

Mississippi Office of State Public Defender: 2018 Spring Public Defender Conference ID Day Hypothetical Fact Pattern

You represent Demetrius Green. He is charged with one count of armed robbery, possession of a firearm during the commission of a crime of violence, one count of carrying a pistol, one count of possession with intent to distribute of crack cocaine, and one count of possession of unregistered ammunition.

According to police reports, on May 1, 2015 at 11:00pm in the 900 block of East Capitol Street, Juan Rivera was walking to the Metro. Two African American men approached him from behind. One of the men struck Mr. Rivera on the side of his head with a hard object and he fell to the ground. One of the men then yelled, "you know what time it is, give it up!" That man then pointed a gun in Mr. Rivera's face and took his wallet and iPhone, before kicking Mr. Rivera in the head and chest as Mr. Rivera covered up. Both men then ran off.

A Good Samaritan passerby noticed Mr. Rivera on the ground curled up in a ball and called 911. The police came and Mr. Rivera reported that he was robbed of his wallet containing \$40, IDs, a credit card, as well as his iPhone. He describes the robbers to the police on the scene as follows:

- The man with the gun was a light complected black male, early 20s, low haircut, wispy goatee, 5'8" - 5'10", 150-175 lbs with dark clothing and a red stripe on the arm of his shirt.
- The second robber was a black male in his teens or early twenties, about six feet tall, slim build, dark clothing.

Mr. Rivera describes the gun as a small black revolver with a silver handle.

The police put out a radio run with these descriptions and 20 minutes later, four blocks away, a group of three black males are spotted. As the police approach them, one (your client, Demetrius Green) turns quickly and walks away. Two officers draw their guns and yell for Mr. Green to stop, but he speeds up and continues around a corner, into an alley. As the police round the corner themselves, one of the two officers (Officer Lewis) sees Green throw an object into the bushes. Lewis catches Green, grabs him and puts him on the ground. Officers then search the bushes where they find four zips of crack cocaine. Officer Lewis asks Green, "What's this?" and he says, "that's my man Reggie's, I was just holding it for him."

They bring Green back to the corner where the other officers have stopped the other two men who did not flee. One of the three is light skinned with a goatee and has a black shirt with red stripes on the sleeves. His name is Reggie Ford, and he generally matches the description of the man with the gun.

The officers who stopped the three suspects radio to dispatch, "we have them stopped; we have suspects stopped who match the description, bring the victim around for confirmation."

Mr. Rivera is then placed in a squad car and driven to the corner where the three suspects are stopped. Reggie Ford is brought out and Rivera says, "Yeah, that's one of them, that's the one that beat me." Your client, Demetrius Green, is brought forward next, and Rivera says, "that looks like the second one, yeah." Rivera is never shown the third suspect and you never learn who that person is; Officer Lewis never writes a description of that person.

Back at the station, after being Mirandized, Ford confesses that he and Green robbed a Latino man of \$20 earlier in the evening near where they were stopped.

No forensic evidence of any value is collected.

You meet Green early the next morning at arraignment following his overnight detention. He is 27 years old, 5'9", 170 lbs, has dreadlocks down to his shoulders, a tattoo on his left hand that says "Laina" and a tattoo of a dragon on his right hand. He is wearing a royal blue shirt, jeans and a Redskins baseball cap.

You litigate and win *Miranda* and *Bruton* motions.

United States v. Demetrius Green – assignment

Exercise #1: Cross examination of Juan Rivera

Mr. Rivera's direct examination is consistent with his grand jury testimony and statement to the police except that

- (1) He testifies that \$200 was stolen from him;
- (2) The second robber had dreadlocks;
- (3) The gun was a silver handled revolver;
- (4) He was waking to metro after having met up with some friends to play soccer in the park;
- (5) He is on probation but is "doing well" because the judge has not revoked him.

Exercise #2: Cross examination of Officer Lewis

Officer Lewis' direct examination is consistent with his police reports and grand jury testimony except that

- (1) He had to tackle Green in the alley or else he would have gotten away;
- (2) Green ran away before we pulled out guns or yelled anything;
- (3) When asked about the pending investigation for use of force, Lewis keeps reiterating that "I never did anything wrong" not even acknowledging the charge;
- (4) Rivera's initial description of the second robber included 'dreadlocks';
- (5) He never showed River the third person stopped but that person didn't run and Officer Lewis is sure he put that person's name and description in his PD 163 the only report he wrote.
- (6) Green threw the object just as he started running, before he got to the alley.

IN THE SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA

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 IN THE MATTER OF:
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 UNITED STATES OF AMERICA:
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 v. :
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 DEMETRIUS GREEN
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 Defendant :
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Case No.
2015 CF3 1001

Washington, DC
Date: June 17, 2015

TESTIMONY OF JUAN RIVERA

This transcript was produced from audio
provided by D.C. Public Defender Services.

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After being called as a witness in the Grand Jury for the Superior Court for the District of Columbia, first being duly sworn, JUAN RIVERA testified as follows:

MR. EDGEWORTH: Mr. Rivera tell the ladies and gentlemen of the grand jury what you were doing that evening before you were robbed.

MR. RIVERA: That night I was walking to the Metro. It was late, maybe 10 pm. I had been at a friend's house for dinner. As I walked down East Capital street, I noticed two guys in an alley I walked by. They were whispering pointing at me as a went by. Once I got to the next block, I heard them running up behind me. One swung on me and hit me int eh head with a gun. I went down hard.

MR. EDGEWORTH: What did the men do to you once you were on the ground?

MR. RIVERA: Once I was on the ground, the one with the gun shoved it in my face, while the other guy went through my pockets. They took my wallet. It has IDs, my metro card, credit cards and about \$80 in it.

MR. EDGEWORTH: How did the encounter end?

MR. RIVERA: They both kicked me some as I curled up in a ball and then ran off together.

MR. EDGEWORTH: Can you describe what the men

1 who robbed you looked like?

