

1980 WL 121217 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 12, 1980

*1 Captain Charles E. Lloyd
Commander of Uniform Division
North Charleston Police Department
Post Office Box 10100
North Charleston, SC 29411

Dear Captain Lloyd:

In a letter to this Office you raised the following question:

Can an officer issue a traffic summons at an accident based on his investigation of the accident?

I presume you are referring to a situation where the officer does not see the defendant driving but instead arrives after an accident has occurred to investigate.

In the case of [State v. Biehl](#), 264 S.E.2d 859 (1978) the South Carolina Supreme Court reaffirmed its earlier holding in [State v. Prince](#), 262 S.C. 89, 202 S.E.2d 645 (1974), where the court held that pursuant to [Section 56-7-10, Code of Laws of South Carolina](#), 1976, the service of a uniform traffic ticket vests a traffic court with jurisdiction to hear and dispose of the charges, including first offense driving under the influence, for which a uniform traffic ticket was issued. An arrest warrant is not necessary to give such court jurisdiction to consider the case. In [Biehl](#) the arresting officer arrived after an accident involving the defendant had occurred and never actually saw the defendant driving a motor vehicle. Based upon information obtained at the scene, the defendant was served with a uniform traffic ticket and arrested. A breathalyzer test was given but the results were not used at the trial. At the defendant's trial the State relied on testimony of eyewitnesses whose testimony was that the defendant was driving a motor vehicle and was under the influence of an intoxicant. The Supreme Court in [Biehl, supra.](#), in holding that a traffic court has jurisdiction to hear a case involving an offense which the officer who issued the summons did not see, gave no indication of what its ruling might have been if any evidence procured as a result of the arrest, such as a breathalyzer test result, had been introduced. The Court also did not rule that the defendant's arrest under such circumstances was legal. The Court stated:

'(t)he issuance of the uniform traffic ticket merely summons the accused person to appear before a magistrate, where he may submit any contention relative to the preservation of his rights.' 246 S.E.2d at 860.

With reference to such, while a uniform traffic ticket suffices as a charging document to give a court jurisdiction to hear a case involving a typical traffic offense which the issuing officer did not see, as to those situations where the arresting officer does not actually witness the circumstances that would warrant an arrest for driving under the influence, it is the opinion of this Office that to effect a proper arrest, an arrest warrant be served. This is based on the legal premise that an officer may arrest without a warrant only when a misdemeanor is committed in his presence.

Therefore, in answer to your question, in those circumstances where an officer does not witness a traffic violation, the officer can issue a uniform traffic summons at an accident based upon his investigation of the accident and such summons is sufficient to give a court jurisdiction to hear a case involving the defendant cited for a typical traffic case. The same opinion would hold true for an individual arrested for driving under the influence as to jurisdiction of a court to consider the case. However the

qualification noted above in Biehl, supra., as to the apparent need for an arrest warrant to effect a lawful arrest and to allow the introduction of evidence procured as a result of the arrest, such as a breathalyzer test result, should be noted.

*2 If there any questions relative to the above discussion, please contact me.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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