Eyewitness Identification Expert Report of Dr. Jennifer Dysart in
State of Arkansas v. Ledell Lee
(Case No. 1993-1249)

Report Date: November 7, 2019

I. Overview and Credentials of Dr. Dysart

My name is Dr. Jennifer Dysart and I am a tenured Associate Professor of Psychology at John Jay College of Criminal Justice, in New York City. I have been testifying as an Eyewitness Identification Expert since 2006. In February 2018, I was retained by attorneys representing Mr. Ledell Lee to review materials in the above referenced case and asked to provide my opinions regarding the eyewitness identification evidence relating to the conviction of Mr. Lee for the murder of Ms. Debra Reese on February 9, 1993 in Jacksonville, Arkansas.

Employment: I am a tenured Associate Professor of Psychology at John Jay College of Criminal Justice of the City University of New York. Prior to my faculty appointment at John Jay College in January of 2006, I was an Assistant Professor of Psychology at Southern Connecticut State University, New Haven, CT (2003-2006).

Education: I hold a PhD in Social Psychology from Queen's University, Kingston, Ontario, a Master's degree in Psychology (Brain, Behavior and Cognitive Science) also from Queen's University, and a Bachelor of Arts degree in Psychology from St. Thomas University, Fredericton, New Brunswick.

Teaching Experience: I have taught about eyewitness identification research in psychology courses at the undergraduate, Master's and doctoral levels. I have supervised more than a dozen undergraduate and Master's thesis research projects and one doctoral dissertation on the topic of eyewitness accuracy.

Testimony & Consulting: I have been admitted as an eyewitness expert approximately 65 times in various pre-trial hearings, trials, post-conviction hearings, and civil cases in California, Connecticut, Delaware, Florida, Illinois, Louisiana, Maryland, Massachusetts, Michigan, Nevada, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Texas, Vermont, Virginia, and St. Thomas, USVI. I have also testified at a criminal jury trial in Federal court in New Jersey. I have never been deemed unqualified as an Eyewitness Identification expert in court. In addition to testifying, I have consulted in numerous other cases. Although most of my consulting has been for criminal defendants and plaintiffs in civil cases, I have also worked for prosecutors in the Conviction Review Unit in the wrongful conviction case of Mr. Mark Denny in Kings County, New York, who was ultimately released from prison in December, 2017.

Publications: I am an author or co-author of over two dozen eyewitness publications including original research articles published in peer-reviewed scientific journals, book chapters, a law review article, and a book on eyewitness identification accuracy titled "Eyewitness Identification: Civil and Criminal, 5th Edition" published by LexisNexis (6th Edition forthcoming).

Presentations: I have given more than 160 presentations on eyewitness identification before professional psychological organizations and at conferences attended by judges, lawyers, police officers, investigators, law students, and the general public concerning the accuracy of eyewitness identification and factors that may increase or decrease its reliability.

Curriculum Vitae: My complete curriculum vitae is attached to this report (Appendix A)

II. Materials Reviewed in this Case

As an eyewitness identification expert witness, I ask the attorney or firm who has retained me to provide me with all available relevant materials related to the identification of their client, including police reports, copies of all identification procedures, testimony of the victim(s) and/or witness(es), testimony of all police officer(s) involved in collecting the eyewitness evidence, and any other documentation that is relevant to the eyewitness identification at hand. In this case, I was provided with and have reviewed the following materials:

1. Investigation Photos showing victim's house and other nearby houses including Andy Gomez's house (taken 08/21/18)
2. Andy Gomez witness statement (2/9/93)
3. William McCullough witness statement (Jacksonville PD Report # 93-2253)
4. William McCullough witness statement (annotated; Jacksonville PD Report # 93-2253)
5. Jacksonville PD report (Officer Lewis) (2/9/93) (typewritten)
6. Jacksonville PD report (Officer Lewis) (2/9/93) (handwritten)
7. Jacksonville PD report (Officer Williams) (2/9/93)
8. Jacksonville PD supplemental report (Cpt. Bouillon) (2/9/93)
9. Jacksonville PD supplemental report (Sgt. Smiley) (2/9/93)
10. Lt. Johnson case summary
11. Color copy of photo array (Photo #1 missing)
12. Black and white copy of 6-person photo array
13. Andy Gomez Suppression Hearing testimony
14. Andy Gomez Trial 1 testimony
15. Andy Gomez Trial 2 testimony
16. Glenda Pruitt Suppression Hearing testimony
17. Glenda Pruitt Trial 1 testimony
18. Glenda Pruitt Trial 2 testimony
19. William McCullough Suppression Hearing testimony
20. William McCullough Trial 1 testimony
21. William McCullough Trial 2 testimony
22. Catherine Williams Pre-trial testimony (P. 55-59)
23. Catherine Williams Trial 1 testimony (P. 251-262)
24. Chris Stough Trial 2 testimony
25. Pamela Gomez Trial 2 testimony
26. State's Closing Trial 1
27. Defense Closing Trial 1
28. State's Closing Trial 2
29. Defense Closing Trial 2
30. Catherine Williams Trial 2 testimony (P. 331-338)
31. Affidavit of Elizabeth Vartkessian (8/31/18)

III. Brief Summary of Case Facts

Between the hours of 11:00am and 1:30pm on February 9, 1993, Ms. Debra Reese was murdered inside her home at 212 Cherry Street in Jacksonville, Arkansas. According to the statement and testimony of Mrs. Williams, the victim's mother, she spoke with her daughter around 10:50am and her daughter told her that a black male had come to Ms. Reese's door asking to borrow tools. Ms. Reese was uncomfortable with this interaction and the two discussed that she would come over to Mrs. Williams' house, a short distance away, after Ms. Reese did her hair and got ready. Around 1:30pm, Mrs. Williams went to her daughter's house because she hadn't been able to reach her. When Mrs. Williams arrived, it appeared that

Ms. Reese's house had been broken into. The police were called and it was the police who then discovered Ms. Reese's body in a bedroom of the house.

There were no witnesses to the actual homicide but three witnesses selected Mr. Ledell Lee from a photo array as being in the neighborhood or near 212 Cherry Street between the hours of 10:00am and 12:30pm.[1] Therefore, I will provide a summary of each witness's reported observations followed by a brief description of the eyewitness factors that could have impacted their memory for the person they viewed. More detailed descriptions of each of the factors will follow in *Section VI: Proposed Testimony*.

