

1981 WL 158260 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 7, 1981

*1 Honorable Wendell O. Adams
Magistrate
P. O. Box 1152
Walterboro, SC 29488

Dear Magistrate Adams:

In a letter to this Office you correctly referenced that the South Carolina Supreme Court has ruled that testimony from the State that an individual charged with driving under the influence refused to submit to a breathalyzer test did not violate an individual's privilege against self-incrimination. In [State v. Miller, 257 S.C. 213, 185 S.E.2d 359 \(1971\)](#), the Court held that the lower court did not err in permitting such testimony.

Referencing the above, you have questioned whether the State is entitled to offer such testimony over a defendant's objection. Please be advised that inasmuch as such testimony has been construed as not violating an individual's privilege against self-incrimination, you should not suppress any testimony from the State concerning the refusal of a defendant, arrested for driving under the influence, to take a breathalyzer test.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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