



**MIDDLETON POLICE
DEPARTMENT**

DATE
August 20, 2012

POLICY
6.3.07

SUBJECT: **Eyewitness Identification**

REVIEWED
April 12, 2018

Refer to: SS [175.50\(2\)](#)
History: 10/17/2005; Updated 9/07; 8/12; 06/15
[WILEAG \(5th Ed.\) Standards](#): 6.3.07

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PURPOSE

The purpose of this policy is to establish guidelines and instruments for eyewitness identification procedures involving photo arrays (independent, folder), show-ups, live lineups, facial composites, and photo collection displays and to reduce the risk of wrongful conviction of innocent persons while increasing the probability of convicting the guilty.

POLICY

Research and nationwide experience suggest that eyewitness evidence can be fragile, and that eyewitnesses can be mistaken. To reduce the risk of wrongful conviction and aid in the detection and apprehension of the guilty, officers should adhere to procedures set forth in this policy to maximize the reliability of identifications, minimize unjust accusations of innocent persons and to establish evidence that is reliable and conforms to established legal procedure.

Definitions

Photo Array – The showing of multiple photographs (array) to an eyewitness to discover or confirm the identity of a suspect.

Live Lineup - The live presentation of a number of individuals, including a suspect, individually shown before an eyewitness for the purpose of identifying or eliminating suspects. Live lineups are sometimes called “physical lineups.”

Show-up - The presentation of a suspect to an eyewitness within a short time following the commission of a crime.

Blank Photo – A sheet of paper the same size as the photos utilized in an array that is blank, with no photo showing.

Filler - An individual or photo (non-suspect) bearing a resemblance to the description of the suspect for use in photo arrays and live lineups.

Administrator - An Officer who actually shows a photo array, lineup or suspect to a witness.

Independent Administrator – An Officer administering a lineup or photo array who has no knowledge of the suspect’s identity. (Sometimes referred to as a “Blind Administrator.”)

Single Officer Photo Array - A process in which the administrator is the investigating officer and/or has knowledge of the suspect's identity, sometimes referred to as the folder method.

Folder Method – A procedure used during a single Officer Photo Array wherein photos are placed in folders and the folders shuffled before presentation to ensure the administrator is not in a position to unintentionally influence the witness’s selection. (Sometimes referred to as the Functional Equivalent Procedure.)

Photo Array - Independent Administrator Method

Preparation

1. Gather one suspect's photo, a minimum of five filler (non-suspect) photos, and at least two blank photos. If there are multiple suspects, include only one suspect's photo in the array. If there are multiple photos of the suspect available, choose the photo that most resembles the suspect's appearance at the time of the crime. If you do not know what the suspect looked like at the time of the crime, choose the photo that most resembles the description of the perpetrator.
2. Set aside one lead filler, so the administrator will know to place it in the lead position. (Research suggests witnesses are reluctant to identify someone in the first position.)
3. Set aside two blank photos, so that the administrator will know to place them at the end of the array. (Research suggests witnesses should not know when they are viewing the last photo.)
4. Assess the array to make sure that no person stands out from the rest.
5. Bring in an independent administrator to conduct the procedure.
6. Give the administrator the suspect's photo and the remaining filler photos. Do not tell the administrator which photo is the suspect's. Have the administrator mix these photos and place them after the lead filler photo and before the two blank photos. Then have the administrator number all the photos in the series. If the same suspect is to be shown to a new witness, the administrator should remix all but the lead filler and the two blank photos and renumber them accordingly. If a different suspect is to be shown to the same witness, do not reuse the same filler photos.

Conduct the Array

1. If practical, record the identification procedure. Ensure that no writings or information concerning previous identification results are visible to the witness. No one should be present during the photo array procedure who knows the suspect's identity. Witnesses should not be aware how many photos will be shown.
2. Witnesses should be instructed separately and, to the extent possible, not allowed to confer before, during or after the procedure. The administrator should give the witness a written copy of the following instructions and should read the instruction sheet aloud at the beginning of each identification procedure:

In a moment, I am going to show you a series of photos. The person who committed the crime may or may not be included. I do not know whether the person being investigated is included. Even if you identify someone during this procedure, I will continue to show you all of the photos in the series.

Keep in mind that things like hair styles, beards, and mustaches can be easily changed and that complexion colors may look slightly different in photographs.

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.

The photos 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 each photo, 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 ask you, "In your own words, can you describe how certain you are?"

Because you are involved in an ongoing investigation, in order to prevent damaging the investigation, you should avoid discussing this identification procedure or its results.

