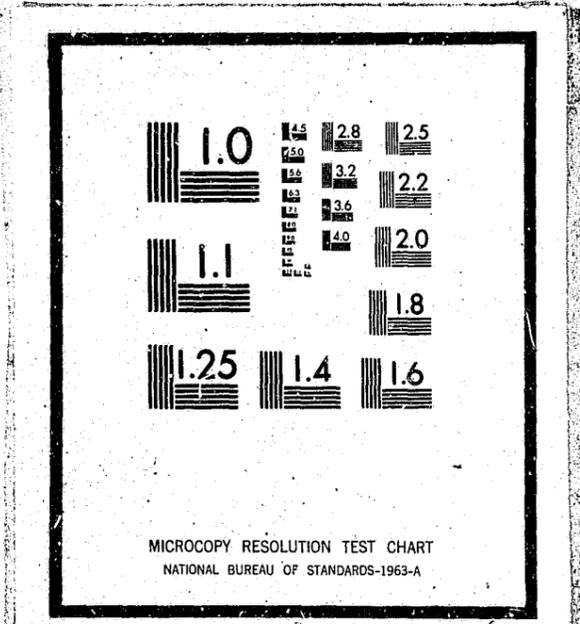


NCJRS

This microfiche was produced from documents received for inclusion in the NCJRS data base. Since NCJRS cannot exercise control over the physical condition of the documents submitted, the individual frame quality will vary. The resolution chart on this frame may be used to evaluate the document quality.



Microfilming procedures used to create this fiche comply with the standards set forth in 41CFR 101-11.504

Points of view or opinions stated in this document are those of the author(s) and do not represent the official position or policies of the U.S. Department of Justice.

U.S. DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
NATIONAL CRIMINAL JUSTICE REFERENCE SERVICE
WASHINGTON, D.C. 20531

Date filmed

1/27/76

SOUTH CAROLINA LAW ENFORCEMENT ETV TRAINING PROGRAM



71

RULES OF EVIDENCE PART IV

South Carolina ^{Educational Television} LAW ENFORCEMENT - ~~TV~~ TRAINING PROGRAM - From Crime to Court -

RULES OF EVIDENCE,

PART ~~IV~~ 4



BY:
Assistant Attorney General
(South Carolina)
Hon. Joseph C. Coleman

Sponsored by:

South Carolina Law Enforcement Division

in co-operation with

South Carolina Educational Television Network

Endorsed by:

South Carolina Governor Robert E. McNair
South Carolina Sheriffs' Association
South Carolina Law Enforcement Officers' Association
South Carolina Police Chiefs' Executive Association
South Carolina F.B.I. National Academy Associates
South Carolina Southern Police Institute Associates

PROGRAM OBJECTIVE:

This material will present information relative to Rules of Evidence.



LECTURE OUTLINE:

1. ARE THE RESULTS OF SPEED RADAR READINGS CONSIDERED TO BE LEGAL EVIDENCE?

A. Yes. This is based on cases from other states.

2. IS IT NECESSARY THAT THE RESULTS OF RADAR READINGS BE TESTIFIED TO BY AN INDIVIDUAL WITH SPECIAL TRAINING IN THIS FIELD?



A. Yes.

(1) Training does not have to be to the extent of qualifying as an electronics engineer.

(2) Training can come from fellow officers who have established their qualifications in the past.

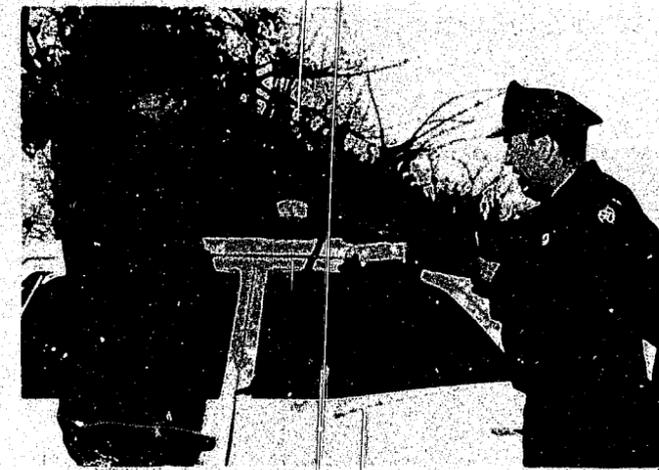
(3) The best training is given by police training schools or manufacturers of radar equipment.

3. IS IT LEGALLY PROPER FOR OFFICERS WORKING TOGETHER AS A TEAM ON RADAR TO EFFECT THE APPREHENSION OF THE SPEEDER BY ONE OF THE OFFICERS WHO DID NOT ACTUALLY SEE THE CRIME OF SPEEDING?



A. Yes. This is true even though one of the officers may not have actually viewed the speeding which consisted of a misdemeanor in his presence.

4. WHAT ARE THE NECESSARY POINTS THAT AN OFFICER MUST ESTABLISH REGARDING THE RADAR MACHINE IN ORDER TO HAVE HIS TESTIMONY ACCEPTED?