2 MR. RIVERA: The man with the gun was a light
3 completed black male, early 20s, low haircut, wispy goatee, 5'8" – 5'10"
4 150-175 with dark clothing and a red stripe on the arm of his shirt.

5 MR. EDGEWORTH: And the second robber?

6 MR. RIVERA: The second robber was a black male in
7 his twenties, about six feet tall, slim build, dark clothing and something
8 covering his head.

9 MR. EDGEWORTH: What kind of gun did they use?

10 MR. RIVERA: Umm --

11 MR. EDGEWORTH: Just describe it as best as you
12 can.

13 MR. RIVERA: (No audible response).

14 MR. EDGEWORTH: Mr. Rivera, do you remember
15 speaking with me before we came down to the grand jury, in my office?

16 MR. RIVERA: Yes.

17 MR. EDGEWORTH: And do you remember telling
18 me upstairs about what the gun looked like?

19 MR. RIVERA: Um, kind of.

20 MR. EDGEWORTH: It was black?

21 MR. RIVERA: Yes.

22 MR. EDGEWORTH: You said it was a 9mm.

23 MR. RIVERA: (No audible response).

1 MR. EDGEWORTH: I can't hear you.

2 MR. RIVERA: Yeah.

3 MR. EDGEWORTH: So you told me that the gun was
4 a 9 mm black semi-automatic.

5 MS. JANET: Mm-hmm.

6 MR. EDGEWORTH: Could you say that to the ladies
7 and gentlemen of the grand jury?

8 MR. RIVERA: The gun was a 9 mm black semi-
9 automatic.

10 MR. EDGEWORTH: What happened when the police
11 arrived?

12 MR. RIVERA: The police came and waited with me
13 for a few minutes. Then over the radio I heard an officer say that they had
14 found the robbers and they needed me to come round for confirmation. I
15 was scared they guys would see me, but I was in the back of a police car
16 with tinted glass and we just drove by. I identified the two robbers

17 MR. EDGEWORTH: How sure were you that those
18 were the men that robbed you?

19 MR. RIVERA: I was 100% sure they were both
20 involved.

21 MR. EDGEWORTH: All right.

22 (All parties leave the room)

23 **END OF STATEMENT**

IN THE SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA

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 IN THE MATTER OF:
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 UNITED STATES OF AMERICA:
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 v. :
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 DEMETRIUS GREEN
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 Defendant :
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Case No.
2015 CF3 1001

Washington, DC
Date: June 17, 2015

TESTIMONY OF OFFICER LEWIS

This transcript was produced from audio
provided by D.C. Public Defender Services.

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1
2 After being called as a witness in the Grand Jury for the Superior Court for
3 the District of Columbia, first being duly sworn, OFFICER LEWIS testified
4 as follows:

5 MR. EDGEWORTH: Officer Lewis, tell the ladies and
6 gentlemen of the grand jury about the evening of May 1, 2015.

7 OFC. LEWIS: I was on routine patrol in Capitol Hill
8 when a call came over for an assault. Officer Jones got to the complainant
9 first and radioed in that the complainant had been attacked and robbed by
10 two men, one armed with a gun.

11 MR. EDGEWORTH: Was there a description of the
12 robbers?

13 OFC. LEWIS: The complainant described t the first
14 robber, the armed suspect, as a light complected black male, early 20s, low
15 haircut, wispy goatee, 5'8" – 5'10" 150-175 with dark clothing and a red
16 stripe on the arm of his shirt.

17 MR. EDGEWORTH: And was there a description
18 provided for the second robber?

19 OFC. LEWIS: The second robber was a black male in
20 his teens or early twenties, about five foot seven, slim build, dark clothing,
21 and something red covering on his head.

22 MR. EDGEWORTH: Did you encounter anyone that
23 matched that description that night?

1 OFC. LEWIS: My partner and I canvassed the area for
2 about 20 minutes. At that point, about four blocks away, we spotted a group
3 of four black males. We got out and approached them. Two of the four
4 spinted away from the group toward a nearby alley.

5 MR. EDGEWORTH: What did you do in response?

6 OFC. LEWIS: My partner and I drew our guns and
7 yelled for them to stop, but they sped up and continued around a corner,
8 into the alley. I pursued them while my partner stayed with the other two
9 we stopped.

10 MR. EDGEWORTH: Did you see the suspects you
11 were pursuing discard anything?

12 OFC. LEWIS: Umm --

13 MR. EDGEWORTH: In the bushes?

14 OFC. LEWIS: Ah, yes. As I came around the corner, I
15 saw an object flying into some bushes by a garbage dumpster in the alley.

16 MR. EDGEWORTH: Were you able to apprehend
17 anyone?

18 OFC. LEWIS: Yes.

19 MR. EDGEWORTH: Could you describe how that
20 occurred?

21 OFC. LEWIS: Defendant Green stopped as I yelled at
22 them to freeze, but the other guy ran away. When I came up to Defendant
23 Green he started giving me lip about harassing brothers in the area. Then, as

1 I started to handcuff him for officer safety, he began resisting me physically
2 and I had to take him down to the ground face first. I then handcuffed him.

3 MR. EDGEWORTH: Were you able to locate the
4 object you saw the Defendant throw?

5 OFC. LEWIS: When back-up arrived I searched the
6 bushes where Green threw the object and found four zips of crack cocaine.

7 MR. EDGEWORTH: Did you ask Defendant Green
8 about the zips of crack cocaine?

9 OFC. LEWIS: I asked Green, "What's this?" and he
10 said, "that's my man Reggie's, I was just holding it for him."

11 MR. EDGEWORTH: Did you ever conduct an
12 identification procedure with Defendant Green?

13 OFC. LEWIS: We brought Green back to the corner
14 where the other two were stopped. All three had dark clothes. My partner
15 had found a small revolver stashed nearby. I radioed back to Jones who was
16 with the complainant and let him know that we found the robbers and they
17 needed to bring the complainant round for confirmation.

