

Example of the kirby rule critical thinking

[Law](#), [Criminal Justice](#)



In establishing whether a person who has been arrested or taken into custody is the one indeed responsible for a crime, the police use three main procedures namely: line ups, show ups and photographic identification. Line ups involve the parading of all the possible suspects in a 'line' and the victim is then expected to pick out the offender from these line up of suspects. A show up on the other hand involves showing only one suspect to the witness or victim and is usually done at the scene of the crime or following the quick arrest of a suspect. Thirdly, photographic identification entails showing the witness or victim photographs of the probable suspects for identification purposes.

During a line up or a show up, the general rule is that a suspect is not entitled not to an attorney. The rationale behind this is the fact that no formal charges have yet to be filed against the suspect and he is not subjected to any form of interrogation which may incriminate him. However, a suspect may be entitled to an attorney depending on the state policy or local law of a given state. Usually, a suspect will only be entitled to an attorney once he/she has been formally charged but not any time before the filing of charges. This is because the presence of the attorney can help in averting prejudice against the suspect and thus reduce chances of a miscarriage of justice occurring during the trial process.

The Kirby rule is the requirement that a suspect will only be entitled to an attorney once formal charges have been filed against him. This rule was enumerated in *United States v. Wade* where the court stated that absence of an attorney after charges have been filed against the suspect may increase the likelihood of either or both inadvertent and intentional prejudice against

the suspect. Having stated the above, it is important to highlight the fact that a line-up is not an interrogation but merely an identification process; it is a matter of routine police investigation and does not therefore constitute a formal investigation.

Works Cited

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