A. He must establish that the machine was in good working order, was being used properly, and that the recordings were accurate.

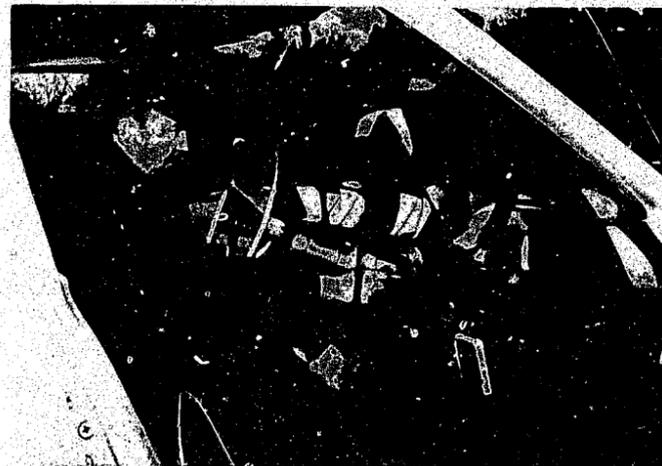
B. He must establish that he has in the past taken a course of instruction in the use of the machine. The training could have been given by the manufacturer or by a special training course.

C. The position of the machine with reference to traffic flow must be established, as well as the position of the officers, with regard to the location of the machine.

D. The fact that "run-through" tests were given the machine prior to its operation each time it was set up must be made clear.

(1) The "run-through" test should be supported by testimony that the accuracy of the machine was tested by speedometer checks, or other legally accepted methods.

5. WHAT GENERAL KNOWLEDGE OF THE RADAR MACHINE MAY THE JUDGE REQUIRE OF THE TESTIFYING OFFICER?



A. An explanation of:

- (1) A transmitter-receiver.
- (2) A speedometer.
- (3) A graphic-recorder.

NOTE: The more accurate the knowledge the officer can impart, the better impression he will make as a witness.

6. ARE PHYSICAL COORDINATION TESTS CONSIDERED TO BE SELF-INCRIMINATING?



A. No.

7. DOES THE COURT HOLD THAT BLOOD MAY BE TAKEN FORCIBLY FROM A SUSPECT FOR THE PURPOSE OF TESTING THE BLOOD FOR ALCOHOL CONTENT?

A. Yes. (U. S. Supreme Court.)

B. No. (S. C. Supreme Court.)

NOTE: S. C. Supreme Court says the results are legal if the sample was voluntarily given.

8. IS IT LEGAL FOR A POLICE OFFICER TO TESTIFY AS TO THE FINDINGS OF A CHEMICAL TEST FOR ALCOHOL IN THE BLOOD OR ON THE BREATH IF HE DID NOT PERSONALLY PARTICIPATE IN GIVING THE TEST?

A. No. Unless he saw the test given and is personally qualified to operate the machine it is not legal.

9. WHAT IS AN IMPLIED CONSENT LAW?

A. An implied consent statute would force suspected drunken drivers to either submit to a sobriety test or to have their drivers license suspended. This agreement would have taken place at the time the State Highway Department issued the driver's license.

NOTE: The possession of a driver's license is a privilege and not a right.

10. WOULD CONSENT TO TEST BE ASSUMED TO HAVE BEEN GIVEN IF THE ACCUSED PARTICIPATED IN A CHEMICAL TEST WITHOUT HAVING BEEN FORCED TO DO SO OR WITHOUT GIVING ORAL CONSENT?

A. Yes. In this set of circumstances the accused never agreed to the test but he submitted without protest.

11. IS IT NECESSARY THAT AN ACCUSED BE INFORMED OF HIS RIGHT NOT TO TAKE A CHEMICAL TEST IN ORDER THAT THE RESULTS BE LEGALLY ACCEPTED?

A. No. This is unlike the warning necessary on a confession.

12. CAN A SUSPECT BE COMPELLED TO TAKE A POSITION IN A POLICE LINE-UP?

A. Yes. It is lawful and proper and this is not to be considered as forcing an individual to testify against himself.

NOTE: A witness testifying as to the identity of the accused is testifying to something he knows to be true, and this is independent of anything the accused might have said.

13. IS IT LEGAL TO REQUEST THAT A SUSPECT REPEAT CERTAIN PHRASES, EXHIBIT CERTAIN WEARING APPAREL AND ASSUME CERTAIN POSITIONS OR STANCES IN A LINE-UP?

A. Yes.

14. IS POSITIVE IDENTIFICATION FROM A LINE-UP DIFFERENT FROM A COURT ROOM IDENTIFICATION?

A. No, and usually it is more effective due to the fact that there are more persons in a line-up from whom the identification was made.

15. IS IT LEGAL FOR A POLICE OFFICER TO TESTIFY TO WHO WAS IDENTIFIED IN THE LINE-UP?

A. No. Neither police officer or anyone else could testify.

16. ARE THERE ANY SPECIAL TECHNIQUES TO BE EMPLOYED IN HANDLING POLICE LINE-UP PROCEDURES?

A. Yes.

(1) Persons in a line-up should not be too similar in appearance to the suspect nor should there be too much variance.

