

1972 S.C. Op. Atty. Gen. 90 (S.C.A.G.), 1972 S.C. Op. Atty. Gen. No. 3285, 1972 WL 20429

Office of the Attorney General

State of South Carolina

Opinion No. 3285

March 21, 1972

**\*1 Re: Suspension and Reduction of Sentences for Traffic Offenses Triable Before Lower Courts**

Patrolman Larry E. Bogan  
Spartanburg Police Department  
108 Shelby Street  
Spartanburg, South Carolina 29301

Dear Mr. Bogan:

You have inquired of this office as to whether a Magistrate or City Recorder can reduce the amount of a fine where the statute provides for a minimum fine, suspend a party of the sentence imposed, and whether a defendant may be found guilty of a lesser offense than the one charged.

It has been the opinion of this office and of the courts that a Magistrate, not being a court of record, cannot suspend any party of a sentence once it has been imposed. 1968 Atty. Gen. Ops. 200. Where a minimum fine is provided for, the court has no power, jurisdiction, or authority to charge less than such minimum.

Section 46–685 of the South Carolina Code of Laws, 1962, provides that the City Recorder shall have jurisdiction to dispose of traffic offenses arising under Chapter 7 of the Uniform Act Regulating Traffic on the Highway, Section 46–201 through Section 46–692 of the South Carolina Code. Section 15–1010 of the South Carolina Code of Laws provides that in trial jurisdiction in such cases shall be the same as that of a Magistrate, therefore, it follows that the Recorder, just as the Magistrate, does not have the power of authority to suspend or reduce sentences.

In order for a charge to be reduced to a lesser offense, the greater must include all the legal elements of the lesser. If the greater crime can be committed without committing the lesser, then the lesser crime is not included within the greater. Wharton's Criminal Law, 1975, Law Coop. Pub. Co., 4. 752, S. 1888

In the example you cite, a person may be driving recklessly without speeding, therefore, speeding is not a lesser included offense and the defendant must be found guilty of reckless driving or nothing. 1969 Atty. Gen. Ops. 155.

Enclosed are two opinions which may be of assistance to you.

With kindest regards, I am  
Very truly yours,

G. W. Thomason  
Assistant Attorney General

1972 S.C. Op. Atty. Gen. 90 (S.C.A.G.), 1972 S.C. Op. Atty. Gen. No. 3285, 1972 WL 20429