

## City of Johns Creek Police Department

<i>Subject:</i> Eyewitness Identification		<i>Number:</i> 02-53
<i>Reference:</i> O.C.G.A 17-20-1		<i>Amends:</i>
<i>Effective:</i> 04/08 <i>Revised:</i> 06/15	<i>Review Date:</i> Annually	<i># of Pages:</i> 8

**PURPOSE:** To provide guidelines concerning interviews with victims and witnesses and documenting their observations and identification of the perpetrator of the crime.

**SCOPE:** Applicable to all officers, members, and employees of the Johns Creek Police Department.

**POLICY STATEMENT:** Interviews, show-ups, photographic line-ups and physical line-ups are to be conducted in compliance with constitutional guidelines and applicable statutes. Eyewitness identification must be performed in a structured and professional manner to ensure the identification is as objective as possible and results are as reliable as possible.

Eyewitness identification is only one element of a successful criminal investigation. Officers must ensure they independently corroborate all facts and circumstances possible regarding identification of nay suspect.

### **DEFINTIONS:**

Filler - a person or photograph of a person who is not a suspect in the crime under investigation and is made part of the physical lineup or a photographic lineup.

Independent Administrator – a person who administers the lineup, did not compose the lineup, and has no knowledge of the actual suspect.

Photographic Lineup – a procedure in which an array of photographs is displayed to a witness for the purpose of determining if the witness is able to identify the suspect of a crime.

Physical Lineup – allowing a witness to view at least six persons in a structured location in an attempt to identify the suspect.

Show-up Identification – presenting the witness with a single suspect for the purpose of elimination or identification as the suspect.

Sequential identification – a procedure whereby the witness views only one member of the photographic lineup at a time.

Witness – for the purpose of this directive, witness means the victim and/or any witness to the crime.

## **PROCEDURES:**

### **VICTIM/WITNESS IDENTIFICATION OF SUSPECT(S) - (02-53-01)**

Essential to any officer/detective's ability to conduct professional criminal investigations is their competence, knowledge, and judgment when initiating and receiving information from witnesses involving their observations and identifications of suspects.

- A. When interviewing witnesses regarding their observations in order to make an eyewitness identification of a suspect, officers must ensure first that the witness does not know the suspect. If the witness is absolutely positive they know the suspect, the pretrial identification is not necessary. However, if the witness does not know the suspect, sound methods of identification must be implemented. This information must be objective and reliable. Officers shall ensure the witness has no preconceived notions regarding the identity of the suspect and that the recollections have not been tainted as a result of a prior action, event, information or statements by police, media or any other source.
- B. Officers/detectives shall inquire about the following areas with the witness:
  1. The opportunity of the witness to view the suspect at the time of the crime.

2. The witness' degree of attention during the crime.
  3. The accuracy of the witness' prior description to police or others of the suspect before the observation and identification of the suspect.
  4. The level of certainty demonstrated by the witness of any and all descriptions before and during the identification of any suspect.
  5. The length of time between the crime and identification process.
- C. Officers/detectives shall document the information given by the witness in the report.
- D. If multiple witnesses are involved in show-ups, photographic lineups, and physical lineups, each will be conducted independently with each witness and suspect. Witnesses shall not be allowed to confer with one another until all identification presentations have been completed and statements taken.

### **SHOW-UP IDENTIFICATION – (02-53-02)**

- A. Show-up identifications are used to guide officers/detectives in determining whether to focus on a particular person as a suspect.
1. Show-ups can only be used during a short window of time between the actual commission of the crime and the location of the suspect(s).
  2. The duration of time between when the witness views the suspect at the crime, views the suspect at the latter location, or show-up must be reasonable to ensure accuracy and reliability of the identification.
- B. Show-ups are also used to permit the speedy release of an innocent person detained
- C. A full detailed description of the suspect shall be provided by the witness prior to observation of the suspect. Officers/detectives shall document the description.

- D. The witness shall be given precautionary instructions that the suspect presented to them may or may not be the person responsible for the crime. Further, officers/detectives shall ensure the witness is not exposed to any suggestive conduct, comments or actions regarding the identification of the suspect.
- E. Officers/detectives will determine what course is proper regarding whether the witness should be transported to the suspect location or the suspect should be transported to the witness location. Officers will ensure the meeting is secure and safety measures are in place before the show-up is conducted. If possible, do not show the suspect handcuffed or in the back seat of a law enforcement vehicle. If the suspect is handcuffed, take measures to conceal this fact from the witness. Officer and witness safety is paramount, however, when determining whether a suspect can be viewed safely outside the law enforcement vehicle.
- F. Officers/detectives will ensure that there is proper lighting and distance in the show-up procedure.
- G. Show-ups shall be documented in a report articulating the specific facts, circumstances, statements, and conduct of the witness and suspects.
- H. When possible the show-up identification shall be video and/or audio recorded using the in-car camera system.
- I. If the witness does not volunteer information about certainty of the identification, then the witness should be asked to state certainty in his/her own words. Officers/detectives should ask, "How certain are you?" The response shall be documented in the report.

