

1973 WL 27008 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 17, 1973

***1 In re: Searches of Traffic Offenders, Effect of Recent United States Supreme Court Rulings**

Honorable J. P. Strom
Chief
South Carolina Law
Enforcement Division
Broad River Road
Post Office Box 1166
Columbia, South Carolina 29202

Dear Chief Strom:

You have inquired as to the effect of two recent opinions of the United States Supreme Court, United States v. Robinson, 42 LW 4055, and Gustafson v. Florida, 42 LW 4068, on the powers of police officers of South Carolina to search persons stopped or arrested for traffic violations.

The two decisions do not change in any degree the law with reference to such searches by South Carolina police officers.

From early times, it has been held that a police officer has a right to conduct a thorough search of the person of a subject who has been placed under custodial arrest—to discover weapons, evidence, or anything (such as money) that might aid the arrestee in procuring his escape from custody. This has been the law not only in South Carolina, but in all states and with respect to Federal officers, for many years. The United States Supreme Court first approved the rule specifically in 1914, Weeks v. United States, 232 U.S. 383. Robinson and Gustafson did nothing more than reaffirm the established rule. The decisions did not enlarge the powers of police officers to make searches of the person in traffic cases.

There has never been a distinction between the right of a police officer to search the person of a subject placed under custodial arrest for a traffic offense, on the one hand, and his right to search the person of a subject placed under custodial arrest for any other offense.

Custodial arrest means placing a person under arrest with the intent and purpose of bringing him before a court or placing him in jail. It does not include a mere temporary detention for the purpose of issuing a traffic ticket, whether the motorist is permitted to post bond on the road or is issued a ‘courtesy’ summons. It is important that every police officer understand this distinction.

The two new decisions (Robinson and Gustafson) do not permit search of the person of a subject stopped for a traffic check or when a traffic ticket is to be issued and the motorist permitted to proceed—unless there is probable cause to believe such motorist might be armed or that he has contraband on his person.

The Robinson case was before the Supreme Court because the Federal Court of Appeals for the District of Columbia had ruled that search of a traffic offender under custodial arrest must be limited to a frisk-type search for weapons only (Terry v. Ohio, 392 U.S. 1), and that evidence of another crime discovered as a result of a thorough search was inadmissible. The Gustafson case was before the Supreme Court because of a similar ruling by a Florida State Appeals Court. The Supreme Court disagreed with both courts and reaffirmed the established rule.

*2 In view of the foregoing, as well as the plain language of the decisions in Robinson and Gustafson, it is the opinion of this Office that those rulings of the United States Supreme Court did not change the law with respect to the powers of police officers to search traffic offenders.

Yours very truly,

Joseph C. Coleman
Deputy Attorney General

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