

CRIMINAL LAW:: When a defendant voluntarily appears to answer a
ARREST: : charge that he has committed a misdemeanor, and
SUMMONS: : does not object to the failure of issuance of a
WARRANTS: : warrant of arrest or summons against him, it is
: unnecessary to then issue as a matter of course
: such warrant of arrest or summons.
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March 30, 1955

Honorable Roy W. McGhee, Jr.
Prosecuting Attorney
Wayne County
Greenville, Missouri

Dear Mr. McGhee:

Your letter of March 25, 1955, requesting an opinion of this office reads, in part, as follows:

"This office handles a large volume of minor misdemeanors, the majority of which can be classified as follows:

"1. Conservation commission regulation violations.

"2. Minor traffic violations.

"In most of these cases either the conservation agent in the former case, or the sheriff or highway patrolman in the latter, give the violator a summons to appear before the magistrate court on a day certain to answer the charge, which is subsequently filed by me.

"As I understand the matter, this 'summons', not being issued by the court pursuant to the Supreme Court rule, has no legal validity, but is merely a 'reminder' to appear as directed or a warrant will be issued.

"When the violator does appear in response to such 'summons' should a warrant be issued or not?

"The magistrate here has taken the position that the violator, by his appearance, has

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waived the issuance of the warrant, while I am informed that in other counties a warrant is issued in all such cases as a matter of course."

Supreme Court Rule 21.05 provides:

"Upon the filing of an information charging the commission of a misdemeanor, a warrant for the arrest of the defendant shall be issued. If, however, there is reasonable ground, in the discretion of the judge, magistrate or the prosecuting attorney, as the case may be, to believe that the defendant will appear upon a summons, a summons shall be issued instead of a warrant of arrest. The summons shall describe the offense charged in the information and shall command the defendant to appear at a stated time and place in answer thereto. The summons may be served in the same manner as a summons in a civil action. If the defendant shall fail to appear as commanded by the summons, a warrant of arrest shall be issued."

The obvious intent of the Supreme Court in formulating the above rule was to obviate the necessity of the issuance and execution of an arrest warrant in misdemeanor cases wherein there is reasonable ground to believe that the defendant will appear voluntarily to answer the charge against him. Since a warrant of arrest need issue only when the defendant fails to appear in response to a summons, it is clear that such warrant is not required to be issued as a matter of course when a defendant voluntarily appears at a time and place satisfactory to the court having jurisdiction of the case. Nor is it necessary for the court to issue a summons to a defendant who voluntarily appears without objection to the failure of issuance of a summons by the court. The summons is nothing more than notice to the defendant that he has been charged with an offense, and that he is required to appear at a certain time and place to answer the charge. See Form No. 22, Criminal Procedure Forms Promulgated by the Supreme Court of Missouri, p. 789, RSMo Cumulative Supplement, 1953. The purpose of the summons having been fulfilled upon

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the voluntary appearance of the defendant, it is our opinion that no summons need be then issued. Our position is substantiated by 22 C.J.S., Criminal Law, paragraph 316, p. 468, which declares the rule to be:

"* * * However, since the only function of the warrant in a criminal case is to enable the court to acquire jurisdiction of the person of accused by bringing him before the court to answer the charge made against him, where a person is arrested lawfully, without a warrant, and is immediately taken before the court, or when accused appears voluntarily and pleads to the complaint, or when his presence is secured in some other way, there is no necessity for a warrant. * * *."

CONCLUSION

It is, therefore, the opinion of this office that when a defendant voluntarily appears to answer a charge that he has committed a misdemeanor, and does not object to the failure of issuance of a warrant of arrest or summons against him, it is unnecessary to then issue as a matter of course such warrant of arrest or summons.

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

Yours very truly,

JOHN M. DALTON
Attorney General

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