

Policy: 1636.5, Suspect Identification: Show-Ups, Photographic and Physical Line-Ups

Effective Date: 9/14/2017

Distribution Group: All Employees

Review Responsibility: Violent Crimes Section Commander

Accreditation Chapter(s): 15

Chief of Police: Orlando Rolón

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I. PURPOSE

This directive sets forth guidelines for correctly preparing and administering line-ups.

II. POLICY

The Orlando Police Department recognizes the importance of the suspect identification process and realizes its success in identifying suspects hinges upon the reduction of possible suggestiveness associated with the process. Officers and detectives engaged in criminal investigations will take all steps possible to minimize the possibility that persons will be misidentified during a criminal investigation.

III. DEFINITIONS

Out-of-court identifications may not be unnecessarily suggestive. The more suggestive the identification method is, the greater the likelihood of an “irreparable misidentification,” which can render the identification inadmissible.

Consequently, it is important that any identification process used by law enforcement be conducted in the least-suggestive manner possible under the circumstances.

Filler Participants: Persons used in physical line-ups who are not suspected of a crime but are used as distracters from the suspect. Filler participants are physically similar to the suspect.

Filler Photographs: Photographs of persons other than the suspect, used to complete a photo array and bring the number of photographs in the array up to a minimum of six photographs.

Independent Administrator: The officer or detective who conducts the lineup on behalf of the lead officer or detective investigating the case. This person may not participate in the investigation and must be unaware of which person in the lineup is the suspect. This is also referred to as a “blind administrator.”

Photographic Line-Ups: The most commonly used method of suspect identification is a photographic line-up. A photographic line-up will contain a minimum of six (6) photographs: one photograph of the suspect and five filler photographs that are placed in an array and presented to a potential witness.

Physical Line-Ups/Live Line-Ups: A physical/live line-up consists of a number of persons sharing similar characteristics, presented in a controlled setting in which witnesses may physically observe those persons in an effort to identify a suspect in a criminal case.

Sequential Photographic Line-Up: A line-up using a photographic array containing six or more photographs where the photographs in the array are presented to the witness one at a time rather than all at once.

Show-Up Identifications: This type of identification is a one-on-one identification and in most cases, the victim or witness is driven to the location of a suspect to view the suspect. Show-up identifications usually occur after preliminary identification and detention of suspects who are being sought immediately after a criminal event. The show-up can be utilized on detained persons or persons who have voluntarily agreed to participate in the show-up.

Simultaneous Photographic Line-Up: A line-up using a photographic array containing six or more photographs where the photographs in the array are presented to the witness simultaneously.

IV. PROCEDURES

1. SHOW-UP IDENTIFICATIONS

Since show-up identifications occur during the time closest to the occurrence of a criminal act, they often present the best opportunity for a “fresh” and immediate identification of a suspect by victims or witnesses. Show-up identifications are not favored by the courts. It is realized, however, that these types of identifications are sometimes necessary in order to identify perpetrators, eliminate other suspects, and to make speedy arrests of dangerous criminals. In instances where time is not of the essence or where probable cause is developed by means other than a show-up, careful consideration should be made not to use a show-up identification and to defer to a different, less suggestive means.

Timeliness of the show-up is crucial. Show-up identification will only be used within a reasonable amount of time between the incident and show-up. Past practice has been that if a show-up is not completed within two (2) hours of the incident, other means of suspect identification such as a photographic lineup should be considered. Show-ups should be thought of as a tool for exigent use. Once the exigency expires, the validity of the show-up will be diminished. If probable cause exists to arrest a suspect being held for a show-up, the show-up method of identification should not be used. Instead, the witness (es) will be shown either a photo line-up or physical line-up.

In instances where a suspect is contacted and reasonable suspicion exists, they may be detained and held for a reasonable period of time to confirm or refute whether the suspect is the person being sought. Absent reasonable suspicion, cooperation and consent must be obtained from the person before a show-up is conducted.

Show-ups will generally take place at the location a potential suspect is contacted. Suspects should not be transported to the witness's location unless an urgent situation exists. In emergency circumstances, such as when a witness or suspect is in danger of imminent death or blindness, an immediate show-up may be arranged if medical authorities permit. In these situations, time and location limitations contained in this policy may be disregarded. If there is any doubt about an emergency show-up, approval to conduct one should be obtained from a supervisor before proceeding.

