

Purpose:

The identification of a suspect by an eyewitness can be an important component of a criminal investigation, but can be equally significant in clearing an innocent suspect. Many people who have been convicted of serious crimes, only to later be exonerated by scientific evidence, were originally convicted based in large part on mistaken identification by a witness. Eyewitness misidentification is the single greatest cause of wrongful convictions nationwide, playing a role in approximately 75% of convictions overturned through DNA testing. The Cecil County Sheriff's Office recognizes that it is as much the responsibility of the police to protect the innocent from conviction as it is to assist in the conviction of the guilty.

The identification of criminal offenders must be approached with extreme caution as the court may exclude eyewitness evidence if it determines that police methods were unnecessarily suggestive.

Policy:

It is the policy of the Cecil County Sheriff's Office that:

1. Eyewitnesses will be given specific instructions prior to being shown a suspect;
2. Photo arrays and line-ups will be conducted using *sequential* rather than simultaneous presentation; and
3. Photos arrays, line-ups and voice identifications will be conducted using **blind administration**.

Line-up Procedures

1. The four types of line-ups used for a victim/witness to identify a suspect are as follows:
 - a. Show-up: The live presentation of one suspect to an eyewitness shortly after the commission of a crime.
 - b. Photo Array: The showing of photographs of several individuals to an eyewitness for the purpose of obtaining an identification.
 - c. Line-up: The live presentation of a number of people to an eyewitness for the purpose of obtaining an identification.
 - d. Voice Line-up: A procedure whereby a witness is permitted to hear the voices of several people for the purpose of obtaining an identification of a suspect's voice.
2. Right to counsel during identification procedure

- a. Once a suspect has been arraigned or indicted, his/her right to have counsel present at an in-person identification procedure attaches. No right to the presence of counsel exists simply because a complaint has been filed, even if an arrest warrant is issued.
- b. No right to counsel attaches for non-corporeal identification procedures, such as those involving photographs or composite drawings, whether conducted before or after the initiation of adversarial criminal proceedings.

3. Show-up

- a. Immediately following a crime:
 - (1) Determine and document, prior to the show-up a description of perpetrator.
 - (2) A suspect is located matching the description broadcast and may be detained for a reasonable length of time.
 - (3) Consider transporting the witness to the location of the suspect to limit the impact of the suspect's detention.
 - (4) Caution the witness that the person he/she is looking at may or may not be the perpetrator.
 - (5) Obtain and document a statement of certainty for both identification and non-identifications.
- b. If a witness makes a positive identification a deputy may:
 - (1) Use the information as part of the probable cause to arrest, or
 - (2) Use the information in the application for statement of charges for a charging document against the suspect.
- c. Preparing a complete and accurate record of the outcome of the show-up improves the strength and credibility of the identification and non-identification results obtained from the witness and can be a critical document in the investigation and any subsequent court proceedings.
- d. When conducting a show-up, or the one on one identification, the deputy should.
 - (1) Document the time and location of the procedure.
 - (2) Record both identification and non-identification results in writing, in the witness' own words regarding how certain he/she is.

4. Photo Array

- a. In composing a photo array the deputy should:

- (1) Include only one suspect in each identification procedure. When showing a new suspect avoid reusing fillers in line-ups shown to the same victim/witness.
 - (2) Must have the same type of background scenery.
 - (3) Must not contain information or arrest numbers which could identify the person in the photograph. Such information must be deleted or covered up.
 - (4) Photographs of persons similar to a suspect can be obtained from in house files or other local police departments.
 - (5) The photographs must be numbered and correspond to the numbered list of names on the Line-up Identification Record, CCSO Form # SO-213.
 - (6) A minimum of at least five fillers in addition to the suspect should be used for all photo arrays.
- b. Showing a photo array:
- (1) If practicable, the deputy should record the procedure.
 - (2) Allow each witness to view the photographs independently, out of the presence and hearing of the other witnesses.
 - (3) Never make suggestive statements that may influence the judgment or perception of the witness.
 - (4) A second deputy who is unaware of which photograph depicts the suspect should actually show the photographs. The technique, called ***double-blind administration***, is intended to ensure that the witness does not interpret a gesture or facial expression by the deputy as an indication as to the identity of the suspect. The technique also allows the prosecution to demonstrate to the judge or jury that it is impossible for the deputy showing the photographs to indicate to the witness, intentionally or unintentionally, which photograph he/she should select.
 - (5) If a second deputy is not available, the deputy showing the array must employ a so-called “blinded” technique so that he/she does not know when the witness is viewing a photograph of the suspect.
 - (6) The investigating deputy or the second deputy (the administrator) should carefully instruct the witness by reading from a Photo Array Instruction Form (CCSO form # SO-214). The witness should be asked to sign the form indicating that he/she understands the instructions. The investigating deputy and the administrator should also sign and date the form.
 - (7) For the reasons above, the investigating deputy should explain to the witness that the deputy showing the array does not know the identity of the people in the photographs. The investigating deputy should leave the room while the array is being shown.
 - (8) The administrator should show the photographs to a witness one at a time. When the witness signals for the next photograph, the

