



VOLUSIA COUNTY SHERIFF'S OFFICE
Sheriff Ben F. Johnson

Departmental Standards Directive

**TITLE: EYEWITNESS IDENTIFICATION:
LINE-UPS & SHOW-UPS**

CODIFIED: 42.15
EFFECTIVE: 08-2011
RESCINDS/AMENDS: 11-2009
ATTACHMENTS: 2

PURPOSE

The purpose of this Directive is to establish procedures for preparing and conducting non-suggestive photographic/live line-ups and show-ups, thus enhancing accuracy and use of eyewitness identifications and minimizing the potential for misidentifications.

DISCUSSION

Eyewitnesses frequently play a vital role in uncovering the truth about a crime. The evidence they provide can be critical in identifying, charging, and ultimately convicting suspected criminals. That is why it is absolutely essential that eyewitness evidence be accurate and reliable.

In the use of eyewitnesses, there are two variables that affect eyewitness identification: *estimator variables* and *system variables*.

Estimator variables are those that cannot be controlled by the criminal justice system. They include simple factors such as lighting, distance to the perpetrator, time lapse, eyewitness veracity, etc., to more complex factors involved with stress and/or trauma.

System variables on the other hand, are those that the criminal justice system can and should control and include all the ways that law enforcement agencies retrieve and record witness memory, such as line-ups, photo arrays and show-ups.

For this reason, it is imperative that proper protocol be established and strictly adhered to while administering eyewitness identification procedures.

Misidentifications not only threaten the innocent, they also derail investigations by taking the focus off the actual perpetrator. Enhanced attention to identification procedures helps to avoid misidentifications and ensure that more accurate identifications are made.

POLICY

It is the policy of the Volusia County Sheriff's office to adhere to non-suggestive, professional and objective eyewitness identification protocol and administrative procedures as outlined herein. This policy applies to all forms of eyewitness identification to include photographic and live line-ups as well as field show-ups. Further, it is the policy of the Volusia County Sheriff's Office to authorize and conduct simultaneous line-ups only.

In cases involving multiple witnesses, it shall be the policy of the VCSO that only one witness at a time view the selected lineup. If there are multiple suspects involved and a field show-up procedure is warranted, the suspects shall be separated and subjected to separate individual show-up procedures as outlined herein.

DEFINITIONS

A. **Administrator** – The person conducting the line-up or showup (Investigator/ Deputy).

- B. **Eyewitness** - The person who observes another person at or near the scene of an offense.
- C. **Filler** - Either a person or a photograph of a person who is not suspected of an offense and is included in an identification procedure. Used to complete a photo array and bring the total number of photos/persons up to a minimum of six photos/persons.
- D. **Live lineup** - An identification procedure in which a group of persons, including the suspected perpetrator of an offense and other persons not suspected of the offense, is displayed before an eyewitness for the purpose of identifying or eliminating suspects.
- E. **Photo Array** - The group of photographs utilized in a photographic lineup.
- F. **Photo lineup** - Showing photographs to an eyewitness for the purpose of identifying or eliminating suspects
- G. **Simultaneously** - Presentation of photos or individuals in a lineup to a witness all at once rather than one-at-a-time.
- H. **Showup** - an identification procedure in which an eyewitness is presented with a single suspect for the purpose of determining whether the eyewitness identifies this individual as the perpetrator.
- I. **Suspect** - the person believed by law enforcement to be the possible perpetrator of the crime.

PROCEDURE

The following procedures are designed to enhance the accuracy of identifications and minimize the risk of inadvertent misidentifications thus providing stronger evidentiary value for the case.

COMPOSING & PREPARING LINE-UPS

42.15.1 In composing a photo or live lineup, the administrator shall ensure that the lineup is comprised in such a manner that the suspect does not unduly stand out; however, complete uniformity of features is not required.

42.15.2 When selecting photographs:

- Do not mix color photos with black and white photos;
- Use photos of the same size and basic composition;
- Do not mix mug shot photos with other photos;
- Do not include more than one photo of the same suspect;
- Cover or crop any portion of a mug shot or other photo that provides identifying information on the subject or other persons included in the photographic lineup (e.g. previous arrest information, name tags, etc).

42.15.3 Suspects will be placed in different positions in each lineup, to include across multiple cases (e.g. same suspect in 3 separate robberies) and with multiple witnesses in the same case.