1) Mr. Andy Gomez

Mr. Gomez alleges that he was watching television in his home at 404 North Oak on the morning of February 9, 1993. He was at home due to an injury for which he was taking the prescribed narcotic Vicodin.[2] His residence is across the street from the victim's home, although he had never previously seen the victim.[3] Sometime around 11:15am, he allegedly viewed a black male walking north on Cherry Street (towards his home) and then saw the man go to 212 Cherry Street. Although Mr. Gomez testified that the distance between his living room window and 212 Cherry Street was approximately 50-75 feet, it has subsequently been determined that the actual distance is 221 feet.[4] Mr. Gomez allegedly saw the black male speaking with the unknown female and then saw the black male suspiciously enter the home (by entering quickly). Mr. Gomez allegedly continued to watch the neighbor's home from his living room. Approximately 20 minutes later, he saw what he believed to be the black male exit 212 Cherry Street and walk south down Cherry Street, away from Mr. Gomez. After continuing to watch the black male walk to approximately Cherry Circle,[5] Mr. Gomez decided to get in his red car and follow the black male. On his pursuit of the black male, Mr. Gomez lost sight of the individual approximately 4 times. The closest he allegedly viewed the individual who he believed was the black male he saw leave 212 Cherry Street – after losing sight of the person who exited 212 Cherry Street – was approximately 4-12 feet when Mr. Gomez was driving and making a turn. He estimates that he followed the male for 20-25 minutes in total. Mr. Gomez reported his observations to police after he saw police cars at 212 Cherry Street that same afternoon. The totality of the description that Mr. Gomez provided was dark-complected male, 6'1", 180 pounds wearing a cap, jeans and a dark jacket (perhaps with some logo on the back). That same afternoon, Mr. Gomez was taken to the police station and viewed a 6-person photo array containing the photograph of Mr. Lee. Mr. Gomez selected Mr. Lee as the person he saw at 212 Cherry Street as well as being the person he followed. Mr. Gomez testified three times: Suppression Hearing, first trial and the second trial. He made in-court identifications of Mr. Lee in each of these proceedings.

When examining the issues that can play a role in the accuracy of an eyewitness identification, there are factors that are inherent in the situation that can affect accuracy (e.g., lighting, distance) and there are factors related to the police investigation that can affect accuracy (e.g., the quality of a lineup). The situational factors are called estimator variables and police procedures are referred to as system variables. The estimator variables relevant to Mr. Gomez in this case include: a limited opportunity to observe

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[1] Two additional witnesses testified in the second trial, Mrs. Pamela Gomez (Mr. Gomez's wife) and Ms. Chris Stough. Neither of these witnesses was shown any identification procedure and neither were asked to make an identification (of Mr. Lee) at the second trial.
[2] Mr. Gomez believes he had taken Vicodin that day but is not sure when.
[3] See Suppression Hearing P. 129-130. I have requested information relating to how long Mr. Gomez lived at 404 North Oak but have not yet received this information.
[4] See affidavit of Elizabeth Vartkessian dated 8/31/18.
[5] A simple pin drop measurement on Google Maps indicates that the distance between 404 North Oak Street and Cherry Circle is over 700 feet.

resulting from the distance from Mr. Gomez's living room to the front door of 212 Cherry Street, the length of time that he had to see the individual's face, the fact that he "lost sight" of the individual multiple times, the stress/arousal he experienced while following an unknown male with his car, cross-race identification, the common (general) description provided of the individual, and potential contamination of his memory over time by learning information from others related to the case. With respect to system variables, the police identification procedure has reliability concerns with regard to the quality of the fillers, the fact that no pre-lineup instructions were given indicating that the actual individual may or may not be present, the use of a non-blind lineup administrator who may have unconsciously or consciously affected the identification, no contemporaneous recording of Mr. Gomez's confidence in his selection, and the use of repeated identification procedures where Mr. Lee appeared multiple times. Mr. Gomez also received information that likely contaminated his memory for the events. All of these factors, individually and in combination, serve to reduce the likelihood that an accurate identification decision was made. Further, Mr. Gomez's testimony in the Suppression Hearing, first trial and second trial had significant inconsistencies.

2) Ms. Glenda Pruitt

On February 9, 1993, Ms. Pruitt lived in the neighborhood at 128 Galloway Circle, which is 0.5 miles (walking distance) from 212 Cherry Street.[6] She allegedly saw and briefly spoke with a man she knows as "Skip" on February 9, 1993 on her front lawn as Skip was passing by. The exact time of this interaction is not known however according to Ms. Pruitt it was after a housing inspector had left her home, around noon. Ms. Pruitt recalls having seen Skip around the neighborhood a few times but did not know him well and did not know his real name. Detective Johnson came to Ms. Pruitt's house in the early afternoon of February 9, 1993 and said to her "You were talking to Ledell Lee."[7] Ms. Pruitt responded that she did not know who that was but wondered how the police knew she was talking with someone. She was subsequently shown photographs and she pointed out the person she knows as Skip, who she was then told was Ledell Lee. Ms. Pruitt also recognized two other people in the photo array from the neighborhood. Ms. Pruitt did not see any red vehicles near her home around that the time that Skip passed by her house.

The estimator variables relating to Ms. Pruitt's reliability include the limited amount of time that she had to see the person she alleged was Skip on February 9, 1993 and her limited familiarity with Skip prior to February 9, 1993. The system variable factors related to Ms. Pruitt's selection of Mr. Lee and her identification accuracy are the same concerns that exist with Mr. Gomez: there are concerns with regard to the quality of the fillers, the fact that no pre-lineup instructions were given indicating that the actual individual may or may not be present, the use of a non-blind lineup administrator who may have unconsciously or consciously affected the identification, no contemporaneous recording of Ms. Pruitt's confidence in her selection, and the use of repeated identification procedures where Mr. Lee appeared multiple times. Ms. Pruitt also received post-identification feedback where she learned that the person she selected was Ledell Lee. All of these factors, individually and in combination, serve to reduce the likelihood that an accurate identification decision was made. It also appears that law enforcement never asked her to provide a description of Skip before showing her a photo array with Mr. Lee. Further, Ms. Pruitt's sworn testimony across proceedings had significant inconsistencies.

