Colorado Springs Police Department
Standard Operating Procedure

DL-1036-02 Photo Array Identifications

Section 1000 – Patrol Functions

Effective Date: 6/23/2022
Supersedes Date: 2/5/2021

.01 Purpose

The purpose of this directive is to establish procedures for conducting suspect identification using a photo array.

.02 Cross Reference

GO 504 Body Worn Camera
GO 104 Determining Probable Cause
GO 1036 Identifications
DL-1036-01 Show-up Identifications

.03 Definitions

Photo Array: A procedure in which a photograph of the suspect is placed among photographs of fillers with similar physical characteristics to allow a witness the opportunity to identify (or not to identify) a possible suspect to a crime.

Independent Administrator: The person, preferably a sworn law enforcement officer or Civilian Criminal Investigator (CCI), who presents the photo array to the witness for viewing. The independent administrator does not know the identity of the suspect. In cases involving young children, a forensic interviewer assigned to the Forensic Interviewer Unit may be used as an independent administrator.

Double Blind Sequential Method: A photo array procedure in which an independent administrator presents the array to the witness by showing one photograph at a time. Prior to viewing the photographs, the witness is told that the independent administrator does not know the suspect's identity.

Filler: A photograph of a person who is not suspected of the offense in questions and is included in an identification procedure.

Functional Equivalent Method (FE): A photo array procedure used with supervisory approval when no independent administrator is available. The FE method assures that although the person presenting the photo array knows the identity of the suspect, they do not know, and cannot see, where the suspect is in the order of photos displayed. During the FE, the witness will be told the individual presenting the array does not know the order of the photographs.

LERMS Computer Aided Investigation: An aspect of the Law Enforcement Records Management System (LERMS) that captures and stores official digital photographs of persons arrested or otherwise officially handled by the CSPD. The LERMS Computer Aided Investigation system includes a computer-based photo array application that assists users in creating an array of persons with similar physical characteristics, comprised of official digital photos stored in the LERMS system.

LUMEN: A software system currently in use by CSPD personnel which offers the ability to search and analyze electronic data to include RMS, CAD, LPR, and official digital photographs of persons arrested or otherwise officially handled by participating law enforcement agencies.

.04   Procedure

When conducting photo arrays, personnel will use the double-blind, sequential method as described in this directive. A functional equivalent method may be utilized when deemed applicable but such a process must be approved by a supervisor prior to administration of the photographs.

Officers will compose the photo array in a manner that ensures that the suspect does not unduly stand out from the fillers.

Officers will avoid showing a witness a single photograph of an unknown/unnamed suspect due to the increased likelihood of such an identification being determined to be prejudicial.

Creating a Photo Array

Fair composition of a photo array enables a witness to provide a more accurate identification, or non-identification, of an alleged suspect.

Whenever practical, photo arrays should be composed using LERMS Computer Aided Investigation or LUMEN, both of which contain a photo array (lineup) application. Both applications allow the preparing officer to place the stored official digital photograph of the suspect into any one of six positions in a photo array, and select five other fillers, which the system has identified as having similar physical characteristics. Due to the descriptors being based on data

input at the time each photo was taken, the fact that the computer selects certain non-suspect fillers for the photo array should not be considered definitive that a particular photo is suitable for inclusion in the photo array.

Officers **must** double check the names and other identifying information associated with each photo to be certain that it does not contain duplicates or that it contains someone known to the witness (e.g., the witness, a family member, a known associate), prior to accepting a produced photo array as satisfactory.

When composing a photo array officers will:

Suspect Selection

- Include only one suspect in each photo array.
  - If there is more than one suspect in an investigation, a separate photo array will be made for each suspect.
- If multiple photos of the suspect are available, select a photo that resembles the suspect description or appearance at the time of the incident.
- Place suspects in different positions in each array, both across cases and with multiple witnesses in the same case.
- When showing a new suspect, avoid reusing fillers from the arrays previously shown to the same witness.
- Ensure no identifying information about those included in the array or other information concerning previous arrest(s) is visible to the witness.

