

Problems Existing in Criminal Identification Process and Practical Reflections

Wenqiang Liu

Criminal Investigation Department, Criminal Investigation Police University of China Liaoning
Shenyang, China
ccpc2232@163.com

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Abstract. As an important measure of criminal investigation in China, criminal identification plays an important role in the investigation of cases because almost all criminal investigations need criminal identification. However, in actual investigation practice, there are some problems, such as arbitrary initiation of criminal identification, ignorance of pre-identification inquiries or interrogation links, improper mixing of mixed identification, lack of effective implementation of witness systems, lack of neutrality in the identification process, and lack of serious identification transcripts. In order to ensure the objectivity and effectiveness of the identification process and results, attention must be paid to the improvement of case-solving thinking of investigators, careful implementation of interrogation or inquiry work before identification, accurately grasping the optimal timing of criminal identification, establishing the double-blind identification rules or neutral rules of the presider, recognition of a particular object, careful selection of identification way and standard production of identification transcripts.

Criminal identification refers to a kind of investigation behavior in which the investigation organ or the investigator organizes the identification person to recall, recognize and identify the criminal suspect, the crime scene and matters or victims related to the criminal case so as to detect the case and find out the criminal facts. As an important measure of criminal investigation in our country, criminal identification has been widely applied and its power has been widely recognized by procuratorial organs and judicial organs. However, in the investigation practice, investigators do not pay enough attention to the criminal identification, and there are many problems in the organization identification, such as simple and casual identification, illegal procedures or improper operations, which lead to the fact that the criminal identification fails to give full play to its investigative functions. Some cases even affect results of the whole case due to improper operations of criminal identification. We should draw lessons from that and regulate criminal identification work.

The Problems Existing in the Process of Criminal Identification Operation

The Initiation of Criminal Identification is Too Casual.

In the process of criminal case investigation, the role of identification is irreplaceable, but this does not mean that all cases need to be identified. Investigators should consider the factors such as the identifier's own situation, the length of the case and the process of the case comprehensively, and then organize and carry out the identification in time when it is indeed "necessary" to identify. In the investigation practice, some investigators work casually, and they organize relevant personnel to identify even when they cannot accurately determine whether there is an identification condition before identification, which not only failed to achieve the expected results, but also caused doubts about the authenticity of the evidence.

Neglect the Inquiry or Interrogation Process before Identification.

The pre-identification inquiry or interrogation process is a procedural safeguard measure that reflects the objective authenticity and scientific reliability of the identification results. The pre-identification inquiry or interrogation can confirm whether the identifier is capable of identification. The more detailed and accurate the identifier's description of the identification object is and the higher the degree of evidence corroborated by other evidence is, the lower the possibility of deviation of the identification results will be and the more reliable the identification results will be.

In the investigation practice, some of the case-handling personnel basically did not care about the pre-identification inquiry work and the questions raised are too simple. They just carry out the pre-identification inquiry work as a formality, and sometimes even neglect the pre-identification inquiry work, carry out the identification work directly, and let the identifier identify the identification object directly.

Improper Mixing During Mixed Identification.

In the practice of investigation, when investigators organize mixed identification and select foil objects, they fail to grasp the core of identification (the similarity is the primary criterion). Instead, they conduct identification for saving time and effort and take convenience and speed as the first criterion of organizing identification activities. Some investigators do not choose the foil objects in combination with the characteristics of the identification object, but only pursue the quantity to meet the requirements of the law, which makes the mixed identification become “choosing” because of the lack of similarity or the disparity of similarity. This not only greatly reduces the authenticity of the identification results, but also limits the functions of criminal identification, such as evidence fixation and criminal suspect identification.

The Witness System Cannot be Effectively Implemented.

In accordance with the provisions of the law, witnesses should be present in the identification process and, in accordance with the provisions of the judicial interpretation of the Supreme People's Court, staff or employed personnel of the public security and judicial organs should not act as witnesses. However, the actual situation is that some case-handling organs are witnessed by public security service personnel and joint defense personnel; Or they did not invite witnesses according to the requirements of regulations, but added signatures, stampings and filling organs on the record afterwards; There are also identification records that do not even have witness signatures.

Lack of Neutrality in the Identification Process.

Criminal Procedure Law stipulates that identification activities should be carried out under the organization of investigators. In the actual identification activities, all identification organization personnel are the investigators who participate in the case investigation process. Therefore, in this case, since the person who presided over the identification is the investigator of the case, which means that there is an inevitable connection and interest relationship between the identification organizer and the case itself. Because of the familiarity with the case, he is very likely to intentionally or unintentionally show biased motivations or suggestive actions in the process of identification. This violates the principle of legitimacy of the procedure and may lead to distortion of the identification results.

Nonstandard Making of Identification Written Records.

Process and results of criminal identification are presented through identification written records, the identification written records used as evidence should record the specific process and results of identification objectively, comprehensively, accurately and clearly, but the non-standard problems are commonly found in the investigation practice, mainly manifested in the following aspects: First, the record cannot fully reflect to specific identification process. Many written records are too simple. After recording the format content, such as the purpose of identification, the process and results of identification are simply recorded. Second, replace the identification record with the interrogation record. Some investigators confuse identification and interrogation procedures, simply show evidence to criminal suspects for identification during the interrogation, and record the identification results in the form of questions and answers. Third, the identification photos are not standard. some case-handling personnel neglect the general procedural requirements of the law and do not pay attention to the correspondence between photographs, video materials and identification records.

