

OP. NO. 05-017

RULES OF SUPREME COURT OF VIRGINIA: CRIMINAL PRACTICE AND PROCEDURE.

CRIMINAL PROCEDURE: ARREST.

Authority for officer to execute misdemeanor capias, not in his possession, provided that officer informs accused of existence of, and charges contained in, capias and delivers same to accused as soon as practicable.

The Honorable George S. Webb, III
Commonwealth's Attorney for Madison County
April 26, 2005

Issue Presented

You ask whether a law enforcement officer has the authority to execute a misdemeanor capias, not in his possession, based upon an official dispatch from another county.

Response

It is my opinion that an officer has the authority to execute a misdemeanor capias, not in his possession, provided that the officer informs the accused of the existence of, and charges contained in, the capias and delivers the capias to the accused as soon thereafter as practicable.

Background

You relate that the Greene County Sheriff's Office requested that the Madison County 911 Center assist in locating a suspect for execution of a capias. The 911 Center notified a deputy with the Madison County Sheriff's Department of the existence of the capias. You also relate that the 911 Center informed the deputy of the suspect's name, physical description, date of birth, and location. The deputy located and identified the suspect and informed him that a capias had been issued for him. Further, you relate that it is not clear whether the Deputy informed the suspect of the offense charged. Finally, after the deputy placed the suspect in custody, a deputy with the Greene County Sheriff's Department delivered the misdemeanor capias to the suspect.

Applicable Law and Discussion

Rule 3A:7(b) of the Rules of the Supreme Court of Virginia, pertaining to the execution of a capias, indicates that "[t]he capias shall be executed as provided in Rule 3A:4(c)." Thus, Rule 3A:4(c) specifically applies to the execution of a capias. Rule 3A:4(c) provides that

If a [capias] has been issued but the officer does not have the [capias] in his possession at the time of the arrest, he shall
(i) inform the accused of the offense charged and that a [capias]

has been issued, and (ii) deliver a copy of the [capias] to the accused as soon thereafter as practicable.

Consequently, for the valid execution of a capias not in the possession of the officer, three criteria must be met. First, the officer must notify the accused of the issuance of the capias. Second, the officer must notify the accused of the offense being charged. Finally, the officer must, thereafter, deliver a copy of the capias to the accused as soon as practicable.

It is important to note that before 1984, Rule 3A:4(d)(2) read, in part:

The officer shall deliver a copy of the [capias] to the accused at the time of the arrest unless the arrest is for a *felony* and the officer does not have the [capias] in his possession at the time of the arrest, in which case he shall (i) inform the accused of the offense charged and that a [capias] has been issued and (ii) deliver a copy of the [capias] to the accused as soon thereafter as practicable.^[1]

In 1984, subsection (d) was deleted in its entirety and replaced by subsection (c) as quoted above.² Since the word "felony" was deleted, it is apparent that the intent of Rule 3A:4(c) is to grant an officer the authority to execute either a felony or misdemeanor capias not in his possession.

Further, § 19.2-81 permits county and city sheriffs, and their deputies, to "arrest, without a warrant, for an alleged misdemeanor not committed in his presence when the officer receives a radio message from his department or other law-enforcement agency within the Commonwealth that a warrant for such offense is on file." This Office consistently has treated capiases and warrants synonymously.³ Therefore, it is my opinion that § 19.2-81 would authorize such an arrest for a misdemeanor capias, provided that the officer complies with Rule 3A:4(c).

Conclusion

Accordingly, it is my opinion that an officer has the authority to execute a misdemeanor capias, not in his possession, provided that the officer informs the accused of the existence of, and charges contained in, the capias and delivers the capias to the accused as soon thereafter as practicable.

¹Va. Sup. Ct. R. 3A:4(d)(2), Vol. 2 (Michie Repl. Vol. 1977) (emphasis added).

²See Va. Sup. Ct. R. 3A:4 cmt. (Michie 1984 Added Vol.). A prior opinion of this Office concludes that a police officer could not execute a misdemeanor capias not in his possession. 1975-76 Op. Va. Att'y Gen. 11. As noted herein, the subsequent change to Rule 3A:4, however, now compels a different result. Further, the previous opinion treated capiases and warrants synonymously. *Id.*

³See Op. Va. Att'y Gen.: 1985-1986 at 130; 1981-1982 at 20; 1975-1976, *supra* note 2, at 11.

[Back to April 2005 Opinion Index](#)