18 MR. EDGEWORTH:/ Could you describe the
19 identification procedure for the grand jury?

20 OFC. LEWIS: I stood with Ford and then Green during
21 the show-up. We got confirmation from the officer in the car with the
22 complainant that both were positive IDs. We arrested them and searched
23 each. We found \$80 on Ford.

1

MR. EDGEWORTH: What happened next?

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OFC. LEWIS: I called crime scene and had them come

3

collect the evidence and then ordered transport to take Green and Ford

4

away.

5

MR. EDGEWORTH: Okay and Officer Lewis, are

6

there any pending investigations into any use of force during the course of

7

your duties?

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OFC. LEWIS: I am currently under investigation by

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internal affairs at MPD for excessive use of force during an arrest,

10

supposedly knocking a suspect to the ground where he fractured his elbow.

11

(All parties leave the room)

12

END OF STATEMENT

METROPOLITAN POLICE DEPARTMENT
WASHINGTON, D.C.

PD 173 Rev.

COMPLAINANT / WITNESS STATEMENT

1. COMPLAINT NO.

20150133442

2. NATURE OF INVESTIGATION

Robbery w/a

3. UNIT FILE NO.

4. STATEMENT OF: (Last, First, Middle)

Rivera, Juan

5. DOB

3/15/80

6. SEX

M

7. HOME ADDRESS

refused

8. HOME PHONE

9. EMPLOYMENT (Occupation and Location)

10. BUSINESS PHONE

11. LOCATION STATEMENT TAKEN

2D Station

12. NAME OF OFFICER TAKING STATEMENT (if other than block 10, include signature)

Det. Light Yacami

13. DATE/TIME STARTED

5/2/15, 01:15

14. STATEMENT

I was walking in the 900 block of East Capital street, headed to the Metro. I was coming from a bar where I had had a couple of drinks.

Two African American males approached me from behind. One of the men hit me on the side of his head with a hard object and I fell to the ground. That same man then yelled, "you know what time it is, give it up!" He then pointed a gun in my face and took my wallet and iphone. He then kicked me in the head and chest a few more times and I curled up in a ball. Both men then ran off.

The gun was a small black revolver with a silver handle. Someone came by and called 911 for me. The police came. I told the police what happened and I gave them a description of the robbers:

-the man with the gun was a light completed black male, early 20s, low haircut, wispy goatee, 5'8" -- 5'10" 150-175 with dark clothing and a red stripe on the arm of his shirt.

-the second robber was a black male in his teens or early twenties, about six feet tall, slim build, dark clothing. The robbers stole my wallet containing \$40, IDs and a credit card, as well as my iPhone.

Later that night, the police showed me two guys they stopped. When they showed me the first, I said, "Yeah that's one of them, the one that beat me." When they showed me the second I said, "that looks like the second one, yeah." saw a weapon. I have read the above statement and it is true to the best of my recollection.

15. I HAVE READ THIS STATEMENT GIVEN BY ME OR HAVE HAD IT READ TO ME. I FULLY UNDERSTAND IT AND CERTIFY THAT IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND RECOLLECTION. ("I UNDERSTAND THAT MAKING OF A FALSE STATEMENT IS PUNISHABLE BY CRIMINAL PENALTIES. D.C.



Signature of Person Giving Statement

16. DATE / TIME ENDED

17.

PAGE \ OF / PAGE

18. OFFICER OBTAINING THE SIGNATURE IN BLOCK 15:

19. PERSON WITNESSING THE SIGNATURE IN BLOCK 15:

(Name and Signature)

(Name and Signature)

Incident: May 1, 2103 @11pm

I was on routine patrol in Capital Hill when a call came over for an armed robbery. Officer Jones radioed in that the complainant had been attacked and robbed by two men, one armed with a gun.

The complainant described the robbers as:

-the man with the gun was a light completed black male, early 20s, low haircut, wispy goatee, 5'8" – 5'10" 150-175 with dark clothing and a red stripe on the arm of his shirt.

-the second robber was a black male in his teens or early twenties, about six feet tall, slim build, dark clothing.

My partner and I canvassed the area for about 20 minutes. At that point, about four blocks away, we spotted a group of three black males. We got out and approached them. One of the three (later identified as Demetrius Green) turned quickly and walked away. My partner and I drew our guns and yelled for Green to stop, but he sped up and continued around a corner, into an alley. I pursued him while my partner stayed with the other two we stopped. As I came around the corner, I saw Green throw an object into the bushes. I caught Green, grabbed him, and put him on the ground. Green slipped as he went to the ground and cut his face.

I handcuffed him for officer safety until back-up arrived. When it did, I searched the bushes where Green threw the object and found four zips of crack cocaine.

I asked Green, "What's this?" and he said, "that's my man Reggie's, I was just holding it for him."

We brought Green back to the corner where the other two were stopped. All three had dark clothes. My partner had found a small revolver stashed nearby. I radioed back to Jones who was with the complainant and let him know that we found the robbers and they needed to bring the complainant round for confirmation.

I stood with Ford and then Green during the show-up. We got confirmation from the officer in the car with the complainant that both were positiv IDs. We arrested them and searched each. We found \$80 on Ford.

I called crime scene and had them come collect the evidence and then ordered transport to take Green and Ford away.

DEFENDANT'S VERSION / REMARKS: (What did defendant say about the offense or his/her whereabouts at the time of offense? (Use PD 118 for defendant's written statement.))

RECORD CLERK'S NAME

ARREST RECORD SUMMARY

PROPERTY BOOK/PAGE NO. PRISONER'S PROPERTY ONLY

BAIL REFORM ACT CASES: Was a statement made by defendant in reference to his/her failure to appear? (If yes, include in Defendant's Version/Remarks Section above.)

