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New Zealand
POLICE
Nga Pirihimana O Aotearoa

Manual of Best Practice

Volume Two

INVESTIGATION SUPPORT

IDENTIFICATION OF OFFENDERS

INTRODUCTION	313
LEGISLATION	313
Statutory warning regarding caution	313
Attendance at identification parade	313
Requirement to provide particulars.....	314
Judge to warn jury	314
Establishing roles of each suspect in a large group	314
IDENTIFICATION METHODS.....	315
Formal parade.....	315
Procedure	315
Before the parade.....	316
At the parade	316
After the parade	316
Refusal.....	316
Informal identification	317
Procedure	317
Admissibility	317
Photographic identification	318
Procedure	318
Status of photographic evidence	319
Statements	319
Other methods	320
Fingerprints	320
DNA	320

INTRODUCTION

This chapter discusses the law and procedures relating to the identification of offenders.

The chapter will focus on formal identification parades, informal identification and identification by photograph. It will also briefly cover fingerprint identification and scientific identification. Remember that you can expect to have your actions carefully scrutinised in subsequent court cases.

Where there are large numbers of suspects, these methods can also be used to establish the role each suspect played at the scene.

LEGISLATION

Statutory warning regarding caution

Where evidence of the defendant's involvement in a crime is based principally on evidence of the defendant's identity, and the defendant disputes that evidence, the court must be cautious about convicting him or her solely on the basis of that evidence.
Summary Proceedings Act 1957 s67A

Attendance at identification parade

It must be voluntary

No person charged with an offence can be compelled to attend an identification parade.

Crimes Act 1961 s344B(1)

'Charged with an offence' is restricted to the offence for which evidence of identification is required.

For example, a suspect who refused to take part in an identification parade was placed among a group of people at a periodic detention centre, where he was informally identified by a witness. The court refused to admit the evidence because he had been charged with an offence and had not been free to object to an identification taking place for that offence.

R v Curran (1988) 3 CRNZ 6318/88

On the other hand, a victim identified the offender for one offence while he sat in Court charged with another offence. This evidence was admissible, because the principle of fairness was not disregarded.

R v Tuboe (1988) 3 CRNZ 581

A solicitor may be present

Any person charged with an offence who attends an identification parade is entitled to have his or her solicitor present.

Crimes Act 1961 s344B(2)

The accused must be advised of rights

An accused person must be advised of his or her rights in relation to the identification parade.

R. v Mei (1990) 3 NZLR 16

No adverse comment on refusal

If a person charged with an offence refuses to attend an identification parade, no comment adverse to the person charged shall be made.

Crimes Act 1961 s344B(3)

Requirement to provide particulars

For the purposes of this section, an identification witness is a person who claims to have seen the offender in the circumstances of the offence.

Crimes Act 1961 s344C(1)

If the defendant or person acting on his or her behalf so requests, the prosecutor must supply:

- the name and address of each identification witness, whether or not that witness will be called
- each witness' written description of the offender
- a copy of any identikit picture or other drawing made by any such witness.

Crimes Act 1961 s344C(2)

The judge may make an order excusing the prosecutor from supplying the name and address of an identification witness if he or she is satisfied that the order is necessary to protect the witness or any other person.

Crimes Act 1961 s344C(3)

Judge to warn jury

If the case depends wholly or substantially on visual identification, the judge must warn the jury to be cautious about convicting the defendant. The warning need not be in any particular words but must:

- include the reason for the warning; and
- make the jury aware that a mistaken witness can be convincing; and
- if there is more than one identification witness, point out that they could all be mistaken.

Crimes Act 1961 s344D

Establishing roles of each suspect in a large group

The courts have held that in exceptional circumstances where crimes have been committed by gangs or large groups, officers who were present at the scene can hold a formal identification parade to establish the role each suspect played. The purpose of the parades is not to identify suspects but rather to establish whether additional charges should be laid against individual suspects.

Evidence of such parades should not be given in any resulting criminal proceedings.

IDENTIFICATION METHODS

Formal parade

Formal identification parades are fair and carry more evidential weight than other methods.

Procedure

The identification parade should, if possible, be conducted by a non-commissioned officer. The O/C Case can be present, but must not take part in the proceedings.

