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Kazimiera Juszka, Karol Juszka

Research issues pertaining to the methodology of performing a police lineup in Poland

Problematyka badawcza metodyki przeprowadzania okazania w Polsce

I. Introduction

In Polish forensic literature, a police lineup (identification parade in British English) (Article 173 of the Polish Code of Criminal Procedure¹, Article 74§2 of the Polish Code of Criminal Procedure, Article 74§3 of the Polish Code of Criminal Procedure) is defined as a standalone procedural and forensic action, which consists in concentration of a statement made by the recognizing person, in recalling the appearance of the subject of a lineup and comparing it with the appearance of a currently presented one in the course of this action conducted in appropriate conditions².

The objective of a police lineup as one of the methods of procedural and forensic identification is establishing whether a given subject has been previously seen in connection with a certain event³ recognizing the subject of a lineup or not recognizing it (when the subject is recognized it results in identifying it), verifying previous depositions or statements made by the recognizing and recognized person; the psychological effect consisting of a change of tactics of

¹ Statute of 6 June 1997 Code of Criminal Procedure (Journal of Laws of 1997, No. 89, item 555 with later amendments).

² E. Gruza, M. Goc, J. Moszczyński, *Forensic science – a book on the methods of investigation*, Warsaw 2008, p. 144. [in Polish]; E. Gruza, *Police lineup. Forensic issues*, Toruń 1995, p. 16 [in Polish]; T. Hanausek, *Forensic science*, Warsaw 2009, p. 206-207 [in Polish].

³ E. Gruza, M. Goc, J. Moszczyński, *Forensic science...*, *op. cit.*, p. 144. [in Polish].

the presented person resulting from recognizing him/her, supplementing and – at the same time – strengthening the evidence gathered so far in a given case⁴.

In Poland, subjects of a lineup could be persons alive, corpses, things, animals, places as well as particular features or properties (including dynamic properties of a person (his/her image and voice⁵). The above procedural action is applied to the accused and the suspect (§1 of the Ordinance of the Minister of Justice of 23 February 2005)⁶.

The aim of this paper is to present the author's own studies of 154 case files of courts and prosecutors where lineups of persons (also called an 'identity parade'), images or things were performed in cases involving homicides, robberies and rapes. Research issues pertaining to the lineup will be analysed from the viewpoint of applying the principles for the performance of this action.

II. Methodology of studies of files of court and investigative cases

The studies involved the analysis of files of court and investigative cases in 154 criminal cases from the period 2000-2005, where lineups were performed in cases of killings (Article 148 of the Polish Penal Code⁷), robberies (Article 280 of the Polish Penal Code), and rapes (Article 197 of the Polish Penal Code). The proceedings in question were carried out in 17 common organizational units within the Małopolska voivodeship. The research tool used was a questionnaire covering 40 guidelines pertaining to the issues studied in this paper, including both quantitative and qualitative features. In these 154 cases, a total of 288 lineups were carried out, including 189 lineups of persons, 74 lineups of images, and 25 lineups of things.

The analysed cases were sampled by the method, called – in statistical research – multiple stage sampling⁸, which is commonly used in Poland in the field

⁴ T. Hanausek, *Forensic science...op. cit.*, p. 207 [in Polish]; E. Gruza, *Assessment of the credibility of witnesses in criminal trials*, Cracow 2003, p. 308-309 [in Polish].

⁵ E. Gruza, M. Goc, J. Moszczyński, *Forensic science... op. cit.*, p. 144. [in Polish]; T. Hanausek, *Forensic science...op. cit.*, p. 207 [in Polish].

⁶ Ordinance of the Minister of Justice of 23 February 2005 on the issue of submitting the accused or the suspect to examinations or performing actions with their participation (Journal of Laws of 2005, No. 33, item 299).

⁷ Statute of 6 June 1997 Code of Penal Law (Journal of Laws of 1997, No. 88, item 553 with later amendments).

⁸ R. Zasepa, *Multiple stage sampling*, Warsaw 1972, p 17 i 23. [in Polish].

of social science. The first stage of research included the defining of three layers (time, place, and range) of the studies carried out. These three layers from the first stage provided the material for the second stage of sampling, so-called simple random sampling. Its principle was that each of the files from any of the particular layers could be drawn with the same probability.