PRINTED NAME - OFFICER MAKING STATEMENT	CAD	BADGE NUMBER	RANK	SIGNATURE OF REVIEWING OFFICIAL
Officer Marvin Lewis	9237	4607	OFF1	Sgt James M. Butler
SIGNATURE OF OFFICER MAKING STATEMENT	UNIT	DATE	UNIT	DATE
	3D	5/2/15	3D	6/7/14

COMPLETE ALL REQUIRED FIELDS AND MAKE FIVE COPIES FRONT TO BACK

GENERAL ORDER



DISTRICT OF COLUMBIA

Subject Procedures for Obtaining Pretrial Eyewitness Identification		
Topic	Series	Number
PCA	304	07
Effective Date April 18, 2013		
Replaces: General Order 304.7 (Procedures for Obtaining Pretrial Eyewitness Identification), Effective Date June 15, 2007		

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I. BACKGROUND

The Metropolitan Police Department (MPD) understands the critical role eyewitnesses play in our criminal justice system. Eyewitness identification is essential not only to establish probable cause for an arrest, but also to focus the investigation and obtain search warrants. Eyewitnesses may help exonerate the innocent, as well as inculcate the guilty. For these reasons, accurate and reliable eyewitness evidence is essential.

The purpose of this order is to establish procedures to promote the accuracy and reliability of eyewitness identifications.

While it is clear that current eyewitness identification procedures fully comport with federal constitutional requirements and decisions of the District of Columbia Court of Appeals, and produce accurate and reliable identifications, the adoption of this General Order may further enhance the accuracy and reliability of eyewitness identifications and thus strengthen the prosecution of cases. The issuance of this General Order shall in no way be used to imply that identifications made without these procedures, however, are inadmissible, inaccurate or unreliable.

II. DEFINITIONS

When used in this directive, the following terms shall have the meanings designated:

1. Blind – Method of conducting a photo array where the administrator of the photo array does not know which photo is of the suspect and which are fillers.
2. Confirmation Photo – The display of a single photograph, to confirm whom the witness means, when the perpetrator is known to the witness in a context other than the commission of the offense.
3. Critical/Serious Condition Viewing – A show-up that occurs when either the suspect or the witness is in the hospital in critical or serious condition.
4. Filler – A person or photograph of a person other than the suspect who generally fits the witness's description of the perpetrator or who has the same general characteristics as the suspect (age, weight, race, complexion, distinctive features).
5. Line-up – A group of six (6) or more persons, including one (1) or more suspects, and the remainder are fillers, who are displayed in person to a witness or witnesses.
6. Modified-blind – Method of conducting a photo array where the investigator conducting a photo array, because of procedural precautions taken, is unable to discern during the identification procedure which photograph the witness is viewing.
7. Other Identification Procedure – The display of a group of persons or photographs to the witness when the witness or investigator believes that the perpetrator may belong to a certain group but there is insufficient information to identify a suspect. Other identification procedures may include, but are not limited to, viewing a yearbook; team photographs; persons entering or leaving a certain building or other location.

8. Photo Array – A group of nine (9) or more individual photographs, or a live scan array, one (1) of which depicts the suspect and the remainder are fillers.
9. Second Sighting – A sighting of the perpetrator by a witness or complainant, on his/her own, some time after the offense.
10. Sequential Identification Procedure – A photo array or line-up in which only one (1) person or one (1) photograph at a time is displayed to the witness.
11. Show-up – The display of a single suspect to a witness within a reasonable amount of time after the offense.
12. Simultaneous Identification Procedure – A photo array or line-up in which all the persons or all photographs are displayed to the witness at the same time.
13. Witness – A person who has witnessed the offense or circumstances surrounding the offense and includes the victim of the offense.

III. REGULATION

For the purposes of this general order, identification procedures shall be categorized as show-ups (including critical condition viewing), second sightings, photo arrays, line-ups, confirmation photos, and other identification procedures.

IV. PROCEDURES

A. General Instructions for Investigators

1. Investigating members shall use the identification procedure that is likely to produce the most reliable identification under the circumstances.
2. When multiple persons or photographs are to be displayed to the witness, no single person or photograph shall stand out.
3. Except for line-ups, whenever there is more than one (1) witness, the investigator shall separate each witness from all of the others prior to any showing and give instructions regarding the identification procedures to each witness separately. If there are exceptional circumstances where this is not possible, the reasons shall be fully documented.

4. The investigator shall obtain a description of the perpetrator at the earliest possible time during the investigation and in all cases prior to conducting an identification procedure. The witness shall also be asked about the conditions under which he/she observed the perpetrator including location, time, distance, weather, lighting, and obstructions, if any.
5. The investigator shall ask the witness whether he or she needs glasses or contact lenses to see up close or for distance. If so, the investigator shall ask whether the witness was wearing them at the time of the offense and note if the witness is wearing them at the time of the identification procedure.
6. **All identification procedures** shall be conducted with each witness individually and privately. To the extent feasible, witnesses who have already participated in the identification procedure shall be separated physically from those who have not yet participated in the identification procedure.
7. If it is not possible under the circumstances to keep witnesses apart physically, a sworn member shall be posted to ensure that the witnesses do not talk to each other regarding any identification they may make or have made.
8. Neither the investigator nor any other member shall, at any time before, during or after the identification procedure, indicate to the witness by words, sounds, or actions, directly or indirectly, which person or photograph is the suspect.
9. Neither the investigator nor any other member shall indicate to the witness by words, sounds, or actions, directly or indirectly, whether the witness has identified "the right" person or "the wrong" person. This does not prevent the investigator or another member from informing the victim at any other time that an arrest has been made and the status of the case as required by the Victims' Rights Act of 2000 and the Omnibus Juvenile Justice Act of 2004, and keeping other witnesses similarly informed.
10. In order to ascertain the witness's level of confidence, where certainty is not evident, the investigator shall ask the witness: "What do you mean by "[insert the words the witness used]," such as "I think it's him" or "Maybe Number 2." The investigator may have to probe further if the witness's response does not convey the witness's level of confidence.
11. The investigator shall document the identification procedures thoroughly and completely, including:

