

Rule 3:11. Record of an Out-of-Court Identification Procedure

(a) Recordation. An out-of-court identification resulting from a photo array, live lineup, or showup identification procedure conducted by a law enforcement officer shall not be admissible unless a record of the identification procedure is made.

(b) Method and nature of recording. A law enforcement officer shall contemporaneously record the identification procedure in writing, or, if feasible, electronically. If a contemporaneous record cannot be made, the officer shall prepare a record of the identification procedure as soon as practicable and without undue delay. Whenever a written record is prepared, it shall include, if feasible, a verbatim account of any exchange between the law enforcement officer involved in the identification procedure and the witness. When a written verbatim account cannot be made, a detailed summary of the identification should be prepared.

(c) Contents. The record of an out-of-court identification procedure is to include details of what occurred at the out-of court identification, including the following:

- (1) the place where the procedure was conducted;
- (2) the dialogue between the witness and the officer who administered the procedure;

(3) the results of the identification procedure, including any identifications that the witness made or attempted to make;

(4) if a live lineup, a picture of the lineup;

(5) if a photo lineup, the photographic array, mug books or digital photographs used;

(6) the identity of persons who witnessed the live lineup, photo lineup, or showup;

(7) a witness' statement of confidence, in the witness' own words, once an identification has been made; and

(8) the identity of any individuals with whom the witness has spoken about the identification, at any time before, during, or after the official identification procedure, and a detailed summary of what was said. This includes the identification of both law enforcement officials and private actors who are not associated with law enforcement.

(d) Remedy. If the record that is prepared is lacking in important details as to what occurred at the out-of-court identification procedure, and if it was feasible to obtain and preserve those details, the court may, in its sound discretion and consistent with appropriate case law, declare the identification inadmissible, redact portions of the identification testimony, and/or fashion an appropriate jury charge to be used in evaluating the reliability of the identification.

Note: Adopted July 19, 2012 to be effective September 4, 2012.