To sum up, it may be stated that using this method of statistical sampling yielded a representative research material, because it came from various courts or public prosecutors' offices. Therefore, the method guaranteed major cognitive and utilitarian effects.

III. Analysis of the results of research involving files of court and investigative cases

The research issues taken up in this paper were divided in accordance with the three principal types of lineups applied in Poland: the lineup of persons, the lineup of images, and the lineup of things. The tactical and procedural rules for carrying out this action in Poland are those included in the statute of 6 June 1997 Code of Criminal Procedure⁹, the Ordinance of the Minister of Justice of 2 June 2003¹⁰, the Ordinance of the Minister of Justice of 23 February 2005 (cited above) and the Order No. 1426 of the Chief of the Police of 23 December 2004¹¹ in force at the time of studies referred in the title of this paper¹².

⁹ Statute of 6 June 1997 Code of Criminal Procedure..., op. cit.

¹⁰ Ordinance of the Minister of Justice of 2 June 2003 setting forth the technical condition for conducting the lineups (Journal of Laws of 2003, No. 104, item 981).

¹¹ Order No. 1426 of the Chief of the Police of 23 December 2004 on the methodology of procedures of investigation and inquiry by police agencies appointed to detect offences and prosecute their perpetrators (Official Journal of the National Police Headquarters of 2005, No. 1, item 1).

¹² Order of the Chief of the Police No. 109 of 15 February 2012 on some forms of organizing investigative and inquiry records of the Police and on storage by the Police of pieces of material evidence obtained in criminal proceedings (Official Journal of the National Police Headquarters of 2012, item 6 [In Polish]; Guidelines No. 3 of the Chief of the Police of 15 February 2012 on performing procedures of investigation and inquiry by policemen (Official Journal of the National Police Headquarters of 2012, item 7) with later amendments [in Polish]; Guidelines No. 1 of the Chief of the Police of 29 January 2013, amending the guidelines on performing procedures of investigation and inquiry by policemen (Official Journal of the National Police Headquarters of 2013, item 14) [in Polish].

The role of the principles should result from the essence of criminal proceedings, constitutional guarantees, and from the indications of forensic expertise¹³. The results of the author's own studies of 154 cases implementing the objective of this paper will be presented below, in the course of analysis of particular principles of conducting the three aforementioned types of lineups¹⁴.

The first rule for conducting a lineup is that it is carried out in the seat of the authority which performs this legal procedure (§1.1 of the Ordinance of the Minister of Justice of 2 June 2003 cited above). The author's own analysis of the 154 cases indicates that only in one case of lineup of images was this action conducted outside of the Police quarters whereas in the remaining types of lineups of person, image, or things, they occurred in the correct place of a lineup.

The essential rule for identification lineups is that there should be as many lineups performed as the number of persons to be recognized.

The analysis of the results of the author's own research involving 154 cases, showed this rule applied in 123 lineups of persons, whilst 66 lineups were performed contrary to this rule. The lineup of images followed the rule in 11 lineups, 8 lineups were conducted incorrectly with respect to this rule, whereas in 51 lineups no relevant data was available. As regards the lineup of things, 8 lineups were showed to be correct, 15 were performed incorrectly whereas in 2 lineups the relevant data was lacking.

Due to the third principle, any possibility of preceding or following mutual contacts between the recognizing persons should be excluded in order to avoid suggestions¹⁵. This means the preparing of the dates of summons and lineups following one another in such a way that the persons examined has had no possibility to see the presented person, his or her image, or the thing prior to their lineup, in a situation indicating their role in a given event, or procedural consequences¹⁶.

The author's own studies indicate that in the case of a lineup of persons, the analysed rule of preventing mutual contacts was applied in 133 lineups, but was not adhered to in 49 lineups, whereas there was no relevant data available for 7 lineups. In the lineups of images, in 16 cases the rule of preventing mutual contact was observed, no data was available for 58 lineups and there was no case found which did not adhere to this rule. The protocols of all 25 lineups of things did not

¹³ K. Juszka, *The procedural and forensic principles vis-à-vis the repeatability of lineups in practice*, „Problemy Kryminalistyki” 2009, nr 263, p. 34-39 [in Polish].