- a. The date, time, and location of the procedure and the names of all persons present.
 - b. The conditions including weather, lighting, distance and obstructions, if any, when the identification procedure is being conducted outside.
 - c. The procedure employed (e.g., sequential photo array, simultaneous line-up, show-up).
 - d. The name and other identifying information (e.g., date of birth, PDID or other law enforcement identification number, date of photo used) of each person or photograph displayed to each witness.
 - e. If a photo identification procedure is used, the type of photo used (e.g., PDID, DMV Photo, yearbook, sports team photo).
 - f. The name and other identifying information (e.g., address, phone number) of each witness participating in the identification procedure.
 - g. The results of the procedure, including the exact words spoken by each witness and any expression, gesture, or body language such as pointing, nodding, shaking one's head, or showing emotion during the identification procedure.
 - h. The number of times that the witness views a sequential procedure.
12. The investigator shall preserve all photographs displayed to the witness(es) and the photograph and videotape of a line-up procedure.
 13. A new array should be used for each witness. However, where the witness signs and dates or otherwise writes on a photograph and circumstances are such that the same array must be subsequently displayed to another witness, make sure that such marks are not visible.

B. Identification Instructions given to Witness(es)

The investigator shall advise each witness participating in a show-up, photo array, line-up, or other identification procedure as follows:

1. Advise each witness not to discuss the identity or identification of the suspect with any other witness(es), either before or after the identification procedure.
2. Explain the identification procedure the investigator will use:
 - a. Show-up, including critical/serious condition viewing;
 - b. Photo array, either simultaneous or sequential;
 - c. Confirmation photo;
 - d. Line-up, either simultaneous or sequential; or
 - e. Other identification procedure.
3. Tell the witness that the perpetrator may or may not be present in the identification procedure.
4. Caution the witness that at times people (or photographs of people) may look different for many reasons (e.g., a hat, facial hair, age, or lighting of the photo). Witnesses should, therefore, try to focus on facial features.
5. Inform the witness to go at his/her own pace in viewing the photographs.
6. Instruct the witness to tell you if he/she sees the perpetrator; or anyone else in the array whom he/she recognizes.
7. Tell the witness that, if he/she selects a person or photograph, you may ask some follow up questions.
8. If you are using a sequential procedure, inform the witness that if he/she selects a photograph, you will ask him/her to view the remaining photographs or line-up participants.
9. Inform the witness that, if the witness selects a person or photograph, you will not tell the witness if he/she identified the "right" person or the "wrong" person.
10. Assure the witness that the Department will continue to investigate the offense regardless of whether the witness makes an identification or not.

11. At the conclusion of the procedure, remind the witness not to discuss the procedure or the results of the procedure with any other witness.

C. Show-ups

1. One (1) member shall be responsible for conducting and documenting any show-up identifications.
 - a. If a detective is on the scene, he or she shall remain on scene to conduct the show-up.
 - b. If there is no detective on the scene and the crime is a Part I felony that involves an unknown suspect, the member shall request a detective to respond to the scene to handle the show-up. If a detective is unavailable, the first unit on the scene shall fulfill that role.
2. In the event that a member makes a statement over the radio that suggests that the police have stopped the perpetrator and the statement is overheard by a witness, the member shall notify the detective who shall document the statements in the case file.
3. If a suspect is stopped within a reasonable amount of time of an alleged offense and within an area reasonably proximate to the scene of the crime:
 - a. If feasible, the witness(es) shall be brought to the place where the suspect(s) is being detained; or
 - b. The witness(es) and the suspect (s) shall be brought to a neutral location.
 - c. If it is necessary to bring the suspect(s) back to the scene of the crime, take measures to avoid potential contamination of the scene or exposure to the media.
4. If more than one (1) suspect is detained, each suspect shall be shown to each witness separately outside the hearing of other persons.
5. Ensure that the suspect is presented in the least suggestive manner possible under the circumstances.
6. Conduct the show-up.
7. If there is more than one (1) witness, the investigator shall determine whether, under the circumstances, a different identification procedure

shall be used for the remaining witnesses if one (1) or more of them make an identification.

8. As appropriate, arrest or release the suspect and provide all information to the reporting member for documentation in the original paperwork [e.g., PD Form 251 (Incident-Based Event Report), PD Form 252 (Supplement Report), PD Form 76 (Stop and Contact Report)].
9. Provide a list of all persons involved in the show-up procedure for documentation in the narrative, including the names and other identifying information of all persons who were stopped and released. Document the information required in Part IV.A.11 of this order (e.g., PD Form 251, PD Form 252, PD Form 76).

D. Critical/Serious Condition Viewing

1. If a suspect is admitted to a hospital in critical or serious condition and the hospital permits it, the witness(es) may be taken to the hospital for a show-up identification within a reasonable amount of time after the offense. Similarly, if a witness is admitted to a hospital in critical or serious condition, and the hospital permits it, the suspect may be taken to the hospital for a show-up identification within a reasonable amount of time after the offense.
2. The same procedures outlined for conducting and documenting show-up identifications outlined in Part IV.C.4-7 of this order shall be followed.

E. Second Sightings

1. As a general rule, a second sighting occurs when a witness on his/her own sees the perpetrator of a crime some time after the commission of the crime and notifies the police.
 - a. Members are allowed a reasonable amount of time from the time of this second sighting in which to attempt to locate the suspect.
 - b. If the suspect is not in the witness's line of sight when stopped, members may transport the witness to the suspect's location for a show-up identification. (If it is not feasible to transport the witness to the suspect, the suspect may be transported to the witness.)
 - c. Members shall conduct and document show-up identifications as outlined in Part IV.C.4-7 of this order.
 - d. Spontaneous Identifications

If a witness is driving around with a member and spots the perpetrator, the member shall request another unit to stop the subject. The member shall record exactly what the witness stated (e.g., "There he is right there, the one with the red hat"). The member shall also note if there were any other persons near the suspect when spotted by the witness.

