1977 WL 37301 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
April 12, 1977

***1** Honorable Nathan H. Brown
Georgetown County Magistrate
Route 2
Box 63
Pawley's Island, South Carolina 29585

Dear Judge Brown:
In response to your letter of March 23, 1977, I understand your question to basically be whether an exhibit indicating the result of a blood test that necessarily had to be sent away for testing and thus resulted in some delay in the actual testing and in some difficulty in actually being able to trace the sample from the time it left the source to the place where it was actually tested, should be admitted into evidence in Court. The South Carolina Supreme Court held in the case of Benton v. Pellum, 232 S.C. 26, 100 S.E.2d 534 (1957), that 'while proof need not negative all possibility of tampering, . . ., it is generally held that the party offering such specimen is required to establish, at least as far as practicable, a complete chain of evidence, tracing possession from the time the speciman is taken from the human body to the final custodian by whom it is analyzed.' 232 S.C. at 33, 100 S.E.2d at 537. See Also:State v. Pollard, 261 S.C. 389, 200 S.E.2d 233 (1973). Thus it can be seen that based on this case that you would have to be satisfied at least as far as practicable that the chain of evidence concerning such sample has not been interfered with in any way that might damage the credibility of any final analysis.

Section 46-344, Code of Laws of South Carolina, 1962, as amended, contains the South Carolina Implied Consent Law and in pertinent part provides:
'The person tested may have a physician, qualified technician, chemist, registered nurse, or other qualified person of his own choosing conduct a test or tests in addition to the test administered by the law enforcement officer. The failure or inability of the person tested to obtain an additional test shall not preclude the admission of evidence relating to the test taken at the direction of the law enforcement agency or officer. The arresting officer or the person conducting the chemical test of the person apprehended shall promptly assist that person to contact a qualified person to conduct additional tests.' (Emphasis Supplied)

In previous opinions by this Office it has been stated, 'If the Defendant submits to the test he has a right to an additional test administered by a qualified person.' 1969-70 OPS.ATTY.GEN., No. 2830 p. 47, and '. . . the law gives the Defendant the right to an additional test and . . . it is mandatory that law enforcement render assistance in contacting a qualified person to render such tests.' 1969-70 OPS.ATTY.GEN., No. 2837, p. 66. Despite the language of previous opinions it is apparent from reading this statute that a Defendant does not have a right to an additional test per se. He is, however, entitled to the reasonable assistance by the arresting officer or the person conducting the chemical test in contacting a qualified person to conduct additional tests. It is clear that while a person may seek and obtain additional tests by qualified persons, 'the failure or inability . . . to obtain an additional test shall not preclude the admission of evidence relating to the test taken at the direction of the law enforcement agency or officer.' The above paragraph would seem to indicate that should you find that the party offering a specimen or blood test has failed to meet its burden of proof, this would not preclude you from accepting the results of the breathalyzer test as given by the highway official. However, it should be remembered that in ruling on the admission of any other test requiring the establishment of the chain of evidence, the party offering such speciman is required to establish only 'at least as far as practicable' the complete chain of evidence.

***2** Also since the law gives the Defendant the right to additional tests, the person seeking such additional tests should not be prejudiced necessarily by the inability to get a quick test or analysis of such test samples. If the only means of having an additional test made involves the sample being sent to Charleston, South Carolina, and thus resulting in several days delay in having the analysis done, the Defendant should not necessarily be prejudiced. However, again you would have to be satisfied that the chain of evidence tracing the possession from the time the specimen was taken from the body to the final analysis is good at least as far as practicable.

I hope this satisfactorily answers your inquiry, and if I can be of further assistance, please do not hesitate to call upon me.

With kindest regards, I am
Very truly yours,

Charles H. Richardson
Staff Attorney

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