¹⁴ K. Juszka, *Quality of forensic procedures*, Lublin 2007, p. 274-330 [in Polish].

¹⁵ K. Juszka, *The principle of substantive truth vis-à-vis suggestion in lineup*, „Przegląd Polijny” 2009, nr 1, p. 23-31 [in Polish].

¹⁶ K. Juszka, *Quality of forensic procedures...*, *op. cit.*, p. 86 [in Polish].

contain information on this principle. In this connection it should be postulated that the protocols of lineups should always include a note on the implementation of this rule in practice.

The principle of a similar appearance of the presented person as seen during the investigated event and during the lineup, is of no less importance. Its essence lies in caring, each time, for the appearance of the person identified in a lineup to be possibly close to that of the one he/she had when first seen (in terms of clothing, facial hair, hairstyle etc.) as well as other features (similar movement, voice, similar lighting etc.)¹⁷.

The author's own studies of 154 cases indicate that the rule of similar outlook of presented persons was observed in 3 lineups whilst in 186 lineups the rule was not observed. Viewing the images turned out to keep the above principle in 2 lineups whereas in 62 lineups the principle was not observed and in 10 lineups there was no information available on this topic. In the three lineups of things the rule was observed while in 22 lineups it was not.

It should be noted that the authority carrying out the lineup should make sure that the appearance of the presented person during the lineup should not be different from the appearance he/she had during the event that is the subject matter of the proceedings. The author's own research indicates that witnesses often pay attention to clothes. One may presume that it results from a simple psychological feature – in the situation of danger or stress, our visual senses concentrate more rapidly on the large 'spot' noted than on details¹⁸.

The next rule pertains to the necessity to include a description in the relevant columns of the protocol of a lineup, pertaining to the change of the appearance of the person between the event and the lineup¹⁹.

The author's own research analysis of 154 cases indicates that there were 7 lineups of persons where such information was contained in the protocol, whereas in 5 protocols it was not done. In the lineups of images one protocol had correct information while in 9 lineups such information was not included. In one protocol of the lineup of things the information in question was included whereas in 7 protocols this requirement was not met.

In connection with the above-mentioned findings, in order to guarantee the high probative value of the action, it should be postulated that each protocol

¹⁷ Ibidem, p. 86 [in Polish].

¹⁸ Ibidem, s. 92 [in Polish].

¹⁹ Ibidem, s. 276 [in Polish].

should be checked for completeness of information regarding the changes in the appearance of the subject of a lineup.

The next rule to be applied when the lineup is performed, is the principle of presenting the subject of the lineup (a person, image, or thing) always either among other subjects of similar features as a group, or individually different from the subject²⁰.

The analysis of the results of the author's own research indicates that from 18 lineups the rule of appropriate selection of fillers (i.e. persons not connected with the case) was not observed in 14 lineups, whereas in the remaining 157 lineups no data was available in the protocols. In the case of the lineup of images, the rule was observed in 2 lineups, in one lineup the selection was improper whereas 71 lineups were described without providing data on the issue of the observance of the rule.

Moving on to the lineup of things it was found that there were 4 correct lineups with regard to the rule of the correct selection of things added to the lineup, 17 lineups were incorrect in this aspect whereas 3 protocols did not contain information about the selection of things not connected with the case. In the light of the above, a more responsible implementation of this rule should be required, together with observing the indispensability of its description in the protocol of a lineup.

When carrying out the lineup, it is important to observe the rule that there should be at least 4 persons in the group in which the presented person is shown.

The even number of persons in the group is conditioned by the occurrence of the so-called stereotype of central position that occurs in more than 50% of people which shows the tendency to always choose a central element among the several similar elements presented to him/her, who – without deeper insight as to whether the recognition is correct or not – will indicate the central element of the group²¹.

The author's own research on the issues in question regard 121 lineups with the proper number of fillers (i.e. persons not connected with the case) whereas in 68 lineups this number was not attained. In 13 lineups of images, the procedure was performed in keeping with this rule, in 3 lineups the rule was not observed whereas in 60 lineups the information was lacking. The analysis of lineups of things showed 7 lineups performed in accordance with the above-mentioned rule, 16 lineups were performed incorrectly with respect to this rule whereas in 2 lineups there was no note of the issue made. The observance of a code-required number of fillers (i.e. the persons who are not connected with the case) will increase the

²⁰ Ibidem, s. 86 [in Polish].