Special consideration should be given to an instance where there are multiple witnesses or suspects. Show-ups will be conducted with one witness at a time. Multiple suspects can be displayed to the witness, but care must be exercised to ensure that only one suspect is visible at a time.

An officer or detective assigned to an incident shall either manage the show-up or specifically delegate the task to another person. Show-up identifications usually involve three officers/detectives: one taking the pre-show-up statement, one transporting the witness to the suspect location, and one positioning and giving the suspect directions. When possible, responsibilities of the officer/detective taking the pre-show-up statement can be combined with the transporting officer.

Instructions to the pre show-up statement officer/detective:

1. Obtain a detailed description of the suspect from the witness before the suspect is shown to the witness.
2. Read the show-up instructions to the witness directly from the show-up instruction and statement form (Attachment A).
3. Obtain a statement from the witness that they understand the show-up instructions and that they are capable of recognizing and identifying a suspect.

Instructions to the transport officer/detective:

1. The witness will be transported in an agency vehicle. Document the vehicle information.
2. The vehicle should be equipped so the identity of the witness is shielded from the suspect and potential on-lookers.
3. Notify the officer(s) with the suspect that you are enroute and request specific instructions regarding the approach to the show-up location.

4. A staging area approximately one block away should be established so the officers with the suspect(s) can be prepared and the arrival of the witness properly timed.
5. Drive to the location of the show-up.
6. Coordinate having the suspect positioned in a manner so the witness can have an unobstructed view while taking care not to get so close that the witness is identifiable to the suspect.
7. Ask the witness, "Is this the person involved in the incident we are investigating?"
8. If the witness makes an identification, do not confirm or corroborate the identification. Do not provide feedback to the witness regarding the identification.
9. Document all the statements made by the witness regarding the show-up.
10. Do not ask a witness for their level of certainty if they choose: allow the witness to provide a statement of certainty in their own words. Document exactly what is said, and, if possible, note any non-verbal indicators you observe during the show-up process.

Instructions to the officer/detective in contact with the suspect:

1. Provide the officer transporting the witness directions to the location of the show-up. Have them stage approximately one block away so that the suspect can be prepared and the arrival of the witness properly timed.
2. Careful consideration should be given to where the suspect will be positioned during the show-up. Adequate lighting and a location that is safe and free from distractions is important.
3. The suspect should be detained in the least restrictive manner possible that will ensure the suspect is not afforded an opportunity for escape.
4. If the suspect is to remain handcuffed, position the suspect in such a manner that the handcuffs are concealed from the witness's view.
5. Do not order a suspect to put on clothing they were not wearing at the time of initial contact.
6. You may ask the suspect to speak, utter words said by the perpetrator or perform other actions the perpetrator did during the criminal act.
7. Even if witness/victim fails to identify, officer shall document encounter (FIR).
8. In instances where multiple suspects have been detained or have consented to a show-up, only one suspect will be made visible to the witness at a time. Each suspect will be presented in the same manner.
9. If multiple suspects are shown, document their personal information and the order in which they were shown to the witness.
10. Document any spontaneous statements made by the suspect(s) during the show-up process.
11. Record on body-worn camera (BWC) the suspect(s) in the position and lighting they were presented to the witness (es).

Once the show-up has been conducted, the case officer/detective should meet with officers/detectives that were involved in the show-up. The case officer/detective shall ensure the statements outlined above have been taken and collect them for the investigative file. Those officers/detectives who are involved in the show-up shall provide a statement regarding their involvement and observations to the case officer/detective.

2. PHOTOGRAPHIC LINE-UPS

The most commonly used method of suspect identification is a photographic line-up. There is no 6th Amendment right to counsel for the suspect when a photo line-up is utilized, and this procedure may be used at any time in the criminal investigation or prosecution process. It is imperative that the photographic line-up be conducted without any suggestion by law enforcement as to the identity of the suspect. Careful consideration must be given while constructing and administering a photographic line-up so that the validity of the identification is not compromised. For these reasons and in accordance with Florida Statute 92.70, an independent administrator shall be used during all photographic line-up procedures.