Filler Selection

- Include a minimum of five fillers per photo array.
- Select fillers who generally fit the witness's 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.
- 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. Complete uniformity of features is not required.
- Select fillers who are unknown to the witness
- Filler photos should be of consistent size, quality, color, and background.

General Considerations

- Create a consistent appearance between the suspect and fillers with respect to any unique or unusual features (e.g. scars, mark, tattoos, etc.) used to describe the perpetrator. It may

be necessary to artificially add or conceal those features (e.g., finding fillers with similar features, blocking out the feature on all photographs, etc.).

- Examine the photo array once completed to ensure that the suspect does not unduly stand out.
- Personnel not assigned to investigative units will have a supervisor approve the composition of the photo array prior to the array being shown to a witness.
    - Prior to investigative personnel showing a photo array to a witness, detectives should have the photo array reviewed by another detective/officer, with preference being given to it being shown to a supervisor.

LUMEN Photo Array Preparation

CSPD is an active member of the Colorado Information Sharing Consortium (CISC), along with numerous other Colorado law enforcement agencies, which archive official digital photographs into LUMEN's Regional Data Warehouse (RDW). Department personnel may use photographs captured in the RDW during the photo array process.

LERMS Computer Aided Investigation photo arrays can **only** be composed when a digital photo of the suspect is on file in the department's LERMS Computer Aided Investigation system.

Temporary Photos for a Photo Array

If an officer wishes to compose a LERMS Computer Aided Investigation photo array, which includes a suspect who does not have an official photo already in the system, provisions exist for having a custom photo taken of the suspect and a temporary subject jacket saved into the system until the photo array can be completed. This may be done when a suspect volunteers to submit to a photo, or when a court order is obtained for this purpose.

Officers should pre-arrange the taking of the custom photo with a Records & ID Section supervisor. This custom photo and subject jacket will be deleted from the LERMS Computer Aided Investigation after the photo array has been composed.

Witness Interaction

Instructions will be given to a witness prior to viewing a photo array to facilitate a reliable identification, as well as reduce mistaken identifications.

It is critical the investigating officer not provide the witness with any information that could artificially inflate the level of confidence the witness expresses in their selection (e.g., the witness must not be told that they did a good job, that they picked the same person as other witnesses, etc.).

If the witness asks if they picked the correct person, the investigating officer should explain why they cannot answer that question.

Double Blind Sequential Method

The independent administrator should not show the photo array more than once unless requested by the witness. Upon this request, the entire photo array may be shown a second time and it must be shown in the same order. The photo array cannot be shown more than twice.

Investigating Officer Responsibilities

The investigating officer will use a department approved digital photo array system to compile six individual photographs (one of the suspect and five fillers).

When printing the completed photo array, both systems will print a photo number and page number based on what position the photographs were placed in when the photo array was generated. Using black ink, the investigating officer will number each folder the same as the photo it contains (e.g. folder #1 contains photo #1, folder #2 contains photo #2, etc.)

The investigating officer must ensure that the independent administrator does not know the identity of the suspect. The investigating officer will then give the completed folders to the designated independent administrator charged with presenting the photo array to the witness.

Recognizing the investigating officer may have already interviewed and established rapport with the witness, it is acceptable for the investigating officer to explain that department procedures require another officer to show the photos, but that the investigating officer will be available to speak with the witness after the identification procedure is done. The investigating officer may remain in the area but must be out of sight of the witness while the photo array is being viewed.

Independent Administrator Responsibilities

The independent administrator will read the directions detailed in the *Photo Array Admonition and Instructions*. Prior to administering the array, the independent administrator will receive an affirmative response to the question, "*Do you understand the instructions I have read you?*" The independent administrator will note the witness's response to this question.

The independent administrator should take care to ensure that the witness does not know ahead of time how many photos they will be viewing. The independent administrator will provide the photographs to the witness, one at a time, in the appropriate numerical order (one through six). After each photograph is viewed, the independent administrator will advise the witness to place them back into the folder and return the envelope to them..

