

MINNEAPOLIS PARK POLICE
DEPARTMENT



BY ORDER OF THE CHIEF OF POLICE

SPECIAL ORDER 2021-03

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| TO: All Park Police | | | RETENTION DATE: Indefinitely |
| SUBJECT: Eyewitness Identification | | | APPROVED BY: Chief J. Ohotto |

EYEWITNESS IDENTIFICATION

I. PURPOSE

The purpose of this policy is to establish guidelines for eyewitness identification procedures involving show-ups, photo arrays, and line-ups. Erroneous eyewitness identifications have been cited as a factor frequently associated with wrongful convictions. Therefore, in addition to eyewitness identification, all appropriate investigative steps and methods should be employed to uncover evidence that either supports or eliminates the suspect identification.

II. DEFINITIONS

Administrator: The officer conducting the identification procedure.

Independent Administrator: A person who does not know the identity of the suspect.

Functional Equivalent: When an independent administrator is unavailable, a functional equivalent method must be used. Functional equivalent means that the administrator cannot see and does not know the order of the photos and that the witness knows the administrator does not know the order.

Blind Presentation: During a blind presentation, no one who is aware of the suspect's identity should be present during the administration of the photo array.

Blinded Presentation: When the administrator may know the identity of the suspect but does not know which photo array member is being viewed by the eyewitness at any given time.

Confidence Statement: A statement in the witness's own words taken immediately after an identification is made stating their level of certainty in the identification.

Confirmatory Photograph: An identification procedure in which a single photograph of an individual is shown to a witness or victim to authenticate the identity of a person.

Eyewitness: A person who has observed an event and can provide a first-hand report of what was seen.

Filler: A live person, or a photograph of a person, included in an identification procedure who is not considered a suspect.

Line-up: The process of presenting live individuals to an eyewitness for the purpose of identifying or eliminating suspects.

Photo Array: A means of presenting photographs to an eyewitness for the purpose of identifying or eliminating suspects.

Sequential: Presentation of a series of photographs or individuals to a witness one at a time.

Show-up: The presentation of a suspect to an eyewitness within a short time frame following the commission of a crime to either confirm or eliminate the suspect as a possible perpetrator. Show-ups, sometimes referred to as field identifications, are conducted in a contemporaneous time frame and proximity to the crime.

Simultaneous: Presentation of a series of photographs or individuals to a witness all at once.

III. POLICY

- A. Officers shall adhere to the procedures for conducting eyewitness identifications set forth in this policy, in order to maximize the reliability of identifications, minimize erroneous identifications, and gather evidence that conforms to contemporary eyewitness identification protocols.
 - Exceptions to this policy include instances in which a person, acting independent of law enforcement, spontaneously identifies a person as being the perpetrator of a crime or identifies a suspect via social media prior to meeting with an MPPD employee.
- B. Photo arrays and line-ups shall be conducted by displaying the suspect and fillers sequentially using a blind or blinded administration.
- C. Employees shall complete a supplemental Police Report if they:
 - 1. Coordinated, assisted, or witnessed a show-up.
 - 2. Acted in the capacity of the line-up administrator.

3. Were designated as the assigned investigator or otherwise considered to be assisting in the investigation.
- D. All eyewitness procedures shall be recorded by either BWC, MVR or audio recording devices.
- E. The use of a confirmatory photograph is limited in scope to those instances in which the person being identified is previously known by or an acquaintance of the person viewing the photograph.
- F. Any photo line-up that is viewed electronically shall be printed for documentation and inventoried or saved to an electronic file.
- G. Employees SHALL NOT request an eyewitness to represent their response in the form of a percentage. For example, if the witness positively identifies a suspect, employees should not then ask them to give a percentage of how certain they are that the person they identified is the suspect.

