1982 WL 189301 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
May 21, 1982

***1 Re: Jurisdiction of Magistrates Courts Based on Issuance of Uniform Traffic Tickets**

Chief Richard P. Ruonala
City Police Department
P. O. Box 236
Goose Creek, South Carolina 29445

Dear Chief Ruonala:
Your letter to the Attorney General dated April 20, 1982, has been referred to me for review and reply. In that letter, you asked this office to update its opinion previously issued regarding the necessity for the issuance of arrest warrants in addition to or in lieu of Uniform Traffic Tickets.

The opinion referred to, 1971-72 Opinions of the Attorney General No. 3269, page 68, was explicitly confirmed by the South Carolina Supreme Court in the case of State v. Prince, 262 S.C. 89, 202 S.E.2d 645 (1974). The court's decision in State v. Prince was reinforced by its later decision in State v. Biehl, 271 S.C. 201, 246 S.E.2d 859 (1978) which noted that the Uniform Traffic Ticket gave jurisdiction of traffic offenses to all traffic courts without the requirement of a warrant even in those situations where the officer had not directly observed the offense.

By Act No. 353, the 1980 General Assembly substantially amended § 56-7-10 deleting the statutory form for the tickets. However, the language conferring jurisdiction to traffic courts was not in any substantial way changed.

In view of the two cases previously cited and in view of the almost identical language used in the statute effective today as compared with the statute in effect at the time of those two decisions, there does not appear to be any reason to revise, update, or otherwise draft a new opinion on this matter. The law has not changed, and the opinion remains valid.

As to the specific case which you mentioned in your letter, it appears that the trial judge clearly was in error in dismissing the tickets. However, it also appears that the State's remedy for this error (if any remedy exists) would have been to appeal the magistrate's decision to the Circuit Court, perhaps after asking the magistrate to reopen the case in light of the Supreme Court decisions previously cited herein. The question of whether or not the State has a right to appeal under the circumstances which you present has not yet been clearly answered by our Supreme Court. There is no clear statutory authority for such an appeal. The question of whether such authority exists is currently before our State Supreme Court and hopefully an answer will soon be forthcoming.

You have also inquired as to whether or not bringing the defendant back to trial would now constitute double jeopardy. Our Supreme Court has held that jeopardy ordinarily attaches after a jury has been impaneled and sworn. State v. Charles, 183 S. C. 188, 190 S.E. 466 (1937). Our Supreme Court has also held that an acquittal in a court lacking competent jurisdiction was not a bar to subsequent prosecution. State v. Howell, 220 S.C. 178, 66 S.E.2d 701 (1951).

The situation here, though, is a court which clearly did have jurisdiction but erroneously reached the conclusion that it did not, thereby dismissing the charges. There are no South Carolina cases on this specific issue. However, a general statement of the law is that the judgment of any court which has jurisdiction is a bar to a subsequent prosecution for the same offense even

though the judgment is erroneous and voidable and even where the court erred in exercising discretion which was vested in it. 22 CJS Criminal Law § 244.

***2** Therefore, if the trial court was correct in dismissing the case for want of jurisdiction, arrest warrants would remedy the situation and provide competent jurisdiction. Unfortunately, it appears that the trial court did have jurisdiction and erred in dismissing the case—the State's only remedy to this error being an appeal to the Circuit Court (the viability of this remedy is very hazy and will remain so until and if the State Supreme Court rules on the State's right to appeal decisions such as this.) Therefore, no other court properly having jurisdiction and no appeal being taken from the erroneous decision, the issuance of arrest warrants or new traffic tickets for the same charges would appear to constitute double jeopardy.

I have discussed this particular aspect of the question with the Chief of the Criminal Appeal Section who has advised me that he concurs which my view of this situation. It thus appears that we are caught in a Catch-22 situation.

I am sorry that I cannot be more optimistic or helpful with this information. If you have any further questions regarding this matter, please let me know.
Yours very truly,

William L. Todd
Assistant Attorney General

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