2. When necessary, members shall initiate a flash look-out as a part of the second sighting identification procedure.

F. Photo Arrays

1. There are two (2) methods of conducting photo arrays: simultaneous and sequential. The investigator may elect which method to use.
2. Investigators shall conduct simultaneous and sequential photo arrays using a blind or modified-blind method unless it is not practicable to do so.
3. When preparing a photo array the investigator shall follow the following protocols:
 - a. Except in extraordinary circumstances (e.g., brothers), a photo array may not include more than one (1) person suspected of committing a particular crime or series of crimes.
 - b. Select eight (8) or more fillers who have the same general characteristics as the suspect (age, weight, race, complexion, distinctive features). The suspect's photograph shall not stand out from the others.
 - c. Avoid using fillers who so closely resemble the suspect, that a person familiar with the suspect might find it difficult to distinguish the suspect from the fillers. Uniformity of features is not required.
 - d. When a new suspect is identified and it is necessary to display a second or subsequent photo array to the same witness(es), do not use any filler whose photograph was included in an earlier array.
 - e. Ensure the suspect is positioned randomly in each array.
 - f. If a blind or modified blind procedure is not practicable, document the reasons why.

- g. If a modified-blind procedure is being used, have another member shuffle the order in which the photographs will be displayed (either simultaneously or sequentially) and give the array to the investigator in a folder or envelope so that the investigator does not know in which position the suspect appears. The array should be shuffled separately for each witness, if practicable.
- h. At the conclusion of the procedure:
 - (1) Complete the PD Form 122-A (Identification Instruction Viewing Sheet).
 - (2) Ask the witness to circle the photograph he/she has chosen, if any, in a simultaneous array and sign and date the back of it. Ask the witness to sign and date the back of photograph he/she has chosen, if any, in a sequential array. In both circumstances, the member shall also write the witness's exact words on the back of the photograph.
 - (3) Preserve the array or record the information regarding the array including the PDID numbers and dates the photographs were taken, and the order in which the photographs were displayed.

4. Simultaneous Photo Arrays

- a. When conducting a **blind simultaneous photo array**, the administrator shall:
 - (1) Give the instructions to the witness detailed in Part IV.B of this order.
 - (2) Explain how the procedure works and answer any questions the witness may have.
 - (3) Present the witness with the live scan array or other array.
- b. When conducting a modified-blind, simultaneous photo array, the investigator shall:
 - (1) Give the instructions to the witness detailed in Part IV.B of this order.

- (2) Explain how the procedure works and answer any questions the witness may have.
- (3) Hand the folder that contains the photographs that were shuffled by someone else to the witness.
- (4) Stand behind and to the right or left of the witness so that he/she cannot tell which photograph the witness is looking at. Any other method by which the investigator cannot tell which photograph the witness is looking at also is acceptable.

5. Sequential Photo Arrays

- a. When conducting a **blind, sequential photo array**, the administrator shall:
 - (1) Give the instructions to the witness detailed in Part IV.B of this order.
 - (2) Explain how the procedure works and answer any questions the witness may have.
 - (3) Give/display the photographs to the witness and instruct him/her to view them one (1) at a time, turning over each photograph before the next one (1) is viewed. Any other system that displays photographs one (1) at a time is also acceptable.
 - (4) If the witness identifies a photograph as that of the perpetrator before viewing all of the photographs, the administrator shall instruct the witness to continue through the remainder of the photographs or shall display the remaining photographs to the witness.
 - (5) If the witness proceeds through the array, and asks to review the array again, the array may be reviewed again in its entirety, as many times as the witness asks to do so.
- b. When conducting a modified-blind, sequential photo array, the investigator shall:
 - (1) Have another member scramble/shuffle the photographs and record the new order before returning the array/folder back to the investigator.

- (2) Have the other member place the photographs in a stack in a folder/envelope.
- (3) Give the instructions to the witness detailed in Part IV.B of this order.
- (4) Explain how the procedure works and answer any questions the witness may have.
- (5) Hand the folder/envelope to the witness.
- (6) Ask the witness to remove the photographs from the folder/envelope and look at them one (1) at a time in a manner that will not permit the investigator to see it, and either move each photograph to the back of the stack or turn it over when he/she has finished looking at it.

G. Confirmation Photographs

1. A confirmation photograph can be used when the perpetrator is known to the witness in a context other than the commission of the crime.
2. The investigator shall ascertain and record how long and under what circumstances the witness has known or is acquainted with the perpetrator. If the investigator is satisfied that the witness is sufficiently familiar with the perpetrator, he or she may proceed with a confirmation photograph.
3. The investigator shall obtain a photograph of the person named/described/identified by the witness as the perpetrator and present it to the witness to confirm that this is the person to whom he/she referred.
 - a. The photo may be any photograph of the person named/described/identified as the perpetrator including, but not limited to, a snapshot, family photo, Department of Motor Vehicle (DMV) photo, school yearbook photo, work photo, government photo, police photo or passport photo.
 - b. Efforts shall be made to obtain a recent photograph of the perpetrator. To the extent practicable, a photograph shall be displayed in a way that does not reveal the name of the person depicted.

H. Other Identification Procedures

Depending on the circumstances of a case other identification methods may be used to identify a perpetrator.

1. If the perpetrator was wearing a team jacket, it would be appropriate to show the witness a photograph of the team to see if the perpetrator is seen in the photograph.
2. When information is provided that the perpetrator attends a particular school, it would be appropriate to show the witness a yearbook from that school.
3. If there is reason to believe the perpetrator is employed or attends school at a particular place, the investigator and witness may observe persons entering and leaving that work place or school.