Do you understand the way the photo array procedure will be conducted and the other instructions I have given you?

Witnesses should then be asked to read the following additional paragraph and sign and date below. (Some witnesses may decline to sign. When a witness declines to sign, it is sufficient for the 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 that will be presented to me, and I will follow the instructions provided on this form.

3. Present each photo to the witness separately, in order. When the witness is done viewing the photo, have the witness hand the photo back.
4. After the witness has looked at a photo and handed it back to you, ask, “***Is this the person you saw*** (insert description of act)?” If the witness answers “Yes,” ask the witness, “***In your own words, can you describe how certain you are?***” Document the responses. Show each photo only once and never suggest a second viewing. However, upon the request of the witness, one or more photos may be shown again. If there is a second showing of one or more photos, it must be documented. Even if the witness makes an identification, show the witness the next photo until you have gone through all the photographs. If asked why, indicate that the procedure requires it.
5. Do not give the witness any feedback regarding the individual selected or comment on the outcome of the identification procedure in any way.
6. Once the procedure is completed, show the witness the written record of the results, and ask the witness to sign and date that record.
7. The administrator shall preserve the array and document the:
 - a. Incident number
 - b. Name of the person who compiled the array
 - c. The administrator’s name
 - d. The procedure employed
 - e. Date, time, and location of the procedure
 - f. The total number of filler photos and blank photos
 - g. Names of persons present during the array
 - h. If additional viewing occurred
 - i. Whether the procedure was recorded.

Photo Array – Folder Method

In some situations, it may be difficult to have an independent administrator conduct the array. In those situations, the investigating officer may conduct the array, but only with safeguards to ensure that he/she is not in a position to unintentionally influence the witness’s selection. The folder system is a method to ensure this safeguard.

Use the independent administrator procedure but with the following modifications:

1. Gather folders, each large enough to hold and fully conceal one photograph. Place the lead filler photo in one folder and set it aside. Set aside two empty blank folders.
2. Place the remaining filler photos and suspect's photo into the folders (one photo per folder). Shuffle the filler and suspect's folders so that you no longer know which folder contains the suspect's photo.
3. Place the lead folder on top of the pile. Place the empty blank folders on the bottom of the pile. Number the folders.
4. When presenting the array, 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 you being able to see the photo.
5. The procedures and instructions are the same as they are for an independent administrator, except the references is to folders containing photos, rather than photos. (See instruction sheet.)

Show-Ups – General Considerations

A show-up occurs when law enforcement officials show one suspect to one witness for the purpose of eyewitness identification. Show-up procedures can be suggestive, but may have benefits for both public safety and innocent suspects.

1. A single suspect show-up conducted on the street is permissible only if there is reasonable suspicion but not probable cause to make the arrest or if there are exigent circumstances (e.g. the victim or witness is in imminent danger of death).
2. The use of show-ups shall be secondary to the use of photo arrays or lineups. When exigent circumstances require the use of a show-up, the following guidelines should be considered:
 - a. Document the eyewitness's description carefully prior to the show-up.
 - b. Whenever practical, transport the eyewitness to the location of the suspect. The show-up shall be conducted at the scene of the incident or within close proximity to the scene. Show-ups should not be conducted at the police station, other public safety buildings, squad cars or with the suspect in handcuffs visible to any witness, unless exigent circumstances are present, i.e. extremely violent suspect or officer/witness safety concerns.
 - c. The officer shall read the "Show-up Instructions" sheet and have the eyewitness sign and date it.
 - d. Show-ups shall be conducted with only one witness at a time. Multiple witnesses shall not be permitted to communicate before or after any show-up regarding the identification of the suspect.
 - e. The same suspect shall not be presented to the same witness more than once.
 - f. Show-up suspects shall not be required to put on clothing worn by the perpetrator. They may be asked to speak words uttered by the perpetrator or to perform other actions of the perpetrator.
 - g. Words or conduct of any type by officers that may suggest to the witness that the individual is or may be the perpetrator shall be scrupulously avoided.
 - h. Assess eyewitness confidence immediately following an identification.

