

105.70 LIVE LINEUP REQUIREMENTS. N.C. Gen. Stat. § 15A-284.52.

NOTE WELL: When evidence of compliance or noncompliance with the requirements of this section has been presented at trial, the jury shall be instructed that it may consider credible evidence of compliance or noncompliance to determine the reliability of eyewitness identifications. See N.C. Gen. Stat. § 15A-284.52(d)(3).

The evidence in this case shows that a live lineup was conducted. A live lineup is a procedure in which a group of people is displayed to an eyewitness for the purpose of determining if the witness is able to identify the perpetrator of a crime.¹ A live lineup conducted by a local law enforcement agency is required to meet all of the following requirements:

1. A live lineup shall be conducted by an independent administrator. An independent administrator is person who administers a lineup, and who is not participating in the investigation of the criminal offense and is unaware of which person in the lineup is the suspect.
2. Individuals shall be presented to witnesses sequentially, with each individual presented to the witness separately, in a previously determined order, and removed before the next individual is presented.
3. Before a lineup, the eyewitness² shall be instructed that:
 - a. The perpetrator might or might not be presented in the lineup,
 - b. The lineup administrator does not know the suspect's identity,

- c. The eyewitness should not feel compelled to make an identification,
- d. It is as important to exclude innocent persons as it is to identify the perpetrator, and
- e. The investigation will continue whether or not an identification is made.

The eyewitness shall acknowledge the receipt of the instructions in writing. (If the eyewitness refuses to sign, the lineup administrator shall note the refusal of the eyewitness to sign the acknowledgement and shall also sign the acknowledgement.)

4. The lineup shall be composed so that the individuals who are not the suspect, called "fillers," generally resemble the eyewitness's description of the perpetrator, while ensuring that the suspect does not unduly stand out from the fillers. In addition:

- a. All fillers selected shall resemble, as much as practicable, the eyewitness's description of the perpetrator in significant features, including any unique or unusual features.

- b. At least five fillers shall be included in a live lineup, in addition to the suspect.

- c. If the eyewitness has previously viewed a photo lineup or live lineup in connection with the identification of another person suspected of involvement in the offense, the fillers in the lineup in which the current suspect participates shall be different from the fillers used in any prior lineups.

5. If there are multiple eyewitnesses, the suspect shall be placed in a different position in the lineup for each eyewitness.
6. In a lineup, no writings or information concerning any previous arrest, indictment, or conviction of the suspect shall be visible or made known to the eyewitness.
7. In a live lineup, any identifying actions, such as speech, gestures, or other movements, shall be performed by all lineup participants.
8. Only one suspect shall be included in a lineup.
9. Nothing shall be said to the eyewitness regarding the suspect's position in the lineup or regarding anything that might influence the eyewitness's identification.
10. The lineup administrator shall seek and document a clear statement from the eyewitness, at the time of the identification and in the eyewitness's own words, as to the eyewitness's confidence level that the person identified in a given lineup is the perpetrator. The lineup administrator shall separate all witnesses in order to discourage witnesses from conferring with one another before or during the procedure. Each witness shall be given instructions regarding the identification procedures without other witnesses present.
11. If the eyewitness identifies a person as the perpetrator, the eyewitness shall not be provided any information concerning the person before the lineup administrator obtains the eyewitness's confidence statement about the selection. There shall not be anyone present during the live lineup identification procedure who knows the suspect's identity, except the eyewitness and counsel as required by

law.

12. Unless it is not practical, a video record of live identification procedures shall be made. If a video record is not practical, the reasons shall be documented, and an audio record shall be made. If neither a

video nor an audio record are practical, the reasons shall be documented, and the lineup administrator shall make a written record of the lineup.

13. Whether video, audio, or in writing, the record shall include all of the following information:

a. All identification and nonidentification results obtained during the identification procedure, signed by the eyewitness, including the eyewitness's confidence statement. (If the eyewitness refuses to sign, the lineup administrator shall note the refusal of the eyewitness to sign the acknowledgement and shall also sign the notation.)

b. The names of all persons present at the lineup.

c. The date, time and location of the lineup.

d. The words used by the eyewitness in any identification, including words that describe the eyewitness's certainty of identification.

e. Whether it was a photo lineup or live lineup and how many photos or individuals were presented in the lineup.

f. The sources of all persons used.

Evidence has been presented concerning compliance or noncompliance with the requirements for administration of a live lineup to an eyewitness. You may consider what evidence you find to be credible concerning compliance or noncompliance with such requirements in determining the reliability of eyewitness identification.

1. N.C. Gen. Stat. § 15A-284.52(a)(6).

2. An eyewitness is a person whose identification by sight of another person may be relevant in a criminal proceeding.