

## AOM CHAPTER O-408

# EYEWITNESS IDENTIFICATION PROCEDURE

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## I. Introductory Discussion

A. Nowhere more so than in criminal cases does the legal system rely on the testimony of eyewitnesses. The evidence eyewitnesses provide can be tremendously helpful in developing leads, identifying criminals, and exonerating the innocent.

Therefore, the Northampton Police Department has established the following policies/procedures with regard to the collection and handling of eyewitness evidence.

The intent of this policy is to:

- Combine research and practical perspectives;
- Promote accuracy in eyewitness evidence; and
- Promote sound professional practices.

## II. General Guidelines – Types of Eyewitness Evidence

A. **Lineups:** A display of photos or persons consisting of one suspect among a number of fillers, from which a witness can identify a perpetrator. Lineups will be composed in such a manner that the suspect does not unduly stand out. Lineups shall be presented in the sequential fashion as described below:

1. **Sequential Photo/Live Lineup:** Photos or individuals are viewed by the witness one at a time in random order.

***Note:*** *Live lineup order may be determined by the investigator and consideration given to the suspect's and/or their attorney's request for a certain position within the lineup.*

2. **Blind Testing Procedures:** Blind testing means that the person administering the test (Independent Administrator) does not know the desired answer. Utilizing this practice, the Independent Administrator would not be aware of which member of the photo-spread or lineup is the suspect, and would eliminate the possibility of influencing the witness' selection.
- B. **Digital Imaging System:** Digital Imaging Systems are collections of photos of previously arrested persons which may be used in cases where a suspect has or has not yet been determined and other reliable sources have been exhausted. This technique may provide a possible suspect, but results should be evaluated with caution.
- C. **Composites:** A composite is a sketch based on the witness's descriptive information that enables officers to better perceive how a suspect may appear. Composite images can be beneficial investigative tools; however, they should not be used as stand-alone evidence and may not rise to the level of probable cause (Refer to departmental policy entitled *Police Sketch Artist*).
- D. **Showups:** A showup is a field identification procedure performed when circumstances require the prompt display of a single suspect to a witness. The inherent suggestiveness of the encounter can be minimized through the use of procedural safeguards.

### III. Procedures

- A. **Composing Lineups:** The identification procedure should be conducted in a manner that promotes the accuracy, reliability, fairness and objectivity of the witness' identification. The following procedures will result in the composition of a lineup in which a suspect does not unduly stand out.

1. Photo Lineups: Presenting a photo lineup, the investigator or lineup administrator should:
  - a. Include only one suspect in each identification procedure.
  - b. Select fillers (non suspects) who generally fit the witness' description of the perpetrator. 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. Select a photo that resembles the suspect's description or appearance at the time of the incident if multiple photos of the suspect are reasonably available to the investigator.
  - d. Include a minimum of five fillers (non suspect) per identification procedure. Once the photos are selected, the investigator/administrator shall mark the back of each photo with numbers and record the order in which they were shown on form *O-408a, Individual/Photo Sequence Form*.
  - e. Consider that complete uniformity of features is not required. Avoid using 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.
  - f. Create a consistent appearance between the suspect and fillers with respect to any unique feature (e.g., scars, tattoos) used to describe the perpetrator by using images that covered those characteristics.
  - g. Position the suspect randomly in each lineup, both across cases and with multiple witnesses in the same case.
  - h. When showing a new suspect, avoid reusing fillers in lineups shown to the same witness.
  - i. Ensure that no writings or information concerning previous arrest(s) will be visible to the witness.
  - j. View the array, once completed, to ensure that the suspect does not unduly stand out.

- k. Present each photo/individual to the witness one at a time, removing those previously shown.
  - l. Avoid saying anything or making any gestures to the witness that may influence the witness' selection.
  - m. Avoid reporting to the witness any information regarding the individual he/she has selected prior to obtaining the witness' statement of certainty.
  - n. Preserve the photos in their original condition.
2. Live Lineups: In composing a live lineup, the lineup administrator or investigator shall;
- a. Include only one suspect in each identification procedure.
  - b. Select fillers who generally fit the witness' description of the perpetrator. When there is a limited/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. Position the suspect randomly in each lineup, both across cases and with multiple witnesses in the same case unless, the suspect or the suspect's attorney requests a particular position.
  - d. Include a minimum of four fillers (non suspects) per identification procedure.
  - e. Avoid reusing fillers in lineups shown to the same witness when showing a new suspect.
  - f. Consider that complete uniformity of features is not required. Avoid reusing 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.
  - g. Create a consistent appearance between the suspect and fillers with respect to any unique or unusual feature (e.g., scars, tattoos) used to describe the perpetrator by using images that covered those characteristics.

