



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

January 4, 2006

Timothy Ford, Chief of Police
Eastover Police Department
P. O. Box 58
Eastover, South Carolina 29044

Dear Chief Ford:

In a letter to this office you questioned whether a uniform traffic summons can serve as the charging document for the offense of criminal domestic violence ("CDV"), 1st offense. You also questioned whether the preference of the judge for a warrant may supercede any statute providing for the use of a traffic ticket in such circumstances. Such question was prompted by a situation involving a physical altercation between a boyfriend and his girlfriend. You indicated that the incident was witnessed by you, the chief of police.

S.C. Code Ann. § 56-7-10 provides that a uniform traffic ticket can be used in arrests for traffic offenses and for other specified offenses. Additionally, S.C. Code Ann. § 56-7-15 states that

(A) The uniform traffic ticket, established under the provisions of Section 56-7-10, may be used by law enforcement officers to arrest a person for an offense committed in the presence of a law enforcement officer if the punishment is within the jurisdiction of magistrates court and municipal court.

S.C. Code Ann. §§ 16-25-20(A) and (B) provide for the offense of criminal domestic violence. Such provision specifically states that "...an offense pursuant to the provisions of this subsection must be tried in summary court." Therefore, first offense CDV would be within the jurisdiction of a magistrate.

Consistent with the above, a uniform traffic ticket may be used for an arrest of a first offense CDV violation if the offense is committed in the presence of a law enforcement officer. Such conclusion is supported by the further provision in Section 56-7-15(B) that

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An officer who effects an arrest, by use of a uniform traffic ticket, for a violation of Chapter 25 of Title 16...(CDV)...shall complete and file an incident report immediately following the issuance of the uniform traffic ticket.

As to your question of whether the preference of the judge for a warrant may supercede a statute providing for the use of a traffic ticket in such circumstances, in my opinion, it cannot. As referenced above, the use of a traffic ticket for first offense CDV is specifically authorized by statute where the offense is committed in the presence of a law enforcement officer.

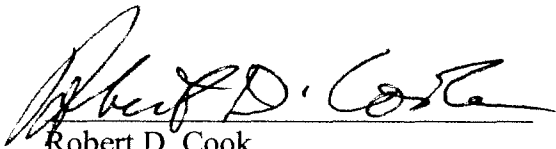
If there are any questions, please advise.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General