Most photographic line-ups utilized by the Orlando Police Department are photographic arrays where six photographs are presented to a witness simultaneously. The photographs are usually printed on a single sheet of paper and are numbered one through six: one through three on the top row, and four through six on the bottom row. Instances may arise that make it impractical or impossible to compose a photographic line-up array.

Instructions for Composing a Photographic Line-Up:

The lead officer or detective shall be responsible for preparing the line-up. The lead officer or detective shall prepare a folder consisting of the line-up and all required forms to administer the line-up. A photographic line-up will contain a minimum of six photographs: five filler photographs and one photograph of the suspect. A filler photograph must be used in the lead/number one position of the photographic area. All photographs in the array must be numbered in sequential order. The photographs should be of persons who are reasonably similar in appearance to the suspect with regard to size, hair, age, glasses, moustaches, beards or other prominent features like clothing or jewelry visible on the photograph. The background color and features of all photographs must match. Do not mix color and black-and-white photographs. The use of photographs that come from different sources (e.g., X-Image and David) should not be used unless it can be done in a manner that does not single out the suspect. Do not include more than one photograph of the suspect in the photographic line-up. If multiple photographs of the suspect are reasonably available, select a photograph best resembling the suspect description at the time of the incident. Avoid using filler photographs of persons who so closely resemble the suspect that persons familiar with the suspect may find it difficult to distinguish the suspect from non-suspects. Cover or crop any portion of a mug shot or other photo that provides identifying information on the subject or other persons included in the photographic line-up. Make certain any covers or crops appear the same or similar in all photographs on the array.

Once composed, the photographic line-up should be viewed as it is going to be presented to the witness. Care should be taken to make certain that the suspect or others in the line-up do not unduly stand out. It is suggested that other officers/detectives be asked to view the line-up to see if others might detect a defect in the line-up. Preserve the presentation order of the photographic line-up. In a photographic line-up, the photographs themselves should be maintained in their original condition. If the photographs are digitally enhanced or modified, the person modifying must be identified in the report as well as the modification that took place. All forms regarding the photographic line-up will be maintained in the investigative file.

When confronted by a case where a photographic line-up is to be shown to multiple witnesses or witnesses from different cases, the suspect shall be placed in a different position(s) in the photographic line-up to prevent witnesses from purposely or inadvertently discussing the photographic line-up with other witnesses and compromising the

identification. When showing a new suspect photographic line-up to a witness, avoid using filler photographs of persons shown to the same witness in prior line-ups.

Instructions for Presenting a Photographic Line-Up:

The presentation of photographic line-ups requires absolute adherence to policy in order to maintain the validity of the photographic line-up being presented. Failure to follow exact procedure could result in the suppression of the identification and damage to the credibility of the witness's testimony in court. The lead or assisting officer or detective shall be responsible for identifying the independent administrator.

A body-worn camera or in-car video system may also be used for the administration of the line-up. The recording will be obtained following the administration of the line-up and saved as evidence. Prior to presenting a photographic line-up, the independent administrator shall read the "Photographic Line-Up Instructions" exactly as written in the Photo Lineup Administration and Witness Instruction Form (Attachment B) and give a copy to the witness. By signing, the witness will acknowledge that he/she was read and given a copy of the instructions. If the witness refuses to sign a document acknowledging receipt of the instructions, the line-up independent administrator shall document the refusal of the witness to sign and then sign the acknowledgment himself or herself. The independent administrator will ask the witness to provide a statement indicating that they understand the nature of the line-up procedure and then ask the witness to provide a statement regarding the suspect description in as much detail as they remember and indicate whether they believe they can identify a suspect from a photograph. The witness should not be in the presence of other witnesses, family members, or friend during the presentation of a photographic line-up.

