



MYRTLE BEACH POLICE DEPARTMENT

ADMINISTRATIVE REGULATIONS AND OPERATING PROCEDURES

Subject: *Brady Disclosures*

Number: *124*

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Rescinds:

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Approved By:

PURPOSE

To establish a procedure to properly fulfill the reporting and testimonial requirements mandated under U.S. Supreme Court decisions including *Brady v. Maryland* 373 U.S. 83 (1963) and *Giglio v. U.S.* 405 U.S. 150 (1972) and their progeny.

DEFINITIONS

1. Material Evidence: Exculpatory evidence is “material” if there is a reasonable probability that disclosing it will change the outcome of the criminal proceeding. A “reasonable probability” is a probability sufficient to undermine confidence in the outcome of the trial or sentencing of a criminal case.
2. Exculpatory Evidence/Brady Material: Brady violations are, by definition, violations of an individual’s 14th Amendment right to due process of law. Exculpatory evidence is evidence that is favorable to the accused; is material to the guilt, innocence, or punishment of the accused; and that may impact the credibility of a government witness. Impeachment material is included in the Brady disclosure requirements.
3. Duty to Disclose: The affirmative constitutional duty of the police to notify the prosecutor of any Brady material.

PROCEDURE

1. The Brady decision and subsequent rulings have made it a duty of all law enforcement agencies to identify and provide to the prosecution any exculpatory material that would have a reasonable probability of affecting the following circumstances.
 - a) Altering the results in a trial.
 - b) Reasonably mitigating the sentencing of a defendant.
 - c) Reducing the credibility of government witnesses, including, but not limited to, police officers.
2. Affirmative Duty to Report. This department shall exercise due diligence to ensure that material of possible Brady relevance is made available to the Solicitors Office.
 - A. Although the defense is not required to request potential Brady material, it is this department's responsibility to disclose such material as soon as reasonably possible to the Solicitors office, or in time for effective use at trial.
 - B. Responsibility for disclosing such material extends from investigation through the trial and sentencing process.
3. Examples of Brady material that may be subject to disclosure by this department include, but may not be limited to the following.
 - A. Evidence that a proposed witness has a racial, religious, or personal bias against a defendant individually or as a member of a group.
 - B. Any criminal record or criminal case pending against any witness whom the prosecution anticipates calling.
 - C. Allegations that cannot be substantiated, are not credible, or have resulted in an individual's exoneration are generally not considered to be potential impeachment information.
 - D. Information that would directly negate the defendant's guilt concerning any count in an indictment.
 - E. Information that would cast doubt on the admissibility of evidence that the government plans to offer that could be subject to a motion to suppress or exclude.
 - F. The failure of any proposed witness to make a positive identification of a defendant.
 - G. Information that casts doubt on the credibility or accuracy of a witness or evidence.

- H. An inconsistent statement made orally or in writing by any proposed witness.
 - I. Statements made orally or in writing by any person that are inconsistent with any statement of a proposed government witness regarding the alleged criminal conduct of the defendant.
 - J. Information regarding any mental or physical impairment of any governmental witness that would cast doubt on his or her ability to testify accurately and truthfully at trial.
 - K. Information that tends to diminish the degree of the defendant's culpability or the defendant's offense level under state or federal sentencing guidelines.
- 4. It is the prosecutor's responsibility to establish whether material disclosed by this department must be provided to the defense.
 - 5. Suppression of evidence favorable to an accused violates due process when the evidence is material either to guilt or to punishment, irrespective of good or bad faith. There is no distinction between "impeachment evidence" and "exculpatory evidence" for Brady disclosure purposes.
 - 6. All sworn law enforcement officers of this department shall receive training in Brady disclosure requirements.