



MYRTLE BEACH POLICE DEPARTMENT

ADMINISTRATIVE REGULATIONS AND OPERATING PROCEDURES

Subject: *Photo Line-Up*

Number: *252-C*

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Rescinds: *252 Photo Line-Up*
252-A Photo Line-Up
252-B Photo Line – Up

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Approved By:

PURPOSE

The purpose of this regulation is to provide procedures to prevent substantial likelihood of irreparable misidentification under the totality of the circumstances via photographic line-ups and show-ups.

DEFINITIONS

For the purposes of this regulation, the following terms shall have the meaning listed thereafter:

1. Administrator – The administrator is a law enforcement officer that shows a photo line-up to a witness for purposes of subject identification.
2. Advisement – Written instructions provided to a witness prior to showing a photo line-up.
3. Case Agent – The case agent is the law enforcement officer primarily responsible for investigating a reported crime irrespective of whether he or she is ultimately the arresting officer.
4. Photo Array – A photo array is the simultaneous showing of 6 photographs to a witness.
5. Sequential Line-up – A sequential line-up is the consecutive showing of 6 photographs to a witness. The witness is expected to decide whether each photograph depicts the subject before the witness is shown the next photograph.

6. Show-up – A show-up is the presentment of a subject, alone, whether in person or by photograph, to a witness for identification as the suspect of a crime.
7. Subject – The subject is the person the case agent suspects of committing a crime the case agent is investigating.
8. Witness – A witness is a person, including a victim, who experienced a crime directly, and may therefore, be able to identify the subject from their recall of the actual event.

PROCEDURE

1. DISCRETIONARY DEVICES

- A. Photo Line-ups – A photo line-up is one of many investigative devices a case agent may use in the investigation of a case for purposes of identifying a subject. As such, the decision whether to utilize a photo line-up is subject to the discretion of the case agent based upon his or her knowledge of the facts and circumstances of a case. Moreover, should a case involve multiple subjects, the decision whether to show a photo line-up of one, all, or none of the subjects involved therein is at the discretion of the case agent. While the decision whether to use a photo line-up is discretionary, should a case agent decide to utilize one, he or she shall follow the procedures of this regulation.
 - 1) When considering a photo line-up during an investigation, the Officer may consult with his/her supervisor or a supervisor on duty completing a photo line-up. The Officer will provide the supervisor the circumstances surrounding the incident, the description of the possible suspect(s) and any additional pertinent information which lead to the initiation of the line-up.
- B. Show-up – As with a photo line-up, a show-up is a discretionary device used for identification purposes. Unlike a photo line-up, a show-up may by nature be more unduly suggestive, and should therefore, be used only when appropriate under the circumstances.
 - 1) In deciding whether to use a show-up, the case agent should consider the totality of the circumstances to include, but not limited to, the following:

- a. The immediacy of the need to further an investigation. In example, if an officer detains a subject, whom he or she believes has just left the scene of a crime, that officer under *Terry v. Ohio*, 392 U.S. 1 (1968) may only detain the subject for a reasonable period while he or she confirms or dispels his or her suspicions. In most instances, another officer transports the victim or witness to the detention site for a live show-up because of the impracticality, if not impossibility, of securing a photo line-up within the limited detention period.
 - b. “[T]he opportunity of the witness to view the criminal at the time of the crime, the witness’ degree of attention, the accuracy of the witness’ prior description of the criminal, the level of certainty demonstrated by the witness at the confrontation, and the length of time between the crime and the confrontation.” *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972).
- 2) When considering a show-up during an investigation, the Officer may consult with his/her supervisor or a supervisor on duty about conducting the show-up. The Officer should provide the supervisor the circumstances surrounding the incident, the description of the possible suspect(s) and the location of the possible suspect(s). The officer may use the following procedures as a guideline:
- a. The entire show-up may be audio and video recorded and should be treated as evidence.
 - b. Prior to the show-up, the Officer will obtain a description of the suspect.
 - c. Prior to the show-up, the Officer will inform the witness that:
 - 1. The person being viewed may not be the offender
 - 2. The witness is not required to make an identification.
 - d. The Officer will make every effort to transport the witness to the suspect’s location.
 - e. The Officer will separate witnesses when multiple witnesses are involved.
 - f. The Officer will ensure that the witness has ample opportunity and ability to observe the suspect(s).

- g. A written record of the show-up will also be completed by the administering officer within a supplemental report and will include the following:
 - 1. The names of all persons present during the identification.
 - 2. The date, time and location of the show-up.
- h. The officer should document the suspect(s) appearance through a photograph or video footage which should be stored on the recordings drive and with the Property and Evidence Section.
- i. If after the show-up the detained suspect is not identified and officers lack any other probable cause for an arrest, the suspect should be released. The officers must complete a Supplemental Report for documentation purposes.

2. CREATING A PHOTO ARRAY

- A. Photo Array – The case agent may create a photo line-up, or the case agent may request a law enforcement officer or official from this department or another department to create a line-up for him or her. The array shall contain at least six photographs – the subject and five other persons with like characteristics. For example, if a subject is described as having a mustache and the subject is included in the photo array with a mustache, the remaining five depictions should not be clean shaven.
- B. Multiple Subjects – If a case involves multiple subjects, only one subject may be included in a photo array.

3. SHOWING THE LINE-UP

- A. Advisement – Prior to showing a line-up to a witness, the administrator should read a written advisement to the witness, which states, at a minimum, that the subject of the crime may not be present in this particular line-up. An Advisement is included at the end of this regulation. Once read and understood, the Advisement should be signed and dated by both the witness and the administrator.
- B. Photo Array – The administrator shall show the photo line-up as a photo array, as opposed to a sequential line-up.

- C. Concealment of the Photo Array – The administrator shall hand the photo array concealed in either a folder or envelope to a witness in order to avoid the witness from mistakenly believing that the administrator is attempting to assist him or her by pointing to the subject, possibly resulting in a substantial irreparable misidentification.
- D. Multiple Witnesses – If there are multiple witnesses to a crime, the witnesses shall be sequestered during presentment of a photo array. In other words, the photo array must be shown to each witness outside of the presence of any other witness to prevent one witness from unduly influencing the decisions of subsequent witnesses.
- E. Multiple Subjects – If a case involves multiple subjects, the administrator must show each photo array individually and wait for the decision of the witness as to that array before moving onto any subsequent photo arrays.

4. DOCUMENTING & PRESERVING THE LINE-UP

- A. Documenting the Line-up – After showing a line-up to a witness, the administrator shall document in writing whether the witness made a positive identification, was unsure of the presence of the subject, or indicated that the subject was not present in the photo array.
- B. Preserving the Line-up – In order to preserve the Advisement and Photo Array as evidentiary documents, both should be submitted to the Property and Evidence Unit after a witness has signed and viewed them, whether the witness indicates that the subject is present, that the subject is not present, or that the witness was unsure if the subject is present.