I. Line-up Procedures

1. The papering member is responsible for requesting a line-up order to be presented to a judge for signature. If witnesses to multiple offenses are to view the line-up, the papering member must provide information to the U.S. Attorney's Office (USAO) or the Office of the Attorney General (OAG) pertaining to each separate offense, including the lead charge, date, time, location, and names of the witnesses.
 - a. Special line-ups - Special line-ups are used when the defendant has one (1) or more physical characteristics that are so unusual that extra attention may be required to find line-up fillers. See Attachment B of this order.
 - b. Regular line-ups - Regular line-ups are used when the description of the defendant is general and generic enough that several defendants can stand in the same line-up without drawing undue attention to any one (1) of them. Regular line-ups may have several suspects accused of committing different offenses but, except in extraordinary circumstances (e.g., brothers), shall not have more than one (1) person accused of committing a particular crime or series of crimes in it. See Attachment B of this order.
2. Obtaining fillers - It is necessary for officials of the Department to assist each other by providing members to stand in line-ups as fillers. Officers who fit the same general description as the suspect (age, height, weight, race, complexion, distinctive features) will be required to stand as fillers so that a fair and impartial line-up can be constructed.

Selection to stand as a filler in a line-up is a duty assignment and shall be responded to as such. See Attachment B of this order.

- a. The line-up administrator may use other sources of fillers, including but not limited to the USAO, the OAG, and the Court Services and Offender Supervision Agency.
- b. If it is necessary to display a second or subsequent line-up to the same witness(es), the line-up administrator shall not use any filler who was used in an earlier line-up.

J. Composing Line-ups

In composing a line-up, the line-up administrator shall abide by the following protocols:

1. Except in unusual circumstances (e.g., brothers), a line-up shall not include more than one (1) person suspected of committing a particular crime or series of crimes, but may include persons suspected of committing totally separate crimes or series of crimes.
2. Five (5) fillers who fit the general description of the suspect (age, weight, race, complexion, distinguishing features) shall be used, unless more than one (1) suspect will stand in the line, in which case eight (8) fillers shall be used. The suspect (s) shall not stand out from the others.
3. A unique or unusual characteristic (e.g., a scar or tattoo) of a suspect shall be concealed or replicated if possible. Replicated characteristics do not have to be identical, but shall resemble that of the suspect's characteristic.
4. Fillers shall not be used who so closely resemble the suspect that a person familiar with the suspect might find it difficult to distinguish the suspect from the fillers.
5. Position the suspect(s) randomly in each line-up.
6. When showing a different suspect to a witness, do not use any filler who was shown to the witness in an earlier photo array or line-up.

K. Conducting the Line-up

1. There are two methods of conducting line-ups: simultaneous or sequential. The line-up administrator may elect which method to use.

2. In conducting a simultaneous line-up procedure, the line-up administrator shall:
 - a. Give the instructions to the witness detailed in Part IV.B of this order.
 - b. Explain that the entire line will be shown to the witness at one time.
 - c. Inform the witness that he/she can ask the persons in the line to do or say something.
 - d. Explain how this procedure will work and answer any questions the witness may have.
 - e. Display the line to the witness(es).
 - f. If the witness requests that one person do or say something, tell all persons in the line-up to do or say the same thing.
3. In conducting a sequential line-up procedure, the line-up administrator shall:
 - a. Give the instructions to the witness detailed in Part IV.B of this order.
 - b. Explain that the people in the line-up will be shown to the witness one at a time and that everyone in the line-up will be shown to the witness.
 - c. Inform the witness that he/she can ask the persons in the line-up to do or say something, and they all will be asked to do or say the same thing.
 - d. Explain how this procedure will work and answer any questions the witness may have.
 - e. Display the persons to the witness one (1) at a time.
 - f. If and when the witness identifies a person as the perpetrator, remind the witness that the remaining persons will be displayed to the witness.

NOTE: If the witness views all of the persons in the line-up and asks to review the line again, the line may be presented again in its entirety, as many times as the witness asks to see it.

- g. If the witness requests that one person do or say something, tell all the remaining persons in a sequential line-up to do or say the same thing.

L. Notifying Witnesses of Line-ups

The papering member shall:

1. Notify the victim/witness of the date and time to attend the line-up.
2. Inform witnesses **not** to arrive at MPD Headquarters earlier than the scheduled time. See Attachment B of this order.
3. Inform a witness who sees the suspect or any filler when he or she is arriving that he/she will not be allowed to view the line-up.

M. Interviewing Witnesses at Line-ups

1. The defense is **not** permitted to interview the victim/witnesses while on Department property before, during, or after the line-up.
2. Witnesses who want to speak with defense members shall not be stopped from doing so. However, the witness may be informed that he/she is not required to speak to anyone, either from the defense or prosecution.
3. No information about the victim's/witness's identity shall be provided to the defense.
4. Defense investigators will not be allowed to view the line-up proceedings without a written court order.

N. Legal Counsel Responsibilities for Line-ups

1. The USAO or the OAG is responsible for:
 - a. Preparing an order for a judge's signature for a defendant to appear in a line-up.
 - (1) The line-up order shall instruct the defendant not to change his appearance before the line-up.
 - (2) When the defendant is in custody, the order shall direct the United States Marshals Service to bring the suspect

to MPD Headquarters and return him/her to the Department of Corrections.

- b. Ensuring that the defense counsel and the defendant are served with the order.
- c. Having a representative present during a court-ordered line-up.

NOTE: The line-up will commence whether an Assistant United States Attorney or an Assistant Attorney General is present or not.

2. Presence of Counsel during Line-ups

- a. The United States Supreme Court has ruled that a line-up is a critical part of a criminal prosecution and that the defendant has the right to have his/her attorney present during the line-up.
- b. The USAO/OAG will notify the defense attorney of the date, time and location of the line-up at the time of presentment. If the defense attorney or his designee is not present for a line-up, another defense attorney present in the line-up room shall be asked to act as stand-in counsel.
- c. If no such defense attorney is present, the line-up administrator shall call the Defender Services Office (DSO) to request that stand-in counsel be sent over immediately.
- d. If the DSO Office is not able to do so, the line-up administrator shall contact the Chambers of the Chief Judge of the Superior Court for assistance.
- e. A line-up **shall not** be conducted unless a defense attorney is present.

