

Marquette University Police Department		
Policy and Procedure Manual Eyewitness Identification		
Policy: 5.5	Issued: May 1, 2015	Date Revised: N/A
WILEAG Standards: 6.3.7		IACLEA Standards: 13.2.4

5.5.00 **Purpose**

The purpose of this Policy is to provide Marquette University Police Department (MUPD) officers direction on the utilization of eyewitness identifications and comply with the requirements of Wisconsin Statute § 175.50(2).

5.5.10 **Policy**

reduces the occurrence of misidentifications that result from a witness making relative judgment identifications by comparing members of the array to determine which one looks most like the suspect, rather than focusing on whether a particular array member actually is the suspect.

C. DOUBLE BLIND PROCEDURE

The individual conducting the photo array should not know which photo, or member of the lineup, is the suspect. This is sometimes -blind procedure.

a. Suspect s Photo

a.

- i. If there are multiple suspects, include only one
- ii. If multiple photos of the suspect are available, choose appearance at the time of the crime. If you do not know what the suspect looked like at the time of the

2. Place one filler photograph in a folder and set that folder aside.
3. Place the two blank photos in folders and set those folders aside.
4. Randomly place the other photos (of the suspect and remaining fillers) into the remaining empty folders, one photograph per folder.
5. Shuffle the folders you are holding, so that you no longer know

Explanation: This ensures that you will not be in a position to

6. Place the single folder containing a filler, the one you set aside earlier, on the top of the pile.

Explanation: Witnesses are reluctant to identify someone in the first position and, if that person is the suspect, a failure to identify the perpetrator or a misidentification may result.

7. Place the folders with the blank photos, the ones you set aside earlier, at the bottom of your pile.

Explanation: You do not want the witness to know when he/she is viewing the last photo. Witnesses who believe they are viewing the last photo may feel a heightened need to make an identification.

C. Conducting the Array

1. Videotape or Audio Tape the Identification Procedure. If practical, videotape or audio tape the entire identification procedure. Videotaping is preferable. For information on videotaping and audio taping
Physical Evidence Handbook, p. 42-44 & 53-56.
2. Restrict availability of other results to witness. Ensure that no writings or information concerning previous identification results are visible to the witness.
3. Seat the witness at a desk or table or otherwise provide a comfortable environment.
4. Position yourself close enough to the witness to verbally communicate with him/her but in a place where the witness will be

able to open a folder and look at the photo without your being able to see the photo.

Explanation: This will make it impossible for you to unintentionally communicate information to the witness about which folder contains

5. Give the witness a written copy of the following instruction sheet and read the instruction aloud:

investigating officer to document that the witness was appropriately instructed.

I have read these instructions, or they have been read to me, and I understand the instructions. I am prepared to review the photographs, and I will follow the instructions provided on this form.

7. Give the Witness the Folders. Hand the witness the folders one at a time.
8. After a witness has looked at a photo and handed the folder back to you, ask the witness:

**“Is this the person you saw [insert description of act here]?” If
“In your own words,
can you describe how certain you are?”**

9. videotaping or audio taping the entire identification procedure is recommended. Whether or not this is possible, document the
10. After identification, a follow-up interview should assess any relevant factors that support the identification, such as: special facial features, hair, marks, etc.
11. Show every folder. Even if the witness makes an identification, hand the witness the next folder until you have gone through all the folders containing photographs. If a witness asks why he/she must view the rest of the photos despite already making an identification; tell the witness the procedure requires the officer to show the rest of the photos.

Explanation: Showing all photos in the series ensures that the photo array procedure will reveal as much information as possible. For instance, a witness may make an identification of an early photo, but then change his/her mind after viewing a later photo.

12. This change supplies important information about both the suspect and the witness.
13. Do not give the witness any feedback regarding the individual selected or comment on the outcome of the identification procedure in any way. Be aware that witnesses may perceive such things as

unintentional voice inflection or prolonged eye contact, in addition to off-handed words or phrases, as messages regarding their selection. Avoid casual conversation comments such

14. Requests for additional viewing. Only upon request of the witness, the witness may view one or more of the photos again after the first photo procedure has been completed. If this occurs, it must be thoroughly documented. The administrator should never suggest an additional viewing to the witness.

Explanation: Allowing a witness to view an array a second time converts the procedure from a sequential to a quasi-simultaneous array, thereby risking the benefits of the sequential procedure. In the interest of facilitating an identification, a witness who asks to see the array a second time may be permitted to do so, but because this may diminish the value of the identification it should not be offered without request.

15. Ensure that if the witness writes on, marks, or in any way alters identification materials, those items are not used in subsequent procedures.

D. Document Procedures and Results.

1. Have the Witness Sign and Date the Results. Once the procedure is completed, show the witness the written record of the results, and ask the witness to sign and date that record.
2. Preserve and place on evidence inventory, the photos in the order in which they were presented to the witness.
3. Document the procedure(re.)-4(l)8(n)-3() TJr9 Tm 0 Tc[() TJET()](t)6(th)TJET

f. If additional viewing occurred during the procedure.

