

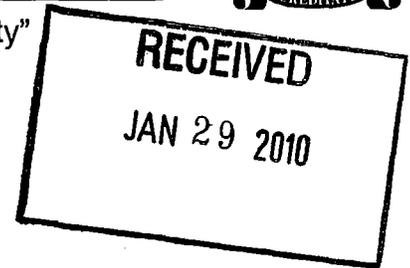


CUMBERLAND POLICE DEPARTMENT



"Working Together to Build a Safer Community"

John R. Desmarais
Chief of Police



January 27, 2010

Michael A. DiLauro
Assistant Public Defender
Director of Training & Legislative Liaison
Office of Public Defender
160 Pine Street
Providence, RI 02903

Dear Mr. DiLauro:

Per your request, I have enclosed a copy of the Cumberland Police Department's policy on Witness Identification relating to eyewitness identification protocols. As you will notice, our policy was recently reviewed and updated. The effective date of the policy is December 11, 2009.

If I can be of any further assistance, please do not hesitate to contact me at 333-2500.

Sincerely,

John R. Desmarais
Chief of Police

JRD:pt

Enclosure

"A NATIONALLY ACCREDITED AGENCY"



CUMBERLAND POLICE DEPARTMENT

1380 Diamond Hill Road, Cumberland, RI 02864

ORDER	EFFECTIVE DATE	NUMBER	ISSUING DATE
GENERAL	December 11, 2009	350.06	December 11, 2009
SUBJECT TITLE		SUBJECT AREA	
WITNESS IDENTIFICATION		INVESTIGATIONS	
CALEA REFERENCE		PREVIOUSLY ISSUED DATES	
42.2.11, 42.2.12		NEW	
DISTRIBUTION	REVIEW DATE	PAGES	
ALL	AS NECESSARY	6	

WITNESS IDENTIFICATION

I. PURPOSE

The purpose of this policy is to advise all personnel of procedures to follow when preparing and showing a non-suggestive photographic lineup or show-up.

II. POLICY

To reduce the risk of wrongful conviction and aid in the detection and apprehension of the guilty, officers should adhere to procedures set forth here in order to maximize the reliability of witness identifications, minimize unjust accusations of innocent persons and to establish evidence that is reliable and conforms to established legal procedure.

III. DEFINITIONS

1. **Show-up** – An identification procedure in which an eyewitness is presented with a single suspect within a short time following the commission of a crime for the purpose of determining whether the eyewitness identifies this individual as the perpetrator.
2. **Photo Lineup** – An identification procedure, in which an array of photographs, including a photograph of the suspect of an offense and additional photographs of other persons not suspected of the offense, is displayed to an eyewitness either in hard copy form or via

computer for the purpose of determining whether the eyewitness identifies the suspect as the perpetrator.

3. **Filler** – Either a person or a photograph of a person who is NOT suspected of an offense and is included in an identification procedure.

IV. GENERAL RULES FOR EYEWITNESS IDENTIFICATION

A. AVOIDING OFFICER AND WITNESS “SUGGESTION”

Officers must not, by word or gesture, suggest opinions to any witness concerning the guilt or innocence of a suspect in any identification procedure. Witness making inquiries about an officer’s opinion shall be informed of this restriction.

A witness who has taken part in an identification procedure must not be permitted to state conclusions within earshot of another person who is about to be, or has been, a viewer of the identification procedure.

B. MULTIPLE WITNESS / SUSPECTS

Each witness is to view any identification procedure separately. Witnesses shall not be permitted to communicate with each other until all identification procedures are completed, and should be instructed not to discuss their identifications with anyone else.

C. VIDEO AND/OR AUDIO RECORDING & DOCUMENTATION

Whenever practical; e.g., major crimes, officers are encouraged to video and/or audio record any witness identification procedure from start to finish. Video and audio recordings may be downloaded into the central computer system or stored on appropriate media based on the size of the video file, and the media used for the original recording.

