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POLICE OFFICER'S HANDBOOK

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ARREST, SEARCH AND SEIZURE

1973

PART IV

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EMERGENCY SICK-ROOM  
IDENTIFICATION OF SUSPECT

ERRONEOUS LINE-UP IDENTIFICATION  
AS EVIDENCE FOR THE DEFENSE

THE ROADBLOCK

FLEMING'S NOTEBOOK...Chapter 87

Latest United States Supreme Court Rulings  
On TRIAL IN ABSENCE and PRIOR CONFESSIONS  
BY PERSONS OTHER THAN THE DEFENDANT.

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Prepared under the direction of E. Fleming Mason,  
Producer of Crime-to-Court ETV Law Enforcement  
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POLICE OFFICER'S HANDBOOK -

ARREST, SEARCH AND SEIZURE,

1973,

PART IV 4

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By

Joseph C. Coleman  
Deputy Attorney General  
State of South Carolina

Sponsored by

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Hon. Bruce Littlejohn  
Associate Justice  
Supreme Court of South Carolina

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F O R E W O R D

When one single suspect is carried to a victim of a crime for the purpose of identification, it is usually held to be a tainted identification. Oftentimes, such evidence of identification is held to be inadmissible at the trial. At the same time, there are rare exceptions to the rule and the exceptions are important as the rule itself.

Every police officer should be well acquainted with the exceptions. Hesitation because of uncertainty on the part of a police officer can often be fatal to the case.

Line-up identification of suspects is a basic part of police activities. It is necessary to efficient investigation. You have learned to safeguard the rights of the suspect and to insure the admissibility of in-court identification of defendants after a line-up identification. There is some danger in hasty line-up procedures; tonight, we will discuss that danger so that you can guard against it.

It is important that every police officer know the proper procedure when road-blocks are used. Road-blocks are lawful under restricted conditions. In many cases, an officer simply does not have sufficient facts or information to constitute probable cause to stop an automobile in connection with a particular crime. Every officer should know under what conditions a road-block is permitted.

Bruce Littlejohn

Associate Justice

Supreme Court of South Carolina

EMERGENCY IDENTIFICATION  
OF SUSPECT BY VICTIM

It has become a major rule in criminal law that an identification of a suspect by a victim in 'lone confrontation' or 'non-line-up' circumstances is the result of too much suggestion of the guilt of the suspect, and that, when such an unlawful out-of-court identification is made, in most cases an in-court identification will not be allowed. This will often ruin the case, because, in many classes of crimes, personal identification of the defendant is necessary to obtain a conviction. US v. WADE, 388 US 219, as to right of attorney.

Restricted exceptions to the Wade rule are allowed, but the prosecution must always be able to prove that the exception was necessary. For example, if the victim has been injured and it is likely that he will not live to participate in a regular line-up viewing, the rule will be relaxed, and lone confron-

tation between victim and suspect will be permitted. See US v. O'Connor, 282 FS 963.

The basis for this important exception is that it is important that identification be made when there is a substantial possibility that the victim will not live to participate in a line-up. Possibility of an erroneous identification is still just as possible, but the circumstances justify 'lone' or 'solitary' confrontation.

BAD LINE-UP  
IDENTIFICATION

One of the most important reasons for not having 'lone' or 'solitary' identification of suspects is that such a situation often does tend toward suggesting that the suspect under arrest at the time is the guilty person. When an erroneous identification is made, and the real culprit is later found, the earlier identification of the wrong person is evidence

that the defendant's attorney may use at trial...and such evidence will certainly weaken the accuser's in-court identification of the real guilty party.

The United States Supreme Court in February, 1973, said that confession of guilt by another than the defendant must be made available to the defendant. Chambers v. Mississippi, 41 LW 4266, Feb. 21, 1973. There is little doubt that the same reasoning would make an erroneous identification available to the defense.

All aids necessary and lawful...such as, trying on certain clothing, speaking certain words, or taking certain positions...should be arranged for the initial line-up. Initial uncertainty, followed by identification at a later line-up, also weakens the prosecution.

### THE ROADBLOCK

It has been assumed for many years that police have the unrestricted authority to set up roadblocks. Movies and television have added to this belief... just as they have to the falacy that a person must be 'given his rights' before he is arrested, or, at least, as soon as he has been arrested. Both are false. If by 'rights', the Miranda warnings are referred to, the United States Supreme Court itself made it quite clear in the Miranda decision that the warnings required by that decision are necessary only if the defendant is to be questioned by police while in custody. Otherwise, the warnings need never be given.

You will hear vigorous argument that roadblocks are always lawful because police authorities always have the right to stop a driver to check his driver license or auto registration. Such position appears to be sound...except for one thing: the courts have

not accepted the argument. If the license check is, in fact, nothing more than an excuse for a dragnet inspection procedure, it is not lawful...and any evidence found as a result of the procedure will be thrown out at trial. See State v. Severance, 237 A2d 683.

On the other hand, check lanes set up in good faith to check for driver licenses, motor vehicle registration, and inspection stickers are reasonable and lawful. See Anno. 17 ALR 3rd 815.

#### ROADBLOCK RULE

A good rule of thumb to apply when a roadblock is contemplated are based on these three questions:

1. Has a felony been committed?
2. Does the police officer have good grounds to believe there has been such a crime committed?
3. Is a roadblock necessary and reasonable in the circumstances?

