

## Eyewitness Identification

### 604.1 PURPOSE AND SCOPE

This policy sets forth guidelines to be used when Deputies of this office employ eyewitness identification techniques.

#### 604.1.1 DEFINITIONS

Definitions related to this policy include:

**Eyewitness identification process** - Any field identification, live lineup or photographic or video identification.

**Field identification** - A live presentation of a single individual to a witness following the commission of a criminal offense for the purpose of identifying or eliminating the person as the suspect.

**Live lineup** - A live presentation of individuals to a witness for the purpose of identifying or eliminating an individual as the suspect.

**Photographic or Video lineup** - Presentation of photographs or video to a witness for the purpose of identifying or eliminating an individual as the suspect.

### 604.2 POLICY

The Montgomery County Sheriff's Office will strive to use eyewitness identification techniques, when appropriate, to enhance the investigative process and will emphasize identifying persons responsible for crime and exonerating the innocent.

### 604.3 INTERPRETIVE SERVICES

Deputies should make a reasonable effort to arrange for an interpreter before proceeding with eyewitness identification if communication with a witness is impeded due to language or hearing barriers.

Before the interpreter is permitted to discuss any matter with the witness, the investigating Deputy should explain the identification process to the interpreter. Once it is determined that the interpreter comprehends the process and can explain it to the witness, the eyewitness identification may proceed as provided for within this policy.

### 604.4 EYEWITNESS IDENTIFICATION FORM

The Criminal Investigations Division Director shall be responsible for the implementation of an eyewitness identification process for use by Deputies when they are conducting eyewitness identifications.

The process and any related forms or reports shall comply with current laws.

# Montgomery County Sheriff's Office

## Policy Manual

### *Eyewitness Identification*

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#### 604.4.1 PROCESS REQUIREMENTS

The Criminal Investigations Division Director shall implement procedures to ensure lineups are conducted consistent with the requirements of current laws.

#### **604.5 EYEWITNESS IDENTIFICATION**

Deputies are cautioned not to, in any way, influence a witness as to whether any subject or photo presented in a lineup is in any way connected to the case. Deputies should avoid mentioning that:

- The individual was apprehended near the crime scene.
- The evidence points to the individual as the suspect.
- Other witness have identified or failed to identify the individual as the suspect.

In order to avoid undue influence, witnesses should view suspects or a lineup individually and outside the presence of other witnesses. Witnesses should be instructed to avoid discussing details of the incident or of the identification process with other witnesses.

Whenever feasible, the eyewitness identification procedure should be audio and/or video recorded and the recording should be retained according to current evidence procedures. Video should be used unless a video record is not practical. If neither an audio nor a video record is practical, the reasons shall be documented by the administrator along with a written record of the procedure.

#### **604.6 PHOTOGRAPHIC LINEUP AND LIVE LINEUP CONSIDERATIONS**

The Deputy presenting the lineup should not be directly involved in the investigation of the case nor should he/she know which photograph or person is the suspect.

Other persons or photos used in any lineup should bear similar characteristics to the suspect to avoid causing him/her to unreasonably stand out. In cases involving multiple suspects, a separate lineup should be conducted for each suspect. The suspects should be placed in a different order within each lineup.

The Deputy presenting the lineup should do so sequentially and not simultaneously (i.e., show the witness one person at a time). The witness should view all persons in the lineup.

The order of the suspect or the photos and the fillers should be randomized before being presented to each witness.

A live lineup should only be used before criminal proceedings have been initiated against the suspect. If there is any question as to whether any criminal proceedings have begun, the investigating Deputy should contact the appropriate prosecuting attorney before proceeding.

#### 604.6.1 STATE REQUIREMENTS

All lineups shall be conducted consistent with current law including:

## *Eyewitness Identification*

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- (a) No one present during a lineup shall know the suspect's identity, except the eyewitness and the suspect's counsel, as required by law.
- (b) No writings or information concerning any previous arrest, indictment or conviction of the suspect shall be visible or made known to any eyewitness.
- (c) Any identifying actions such as speech, gestures or other movements shall be performed by all live lineup participants.
- (d) All live lineup participants shall be out of view of any eyewitness prior to a lineup beginning.
- (e) If an eyewitness identifies a person as the perpetrator, the lineup administrator shall not provide any information to the eyewitness concerning the person before the administrator obtains the eyewitness's statement of how certain he/she is of the identification or non-identification.

If an eyewitness refuses to sign an eyewitness identification form, the lineup administrator shall note the refusal and shall also sign the acknowledgement.

### **604.7 FIELD IDENTIFICATION CONSIDERATIONS**

Field identifications, also known as show-ups, may be helpful in certain cases where exigent circumstances make it impracticable to conduct a photo or live lineup identifications. A show-up should not be used when independent probable cause exists to arrest a suspect. When probable cause for an arrest exists, a live or photo lineup is the preferred course of action if eyewitness identification is contemplated.

When initiating a field identification, the Deputy should observe the following guidelines:

- (a) Obtain a complete description of the suspect from the witness.
- (b) Assess whether a witness should be included in a field identification process by considering:
  - 1. The length of time the witness observed the suspect.
  - 2. The distance between the witness and the suspect.
  - 3. Whether the witness could view the suspect's face.
  - 4. The quality of the lighting when the suspect was observed by the witness.
  - 5. Whether there was distracting noise or activity during the observation.
  - 6. Any other circumstances affecting the witness's opportunity to observe the suspect.
  - 7. The length of time that has elapsed since the witness observed the suspect.
- (c) If safe and practicable, the person who is the subject of the show-up should not be handcuffed or in a patrol vehicle.
- (d) When feasible, Deputies should bring the witness to the location of the subject of the show-up, rather than bring the subject of the show-up to the witness.

# Montgomery County Sheriff's Office

## Policy Manual

### *Eyewitness Identification*

---

- (e) The person who is the subject of the show-up should not be shown to the same witness more than once.
- (f) In cases involving multiple suspects, witnesses should only be permitted to view the subjects of the show-up one at a time.
- (g) The person who is the subject of the show-up should not be required to put on clothing worn by the suspect, to speak words uttered by the suspect or to perform other actions mimicking those of the suspect.
- (h) If a witness positively identifies a subject of a show-up as the suspect, Deputies should not conduct any further field identifications with other witnesses for that suspect. In such instances Deputies should document the contact information for any additional witnesses for follow-up, if necessary.

#### **604.8 DOCUMENTATION**

A thorough description of the eyewitness process and the result of any eyewitness identification should be documented in the case report. Witness comments of how certain he/she is of the identification or non-identification should be quoted in the report.

If a photographic lineup is utilized, a copy of the photographic lineup presented to the witness should be included in the case report. In addition, the order in which the photographs were presented to the witness should be documented in the case report.

Documentation of any field identification, including video, audio or in writing, shall meet the requirements of current law.