Confidence Statement

In the event of an identification, the independent administrator will confirm the witness's level of confidence by asking if they are:

- Confident in their identification
- Somewhat confident in their identification
- Not confident in their identification

The independent administrator then will have the witness sign, date, and list the time on the selected photograph.

Functional Equivalent Method (FE)

When no independent administrator is available for the preferred double blind sequential method, the functional equivalent (FE) method can be used when approved by a supervisor. This method allows the investigating officer, who knows the identity of the suspect, to present the photo array to the witness.

If approved, the investigating officer will make arrangements to have another person, preferably the approving supervisor, place the photographs in the assigned folders.

It is imperative that when the investigating officer presents the photo array that they do not know and cannot see which sequential photo display folder contains the suspect's photo.

Assisting Officer Responsibilities

Another officer, not the investigating officer will add a number (one through six) in black ink to each photograph (different from the system-produced photo number) and place the photos into an appropriately numbered folder. The assisting officer should disregard the existing system-produced page or photo numbers and add an additional and different number to each photo and envelope. This must be done outside the presence of the investigating officer.

Investigating Officer Responsibilities

The investigating officer will complete and print the photo array using the same procedures as in the double-blind sequential method up to the numbering of the photos. The investigating officer will not number the folders.

When presenting the photo array to the witness, the investigating officer will complete the information on the *Photo Array Admonition and Instructions* and will read the alternate functional equivalent instructions to the witness, as shown on the form.

The investigating officer will then present the photo array to the witness in the same manner as the double-blind sequential method, to include the requirement that they ask the witness their level of certainty and that they document those responses accordingly.

Follow-up Questioning

After the photo array process is completed, either double-blind or FE, the investigating officer may ask additional follow-up questions, to include details of any identification made (e.g., did you recognize anyone, (if so) what number did you recognize, where did you recognize that person from, etc.). In the case of multiple suspects, follow-up questions should be asked concerning the role each played during the incident under investigation.

Documenting the Results

The officers involved in the photo array process will be responsible for completing a supplement to the case detailing their involvement in the investigation. Such a report will contain, at a minimum, the following information:

- Witness identity and contact information (i.e., full name, DOB, race, ethnicity, sex, etc.)
- Names of all persons present when the photo array was shown
- Location, date, and time the array was shown (e.g., 1140 South Chelton Rd, #635 - in the living room; 11/01/2015 at 3:11 pm)
- Name, DOB and position of each individual included in the photo array
- The witness's level of confidence (e.g., Confident, Somewhat confident, Not confident)
- Verbatim statements/comments made by the witness
- Physical reactions, if any, made by the witness when each photo is viewed
- Any other statements made by the witness regarding the case, to include any statements made during the follow-up questioning
- Notation as to the number of times the array was shown (once or twice)

If the FE method is used, officers will document in their supplement the name of the supervisor who approved the use of the FE method.

Photo Array Evidence

The completed *Photo Array Admonition and Instructions* form, each photograph, the photo array, and the accompanying photo array display folder will be placed into evidence by the investigating officer.

If an audio/video recording of the presentation (aside from the BWC) is made, the recording will be placed into evidence in accordance with department procedures.

Alternative Photographic Identification Process

Circumstances may exist that preclude showing a photo array using the procedures previously outlined in this procedure. Prior to using an alternative photographic identification process, officers will discuss the case and the appropriateness of such a process with a supervisor.

Examples of an alternative photographic identification process include:

- A witness was only able to give a description of the perpetrator and the investigating officer has been unable to develop a named suspect for inclusion in a photo array. Therefore, it may be appropriate to use an alternate process by allowing the witness to look through high school yearbooks.
- The investigating officer may query an approved law enforcement database for photographs matching certain descriptive characteristics as given by the witness. The witness would then be allowed to view these photographs one at a time on a desktop or laptop computer monitor.
  - If this process is used, the officer showing the photographs must ensure that the witness cannot see any identification information or criminal record information associated with each photo. This may be accomplished by simply covering a portion of the screen with a piece of paper.

Attachments

Photo Array Admonition and Instructions