The photographic line-up will be placed into an unmarked, non-descript folder or envelope and presented to the witness. The witness will be directed to open the folder/envelope and view the line-up. While the witness views the line-up, the independent administrator shall avoid any conduct that might directly or indirectly influence the witness's decision. If possible, step away from the witness's immediate vicinity, preferably in a location that is out of sight of the witness. By doing so, the independent administrator will prevent inadvertent behavior from affecting the process and allow the witness to relax and examine the photographs. An officer or detective without knowledge of the suspect's identity should administer the photo line-up in order to prevent inadvertent behavior. There is no time limit placed on the witness's viewing of the photographic line-up, but the independent administrator will document the estimated amount of time it took before the witness gave identification or indicated that they could not identify. Non-verbal cues provided by the witness should be documented in the investigative file.

There are several witness reactions commonly encountered when presenting photographic line-ups. The witness will: 1) identify the suspect; 2) indicate that they cannot identify the suspect; 3) indicate that they are not sure and identify the suspect while attaching a believed level of certainty; or 4) identify one of the persons depicted in a filler photograph as the suspect. In any case, the independent administrator will obtain a statement from the witness that describes their identification or non-identification of a potential suspect. If the witness identifies a photograph within the photographic line-up, no matter what their level of certainty is, the independent administrator will have the witness initial the photographic line-up array. The independent administrator will not provide any verbal or non-verbal feedback to the witness regarding the process. Comments such as "Good job! You picked out the suspect," or any other comment that suggests to the witness that he or she has or has not picked the suspect shall not be made. With regards to the level of certainty a witness may attach to the identification, the independent administrator should never

ask for a numerical percentage. Instead, the independent administrator should ask the witness to provide specific articulated facts about the suspect's appearance that led them to identify the person in the line-up.

Note: A photo line-up may be shown using a computer (MCT). In these instances the officer should complete all the steps described for showing a paper copy. The computer screen should be closed or obscured with a piece of paper. The witness will be directed to open the screen or remove the paper and view the line-up. They will provide a written statement regarding the identification and will circle and initial a paper copy of the line-up when one becomes available.

Instructions for Use of the Single Photograph in the Identification Process:

Single photographs may be used when absolutely necessary and in instances where the witness has personal knowledge of the suspect and can clearly articulate the nature of that personal knowledge. Use of the single photograph for the identification process is most often used when a law enforcement officer is the witness: There is less chance of a mistaken identification because of the officer's training and experience in the detection and recognition of suspects. Just because the witness is an officer does not automatically justify the use of a single photograph to identify a suspect. The officer's vantage point, their detailed description, and the length of contact should be carefully considered before using this method of identification, even with a police officer.

The most common instances where single photographs are utilized are when the witness can articulate knowledge of who the suspect is and the officer's/detective's intent is to confirm the identity before proceeding any further in an investigation. Examples are:

- a. The victim of a theft observed their next-door neighbor, whom they have known for two years, commit the crime. The officer/detective wants to confirm the identity of the suspect before obtaining an arrest warrant.
- b. An aggravated battery victim knows the person who attacked him as "George." The victim knows "George" because they used to attend school together.

There may be circumstances that warrant the use of a single photograph, such as an active shooter or an armed and dangerous suspect at large.

If there is a question as to whether a single photograph should or should not be used, it would be wise to use another method. As with any identification process, the officer/detective utilizing a single photograph for means of identification must be able to articulate why such a decision was made.

Instructions for Presenting a Photographic Line-Up Via Electronic Means:

Many witnesses identified during the criminal investigation are not from the immediate area. When the location of a witness makes it difficult for an officer/detective to obtain suspect identifications, they can utilize electronic means such as email and FAX to conduct photographic line-ups. The integrity of the photographic line-up identification process must be preserved. Because this type of seemingly unorthodox means of identification will be subject to increased scrutiny, it should only be used when other means have been exhausted. Having another officer/detective from a jurisdiction with access to the witness is one option that should be considered.

When sending a line-up via electronic means, the images should not be subject to alteration or movement within the line-up. Utilization of electronic safeguards such as the "Read Only" function or by scanning and sending the photographic line-up array as an attachment should be considered. The lead or assisting officer or detective shall be responsible for preparing the line-up and identifying an independent administrator. When possible, the independent administrator should be in real-time communication, phone or other electronic means, with the witness at the time the photographic line-up is administered. Provisions regarding the administration of photographic line-ups in person should be followed in these instances. The instructions must be read and proper statements obtained in order to increase the likeliness of a usable identification.