PHOTO LINEUP

42.15.4 In composing a photo lineup, the lineup administrator shall: (CALEA 42.2.11A)

- A. Include only one photo of the suspect in each identification procedure; if multiple photos of the suspect are reasonably available to the investigator/ deputy, select a photo that resembles the suspect's description or appearance at the time of the incident.
- B. Select fillers (non-suspects) who generally fit the witness's description of the perpetrator. Use contemporary photographs of individuals who are reasonably similar in age, height, weight, and general appearance and are of the same sex and race. When there is a limited or inadequate description of the perpetrator provided by the witness, or when the description of the perpetrator differs significantly from the appearance of the suspect, fillers should resemble the suspect in significant features.
- C. Include a minimum of five (5) fillers per identification procedure.
- D. Do not reuse fillers in line-ups shown to the same witness when showing a new suspect.
- E. View the array, once completed, to ensure that the suspect does not unduly stand out.

LIVE LINEUP

42.15.5 Live line-ups require the authorization/coordination through a supervisor and availability of video/digital and audio equipment for recording of the procedure. All such video/digital and audio equipment will be in record-ready status prior to beginning the identification process.

42.15.6 In composing a live lineup, the lineup administrator shall:

- A. Include only one suspect in each identification procedure.
- B. Select fillers (non-suspects) who generally fit the witness's description of the perpetrator in age, height, weight, and general appearance and are of the same sex and race. When there is a limited or inadequate description of the perpetrator provided by the witness, or when the description of the perpetrator differs significantly from the appearance of the suspect, fillers should resemble the suspect in significant features.
- C. Include a minimum of five (5) fillers (non-suspects) per identification procedure.
- D. 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.
- E. Do not reuse fillers in line-ups shown to the same witness when showing a new suspect.
- F. Present separate line-ups when there are multiple eyewitnesses.
- G. Place the suspect in different positions in each lineup, both across cases and with multiple witnesses in the same case.

INSTRUCTING THE WITNESS PRIOR TO VIEWING A LINEUP

42.15.7 Prior to any viewing any photo or live lineup, the administrator shall provide standardized instructions to the witness and shall obtain from the witness a signed acknowledgement of the information provided through use of the Witness Form (Attachment A). Instructions to the witness will include the following information:

- A. That the suspect or person of interest may or may not be among the persons in the identification procedure;
- B. That the eyewitness should not feel compelled to make an identification and should take as much time as needed to examine each photo/individual;
- C. That the investigation will continue whether or not an identification is made;
- D. That the procedure requires the administrator or investigator to ask the eyewitness to state, in his/her own words, how certain he/she is of any identification;
- E. That after viewing all the photos/ individuals, if an identification can be made, the witness will be asked to initial and date the photograph of/ or indicate the person identified.
- F. That the case is an ongoing criminal investigation and that the eyewitness should refrain from discussing the identification procedure or its results with other eyewitnesses involved in the case or with the media.

DIRECTIONS TO THE ADMINISTRATOR

42.15.8 After instructions are read to the witness and the witness acknowledges the specific instructions in writing, the Administrator will step away from the witness's immediate vicinity. If possible, the Administrator should not be in the witness's direct line of sight. This will help to minimize the opportunity for inadvertent behaviors that might influence the witness's decision and provides the witness a more relaxed opportunity to view the lineup.

42.15.9 During contact with the witness(es), Administrators are prohibited from communicating, either verbally or by body language, anything beyond the reading of the standardized instructions that may mislead a witness during the eyewitness process and shall scrupulously avoid any conduct that directly or indirectly influences the witness's decision.

42.15.10 Any special circumstances that prompt a variance from the instructions or refusal of the witness to acknowledge that he or she read the instructions shall be documented.

CONDUCTING THE ID PROCEDURE

42.15.11 The identification procedure will be conducted in a manner that promotes the accuracy, reliability, fairness and objectivity of the witness's identification.

42.15.12 The Administrator shall ensure communication among multiple witnesses is prevented during lineup procedures to avoid "contamination" of results.

PHOTO LINEUP

42.15.13 When presenting a simultaneous photo lineup, the lineup administrator shall:

- A. Confirm that the witness understands the nature of the lineup procedure;
- B. Avoid saying anything to the witness that may influence selection;
- C. If identification is made, scrupulously avoid communicating in any way to the witness any information regarding the individual he or she has selected.
- D. Record all results as per section, "Recording ID Results".

42.15.14 Preserve the presentation order of the photo lineup. In addition, the photos themselves shall be preserved in their original condition.

LIVE LINE-UPS

42.15.15 All live line-ups must conform to specific legal requirements. If the right to counsel has attached, the counsel representing the accused is entitled to have sufficient time to confer with his or her client prior to the lineup, and to observe the lineup itself. Any waiver of right of counsel must conform with requirements of law.

