

1975 WL 29474 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 5, 1975

\*1 Walter B. Wall, Sr.

Magistrate

Berkeley County

Route #2, Box 371

Cross, South Carolina 29436

Dear Sir:

You have asked whether an arrest warrant must be signed by the prosecuting witness in the case of an individual charged with 'driving too fast for conditions' and 'leaving the scene of an accident'.

Briefly, the answer is yes. The charges are misdemeanors. § 46-322 Code of Laws of South Carolina (1962). A highway patrolman is not authorized to make an arrest without a warrant for misdemeanors not committed in his presence. Yogue v. National Surety Corp., 3 S.E.2d 198, 190 S.C. 421. Thus an officer may make an arrest for a misdemeanor only if committed in his presence. Otherwise, a warrant is necessary and must be signed by a witness.

If we can be of any further help, please let us know.

Sincerely,

Wally Smith

Law Clerk

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