IV. PROCEDURES

A. Show-ups

1. The use of show-ups should be avoided whenever possible in preference to the use of a lineup or photo array procedure.
2. If circumstances require the prompt presentation of a suspect to a witness, the following guidelines shall be followed to minimize potential suggestiveness and increase reliability:
 - a. Document the witness's description of the perpetrator prior to conducting the show up.
 - b. Conduct a show-up only when the suspect is detained within a reasonable time frame after the commission of the offense and within a close physical proximity to the location of the crime.
 - c. Do not use a show-up procedure if probable cause to arrest the suspect has already been established.
 - d. If possible, avoid conducting a show-up when the suspect is in a patrol car, handcuffed, or physically restrained by officers, unless safety concerns make this impractical.
 - e. Caution the witness that the person they are about to see may or may not be the perpetrator, and it is equally important to clear an innocent person. The witness

should also be advised that the investigation will continue regardless of the outcome of the show-up.

- f. Do not conduct the show-up with more than one witness present at a time.
- g. Separate witnesses and do not allow communication between them before or after conducting a show-up.
- h. If one witness identifies the suspect, use a line-up or photo array for remaining witnesses.
- i. Do not present the same suspect to the same witness more than once.
- j. Do not require show-up suspects to put on clothing worn by, speak words uttered by, or perform other actions of the perpetrator.
- k. Officers should scrupulously avoid words or conduct of any type that may suggest to the witness that the individual is or may be the perpetrator.
- l. Ask the witness to provide a confidence statement.
- m. Remind the witness not to talk about the show-up to other witnesses until police or prosecutors deem it permissible.
- n. Document the following information:
 - i. The time and location of the show-up.
 - ii. The officers present.
 - iii. The full name and contact information of the eyewitnesses.
 - iv. The suspect's clothing appearance, from head to toe. Photographs should be taken to fully capture the details of the suspect's clothing and appearance.
 - v. Environmental and physical circumstances that could include but are limited to:
 - Lighting,
 - Weather,
 - Approximate distance between the eyewitness and suspect,
 - Whether the suspect was handcuffed, and
 - Time that transpired between the suspects detention and the eyewitness' identification.
 - vi. The result of the procedure.

B. Line-up and Photo Array Procedures

1. Line-ups should not typically be used for investigations, unless conducting a photo array is not possible.
2. Whenever possible, a blind presentation shall be used. In cases where a blind presentation is not feasible for a photo array, a blinded presentation should be used.
3. Live line-ups must be conducted using a blind presentation.
4. Basic Procedures for Conducting a Line-up or Photo Array:
 - a. The line-up or photo array should consist of a minimum of six individuals or photographs, with a minimum of five fillers and only one suspect.
 - b. Fillers should be reasonably similar in age, height, weight, and general appearance and be of the same sex and race, in accordance with the witness's description of the offender.
 - c. Create a consistent appearance between the suspect and the fillers with respect to any unique or unusual feature (e.g., scars, tattoos, facial hair) used to describe the perpetrator by artificially adding or concealing that feature on the fillers.
 - d. If there is more than one suspect, include only one in each line-up or photo array.
 - e. During a blind presentation, no one who is aware of the suspect's identity should be present during the administration of the photo array. However, during a line-up, the suspect's attorney should be present.
 - f. Place suspects in different positions in each line-up or photo array, both across cases and with multiple witnesses in the same case.
 - g. Witnesses should not be permitted to see or be shown any photos of the suspect prior to the line-up or photo array.
 - h. The witness shall be given a copy of the following instructions prior to viewing the line-up or photo array and the administrator shall read the instructions aloud before the identification procedure.
 - i. You will be asked to look at a series of individuals.
 - ii. The perpetrator may or may not be present in the identification procedure.

- iii. It is just as important to clear innocent persons from suspicion as it is to identify involved parties.
- iv. Either:
 - aa. I don't know whether the person being investigated is included in this series (if administered by an independent administrator); or
 - ab. I do not know the order of the photos (if administered by a functional equivalent).
- v. Sometimes a person may look different in a photograph than in real life because of different hair styles, facial hair, glasses, a hat or other changes in appearance. Keep in mind that how a photograph was taken or developed may make a person's complexion look lighter or darker than in real life.
- vi. You should not feel that you have to make an identification. If you do identify someone, I will ask you to describe in your own words how certain you are.
- vii. The individuals are not configured in any particular order.
- viii. If you make an identification, I will continue to show you the remaining individuals or photos in the series.
- ix. Regardless of whether you make an identification, we will continue to investigate the incident.
- x. Since this is an ongoing investigation, you should not discuss the identification procedures or results, particularly with any other potential witnesses.
- i. The line-up or photo array should be shown to only one witness at a time.
- j. Officers should separate witnesses prior to and during viewing so they will not be aware of the responses of other witnesses. Once the viewing is completed the eyewitness should be told not to discuss the procedure or their response with any other eyewitness.
- k. Multiple identification procedures should not be conducted in which the same witness views the same suspect more than once.
- l. Officers should scrupulously avoid the use of statements, cues, casual comments, or providing unnecessary or irrelevant information that in any manner may influence the witnesses' decision-making process or perception.