- h. View the array, once completed, to ensure that the suspect does not unduly stand out.
- i. Preserve the presentation of the lineup via videotape or by photographing the procedure.

**B. Conducting Lineups:** Presenting the photos/individuals by utilizing best practices ensures that the identification procedures minimize the chance of misidentification of a suspect. The method of presenting the photos or individuals is the sequential method.

Blind Testing Procedures shall be employed by the Lineup Administrator to eliminate the possibility of influencing the witness' selection.

1. Sequential Photo/Live Lineup: When presenting the lineup, the administrator or investigator should provide instructions to the witness as follows (Refer to departmental form ***O-408b, Photo/Live Line-Up ID Instructions***):
  - a. Instruct the witness that he/she will be asked to view a group of photographs/individuals.
  - b. Instruct the witness that it is just as important to clear innocent persons from suspicion as to identify guilty parties.
  - c. Instruct the witness that individuals depicted in the lineup 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.
  - d. Instruct the witness that the person who committed the crime **may or may not** be in the lineup being presented.
  - e. Assure the witness that regardless of whether an identification is made, the police will continue to investigate the incident.
  - f. Instruct the witness that the procedure requires the investigator to ask the witness to state, in his/her own words, how certain he/she is of any identification.

- g. Instruct the witness that the photos/individuals will be viewed one at a time and that they are in random order.
- h. Advise the witness to take as much time as needed in making a decision about each photo/individual before moving to the next one.
- i. All photos/individuals will be shown, even if an identification is made.
- j. Ensure that any identification actions (e.g., speaking, moving, etc.) are performed by all members of the lineup.
- k. 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.
- l. Confirm that the witness understands the nature of the sequential procedure.

#### **IV. Other Methods of Identification**

- A. **Digital Imaging System:** (use *Imaging System Viewing Instructions form O-408c*) The digital imaging system is composed of images taken during the booking process, the registration of a sex offender, or of an individual on a voluntary basis, or of a scanned photograph.

##### **Viewing Preparations:**

- Ensure that positive identifying information is available for all individuals.
- Ensure that the images are contemporary.
- Attempt to show only one image of each individual during the viewing.
- Select images by specific physical characteristics (e.g., race, age, sex).

##### **Witness Instructions:**

- Instruct the witness without other persons present.

- Describe the system to the witness only as a “collection of images.”
- Instruct the witness that the person who committed the crime may or may not be present in the system.
- Consider suggesting to the witness to think back to the event and his/her frame of mind at the time.
- Instruct the witness that individuals depicted in images 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.
- Instruct the witness to select an image if he/she can and to state how he/she knows the person.
- Assure the witness that regardless of whether he/she makes an identification, the police will continue to investigate the case.
- Instruct the witness that the procedure requires the investigator to ask the witness to state, in his/her own words, how certain he/she is of any identification.
- 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.

B. **Composites Sketches:** A composite drawing is a specialized tool that may be utilized under the conditions of Policy O-406 entitled *Police Sketch Artist*.

- C. **Showups:** The investigator should:
- Determine and document the description of the perpetrator prior to the showup.
  - Consider transporting the witness to the location of the detained suspect to limit the legal impact of the suspect’s detention and scene contamination.
  - When multiple witnesses are involved, separate witnesses and instruct them to avoid discussing details of the incident with other witnesses.
  - If a positive identification is obtained from one witness, consider using other identification procedures (e.g., lineup, photo array) for remaining witnesses.
  - Caution the witness that the person he/she is looking at **may or may not** be the perpetrator.

- Obtain and document a statement of certainty if identification is made. All identifications and non-identifications must be documented.

## **V. Documenting the Results of Identification**

- A. The investigator shall preserve the outcome of the procedure by recording any identification results and witness's statement of certainty as follows:
1. Document the date, time, names of all persons present and location of the procedure.
  2. Document the procedure employed (e.g., sequential photo or live lineup, digital imaging system, etc.) in writing.
  3. Document the results of the procedure, including the witness' own words regarding how certain he/she is of any identification.
  4. Document items used and preserve the procedures presented to the witness for future court considerations.
  5. Record both identification and non-identification results in writing on the witness identification form, including the witness's own words regarding how sure he/she is;
  6. Ensure that the results are signed and dated by the witness and that no materials indicating other witness identification results are visible; and
  7. Ensure that the witness does not write on or mark any materials that will be used in other identification procedures.

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