²¹ T. Hanausek, *Forensic science...*, *op. cit.*, p. 211 [in Polish].

probability of detecting the perpetrator, excluding any undue suggestion (cf. Article 173 of the Polish Code of criminal procedure).

The principle of documenting the lineup is of key importance. Apart from the obligatory requirement of writing a protocol also requires an optional recording of the course of this procedure with the use of electronic audio or visual recording equipment.

The author's own research of the subject matter of this paper noted the use of electronic audio or visual recording equipment in 15 lineups, whereas in 174 lineups this possibility was not utilized. In the lineups of images, one lineup was carried out with the use of such equipment whereas in 73 lineups it was not used. Recordings of 4 lineups of things was made with the use of electronic equipment, whereas in 21 lineups such recordings were not made.

The technical manner of carrying out the procedure and the documentation of its course is not only of formal importance but may also affect the probative value of this important non-repeatable legal procedure²². The above-analysed procedure is reconstructed during a court hearing on the basis of the protocol of the procedure made during preparatory proceedings and attachments added to it²³.

In the light of the above, the obligation to provide documentation should also be considered for lineups performed by means of audio or visual recording equipment, as well as the wider use of modern technologies e.g. scanning in 3D²⁴.

IV. Summary of the results of the study of court files

The research issues pertaining to the methodology of conducting a lineup in Poland were presented from the viewpoint of how the rules of this procedure in criminal proceedings are observed. The tactical and procedural development of the issues pertaining to lineups taking into account *de lege ferenda* postulates presented in this paper will contribute to the further development of the studies on this procedural action considered in this study, and – as a consequence – to its more frequent use in criminal proceedings.

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²² K. Juszka, *The procedural and forensic...*, *op. cit.*, p. 34-39 [in Polish].

²³ K. Juszka, *Quality of forensic procedures...*, *op. cit.*, p. 113 [in Polish].

²⁴ K. Juszka, 3D scanning applied to implementing the principles of conducting forensic evidence by inspection (in:) E. Gruza (ed.), *Faces of contemporary forensic science. A jubilee book of Professor Hubert KołECKI*, Warsaw 2013, p. 177. [in Polish].

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Streszczenie

Celem artykułu jest przedstawienie wyników badań własnych 154 spraw sądowych i prokuratorskich, w których przeprowadzono okazania osoby, wizerunku i rzeczy w sprawach zabójstw, rozbojów i zgwałceń. Analizowane sprawy były losowane, przy czym losowanie odbywało się metodą, nazywaną w badaniach statystycznych - metodą losowania zespołowego wieloetapowego, która w Polsce jest powszechnie stosowana w naukach społecznych. Prezentacja problematyki badawczej okazania zostanie poddana analizie z punktu widzenia realizacji zasad przeprowadzania tej czynności. Taktyczny i procesowy rozwój problematyki okazania uwzględniający także przedstawione w niniejszym artykule postulaty *de lege ferenda* przyczyni się do dalszego rozwoju badań nad tytułową czynnością a w konsekwencji częstszym jej stosowaniem w postępowaniu karnym.

SŁOWA KLUCZOWE: okazanie, taktyka kryminalistyczna, technika kryminalistyczna, identyfikacja kryminalistyczna, wyniki badań własnych.

Summary

The aim of this paper is to present the author's own studies of 154 case files of courts and prosecutors where lineups of persons (also called an 'identity parade'), images or things were performed in cases involving homicides, robberies and rapes. The analysed cases were sampled by the method, called – in statistical research – multiple stage sampling, which is commonly used in Poland in the field of social science. Research issues pertaining to the lineup will be analysed from the viewpoint of applying the principles for the performance of this action. The tactical and procedural development of the issues pertaining to lineups taking into account *de lege ferenda* postulates presented in this paper will contribute to the further development of the studies on this procedural action considered in this study, and – as a consequence – to its more frequent use in criminal proceedings.

KEY WORDS: Lineup for identification purposes, forensic tactics, forensic technique, forensic identification, research results

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