

1975 S.C. Op. Atty. Gen. 163 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4085, 1975 WL 22381

Office of the Attorney General

State of South Carolina

Opinion No. 4085

August 19, 1975

*1 The common law crime of obstruction of justice would generally be applicable in South Carolina to a person who interferes with a police officer duly executing a 'detention order' for purpose of mental examination of the Probate Court issued pursuant to Section 32–957, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended.

TO: Senator James Barnett Stephen

QUESTION PRESENTED:

Would South Carolina recognize the common law crime of obstruction of justice and apply it to the interference of a police officer duly executing a 'detention order' for purpose of mental examination issued pursuant to Section 32–957, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended?

STATUTES, CASES, ETC., INVOLVED:

Section 1–19, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended.

Section 32–957, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended.

Section 17–553, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended.

[City of Columbia v. Bowie](#), 239 S.C. 570, 124 S.E.2d 332 (1962).

[City of Charleston v. Mitchell](#), 239 S.C. 376, 123 S.E.2d 512 (1961).

[State v. Hollman](#), 232 S.C. 491, 102 S.E.2d 873 (1958).

[State v. Bowen](#), 17 S.C. 58 (1881).

67 C.J.S. [Obstructing Justice](#), Section 5.

[Perkins Criminal Law](#) (2d ed. 1969).

DISCUSSION OF ISSUE:

Obstruction of justice is a crime at common law which has been well recognized and documented in the past. 67 C.J.S. [Obstructing Justice](#), Section 5 states that resisting or obstructing an officer in the performance of an official duty is an offense at common law. C.J.S. further says that as a general rule, any person who interferes with or obstructs an officer while executing, or attempting to execute legal process may be prosecuted therefore. Obstruction of justice at common law is not limited to resisting or interfering with a criminal arrest. As a general rule, any person who interferes with or obstructs an officer in the performance of his duties is guilty of the offense, whether these duties be making arrest or

affecting some other type of lawful duty. Perkins on Criminal law (2d ed., 1969) 487 concludes in reference to obstruction of justice that ‘it is obviously an offense willfully to obstruct an officer in his lawful effort to execute or serve any warrant, subpoena, writ or other process, and in this connection it is important to remember that an officer is authorized to execute a warrant regular and complete on its face and issued by a court of magistrate having jurisdiction over the matter, even if it was issued without proper grounds.’

The State of South Carolina pursuant to statute and case law recognizes the common law where it is not altered by the Code or inconsistent with the Constitution or laws of this State. Section 1–19 CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended. On various occasions the South Carolina Supreme Court has specifically recognized the common law crime of obstruction of justice. [City of Columbia v. Bowie](#), 124 S.E.2d 332 (1962); [City of Charleston v. Mitchell](#), 239 S.C. 376, 123 S.E.2d 512 (1961); [State v. Hollman](#), 232 S.C. 491, 102 S.E.2d 873 (1958); [State v. Bowen](#), 17 S.C. 58. The Court in the Hollman case supra at 501 noted that the common law crime of obstruction of justice was not defined by statute in this State. It therefore appears that South Carolina has not altered or restricted the common law crime of obstruction of justice by statute and that it is recognized in its common law form.

*2 Section 32–957, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended, sets forth a statutory procedure by which an individual may be immediately detained for a period not exceeding twenty-four (24) hours for the purpose of a mental examination if the individual is believed to be mentally ill and because of such condition is likely to cause serious harm, and his whereabouts are unknown or for other reason. When such order is duly issued by the Judge of Probate, it requires any officer of the peace to execute the order and take the person named therein into custody. Interference with the police officer executing the order of the Probate Court would generally constitute an interference with and on obstruction of justice in South Carolina.

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