42.15.16 In a live lineup no person aware of the suspect's identity other than the investigator who is administering the lineup, and in the case where the right to counsel has attached the suspect's attorney, may be present.

42.15.17 Instruct all those present at the lineup not to suggest in any way the position or identity of the suspect in the lineup and that such communication in any way, verbal or body language, about assumed identity of the suspect is prohibited.

42.15.18 When presenting a live lineup, the lineup Administrator shall:

- A. Prior to the viewing, provide viewing instructions to the witness.
- B. Ensure that any identification actions (e.g. speaking, moving, etc.) are performed by all members of the lineup.
- C. If an identification is made, scrupulously avoid communicating in any way to the witness any information regarding the individual he or she has selected.
- D. Record all results as per section, "Recording ID Results".

42.15.19 Document the lineup by photo, video and audio. This documentation should be of a quality that represents the lineup clearly and fairly.

42.15.20 Instruct the witness not to discuss the identification procedure or its results with other witnesses involved in the case and discourage contact with the media.

RECORDING ID RESULTS

42.15.21 When conducting an identification procedure, the lineup Administrator shall preserve the outcome of the procedure by documenting any identification or non-identification results obtained from the witness. Preparing a complete and accurate record of the outcome of the identification procedure is crucial. This record can be a critical document in the investigation and any subsequent court proceedings.

42.15.22 Document in writing the lineup procedure including:

- A. Date and time of the identification procedure
- B. Identification information of lineup participants
- C. If a photo lineup, include sources of all photos used
- D. Names of all persons present at the lineup

42.15.23 Document the level of confidence expressed by the witness in terms of witness conduct, relevant observations, and the witness's statements word-for-word regarding how sure he or she is by utilizing the Witness Form (Attachment A).

- Example: "Upon viewing photo number four, the witness stated, 'That's the one. He's the one who told me he was going to kill me,' and the witness began crying."

42.15.24 Record both identification and non-identification results in writing as noted by the witness.

42.15.25 Ensure that the results are signed and dated by the witness including any acknowledgement forms.

42.15.26 Ensure that no materials indicating previous identification results are visible to the witness.

42.15.27 Ensure that the witness does not write on or mark any materials that will be used in other identification procedures.

42.15.28 Regardless of whether or not an identification was made, all results, forms utilized and documentation about the identification process will be maintained in the investigative case file; all recordings and photograph arrays shall be preserved and submitted to the Evidence Section.

SHOW-UPS

42.15.29 A showup is a field identification procedure performed when circumstances require the prompt display of a single suspect to a witness. The inherent suggestive nature of the encounter can be minimized through the use of procedural safeguards.

42.15.30 In order to determine whether a suggestive out-of-court confrontation gave rise to a likelihood of misidentification, courts have considered such factors as:

- The opportunity of the witness to view the criminal at the time of the crime
- The witness's degree of attention
- The accuracy of the witness's prior description of the criminal
- The level of certainty demonstrated by the witness at the confrontation
- The length of time between the crime and the confrontation,
- Whether the witness was a "casual observer" or the victim of the crime.

42.15.31 Show-ups should be used when compelling reasons/circumstances require the prompt display of a single suspect to a witness (e.g. public safety concerns).

42.15.32 Show-ups require a supervisor's approval. The approving supervisor will evaluate the above noted factors before approving a showup.

42.15.33 Determine and document the description of the perpetrator prior to the showup; be as detailed with the description as possible.

42.15.34 Show-ups should only be conducted when the suspect matching the description of the perpetrator is located in close proximity (in time and place) to the crime.

42.15.35 If practical, transport the witness to the location of the detained suspect to limit the legal impact of the suspect's detention.

42.15.36 The showup administrator/ deputy is prohibited from providing any feedback/communication, verbal or body language, which may influence the witness in identifying the suspect.

42.15.37 Show-ups shall not be conducted with more than one witness present at a time.

42.15.38 Witnesses shall be given the following cautionary instructions **before** viewing a suspect:

- A. The perpetrator may or may not be the person that is presented to the eyewitness;
- B. The eyewitness should not feel compelled to make an identification;
- C. The investigation will continue whether or not an identification is made;
- D. The procedure requires the administrator to ask the eyewitness to state, in his own words, how certain he is of any identification; this must be documented in the witness form and reflected in the report.
- E. Direct the eyewitness not to discuss the identification procedure or its results with other eyewitnesses involved in the case; discourage contact with the media.

42.15.39 In cases involving multiple witnesses, the eyewitnesses will be separated and instructed to refrain from discussing the identification procedure or its results with other eyewitnesses involved in the case.