- administrator should move the first photograph so that it is out of sight.
- (9) The procedure should be repeated until the witness has viewed each photograph. If the witness identifies a subject before all photographs have been viewed, the administrator should remind the witness that he/she is required to show the rest of the photographs.
 - (10) If the witness fails to make an identification, but asks to view the array a second time, then it is permissible to show the entire array a second time. **An array may not be shown more than twice.**
 - (11) If the witness identifies the suspect, the deputy should ask the witness how certain he/she is of the identification. Deputies should ask the witness not to use a numerical scale, but rather his/her own words. The witness should be asked to initial and date the front of the photograph selected.
 - (12) When identification or non-identification is made, the victim/witness so indicates and signs the Line-up Identification Form, CCSO Form # SO-212.
 - (13) Do not confirm or disaffirm the photograph identified as that of a suspect.
 - (14) The Line-up Identification Record, CCSO Form # SO-213 and photos will be considered evidence and placed in the property room. Copies can be placed in the case file. This will prevent anyone from borrowing a photograph.

5. Line-Up

Line-ups shall be conducted under the direction of a Criminal Unit supervisor and, when feasible, after consultation with the State's Attorney's Office.

- a. If practicable, the deputy should record the procedure.
- b. A suspect cannot be detained and compelled to participate in a line-up without probable cause to arrest. If a suspect refuses to participate in a line-up, the State's Attorney's Office may be asked to apply for a court order to compel the suspect to cooperate.
- c. Before any suspect who has been arraigned or indicted is shown to eyewitnesses in a line-up or other live identification procedure, he/she must be informed of his/her right to have an attorney present at the line-up. Unless a valid waiver is voluntarily and knowingly made, in writing if possible, no such identification may proceed without the presence of the suspect's attorney.
- d. Select a group of at least five fillers who fit the description of the subject as provided by the witness(es). Because line-ups will be administered by a deputy who does not know the identity of the suspect, the fillers selected should not be known to the deputy administering the line-up. In selecting line-up fillers, abide by the guidelines for photo array fillers as described above.

- e. Complete the Line-up Identification Record, CCSO Form # SO-213, to record the information of the persons participating in the line-up.
- f. All persons in the line-up should carry cards that identify them only by number and should be referred to only by their number. As with photo arrays, each witness must view the line-up independently, out of the presence and hearing of the other witnesses.
- g. The investigating deputy should explain to the witness that a second deputy (the line-up administrator) will be conducting the line-up, and that he/she does not know the identity of the people participating.
- h. The investigating deputy should carefully instruct the witness by reading from a Line-up Instruction Form (CCSO Form # SO-215), and the witness should be asked to sign the form indicating that he/she understands the instructions. The deputy should also sign and date the form.
- i. The investigating deputy should leave the room while the line-up administrator conducts the line-ups.
- j. The line-up should be conducted so that the suspect and fillers do not actually line up, but rather so that they are displayed to the witness one at a time. This can be accomplished by having them enter the room individually and leave before the next one enters.
- k. The procedure for showing the participants to the witness and for obtaining a statement of certainty is the same as for photo arrays.
- l. When an attorney for the suspect is present, the attorney should be permitted to make reasonable suggestions regarding the composition of the line-up and the manner in which it is to be conducted. Any suggestions made by the suspect's attorney should be included as part of the line-up report.
- m. Allow counsel representing the accused sufficient time to confer with his/her client prior to the line-up. Once the line-up is commenced, attorneys should function primarily as observers and he/she should not be permitted to converse with the line-up participants, or with the witnesses, while the line-up is underway. The concept of blind administration requires that no one be present who knows the identity of the suspect. For this reason, the attorney should leave the room before the line-up begins. An attorney who does not know which person is the defendant may attend the line-up in place of the suspect's attorney.
- n. The suspect's attorney is not legally entitled to the names or addresses of the witnesses attending a line-up if the suspect has not yet been arraigned or indicted. If an attorney in such a situation insists on having information about line-up witnesses, advise him/her to direct his/her request to the State's Attorney's Office.
- o. During a line-up each participant may be directed to wear certain clothing, to put on or take off certain clothing, to take certain positions or to walk or move in a certain way. If deputies are to ask the participants to wear an article of clothing, they must guard against