### **PHOTOGRAPHIC LINEUP – (02-53-03)**

- A. A photographic array should consist of at least six photographs. A minimum of five filler photographs should be utilized with one photo of the suspect. A filler photograph should be used in the lead position of the photo lineup. The identification data of a suspect and fillers should be documented.
- B. Photographs selected should generally fit the witness's description of the suspect at the time of the crime, especially with respect to any unique or

significant features. Complete uniformity of features is not required. Photographs must merely match the description of the suspect as given by the witness viewing the lineup, as long as the suspect does not unduly stand out. Use persons of the same race, gender, and general physical characteristics (e.g. facial hair, head hair).

- C. Do not mix color and black and white photos with other photos. Do not include more than one photo of the same suspect. Cover or crop any portion of a mug shot or other photo that provides identifying information on the subject of other persons included in the photographic lineup.
- D. Number all the photos used in the photo array. This should be done prior to the presentation by the independent administrator.
- E. Ensure the witness is prevented from seeing any suspect in custody.
- F. An independent administrator will be used to administer the simultaneous photographic lineup unless an extraordinary circumstance(s) necessitates using the same officer to compile and administer the lineup. If this occurs, the extraordinary circumstance(s) shall be documented.
- G. The independent administrator will read the following written instructions to the witness:

In a moment, I am going to show you a group of photographs.

This group of photographs may or may not contain a picture of the person of interest in this investigation.

I do not know whether the person being investigated is included in this series.

It is just as important to clear innocent persons from suspicion as to identify guilty parties.

Keep in mind that individuals presented in the group may not appear exactly as they did on the date of the incident because features such as head and facial hair are subject to change. Also,

photographs may not always depict the true complexion of a person – it may be lighter or darker than shown in the photograph.

The photographs will be shown to you one at a time and are not in any particular order. Take as much time as you need to examine each photo. If you make an identification, I will continue to show you the remaining photos in the group.

Do not tell other witnesses that you have or have not identified anyone.

You should not feel you have to make an identification. If you do identify someone, I will have you designate the photograph of the person you have identified.

Regardless of whether you make an identification, we will continue to investigate the incident.

- H. If the lineup administrator is not an independent administrator due to extraordinary circumstances and does know the actual suspect, the administrator **should not read** the following sentence: “I do not know whether the person being investigated is included in this series.” The lineup administrator should then check the box indicating that this sentence was not read.
- I. Additionally when an independent administrator is not used, two blank photos (no person depicted) should be included in the photo array for a minimum of eight photos. Each photo should be inserted in a folder. The administrator should shuffle the folders before giving them to the witness. To avoid a predictable question from the witness, the administrator should tell the witness that there will be some blank photos included in the presentation, and that this is part of the normal procedure.

The administrator should position himself or herself away from the witness, and in a position that he or she cannot see inside the folders as they are viewed by the witness.

- J. After reading the instructions to the witness, the witness should be asked to sign the “Photographic Line-up Admonition Form” (Form #04/2008 24). If the witness refuses to sign, the independent administrator should indicate “refused to sign” and sign their name.
- K. Ensure that no one present exposes the witness to any suggestive behavior either by conduct, statements, information, or demeanor.
- L. Display the photographs in a secure, comfortable, well-lighted environment to one witness at the time.
- M. After all photos have been displayed and only if a witness requests it, the entire display may be shown once more in the same sequence as originally presented. The entire sequence should be presented even if the witness only requests to see one or a few photos again.
- N. If a photograph is selected/identified by the witness, have the witness circle the photograph number and write their initials.
- O. After the witness finishes viewing the photos, have the witness complete the remainder of the Photographic Line-up Admonition Form. The independent administrator should also sign the Photographic Line-up Admonition Form.
- P. Do not indicate to the witness any results or if they selected the right or wrong person in the investigation.
- Q. If a photograph is selected/identified, the administrator should advise the witness to give feedback in his/her own words regarding his/her level of confidence at the time of the identification. Ask, “How certain are you?”
- R. Document the process by investigative summary to include all conduct, gestures, and statements made by the witness. Video and audio taping of the process may be considered appropriate in certain circumstances.
- S. The photographs used in the photo array will be documented on an evidence voucher and stored as evidence in the investigation. Copies of the photographic lineup may also be maintained in the case file. If the

investigation requires showing other photograph lineups to the same witness, new lineups should be prepared with new fillers and the suspect should be placed in a new position.

### **PHYSICAL LINEUP – (02-53-04)**

This process utilizes actual individuals in a controlled environment and is completed only at a facility that has rooms designated for the process. The Johns Creek Police Department does not have access to such facilities, so therefore agency personnel are not authorized to conduct physical lineups. Our agency is not equipped to properly perform physical lineups in accordance with guiding rules and regulations. Physical lineups are the responsibility of the District Attorney's office and if needed will be conducted under the direction and authority of the Fulton County District Attorney's Office.

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