42.15.40 If there are multiple witnesses and one witness makes a positive identification during a showup, that identification should provide the probable cause to make an arrest; the remaining witnesses should then be provided with a photo lineup procedure rather than continue with the showup.

42.15.41 Words or conduct of any type that may suggest to the witness that the individual is or may be the perpetrator is prohibited.

42.15.42 Presentation of the suspect should (if safe to do so):

- A. Avoid the restraint of the suspect during the course of the showup;
- B. Remove the suspect from the patrol vehicle.

42.15.43 If there are multiple suspects and a showup procedure is warranted, the suspects should be separated and subjected to separate procedures if at all possible. Any extenuating circumstances (e.g. public safety issue) that prohibit separation shall be documented in the report.

42.15.44 Deputies shall fully document the event and the result in an incident report. The documentation shall include the witness form and the name of the supervisor who authorized the showup.

TRAINING

42.15.45 All sworn officers whose duties include the use of line-ups and show-ups shall receive documented field/roll call training on VCSO policy and authorized protocol for conducting eyewitness identifications and shall acknowledge via electronic signature that he or she has read and understands VCSO Directive 42.15, Eyewitness Identification – Line-ups & Show-ups.

42.15.46 This directive shall be addressed as part of the FTEP for all new recruits; documented refresher training will be conducted annually through training bulletins issued by the Training Section.

ATTACHMENTS

Attachment A: Witness Form: Line-ups

Attachment B: Witness Form: Show-ups

Drafted by: 6760/2225

Drafted on: 08-18-2011

Approved:



Ben F. Johnson
Sheriff, Volusia County

VOLUSIA COUNTY SHERIFF'S OFFICE

WITNESS FORM: SIMULTANEOUS LINEUP

WITNESS NAME: _____ LINEUP ID #: _____

DATE: _____ TIME: _____ CASE NUMBER: _____

Administrator: Read to witness before the lineup and have the witness read and initial below:

- A. You will be asked to view a group of photos/ individuals.
- B. The suspect or person of interest may or may not be among the persons in the identification procedure;
- C. You should not feel compelled to make an identification; it is just as important to free innocent persons from suspicion as it is to identify the correct guilty parties.
- D. The photos/ individuals will be shown to you simultaneously and are not in any particular order. Take as much time as you need to examine the photos/ individuals.
- E. Individuals presented in the group may not appear exactly as they did on the date of the incident because features such as head and facial hair are subject to change.
- F. If an identification is made, I will ask you to state in your own words how certain you are of the identification you made.
- G. Regardless of whether an identification is made, the investigation will continue.
- H. This case is an ongoing criminal investigation. Please do not discuss the case with any other witnesses or the media, nor indicate in any way that you have identified someone, if in fact you have.

Please read and initial here if you understand the above instructions: _____

Complete AFTER viewing the lineup:

The photo array/ lineup I was shown consisted of _____ photos / _____ individuals.

CHOOSE:

____ I am unable to select any photo/ individual as being the person who _____

____ I have selected photo/ individual # _____ as the person who _____

with the following amount of certainty: _____

Your Signature

Date

Witnessed By:

Signature of Administrator conducting the lineup

Date

DID #

Note: Document any refusal or inability of the witness to complete this form.

ADMINISTRATOR COMMENTS/OBSERVATIONS: _____

VOLUSIA COUNTY SHERIFF'S OFFICE

WITNESS FORM: SHOWUPS

WITNESS NAME: _____

DATE: _____ TIME: _____ CASE NUMBER: _____

Administrator: Read to witness BEFORE the showup procedure; have the witness read and initial below:

- A. You will be asked to view an individual(s)
- B. The suspect or person of interest may or may not be the persons in the identification procedure;
- C. You should not feel compelled to make an identification; it is just as important to free innocent persons from suspicion as it is to identify the correct guilty parties. Take as much time as you need to view the individual; regardless of whether an identification is made, the investigation will continue.
- D. If an identification is made, I will ask you to state in your own words how certain you are of the identification you made.
- E. This case is an ongoing criminal investigation. Please do not discuss the case with any other witnesses or the media, nor indicate in any way that you have identified someone, if in fact you have.

Please read and initial here if you understand the above instructions: _____

Complete AFTER viewing the individual(s):

I was shown _____ individuals.

CHOOSE:

___ I am UNABLE to identify the individual [#___] as being the person who _____

_____.

___ I am ABLE to identify the individual [#___] as being the person who _____

_____.

with the following amount of certainty: _____.

Your Signature

Date

Witnessed By:

Signature of Administrator conducting the Showup

Date

DID #

Note: Document any refusal or inability of the witness to complete this form.

ADMINISTRATOR COMMENTS/OBSERVATIONS: _____