In the following procedures, the term suspect includes people who have been charged.

Before the parade

The O/C Parade must choose eight or more participants who are:

- Of the same race as the suspect.
- Of similar age, height, general appearance and social grouping as the suspect.
- Not police members.

If the same witness is to view more than one parade, different participants must be used in each.

The suspect must be advised that:

- He or she is entitled to:
 - refuse to take part in the parade
 - have a solicitor present.
- The parade will, where practicable, be photographed if the suspect so requests or is not represented by counsel.

The witnesses must not be:

- Allowed to see the suspect before he or she is placed in the parade.
- Influenced by any opinion, or written or verbal description, from the police.
- Asked any leading questions that would draw their attention to any distinctive physical characteristic of the suspect.

If a witness does not feel able to face the participants directly, a one-way glass viewing facility may be used, where available, and the following procedure adapted accordingly.

At the parade

The O/C Parade must:

- Ask the participants to stand about one metre apart and, if it will assist the witness, to:
 - wear or remove their hats
 - speak
 - walk individually.
- Tell the participants the reason for any photographs and assure them that the negatives and prints will be adequately secured, and destroyed when no longer required.
- Ensure that the venue has good light.

The suspect must be:

- Asked if he or she objects to any of the participants or the way they are arranged.
- Invited to stand where he or she wishes and change position after each witness has viewed the parade.

No more than two suspects of similar appearance can be placed on the same parade.

The witnesses must be:

- Brought in one by one and asked to stand in front of, and point to, the person they identify.
- Told not to hurry.
- Accompanied along the parade by the O/C Parade.
- Prevented from communicating with waiting witnesses when they leave.

If a witness indicates a person but cannot make a positive identification, or picks out someone other than the suspect, the O/C Parade must ensure that this is recorded.

After the parade

The O/C Parade must make a written report that includes:

- The time, date and place of the parade.
- The name and address of the witness.
- The names, ages, occupations and addresses of the participants.

Details of the participants and a photograph of the parade may be supplied to the defence, on request, before any court hearing. When the case is over, they are surrendered to the O/C Case and destroyed.

Refusal

If a suspect refuses to take part in an identification parade the police can use alternative methods of identification.

Two suspects refused to take part in a formal identification parade. They were subsequently identified, one by photograph and one informally. The court allowed the evidence, holding that the method had been fair and, as the suspects had refused to take part in identification parades, the police were allowed to use alternative methods.

R v Tuboe (1988) 3 CRNZ 581

Informal identification

Informal identification should not be used unless there is a valid reason such as fresh pursuit, or a suspect's refusal to take part in a parade. The reason must be presented to the court or the evidence may be excluded on grounds of fairness.

If a suspect refuses to attend a parade, it is good practice to tell him or her that other methods of identification may be used.

Procedure

The procedure should, as far as possible, follow that of a formal parade. The issue of fairness will definitely come into play if the suspect is identified in an informal parade.

The O/C Case must take no part and preferably should not be present. The person conducting the identification must ensure that nothing relating to:

- the venue, or
- the number, race, age, general appearance or social grouping of the participants, or
- their likely behaviour

will prejudice the suspect, or suggest to the witness which person is the suspect.

A report covering:

- the time, date and place of the identification
 - the name and address of the witness, and
 - the approximate number of people present
- must be attached to the prosecution file.
-

Admissibility

Because of the informal nature of this method, you must take extra care to be seen to be fair.

Engineering a suspect into a certain place at a certain time has been deemed by the courts to be unfair. Evidence arising from such manoeuvring is not admissible.

For example, a person was arrested on a minor matter so that the police could arrange an informal identification in court. The witness was warned that the suspect would be in court, and was told to look through the courtroom door. The evidence was excluded.

***R v McIntosh* (unreported High Court Invercargill, 22 August 1990, T8/90)**

On the other hand, an informal identification made in a crowded courtroom by a rape victim was admissible because she did not know the suspect's name or that he would be in court; nor did he come to her attention by being called.

***R v Tuboe* (1988) 3 CRNZ 581**

In another case, evidence was excluded as being too prejudicial because the suspects were engaged in a conversation with a uniformed constable when the witness was driven past by other officers.