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[6] I conducted a Google Maps directions inquiry for walking distance between 212 Cherry Street and 128 Galloway Circle in Jacksonville, AK.
[7] Suppression Hearing transcript P.156. From the materials I have received and reviewed, it is not clear how Mr. Lee became a suspect so quickly in the investigation.

3) Mr. William McCullough

Mr. McCullough was a neighbor of the victim who lived at 412 North Oak Street, approximately 315 feet from the victim's home.[8] Mr. McCullough recalls being woken up by the sound of someone knocking at his door just before 10:00am on February 9, 1993. He answered the door and there was a black male – with no hat, no jacket, but perhaps wearing a short-sleeved shirt – standing there who wanted to borrow a tool to make a repair to his car. Mr. McCullough went outside and got the tool for the gentleman, a person he had never seen before. He gave him the tool and they had a conversation that Mr. McCullough estimated to be 10-15 minutes in length. Mr. McCullough never asked for the gentleman's name. The person left and Mr. McCullough went back to bed and saw that the time was around 10:00am.

With respect to Mr. McCullough's observations, there is uncertainty with regard to the timing and length of his observations on February 9, 1993 due to inconsistencies in his testimony. The system variable factors related to Mr. McCullough's selection of Mr. Lee are similar to the concerns that exist with Mr. Gomez and Ms. Pruitt: the fact that no pre-lineup instructions were given indicating that the actual individual may or may not be present, the use of a non-blind lineup administrator who may have unconsciously or consciously affected the identification and who also was aware that two other witnesses has already selected Mr. Lee the day before, no contemporaneous recording of Mr. McCullough's confidence in his selection, and the use of repeated identification procedures where Mr. Lee appeared multiple times. All of these factors, individually and in combination, serve to reduce the likelihood that an accurate identification decision was made. In addition, the description of the black male Mr. McCullough interacted with was extremely vague, despite the fact that he recalled that the interaction lasted 10-15 minutes. Finally, Mr. McCullough's sworn testimony across proceedings was inconsistent with respect to the time when this interaction took place.

Summary

The summaries above of the three witnesses who selected Mr. Lee as the person they saw on February 9, 1993 show that there were a number of estimator and system variable concerns for each of the witnesses. What is important to keep in mind when evaluating an "eyewitness case" is that if there are significant concerns with each eyewitness independently, it is not dispositive that there are multiple eyewitnesses who made the same choice. As evidence of this from real-world examples, the DNA exoneration cases in the United States have shown that one third of exonerations that included eyewitness evidence had more than one witness who made the same mistake and chose an innocent suspect. In fact, some of these exonerations had five or more witnesses who all made the same error. Thus, the strengths and weaknesses of each witness must considered individually, as I do in this report.

In addition, for this case I conducted what is known as a "mock witness experiment" in order to assess the quality of the photo array that was shown to Mr. Gomez, Ms. Pruitt and Mr. McCullough. This experiment is described in detail in *Section 8*: *Lineup Bias* on page 25 of this report. Briefly, the experiment was conducted using 47 mock witnesses who were given a description of the black male (provided by Mr. Gomez) and were shown the color photo array that was used in this case. The color array I have received is missing image #1 and thus the mock witnesses viewed a 5-person array. The results showed that 83% of witnesses who read the description and looked at the array chose Mr. Lee as the person who best matched the description. Clearly, the results of this experiment demonstrate that the array was biased toward the defendant.

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[8] I conducted a Google Maps directions inquiry for walking distance between 212 Cherry Street and 412 North Oak Street in Jacksonville, AK.

IV. Basis for Opinions in This Case

In this section, I identify a series of factors, relevant to the current case, that have been shown through scientific peer-reviewed research to influence the reliability of eyewitness identifications. As this research relates to the identifications of Mr. Lee, I will first outline the factors known to affect eyewitness accuracy that are *not* under the control of law enforcement (known as "estimator variables"), followed by the factors that are under the control of law enforcement (known as "system variables"). It is critical to understand the impact of both system and estimator variables on eyewitness accuracy so that an evaluation of an eyewitness's ability to view and perceive the events and subsequent likelihood of making an accurate identification can be made. These evaluations should be made by law enforcement and prosecutors during their investigation of the case, defense attorneys, judges and ultimately juries.

The distinction between estimator and system variables was developed in 1978 by Dr. Gary Wells, a Distinguished Professor of Psychology and leading international expert in eyewitness identification research. Over the past 40+ years, a substantial amount of research on both estimator and system variables has been conducted and published in peer-reviewed scientific journals, books, law reviews, and other sources.

Estimator and system variables have been shown to independently influence the likelihood of an accurate identification decision. That is, even when best practices to collect the eyewitness evidence are used by law enforcement, eyewitness errors are not necessarily eliminated. This is because estimator variables – the circumstances surrounding the crime and the witness' ability to perceive, store, and recall – also influence eyewitness accuracy and reliability.

Based on my review of the above materials, the estimator and system variables relevant to this case include:

1. Effects of Limited Opportunity to Observe: Distance
2. Effects of Limited Opportunity to Observe: Time
3. Effects of Limited Opportunity to Observe: Change Blindness
4. Effects of Stress/Arousal
5. Cross-race Identification
6. Description "Accuracy"
7. Post-event Contamination
8. Lineup Bias
9. Pre-identification Warnings/Instructions
10. Use of a Non-blind Lineup Administrator Rather Than a Double-blind Administrator
11. Decision Speed
12. Witness Confidence
13. Repeated Identification Procedures and Commitment Effects

V. General Background on Eyewitness Research

Over a period of decades, researchers have established that when we experience an important event, we do not simply record it in our memory as a video recorder would. The situation is much more complex.[9]

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[9] For a review of science of perception and witness memory, see National Research Council (2014). *Identifying the culprit: Assessing eyewitness identification.* Washington, DC: The National Academies

In fact, the National Research Council Report on eyewitness identification titled "Identify the Culprit: Assessing Eyewitness Identification"[10] concluded the following with respect to humans' ability to accurately perceive their environment (P. 55):

> Perception does not reflect the sensory world passively, as camera film detects patterns of light.

