



# GENERAL ORDER

DURHAM POLICE DEPARTMENT  
DURHAM, NC

NUMBER:

4077 R-4

## EYEWITNESS IDENTIFICATION

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03/29/2021

### INTRODUCTION

The Department will adhere to the procedures outlined in this order. They are based upon the Eyewitness Identification Reform Act as enacted and amended by the North Carolina General Assembly and recommendations published by the North Carolina Innocence Inquiry Commission endorsed by the Education and Training Committee of the North Carolina Criminal Justice Education and Training Standards Commission.

### DEFINITIONS

*Eyewitness:* A person, including a law enforcement officer, whose identification by sight of another person may be relevant in a criminal proceeding.

*Filler:* A photograph of a person who is not suspected of an offense and is included in a lineup.

*Independent Administrator:* A lineup administrator who is not participating in the investigation of the criminal offense and is unaware of which person in the lineup is the suspect.

*Lineup:* For purposes of this policy, synonymous with the term “photo lineup.”

*Lineup Administrator:* The person who conducts a lineup.

*Photo Array:* Synonymous with the term “photo lineup.”

*Photo Lineup:* A procedure in which an array of photographs is displayed to an eyewitness for the purpose of determining if the eyewitness is able to identify the perpetrator of the crime.

*Show-up:* A procedure in which an eyewitness is presented with a single live suspect for the purpose of determining whether the eyewitness is able to identify the perpetrator of a crime.

*Show-up Administrator:* The person who conducts a show-up.

### PHOTO LINEUP PROCEDURES

Photo lineups shall adhere to the following set of guidelines with regards to the composition, presentation, and documentation of the process:

## **Composition of the Photo Lineup**

The photograph of the suspect shall be current and, to the extent practical, resemble the suspect's appearance at the time of the offense.

Only one suspect shall be included in a lineup, which will include a minimum of five fillers.

Fillers should resemble the witness's description of the perpetrator in significant features (face, hair, height, weight, etc.) or, in the case where a composite is used, based on their resemblance to the composite. If the perpetrator was described as having an unusual identification feature, all fillers should have similar features, or all array members should have similar coverings over the affected area.

When there is an inadequate description of the perpetrator, or when there is a suspect whose appearance differs from the description of the perpetrator, fillers should resemble the suspect in significant features. For example, if a suspect is identified through fingerprints and the suspect's appearance differs from the witnesses' description of the perpetrator, fillers should be chosen that resemble the suspect in appearance.

When creating photo lineups for a case involving multiple suspects, the same fillers will not be used for different perpetrators shown to the same witness.

The investigator, or their designee, will be responsible for compiling the photo array order for the independent lineup administrator. The first photo in the array should be filler. If there are multiple witnesses being presented with the array, the investigator should use a copy of the array and reorder the photographs, making sure that the suspect is in a different position for each witness. Multiple witnesses may require the use of more fillers.

Prior to giving the lineup to the administrator the investigator, or designee, will ensure that no writings or information concerning previous arrests, indictments, or convictions of the suspect or previous identification results are visible. Booking photos that show evidence of the suspect having been arrested should not be used (e.g., holding an agency file number board, wearing a jail suit, etc.).

## **Presentation of the Photo Lineup**

For the presentation of the lineup, investigators should, whenever possible, utilize an independent administrator. If an independent administrator is not reasonably available, the investigator should use the Folder System alternative described below.

Unless the Folder System alternative is being utilized, no one shall be present during the identification procedure, which knows the suspect's identity except the witness.

When showing the lineup to multiple witnesses, all witnesses should be separated to prevent them from conferring with one another before, during, or after the procedure.

The lineup administrator shall give identical instructions at the beginning of every identification procedure by appropriately completing and using the [Verbal Instructions & Certification](#) form. Administrators shall have the witness sign and print their name and date on the instruction form indicating that he/she has received and understands the instructions. Each witness will be given instructions regarding the array procedures without other witnesses present.

Photographs will be presented to witnesses sequentially rather than simultaneously. Sequential presentation requires each photograph to be presented to the witness separately, in the order that the investigator provided to the independent administrator, removing each photograph after it is viewed. The simultaneous presentation presents all photographs at the same time and should be avoided.

Witnesses will not be told how many photographs will be shown. They will be shown all photographs given to the administrator, even if they make an identification during the presentation.

Administrators should use great care not to influence the witness's selection in any way. Administrators should avoid making any comments during the selection procedure. Nothing shall be said to the witness regarding the suspect's position in the lineup or regarding anything that might influence the witness's identification. Administrators should also be aware that witnesses can perceive such things as unintentional voice inflection or prolonged eye contact as messages regarding their selection.

