

POLICE DEPARTMENT,
CITY OF NASHVILLE,
Nashville, Tenn., April 19, 1961.

Hon. ROBERT V. MURRAY,
Chief of Police, Government of the District of Columbia, Metropolitan Police
Department, Washington, D.C.

DEAR CHIEF: In answer to your letter of April 4 we wish to inform you that numerous cases decided by the Tennessee Supreme Court hold that there is no set time that a person may be held between arrest and arraignment before a magistrate when the arrest is made by an officer. However, the code does provide that a private person who arrests another for a public offense must take the arrested person before a magistrate or deliver him to an officer without unnecessary delay.

Our city code provides that an arrested person must be taken before a magistrate without unnecessary delay when arrested in the daytime or when the court is in session. When at nighttime and the court is not in session the arrested person may be placed in detention without a warrant until such time as the court is in regular session. The arrested person is allowed bail for bailable offenses.

There is nothing in the State code to prohibit an officer from holding a person incommunicado for the purpose of investigating him when there is reasonable grounds for believing he had committed a felony, even though it was later determined he was not guilty and any confession obtained during that time can be used in evidence against him, provided he is not held for a period longer than 72 hours and was not mistreated during that time and no promises were made to him.

I am enclosing several cases decided by our Tennessee Supreme Court relating to confessions obtained between arrest and arraignment.

Very truly yours,

DOUGLAS E. HOSSE, *Chief of Police.*

SUBMITTED HEREWITH IS SOME AUTHORITY FOR THE POLICE DEPARTMENT TO DETAIN A PERSON AND TAKE HIS CONFESSION PRIOR TO ARRAIGNMENT BEFORE A COMMITTING MAGISTRATE OR JUDGE

In the case of *Wynn v. State*, reported in 181 Tennessee, at page 325, the supreme court, speaking through Chief Justice Green, said:

"The proprietor of a restaurant in Memphis, after closing his place of business about 11 o'clock at night, on his way home was held up by three Negroes at the point of a pistol and a small sum of money and a bunch of keys were taken from his person. He received a blow in resisting the assault. The Negroes left him and he reported the matter to the police telling them that the keys to his place of business were taken and that it was probably the intention of those assaulting him to enter it. The doors to the house and safe were opened with keys, without doubt the keys taken from the prosecutor's person.

"They were detained in the police station 3 days without being taken before a magistrate. They were held incommunicado during this time. On the third day they were taken before a magistrate and in open court pleaded guilty. Shortly before he was taken into the magistrate's court, Wynn made a confession, as did the other two Negroes.

"At the conclusion of this preliminary hearing objection was made to the admission of the confessions solely on the ground that the defendant and the other Negroes were illegally detained for about 72 hours before they were brought into the magistrate's court.

"Since there was no proof of any mistreatment of defendant, nor of whipping, nor of threats of whipping while in custody offered on the preliminary hearing the trial judge was right in admitting the confession, unless the mere fact of the detention of defendant during the 72 hours rendered the confession inadmissible.

"Section 11544 of the code provides: 'A private person who has arrested another for a public offense, shall, without unnecessary delay, take him before a magistrate or deliver him to an officer.' There is no such provision with respect to the duty of an officer making an arrest."

In *Ashcraft v. State* (unreported 1943) and on appeal in the U.S. Supreme Court, 88 L. Ed. 858, this Court, with respect to the detention of the defendants for 36 hours prior to the time they were taken before a magistrate, said that,