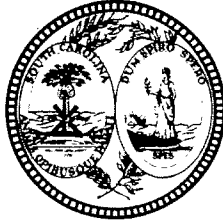


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The State of South Carolina  
**OFFICE OF THE ATTORNEY GENERAL**

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

May 21, 1997

The Honorable B. Lee Miller  
Municipal Judge, City of Greenwood  
Post Office Box 40  
Greenwood, South Carolina 29648

Re: Informal Opinion

Dear Judge Miller:

You have sought an opinion "concerning the issuance of a Uniform Traffic Ticket for a freshly committed Shoplifting incident, that can be tried in a Municipal or Magistrate Court." Your question concerns the following situation:

[a] Police Officer arrives at Johns House of goods and speaks with employee ABC pertaining to a 911 call, Shoplifting, that has just occurred (freshly committed). Employee ABC states that Suspect XYZ has been caught Shoplifting, allows the Police Officer to view the items shoplifted and advises the Officer of the facts surrounding the incident. The Police Officer investigates the incident and determines there is probable cause for the charge of Shoplifting.

A Custodial Arrest (pursuant to a citizen's arrest) is made for Shoplifting by the Police Officer and Suspect XYZ is transported to the County Jail for the crime of Shoplifting to await a bond hearing.

You further state that your question is whether a Uniform Traffic Ticket "can be issued by the assisting Police Officer to give the Magistrates Court/ Municipal Court jurisdiction to hear this infraction of law, or must a warrant be obtained by employee ABC to give

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the court jurisdiction." It is your view that "the arrest has already occurred and the Arrest warrant or UTT is after the fact and is only to give the court jurisdiction to hear the case." Your research in this regard is that

[i]t is quite clear from case cites: State v. Martin (1980) 268 S.E.2d 105, State v. Clark (1982) 287 S.E.2d 143 and State v. Refford (1981) 281 S.E.2d [ ] that a Police Officer may make an arrest without a warrant for freshly committed acts. In addition, an Attorney General Opinion cited 1990 No. 90-48 states that if a crime is committed in the presence (extended to freshly committed by the Courts) of a Law Enforcement Officer, he/she may make an arrest on UTT which gives the Magistrate or Municipal Court Jurisdiction without the necessity of obtaining an arrest warrant.

#### Law / Analysis

As you correctly note, our Supreme Court has recognized on several occasions that "while generally an officer cannot arrest, without a warrant, for a misdemeanor not committed in his presence, an officer can arrest for a misdemeanor when the facts and circumstances observed by the officer give him probable cause to believe that a crime has been freshly committed." State v. Martin, 275 S.C. 141, 268 S.E.2d 105 (1980). In Martin, the Court referenced S.C. Code Ann. Sections 17-13-30, 23-13-60 (deputy sheriffs may arrest without warrant for any freshly committed crime), 23-5-40 (highway patrolman possess same powers of arrest as deputy sheriffs) and State v. Sims, 16 S.C. 486 ("upon fresh and immediate pursuit") in reaching this conclusion. There, a State Highway Patrolman was deemed to have sufficient basis to arrest without a warrant for the misdemeanor offense of DUI because when the officer arrived at the scene, based upon the facts within his observation, it was evident that "the crime had been freshly committed." 268 S.E.2d at 107. The Court cited with approval the language contained in State v. Mims 263 S.C. 45, 208 S.E.2d 288, where it was stated that a "crime is committed in the presence of an officer when the facts and circumstances occurring within his observation, in connection with what, under the circumstances, may be considered as common knowledge, give him probable cause to believe or reasonable grounds to suspect that such is the case." Subsequently, in State v. Clark, 277 S. C. 333, 287 S.E.2d 143 (1982), the Court applied this same principle to an arrest by a municipal police officer. See also. State v. Refford, 276 S.C. 657, 281 S.E.2d 471 (1981). Thus, where the law enforcement officer possesses probable cause that the misdemeanor was freshly committed, an arrest without warrant for such offense is valid.

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Where no warrant is thus involved, and the offense is one within the jurisdiction of a magistrate's or municipal court, your concern is what will then serve as the charging document to give the court jurisdiction?

The Uniform Traffic Ticket is provided for at Section 56-7-10 et seq. Section 56-7-10 makes the UTT applicable to "all traffic offenses" as well as a number of additional offenses enumerated. Such Section further provides that "[t]he service of the uniform traffic ticket shall vest all traffic, recorder's and magistrate's courts with jurisdiction to hear and dispose of the charge for which the ticket was issued and served." Section 56-7-15 does not specifically enumerate the offense of shoplifting therein.

However, Section 56-7-15 further provides that

[t]he 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 magistrate's court and municipal court.

As you indicate, in Op. Atty. Gen., Op. No. 90-48 (August 17, 1990), this Office construed Section 56-7-15 as providing "for the use of the uniform traffic ticket for any offense which falls within the jurisdiction of magistrate's court and municipal court when the offense is committed in the presence of a law enforcement officer." (emphasis added). And as indicated above, the Court in State v. Martin, supra quoted the language used in State v. Mims, supra, that a crime is "committed in the presence of an officer when the facts and circumstances occurring within his observation, in connection with what, under the circumstances, may be considered as common knowledge, give him probable cause to believe or reasonable grounds to suspect that such is the case." The Court used this language from Mims to support the validity of an arrest "when the facts and circumstances observed by the officer give him probable cause to believe that a crime has been freshly committed."

Therefore, I agree with your reading of Section 56-7-15 that where an officer has probable cause to believe that a misdemeanor offense (such as shoplifting) has been "freshly committed" and subsequently serves a Uniform Traffic Ticket upon the defendant for such offense, such would be sufficient to give a magistrate or municipal court jurisdiction to hear the offense. This conclusion is consistent with the case of State v. Biehl, 271 S.C. 201, 246 S.E.2d 859 (1978) where the Court held with respect to a citation for a traffic offense (Section 56-7-10), that "the issuance of a uniform traffic ticket vests jurisdiction in the traffic court, even though the officer may not have

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personally seen the accused person commit the offense with which he is charged." While Section 56-7-15 requires that the offense be committed in the officer's "presence," I believe that where there is probable cause to believe the misdemeanor was "freshly committed," Section 56-7-15's "presence" requirement is met for purposes of vesting the magistrate or municipal court with jurisdiction through use of the Uniform Traffic Ticket.

Of course, I would caution that the offense must truly have been "freshly committed" based upon all the facts and circumstances. Moreover, where a warrant can be obtained prior to trial such would obviously be the safest course. Nevertheless, even where a warrant cannot be obtained and a Uniform Traffic Ticket is written for an offense which has been freshly committed, I believe that such ticket would serve as the charging document and would give the summary court jurisdiction.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,



Robert D. Cook  
Assistant Deputy Attorney General

RDC/an