3. PHYSICAL LINE-UPS

Physical line-ups must be completed in a location where the line-up process is controlled, usually at the jail or similar facility. Like photographic line-ups, Florida Statute 92.70 requires that physical line-ups be conducted by an independent administrator. Generally, physical line-ups should only be conducted by detectives in CID with the guidance of their supervisor, the Police Legal Advisor's Office, and the State Attorney's Office.

A suspect cannot be compelled to appear in a physical line-up prior to their arrest, and a pre-arrest physical line-up may only be conducted with the suspect's consent. There is an absolute 6th Amendment right to have counsel present for a post-arrest physical line-up. Rules of procedure imply that the 6th Amendment right to have an attorney present for line-up attaches only after indictment or information, but case law seems to suggest the 6th Amendment rights may attach as early as booking. Any post-arrest line-up must be conducted with the suspect's attorney present or after a waiver of counsel is made in the presence of the attorney. The suspect, through counsel, may consent to a physical line-up, but the most common method for presenting the suspect in a physical line-up is by order of the court.

If a court order is sought, consideration should be given regarding requests that require the suspect and filler participants from speaking or making gestures during the physical line-up. The requests must be very specific, and reasoning for the request must be provided. It is very important to remember that all participants in the physical line-up, suspect and filler participants alike will be required to speak or act as directed in the order. Special consideration should be made to specify within the court order that the physical line-up participants will be requested to provide left and right profiles and a view from behind.

In instances where a court order has been obtained, a copy of the order must be provided to the suspect's legal counsel. They must be provided reasonable time to review the order and to prepare their client for the line-up process. Since this notification process may induce a suspect to change their physical appearance prior to their participation in the physical line-up, it is suggested that photographs of the suspect be obtained to document their appearance before the request of a court order has been obtained.

Each physical line-up will consist of three distinct phases: the pre-line-up phase, administration phase, and post-line-up phase. Careful consideration must be made to ensure that all aspects within each phase are completed so that the identification process in whole will be considered valid during subsequent legal proceedings.

Pre-Line-Up Considerations and Preparations:

Physical line-ups must be conducted in locations that are very controlled, such as a correctional or law enforcement facility. Once a venue has been determined, the administrator of the physical line-up should visit to ensure that the space to be used provides an atmosphere that will protect the validity of the physical line-up while providing for security of the filler participants, the suspect, the witnesses and other persons observing or coordinating the line-up. The location where the suspect and filler participants are positioned should provide even and stable footing that does not require them to adjust their normal standing position in order to be seen. Numbering shall be provided in the same font, color and size to notate what positions the suspect and filler participants are positioned. The area where the suspect and filler participants are positioned must be subject to the same ambient light levels and background color. The area where the witness is permitted to observe the physical line-up will be separated by glass or other transparent divider that allows the witness to view the suspect and filler participants without the fear of physical contact. Reasonable steps should be taken to prevent the suspect from seeing the witness (e.g., one way glass, or difference in lighting between the areas where the witness stands and where the suspect is presented). When possible, communications between the areas will be provided by intercom or other means.

A physical line-up shall contain a minimum of six (6) participants: one (1) suspect, and five (5) filler participants who are reasonably similar in age, height, weight, and general appearance and are of the same sex and race. Participant fillers in the line-up should share general physical characteristics with the suspect, and all care should be exercised to eliminate the chance that the suspect may be singled out by a witness for some reason other than his or her identity/appearance. It is unduly suggestive for a suspect to appear for a physical line-up wearing street clothes when the other participants are wearing jail clothing or visa-versa. The suspect and filler participants will be placed in desired order and in place prior to the witness being permitted to view the line-up. This method allows for a simultaneous line-up to occur.

In instances where the suspect is in custody, the filler participants will likely be provided by correctional personnel from a pool of inmates who have volunteered to participate. The administrator should meet with correctional personnel prior to the line-up to view the pool of volunteers to see if they meet their requirements. The administrator will document the name, date of birth and inmate number of all volunteers within the pool and maintain a copy of the information within the investigative file. Facial and full-body photographs of each person in the pool will be taken and maintained in the investigative file. Administrators should be prepared to defend their selection of participant fillers to the court.

