



SPECIAL ORDER

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SUBJECT

EYEWITNESS IDENTIFICATION AND LINEUPS

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	Department Manual Directive 203.11, Eyewitness Identification and Lineups	12/16/2023	A

PURPOSE

The purpose of this directive is to establish the guidelines for eyewitness identification procedures involving showups, photo arrays, and live lineups. *Erroneous eyewitness identifications have been cited as the factor most 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.*

POLICY

Members shall strictly adhere to this directive in order to maximize the reliability of identifications, minimize *erroneous identifications*, and *gather evidence that conforms to established legal procedures*.

Definitions

Administrator

The law enforcement official conducting the identification procedure.

Blinded Presentation

The administrator may know the identity of the suspect, but does not know which live lineup or photo array is being viewed by the eyewitness at any given time.

Double-Blind Presentation

The administrator conducting the identification procedure does not know the suspect's identity.

Filler

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

Live Lineup

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.

Showup

The presentation of a suspect to an eyewitness within a short time frame following the commission of a crime to eliminate them as a possible perpetrator. Showups, 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.

Procedures

Showups

The use of showups should be avoided whenever possible in preference to the use of a live lineup or photo array procedure. However, when 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 showup. This description should be clearly noted as the witness' description and separate from the description noted by the member;*
- b. Conduct a showup 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. Members shall obtain supervisory approval before conducting a showup;*
- d. Do not use a showup procedure if probable cause to arrest the suspect has already been established;*
- e. Transport the witness to the location of the suspect whenever possible. Members shall not transport the suspect to the witness;*
- f. If possible avoid conducting a showup when the suspect is in a patrol vehicle, handcuffed, or physically restrained by Department members, unless safety concerns make this impractical;*
- g. Do not take a suspect to the witness's residence unless it is the scene of the crime and without the consent of both the suspect and the witness;*
- h. 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 showup;*
- i. Do not conduct the showup with more than one witness present at a time;*
- j. Separate witnesses and do not allow communication between them before or after conducting a showup;*
- k. If one witness identifies the suspect, use a live lineup or photo array for remaining witnesses;*
- l. Do not present the same suspect to the same witness more than once;*
- m. Do not require showup suspects to put on clothing worn by, speak words uttered by, or perform other actions of the perpetrator;*
- n. Members should avoid words or conduct of any type that may suggest to the witness that the individual is or may be the perpetrator;*
- o. Remind the witness not to talk about the showup to other witnesses until police or prosecutors deem it permissible;*

- p. Videotape the identification process using an in-car or body-worn camera;
- q. Members shall not use a cellular phone or other mobile communication device for a showup; and
- r. Members shall document the time and location of the showup, the members present, the result of the procedure, and any other relevant information on their activity log.

Basic Procedures for Conducting a Live Lineup or Photo Array

1. Prior to conducting a live lineup or photo array, members shall have the witness provide a recap of the incident to provide clarity that the witness has actual recollection of the incident and the suspect;
2. Whenever possible, a double-blind presentation shall be utilized. In cases where a double-blind presentation is not feasible, a blinded presentation should be used.
3. The live lineup or photo array should consist of a minimum of six (6) individuals or photographs. Use a minimum of five (5) fillers and only one suspect.
4. 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.
5. Avoid the use of fillers who so closely resemble the suspect that a person familiar with the suspect might find it difficult to distinguish the suspect from the fillers.
6. Create a consistent appearance between the suspect and the fillers with respect to any unique or unusual features (e.g. scars, tattoos, facial hair) used to describe the perpetrator by artificially adding or concealing that feature on the fillers.
7. If there is more than one suspect, include only one in each live lineup or photo array.
8. During a double-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 live lineup, the witnessing attorney should be present.
9. Place suspects in different positions in each live lineup or photo array.
10. Witnesses should not be permitted to see or be shown any photos of the suspect prior to the live lineup or photo array unless as a part of a continued investigation where a proper lineup was conducted.
11. The live lineup or photo array should be shown to only one witness at a time; members should separate witnesses so they will not be aware of the responses of other witnesses.
12. Multiple identification procedures should not be conducted in which the same witness views the same suspect more than once.
13. Members shall not use statements, cues, casual comments, or provide unnecessary or irrelevant information that in any manner may influence the witnesses' decision-making process or perception.
14. The proceeding must be conducted in a fair manner, so as not to be unduly suggestive of the suspect. This is important because any remarks could later be interpreted as an attempt to influence the identification.
15. The administrator shall ask the witness to complete and sign a live lineup or photo array form.
16. Live lineup and photo array procedures shall be video and audio recorded, unless doing so is not possible. If a procedure is not recorded, a written record shall be created and the reason for not recording shall be documented. In the case of live lineups that are not recorded, members shall take and preserve a still photograph of each individual in the lineup.
17. The administrator shall document all parties present during the live lineup.