circumstances where the article only fits the suspect. All line-up participants shall be asked to perform the same actions.

- p. Line-up participants must not speak during the line-up. If identification of the suspect's voice is desired, a separate procedure must be conducted. (See section on voice identification below.)
- q. After a person has been arrested, he/she may be required to participate in a line-up regarding the crime for which he/she was arrested. After arrest, a suspect may lawfully refuse to participate in a line-up only if he/she has a right to have counsel present (post arraignment/indictment) and the counsel is absent through no fault of the suspect or his/her attorney.
- r. When identification or non-identification is made, the victim/witness so indicates and signs the Line-up Identification Form, CCSO Form # SO-212.

6. Voice Identification

Although considerably less common than visual identification, voice identifications may be helpful to criminal investigations where the victim or other witness was blind, the crime took place in the dark, the subject was masked, the witness' eyes were covered by the perpetrator, or they were never in the same room with the perpetrator but heard his/her voice. If deputies wish to conduct a voice identification procedure with a witness who also saw the subject, they must first consult with a Criminal Unit supervisor and, when feasible, the State's Attorney's Office.

Where a voice identification is attempted, the following procedures should be employed to the extent possible:

- a. As in a line-up, there should be at least six persons whose voices will be listened to by the witness; one-on-one confrontations should be avoided. Because line-ups will be administered by a deputy who does not know the identity of the suspect, the fillers should not be known to the deputy administering the procedure, and deputies should abide by the guidelines for photo array and line-up fillers as described above;
- b. Complete the Line-up Identification Record, CCSO Form #SO-213, to record the information of the persons participating in the line-up.
- c. The suspect and other participants shall not be visible to the witness; this can be done by using a partition, or by similar means;
- d. All participants, including the suspect, shall be instructed to speak the same words in the same order;
- e. The words recited by the participants shall not be the ones spoken by the offender during the crime; the line-up participants should speak neutral words in a normal tone of voice;
- f. When both a visual and voice line-up are conducted, the witness should be informed that the line-up participants will be called in a different order and by different numbers;

- g. If there are two or more suspects of a particular crime, present each suspect to witness in separate line-ups. Different fillers should be used to compose each line-up.
- h. As with any identification procedure, deputies should avoid any words or actions that suggest to the voice witness that a positive identification is expected or who they expect the witness to identify.
- i. The investigating deputy should carefully instruct the witness by reading from a Voice Identification Line-up Instruction Form (CCSO Form # SO-216), and the witness should be asked to sign the form indicating that he/she understands the instructions. The deputy should also sign and date the form. If practicable, the deputy should record the procedure.
- j. Adhere to the principles of blind administration as described above. As is the case with photo arrays and line-ups, the investigating deputy should leave the room while the administrator conducts the procedure.
- k. When identification or non-identification is made, the victim/witness so indicates and signs the Line-up Identification Form CCSO Form # SO-212.

General Considerations

Due process requires that identifications be conducted in a fair, objective, and non-suggestive manner. Due process is violated when identification procedures conducted by the police are unnecessarily suggestive and conducive to irreparable mistaken identification.

A report of every show-up, photo array, line-up or voice identification procedure, whether an identification is made or not, shall be submitted. The report shall include a summary of the procedure, the persons who were present for it, instructions given to the witness by the deputy (this should be accomplished by submitting the appropriate witness instruction form), any statement or reaction by the witness, and any comments made by the witness regarding the identification procedure.