

CRIMINAL PROCEDURE:
BAIL: SUPREME COURT
RULE 21.14:

Under Rule 21.14, Supreme Court Rules of Criminal Procedure for all Missouri courts, one arrested without warrant for criminal offense of careless and reckless driving of a motor vehicle, a bailable offense under Sec. 20, Art. I, Const. of Mo. 1945; while in custody said person may request and be granted bail by magistrate court of county having jurisdiction to try case if charge filed in such court. Condition of bond being that person will appear on specified date, or from time to time to which cause may be continued, to answer information that may be preferred against him, charging said offense. One arrested without warrant for alleged criminal offense and while in custody applies to the magistrate court of the county having jurisdiction if criminal charge filed, and court orders sheriff to bring the prisoner before court and be present during consideration of application for bail; order properly and legally made, and duty of sheriff to obey same.

July 30, 1953

Honorable Ellsworth Haymes
Prosecuting Attorney of
Webster County
Marshfield, Missouri

Dear Sir:

This department is in receipt of your recent request for an official opinion upon the procedure for admitting persons to bail under Rule 21.14, Rules of Criminal Procedure for all courts, adopted by the Supreme Court of Missouri. The opinion request reads as follows:

"This is a request for an opinion on the application of Rule 21.14, Rules of Criminal Procedure. The facts are as follows: A trooper of the highway patrol apprehended a driver of a motor vehicle who was driving carelessly and recklessly and had been drinking. This was late in the afternoon, after office hours, and the subject was lodged in the county jail. At about 6:00 p.m. the attorney for the driver contacted the magistrate of the county to admit the driver to bail. The magistrate tried to contact the sheriff at that time, but he was out of town. He did contact him about 7:15 p.m. and the magistrate came to his office and ordered the sheriff to bring the driver before him (the magistrate) for the purpose of making bail. This the sheriff refused to do, and the

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next day the magistrate issued a citation to the sheriff for contempt for refusing to obey the order to bring the driver before him. The morning after the arrest the prosecuting attorney filed an information against the driver charging him with careless and reckless driving.

"All parties concerned, including this writer, would like your opinion as the proper procedure under this rule in admitting a person to bail, and also as to the legality of the order of the magistrate ordering the sheriff to bring the driver before him."

Rule 21.14 of the Supreme Court Rules reads as follows:

"All persons arrested and held in custody by any peace officer, without warrant, for the alleged commission of a criminal offense, or on suspicion thereof, shall be discharged from such custody within twenty hours from the time of arrest, unless they be held upon a warrant issued subsequent to such arrest. While so held in custody, every such person shall be permitted to consult with counsel or other persons in his behalf. If the offense for which such person is held in custody is bailable and the person held so requests, he may be admitted to bail in an amount deemed sufficient by a judge or magistrate of a court of such county or of the City of St. Louis having original jurisdiction to try criminal offenses. Such admission to bail shall be governed by all applicable provisions of these rules. The condition of the bail bond shall be that the person so admitted to bail will appear at a time and place stipulated therein (which shall be a court having appropriate jurisdiction) and from time to time as required by the court in which such bond is returnable, to answer to a complaint, indictment or information charging such offense as may be preferred against him."

This rule, while very similar to Section 544.170, RSMo 1949, is believed to be for the purpose of implementing and giving effect to said statutes, and to provide the necessary procedure for admitting

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persons to bail who have been arrested and taken into custody by any peace officer without a warrant for alleged commission of a criminal offense, or on suspicion thereof.

It is noted that Section 544.170, supra, makes no provision for admitting persons to bail who have been arrested without warrant under authority of this section. Said section reads as follows:

"All persons arrested and confined in any jail, calaboose or other place of confinement by any peace officer, without warrant or other process, for any alleged breach of the peace or other criminal offense, or on suspicion thereof, shall be discharged from said custody within twenty hours from the time of such arrest, unless they shall be charged with a criminal offense by the oath of some credible person, and be held by warrant to answer to such offense; and every person shall, while so confined, be permitted to all reasonable hours during the day to consult with counsel or other persons in his behalf; and any person or officer who shall violate the provisions of this section, by refusing to release any person who shall be entitled to such release, or by refusing to permit him to see and consult with counsel or other persons, or who shall transfer any such prisoner to the custody or control of another, or to another place, or prefer against such person a false charge, with intent to avoid the provisions of this section, shall be deemed guilty of a misdemeanor."

Rule 21.14, supra, specifically provides that when one is arrested without warrant and held in custody for an alleged criminal offense or on suspicion thereof, and such offense is bailable, and he so requests, he may be admitted to bail in an amount deemed to be sufficient by a judge or magistrate of the proper court of the county, or of the City of St. Louis having original jurisdiction to try the case, should the criminal charge be filed in said court. The condition of the bail bond shall be that the person admitted to bail will appear at the time specified in the court to which bond is returnable, or from time to time to which the cause may be continued, to answer a complaint, indictment or information for such offense as may be preferred against him.

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It is noted that the rule does not provide that one arrested and held in custody under the circumstances referred to shall be required to wait until after a criminal charge has first been filed against him before he can request and be granted bail for his appearance on whatever day the case is set for trial, but that he may apply for, and, if the offense is bailable, be granted bail by the proper court even though no charge is filed against him.

Section 20, Article I, Constitution of Missouri 1945, provides the classes of criminal offenses which are bailable and reads as follows:

"Bail guaranteed-exceptions.--That all persons shall be bailable by sufficient sureties, except for capital offense, when the proof is evident or the presumption great."

