The State of South Carolina

Office of the Attorney General

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Robert M. Stewart, Chief
South Carolina Law Enforcement
Division
P.O. Box 21398
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Dear Chief Stewart:

You have requested the opinion of this Office as to a procedure you intend to implement regarding the handling of evidence at the new forensic laboratory at SLED. Your letter sets out the procedure and question as follows:

> We had planned to provide for one central evidence receiving point within the new laboratory facility. Before turning over any evidence to the evidence custodian, the contributing officer would properly seal, initial, and date the container after case reference information such as subject, victim, date of crime, agency, etc. is collected. An evidence log entry would be prepared to place any evidence in the evidence room. This log could be either a paper document or could be kept by a computer. The log entry would have a "said to contain" inventory of the evidence submitted.

The evidence custodian or custodians would place the sealed evidence containers inside the evidence room and store them until an examiner needed the evidence for analysis. The examiner would check the evidence out of the evidence room and prepare a log entry to that effect. The examiner would safeguard the evidence under his own personal control during the time required for analysis in an evidence locker located in his work area. When the examiner started his tests, he would cut the sealed evidence container open in a manner which did not destroy the original seal. The evidence container with intact seal would then become another exhibit in the case. The cut open sealed container could be used to demonstrate that the evidence contained therein had not been tampered with or altered in any way. The examiner, being the first person to actually open the sealed container, would reconcile the "said to contain" inventory with the evidence actually received, noting shortages or overages, if any.

After concluding his tests, the examiner could transfer the evidence to another examiner if further tests were indicated or he could return the evidence to the evidence custodian so that the custodian could later forward the evidence to the next examiner. In any event, the last examiner to test the evidence would repackage and reseal all the evidence together with the original sealed container. This second container would be sealed, initialed and dated in the same manner in which the original container was submitted. The sealed evidence package would be returned to the evidence custodian, another log entry made, and the sealed evidence package placed in a designated location in the evidence room. When an authorized representative of the law enforcement agency which submitted the evidence calls to pick up the evidence, the custodian will search the evidence log, locate the evidence container and initiate a transfer document. This document will list the actual evidence inventory and all pertinent case reference data and provide signature control.

> By providing the sealed container at entry and exit from the lab system, the evidence custodian would never actually touch the evidence directly and is not able to tamper with the container's contents. We had hoped that by so doing we could avoid the necessity of making the evidence custodian testify at trials regarding the evidence he had safeguarded.
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> The evidence custodian system with a central evidence room is obviously not going to work if the custodian is constantly in court. As a practical matter, we could not produce the custodian to be a witness in all cases.
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> Would you please research the chain of custody question as it has been appealed in South Carolina and other states and advise us as to the ability of the handling procedure we have outlined or any other system you may find to keep the evidence custodian our of court. If your research offers any clear-cut indication of a better evidence handling procedure, we would be most interested in finding a better way.

In South Carolina questions involving the admission of evidence are largely discretionary with the trial judge. State v. Atchison, 268 S.C. 588, 235 S.E2d 294 (1977). Thus, it would be impossible to issue a definitive judgment on the question you have raised;[1] however, an analysis of the relevant case law in South Carolina leads me to conclude that a strong argument could be made to allow introduction of evidence handled in the manner you have proposed.[2]

The basic rule on chain of custody was stated in Benton v. Pullum, 232 S.C. 26, 33-34, 100 S.E.2d 534, 537 (1957), to wit:

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[1] Our research does not disclose any "clear-cut procedure" for a better way of handling evidence than you have set out. The definitive answer as to whether or not evidence would be admissible at trial under the procedure you have proposed could only be given by the South Carolina Supreme Court in an appropriate case.

[2] This Opinion addresses only the "chain of custody" evidence issue. All other factors necessary to introduce evidence -- competence, relevance, etc. -- must be met.

> "While proof need not negative all possibility of tampering, it is generally held the party offering such specimen is required to establish, at least as far as practicable, a complete chain of custody, tracing possession from the time the specimen is taken from the human body to the final custodian by whom it is analyzed."

The Benton court quoted with approval the Virginia Supreme Court case of Rogers v. Commonwealth, 197 Va. 527, 90 S.E.2d 257, 260 (1955) which stated:

> "where the substance analyzed has passed through several hands the evidence must not leave it to conjecture as to who had it and what was done with it between the taking and the analysis."

In South Carolina evidence has been admitted even when there has been a "gap" in the chain of custody.[3] See State v. Williams, 297 S.C. 290, 376 S.E.2d 773 (S.C. 1989); Sligh v. Johnson, 288 S.C. 364, 342 S.E.2d 620 (S.C. Ct. App. 1986).

In State v. Williams, supra, the defendant/appellant who was convicted of felony DUI, contested the trial judge's refusal to suppress the results of a blood alcohol test. Chief Justice Gregory, speaking for a unanimous court, held:

> Next, appellant contends the chain of custody of his blood sample was insufficient because the nurse who drew the blood did not testify.

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[3] You called our attention to the case of Stunson v. State, 228 So.2d 294 (Fla. 3d DCA 1969), cert denied, 237 So.2d 179 (Fla. 1970). The Stunson case and subsequent cases in Florida have held that relevant physical evidence is admissible unless there is some indication of tampering with the evidence. None of these cases specifically address the "sealed container method" but have based their decisions on whether or not there is some indication of "probable tampering" with the evidence.

> Nurse Yorke testified she removed the blood sample from a locked refrigerator on the morning after the accident and took it to the lab for testing. The vial was labeled with appellant's name, his patient number, his date of birth, and the date the blood was drawn. The hospital's internal chain of custody form was initialled by Nurse Burns indicating she had obtained the sample from the appellant and then locked it in the refrigerator.
>
> Proof of chain of custody need not negate all possibility of tampering but must establish a complete chain of evidence as far as practicable. Benton v. Pellum, 232 S.C. 26, 100 S.E.2d 534 (1957); Sligh v. Johnson, 288 S.C. 364, 342 S.E.2d 620 (Ct. App. 1986). The admission of evidence is discretionary with the trial judge. State v. Bailey, 276 S.C. 32, 274 S.E.2d 913 (1981). The initialled form which complied with hospital protocol and Nurse Yorke's testimony sufficiently established a chain of custody. We find no abuse of discretion in admission of the blood sample test result.

376 S.E.2d at 774.

The procedure you have proposed is strikingly similar to the factual setting in State v. Williams. While this conclusion is not free from doubt, it is the opinion of this Office that the utilization by SLED of the procedure for a central evidence receiving point within the new forensics lab described hereinabove would most probably allow evidence to be introduced free from any defect as to chain of custody.

Sincerely yours,

Charles W. Gambrell Jr.

CHARLES W. GAMBRELL, JR.
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