O. Major Violators Section Line-up Responsibilities

1. The Section Administrator, Major Violators Section shall:
 - a. Ensure members conduct line-ups in a fair and impartial way.
 - b. Provide adequate staffing to cover line-ups.
 - c. Maintain order throughout proceedings.

- d. Respond to the United States Attorney's Office and the Office of the Attorney General, Court Papering, each work day to pick up all pending Court Ordered Line-up SC-1 Forms (U.S. Department of Justice Line-up Sheet).
 - e. Submit a teletype message regarding line-up fillers, on the same day the request was received, with authorization from the Assistant Chief of Police, Investigative Services Bureau, providing the date, time and physical description of officers (fillers) needed for the line-up.
 - f. Ensure that line-ups are set properly; the date, time and line-up information on the letter board is correct; an armed, full-duty member is positioned and assigned to secure the defendant; and that order is maintained.
2. Members assigned to the Major Violators Section shall:
- a. Conduct all court -ordered line-ups in a fair and impartial way.
 - b. Verify the accuracy of the offense time, date and location and victim/witness names, when presented.
 - c. Prepare a jacket for each line-up with a PD Form 122 (Court-Ordered Line-ups) for each victim/witness that will attend the line-up, and take all measures to safeguard the victim/witness information.
 - d. Notify the Watch Commander, Criminal Investigations Division (CID), of all line-ups, and if needed the Watch Commander, CID, shall notify the Field Commander if additional personnel are needed.
 - e. Ensure that the line-up room is ready, the witness sheets are properly prepared, and the audio/video equipment is in working order. Filler officers and the suspect, if on release, shall be greeted on the C-Street side of the 4th floor and escorted to the line-up waiting room.
 - f. Make certain all line-ups are video-recorded.
- P. District Commander Line-up Responsibilities

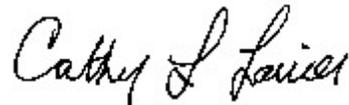
District commanders shall query their units and notify the Major Violators Section of the names of the members available to be detailed as fillers or notification that no fillers are available.

V. CROSS REFERENCES

- A GO-SPT-302.02 (Radio Broadcasts and Flash Look-Outs)
- B. General Order 302.04 (Transmitting of Telecommunications Messages)
- C. General Order 304.01 (Operation and Management of Criminal Investigations)
- D. GO-OPS- 304.10 (Confidential Sources, Confidential Informants, and Cooperating Witnesses)

VI. ATTACHMENTS

- 1. Attachment A: PD Form 122-A (Photograph Identification Viewing Sheet)
- 2. Attachment B: (List of Line-up Reporting Times and Location)



Cathy L. Lanier
Chief of Police

CLL:PAB:MOC

METROPOLITAN POLICE DEPARTMENT
Criminal Investigations Division

PHOTOGRAPH IDENTIFICATION VIEWING INSTRUCTION SHEET

UNIT _____ ADMINISTRATOR _____

In a moment, you will be shown some photographs. The group of photographs may or may not contain a photograph of the person who committed the crime of which you are the victim/witness. Sometimes a person looks different in a photograph than in real life because, for example, the perpetrator was wearing a hat at the time, or his/her hairstyle, facial hair, weight or age have changed. Keep in mind that how a photograph was taken or developed may make a person's complexion look lighter or darker than it looks in real life. So pay attention to facial features.

Take as much or as little time as you need to look at each photograph. Do not assume that I know who the perpetrator is. Let me know if you see the person who committed the crime. If you pick out one of the photographs, I may ask you some follow-up questions. I cannot tell you whether you picked the "right" person or the "wrong" person. The Metropolitan Police Department will continue to investigate this crime whether or not you pick someone from the group of photographs. Tell me too if you see anyone else you recognize.

[For sequential photo arrays only: I am going to show the photographs to you one at a time. Our regulations require that you look at all of the photographs in this array. So if you select one of the photographs before you get to the end, I will still ask you to look at the rest.]

Please do not to discuss this procedure or any photograph you selected (or did not select) with [the victim or] any other witness to this crime.

Do you have any questions before we begin?

PHOTO ARRAY (SHOWN IN THE FOLLOWING PDID # ORDER, IF APPLICABLE)

- | | |
|----------------|----------------|
| 1. PDID# _____ | 6. PDID# _____ |
| 2. PDID# _____ | 7. PDID# _____ |
| 3. PDID# _____ | 8. PDID# _____ |
| 4. PDID# _____ | 9. PDID# _____ |
| 5. PDID# _____ | |

Line-up Reporting Times and Location

I. Special Line-ups:

- Special line-ups are scheduled on Tuesdays, Wednesdays, and Thursdays at 1300 hours.
- Victims/Witnesses for a special line-up are to respond to MPD headquarters at 1245 hours.

II. Regular Line-ups:

- Regular line-ups are scheduled on Tuesday and Wednesday evenings at 1800 hours.
- Victims/witnesses for a regular line-up are to respond to MPD headquarters at 1745 hours.

III. Officers and Other Persons Serving as Fillers:

- In a special line-up shall report to MPD headquarters at 1200 hours.
- In a regular line-up shall report to MPD headquarters at 1700 hours.
- To avoid being seen by witnesses, enter MPD headquarters on the C Street, NW side of the building and use the elevator bank directly in front of that entrance to the 4th floor where they will be met by a member of the Major Violators Section and taken to the line-up room.

IV. Notifying Witnesses:

Instruct witnesses to enter MPD Headquarters on the Indiana Avenue, NW, side of the building and use the elevator bank directly in front of that entrance.