

1978 WL 34611 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 16, 1978

***1 RE: Altering Records of Speeding Charges**

Colonel W. J. Seaborn
State Highway Patrol
P. O. Box 191
Columbia, S. C. 29202

Dear Colonel Seaborn:

You have inquired as to the proper procedures to be followed by the Department when requested by a magistrate or recorder to alter the MVD Driver Records (yellow) copy of a uniform traffic ticket to reflect a lesser degree of speeding (Section 56-5-1520). You advise that with increasing frequency the Department is being requested by such trial judges to either return the records (yellow) copy to the court to be altered or to make the desired change on the Department's records directly. Speeding, as you know, is the only traffic offense which has degrees, therefore, such requests clearly may be appropriate in some instances. Accordingly, procedures for identifying proper requests need to be outlined.

Initially, in all such cases the arresting officer should be contacted to determine whether the requested reduction in charge was made in compliance with a proper plea negotiation between the prosecution and defense prior to trial. (The trial court, of course, has no authority to participate in such matters and therefore cannot properly bind the State where he improperly engages therein.) If a proper plea negotiation was entered into before trial and the ticket was not altered at that time to correctly reflect the lesser degree of speeding, then the requested charge can be made by the Records Division upon written advisement for its files of the full facts of the subject plea negotiation. Such advisement may be in the form of a memorandum addressed to that officer's district commander or headquarters as you may wish for your own internal review purposes. The Department's records then should contain the trial judge's request and the arresting officer's verification.

In other instances, the trial judge, upon a proper evidentiary showing, may have found the defendant guilty of a lesser degree of speeding as provided by law and thereafter failed to note that fact on the face of the uniform traffic ticket. In such a case, the arresting officer should be able to verify that assertion. Such verification again should be made in writing and retained in the Department's records along with the trial judge's request.

In those situations which do not involve a proper plea negotiation or trial disposition as outlined above, the records copy certified by the trial judge as correct must prevail unless and until a lawful order to the contrary is received. (See [Ishmell v. SCHED](#), 264 S.C. 340, 215 S.E.2d 201, 1975).

Only in those cases in which a new trial has properly been granted should the records copy of the subject conviction be returned to the court. Mere correction of the charge may be accomplished in accordance with the procedures outlined above without the Department's surrendering custody of the official record.

It is recognized that the aforementioned procedures are necessarily general in their scope and that individual cases may, from time to time, present unique situations requiring deviation therefrom. Please feel free to contact this Office when questions arise and we will assist as necessary.

*2 I trust the preceding discussion adequately answers your questions, however, if any further explanation is required, please feel free to contact me.

With best personal regards, I am
Very truly yours,

Richard P. Wilson
Assistant Attorney General

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