Most theoretical analyses of the memory process divide it into three major stages. First, a witness perceives an event and information is entered into the memory system. Next, some time passes before a witness tries to remember the event. Finally, the witness tries to retrieve the stored information. The National Research Council report reminds us that (P.57-58):

> The way an observer experiences a visual scene—the setting, the people, and the actions associated with a crime —is commonly influenced as much by expectations from prior experience with the world as it is by the precise patterns of light cast upon the retina. (P. 57) In view of this inherent dependence of perception on prior experiences and context—and, importantly, the fact that the viewer is commonly none the wiser when perception differs from the "ground truth" of the external world—it appears that accurate eyewitness identification may be difficult to achieve.

Psychologists who conduct research in this area investigate the factors that play a role and can affect memory in each of the three stages. In particular, researchers have identified a number of ways that eyewitness evidence – a witness' recollection of events – like other forms of trace evidence in an investigation, can be altered and/or affected through *contamination*. Contamination of a witness' memory can come from information learned from or about other witnesses, information provided by law enforcement or other individuals charged with the collection (and preservation) of eyewitness evidence, media and social media accounts relating to the case, as well as other sources. Regardless of the source, however, once a witness' memory has been exposed to post-event information, it is extremely difficult to ascertain the full impacts of this contamination on a witness' recollection of events and people.

Numerous factors at each stage affect the accuracy of an eyewitness account. Some of the factors affecting eyewitness performance include: the opportunity of the witness to see a perpetrator's face/characteristics, stress/fear, and length of the retention interval. As it relates to law enforcement, research has shown that the procedures and practices police use during the third (retrieval) stage of the memory process can influence the reliability of an eyewitness identification and the witness's subsequent testimony. Examples of police procedures that can affect the accuracy of an identification include the use and content of pre-lineup/photo array[11] instructions, whether the identification was conducted using a double-blind administrator, and the type of post-event information provided to a witness after their identification decision.

Eyewitness Error Rates in Actual Cases

According to the national Innocence Project database, there have been mistaken eyewitness identifications in nearly 70% of post-conviction DNA exonerations in the United States – which this database currently numbers as **367**.[12] In a 2011 analysis of the first 250 DNA exoneration cases in the

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Press.
[10] National Research Council (2014). *Identifying the culprit: Assessing eyewitness identification.* Washington, DC: The National Academies Press.
[11] The terms "lineup" and "photo array" are used interchangeably in this report, unless noted otherwise.
[12] Visit www.innocenceproject.org for updated information and statistics on DNA exoneration cases nationally.

United States, Duke University Law Professor Brandon Garrett found that the leading contributing factor in these wrongful convictions was erroneous eyewitness identification, which occurred in 76% of the first 250 cases.[13] In a quarter of all wrongful convictions studied by Garrett, eyewitness testimony was the *only* direct evidence against the defendant. In the 190 cases where there was an erroneous eyewitness identification of the innocent defendant, 36% included mistaken identifications from *more* than one eyewitness. In fact, some of the cases had as many as five eyewitnesses who incorrectly testified that the defendant was the perpetrator they saw. Further, some 31 DNA exonerations involved the misidentification of an individual that was previously known to the witness. In other words, not all mistaken identifications are of strangers.

In addition to the DNA exoneration cases, there are other sources for statistics relating to wrongful convictions and errors in eyewitness identification decisions in actual criminal cases. For example, the National Registry of Exonerations[14] has accumulated data on both DNA and non-DNA exonerations in the United States and has found that eyewitness errors were involved in 715 of the 2,509 DNA and non-DNA cases combined (28%).[15] In addition, 22 cases in the Registry involve posthumous exonerations. Of these 22 cases, 5 involved mistaken eyewitness identification[16], with 2 of the 5 being DNA exonerations.

In addition to the wrongful conviction cases described above, archival studies of police records also show that eyewitness identifications can be unreliable. Researchers have analyzed archival records of actual eyewitness identifications and attempted identifications from police files.[17] In a 2019 update of the 1998 AP-LS White Paper on eyewitness identification,[18] Dr. Wells and colleagues have summarized the filler identification data from several archival studies of actual eyewitnesses to crimes.[19] The researchers note that there have been 11 published articles on the subject with data from over 6,500 witnesses in actual

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[13] Garrett (2011). *Convicting the innocent: Where criminal prosecutions go wrong.* Cambridge, MA: Harvard University Press.

[14] The National Registry of Exonerations, http://www.law.umich.edu/special/exoneration/Pages/ detaillist.aspx (visited November 3, 2019).

[15] There are multiple reasons why the DNA and non-DNA rates of mistaken identification differ, including that the majority of DNA cases include sexual assaults and homicides, two crimes that often rely on eyewitness evidence.

[16] See the posthumous DNA exonerations of Timothy Cole: http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3114; Frank Lee Smith: http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3644; and Ronald Stewart: http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5530

[17] Unfortunately, when using archival data and police records, it is not possible for researchers to determine when a suspect identification is correct because the actual truth about whether the suspect in a lineup or other identification procedure is guilty is not known. Despite some researchers' best efforts to *estimate* the truth, actual truth about whether the suspect in the lineup or other identification procedure is truly guilty is rarely known to researchers using archival and field data. It is possible, however, to determine general error rates as reflected in the false identification of non-suspect fillers. Dr. Ruth Horry and colleagues discuss additional concerns about archival studies in their 2014 paper: Horry, Halford, Brewer, Milne, & Bull (2014). Archival analyses of eyewitness identification test outcomes: What can they tell us about eyewitness memory? *Law and Human Behavior, 38,* 94–108.

[18] Wells, Small, Penrod, Malpass, Fulero, & Brimacombe (1998). Eyewitness identification procedures: Recommendations for lineups and photospreads. Law and Human Behavior, 22, 603–647.