Improve the Investigative Thinking of Investigators.

To improve the awareness of investigators, the first thing is to change the case-handling thinking of investigators from “getting the confession to improving the evidence” thinking to the thinking “from the known evidence to the confession breakthrough” thinking. Therefore, investigators should actively change the thinking of “presumption of guilt”, establish the basic concept of “trial-centered”, and gradually enhance the awareness of procedures. In the organization of criminal identification, it

is necessary to not only consider whether the identification results meet the needs of investigation, but also fully consider the authenticity of the identification results and the legitimacy of the identification process.

Ways to Improve the Quality of Criminal Identification Work

Seriously Carry Out Inquiry or Interrogation Work before Identification.

Before organizing the identification, the investigators should carry out the pre-identification inquiry or interrogation work to determine whether the identifier is capable of identification. During the inquiry and interrogation, the identifier should first be required to describe the identification object in detail and specify all the details he can remember. At the same time, the identifier should also be inquired whether he has seen the identification object before or after the crime. And if so, make clear the situation at that time.

Accurately Grasp the Best Time for Criminal Identification.

The organization of criminal identification activities must grasp the best time for criminal identification, that is, to make the best choice for the necessity and effectiveness of identification.

(a) Grasp the Necessity of Criminal Identification

In the process of criminal case investigation, the role of identification is irreplaceable, but this does not mean that all cases need to be identified. Criminal identification only needs to be organized when necessary. The identification work before the investigation of case is mainly through the identification activity carried out around the suspect or the physical evidence related to this case, and the witnesses and victims of the case act as the identification subject. As long as the appropriate time and conditions for carrying out identification are available, the identification should be organized in time, so as to obtain the criminal evidence comprehensively and find the case clues in time.

(b) Grasp the Effectiveness of Criminal Identification

The effectiveness of criminal identification is that the identification activities should be organized immediately after the necessity of identification is clarified. The longer the time interval between the identification and the crime, the lower the authenticity and accuracy of the identification results would be. As the case continues to be investigated in-depth, the case situation has been studied further and the evidence is relatively sufficient. At this time, once the conditions for identification are recognized and the necessity of the implementation of the identification activities is determined, it should be organized immediately. In the actual process of investigation practice, this is the best time for effective identification, which can ensure the accuracy and authenticity of the identification results to the greatest extent.

Establish Double-Blind Identification rule or Moderator Neutral Rule.

In the process of organizing identification, investigators can try to establish double-blind identification rule or moderator neutral rule. The double-blind identification rule requires that the identification organizers and the identifiers both do not know whether there exists an identification object in the foil objects before the criminal identification work is carried out. And the moderator neutral rule refers that the moderator of criminal identification should be selected from the investigators who are not involved in this case. Both of the above rules can avoid the situation that moderator gives identifier various forms of suggestion inadvertently, which can guarantee the accuracy and objectivity of the identification results.

Choose your Identification Carefully.

The difference of criminal identification mode is one of the important reasons for the difference of criminal identification results. Because of the directness of direct identification, the recognized object can clearly and comprehensively present its own objective characteristics while the identifier can comprehensively and multi-dimensionally observe all characteristics of the identified object. Therefore, in the actual investigation practice process, detection organs tend to use direct identification compared with indirect identification. However, that doesn't mean that direct identification can apply to all cases. The following cases, which may make results obtained from direct identification not accurate, may happen in actual practice. For example, in robbery, rape, murder, fraud cases, the criminal suspect and identifier will have direct contacts for a period of time,

which will affect psychology of the identifier. Therefore, the identifier or his family members will be unwilling to see the criminal suspect because of various psychological reasons. For example, the identifier is afraid of the criminal suspect or is worried that the suspect may take revenge on him because of his experience in the crime. Family members of the identifier have great influence on criminal suspects because they hate them. Because of that, the identified may beat and scold the criminal suspects during the identification. There are also some criminal suspects who may find chances to destroy the evidence or find goods (often tools for criminal purpose) to harm themselves because they are guilty of fear or have a history of identification. They want to escape legal punishment through hurting themselves and seeking medical parole. Because of the above reasons, we should choose the identification way carefully in the identification process to prevent the identification process from bringing secondary injury to the identified person or the interruption of the case investigation due to objective reasons. Therefore, in special cases, indirect identification ways represented by photographs, audio and video should be used to replace direct identification after actual situations are considered.

Make Standard Identification Transcripts.

As long as the identification activities are done, the investigator shall make a standard record of identification. This legal document reflects the process and results of identification. It is not allowed to replace the identification transcripts by means of information (inquiry), situation description, site investigation and transcript examination. When making identification transcripts, the investigator shall accurately and timely fill in the starting and ending time (exact to minute), place; basic information of investigators (including their names and working units); the name, address, working unit of the identifier and the witness as well as the identification object and purpose and other contents. The whole process and results of identification should be recorded objectively, truthfully and comprehensively in the body part. Try to avoid problems such as recording identification results rather than identification processes or simple record processes.

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