

# First Sequential Lineup Is Held In Staten Island

BY TOM PERROTTA

STATEN ISLAND police officers recently conducted the first court-ordered sequential lineup in New York, after a judge called for the procedure in an alleged robbery.

The decision to follow the court order comes at a time when prosecutors throughout the five boroughs are contemplating whether to challenge similar rulings or to modify long-accepted rules of witness identification. Though other judges have ordered sequential lineups, until now prosecutors have chosen to conduct no lineup at all rather than follow a court order.

Unlike standard simultaneous lineups, sequential lineups force witnesses to view suspects one at a time. According to scientific research, simultaneous lineups can lead to false identifications by inducing witnesses to choose the person who most resembles the suspect.

In Staten Island, the lineup was conducted earlier this month after Criminal Court Judge Salvatore J. Modica granted a motion by Gregory C. Clarke, the attorney for Kevin Affon, who is accused of robbery. In a ruling from the bench, Judge Modica ordered a sequential lineup, but he did not require a double-blind procedure, in which the officer conducting the lineup does not know the true suspect.

Mr. Clarke said he was present during the lineup, which involved Mr. Affon and five other individuals. Mr. Affon was allowed to choose the order in which he wanted to appear. Mr. Affon was already in custody on an unrelated charge.

Mr. Clarke said the individuals entered and left the viewing room one at a time, and a shade was raised for each showing. The witness had as much time as he wanted to look over the potential suspects.

"It probably took about five or six minutes," said Mr. Clarke, whose firm, Battiste, Aronowsky & Suchow, is the contracted public defender for Staten Island.

Mr. Clarke said the witness was uncertain of the suspect during the first showing, but identified Mr. Affon after the individuals were brought into the viewing room a second time. Mr. Clarke

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said he objected to the second showing.

Steven Penrod, a professor of psychology at John Jay College of Criminal Justice in New York, said there were no firm conclusions on whether conducting a sequential lineup twice rather than once could prejudice a witness or be unfair to a suspect.

"It's too early to say," said Mr. Penrod, who has co-authored several studies on sequential lineups and is currently undertaking another one. Mr. Penrod stressed the importance of conducting the lineup in a double-blind fashion to prevent officers from suggesting, even unintentionally, which person is the true suspect.

## No Policy Shift

Monica Brown, a spokeswoman for the office of Richmond County District Attorney William L. Murphy, said that the office had opposed Mr. Clarke's motion for a sequential lineup. She added that complying with the court order does not signify a change in policy for the office.

"We will continue to review the issue, but until we adopt a formal policy we are going to continue to oppose court-ordered double-blind and sequential lineups," Ms. Brown said. She added that the office was not convinced of the absolute benefits of the procedures,

noting that much of the research on the subject has involved students rather than crime victims. Also, participants in the research viewed photos of suspects rather than actual people, which New York lineups use.

Ms. Brown said that for this particular case, challenging the order or declining to conduct a lineup might have led to a lengthy delay and distressed the alleged victim. Mr. Alfion, who was in custody in Nassau County, was transferred to Staten Island by court order. Ms. Brown said Mr. Alfion has yet to be arraigned on the robbery charges, and is scheduled to appear in court on May 21.

David L. Feige, the trial chief at the Bronx Defenders who has led a movement among defense attorneys to request double-blind, sequential lineups, said he was pleased to see that police departments were willing and able to perform sequential lineups.

"Manpower objections to doing double-blind, sequential lineups are really red herrings," Mr. Feige said. "The police department has plenty of available detectives at almost every hour of the day and night."

Prosecutors, however, have disagreed, saying that if the procedures became the norm it could tax available personnel and increase costs. Prosecutors have also argued that courts do not have the authority to order changes to witness-identification procedures. Such policies, the prosecutors contend, are subject

only to Internal or legislative review.

In Brooklyn, one judge has agreed that courts have no jurisdiction over lineup procedures, while two others have found otherwise. Of those two judges, one, Supreme Court Justice Robert S. Kreindler, ordered a sequential, double-blind lineup, and another, Supreme Court Justice Lawrence Knipel, ordered only a double-blind lineup, finding that the absolute benefits of sequential lineups remained unclear.

So far, the Brooklyn District Attorney's Office has been able to avoid conducting a sequential lineup while it continues to assess its policies on witness identification. In the case where a sequential lineup was ordered, prosecutors indicted the alleged murderer without conducting a lineup. After the indictment, prosecutors asked another judge to approve a standard lineup, arguing that the pre-indictment order of Justice Kreindler no longer applied.

Justice Neil Jon Firetop agreed and declined to order prosecutors to follow specific procedures in conducting the lineup, according to Elizabeth L. Wilson of the Capital Defender Office, who had been representing the defendant, Rahim Thomas, before prosecutors decided not to seek the death penalty.

Mr. Thomas was placed in a simultaneous lineup and was identified by two of three witnesses, said Kenneth M. Taub, an Assistant District Attorney in Brooklyn.