- m. Following an identification, the administrator shall ask the witness to provide a confidence statement and document the witness's response.
- n. The administrator shall ask the witness to complete and sign an Eyewitness Identification Procedure Form.

C. Photographic Arrays

1. Creating a Photo Array

- a. Use contemporary photos.
- b. When compiling photographs, employees shall only view databases or case files in which they have been granted access.
- c. Do not mix color and black and white photos.
- d. Use photos of the same size and basic composition.
- e. Never mix mug shots with other photos.
- f. Ensure the images are consistent in photo appearance and in appearance with the suspect, which includes but is not limited to the following;
 - Skin tone
 - Complexion
 - Hairstyle
 - Facial hair
 - Build
 - Glasses
 - Eye color
 - Background
 - Photo sizing
- g. Do not include more than one photo of the same suspect.
- h. Cover any portions of mug shots or other photos that provide identifying information on the subject; and similarly cover other photos used in the array. This includes jail markings, booking information, or other personal identification markings that would specifically identify the suspect.
- i. Where the suspect has a unique feature, such as a scar, tattoo, or mole or distinctive clothing that would make them stand out in the photo array, filler photographs should include that unique feature either by selecting fillers who have the same

features themselves or by altering the photographs of fillers to the extent necessary to achieve a consistent appearance.

- j. Fillers should not be reused in arrays for different suspects shown to the same witness.

2. Conducting the Photo Array

- a. The photo array should be preserved, together with full information about the identification process as part of the case file and documented in a report.
- b. If a blind administrator is not available, the administrator shall ensure that a blinded presentation is conducted using the following procedures:
 - i. Place the suspect and at least five filler photos in separate folders for a total of six (or more depending on the number of fillers used).
 - ii. The administrator will take one folder containing a known filler and place it to the side. This will be the first photo in the series. The administrator should then shuffle the remaining folders (containing one suspect and the remainder of fillers) such that they cannot see how the line-up members are ordered. These shuffled folders will follow the first filler photo. The stack of photos is now ready to be shown to the witness.
 - iii. The administrator should get in a position so that they cannot see inside the folders as they are viewed by the witness.
- c. The witness should be asked if they recognize the person in the photo before moving onto the next photo. If an identification is made before all of the photos are shown, the administrator should tell the witness that they must show the witness all of the photos and finish showing the sequence to the witness, still asking after each photo if the witness recognizes the person in the photo.
- d. If possible, the array should be shown to the witness only once. If, upon viewing the entire array the witness asks to see a particular photo or the entire array again, the witness should be instructed that they may view the entire array only one additional time. If a second viewing is permitted, it must be documented.

D. Line-ups

1. Conducting the Line-up

- a. Live line-ups shall be conducted using a blind administrator.

- b. Ensure that all persons in the line-up are numbered consecutively and are referred to only by number.
2. The primary investigating officer is responsible for the following:
- a. Scheduling the line-up on a date and at a time that is convenient for all concerned parties, to include the prosecuting attorney, defense counsel, and any witnesses.
 - b. Ensuring compliance with any legal requirements for transfer of the subject to the line-up location if they are incarcerated at a detention center.
 - c. Making arrangements to have persons act as fillers.
 - d. Ensuring that the suspect's right to counsel is scrupulously honored and that they are provided with counsel if requested. Obtaining proper documentation of any waiver of the suspect's right to counsel.
 - e. Allowing counsel representing the suspect sufficient time to confer with their client prior to the line-up and to observe the manner in which the line-up is conducted.
 - f. Taking and preserving a still photograph of each individual in the line-up.