If the answer to all three questions is, "yes", a roadblock is lawful and may be conducted without resorting to the subterfuge of a license check. If the answer to any one of the questions is, "no", the roadblock is unlawful, regardless of the name by which it is called. See US v. Bonnano, 180 FS 71; US v. Kunz, 265 FS 543; App. of Kiser, 158 NW2d 596.

COMMENTS BY HONORABLE

BRUCE LITTLEJOHN, ETV

PROGRAM, APRIL, 1973

LONE OR SOLITARY IDENTIFICATION

OF SUSPECT BY THE VICTIM

"...the rule against lone confrontation between suspect and victim is based on a sound theory. The whole situation is too suggestive to the victim that this is the man. Psychologists might even say that the victim would sometimes experience a subconscious guilt. He might feel that he was failing to cooperate with the police if he did not identify the suspect."

"...it has now been firmly established in our law that...except in highly unusual and emergency circumstances...any out-of-court identification of a suspect by a victim at the behest of police authorities

must be accomplished in a basically fair line-up situation."

EXCEPTION TO THE RULE

"The courts recognize that there can be circumstances in which the rigid requirement of a line-up could defeat justice altogether. One exception...is when the victim has been injured and there is a good chance (he) will die before he has had a chance to identify the suspect in a regular line-up procedure. Although the danger of erroneous identification is still present, the courts hold that the dangers to society inherent in prohibiting such an identification in such extreme circumstances outweigh the dangers of erroneous identification."

INVESTIGATION BY POLICE

"A police officer, in the course of his investigation of a case, should have in the back of his mind

how the evidence he is able to assemble will look to a jury. He may be able very easily and quickly to get together enough evidence to constitute probable cause upon which to base an arrest warrant, or to satisfy his superiors that he has broken the case; but, unless he has assembled all the evidence available, he has accomplished only the minimun required of him."

NUMBER OF LINE-UPS PERMITTED

"There's no limit on the number of line-ups that can be conducted, but any line-up is a fact that can be pertinent to the case. If, for example, the victim has identified another person than the defendant, and that person has been released for other reasons, it is vital to the defense that the fact that of the previous identification be known. It would certainly not be in accord with constitutionally-required basic fairness to conceal that fact from the defense.."

USING DRIVER LICENSE CHECK

AS EXCUSE FOR ROADBLOCK

"(Such a procedure cannot be done) lawfully. Such a pretense will not support a valid seizure of evidence in the event the wanted men are found. It's quite possible that a court might hold that the so-called license check was just an excuse for stopping and inspecting a great number of cars in a drag-net operation. If that should happen, and the roadblock was not otherwise justified, the evidence found could be suppressed and made unavailable to the prosecution."

LAWFUL ROADBLOCKS

"...roadblocks by police officers are lawful when conducted in these circumstances:

A felony has been committed.

(The police have) probable cause to believe that the crime (felony) has been committed.

There is need for immediate action.

EXTENT OF ROADBLOCK SEARCH

"In order to justify a thorough search of any particular car, there would have to be something to constitute probable cause that (the particular car) was the one being sought...such as, (for example) an unusual pillow case of sack usually used by bank robbers to transport loot, observed in the car... something to point to that (particular) car as the subject vehicle. Random, thorough searches of cars are not permitted even in a lawful roadblock."

FLEMING'S NOTEBOOK!



FLEMING'S NOTEBOOK...Chapter 87:

INFORMER INFORMATION

DOUBLE HEARSAY

A Federal Court of Appeals has held that information given to an informer by another person may be the basis of a valid affidavit for a search warrant. In other words, the police informer need not always have personal knowledge of the facts if he, in turn, got them in circumstances in which it appears that the information is reliable. Example: An informer gets a tip from a known operator that a drop will be made at a certain time and place. This is sufficient information upon which to obtain a warrant if the police informer is reliable. Legal authority for the foregoing: US v. Kleve, 465 F2d 187.

WARRANTLESS SEARCH OF  
ABANDONED APARTMENT OR ROOM

When the occupant of a rented apartment or room has moved out, the landlord or other person in charge may give consent to search without a warrant. US v. Roberts, 465 F2d 1373.

WARRANTLESS SEARCH OF BOXES  
IN OPEN CAMPING AREA

Police in stake-out saw occupants of VW bus place boxes in open area in outdoor camp ground, then drive away. A search showed narcotics. Stake-out continued and defendants came to boxes and took narcotics. Arrest was lawful. It is not an unlawful invasion of privacy for police to search boxes left in open camping area. US v. Pruitt, 464 F2d 494.

TRIAL IN ABSENCE APPROVED

BY US SUPREME COURT

The United States Supreme Court has recently recognized the right of a state to try a defendant in his absence when the right to be present at trial has not been exercised by the defendant. Tacon v. Arizona, 41 LW 4275, Feb. 21, 1973. South Carolina law recognizes trial in absentia for a misdemeanor, but not for a felony.

EVIDENCE OF CONFESSION BY

PERSONS OTHER THAN DEFENDANT

A defendant was charged with murder and, at his trial, sought to introduce testimony that another person had confessed to the crime. The claim was true, but the other person's confession was rejected as unreliable by police. Under State law, evidence of such confession could not be introduced by the defendant, and it was not admitted at trial. Ruling

by United States Supreme Court: Evidence of the confession by another person should have been admitted in evidence. New trial granted. Chambers v. Mississippi, 41 LW 4266, Feb. 21, 1973.

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