[19] Wells, Kovera, Douglass, Brewer, Meissner, & Wixted (2019, Feb 4 Draft). *Policy and procedure recommendations for the collection and preservation of eyewitness identification evidence.* Downloaded from: https://ap-ls.wildapricot.org/resources/Documents/Feb42019 EWwhitepaper.pdf

cases. The results show that nearly one quarter of eyewitnesses who view a photo array or lineup choose an innocent filler. Of those who "identify"[20] a person from a photo array or lineup, more than one third (36.8%) "identify" an innocent filler as the perpetrator. Further, the overall error rate must be higher than one third, as these data do not include the erroneous identifications of innocent suspects (it only includes filler selections). In summary, identification decisions in actual cases show that errors are common and that over one third of all positive "identifications" are incorrect. While false identifications of innocent fillers do not necessarily send the filler to jail, these choices still constitute identification errors and provide valuable information about the reliability of witnesses and the reliability of lineup procedures generally.

VI. Proposed Testimony

I have identified the following eyewitness factors as being relevant to the facts of the current case involving the selection of Mr. Lee by Mr. Gomez, Mr. McCullough, and Ms. Pruitt.

1. Effects of Limited Opportunity to Observe: Distance

Research conducted by Geoffrey Loftus and colleagues has shown that distance can significantly impact a person's ability to view the details of another person's face.[21] In his "distance-as-filtering hypothesis", Loftus explains that as a face is viewed at further and further distances, there is less ability to detect the details of the face because facial details become coarser and coarser. As way of example, the image below from Loftus' research recreates the loss of detail when one view's a face from 20 feet (left) to 100 feet (right).

20 feet   100 feet
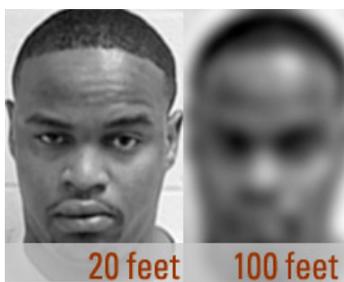
In other research, Willem Wagenaar and Juliette van der Schrier tested witnesses on their ability to recognize a stranger's face from a range of distances.[22] Participants viewed faces from distances between 10 feet (3m) and 131 feet (40m) and were then immediately asked to make an identification from a six-person lineup. The results showed that the proportion of correct responses to errors was too great at

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[20] Witnesses who "identify" an innocent lineup filler are obviously not making this decision because they actually recognize the filler from the crime. Thus, it is important to distinguish between an identification (which is presumably made based on a recognition of a person) and a mere choosing behavior (selecting someone from a lineup procedure).

[21] Loftus & Harley (2005). Why is it easier to identify someone close than far away? *Psychonomic Bulletin & Review, 12,* 43-65; Harley, Carlsen & Loftus (2004). The 'saw-it-all-along' effect: Demonstrations of visual hindsight bias. *Journal of Experimental Psychology: Learning, Memory and Cognition, 30,* 960-968.

[22] Wagenaar & van der Schrier (1996). Face recognition as a function of distance and illumination: A practival tool for use in the courtroom. *Psychology, Crime & Law, 2,* 321-332.

distances over 49 feet (15m) for an identification to be considered probative. Accordingly, the authors recommended a 15-meter distance cutoff point as a useful "rule of thumb" for courts when assessing reliability. A replication of this study using photos of famous people led to a similar conclusion.[23] Other researchers,[24] however, have found significant impairments in identification accuracy as distance between witness and the target increases but do not recommend a particular cutoff point, as did Wagenaar and van der Schrier. The implication of the scientific research is that distances over 100 feet, as shown above, make it extremely difficult to encode the details of a person's face, which is required in order to make accurate identification decisions. Recent research suggests that the effects of distance on accuracy may be even greater in situations where the race of the witness and subject are different.[25] In addition, if a witness requires prescription glasses to correct limitations in seeing objects/people at a distance, this could also affect acuity and the ability to encode details necessary for identification.

Mr. Andy Gomez

With respect to Mr. Gomez, there is relevant testimony pertaining to his observations at 212 Cherry Street (the victim's home) and how far away he *believed* he was from the victim's house when he saw the black male (stranger) go in the front door. (Suppression T.P. 129-130):

Q. What happened then?
A. Okay. He was talking to her, and then she kind of went away from my view. The next thing I knew, I seen the defendant, I guess, the guy in orange, and he had just like opened the screen and just ran in to the house.
Q. Did you also observe the house for a period of time?
A. Yes.
Q. When is the next time you saw him?
A. About 20 minutes later.
Q. Where did you see him 20 minutes later?
A. He came out of the house. Then he kind of looked around, you know, just pretty suspicious looking, I guess.
Q. Could you see his face?
A. Yes.
Q. Mr. Gomez, what did you do at that time?
A. I watched him walk up the street and to probably Cherry Court. And then I decided to go in my car and follow him.

Mr. Gomez's testimony continued on the following page (Suppression T. P. 131):

Q. When you were at your house sitting on your couch, how far away were you from this defendant when he was at the house on Cherry Street?
A. **Probably 50, 75 feet.**

It should be noted here that the actual distance between Mr. Gomez's living room window, where he was located while making his observations described above, and the front door of 212 Cherry Street has been measured by investigators and is in fact **221 feet.**[26] Despite this fact, Mr. Gomez reaffirms his

[23] De Jong, Wagenaar, Wolters, & Verstijnen (2005). Familiar face recognition as a function of distance and illumination: A practical tool for use in the courtroom. *Psychology, Crime & law, 11,* 87-97.

[24] Lindsay, Semmler, Weber, Brewer, & Lindsay (2008). How variations in distance affect eyewitness reports and identification accuracy. *Law and Human Behavior, 32,* 526-535.

[25] Lampinen, Roush, Erickson, Moore, & Race (2015). The effects of simulated distance on recognition of same race and other race faces. Visual Cognition, 23, 678-698.

[26] See affidavit of Elizabeth Vartkessian dated August 31, 2018.

Suppression hearing testimony during the first trial when he described for the jury when he was able to see the black male's face (T.T.1 P. 113):

Q. When did you see this defendant's face?
A. When he was walking towards our house and 212.

In fact, at the second trial, Mr. Gomez was asked on direct about viewing the photo array. This dialogue confirms that Mr. Gomez was making his photo array identification based on his observations from what we now know was over 200 feet (P. 351):

Q. When you looked at those photographs, did you see the person that you had seen coming out of 212 Cherry in those photographs?
A. Yes, I did.

