

1979 WL 43001 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 17, 1979

\*1 The Honorable Mary F. Henderson  
Magistrate  
Law Enforcement Center  
P. O. Box 314  
Hampton, South Carolina

Dear Judge Henderson:

You have asked our office to answer the following question:

Does an officer have the authority to make a reckless driving case when he does not see the person driving the car, such as a traffic accident. If the case can be made, does the officer have to have a witness?

[Section 56-7-10 of the 1976 Code](#) of Laws provides that the service of a uniform traffic ticket 'shall vest all traffic courts with jurisdiction to hear and dispose of the charge for which such ticket was issued and served . . .'. Moreover, the rule in this State has long been that the mere fact of an unlawful arrest does not preclude a defendant's subsequent prosecution and conviction of the offense for which he was arrested. [State v. Biehl](#), 246 S.E.2d 859 (1978); [State v. Holliday](#), 255 S.C. 142, 177 S.E.2d 541; [Thompson v. State](#), 251 S.C. 593, 164 S.E.2d 760; [State v. Swilling](#), 246 S.C. 144, 142 S.E.2d 864; [State v. Waiters](#), 260 S.C. 44, 83 S.E.2d 629.

Of course the arrest would only be unlawful if the officer failed to procure a warrant before arresting the subject. I would also refer you to 1976 Opinion of the Attorney General, 4343, page 169, which states where an officer having traffic jurisdiction, stops a motorist and subsequently issues a traffic ticket but does not actually take the motorist into custody, it does not constitute an arrest of the motorist. Such a ticket is merely a summons or notice to appear and serves to confer jurisdiction over the matter in the traffic court.

Not having all the facts before me, I cannot say whether there was actually an arrest or merely the issuance of a traffic summons. Therefore I must answer your question in the alternative. If the officer having traffic jurisdiction, comes upon the scene of an accident, not actually having seen any driving, and after investigation issues the uniform traffic summons to a subject but does not place the subject under arrest, it is not an arrest, and the magistrate is conferred with jurisdiction by virtue of the traffic summons. If, on the other hand, the officer arrives at an accident scene, not having seen any driving and places one of the individuals under arrest, takes him into custody and also issues a uniform traffic summons the arrest is unlawful, assuming no warrant has been obtained. However, the magistrate's court is nevertheless vested with jurisdiction to hear the matter by virtue of the uniform traffic summons. Of course if the officer has seen the individual driving then it constitutes a misdemeanor committed within the presence of the officer, and he may arrest lawfully without a warrant.

The second part of your question asks if the case can be made does the officer have to have a witness?

The answer to this question would depend greatly upon the circumstances of the particular case. Circumstantial evidence is of course admissible in our courts and is considered valid evidence. If the officer through his independent investigation can present evidence which tends to show the defendant was driving the vehicle in a reckless manner, then an eyewitness need not be presented. Also if the officer testifies as to any statements or admissions made by the defendant himself,

assuming such statements and admissions are admissible, these may prove the case against the defendant. Of course it would be preferable for the officer to have an eyewitness, however the case can be proved circumstantially and through the defendant's own admissions without the use of an eyewitness. This is largely a question of evidence and you as the judge would very likely to be called upon to determine whether there was enough evidence to present the case to the jury if and when the defense makes a motion for a directed verdict based upon lack of evidence. The fact situations are so numerous and varied that you as the judge would have to determine whether or not the lack of an eyewitness is fatal to the officer's case.

\*2 Therefore, it is the opinion of this office that an officer does have the authority to make a reckless driving case when he does not see the person driving; and, even though it would be preferable to have a witness, it is possible to move the case without such a witness depending upon what other evidence the officer offers.

I hope this has answered your questions and if there is anything further that I can do for you, please do not hesitate to call.  
Very sincerely yours,

Patrick M. Teague  
Staff Attorney.

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