

| Fennimore Police Department<br><b>Eyewitness Identification</b> |                             |   |
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| Issue Date:<br>11/04/2013                                       | Last Updated:<br>09/20/2020 | Total Pages:<br>4                                     |
| Policy Source:<br>Chief of Police                               |                             | Special Instructions:<br>Amends All Previous Versions |

## **PURPOSE**

The purpose of this document is to establish guidelines for the use of eyewitness identification procedures involving photo arrays, live lineups, show ups and facial composites. Wis. Stat. § 175.50.

## **POLICY**

It shall be the policy of the Fennimore Police Department to maintain and follow best practices procedures when using photo arrays, live lineups, show ups and facial composites.

## **DISCUSSION**

Eyewitness identification has always been a powerful tool for investigating and prosecuting criminal cases. Eyewitness evidence can be the most important and convincing evidence in an investigation. Research and nationwide experience suggest that eyewitness evidence can be fragile, and that eyewitnesses can be mistaken. Eyewitnesses can make identification errors, but those errors may be difficult to detect because the witnesses are sincere and have no motive to lie.

When wrong, witnesses are usually are not being deceitful, but are simply mistaken. To reduce the risk of wrongful conviction and aid in the detection and apprehension of the guilty, officers should adhere to the procedures set forth here in order to maximize the reliability of identifications, minimize unjust accusations of innocent persons and establish evidence that is reliable and conforms to established legal procedure.

## **DEFINITIONS**

- **Exigent Circumstances:** Facts that would cause a reasonable person to believe prompt action was necessary to prevent physical harm, destruction of relevant evidence, escape of suspect or some other consequence improperly frustrating law enforcement efforts.

- **Facial Composite:** A graphical representation of one or more eyewitnesses' memory of a face as recorded by a composite artist.
- **Live Line Up:** The presentation of a number of individuals, including a suspect, sequentially before an eyewitness.
- **Photo Array:** The sequential showing of multiple photographs to an eyewitness for the purpose of obtaining an identification.
- **Show Up:** The presentation of one suspect to an eyewitness within a short time following the commission of a crime.

## **PROCEDURES**

### **Documentation**

The procedures used for Photo Arrays, Live Line Ups, Show Ups and Facial Composite identifications will be documented in an incident report. The incident report will also document the results or outcome of the procedure.

### **Photo Arrays & Live Line Ups**

- Choose non-suspect fillers which fit the witness's description and minimize any suggestiveness that might point toward a suspect.
- Use 'double blind' procedures, in which the administrator is not in a position to unintentionally influence the witness' selection.
- Specifically instruct eyewitnesses that the real perpetrator may or may not be present and that the administrator does not know which person is the suspect.
- Present the suspects and fillers sequentially (one at a time) rather than simultaneously (all at once). This encourages absolute judgments of each person presented, because eyewitnesses are unable to see the subjects all at once and are unable to know when they have seen the last subject.
- Assess eyewitness confidence immediately following an identification. Carefully document a witness's response before any feedback from law enforcement.
- Avoid multiple identification procedures in which the same witness views the same suspect more than once.

### **Show ups**

In *State v. Tyrone Dubose*, the Wisconsin Supreme Court criticized Show Up identifications as very suggestive but indicated this identification procedure may be utilized when the totality of

the circumstances indicate a Photo Array or Live Line Up is necessary and the procedure is conducted in a non-suggestive manner.

Therefore, the use of Show Ups should be secondary in preference to the use of photo arrays or line ups when possible. However, when **exigent circumstances** require the use of a show up, the following guidelines should be considered:

- Document the eyewitness's description carefully prior to the show up.
- Whenever practical, transport the eyewitness to the location of the suspect. Showups should not be conducted at law enforcement headquarters or other public safety buildings.
- Specifically instruct eyewitnesses that the real perpetrator may or may not be present.
- Show ups should not be conducted with more than one witness present at a time. If identification is conducted separately for more than one witness, witnesses should not be permitted to communicate before or after any procedures regarding the identification of the suspect.
- The same suspect should not be presented to the same witness more than once.
- Show up suspects should 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.
- Words or conduct of any type by officers that may suggest to the witness that the individual is or may be the perpetrator should be scrupulously avoided.
- Assess eyewitness confidence immediately following an identification.

### **Facial Composite General**

Inaccurate information from outside an eyewitness's memory can taint development of a composite. As with photo arrays, live lineups, and showups, composites can be compromised if the witness's description relies on information learned from external sources after the crime or if the person administering the procedure either unintentionally supplies the witness with information or unintentionally incorporates outside knowledge of the case into the production of the composite.

For this reason, when a composite is used, double-blind concepts & principles in which both the witness and the person making the composite are unaware of external information about the case may be helpful.

It may not be feasible to conduct a completely double-blind procedure for a variety of reasons, in which case witnesses should be told to rely on their independent recollection of the event – not information learned from other sources - and administrators must be mindful of any natural tendency to incorporate prior knowledge into the process.

## **Reference Material**

The following documents made available by the Wisconsin Department of Justice will be kept accessible for officers to review before completing any of the procedures listed above. A copy of the documents will be kept in the department Standard Operating Procedures binder along with a copy in each patrol vehicle.

- Comprehensive Review & Analysis of Best Practices 04-01-10
- First Responder Checklist Eyewitness Identification 04-01-05
- Follow-up Investigator Checklist Eyewitness Identification Procedures 04-01-05
- Photo Array Instructions Independent Administrator 04-01-05
- Photo Array Instructions Folder System 04-01-05
- Live Line Up Instructions 04-01-05
- Show Up Instructions 04-01-05

## **DISCLAIMER**

This policy is for department use only and does not apply in any criminal or civil proceeding. Department policy should not be construed as the creation of a higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violation of this policy will only form the basis for departmental administrative sanctions and is not intended for use in courts of civil or criminal jurisdiction.

/s/ Christopher J. French

09/20/2020

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Christopher J. French  
Chief of Police

Date