

1976 WL 30575 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 30, 1976

\*1 Honorable James G. Roof  
Magistrate District #1  
Whitmire, South Carolina 29178

Dear Judge Roof:

Attorney General Daniel R. McLeod has assigned your letter of July 27, 1976, to me for research and reply. I apologize for the delay in answering your correspondence due to having been out of the Office for Court it has been difficult to handle all of my paperwork.

You have inquired as to whether or not a defendant under the circumstances you have described should be charged with driving under the influence. The driving under the influence law, § 46-343, 1962 Code of Laws, provides that a person is not to drive while under the influence of alcohol or drugs. If the officers can prove that there is probable cause to believe that the defendant was driving while under the influence of some drug and that such drug impaired his ability to drive, I would think a warrant should be issued. The fact that the breathalyzer results were only .03% creates a presumption that the defendant was not under the influence of alcohol. This presumption does not carry over, however, to the question of whether one is under the influence of drugs.

I hope this will be of assistance to you, and if I may be of further aid, please do not hesitate to call upon me.

Very truly yours,

Cameron B. Littlejohn, Jr.  
Staff Attorney

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