Administrators will not give witnesses any feedback regarding the individual he/she has selected or comment on the outcome of the array procedure in any way.

If the witness cannot make identification after all photographs are shown, the administrator can ask, "would you like to view the photographs again?" It is important not to tell the witness prior to the completion of the array presentation that they will be allowed to view the photographs a second time if they do not make an identification the first time through.

If a witness wishes to view the photographic array again, all photographs must be presented in the same order as the first viewing. The photographic array can be presented only twice if there is not identification by the witness.

### **Documentation of Photo Lineup**

If a photo array is being presented in an interview room, the presentation of the array should be recorded in accordance with General Order [4078 Interview Room Procedures](#). The recording should include the instructions and be uninterrupted through the conclusion of the presentation.

Array procedures and results must be documented by fully completing the [Sequential Photographic Identification Case Management](#) form.

All completed forms and documentation associated with the lineup will be submitted to the records as an attachment to the case.

### **FOLDER SYSTEM ALTERNATIVE**

If an independent administrator is not available and the investigator, or any administrator who knows the identity of the suspect, is required to perform the photo array, a Folder System alternative will be used for the presentation.

Prior to presenting the photo array and out of the presence of the person who will view the photographic lineup, the suspect and filler photographs should be placed into individual folders. The administrator must shuffle the folders until he/she does not know which folder the suspect photograph is in; once this is accomplished, the folders should be numbered sequentially and kept in order.

Seat the witness at a desk or table or otherwise provide a comfortable environment.

The administrator should position themselves close enough to the witness to verbally communicate with him/her but must be in a place where the witness will be able to open a folder and look at the photograph without the administrator being able to see the photograph.

Without looking at the photograph in the folder, the administrator shall hand each folder to the witness individually. Each time the witness has viewed the contents of the folder, the witness should return the folder

to the administrator. The order of the folders should be preserved, in a facedown position, in the event, the witness desires to view the lineup a second time.

## **SHOW-UP IDENTIFICATION PROCEDURES**

A show-up may only be conducted when:

- A suspect matching the description of the perpetrator, or who is reasonably believed to have changed his or her appearance in close time to the crime, is located in close proximity to the time and place of the crime; and
- Exigent circumstances require the immediate display of a suspect to the eyewitness.

In addition to the above, a show-up may only be conducted with a juvenile suspect if:

- The juvenile is at least ten years old or older at the time of the show-up; and
- The show-up is being conducted for common law robbery or a nondivertible offense. A nondivertible offense is murder, first or second degree rape, first or second degree sexual offense, arson, any Chapter 90 offense that would be a felony if committed by an adult, crime against nature, and any felony that involves the willful infliction of serious bodily injury upon another or which was committed by use of a deadly weapon.

A show-up shall only be performed using a live suspect, not a photograph.

If reasonably possible, transport the eyewitness to the location of the detained suspect.

Show-ups should not be conducted with more than one eyewitness present at a time.

Each eyewitness shall be given instructions regarding the show-up procedure without other eyewitnesses present.

Prior to a suspect being presented to any eyewitness, the show-up administrator shall give identical instructions to each eyewitness by appropriately using and completing the [Show-up Eyewitness Instructions](#) form.

The show-up administrator shall have the eyewitness sign and print his or her name and date on the instruction form indicating that he or she has received and understands the instructions. If the eyewitness refuses to sign, the show-up administrator must sign the form him/herself and not the eyewitness's refusal to sign.


If there are multiple eyewitnesses and one eyewitness makes an identification during a show-up, reserve any remaining eyewitnesses for another identification procedure.

Words or conduct of any type that may suggest to the eyewitness that the individual is or may be the perpetrator should be carefully avoided. Show-up administrators will not give witnesses any feedback regarding the individual he/she has or has not identified or comment on the outcome of the show-up.

The show-up administrator must ensure that a photograph of the suspect is taken at the time and place of the show-up to preserve a record of the appearance of the suspect at the time of the show-up procedures. As soon as it is determined that a show-up will be attempted, the show-up administrator should have a member with a department-issued camera respond to the scene. Officers shall not use personal recording devices for photographing suspects.

Immediately following the show-up procedure, the show-up administrator shall ensure that the [Show-up Eyewitness Confidence Statement](#) is full completed.

All completed forms and documentation associated with the show-up will be submitted to the records as an attachment to the case.



Cerelyn J. Davis  
*Chief of Police*