In his testimony at the second trial, Mr. Gomez again discussed when he had the alleged opportunity to see the "suspicious" black male's face (T.T.2 P. 361):

Q. When you were on that two to four minute drive, you still hadn't seen a front view?
A. Well, I seen, when he, like I said, when he first, you know, went to the house I seen the frontal view then.

In summary, the scientific research on distance strongly suggests that Mr. Gomez would not have been able to see the details of the black male's face at 220 feet clearly enough to subsequently make an accurate identification decision. This is particularly significant because the jury was led to believe that he had made his observations from 50-75 feet. The best opportunity Mr. Gomez would have had to see a black male's face would have been while driving from a distance of approximately 4-12 feet (1st T.T.P. 115-116; 2nd T.T.P. 365, 367).[27] As will be discussed below, it is not clear that the black male he saw from 4-12 feet away is the same black male that he observed at 212 Cherry Street, as Mr. Gomez lost sight of the individual he was following approximately 4 times.

2. Effects of Limited Opportunity to Observe: Time

Common sense might suggest that even a brief opportunity to view a stranger's face allows us to form a mental snapshot of that person, but research shows that the amount of time that a witness views a person's face significantly impacts the witness's ability to subsequently identify that person. However, even when a witness is in the perpetrator's physical presence for an extended period of time, errors can still be made.[28] With respect to the effects of exposure length on eyewitness accuracy, Peter Shapiro and Steven Penrod found a systematic relationship between exposure time and identification accuracy in a 1986 meta-analysis.[29] Since this study, an updated meta-analysis[30] and other research[31] have replicated the positive correlation between the amount of exposure to a person's face and identification accuracy.

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[27] Given Mr. Gomez's significant underestimate of the distance between his window and 212 Cherry Street, it is not clear whether his estimate of 4-12 feet is in fact accurate.

[28] *National Research Council* (n 9).

[29] Shapiro & Penrod (1986). Meta-analysis of facial identification studies. *Psychological Bulletin, 100,* 139–156.

[30] Bornstein, Deffenbacher, Penrod, & McGorty (2012). Effects of exposure time and cognitive operations on facial identification accuracy: A meta-analysis of two variables associated with initial memory strength. *Psychology, Crime and Law, 5,* 473–490.

[31] For example, see: Longmore, Liu, & Young (2008). Learning faces from photographs. *Journal of Experimental Psychology: Human Perception and Performance, 34,* 77–100; Memon, Hope, & Bull (2003). Exposure duration: Effects on eyewitness accuracy and confidence. *British Journal of*

In addition, researchers have found that a person's retrospective estimate of the amount of time that an interaction or event took place may differ from the actual amount of time, with the error often in the direction of overestimating the amount of time.[32] Sometimes the estimate of time is profoundly exaggerated. In one study, participants saw a 30-second simulated bank robbery on videotape.[33] Two days later they were asked some questions about the tape, including how long it lasted. The average estimate of duration was 152 seconds – more than 5 times the actual length. Very few people estimated a duration that was equal to or less than the true value of 30 seconds. Although it was rare, some people produced inordinately long estimates of over 900 seconds. In other words, these individuals remembered a 30-second bank robbery tape as having lasted over 15 minutes. Thus, it is possible that triers of fact will believe, through witness testimony, that the witness had a longer opportunity to view the perpetrator than is in fact true.

Another issue relevant in this case is the accuracy of non-stranger identifications. The research on "familiar" other identifications shows that even these identification circumstances are not without error.[34] For example, there have been multiple field studies (with actual witnesses in real cases) examining the rate of suspect and filler identifications in stranger and *non-stranger* cases. On average, the rate of suspect identifications in these studies is 41% in stranger cases and 90% in non-stranger cases. Of particular interest, however, is the rate of misidentification of known-innocent fillers in the identification procedure. If a witness and perpetrator were previously known to each other, one might expect that the eyewitness would not make a mistake and choose and innocent lineup member. However, on average, 5% of non-stranger real-world cases have filler identifications. It is important to note that there is a range of familiarity – from "minimal" to "extensive" – that impacts the likelihood of identification error.

This pattern of results from field studies is consistent with a laboratory study conducted by Nancy Steblay and colleagues[35] where they found that 9% of witnesses in non-stranger situations made a filler identification. In a 2019 summary of the non-stranger literature,[36] Jonathan Vallano and colleagues provide the following warning (P.133):

> Yet familiar identifications are not infallible. First, an eyewitness who states that they know who the perpetrator is does not necessarily mean that the familiar person she identified is the perpetrator. Second, familiar identifications are not all created equal. Familiar identifications involving *minimal prior exposure* to the perpetrator may operate similarly to stranger identifications, with similarly high error rates. (emphasis added)

Psychology, 94, 339–354; Read, Vokey, & Hammersley (1990). Changing photos of faces: Effects of exposure duration and photo similarity on recognition and the accuracy–confidence relationship. *Journal of Experimental Psychology: Learning, Memory, and Cognition, 16,* 870–882.

[32] For example, see: Attard & Bindermann (2014). Establishing the duration of crimes: An individual differences and eye-tracking investigation into time estimation. *Applied Cognitive Psychology, 2,* 215–225; Loftus, Schooler, Boone, & Kline (1987). Time went by so slowly: Overestimation of event duration by males and females. *Applied Cognitive Psychology, 1*, 3–13; Yarmey, & Yarmey (1997). Eyewitness recall and duration estimates in field settings. *Journal of Applied Social Psychology, 27,* 330–344.

[33] Loftus, Schooler, Boone, & Kline (1987). Time went by so slowly: Overestimation of event duration by males and females. *Applied Cognitive Psychology, 1,* 3-13.

[34] For a review of this research, see Vallano, Slapinski, Steele, Briggs & Pozzulo (2019). Familiar eyewitness identifications: The current state of affairs. *Psychology, Public Policy, and Law*, 25, 128-146.

[35] Steblay, Dietrich, Ryan, Raczynski & James (2011). Sequential lineup laps and eyewitness accuracy. *Law and Human Behavior, 35,* 262–274.

[36] *Vallano et al.* (n 34)

Mr. Andy Gomez

The opportunity that Mr. Gomez had to see the face of a black male – from a distance of less than 220 feet – would have been while he was driving his car and saw a black male standing at the corner approximately 4-12 feet away.[37] Based on Mr. Gomez's description of events, the length of time that he would have had to view this person's face would have been very short, perhaps seconds.