Photographic Arrays

1. *When creating a photo array, members shall follow the below guidelines:*
 - a. *Use photos contemporary to when the crime occurred;*
 - b. *Use black and white photos only if there are no color photos available;*
 - 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. *Do not include more than one photo of the same suspect, and*
 - g. *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.*
2. *For both sequential and simultaneous procedures, the photo array should be preserved together with full information about the identification process as part of the case file.*
3. *A witnessing attorney must be present if a witness views photographs when the suspect is in custody. Members shall obtain the attorney's information including their name, phone number, address, and p number.*
4. *The attorney shall initial photocopies of all photographs used in the photo array. The officer in charge of the case shall ensure that attorneys witnessing the photo array are provided with a document outlining the attorney's role at the photo show up.*
5. *Where a witness identifies the suspect through the use of photographs, the "totality of the circumstances" test is used to determine whether the photographs utilized are not unnecessarily suggestive of any particular suspect.*

Live Lineups

1. *When conducting the live lineup, members shall follow the below guidelines:*
 - a. *If a blind administrator is unavailable, the administrator shall take all reasonable precautions to avoid giving any unintentional cues to the witness;*
 - b. *Ensure that all persons in the live lineup are numbered consecutively and are referred to only by number; and*
 - c. *Document all parties present at the live lineup.*
2. *The officer in charge of the case is responsible for the following:*
 - a. *Scheduling the live lineup on a date and at a time that is convenient for all concerned parties, to include the witnessing attorney and any witnesses;*
 - b. *Ensuring compliance with any legal requirements for transfer of the subject to the live lineup location if they are incarcerated at a detention center; and*
 - c. *Making arrangements to have persons act as fillers.*
3. *A written record, the Lineup and Photo Identification Record (DPD355), should include:*
 - a. *Names, age, and addresses of all persons whose photographs are to be used in the live lineup or photo array;*
 - b. *Physical description of all persons whose photographs are to be used in the live lineup or photo array;*

- c. Names and addresses of all persons present at the *live lineup or photo array*; and
 - d. Statements of identifying witnesses while making the identification.
4. A *live lineup* cannot be avoided by having a witness view photographs when a formal *live lineup* is *reasonably possible*. A *photo array* shall not be conducted if the suspect is in custody, unless:
- a. It is not possible to arrange a proper lineup;
 - b. There are an insufficient number of persons available with the defendant's physical characteristics;
 - c. The nature of the case requires immediate identification;
 - d. The witnesses are *physically unable to attend a lineup*; or
 - e. The subject refuses to participate in a lineup and by this action would seek to destroy the value of the identification.
5. All live lineups shall be photographed.
- a. The name, rank, and assignment of the *member* taking the photograph shall be entered on the *Lineup* and Photo Identification Record (DPD355), in the box designated "OTHERS PRESENT." The photograph shall then be attached to the *Lineup* and Photo Identification Record and become a permanent part of the court file.
 - b. The officer in charge of the case shall be responsible for the photographing of lineups conducted at all other locations.

Refusal of Detainee to Stand in a Lineup

1. If a detainee refuses to stand in a lineup, the following procedures shall be followed:
 - a. A determination shall be made as to the availability of a photograph of the detainee suitable for use in photograph identification; and
 - b. Photograph identification can be used in lieu of a lineup if the subject refuses to participate in a lineup and, by the subject's action, would seek to destroy the value of the identification.
2. Regardless of whether a photograph is available or not, between the hours of 8:30 a.m. to 4:30 p.m. on weekdays and from 8:30 a.m. to 1:00 p.m., on Saturdays, Sundays, and holidays, the Wayne County Prosecutor's Office shall be contacted. *At any other time*, the Control Desk shall be contacted for the number of the on-duty assistant prosecuting attorney.
3. The prosecuting attorney contacted shall be informed if a photograph of the detainee is available or not and shall be informed that the detainee refuses to participate in a lineup. Department members and detention personnel shall be guided by the advice of the prosecuting attorney. Although the Michigan Supreme Court has ruled that forced participation in a lineup does not constitute unreasonable search and seizure, no force shall be exerted to force participation of a detainee in a lineup unless the prosecuting attorney contacted gives direction for such action.

Limited Use of Video for Identification Purposes

1. *Members shall only utilize video to confirm the identity of a subject should the witness be a close associate or family member of the subject (e.g. mother / father or close friend).*

Witnessing Attorney

1. *A witnessing attorney shall be present for all live lineups and photo arrays when the suspect is in custody.*
2. *Should the suspect be criminally charged and have obtained a lawyer, then the suspect's defense attorney shall act as a witnessing attorney. In all other cases, the officer in charge of the case shall call Notification and Control who shall identify the witnessing attorney.*
3. *The purpose of the witnessing attorney's presence is not to interfere with the conduct of the live lineup or photo array but to observe the procedures used by the law enforcement officers, so that in any subsequent court proceeding the accused will have a lawyer as a witness to any unfair suggestive procedures that may have been employed during the lineup or photo array.*
4. *Under no circumstances may a lawyer interfere with the conduct of the live lineup. While counsel may advise a client not to make incriminating statements, counsel may not advise a client to refuse to participate in the live lineup or any requested physical demonstrations including a voice test, a handwriting sample, to wear certain clothing to assume a stance, to walk or to gesture. If any lawyer should so advise a client, the Prosecuting Attorney's Office should be notified so that appropriate action may be considered.*
5. *The OIC's responsibility is to document any objections, procedural violations, or other concerns voiced by the witnessing attorney during the live lineup or photo array.*

JAMES E. WHITE
Chief of Police