

MAINE STATE LEGISLATURE

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Drafting of Complaints by District Court Clerks

SYLLABUS:

Police officers, acting within their jurisdiction, when making an arrest without a warrant are entitled to receive a complaint for the offense from the appropriate District Court. District Court clerks in the above situation do not have discretion to refuse to issue the complaint but are in effect performing a ministerial act.

FACTS:

State police officers, after making a physical arrest of a person for either a misdemeanor committed in their presence or for a felony, have subsequently been refused a complaint by a District Court clerk in whose jurisdiction the arrest was made.

QUESTION:

Where a prior physical arrest has been made, may a District Court clerk refuse to draw a complaint against the person who has been arrested and who must appear before the District Court?

ANSWER:

No.

OPINION:

In Maine, an officer without a warrant may arrest for a felony if he has reasonable grounds of suspicion that the person arrested has committed a felony. Therriault v. Breton, 114 Me. 137, 142; 95 A 699, 701 (1915). An Officer without a warrant may also arrest for a misdemeanor if it is committed in his presence. Caffini v. Hermann, 112 Me. 282; 91 A 1009 (1914).

Glassman, Maine Practice, Rules of Criminal Procedure, Rule 3, indicates that the issuing of a written complaint against a person already arrested is merely a formalizing of an existing criminal process.

Commentary 3.1 reads in part as follows:

"The complaint serves a dual purpose: If the defendant is not in custody it enables the officer empowered to issue process to determine whether probable cause exists to believe that an offense has been committed and that the defendant has committed it, thereby justifying the issuance of a warrant; if the defendant is in custody or before the court it serves as the charging document upon which the preliminary examination is held. In essence the complaint is the formal institution of the criminal process. The word formal is used because in reality the criminal process is instituted the moment a defendant is arrested, and the arrest may take place without a complaint having been filed or a warrant having been issued..." (Emphasis supplied)

Therefore an officer apprehending a person without a warrant for either a felony or a misdemeanor committed in his presence, has in effect instituted the criminal proceeding at the time of the physical arrest. Once this has been done, it is the officer's duty to swear out a complaint to give the court a "charging document" upon which it may proceed.

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