



EYEWITNESS IDENTIFICATION

General Order Number: 44.0

Effective Date: June 12, 2017

I. PURPOSE

It is the purpose of this policy to establish guidelines for eyewitness identification procedures involving showups and photo arrays. 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 suspect identification.

It is also the policy of this department to conduct photographic line-ups using a blind sequential method. The blind sequential method is one where the officer displaying the array to the eyewitness is not aware of which member of the photographic line-up is the suspect and that each photograph in the line-up is viewed individually by the witness. A Brookline Police Photographic Show Up Admonition Form will also be presented to the eyewitness prior to viewing any array and is to be signed by witness and officer. A copy of this form is attached to this policy.

This general order supersedes Special Order 2005-1, Field Identification and Photo Line-Up Procedures.

II. POLICY

Officers shall strictly adhere to the procedures for conducting eyewitness identifications set forth herein, in order to maximize the reliability of identifications, minimize erroneous identifications, and gather evidence that conforms to contemporary eyewitness identification protocols.

III. DEFINITIONS

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

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

Administrator: The law enforcement official conducting the identification procedure.

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

Blinded Presentation: 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 identification is made stating his or her level of certainty in the identification.

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

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

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

IV. PROCEDURES

A. **Showups:** The use of showups should be avoided whenever possible in preference to the photo array procedure. However, when circumstances require the prompt presentation of a suspect to a witness, the following procedural safeguards shall be followed to minimize potential suggestiveness and increase reliability.

1. Document the witness's description of the perpetrator prior to conducting the showup.
2. Conduct a showup only when the suspect is detained within a reasonably contemporaneous time frame after the commission of the offense and within a close physical proximity to the location of the crime.
3. Transport the witness to the location of the suspect whenever possible, rather than bringing the suspect to the witness.
4. If possible, avoid conducting a showup when the suspect is in a patrol car, handcuffed, or physically restrained by officers, unless safety concerns make this impractical.
5. Do not take a suspect to the witness's residence unless it is the scene of the crime.
6. Caution the witness that the person he or she is 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. Officers should read these instructions aloud to the witness from the Instruction Card for Show Up ID Attempt provided in the back of their Calendar book.

7. Do not conduct the showup with more than one witness present at a time.
8. Separate witnesses and do not allow communication between them before or after conducting a showup.
9. Do not present the same suspect to the same witness more than once.
10. Do not require showup suspects to put on clothing worn by, speak words uttered by, or perform other actions of the perpetrator.
11. 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, and shall take precautions to minimize a witness' exposure to MDT data, radio transmissions, or other potentially suggestive environments.
12. Ask the witness to provide a confidence statement.
13. Remind the witness not to talk about the showup to other witnesses until police or prosecutors deem it permissible.
14. Videotape the identification process using whenever possible.
15. Document the time and location of the showup, the officers present, the result of the procedure, and any other relevant information.

B. Basic Procedures for Conducting a Photo Array

1. It is the policy of this department to conduct photographic line-ups using a blind sequential method. The blind sequential method is one where the officer displaying the array to the eyewitness is not aware of which member of the photographic line-up is the suspect and that each photograph in the line-up is viewed individually by the witness. A Brookline Police Photographic Show Up Admonition Form will also be presented to the eyewitness prior to viewing any array and is to be signed by witness and the officer. A copy of this form is attached to this policy.
2. The photo array should consist of a minimum of eight individuals or photographs. Use a minimum of seven fillers and only one suspect.
3. 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.
4. 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.
5. 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.
6. If there is more than one suspect, include only one in each photo array.
7. During a blind presentation, no one who is aware of the suspect's identity should be present during the administration of the photo array.

8. Place suspects in different positions in each photo array, both across cases and with multiple witnesses in the same case.
9. Witnesses should not be permitted to see or be shown any photos of the suspect prior to the photo array.
10. The witness shall be given a copy of the following instructions prior to viewing the photo array and the administrator shall read the instructions aloud before the identification procedure.

You will be asked to look at a series of individuals.

The perpetrator may or may not be present in the identification procedure.

It is just as important to clear innocent persons from suspicion as it is to identify guilty parties.

I don't know whether the person being investigated is included in this series.

Individuals present in the series may not appear exactly as they did on the date of the incident because features such as head hair and facial hair are subject to change.

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.

The individuals are not configured in any particular order.

(If presenting the photo array sequentially): If you make an identification, I will continue to show you the remaining individuals or photos in the series.

Regardless of whether you make an identification, we will continue to investigate the incident.

Since this is an ongoing investigation, you should not discuss the identification procedures or results.

11. The photo array should be shown to only one witness at a time; officers 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. 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.
14. Following an identification, the administrator shall ask the witness to provide a confidence statement and document the witness's response.

15. The administrator shall ask the witness to complete and sign a photo array form.
16. 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.

C. Photographic Arrays

1. Creating a Photo Array
 - a. Use contemporary photos.
 - b. Do not mix color and black and white photos.
 - c. Use photos of the same size and basic composition.
 - d. Never mix mug shots with other photos.
 - e. Do not include more than one photo of the same suspect.
 - f. 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.
 - g. The photo array should be preserved and submitted as evidence, together with full information about the identification process as part of the case file.



BROOKLINE POLICE DEPARTMENT
Brookline, Massachusetts

PHOTOGRAPHIC SHOW UP ADMONITION

Case #: _____ Date: _____ Time: _____ AM PM

Location _____

I, _____ will advise you of the procedures for viewing the following

(Officer's Name - Printed)

photographic or live line-up. The fact, that these photographs/individuals are being shown to you, should not cause you to believe or guess that the guilty person(s) has been identified or arrested. The person who committed the crime *may or may not* be in this line-up. Regardless of whether you make an identification, the police will continue to investigate this incident. It is just as important to clear innocent persons from suspicion as it is to identify the guilty parties.

Please keep in mind that the individuals depicted in the line-up may not appear exactly as they did at the time of the incident because features, such as head/facial hair, and clothing are subject to change.

You will be shown a number of photographs/images sequentially viewing one at a time before moving to the next. All of the photographs/images will be shown even if an identification is made. Whenever you recognize anyone, please tell the officer which photograph/image you recognize and how you recognize the individual. Please indicate in your own words how certain you are of the identification.

Do not indicate in any way to other witnesses, or other persons, that you have or have not made an identification.

I, _____ understand the above information, and after

(Witness's Name - Printed)

viewing _____ photographs, have identified the _____ (#1, #2, etc. preserving the order in which the photos were shown) photograph as that

of _____.

Signed: _____ before me on this _____ day of _____ 20 _____.

(Witness's Signature)

Officer's Signature: _____ Badge #: _____

BPD FORM 12/04