

1979 WL 43507 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 8, 1979

*1 Honorable Jack Allison
Magistrate
Cherokee County
Cherokee County Courthouse
Gaffney, South Carolina 29340

Dear Judge Allison:

In a letter to this Office you questioned the propriety of charging a defendant with both reckless driving and failing to stop for a police vehicle arising from the same set of facts.

Section 56-5-750 defines the offense of failing to stop a motor vehicle when signaled by a law enforcement vehicle. It further states that such offense is punishable by a fine of not less than five hundred (\$500.00) dollars or imprisonment for not less than ninety (90) days. Therefore, such offense is a general sessions court offense. In the case of [State v. Hoffman](#), 257 S.C. 461, 186 S.E.2d 421 (1972), the South Carolina Supreme Court indicated that to establish a violation of Section 56-5-750, the State must show that the defendant was driving a motor vehicle, that he was driving it on a road, street or highway of this State, that he was signaled to stop by a law enforcement vehicle by means of siren or flashing light, and that he did not stop.

The offense of reckless driving is defined by [Section 56-5-2920 of the 1976 Code](#) of Laws. Such Section states in part that 'any person who drives any vehicle in such a manner as to indicate either a wilful or wanton disregard for the safety of persons or property is guilty of reckless driving'. Such Section further states that a conviction is punishable by a fine of not less than twenty-five (\$25.00) dollars nor more than one hundred (\$100.00) dollars or by imprisonment for not more than thirty (30) days. Thus, such an offense is a magistrate's court offense.

In evaluating whether a defendant can be charged with both reckless driving and failing to stop for a police vehicle, it is important to look to the circumstances in deciding whether one or both charges could be brought. For instance, if a driver is driving in a manner which would permit a charge of reckless driving pursuant to [Section 56-5-2920](#), supra., and a law enforcement officer attempts to stop him, but the driver fails to stop and therefore violates Section 56-5-750, supra., in the opinion of this Office, both charges could be brought against a defendant. However, if a defendant driving a motor vehicle on a highway in this State is signaled to stop by a law enforcement vehicle by means of a siren or flashing light and does not stop and thereafter drives in a manner which would under other circumstances constitute reckless driving under [Section 56-5-2920](#), supra., the officer should make a decision to charge the defendant either with reckless driving or failing to stop. It would appear to be inappropriate to charge him with both offenses inasmuch as the manner of driving recklessly occurred after he was signaled to stop and refused to do so. This is especially true inasmuch as Section 56-5-750, supra., states that 'any attempt to increase the speed of a vehicle or in any other manner avoid the pursuing law-enforcement vehicle when signaled by a siren or flashing light shall constitute prima facie evidence of a violation of this section.' Incidentally, it was further stated in the [Hoffman](#) decision that a violation of another law by a defendant prior to being signaled to stop is not an element of the offense of failing to stop.

*2 If there is anything further, do not hesitate to contact me.
Sincerely,

Charles H. Richardson
Assistant Attorney General

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