Live Lineups – General Considerations

1. The investigating officer will be responsible for preparing the live lineup.

- a. Whenever possible, all live lineups shall be videotaped.
 - b. If videotaping is not available, a photograph of each participant shall be taken prior to the live lineup.
 - c. The photographs of each participant shall be numbered in their order of appearance.
 - d. The photographs shall be placed in evidence and documented in a report.
 - e. A minimum of four non-suspect fillers are to be included in the line-up.
 - f. The fillers need to resemble the physical description of the suspect such as sex, race, height, weight and distinguishing characteristics such as hair color, facial hair, glasses, scars, etc.
 - g. The first person shown must be a filler, never the suspect.
 - h. Each of the other participants can be arranged in any other order.
 - i. The investigating officer must provide the administrator with any need to have the participants act or speak in a specific manner while being viewed by the witness.
2. Once the participants have been selected and placed in the order to be shown, the investigating officer will turn control over to the administrator who will conduct the live lineup. Anyone knowing the identity of the suspect shall not be present while the live line-up is being conducted.
 - a. The administrator shall read the live line-up instruction sheet and have the eyewitness sign and date it.
 - b. All participants in the live lineup must be shown individually even after an identification is made.
 - c. The administrator shall direct the participants to speak or act during the lineup if so requested by the investigating officer. While each participant is being viewed by the witness the administrator shall ask, "Is this the person you saw ... (description of act)."
 - d. Following an identification of a suspect by the witness the administrator shall ask the witness, "How confident are you in your identification?" Let the witness respond in their own words. The witness's response shall be documented in the administrator's report.
 - e. The administrator shall permit the re-viewing of the participants only if requested by the witness.
 - f. The administrator shall document the proceedings of the live lineup in a report.
 - g. If the live lineup was videotaped, the administrator shall cause a DVD to be burned and it into the evidence system.
 - h. The administrator shall convey the results of the live lineup to the investigating officer.

Facial Composites

In some investigations, police may have an eyewitness description but no specific suspect or no visual likeness of a known suspect. The use of composite images can yield investigative leads in cases in which no suspect has been determined. In these situations, police may produce a facial composite of the perpetrator based on the eyewitness's description. Various methods exist for carrying out this goal, including manual sketches, mechanical systems such as Identikit, and, more recently, computer-based systems such as E-fit. Composites produced with these methods have been used to gather suspects who resemble the composite or to confirm that an unavailable suspect's appearance matches the description given by an eyewitness.

Because of concerns about the reliability of composites and their potential to taint eyewitnesses' memories, facial composites should be used cautiously. In the rare situation in which a composite must be used, a double-blind composite procedure, in which both the witness and the person making the composite are unaware of external information about the case, is recommended. It may not be feasible in some circumstances to conduct a completely double-blind procedure because it may not be possible to prevent both the witness and the administrator from learning about the case. In such situations, witnesses should be told to rely on their independent recollection of the event - not information learned from other sources - and administrators should be mindful of the natural tendency to incorporate prior knowledge into the interaction with the witness and into the production of the composite itself.

Procedure for Preparing a Composite

1. Assess the ability of the witness to provide a description of the perpetrator.
2. Select the procedure to be used from those available (e.g., Identikit-type templates, artist, or computer-generated images).
3. Unless part of the procedure, avoid showing the witness any photos immediately prior to development of the composite.
4. Select an environment for conducting the procedure that minimizes distractions.
5. Conduct the procedure with each witness separately.
6. Determine with the witness whether the composite is a reasonable representation of the perpetrator.

Photo Collection Displays

“Mug books” (i.e., 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 anyone to stand out unnecessarily.

Mug books 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. The witness should be read and asked to sign the Photo Collection Display instruction sheet.

FORMS

See attached instruments.

Photo Array Folder Method
Photo Array Independent Administrator
Show-Ups
Live Lineup
Photo Collection Display

**MIDDLETON POLICE DEPARTMENT
PHOTO ARRAY INSTRUCTIONS
Folder Method**

The folders in front of you contain photos. In a moment, I am going to ask you to look at the photos. The person who committed the crime may or may not be included in the photos. Although I placed the photos into the folders, I have shuffled the folders so that right now I do not know which folder contains a particular photo.

Even if you identify someone during this procedure, I will continue to show you all photos in the series. Keep in mind that things like hairstyles, beards, and mustaches can be easily changed and that complexion colors may look slightly different in photographs.

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.

You will look at the photos one at a time and, since I have shuffled them, they are not in any particular order. When you open a folder, please open it in a manner that does not allow me to see the photo inside the folder. Take as much time as you need to look at each one. When you have finished looking at a photo, close the folder and hand it to me. I will then ask you,

"Is this the person you saw _____?"

Take your time answering the question. If you answer "Yes," I will then ask you, "In your own words, can you describe how certain you are?"

Because you are involved in an ongoing investigation, in order to prevent compromising the investigation, you should avoid discussing this identification procedure or its results.

