

1974 WL 27558 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 23, 1974

***1 Re: (1) Validity of Prosecution Upon Illegal Arrest for Reckless Driving by Officer Who Did Not See Offense Committed (2) Reckless Driving on Private Property**

Honorable James R. C. Calhoun
Recorder for City of Dillon
P. O. Drawer 431
Dillon, South Carolina 29536

Dear Judge Calhoun:

You have requested an opinion of this Office regarding an arrest on private property for reckless driving, the offense not having been observed by the Arresting Officer.

The facts as I understand them from your letter are that an individual was observed driving recklessly on private property by an off-duty highway patrolman who summoned an on-duty colleague to the scene to effect the arrest. The second officer did not himself observe any violation of the traffic laws by the individual, but did arrest him and issue a uniform traffic ticket for reckless driving. No arrest warrant was subsequently issued, and the prosecution was made upon the uniform traffic ticket issued at the time of arrest. Upon trial of the case, after the testimony was taken, the defense made a motion to dismiss the charge on the grounds, *inter alie*, that (1) since the arrest was unlawful and no arrest warrant was subsequently issued, the court was without jurisdiction to try the matter; and (2) since the alleged acts occurred on private property, they were not within the purview of the reckless driving statute (Section 46-342).

I.

Section 46-871, of the 1962 Code of Laws, as amended, provides that the service of a uniform traffic ticket ‘shall vest all traffic courts with jurisdiction to hear and dispose of the charge for which such ticket was issued and served . . .’ Moreover, the rule in this state has long been that the mere fact of an unlawful arrest does not preclude a defendant's subsequent prosecution and conviction of the offense for which he was arrested. [State v. Holliday](#), 255 S.C. 142, 177 S.E.2d 541; [Thompson v. State](#), 251 S.C. 593, 164 S.E.2d 760; [State v. Swilling](#), 246 S.C. 144, 142 S.E.2d 864; [State v. Waiters](#), 226 S.C. 44, 83 S.E.2d 629. Therefore, assuming under the present facts that there was an unlawful arrest, it is my opinion that the mere fact of an unlawful arrest does not affect the validity of the court's jurisdiction and would not constitute grounds for dismissal of the reckless driving charge. See 1973 Op. A. G. No. 3504, page 111.

II.

As to whether the reckless driving statute (Section 46-342) is applicable to offenses occurring on private property, it has been stated by this Office in the past that the statute is applicable to such areas. See 1970-71 Op. A. G. No. 3152, page 113. There have been no cases found directly on point. Clearly, a motion to dismiss on this ground would not justify dismissal of the charge.

Very truly yours,

Richard P. Wilson
Staff Attorney

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