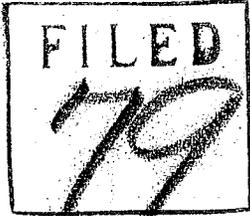


MAGISTRATE COURT: ( Opportunity and time to consult with  
MISDEMEANORS: ) friend or attorney must be given in  
( Magistrate Court to person charged with  
) misdemeanor at time of arraignment.  
( Defendant may waive such right if con-  
) tinuance granted for such purpose and  
( defendant cannot make bail should be  
) committed to jail.



July 28, 1954

Hon. J. B. Schnapp  
Prosecuting Attorney  
Madison County  
Fredericktown, Missouri

Dear Mr. Schnapp:

We render herewith our opinion based upon your request of June 21, 1954, which request reads as follows:

"The Honorable E. C. Westhouse, Magistrate Judge of this County, has requested that I secure an opinion from you on the following question, to-wit:

"Many persons, who have been arrested on a warrant issued by the Magistrate Court or who have been given a 'courtesy' summons by the State Highway Patrol to appear before the Magistrate Court and answer to a misdemeanor charge, do not wish to have 'an opportunity and reasonable time to talk with a friend and attorney' (R. S. Mo., 1949, sec. 558.380) after they have been arraigned, but on the contrary desire to enter a plea of 'Guilty' immediately after the charge (information) is read to them (R. S. Mo., 1949, sec 543.180 and Supreme Court rule 22.07).

"Does the phrase 'an opportunity and reasonable time to talk with a friend and an attorney' mean and does it apply (1) from the time the charge is read to the defendant in court, if the defendant appears voluntarily on a 'courtesy' summons, and (2) from the time the defendant saw and understood the charge on the warrant of arrest?"

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"Can the defendant either voluntarily or involuntarily waive this right if he is fully advised of it?"

"If the Magistrate Court determines that a plea of 'Guilty' cannot be accepted because neither time nor opportunity had been given, then on a resetting of the case to a later date for a plea would the court issue a 'Warrant of Commitment Pending Plea' or should the defendant be recommitted on the original warrant?"

Our opinion is based upon Section 558.380 RSMo 1949, which reads as follows:

"Any judge, magistrate or police judge who shall accept of a plea of guilty from any person charged with the violation of any statute or ordinance at any place other than at the place provided by law for holding court by said judge, magistrate or police judge, or who shall accept of any plea of guilty without first giving the person charged with an offense an opportunity and reasonable time to talk with a friend and an attorney, shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine of not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding three months, or by both such fine and imprisonment, and in addition, shall forfeit his office."

Your first question is whether an opportunity and reasonable time to consult with a friend or attorney must be given to a defendant who has seen and understood the charge against him from the warrant of arrest. Or, in other words, at his arraignment on the charge, must he, even though he has previously been advised of the charge and has had an opportunity to consult with

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friend or counsel, be accorded an opportunity and reasonable time to consult with friend or counsel.

We believe that Section 558.380 supra, contemplates that the opportunity and time (if the latter is required) be given at the time of arraignment.

We think it unnecessary to give a defendant in a criminal case in the Magistrate Court time to consult a friend or attorney, when he states that he does not want such time. It is necessary for the judge, under Section 558.380, quoted above, to give the defendant an "opportunity" to do so; and, should he avail himself of such opportunity, to allow him a "reasonable time" for such purpose, before accepting his plea of guilty. But, having given him the opportunity, and he not availing himself of it, the judge is not required to give him time he does not want.

In State v. Rogers, Mo. Sup., 285 S.W. 976, the facts were as follows:

"The information was filed November 2, 1925, and on that day appellants were arraigned and each entered his plea of guilty. The transcript of the proceedings at that time shows that before such pleas were accepted by the trial court and sentence pronounced, each of the appellants was asked by the court whether he desired to consult with a friend or an attorney, and he said he did not so desire. Each was asked if he was guilty, and each said that he was guilty. \* \* \* \* \*"

After questioning the defendants further regarding their guilt, the trial court made this announcement and entered the same upon his docket:

"Defendants plead guilty, waiving consultation. Each is sentenced to 15 years in the state penitentiary."

Speaking of the application of Section 558.380, supra, to such a state of facts, the Supreme Court said (285 S.W. 976, l.c. 978):

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"Without considering the effect of the violation of such statute upon the validity of a plea of guilty accepted in violation of it, it is sufficient to say that the record before us conclusively shows that the trial judge fully complied with the statute in accepting the pleas of appellants."

This case is authority for the proposition that time to consult with friend or attorney may be waived.

You next inquire, when a continuance is granted to give the defendant time to consult with a friend or attorney, whether the court should issue a "warrant of commitment pending plea" or whether the defendant should be recommitted on the original warrant.

The matter of commitment will be treated just as commitment upon continuance for any other cause. The Supreme Court rule governing the matter is Rule 22.03 reading thus:

"If the defendant shall fail or refuse to enter into such bond the magistrate shall commit him to the common jail of the county or of the city where the trial is pending, there to remain until the day fixed for the trial of the charge alleged against him."

The commitment should not be "on the original warrant" (which we take to be the warrant of arrest), but should be an order to the sheriff to commit the defendant to jail until the trial date. The warrant of arrest simply orders the arrest of defendant and bringing him before the court. The paper delivered to the sheriff on which the order is written might perhaps be called a "warrant of commitment", although it would make no difference, it appears to us, whether the words, "pending plea" were added to the title of the paper.

#### CONCLUSION

It is the opinion of this office that:

- 1) The opportunity and reasonable time to consult with a

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friend or attorney, required to be given by Section 558.380 RSMo 1949, must be given at the time of arraignment, even though previously thereto defendant has had such opportunity and time.

2) A defendant charged with a misdemeanor in Magistrate Court should be accorded an opportunity to consult with a friend or attorney. But he may waive the right to do so, in which case the magistrate is not obliged to grant a continuance or "reasonable time" to do so.

3) When a continuance is granted to allow the defendant to consult with a friend or attorney, he not making bail, the Magistrate should make an order committing him to the County jail.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. W. Don Kennedy.

Yours very truly

JOHN M. DALTON  
ATTORNEY GENERAL

WDK:A