All information regarding any identification procedure shall be documented in the officer’s written report, to include:

- ξ All identification and non-identification results.
- ξ Confidence or certainty statements made by the witness (these should be quoted).
- ξ Names of all persons present.
- ξ Date, time, and location.
- ξ Names of all persons and/or photos used, and source of the photos.
- ξ Any significant remarks made by an officer, lawyer, or suspect.

D. WHEN IDENTIFICATION PROCEDURES MAY BE UNNECESSARY

The use of an identification procedure may be unnecessary under the following conditions:

1. When the witness knows the identity of the suspect before the offense occurred or learned the suspect's identity without police assistance after the offense. A single photograph of the suspect named by the witness may be shown to the witness for confirmation that the person named is the perpetrator, or a photo lineup can be performed to establish additional probable cause.
2. When the witness would be unable to recognize the suspect of the offense, such as when a suspect's face is completely covered during the commission of a crime.

V. SHOW-UP PROCEDURES

A. WHEN SHOW-UPS ARE PERMISSIBLE

1. An officer may arrange a "show-up" between a witness and a suspect whenever a potential suspect is located and detained within a reasonable length of time, in proximity to the location of the crime, and fits the specific description of the perpetrator given by the witness.
2. If an officer has reasonable suspicion to detain a suspect under the above circumstances, the officer may use such force as is reasonably necessary to stop the suspect from leaving, or to cause the suspect to remain in the officers' presence. If probable cause to arrest develops during the detention, an arrest should be made.

B. CONDUCTING THE SHOW-UP

A suspect cannot be detained for longer than a reasonable period of time to confirm or refute whether the suspect is the perpetrator. When conducting a show-up, officers will use the following guidelines:

1. Description: Officers at the scene and in contact with the witness will obtain a detailed description of the perpetrator before the suspect is shown to the witness. The witness must advise the officers that they will be able to recognize the person who committed the crime prior to the show-up.
2. Location: A suspect should not be taken to the police station for a show-up. The suspect should be detained at the place he/she was located, in the least restrictive manner possible that will ensure the suspect remains with the officer. The witness should be transported to the suspect's location for the show-up. Suspects should not be transported to the witness's location unless exigent circumstances exist.
3. Minimize Suggestiveness: If possible, do not show the suspect handcuffed, or in the back of a patrol car. If the suspect is handcuffed, take measures to conceal this fact from the witness when possible. Suspects may not be required to put on clothing worn by the perpetrator. However, they may be asked but not required to speak words uttered by the perpetrator, or perform other actions of the perpetrator. Advise the witness that the person detained

may or may not be the perpetrator and the witness should not feel compelled to make an identification. If the witness makes identification, do not confirm or corroborate the identification.

4. Multiple Witnesses: Show-ups should not be conducted with more than one witness present at a time. If there is more than one witness, the show-up must be conducted separately for each witness, and witnesses should not be permitted to communicate before or after any show-up regarding the identification of the suspect. The same suspect should not be presented to the same witness more than once.
5. Witness Confidence: Assess witness confidence immediately following the show-up identification. Make note of witness confidence remarks for report documentation.
6. Multiple Suspects: If there are multiple suspects, the suspects must be separated and subjected to separate show-up procedures.
7. Photographing Suspects: Consideration should be given to photographing the suspect(s) in the field as documentation.
8. Emergency / Exigent Circumstances: In emergency circumstances, such as when a witness is in danger of imminent death or blindness, or when a suspect is in danger of imminent death, an immediate show-up may be arranged if medical authorities permit. In these situations, time and location limitations contained in the preceding guidelines can be disregarded. If there is any doubt about an emergency show-up, officers should contact a supervisor and/or the prosecutor immediately for guidance.
9. Cruising Area of Offense: Nothing in these guidelines prohibits the common procedure of transporting a witness in a patrol car to cruise the general area in which a crime has occurred in hopes of spotting the perpetrator and arranging a show-up identification procedure.
10. Right to a Lawyer: No person has a right to have a lawyer present at any show-up procedure.
11. Release After Show-up: If the detained suspect is not identified by a witness as the perpetrator, and officers lack any other probable cause for an arrest, the suspect should be released after obtaining basic information.