Mr. McCullough

When asked to describe the interaction between himself and the black male that had come to borrow a tool to fix his car, Mr. McCullough provided the following answer in his Suppression Hearing testimony (P. 6):
    Q. How long was the person at your house that day?
    A. Approximately 10, 15 minutes.
    Q. 10 or 15 minutes to borrow the tool?
    A. Yes.

He then went on to testify that he looked at the black male's face for 5-10 minutes (P. 10). Yet despite this estimate of time, Mr. McCullough was not able to provide specific details regarding the person's appearance. The handwritten description Mr. McCullough provided to law enforcement had only 5 general descriptors**: dark-complected black male, 6'1", 180 lbs.** In addition, his Suppression Hearing testimony yielded few additional details (P. 9-10):
    Q. Do you remember anything about what the person was wearing the day at your house when this
        person borrowed a tool?
    A. No, sir.
    Q. Could you even say that he had on long pants or can you be (sic)
    A. Like I say, he had on long pants.
    Q. Can you say what kind of shoes he had on?
    A. No, sir.
    Q. Can you say there were like dress shoes or sandals or whatever, tennis shoes?
    A. No, sir, I can't.
    Q. You don't remember that. Do you remember anything about a shirt?
    A. No, sir.

In his testimony during the second trial, Mr. McCullough remembered a vague detail about the person's clothing (P. 400):
    Q. Do you know, or are you guessing what he had on as a shirt? Do you know, or are you guessing?
    A. The shirt, I wasn't too sure. I just know it was short sleeved.

Although it is possible that the interaction between strangers in this simple transaction (borrowing a tool that was located close by) lasted for 10 minutes, given the lack of information that Mr. McCullough was able to provide about the person's physical features as well as the science on overestimating time (described above), it is more likely that the interaction was shorter than Mr. McCullough recalled in his testimony.

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[37] Given Mr. Gomez's significant underestimate of the distance between his window and 212 Cherry Street, it is not clear whether his estimate of 4-12 feet is in fact accurate.

Ms. Glenda Pruitt

During the Suppression Hearing, Ms. Pruitt was asked about how well she knew "Skip", the person she has allegedly spoken with on February 9, 1993 and she responded that she didn't know him that well and in fact was not positive that the defendant is Skip (P. 153):

    Q. Do you know someone by the name of Skip?
    A. I met him briefly.
    Q. When did you meet Skip?
    A. I guess in 1993, in the summer.
    Q. Just a few months ago, six months ago?
    A. No. It has been a year.
    Q. Was that summer of '92?
    A. '92, yeah.
    Q. Okay. Is Skip in the courtroom today?
    A. Yes. I believe that's him.
    Q. Would you like to step down and take a look to make sure?
    A. Yes. I didn't really know him very well.

During her testimony at the first trial, Ms. Pruitt again demonstrated that she did not know Skip very well (P. 154):

    Q. How many times did you see him after you met him in the summer of '92?
    A. Three or four, maybe five.
    Q. Where had you seen him?
    A. In front of my house passing.

In addition to not knowing Skip well, the length of her observations and interaction with the black male on February 9, 1993 were very quick (Suppression T.P. 157-158):

    Q. Do you remember telling them at the time what he was wearing?
    A. All I could remember was red plaid. I couldn't, you know, remember very much. It was hard
       for me to remember what he was wearing or anything. It was so fast, the meeting, you know,
       was really fast.

Although it is possible that Ms. Pruitt was vaguely familiar with someone named Skip, it is important to also take into consideration how long she saw the person passing in front of her house on February 9, 1993. Her testimony at the second trial is that she spoke with Skip for "seconds" and he never stopped when she was speaking with him (T2T P. 426).[38] Based on these facts, it is possible that Ms. Pruitt made an error when she selected Mr. Lee as the person she had spoken with that morning.

3. Effects of Limited Opportunity to Observe: Change Blindness

Human perception is extremely complex. Counter-intuitively, just because something is right in front of you, does not mean you will perceive it accurately. In fact, we often fill in the gaps of our visual world because we are limited in our attentional capabilities. One demonstration of this concept is a phenomenon called change blindness.

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[38] Police Summary Report by Lt. Johnson states that Mr. Gomez saw a black male *stop* and talk to someone with long braids (which allegedly is Ms. Pruitt). But Ms. Pruitt was quite consistent in her testimony that "Skip" never stopped.

By way of example, if you have ever watched an action movie with a big Hollywood star, chances are there is a stunt double that is performing in the difficult (and even dangerous) action scenes. While you watch the movie, however, you probably do not notice the switch between the star and the double. This is intentional and due, in part, to change blindness – the finding that we often fail to detect changes – sometimes major – in our visual field.[39] It is a good thing that change blindness occurs while watching (action) movies, otherwise the use of stunt doubles would be ineffective and distracting because we would perceive that the actors were constantly changing. But in the context of a criminal investigation, change blindness can have negative consequences. For example, a store clerk might believe that a robber is the same person who was in the store earlier and erroneously conclude that the robber and the customer are one in the same.

There are several change blindness paradigms that have been developed to study this phenomenon. In one paradigm developed by Dan Simons and colleagues, research participants approach a counter where a research assistant greets them. The assistant speaks with the participant for a short period of time and then asks the participant to sign a consent form. The assistant then bends down behind the counter, ostensibly to get more paperwork, and a different research assistant – who had been hiding behind the counter – stands up and begins interacting with the participant.[40] The question for researchers using this paradigm is "how often do participants notice that they are speaking with an entirely different person?" In one early study using this methodology,[41] the clothing of the two (white male) assistants was the same but one had blond curly hair and the other had brown straight hair. They also had distinct facial features and voices. The results showed that 75% of participants *failed to notice* that a second research assistant stood up from behind the counter. What is particularly interesting is that nearly half of the participants in this early study were aware of the change blindness phenomenon yet did not notice the change of research assistants. Participants made comments such as "I thought I would notice something like that, but I didn't. Curious." and ''I didn't think I would fall for something like that…"

In one eyewitness study examining change blindness, Graham Davies and Sarah Hine tested whether participant witnesses would be able to tell that a "thief" had changed from one person to another in the middle of a filmed staged crime.[42] Notably, the appearance of the two males in the video was considerably different[43] and both males' faces were clearly visible in the film.[44] In this experiment, half of the participants had were told to pay attention to the video because there would be a memory test and the other half were told simply to watch the video. Overall, the results showed that 61% of participants failed to notice the change between the two men in the video. Additional change blindness research with eyewitnesses has found similar results.[45]

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[39] A search for the term change blindness in PsycInfo – the leading database for published psychology research – reveals over 500 published academic articles on the topic. For a review, see Ellis (2012). May I have your attention please? A review of change blindness. *Organization Development Journal, 30,* 54-62.

