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The State of South Carolina

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March 15, 1985

James A. Spruill, III, Esquire
Griggs and Spruill
222 Market Street
Cheraw, South Carolina 29520

Dear Mr. Spruill:

In a letter to this Office you referenced the decision of the United States Supreme Court in Berkemer v. McCarty, ___ U.S. ___, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984) and questioned the impact of such decision on the practice by Cheraw City police officers of videotaping individuals charged with driving under the influence. You stated that the officers typically videotape such individuals performing simple muscle-coordination tests, stating their names and addresses, and reciting the ABC's. In your letter you indicated that the Cheraw City Recorder has held that in light of Berkemer the sound portion of a videotaping cannot be used unless the person charged was first given his Miranda rights. You have particularly questioned whether such ruling by the City Recorder is proper.

A previous opinion of this Office dated November 14, 1984, a copy of which is enclosed, dealt with the general question of how the Berkemer decision impacted on the practice of videotaping individuals arrested for driving under the influence. The opinion reviewed the holdings of the Supreme Court in Berkemer and the applicability of the procedural safeguards relevant to custodial interrogations to individuals stopped for traffic offenses. Such safeguards were recognized by the Court in Miranda v. Arizona, 384 U.S. 436 (1966). The opinion particularly determined that:

> "... pursuant to Berkemer, any statements made in response to questions by law enforcement officers during a videotaped session could be admitted against a defendant only

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> if the defendant was effectively warned of his constitutional rights pursuant to Miranda prior to his making any such statements. As to any question concerning whether Miranda rights must be given prior to the videotaping of an individual arrested for driving under the influence where the videotaping does not include custodial questioning by law enforcement officers, it appears that such rights would not have to be provided."

As stated in the opinion, Miranda rights must be provided to a defendant who is videotaped following an arrest for driving under the influence if the videotaping includes custodial questioning by law enforcement officers. You have indicated that Cheraw police officers require individuals arrested for driving under the influence to state their names and addresses, perform simple muscle-coordination tests, and recite the ABC's while being videotaped. In the opinion of this Office, requiring such an individual to provide his name and address, recite the ABC's, and perform certain other tests does not constitute custodial interrogation so as to require that the individuals must be informed of their Miranda rights prior to being videotaped performing such activities.

In Rhode Island v. Innis, 446 U.S. 291, 300-301 (1980), the United States Supreme Court ruled that:

> "... the Miranda safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent. That is to say, the term 'interrogation' under Miranda refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect."

As stated in the November 14, 1984 opinion, the required display by a defendant of identifiable physical characteristics has been held not to violate any privilege against self-incrimination established by the Fifth Amendment. See: Schmerber v. California, 387 U.S. 757 (1966); United States v. Wade, 388 U.S. 218 (1967); Gilbert v. California, 388 U.S. 263 (1967); United States v. Dionisio, 410 U.S. 1 (1973).

Also referenced in the above opinion of this Office was the decision of the Alaska Supreme Court in Palmer v. State, 604 P.2d 1106 (1979). The Alaska Court was faced with the question as to whether the videotape of an individual being administered a breathalyzer test and performing certain sobriety tests, such as the "walk the line" test, should have been suppressed where the individual was not advised of his Miranda rights prior to being videotaped. The Court in Palmer ruled that the defendant was not protected by the Fifth Amendment from being compelled to take the type tests administered by the law enforcement officers. Furthermore, in the Court's opinion, such tests were not the product of custodial interrogation which required Miranda warnings.

Requiring individuals stopped for suspicion of driving under the influence to recite the alphabet is typically considered a part of field sobriety tests which are administered to such an individual. See: People v. Carlson, ___ Colo. ___, 677 P.2d 310 (1984). In Vrooman v. State, ___ Wyo. ___, 642 P.2d 782 (1982), the appellant alleged that a tape which recorded all the conversation between appellant and law enforcement officers while appellant was being transported to take a breathalyzer test should have been suppressed inasmuch as such conversations constituted interrogation. The Court, however, referencing the decision of the Supreme Court in Rhode Island v. Innis, determined that in such instance there was no interrogation. Instead, the tape "...illustrated appellant's quality of speech and general demeanor." 642 P.2d at 785. The justice of the peace had admitted such tape "...for the quality of ... (appellant's) ... voice, and for the Court to assess his reasoning process and/or whether he is rambling." 642 P.2d at 785. Also, in Palmer, the Court noted that the sobriety tests performed by the appellant while being videotaped included some involving verbal skills. 604 P.2d at 1106. As noted, the Court concluded that such tests were not the product of custodial interrogation so as to require a Miranda warning. Therefore, it is clear that requiring a defendant to recite the alphabet does not constitute custodial interrogation so as to require a Miranda warning prior to such defendant being videotaped while reciting such.

Courts have also held that requiring a defendant to provide certain background information, such as his name, address, age, occupation, marital status, and religion does not constitute custodial interrogation within the meaning of Miranda. See: Commonwealth v. DuVal, 453 Pa. 205, 307 A.2d 229 (1973); Commonwealth v. Bracey, ___ Pa. ___, 461 A.2d 775 (1983).

Similarly, the South Carolina Supreme Court in State v. Sullivan, 277 S.C. 35, 282 S.E.2d 838 (1981) determined that Miranda does not apply to routine booking information.

As stated, in the opinion of this Office, requiring a defendant arrested for driving under the influence to perform the type physical tests as described by you and requiring such defendant to state his name and address and recite the ABC's would not constitute custodial interrogation so as to require that such defendant be advised of his Miranda rights prior to his being videotaped while performing such tests. Therefore, a videotape of such individual performing the tests, including the sound portion, could properly be introduced at the defendant's trial even though no Miranda warnings were provided.

If there are any questions, please advise.

Sincerely,

Charles H. Richardson
Assistant Attorney General

CHR:djg

Enclosure

REVIEWED AND APPROVED BY:

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