VI. CREATING AND CONDUCTING PHOTO LINEUPS

A. SIMULTANEOUS PHOTO LINEUP

The simultaneous photo lineup consists of showing a group of similar photos to a witness all at the same time. Witnesses should be advised the perpetrator may or may not be present in the photo lineup. All simultaneous photo lineups shall be done using the following guidelines:

1. A minimum grouping of six (6) photos must be used to create the photo lineup, and must include five (5) filler photos with one (1) suspect.
2. The photo of the suspect must be contemporary, shall resemble as much as possible their appearance at the time of the offense, and shall reasonably resemble the witness' description of the perpetrator.
3. All filler photos should resemble the suspect photo as much as possible, including size, background, race and skin tone, facial features, weight, hair color and length, scars, tattoos, eyeglasses, etc.
4. If there is more than one suspect, each suspect photo will be placed in the grouping of six separately from any other suspect, and the grouping will be changed so that the suspect's photos are not always in the same position in the grouping.
5. If there is more than one witness, each witness will be shown the lineup separately, the suspect photo shall be placed in a different position in the grouping for each witness, and witnesses will not be permitted to communicate with each other until after the lineup procedure has been completed.
6. If the witness has previously viewed a photo lineup in connection with the identification of another person suspected of involvement in the offense, the fillers in the lineup shall be different from the fillers used in any prior lineups.
7. If identification is made, the witness will be told to circle the identified photo, and write their initials and the date next to it.
8. If an identification is made, the officer shall assess witness confidence immediately following the identification, and clearly document witness confidence by quoting the witnesses remarks in the police report. If no identification is made, this fact must also be clearly documented.
9. Any and all photo lineups created, viewed, identified or not identified must be kept, and secured with the officer's case.
10. No person has a right to have a lawyer present at any photo lineup whether it takes place before or after an arrest.

B. SEQUENTIAL PHOTO LINEUP

The sequential photo lineup consists of showing a group of similar photos individually to a witness. Witnesses should be advised the perpetrator may or may not be present in the photo lineup. All sequential photo lineups shall be done using the following guidelines:

1. A minimum grouping of six (6) photos must be used to create the photo lineup, and must include five (5) filler photos with one (1) suspect.

2. The photo of the suspect must be contemporary, shall resemble as much as possible their appearance at the time of the offense, and shall reasonably resemble the witness' description of the perpetrator.
3. All filler photos should resemble the suspect photo as much as possible, including size, background, race and skin tone, facial features, weight, hair color and length, scars, tattoos, eyeglasses, etc.
4. Each photo will be placed in a separate folder, the folders will then be shuffled, and then each folder will be numbered, from one (1) to six (6).
5. If there is more than one suspect, each suspect photo will be placed in the grouping of six folders separately from any other suspect, and the grouping will be changed so that the suspect's photos are not always in the same numbered folder in the grouping.
6. If there is more than one witness, each witness will be shown the lineup separately, the suspect photo shall be placed in a different numbered folder in the grouping for each witness, and witnesses will not be permitted to communicate with each other until after the lineup procedure has been completed.
7. If the witness has previously viewed a photo lineup in connection with the identification of another persons suspected of involvement in the offense, the fillers in the lineup shall be different from the fillers used in any prior lineups.
8. After explaining the procedure to the witness, give the witness one folder at a time, starting with number one, and give the witness sufficient time to look at each photo. When done viewing each folder, it should be handed back to the officer before viewing the next one.
9. If identification is made, the officer shall assess witness confidence immediately following the identification, and clearly document witness confidence by quoting the witnesses remarks in the police report. If no identification is made, this fact must also be clearly documented.
10. Any and all photo lineups created, viewed, identified or not identified must be kept, and secured with the officer's case.
11. No person has a right to have a lawyer present at any photo lineup whether it takes place before or after an arrest.

By Order of:



John R Desmarais
Chief of Police