Do you understand the way the photo array procedure will be conducted and the other instructions I have given you?

YES

NO

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

Print Name	Signature	
Administrator Name	Date	Time
Location		

PHOTO ARRAY FOLDER METHOD

Case #: _____ Array Compiled By: _____

of Suspects in Array: _____ # of Fillers in Array: _____ # of Blank Photos in Array: _____

Array Administrator: _____ Independent? Yes No

Recorded? Yes No _____ Did Additional Viewing Occur? Yes No

Date: _____ Location: _____

Time: _____ Present: _____

Brief Instructions (see policy for details)

Place one filler (lead) photo folder and two blank folders (trailing) to the side. The administrator will then mix the remaining photo folders containing the suspect and remaining fillers. Then place the lead filler photo folder on top and the two blank folders on the bottom of the pile. The written instructions should be read and presented to the witness for signature. The Administrator should be positioned so he/she cannot see the photo as the witness views it. Each photo folder should be presented separately. When the witness hands the folder back, ask the witness: **“Is this the person you saw?”** If the witness says yes, ask the witness, **“In your own words, can you describe how certain you are?”** Document the witness’s responses using the witness’s own words. If identification is made, continue to show all photos. Don’t provide the witness with any feedback relating to the individual selected. Only upon request of the witness, may the witness view one or more of the photo folders again after the first procedure has been completed. If there is an identification, preserve the array.

Order	ID #	Witness Response
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Administrator Signature	Witness Signature	Date
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**MIDDLETON POLICE DEPARTMENT
PHOTO ARRAY INSTRUCTIONS
Independent Administrator Method**

In a moment, I am going to show you a series of photos. The person who committed the crime may or may not be included. I do not know whether the person being investigated is included. Even if you identify someone during this procedure, I will continue to show you all of the photos in the series.

Keep in mind that things like hairstyles, beards, and mustaches can be easily changed and that complexion colors may look slightly different in photographs.

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.

The photos 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 each photo, I will ask you

"Is this the person you saw _____?"

Take your time answering the question. If you answer "Yes," I will then ask you, "In your own words, can you describe how certain you are?"

Because you are involved in an ongoing investigation, in order to prevent damaging the investigation, you should avoid discussing this identification procedure or its results.

Do you understand the way the photo array procedure will be conducted and the other instructions I have given you?

YES

NO

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

Print Name

Signature

Administrator Name

Date

Time

Location

PHOTO ARRAY

Independent Method

Case #: _____ Array Compiled By: _____

of Suspects in Array: _____ # of Fillers in Array: _____ # of Blank Photos in Array: _____

Array Administrator: _____ Independent? Yes No

Recorded? Yes No _____ Did Additional Viewing Occur? Yes No

Date: _____ Location: _____

Time: _____ Present: _____

Brief Instructions (see policy for details)

Place one filler (lead) photo and two blank photos (trailing) to the side. Provide the independent administrator the remaining fillers (at least four) and suspect photo. Do not communicate which is the suspect. The administrator will then mix the photos and then place the lead filler photo on top and the two blank photos on the bottom of the pile. No one who knows the identity of the suspect should be present during the procedure. The written instructions should be read and presented to the witness for signature. Each photo should be presented separately. When the witness hands the photo back, ask the witness: **“Is this the person you saw _____?”** If the witness says yes, ask the witness, **“In your own words, can you describe how certain you are?”** Document the witness’s responses using the witness’s own words. If identification is made, continue to show all photos. Don’t provide the witness any feedback relating to the individual selected. Only upon request of the witness, may the witness view one or more of the photos again after the first photo procedure has been completed. If there is an identification, preserve the array.

Order	ID #	Witness Response
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Administrator Signature	Witness Signature	Date
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MIDDLETON POLICE DEPARTMENT
Show-Up
INSTRUCTIONS

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 _____?"

Take your time answering the question. If you answer "Yes," I will then ask you, "In your own words, can you describe how certain you are?"

Because you are involved in an ongoing investigation, in order to prevent compromising the investigation, you should avoid discussing this identification procedure or its results.

Do you understand the way this procedure will be conducted and the other instructions I have given you?

YES

NO

I have read these instructions, or they have been read to me, and I understand the instructions. I am prepared to observe the individual who will be presented to me, and I will follow the instructions provided on this form.