E. Procedures for Multiple Suspects of Multiple Witnesses

1. At no time should witnesses view a photo array at the same location, at the same time. This could compromise any identifications due to the influence of others.
2. No communication between witnesses. To the extent possible, prevent witnesses from conferring with each other before, during, and after the photo array procedure.
3. Separate instructions. Each witness should be instructed outside the presence of the other witnesses.
4. If you need to show the same suspect to a new witness, re-shuffle all but the lead filler and the two blank photos and renumber them accordingly.

Explanation: Placement in this way reduces any possibility that a subsequent witness identifies someone based on the position number communicated to them by a previous witness.

5. When showing a different suspect to the same witness, do not reuse the same fillers from a previous array shown to that witness.
6. Avoid multiple identification procedures in which the same witness views the same suspect more than once. Should you decide to do more than one identification procedure you are likely to be called upon to clarify and/or justify the action.

Explanation: Showing a witness the same suspect in more than one photo array can be highly suggestive and can influence the witness to pick out that suspect based on remembering the suspect from the first identification procedure, rather than from the crime. Also, two identification procedures (show-up, followed by a live lineup or photo array) are not better than just one. A witness viewing a second procedure with the same suspect may believe that presence in both procedures suggests that authorities believe the suspect is the actual perpetrator.

5.5.30 **Procedures for Live Lineups**

The principles described in this SOP apply equally to photo arrays and live lineups. Just as witnesses viewing photo arrays can be vulnerable to

unintentional suggestion, so can witnesses viewing live lineups; just as witnesses viewing photo arrays tend to identify the person in the array who looks most like the perpetrator, so do witnesses viewing live lineups. Unfortunately, while photo arrays can be conducted using the folder system, which can allow the investigating officer to conduct the array; live lineups cannot be conducted in that way. Live lineups should be conducted by an independent administrator, someone who does not know which person in the lineup is the suspect. This may impose a logistical burden because it will mean bringing in an additional person from outside the investigation to conduct the lineup. However, in those rare situations in

The individuals will be shown to you one at a time and are not in any particular order. Take as much time as you need to look at each one.

After “ ” |

4. Multiple Lineups with Same Suspect and Same Witness. Avoid multiple identification procedures in which the same witness views the same suspect more than once. Should you decide to do more than one identification procedure you are likely to be called upon to clarify and/or justify the action.

Explanation: Showing a witness the same suspect in more than one

some eyewitness errors made during photo arrays are harmless identifications of fillers known to be innocent, while all false identifications during show-ups result in false evidence against innocent suspects.

Researchers have pointed out another advantage, lineups and photo arrays have over show-ups:

1.

viewing a photo array identifies an innocent filler, the police can conclude that the witness is not useful for future identification procedures. However, if an eyewitness viewing a show-up incorrectly states that the suspect is not the perpetrator; the police are likely to continue to rely upon that eyewitness for other identification

consequences if the unreliable witness is later shown a photo array or lineup and identifies an innocent person.

2.

with or without a show-up, they should consider conducting a photo

transported under custody. Show-ups cannot be conducted at a police station or other law enforcement building.

3. Videotape or Audio Tape the Procedure.

If practical, videotape or audio tape the entire show-up procedure. Videotaping is preferable. For information on videotaping and audio

Physical Evidence Handbook, p. 42-44 & 53-56.

B. Conduct the Show-up.

1. Instruct the Witness. Witnesses should be given a written copy of the following instruction and the instruction should be read aloud:

In a moment, I am going to show you an individual. That person may or may not be the true perpetrator. I do not know if the person is the true perpetrator. You should not feel you have to make an identification. It is as important to exclude innocent persons as it is to identify the perpetrator.

After you have observed the individual, I will ask you “Is this the person you saw [insert description of act]?” Take your time answering the question. If you answer “Yes,” I will then

- b. The procedure employed
 - c. Date, time, and location of the procedure
 - d. Names of persons present during the show-up
4. Multiple Witnesses. Show-ups should not be conducted with more than one witness present at a time. If there are multiple witnesses and one witness makes an identification during a show-up, that identification should provide probable cause for an arrest, and the remaining witnesses should ordinarily be shown a photo array or lineup rather than a show-up.
 5. Multiple Show-ups with Same Suspect and Same Witness. Avoid multiple identification procedures in which the same witness views the same suspect more than once. Should you decide to do more than one identification procedure you are likely to be called upon to clarify and justify the action.

D. Multiple Suspects.

If there are two suspects, the witness should view two separate show-ups, each conducted in accordance with these procedures. Two or more suspects should not be shown to the witness at the same time.

5.5.40

Photo Collection Displays

- A. Collections of photos/images of previously arrested persons may be useful in cases in which a suspect has not yet been determined and other reliable sources have been exhausted. This technique may provide investigative leads, but results should be evaluated with caution. Avoid individual photos/images that are suggestive or cause any one to stand out unnecessarily.
- B. Collections of photos must be objectively compiled to yield investigative leads that will be admissible in court. Individuals should be selected who are uniform with regard to physical characteristics such as race, age, gender, etc.

Case# _____

Marquette University Police Department Eye Witness Form – Show-Ups

In a moment, I am going to show you an individual. That person may or may not be the true perpetrator. I do not know if the person is the true perpetrator.

You should not feel you need to make an identification. It is as important to exclude innocent persons as it is to identify the perpetrator.

After you have obs