From the statement of facts given in the opinion request, it appears that a member of the Missouri Highway Patrol arrested a person without a warrant for the careless and reckless driving of a motor vehicle, and that the person was lodged in the county jail. About 6 p.m. of the same day, the attorney for the prisoner requested the magistrate court of the county to permit said prisoner to make bail. It appears that no formal charge had been filed at the time of the request, and that an information was not filed until the next day, charging said prisoner with careless and reckless driving of a motor vehicle. It does not appear that bail was fixed by the court, that the prisoner furnished a bail bond, or that he was released upon such bond.

The offense for which the person was arrested, held in custody, and later charged, is a violation of Section 304.020, RSMo 1949, and is a misdemeanor, the punishment for which is prescribed by Section 304.570, RSMo 1949.

Said offense was bailable within the meaning of above quoted constitutional provision, and when so requested, the magistrate court of the county might legally have set the bail of the prisoner in a sum deemed sufficient to guarantee his appearance on a specified date or from time to time to which the cause might be continued in said court where said prisoner would be required to answer an information charging him with the careless and reckless driving of a motor vehicle in the event such charge should be preferred against him. This we believe to be the proper construction

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of Rule 21.14, supra, and the procedure for making bail, and the proper application of such procedure to the facts given in the opinion request.

The second inquiry of the opinion request is in regard to the legality of the order of the magistrate requiring the sheriff to bring the prisoner before said magistrate.

The statement of facts given above does not appear to be clear or complete, therefore, insofar as the discussion of the second inquiry is concerned we find it necessary to assume certain facts to be true.

It is assumed that the prisoner was in the custody of the sheriff at 6:00 p.m. on the day of the arrest, when the attorney for the prisoner requested the magistrate court of the county to admit said prisoner to bail, even though no formal charge had been made against such prisoner. The magistrate then attempted to contact the sheriff, presumably for the purpose of getting him to bring the prisoner before the magistrate court for a hearing on the application for bail. The sheriff was out of town at that time, but the magistrate was successful in contacting the sheriff about 7:15 p.m. the same evening. After that time the magistrate went to his office and ordered the sheriff to bring the prisoner before him (the magistrate), which the sheriff refused to do.

It is not clear whether the sheriff was still out of town or whether he was in the presence of the magistrate when ordered to bring the prisoner to court, nor are any reasons given for his failure to comply with the order.

Again, for the purposes of our discussion, it is assumed that the sheriff had returned to town and was in the magistrate's presence when the order was made, and that the prisoner was still in custody of the sheriff where he is assumed to have been placed earlier in the evening.

We make this assumption since it is the only reasonable conclusion we are able to draw from the facts given. We do not believe that the magistrate would, or that he did order the sheriff to bring the prisoner before him when he knew that the sheriff was out of town and that under such circumstances it would be physically impossible for the sheriff to comply with the order. We are rather of the opinion that the magistrate believed the sheriff to be in a position in which he could easily carry out the court's order by bringing the prisoner before said court within a short period of time.

When the prisoner's application for bail was made it was the duty of the magistrate to follow the procedure applicable

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in such cases and as authorized by Supreme Court Rule 21.14, supra. The circumstances required the magistrate to give the application due and proper consideration, and if satisfied that the offense was bailable, to set the amount of bail, and if furnished in the proper amount, then it would be the further duty of the magistrate to release the prisoner.

It appears that such a procedure necessitated a hearing upon the application before the court, and that it was to such a hearing the magistrate ordered the sheriff to bring the prisoner, and to remain until the hearing was adjourned. The court properly and legally made the order, and it was the official duty of the sheriff to bring the prisoner before the court, as ordered, and to remain and attend the court throughout said hearing. In the event the sheriff could not be personally present, then he should have had one of his deputies perform that duty for him, as it is the duty of the sheriff and deputy to attend court and to act in accordance with the court's direction. The general rule in this respect now prevailing in most jurisdictions is stated in 21 C. J. S., under the title of "Courts" Section 142, page 22, as follows:

"As a general rule * * * court * * *
attendants and assistants must act in
accordance with the judge's directions.
* * *"

Section 482.140, RSMo 1949, provides that when requested by a magistrate, it shall be the duty of the sheriff to be present in person, or by deputy and to attend the court. Said section reads as follows:

"Every magistrate may hold court for the trial of all causes of which he has jurisdiction as often as may be necessary to meet the needs of justice, and may hold such court on any day, except Sunday, on which any cause may be set for trial, or any cause adjourned; and, when so required, the sheriff shall be present in person or by deputy and attend on said court."

Therefore, in answer to the second inquiry, it is our thought that the order of the magistrate was properly and legally made, and that it was the official duty of the sheriff to obey same.

CONCLUSION

It is therefore, the opinion of this department that under the procedure provided by Rule 21.14, Rules of Criminal Procedure for all courts of Missouri, as adopted by the Missouri Supreme

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Court, one arrested without a warrant for the alleged criminal offense of careless and reckless driving of a motor vehicle, a bailable offense, under Section 20, Article I, Constitution of Missouri 1945, and while in custody, said person may request and be granted bail by the magistrate court of the county having jurisdiction to try the case in the event a formal charge of such offense were filed in said court. The condition of the bond being that the person admitted to bail shall appear in said court on a specified date, or from time to time to which the cause may be continued, there to answer any information which may be preferred against him, charging the offense of careless and reckless driving of a motor vehicle.

It is the further opinion of this department that when one is arrested for an alleged criminal offense without warrant, and while in custody, makes application for bail to the magistrate court of the county having jurisdiction to try the case in the event a criminal charge were filed in said court, and said magistrate court orders the sheriff to bring the prisoner before the court and to be present during the consideration of the application for bail, such order is properly and legally made and it is the duty of the sheriff to obey same.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul N. Chitwood.

Very truly yours,

JOHN M. DALTON
Attorney General

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