



2016-008

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE  
ATTORNEY GENERAL

November 2, 2015

501 WASHINGTON AVENUE  
P.O. BOX 300152  
MONTGOMERY, AL 36130-0152  
(334) 242-7300  
WWW.AGO.ALABAMA.GOV

Honorable John Keith Warren  
Attorney for City of Lineville  
Post Office Box 566  
Ashland, Alabama 36251-0556

Municipalities – Arrest – Warrants –  
Criminal Procedures – Crimes and  
Offenses – Clay County

When a defendant is arrested without  
a warrant for an offense committed  
in the presence of a law enforcement  
officer and a complaint is issued, the  
judge or magistrate is not required to  
issue a warrant.

Dear Mr. Warren:

This opinion of the Attorney General is issued in response to your  
request on behalf of the Lineville City Council.

QUESTION

When a defendant is arrested by a city  
police officer on a warrantless arrest for a  
criminal act that occurred in the presence of the  
officer and the defendant is then properly  
processed with a bond, conditions of bond, and a  
complaint, is the city then required to also issue  
an arrest warrant either at that time or a later  
date?

FACTS AND ANALYSIS

The circumstances in which a law enforcement officer may arrest  
without a warrant are set forth in section 15-10-3 of the Code of Alabama.

The statute includes arrest “[i]f a public offense has been committed or a breach of the peace threatened in the presence of the officer.” ALA. CODE § 15-10-3(a)(1) (2011). Ordinarily, arrest follows the charging document. The Alabama Rules of Criminal Procedure provide that the general rule is that criminal proceedings are commenced “by indictment or by complaint.” ALA. R. CRIM. P. 2.1. A judge or magistrate determines from the complaint whether there is probable cause. If so, the judge or magistrate proceeds under Rule 3.1. ALA. R. CRIM. P. 2.4. Rule 3.1(a) requires the judge or magistrate to issue an arrest warrant or summons. ALA. R. CRIM. P. 3.1(a).

Rule 4.3 governs procedure upon arrest. Rule 4.3(a) addresses warrantless arrests and sets forth an exception to the general rule where the arrest precedes the charging document. Rule 4.3(a)(1)(iii) provides for the circumstances, as here, where the defendant remains in custody pending bail, and states as follows:

(1) A person arrested without a warrant:

.....

(iii) Shall be afforded an opportunity to make bail in accordance with Rules 4.3(b)(3) and 4.4. A judge or magistrate in the county of arrest shall determine whether probable cause exists to believe that the defendant committed the charged offense, by examining any necessary witnesses in accordance with the procedures for making a probable cause determination provided in Rule 2.4. *If the judge or magistrate finds **there is probable cause for the arrest** of the person, a **complaint shall promptly be prepared**, filed, and served on the defendant, and the judge or magistrate shall proceed as provided in Rule 4.4 for initial appearance.*

ALA. R. CRIM. P. 4.3(a)(1)(iii) (emphasis added).

This Office has considered an identical issue regarding a warrantless arrest for domestic violence, one of the additional circumstances justifying arrest under section 15-10-3(a)(8). Opinion to Honorable William Dennis Schilling, Municipal Judge, City of Pleasant Grove, dated October 17, 2005, A.G. No. 2006-005. That opinion

concluded that all that was necessary under Rule 4.3(a)(1)(iii) was the issuance of a complaint because section 15-13-190 of the Code, which governs procedures for domestic violence offenders arrested without warrants, contains no express requirement of a warrant. ALA. CODE § 15-13-190 (2011)

Similarly, Rule 4.3(a)(1)(iii) itself does not state that a warrant must be issued. On the contrary, unlike Rule 3.1(a), which requires a warrant on a finding of probable cause, Rule 4.3(a)(1)(iii) plainly states the reverse—that a complaint is merely needed on such a finding. Consistent with the *Schilling* opinion, when a defendant is arrested without a warrant for an offense committed in the presence of an officer and a complaint is issued, the judge or magistrate is not required to issue a warrant.

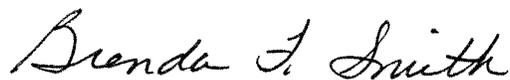
#### CONCLUSION

When a defendant is arrested without a warrant for an offense committed in the presence of a law enforcement officer and a complaint is issued, the judge or magistrate is not required to issue a warrant.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

LUTHER STRANGE  
Attorney General  
By:



BRENDA F. SMITH  
Chief, Opinions Division

LS/GWB

2044271/188346