

The State of South Carolina

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May 16, 1989

Philip E. Wright, Esquire
City Solicitor, City of Lancaster
303 N. Main Street
Lancaster, South Carolina 29720

Dear Mr. Wright:

In a letter to this Office you questioned whether there is a conflict between the provisions of Article I, Section 14 of the State Constitution and Section 14-25-125 of the Code. The constitutional provision states in part:

(t)he right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury....

Section 14-25-125 states in part:

(a)ny person to be tried in a municipal court may, prior to trial, demand a jury trial... The right to a jury trial shall be deemed to have been waived unless demand is made prior to trial.

You referenced a situation where a defendant, charged with first offense driving under the influence, was notified of the time and place for trial but did not appear at the scheduled time and was therefore tried in his absence at a bench trial. You have questioned whether the referenced constitutional provision demands that any case be tried by a jury thereby creating a conflict with Section 14-25-125.

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The State Supreme Court has determined that the State Constitutional provisions establishing the right to a jury trial are applicable only in cases in which the right to a jury trial existed at the time the State Constitution was adopted in 1868. C.W. Matthews Contracting Co., Inc. v. South Carolina Tax Commission, 267 S.C. 548, 230 S.E.2d 223 (1976); McGlohon v. Harlan, 254 S.C. 207, 174 S.E.2d 753 (1970). Such construction was cited by the Fourth Circuit Court of Appeals in United States v. Jenkins, 780 F.2d 472 (1986), cert. den. 476 U.S. 1161. In concluding that inasmuch as a driving under the influence first offense did not exist at the time the State Constitution was adopted, "... a jury trial right for such offense in South Carolina is merely procedural." 780 F.2d at 475. The Court cited Section 22-2-150 of the Code which states that an individual charged with an offense within the jurisdiction of a magistrate's court, which would include first offense driving under the influence, is entitled to a jury trial on demand.

The court in Jenkins also noted that pursuant to Section 56-5-2940 of the Code, the maximum penalty for first offense driving under the influence is thirty days imprisonment or a fine not exceeding two hundred dollars. Citing the decision of the United States Supreme Court in Baldwin v. New York, 399 U.S. 66 (1970) and Duncan v. Louisiana, 391 U.S. 145 (1968), the Fourth Circuit determined that in light of the penalties provided, along with the "intrinsic nature of the offense", the offense of first offense driving under the influence is not "serious" so that a defendant charged with such offense would not have a right to a trial by jury pursuant to Federal Constitutional provisions, namely Article III, Section 2 and the Sixth Amendment.

Consistent with the reasoning in Jenkins, the right to a jury trial in municipal court is governed by Section 14-25-125. As referenced, the right to a jury trial is considered waived unless a demand for such is made before trial. Where no such demand is made before trial and a defendant fails to appear at the scheduled time, he may be tried in his absence by the judge.

I would further note that the State Supreme Court in State v. Adkison, 264 S.C. 180, 213 S.E.2d 591 (1975) approved the trial by a magistrate of a defendant in his absence for a driving under the influence offense. Such case was cited in the South Carolina Bench Book for Magistrates and Municipal Court Judges published by the State Court Administration Office at pages III 77-79 in detailing the procedure for a trial in absentia. See also: Memoranda in the Bench Book dated June 30, 1982 (pp. VIII 95-96) and April 24, 1985 (p. VIII - 142).

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If there is anything further, please advise.

Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR:sds

REVIEWED AND APPROVED BY:



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EXECUTIVE ASSISTANT FOR OPINIONS