The suspect and each filler participant will be provided specific instructions regarding their positioning, movement, speech, or other actions that may take place during the physical line-up. These instructions will be documented in the investigative file.

Unless it is not practical, a video record of a physical line-up shall be made. If a video record of a physical line-up is not practical, the reason for the impracticality must be documented and an audio record shall be made in its place. In order to ensure that this requirement is met, the administrator should contact the video unit and provide sufficient notification that video services are being requested. If neither a video or audio record is practical, the reasons for the impracticality must be documented and the line-up administrator shall make a written record of the line-up.

Instructions for Administering the Physical Line-up:

No person aware of the suspect's identity other than the administrator, the suspect's attorney, and correctional representative may be present during any portions of the physical line-up process involving the witness's instructions, viewing of the line-up or post line-up statements. As part of the physical line-up administration, the "Physical Line-up Instructions" (Attachment C) will be read to the witness. Prior to presenting the physical line-up, the witness will provide a statement that they understand the instructions and provide a detailed description of the suspect as they independently recall. If the physical line-up is being video- or audio-recorded, a verbal statement shall suffice; otherwise, a written statement will be obtained. These statements will be taken prior to the witness being allowed to view the line-up. Once the instructions have been read and understood by the witness, the witness will be taken to the viewing area where the suspect and filler participants are located and positioned.

The witness should be permitted to move within their area so that they will be able to adequately see the suspect and each of the physical line-up participants. The administrator and others present should position themselves in a location out of the witness's view to prevent anyone from giving inadvertent cues that might influence the witness's identification. The administrator and/or persons present for the line-up shall not provide the witness feedback regarding their identification or non-identification of the suspect. Do not make comments such as "Good job! You picked our suspect," or any other comment that suggests to the witness that he or she has or has not picked the suspect.

Any comment or non-verbal communication made by the witness during the entire physical line-up process should be carefully documented word for word.

Post Physical Line-Up Considerations:

The case file of the live line-up shall include:

1. The date, time, and location of the line-up;
2. The names of all persons present at the line-up;
3. All identification and non-identification results;
4. The words used by the witness in any identification, including words that describe the witness's certainty of the identification;
5. The fact that a physical line-up was used;
6. The sources and personal information of all participants used in the physical line-up;
7. Photographs of all participants and the suspect used in the physical line-up;
8. A photograph or other visual recording of the line-up which includes all participants and the suspect as they were positioned in the line-up.

In instances where multiple witnesses will be shown a physical line-up or in instances where the line-up is to be used in multiple cases, the suspect will be moved to different numbered positions within the line-up (e.g.: During the physical line-up with the first witness, the suspect was positioned in location number two; when the second witness is presented in the physical line-up, the suspect is placed in location three). In the event there are more than six witnesses, care should be made to ensure that the suspect's position is evenly distributed amongst all the physical line-ups.

4. COMPOSITE SKETCH CONSIDERATIONS

A non-photographic pictorial representation such as a free-hand sketch, Identikit composite, or other computer program-generated composite may be used when there is no suspect and the use of a photographic line-up has been or is likely to be unsuccessful. Care must be taken not to unintentionally influence the description provided by a witness while developing such a composite image or sketch, and only those members trained in the use of such techniques shall use them.

5. TRAINING REQUIREMENTS

All officers and detectives who perform duties related to the suspect identification process as covered in this policy will acknowledge receipt and understanding of this policy.

Refresher training on this policy will be conducted periodically.

Detectives newly assigned to the Criminal Investigations Division will receive extensive training regarding the suspect identification process as part of their indoctrination training. Records of training documentation will be maintained by the Criminal Investigations Division.

A copy of the current policy shall be on file with the Orange County State Attorney's Office.

V. FORMS AND APPENDICES

ATTACHMENT A-Show-Up Administration and Witness Instructions

ATTACHMENT B-Photo Line-Up Administration and Witness Instructions

ATTACHMENT C-Physical Line-Up Administration and Witness Instructions

VI. REFERENCES

This policy rescinds Policy and Procedure 1636.4

Related Policies: Not Applicable

Related Laws: Florida Statute [92.70](#)