

5.11 SHOW-UPS AND PHOTO LINEUPS

POLICY

It is the policy of the Johnstown Police Department that all personnel comply with the provisions of this general order.

PURPOSE

This regulation establishes Department policy and procedures regarding show-ups and photo lineups.

This regulation is not all encompassing. The goal is to avoid or negate mistaken identifications. The investigator should always consider the "totality of the circumstances," exercise good judgment and reasonableness, and consider the amount and type of information available in instances when this regulation does not address all the specific circumstances.

DEFINITIONS

- A. Filler: Either a person or a photograph of a person who is NOT suspected of an offense and is included in an identification procedure.
- B. Identification Procedure: For the purposes of this regulation, a show-up or photo lineup.
- C. Investigator: The individual conducting the lineup.
- D. Officer: Any law enforcement officer, or anyone else involved in the assembly or conducting of an identification procedure.
- E. 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.
- F. Sequential Photo Lineup: A lineup which consists of showing a group of similar photos individually to a witness.

- G. Show-up: An identification procedure in which an eyewitness is presented with a single suspect within a short time and in close proximity following the commission of a crime for the purpose of determining whether the eyewitness identifies this individual as the perpetrator.
- H. Simultaneous Photo Lineup: A simultaneous photo lineup consists of showing a group of similar photos to a witness all at the same time.
- I. Witness: For the purposes of this regulation, a witness could be a victim, eyewitness, or anyone else who would be in a position to further an investigation by making an identification using one of the methods contained in this regulation.

GENERAL RULES FOR IDENTIFICATION PROCEDURES

- A. When practicable, the investigator administering the photo array should be a person who is NOT aware of which person is suspected as the perpetrator of the offense.
- B. When it is not practicable for the photo array to be presented by an unknowing investigator, the lineup should be presented simultaneously, not sequentially. The preferred method of identification is the SEQUENTIAL PHOTO LINEUP.
- C. Prior to conducting a photo lineup or physical lineup, the investigator shall review the lineup to make sure that the suspect does not unduly stand out by utilizing persons of similar race, age, build, and or complexion.
- D. Prior to the identification procedure, the victim or witness shall be told the following:
 - 1. The perpetrator may or may not be among the persons in the photo lineup and that they should not feel compelled to make an identification.
 - 2. That they should take as much time as needed in making a decision about each individual or lineup.
- E. Officers shall not, by word or gesture, suggest opinions to any witness concerning the guilt or innocence of a suspect in any identification procedure. Witnesses making inquiries about an officer's opinion shall be informed of this restriction.
- F. If the witness makes identification, do not confirm or corroborate the identification. The investigator presenting the photo array shall ask the

witness to circle the individual they have identified as well as sign and date the photo array.

- G. 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.
- H. Any and all photo lineups created, viewed, identified, or not identified should be placed in evidence.

PROCEDURES FOR CREATING A PHOTO ARRAY

- A. Computer Generated Arrays: Whenever possible, computer generated photo arrays should be utilized. Investigators have the discretion to utilize either Visual Alert or JNET to create a photo array.
- B. Fillers: Fillers should be similar in appearance to the suspect in the photo array. Investigators should give consideration to factors such as gender, clothing, facial hair, race, age, height, extraordinary physical features, or other distinctive characteristics. Fillers should not be known to the witness. At least five fillers, but no more than seven fillers should be used, in addition to a suspect dependent upon whether a six or eight person array has been created.

MULTIPLE WITNESSES/SUSPECTS

- A. Each witness/victim shall view any identification procedure separately. Witnesses/victims 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.
- B. Each witness/victim must view the photo array separately. One photo array per suspect shall be shown to each witness, provided there are no markings on the photo array. Each witness/victim will be provided a different photo array which includes the suspect. Under no circumstances should the same photo array be shown to multiple witnesses/victims. When the photo array is shown to multiple witnesses/victims, the suspect photo should be placed in a different order in the grouping for each witness/victim.
- C. When there are multiple suspects, each identification procedure shall include only one suspect. If there is more than one suspect, then different fillers shall be utilized in each separate array for each suspect.

VIDEO AND/OR AUDIO RECORDING AND DOCUMENTATION

- A. Whenever practical, officers may use patrol vehicles appropriately equipped with video and audio recording devices to document show-ups. The victim/witness shall be seated in the vehicle with the audio device activated, while capturing the suspect on camera during the identification procedure.
- B. A record of any lineup may be accomplished by using video and/or audio equipment.

DOCUMENTATION

All information regarding any identification procedure shall be documented in the narrative of the appropriate report. It shall include:

- A. All identification and non-identification results.
- B. Confidence or certainty statements made by the witness (these should be quoted). Investigator's comments may also be included if warranted.
- C. Names of all persons present.
- D. Date, time, and location.
- E. If a photo lineup is conducted and an identification is made, ensure that the victim or witness places their signature or initials next to or on the photo.

ATTORNEYS

No person has a right to have a lawyer present at any photo lineup whether it takes place before or after an arrest.

SHOW-UPS

- A. 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 general description of the perpetrator given by the witness.
- B. 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: The suspect should be detained at the place he/she was located. 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. Multiple suspects: If there are multiple suspects, the suspects must be separated and subjected to separate show-up procedures.
 4. Photographing suspects: Consideration should be given to photographing the suspect(s) in the field as documentation.
 5. 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.

SEQUENTIAL PHOTO LINEUP

The sequential photo lineup consists of showing a group of similar photos individually to a witness. All sequential photo lineups shall be done using the following guidelines:

- A. A minimum grouping of six individual photos shall be used to create the photo lineup, and shall include five filler photos with one suspect.
- B. All filler photos should resemble the suspect photo as much as possible, including size, background, race, skin tone, facial features, weight, hair color and length, scars, tattoo, and eyeglasses.
- C. Explain the procedure to the witness.
- D. Each photo will be viewed one at a time.
- E. Each photo will be displayed/viewed in random order.
- F. The witness should take as much time as needed in making a decision about each photo before moving to the next.
- G. When the witness is done looking at the photo, it should be handed back to the officer before viewing the next one.
- H. All photos will be shown to the witness, regardless of when or if an identification is made.
- I. If a witness asks to look at a specific photo again, the witness must look at all the photos in the same order and manner as they were initially shown.

SIMULTANEOUS PHOTO LINEUP

The simultaneous photo lineup consists of showing a group of similar photos to a witness all at the same time. All simultaneous photo lineups shall be done using the following guidelines:

- A. A minimum grouping of six photos shall be used to create the photo lineup, and shall include five filler photos with one suspect.
- B. All filler photos should resemble the suspect photo as much as possible, including size, background, race, skin tone, facial features, weight, hair color and length, scars, tattoo, and eyeglasses.

Effective Date: November 14, 2019

By Order Of:

A handwritten signature in black ink, appearing to read "Robert F. Johnson". The signature is written in a cursive style with a large, prominent initial "R".

Robert F. Johnson
Chief of Police