

1973 WL 27700 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 3, 1973

***1 In Re: Speed Limit Law**

Leo H. Hill, Esquire
Attorney at Law
Post Office Box 2585
Greenville, South Carolina 29602

Dear Mr. Hill:

You have inquired whether or not a Judge trying a speeding case should in all instances charge the full speeding law, i.e. 46-361, 1962 Code of Laws of South Carolina, as amended.

In my opinion the latest amendment to this section creates three degrees of the events of speeding, i.e. exceeding the posted speed limit. If there is evidence to support a finding of all three degrees, the entire section should be read. In the event, however, the evidence adduced is susceptible of a finding of guilty of only one or two of the degrees of speeding set forth, it is my opinion that the jury should be instructed that they may return a finding of guilty only as to those degrees of speed supported by the evidence. For example if in a speeding case the arresting officer testifies that the speed of the defendant was in excess of 25 mph above the posted limit whereas the defendant testifies that he was exceeding the posted limit but not in excess of 10 mph, it is my opinion that the jury should be instructed that they must bring in the verdict of not guilty, guilty of speeding not in excess of 10 mph, or guilty of speeding in excess of 25 mph above the posted limit. In such a case there will be no evidence to support a finding of guilty of Degree No. 2, i.e. in excess of 10 mph but less than 25 mph above the posted limit.

In most cases I am sure the testimony of the defendant will be that he was not speeding, whereas the testimony of the arresting officer will be that the defendant was traveling at a specified rate of speed. For example, if the defendant should testify that he was not exceeding the posted limit and the officer testified that the defendant was traveling at a speed of 15 mph above the posted limit, it is my opinion that the jury would be limited in its findings to verdicts of not guilty or guilty of speeding in excess of 10 mph but less than 25 mph above the posted limit.

It does not appear to me that a jury could make a valid finding that the defendant was guilty of speeding in any one of the three degrees when there is no evidence from which such finding could be made.

Very truly yours,

Joseph C. Coleman
Deputy Attorney General

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