

**BRISTOL POLICE
DEPARTMENT**



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To: Public Defender Michael DiLauro from Lt Steve Contente

Fax: 222-3287 **Date:** January 29, 2010

Phone: **Pages:**

Re: **CC:**

Report *Eyewitness policy - Bristol*

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Phone Report



BRISTOL POLICE DEPARTMENT

SUBJECT: Eyewitness Identification – Lineups/Photograph	GENERAL ORDER NO. 300-06 Pages 9 With Attachment
SECTION: 300. – Law Enforcement Operations	AMENDS/SUPERSEDES: None
SUBSECTION: 10. - Administrative	EFFECTIVE DATE: November 15, 2009
	REVISED DATE:
	REVIEW DATE: November 15, 2011

NOTE: This written directive is for the internal governance of the Bristol Police Department, and is not intended and should not be interpreted to establish a higher standard of care in any civil or criminal action than would otherwise be applicable under existing law.

INDEX WORDS:

I. POLICY:

A lineup will be prepared in such a way that the suspect in the case does not unduly stand out from the other photographs or individuals in the lineup, in order to ensure reliable and accurate identifications. All personnel must follow this policy when conducting photographic lineups.

II. PURPOSE:

The purpose of this directive is to provide guidelines for preparing a non-suggestive photographic or body lineup for the purposes of eyewitness identification of a suspect involved in a police investigation.

III. DEFINITIONS:

- A. **Sequential photographic lineup:** An array of photographs, including the suspect and five (5) individuals who are similar in appearance, that are presented one at a time to a witness for identification purposes.
- B. **Simultaneous photographic lineup:** An array of photographs of individuals that includes the suspect and five (5) individuals who are similar in appearance that is presented to a witness for identification purposes.
- C. **Body lineup:** A non-suggestive display of individuals that includes the suspect and five (5) individuals who are similar in appearance and who are presented one at a time to a witness for identification purposes; often referred to as a physical or live lineup.

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- D. Fillers: Individuals or photographs of individuals that resemble the suspect that are used to fill in a lineup. A minimum of five (5) fillers will be used with any simultaneous or sequential lineup. Individuals who are suspects in the same case may not be used as fillers.**
- E. Independent Administrator: An officer who does not know the identity of the suspect who has been placed in a sequential photographic lineup or a body lineup by the case investigator. An independent administrator will be used to administer a sequential photographic lineup and whenever possible used to administer a body lineup.**
- F. Witness: A person, including a victim, who views a photographic or body lineup.**

IV. PROCEDURES & RESPONSIBILITIES

As a general rule, photographic lineups should be conducted in the Bristol Police Department's Interview Room.

- A. Sequential Photographic Lineup: Photographs may be generated using the DMV photo system. A sequential lineup will also be used when the officer cannot prepare a lineup from the DMV and must rely upon photographs from outside sources. These sources may include yearbook photographs, Detention Center Mug shots or other sources providing photographs that are not compatible with conducting a simultaneous lineup. The officer will follow the guidelines listed below in creating the lineup in order to ensure that the suspect does not unduly stand out from the filler photographs used.**
 - 1. Only one suspect will be included in each lineup.**
 - 2. The suspect will not be placed in the first position of any lineup. The other members of the lineup will be placed randomly in the lineup. To the extent possible, the officer will place the suspect in different positions in each lineup when lineups will be shown to multiple witnesses in the same case.**
 - 3. The officer will select fillers who generally fit the witness' description of the perpetrator. When there is a**

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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.

4. **The lineup should maintain a consistent similarity of appearance between the suspect and fillers with respect to any unique or unusual features such as scars or tattoos.**
5. **Complete uniformity of features is not required. The officer may 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.**
6. **The officer will ensure that no writings or information concerning previous arrests or identifications will be visible to the witness on any lineup.**
7. **The officer will view the lineup once it is completed to ensure that the suspect does not unduly stand out and appears only once in the lineup.**
8. **Photographs will be shown to the witness one at a time by an independent administrator. If an independent administrator cannot be used, the case investigator will prepare a simultaneous lineup.**
9. **The officer will show the witness all of the photographs in the lineup, even if the witness makes an identification early in the procedure.**
10. **If the witness requests to see a specific photo after being shown the entire array, the officer will show the entire array to the witness again, in the same order in which it was initially presented.**
11. **If the nature of the photographs will not allow for a simultaneous presentation and an independent administrator is not used, the case investigator may present the sequential lineup and must exercise extreme caution to avoid inadvertent signaling to the witness of the "correct" response.**
12. **When showing a lineup with a different suspect, the officer will not use the same fillers used in previous lineups shown to the same witness.**

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V. SIMULTANEOUS PHOTOGRAPHIC LINEUP:

- A. A simultaneous lineup will be constructed using photographs available from the IMC system. If a viable photo of the suspect is not available in the IMC system, a lineup may be generated using other sources that provide similar photographs of every individual to be used in the array. A lineup consisting of photographs provided by other agencies or data sources will be utilized only if it satisfies this directive's requirement of fairness and reliability. In composing a photographic lineup, the officer will adhere to the following guidelines:**
- 1. Only one suspect will be included in each lineup.**
 - 2. The suspect will not be placed in the first position of any lineup. The other members of the lineup will be placed randomly in the lineup. To the extent possible, the officer will place the suspect in different positions in each lineup when lineups will be shown to multiple witnesses in the same case.**
 - 3. The officer will select fillers 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.**
 - 4. The lineup should maintain a consistent similarity of appearance between the suspect and fillers with respect to any unique or unusual features such as scars or tattoos.**
 - 5. Complete uniformity of features is not required. The officer may 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.**
 - 6. The officer will ensure that no writings or information concerning previous arrests or identifications will be visible to the witness on any lineup.**
 - 7. The officer will view the lineup once it is completed to ensure that the suspect does not unduly stand out and appears only once in the lineup.**
 - 8. When showing a lineup with a different suspect, the officer will not use the same fillers used in previous lineups shown to the same witness.**

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VI. CONDUCTING A PHOTOGRAPHIC LINEUP:

- A. A sequential or simultaneous lineup will be conducted in a manner that promotes reliability, fairness, and objectivity in the identification process.**
- 1. The officer will give the witness verbal instructions from the Photographic Lineup Instruction Sheet (Appendix) regarding the lineup. If multiple witnesses are involved, the officer will separate the witnesses and give each witness instructions regarding the lineup without the other witnesses present. Witnesses should not be allowed to confer with one another before, during, or after the procedure.**
 - 2. The officer will instruct the witness prior to viewing the lineup that the suspect may or may not be included in the lineup. When conducting a sequential lineup, the officer will not inform the witness: 1) how many photographs will be shown in the lineup, or 2) prior to the complete lineup presentation, that the witness will be allowed to view the lineup a second time if they do not make identification.**
 - 3. The officer will instruct the witness that it is as important to eliminate innocent parties from consideration as it is to identify those involved in the crime.**
 - 4. The officer will instruct the witness that characteristics such as hairstyles, beards and mustaches can easily be changed and that complexions may look slightly different in photographs.**
 - 5. The officer will instruct the witness that, upon viewing the lineup, the witness will be asked if they recognize anyone and if so, the circumstances from which the witness recognizes the individual.**
 - 6. Prior to showing the lineup, the officer will ask the witness if they understand how the procedure will be conducted and if they have any questions.**
 - 7. The witness will then be given the opportunity to view the lineup. To the extent possible, the lineup will be placed before the witness in such a way that the officer is not holding or touching the lineup while the witness is viewing the lineup.**
 - 8. The witness may look at the lineup for as long as the witness wishes; however, the officer may not provide any feedback regarding the photographs.**

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9. If the witness indicates that they recognize someone in the lineup, the officer will ask the circumstances from which the witness recognizes the individual. The officer will document the witness' responses for the investigative case file. When conducting a sequential lineup, the officer will show the witness all of the photographs, even if the witness makes identification during the presentation.
10. If the witness identifies anyone in the lineup, the witness will be asked to put their initials next to or on the photograph, indicating the individual they identified. And, to write a percentage of how positive they are of this identification. The lineup will become a part of the investigative case file or placed into evidence depending on its value.
11. If the witness identifies a suspect, the officer will not provide the witness any feedback regarding the individual selected or comment on the outcome of the procedure in any way.
12. The officer will instruct the witness not to discuss the lineup or its results with other witnesses and will discourage the witness from discussing the case with the media.
13. In the event there are multiple witnesses, each witness will be shown a clean copy of the lineup.
14. The officer will document all lineup procedures, including the source of the photos used, the date and time the lineup was conducted, and the names of all persons present when the lineup was shown. Any lineup that an officer shows to a witness, regardless of whether or not the witness makes an identification of the suspect, will become a part of the investigative case file and, in the case of a sequential lineup, will include documentation as to the order in which the photos were shown to the witness.

VII. BODY LINEUPS:

- A. A body lineup will be used most often in situations where an individual who is a suspect in multiple cases is in custody or in a case where numerous witnesses may be able to identify the suspect. If the suspect is not in custody, the suspect may be asked to voluntarily participate in a lineup. A body lineup will be conducted at the Bristol Police Department. A body lineup will be conducted under the guidance of a supervisor from the Bristol Police Department's Detectives Division. An officer conducting a body lineup will adhere to the following guidelines.

