

1978 WL 35258 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 5, 1978

***1 RE: State v. Grover Myers DUI—First Offense**

Myron F. Green
Sheriff
Oconee County
Walhalla, S.C. 29691

Dear Sheriff Green:

In your recent letter to this Office you indicated that the above case was dismissed by the magistrate because the officer who charged the defendant with the offense failed to appear for trial at the scheduled time. You mentioned that a second officer did arrive at the magistrate's office after the case had been dismissed.

In the case of [In re Brittian](#), 263 S.C. 363, 210 S.E.2d 600 (1974) the South Carolina Supreme Court held that the failure of the State to proceed with the prosecution in family court against a minor at the scheduled time did not necessitate or warrant a dismissal of the case. In its decision, the Court referenced the following:

(A) statute may authorize the court, either of its own motion or on the application of the prosecuting officer, to order an indictment or prosecution dismissed. But in the absence of such a statute, a court has no power . . . to dismiss a criminal prosecution except at the instance of the prosecutor . . . [263 S.C. at 366](#).

See also [State v. Ridge](#), 236 S.E.2d 401 (1977). Therefore, with reference to the circumstances outlined in your letter, in the opinion of this Office the magistrate had no authority to dismiss the case.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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