

1974 WL 27996 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 1, 1974

**\*1 In Re: State v. Fennell [SC]**

Mr. James A. Neal  
Director  
South Carolina ASAD  
Post Office Box 4616  
Columbia, South Carolina 29240

Dear Mr. Neal:

You have inquired whether or not the South Carolina Supreme Court decision of Fennell v. State, decided October 30, 1974, affects the authority of a law enforcement officer to not pros one charge and substitute another in lieu thereof by the issuance of another uniform traffic ticket or the obtaining of another arrest warrant.

It is the opinion of this Office that the Fennell case says that a magistrate or municipal judge is not empowered to reduce or change a DUI charge preferred by the arresting officer. He must dispose of the case upon the charge presented by the arrest warrant or uniform traffic ticket.

Pennell does not affect the authority of an arresting officer, if the policy of his Department permits such action, to not pros the original charge and issue another uniform traffic ticket or obtain another arrest warrant preferring another charge. Such action has always been the prerogative of the State, represented in General Sessions Court and County Courts by the Solicitor, and, in magistrate's and municipal courts by the arresting officer, or a city or county attorney.

Yours very truly,

Joseph C. Coleman  
Deputy Attorney General

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