Print Name

Signature

Administrator Name

Date

Time

Location

SHOW-UP

Case #: _____ Show-Up Administrator: _____

Recorded? [] Yes [] No _____ Show-Up Photographed [] Yes [] No

Date: _____ Location: _____

Time: _____ Present: _____

Was Subject Cuffed at time of Show-Up? [] Yes [] No

Was Subject Restrained by Officers at Time of Show Up? [] Yes [] No

Was Subject Seated in a Squad Car at Time of Show Up? [] Yes [] No

Witness Pre-Show-Up Suspect Description

Brief Instructions (see policy for details)

Show-ups should be avoided if they cannot be conducted close in time and place to the crime. A single suspect show-up conducted on the street is permissible only if there is reasonable suspicion but not probable cause to make the arrest or if there are exigent circumstances (e.g. the victim or witness is in imminent danger of death). Obtain a detailed description from the witness before the show-up. Whenever practical, transport the witness to the detained suspect's location. Don't do show-ups at the police station. The written instructions should be read and presented to the witness for signature. Video the show-up if possible. Present the Suspect. If possible and safe, the suspect should not be restrained by cuffs or an officer and not be in a squad car. After the witness has viewed the suspect, ask the witness: "Is this the person you saw _____?" If the witness says yes, ask the witness, "In your own words, can you describe how certain you are?" Document the witness's responses using the witness's own words. Photograph the suspect, at the time of the show-up if at all possible.

Witness Response

Administrator Signature

Witness Signature

Date

MIDDLETON POLICE DEPARTMENT
INSTRUCTIONS
Live Lineup

In a moment, I am going to show you a series of individuals. The person who committed the crime may or may not be included. I do not know whether the person being investigated is included. Even if you identify someone during this procedure, I will continue to show you all individuals in the series.

Keep in mind that things like hair styles, beards, and mustaches can be easily changed.

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.

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 each individual, I will ask you "Is this the person you saw _____?" Take your time answering the question. If you answer "Yes," I will then ask you, "Can you describe how certain you are?"

Because you are involved in an ongoing investigation, in order to prevent compromising the investigation, you should avoid discussing this identification procedure or its results.

Do you understand the way the lineup procedure will be conducted and the other instructions I have given you?

YES

NO

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

Print Name

Signature

Administrator Name

Date

Time

Location

Live Lineup

Case #: _____ Array Compiled By: _____

of Suspects in Lineup: _____ # of Fillers in Lineup: _____ # of Blank Photos in Array: _____

Array Administrator: _____ Independent? Yes No

Recorded? Yes No _____ Did Additional Viewing Occur? Yes No

Date: _____ Location: _____

Time: _____ Present: _____

Brief Instructions (see policy for details)

Include only one suspect and at least four fillers (non-suspects) per lineup. Fillers should resemble the witness's description of the perpetrator in significant features. Make sure that no person stands out from the rest. Always lead the lineup with a filler. Record the procedure if possible. Live lineups should be conducted by an independent administrator-- someone who does not know which person in the lineup is the suspect. To the extent possible ensure that no one who knows the suspect's identity is present during the lineup procedure, except defense counsel (if present). The written instructions should be read aloud by the administrator and presented to the witness for signature. Begin with all lineup participants out of the view of the witness. Present each individual to the witness separately, in a previously determined order, removing those previously shown from the field of view. After each individual is shown, ask the witness, "**Is this the person you saw _____?**" If the witness answers "Yes," ask the witness, "**In your own words, can you describe how certain you are?**" Document the witness's response using the witness's own words when possible. If identification is made, continue to show all subjects. Don't provide the witness any feedback relating to the individual selected. Only upon request of the witness, the witness may view one or more of the subjects again after the lineup has been completed. If this occurs, it must be thoroughly documented. Individual or a group photo of all of the lineup participants should be taken to preserve the appearances of the suspect and fillers and the order of the lineup. The administrator should document the lineup.

Order	ID #	Witness Response
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Administrator Signature	Witness Signature	Date
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MIDDLETON POLICE DEPARTMENT
Photo Collection Display
INSTRUCTIONS

In a moment, I am going to show you a collection of photos. The person who committed the crime may or may not be included in the photos.

Keep in mind that things like hairstyles, beards, and mustaches can be easily changed and that complexion colors may look slightly different in photographs.

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.

You will look at the photos and they are not in any particular order. Take as much time as you need. Tell me immediately if you recognize anyone in one of the photographs.

Because you are involved in an ongoing investigation, in order to prevent compromising the investigation, you should avoid discussing this identification procedure or its results.

Do you understand the way the photo collection procedure will be conducted and the other instructions I have given you?

YES

NO

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.

Print Name

Signature

Administrator Name

Date

Time

Location