R v Nohe and another (unreported High Court Hamilton, 31 July 1990, T26/90)

Voice identification

A witness may identify an offender solely on the basis of the offender's voice, provided that the evidence is of high quality. In *R v Waipouri* (unreported High Court T7/92, 6 April 1992), the judge admitted an informal identification by voice because:

- the victim had ample opportunity at the scene to become familiar with the suspect's voice, and
- the identification occurred only two days after the incident, and
- the victim recognised the voice immediately, and was quite sure it was that of the offender.

Photographic identification

If it is not known who committed an offence, photographs can be used for the purpose of establishing identity. If the identity of the suspect is known, photographic identification should be used only if the suspect is unavailable for a formal or informal identification parade.

Procedure

Show the witness at least eight photographs, ensuring that all names and other indications of identity are kept out of sight. Do not help or consult with the witness.

The people in the photographs must be of similar appearance. For example, if the suspect is a bearded Caucasian male, the people in the photographs must be bearded Caucasian males.

If one witness can identify the suspect from the photographs, any other witnesses should attend an identification parade. A witness who has viewed photographs is not prevented from identifying a suspect at a formal or informal parade.

After showing photographs to a witness, make a written report containing:

- The time, date and place of viewing.
- The name and address of the witness.
- The identities of the people in the photographs.
- The details of the photograph from which the witness made a positive identification.

This corroborates the witness' identification in court.

Attach the report to the file.

Return the photographs to the photograph book file. If this is not possible, for example, if they are needed for court, file photocopies in their place.

If you are asked to, supply copies of the photographs to the defence counsel before any court hearing.

Status of photographic evidence

Photographic evidence is not normally produced as exhibits by the prosecution during examination in chief. It should not be presented unless it adds significantly to other identification evidence called. However, defence counsel must be told that photographs have been used.

Statements

It is important to obtain from a witness, as soon as possible after the offence is committed, a written statement describing the offender. Such a statement is crucial in the following circumstances.

If a witness' memory fails

If the witness is unable to recall details of the offender the statement may be admitted as corroborative evidence.

A written statement describing an offender is admissible provided that the witness saw the offender commit the offence, and the statement was taken before the witness identified the suspect.

Evidence Act 1908 s22A

Even if a witness does not make a written statement, an officer present can testify that an identification was made. For example, a witness identified a person but could not then remember him or her at the trial. The officer who was present at the identification gave evidence that the witness had previously identified the accused in his presence. The Court of Appeal ruled that this evidence was not hearsay because it was not given to prove the truth of an identification, but presented to establish that the identification had been made.

***R v Ngahoro* (1988) 2 NZLR 203**

If a witness varies evidence

If a witness' evidence varies from that recorded on the statement, the statement can be admitted in evidence and used to redress the mistake.

If a witness dies

If a witness dies before the court proceedings, the statement is admissible as a 'business record'. This is an exception to the hearsay rule.

***R v Hovell* (1986) 1 NZLR 500**

If the witness identified the accused in an acceptable manner and in the presence of a police officer, and made a statement to the officer that referred sufficiently to identification, the officer may be able to produce that statement at the trial in the absence of the witness.

R v Roberts (unreported High Court Whangarei,
21 June 1989, T16/89)

Other methods

Fingerprints

If a fingerprint is to be relied on for evidence, the suspect must be fingerprinted at the time that he or she is arrested for the offence. If the suspect is already in prison for another offence, the fingerprinting must be arranged when he or she is interviewed.

For further information, see "People in custody", page 283.

DNA

Under certain circumstances, the police have the authority under the Criminal Investigations (Blood Samples) Act 1995 to take blood samples for use in criminal investigations and prosecution, and in a DNA profile databank.

For detailed information about this Act and the procedures arising from it, refer to:

- The Criminal Investigations (Blood Samples) Act 1995 Reference Guide.
- The procedures supplement of Ten-One No 123A, 9 August 1996.
- The Policy Pointers in Ten-One No 124, 23 August 1996.

See also *Physical Evidence and Forensic Science*, pages 491, 496 and 503-504, and *Use of Force*, page 908.