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- 1. All witnesses will be required to appear at the Bristol Police Department at least one hour before the lineup, in order to ensure their presence and to provide them with instructions regarding the lineup.**
- 2. The Solicitor's Office will be notified of the lineup, so that the appropriate Assistant Solicitor may attend.**
- 3. The suspect's attorney (or Appointed Public Defender, when appropriate) will be notified on the day of the lineup at least three (3) hours prior to the lineup.**
- 4. The officer will request a meeting with the suspect and his attorney prior to the lineup, in order to provide adequate time for lineup preparation.**
- 5. The suspect and his attorney will be given the opportunity, to view the eight (8) individuals that have been selected to serve as fillers. The officer will then select five (5) of those individuals as the actual fillers.**
- 6. The officer will ensure that each of the fillers is dressed similarly to the suspect and that the lineup participants represent a non-suggestive lineup.**
- 7. The suspect will not be placed in the first position of any lineup. If only one witness is viewing the lineup, the suspect and his attorney will be allowed to place the participants in the order in which they wish them to appear in the lineup. If multiple witnesses are involved, the officer will, to the extent possible, place the suspect in different positions in each lineup. The other members of the lineup will be placed randomly in each lineup.**
- 8. Each participant will be given a visible number corresponding to their placement in the lineup and numbers will be exchanged as the participants' positions in successive lineups change.**
- 9. If practical, videotape the entire lineup procedure. Minimally, a photograph of each lineup will be taken prior to its presentation, documenting the order in which the participants are presented and their clothing and general appearance.**
- 10. An independent administrator will give instructions to the witnesses and conduct the lineup. The case investigator will not have contact with the independent administrator or the witnesses. The same procedures for separating witnesses,**

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providing instructions, and administering the lineup, as set forth in Section IV.C.1 – 6 above, will be followed.

- 11. Prior to the viewing the lineup, the witness will be instructed that they will be looking at a series of individuals, one at a time, through a two-way mirror and that the individuals will not be able to see or hear the witness.**
- 12. Upon entering the viewing area, the witness will be given the opportunity to view the participants, one at a time, from the front and from the side. If it is necessary for the participants to perform any physical actions (speak a phrase, walk, etc.), each participant must perform the same actions.**
- 13. After viewing each participant, the witness will be asked: "Is this the person you saw [Insert crime or description of act]?" If you answer "Yes", I will then ask you, "Can you describe to me how certain you are?" Note: Percentages are in keeping with this Order, however, additional descriptors are good. All of the participants will be brought into the viewing area, even if the witness makes identification during the presentation. The suspect's attorney will not be allowed to question any witness.**
- 14. If the witness requests to see a specific individual after viewing the entire lineup, the officer will present the entire lineup to the witness again, in the same order in which it was initially presented.**
- 15. If the witness identifies a suspect, the officer will not provide the witness any feedback regarding the individual selected or comment on the outcome of the procedure in any way.**
- 16. The officer will instruct the witness not to discuss the lineup or its results with other witnesses and will discourage the witness from discussing the case with the media.**
- 17. The officer will prepare a detailed supplement as to how the proceeding was conducted, recording the results of the lineup and will include exact words used by each witness in viewing the lineup. The officer will maintain a supplement in the investigative case file.**

VIII. ATTACHMENT:

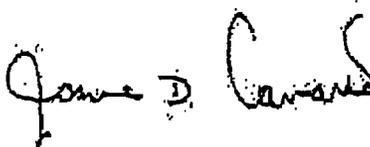
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A. *Lineup instruction sheet.*

CALEA Standards:

CALEA 42.2.11

Per Order Of

A handwritten signature in black ink, appearing to read "Josue D. Canario". The signature is written in a cursive style with a large initial "J" and "C".

**Josue D. Canario
Chief of Police**

rdm

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ADVISE TO WITNESS VIEWING PHOTOGRAPHIC DISPLAY

WITNESS

OFFENSE NUMBER

I have been advised that I will soon be viewing several photographs of individuals for the purpose of identification. I understand that this is an important procedure, designed to clear the innocent as well as to insure accurate and reliable identification of the guilty. I further understand that persons depicted in the photographs may not appear exactly as they did on the date of the crime because features such as head and facial hair are subject to change. Accordingly, the procedures described below will be followed.

1. The photographic display will contain pictures of persons of similar description in similar poses.
2. There is no significance to the order in which the photographs appear.
3. The persons pictures may or may not have anything to do with the subject offense and I am not to assume that the guilty party must be one of the persons represented.
4. During the viewing process, no one is to give me any hints or suggestions or attempt to influence my identification in any way.
5. If I make identification, it will be done in writing.
6. I am to make no identification unless I am positive of such identification.
7. If I make identification, I will be asked to state how certain I am of such identification.

DATE**TIME**

WITNESS SIGNATURE

rdm

Eyewitness Identification- Show Ups

300.06 300.07