

Eyewitness ID – The Importance of Getting it Right

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JT: Eventually I decided that I was certain it was him. A composite sketch was done and I was shown a photo lineup, in which one of the photos strongly resembled the man who had broken into my Burlington, North Carolina apartment in 1984 and raped me. I hesitated at first, but told the officer that I thought Ronald Cotton was the perpetrator. After all, he strongly resembled the sketch that police had done, which was based on my description of the perpetrator. By the time I viewed a live lineup that included Ronald several days later, I was positive that he was my attacker, and I told police so. “We thought that might be the guy,” the investigating officer told me. I grew more and more certain that Ronald was my rapist, all through his trial, at which I re-affirmed my identification of him, after his conviction and throughout his imprisonment. I was wrong.

GR: I, too, was wrong – in believing in the effectiveness of the formula for six-pack photo lineups that was taught to me and my fellow officers in 1988 when I was promoted to be a detective for the Ada County Sheriff’s Office. Six photos were laid out, and the suspect was always placed in the upper right-hand corner, which, I was told, is where the viewer’s eyes would naturally pause. This increased the likelihood that the eyewitness would finger the suspect in the upper right-hand corner—the one we thought to be guilty. I now know this is incredibly problematic because many of the wrongful convictions that have come to light have been linked to misidentification and have proven that the suspect in a law enforcement agency’s investigative cross-hairs is not always the real perpetrator.

In the decades since then, there have been numerous scientifically supported advancements in eyewitness identification practices – improvements that have been proven to protect against the type of misidentification that led to Ronald’s wrongful conviction and preserve the integrity of the process. There was a time when both of us were unaware of the weaknesses in existing identification procedures, but given our life experiences and the overwhelming statistics, there can no longer be

any doubt about the fallibility of human memory and the need for scientifically sound procedural updates.

To say it plainly, eyewitness misidentification is the leading contributing factor in wrongful convictions proven by DNA evidence, playing a role in 72 percent, or 236, of the nation’s 329 DNA exonerations. In 86 percent of those cases, it was the victim who misidentified the perpetrator, just as Ronald was misidentified. Without best practices in place, law enforcement and prosecutors run the risk of catching the wrong guy. This poses a serious threat to public safety as the real perpetrator can remain free to commit other crimes. Of the 236 DNA exonerations that involved eyewitness misidentification, nationally, the real perpetrators went on to commit 64 rapes, 17 murders and 21 other violent crimes that they might not have otherwise done had they been apprehended, tried and convicted. These cases involved a total of 360 victims, all of whom were deprived of justice when the wrong person was convicted. Wrongful convictions also leave localities and states susceptible to costly civil litigation. Since 1990, DNA exonerees who were misidentified have been awarded a whopping \$ 346,135,662 in compensation for wrongful conviction. If you include all of the nation’s DNA exonerees, that number balloons to \$590,531,408. Because the ramifications of wrongful convictions are so severe, we are urging law enforcement and prosecutors nationwide to embrace and implement eyewitness identification best practices. A report released by the National Academy of Sciences last year, *Identifying the Culprit*, the most comprehensive work to date on eyewitness identification, is an excellent blueprint for police departments to look to when implementing written best practices. Eyewitness identification policies should contain, at minimum, the following:

- Blind administration of live lineup, photo lineup- A law enforcement officer conducting a live lineup or photo lineup must be unaware of the suspect’s identity, so there is no chance that the officer can unintentionally influence the eyewitness’ or victim’s selection and result in a misiden-

tification. For small departments with limited personnel, it might be impracticable for an officer to be unaware of the suspect in a major crime. Fortunately, there is a simple, cost-neutral method known as the “folder shuffle,” which effectively blinds the officer. This method is widely used around the country and involves placing photos in different folders, shuffling them and handing them to the eyewitness individually. As a result the officer cannot see which photo is being viewed and is unaware of which position the suspect occupies in the order of photos.

- Confidence Statement – Immediately after the victim or eyewitness makes an identification in a procedure, the officer must write down a verbatim confidence statement, in which the eyewitness or victim describes his or her level of confidence. Between the time of an eyewitness identification procedure and a trial, a victim’s or eyewitness’ level of confidence can significantly increase. Having the witness describe their level of confidence at the time an identification is made will provide investigators and juries with a useful tool for judging the accuracy of the identification.
- Instructions to the eyewitness – The officer must inform the eyewitness viewing a live lineup or photo lineup that the investigation will continue regardless of whether a suspect is selected. Doing this can prevent the eyewitness or victim from feeling pressured into making an identification out of fear that failure to do so will result in the end of the investigation.
- Audio or video record the identification procedure – If law enforcement agencies have the equipment available, they should record the entire identification procedure so that there is a record of the conditions under which an identification was made. This can protect agencies against claims that an identification was coached, provide an easy method for reviewing evidence and strengthen the prosecution’s case against someone who is truly guilty.
- Adequate training for police – It is imperative that police departments provide adequate training to their officers so that they are able to successfully implement all of these best practices.
- Filler Composition - In addition to the recommendations given by NAS, the Department of Justice and other national entities/experts endorse guidelines for filler or “non-suspect” selection, which essentially states that each member of a lineup must match the description given by the eyewitness and administrators should ensure that the suspect does not stand out.

Together, these best practices have been researched and tested for decades and have been scientifically proven to protect against the root causes of misidentification. Because of this, they are recommended by the International Association of Chiefs of Police, the American Bar Association, and many other law enforcement, scientific and criminal justice organizations.

Had these safeguards been in place at the time of my attack, Ronald might not have been sent to prison, and Bobby Poole – the real perpetrator – would not have remained free to rape at least five other women. I was shown a photo lineup and a live lineup, neither of which were administered by an officer unaware of the suspect (Ronald) or unable to see his identity. In other words, due to good intentions but a lack of developed science in the early 80’s one of the core tenets of proper procedure (having a blind administrator) was not followed. I hesitated at first when selecting Ronald in a photo lineup, but when I did land on him, somewhat skeptically, the detective bolstered my confidence by stating: “We thought this might be the guy.” This reinforcement effectively cemented my certainty that Ronald was the perpetrator. Additionally, no confidence statement was taken after I identified Ronald, so the difference between my initial hesitation and my increased confidence, after getting positive feedback, went unrecorded.

As a result, Ronald spent 10 ½ years in prison for a rape he did not commit, before DNA evidence proved his innocence. Ronald has since been exonerated and he and I have worked together to advocate for the necessary safeguards to protect against the dangers of eyewitness misidentification and wrongful conviction.

Mike Gauldin was the lead detective investigating my case. He later became Chief of the Burlington Police Department and responded to Ronald Cotton’s wrongful conviction by becoming the first chief of a North Carolina police department to implement the eyewitness identification best practices that are described above. All police departments in North Carolina have since implemented best practices. And around the country, 11 states now require law enforcement agencies to implement eyewitness identification best practices. Additionally, many agencies nationwide have voluntarily adopted best practices, recognizing the need to update investigative procedures to better protect the public.

The Ada County Sheriff’s Office, under my leadership, is currently crafting an eyewitness identification policy that will contain best practices, as is the Boise Police Department. Both agencies have already been using many of the key reforms.

We are urging law enforcement around this great nation to continue this positive and proactive trend by implementing eyewitness identification practices that will protect the citizenry, jurisdiction, prosecution and your departments from the manifold harm that comes with wrongful conviction. The price of inaction is just too high. ☆

About the Authors

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