EXAMPLE: If a suspect is a fat man, have some fat men in the line-up as well as some thin ones.

(2) A witness should not be permitted to view the people in the line-up prior to viewing the line-up.

(3) A witness should not be permitted to make an identification from a line-up in the presence of the suspect or any other witness.

(4) The witness should not state in front of the suspect that he is not identical with the person having committed the crime.

(5) Witnesses should not be permitted to discuss with other witnesses the individuals in the line-up until after each witness has been afforded an opportunity to make an identification.

(6) Notes should be taken as to the names of the individuals in the line-up and the positions of each individual at the time an individual witness viewed the entire line-up.

(7) Some police departments take a photograph of the line-up as it was viewed by each individual witness.

17. DO THE RESULTS OF A POLYGRAPH EXAMINATION HAVE ANY LEGAL VALUE?

A. No. The machine is merely an interrogation technique and an investigative aid.

NOTE: The fact that an opportunity was afforded a suspect and he did not accept cannot be commented on in court.

OBSERVATION: The polygraph has not as yet been developed to the point where error is virtually impossible. Fingerprint comparisons for example, are admitted due to the fact that no two fingerprints have ever been found to be exactly alike.

18. CAN AN ACCUSED PERSON ON TRIAL CLAIM THAT HE WAS REFUSED A POLYGRAPH TEST BY THE POLICE?



A. No.

19. IF A DRUNKEN DRIVER AT THE POLICE STATION AFTER AN ARREST MAKES A STATEMENT AS TO WHAT HE HAS HAD TO DRINK, CAN THIS STATEMENT BE USED AGAINST HIM?

A. No. If he had been warned and agreed to make the statement, the fact that he agreed while drunk would in itself render the agreement inadmissible.

20. SUPPOSE A DEFENDANT WITHOUT WARNING MAKES A STATEMENT INDICATING AN ALIBI FOR HIS PRESENCE DURING A CERTAIN PERIOD OF TIME. CAN THIS STATEMENT BE USED?

A. No, if it was made as a result of questioning without warnings.

21. DOES A PERSON CHARGED WITH A CRIME AND WHILE AT THE JAIL HAVE THE RIGHT TO CALL A LAWYER?

A. No. Two widely publicized cases, namely Escabedo and Miranda are frequently cited as authority for the proposition that a drunk is entitled as a matter of right to get in touch with a lawyer immediately. However, neither case said such a thing.

OBSERVATION 1: The Federal Court has not said that refusal to permit a drunk to telephone before he sobers up is any grounds for dismissal of the charge.

OBSERVATION 2: South Carolina County Courts in Richland and Spartanburg Counties have said that an individual charged with drunken driving should be allowed the use of the telephone to make at least one call.

NOTE: If a lawyer should object to being called at night at an inconvenient time, the police officer could state in these two counties that our county court has said that the accused has a constitutional right to call you. In other counties one appears to be safe in refusing the use of the telephone to a drunk to call a lawyer.

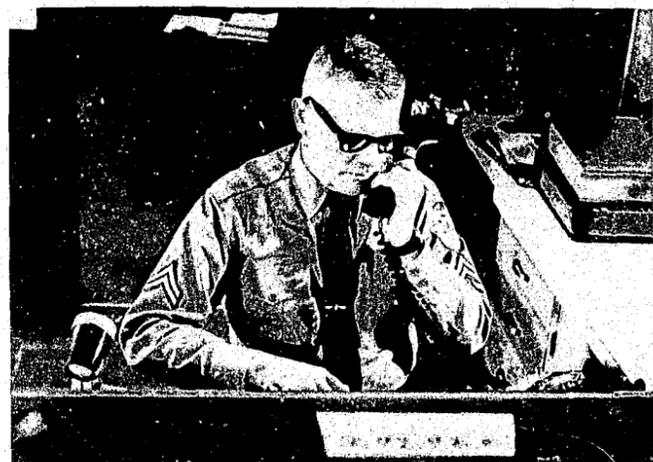
OBSERVATION: One should note that any admission made by the drunk is inadmissible. A statement made as a result of questioning by an accused after he has been denied the right to contact counsel would be inadmissible.

22. IF A SUSPECT SHOULD ADMIT GUILT TO A PLANTED INFORMER, CAN THIS ADMISSION BE USED AGAINST THE SUSPECT?

A. No. The U. S. Supreme Court has said that information given to an informer falls within the same category as though it had been given to the police themselves and, therefore a warning to the suspect would have been necessary before he gave the information to the informer.

NOTE: Any unsolicited admission made to a cell-mate who is not operating in league with the police would be admissible.

OBSERVATION: A confession (an unsolicited admission) could be used against the accused under the above circumstances because it was not made as a result of any trickery on the part of the police. However, the big problem for the prosecution would be to convince a judge and a jury that the confession was made to the cell-mate who was not operating as a "stool pigeon" for the police.



END