[40] To see a video of this paradigm, visit https://www.youtube.com/watch?v=fXWuB7fmGv0.

[41] Levin, Simons, Angelone, & Chabris (2002). Memory for centrally attended changing objects in an incidental real-world change detection paradigm. *British Journal of Psychology, 93(3),* 289-302.

[42] Davies & Hine (2007). Change blindness and eyewitness testimony. *The Journal of Psychology: Interdisciplinary and Applied, 141,* 423-434.

[43] The difference in height was over 6", one had a heavier build with an oval face and the other had a round face. Both wore dark clothing but the style and detail was different.

[44] In this case, Mr. Gomez did not have a clear view of the person's face who entered/exited 212 Cherry Street due to the distance of his observations.

[45] E.g., Fitzgerald, Oriet, & Price (2016). Change blindness and eyewitness identification: Effects on accuracy and confidence. *Legal and Criminological Psychology, 21,* 189-201; Nelson, Laney, Bowman

Mr. Andy Gomez

According to his early statements and subsequent testimony, Mr. Gomez lost sight of the black male approximately 4 times. Some of the lost sightings lasted for a couple of minutes (1st T.T. P. 110):

    Q. So how many times have you lost sight of the person you were trying to follow? Three, four times? How many?
    A. Probably four.
    Q. And the first time was four minutes at least?
    A. Yes.
    Q. And the second time was for how long?
    A. Within a minute or two probably.
    Q. A minute or two. Then the next time?
    A. A minute or two.
    Q. A minute or two. Then the fourth time?
    A. Same, a minute or two.

Yet, Mr. Gomez admits that he didn't see the face of the person until after he had "lost" him, perhaps several times (Second Trial Testimony P. 361):

    Q. When did you see a full face view?
    A. I believe it was when I – let's see. Well, it was after I had turned around at the church parking lot.

But it is clear from his Suppression hearing (and other) testimony that Mr. Gomez believes the person he was watching at 212 Cherry Street is the same person he saw while driving his car (P. 130):

    Q. Where did you follow him to?
    A. I followed him to – he walked up to Graham Street. Then he went down on Pulaski Street. Then right at Pulaski – at Graham Street I turned right because I didn't want to go the same way he was going. Then I went to like a church parking lot and turned around and caught him back within three or four minutes I guess.
    Q. You lost sight of him then?
    A. Yes.
    Q. When you picked him back up, was that the same person that you had seen at the house on Cherry Street?
    A. Yes.
    Q. Are you sure?
    A. Yes.

In support of his belief that he was following the same individual all along, Mr. Gomez made the following statement during the second trial (P. 345):

    "But I knew it was the same person because of what he was wearing."

However, the research on change blindness described above demonstrates that two individuals – seen at different times – who are wearing similar (or even the same clothing) can be perceived as being the same person especially when the witness has the expectation that they are seeing only 1 person. In fact, the majority of participants in change blindness research believe they have seen only one person when they have in fact been exposed to two people. In this case, Mr. Gomez had the expectation that he was

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Fowler, Knowles1, Davis, & Loftus. (2011). Change blindness can cause mistaken eyewitness identification. *Legal and Criminological Psychology, 16,* 62–74.

following the same person he saw exit 212 Cherry Street and this expectation could have affected his belief that he saw only one person rather than two.

Finally, during the State's closing argument at the end of the first trial, the prosecution raised the issue – perhaps unintentionally – of change blindness with respect to Mr. Gomez's observations (P. 622):

> "Would a witness that is that intent on following and watching slip up and confuse him with someone else, someone else wearing the same clothes that's walking down the same street at the same time in the morning? That's a pretty extraordinary coincidence."

In fact, it is not an extraordinary coincidence at all if one understands the phenomenon of change blindness and how it can affect the accuracy of one's perceptions. In addition, the distance between Mr. Gomez and the person leaving 212 Cherry Street as well as the long gaps in time where he lost sight of the person he was following could have contributed to the influence of change blindness in this case. Based on the scientific research, it certainly is possible that Mr. Gomez saw a black male enter/exit his neighbor's home – from a distance of 220 feet – but believe that another black male who was walking in the neighborhood was the same individual.

4. Effects of Stress/Arousal

The effects of stress and arousal on eyewitness memory have been studied many times in scientific psychological research. A meta-analysis of this research was conducted by Deffenbacher, Bornstein, Penrod, and McGorty[46] and these researchers found that – over a number of studies – high levels of stress negatively impact both one's ability to recognize someone and ability to accurately recall details of the event. The meta-analysis also revealed that people in stressful conditions are less likely to be able to pick out a guilty person even when he is present in the lineup. That is, stress particularly reduced correct identification rates. Researchers have also found that even physical exertion, such as running, can cause increases in arousal and result in impaired identification abilities.[47]

Mr. Andy Gomez

During the first trial, Mr. Gomez testified that he was scared when he was driving his car (and had the only opportunity to see the black male's face from a distance of less than 220 feet; P. 98):
Q. What did you do then?
A. Well, I just kind of backed off. I guess I was kind of scared for myself, so I didn't want to go in farther because I had never been down that street. I didn't know if it was a dead end or, you know, what, so I went back home.

He confirmed this testimony in the second trial by stating that he was "kind of scared really" about following the person who had left 212 Cherry Street (2nd T.T.P. 344).

In addition, in their closing statement at the first trial, the State also mentioned Mr. Gomez's fear (P. 622):
"He is so nervous, and he is so afraid for his own safety that he turns, and he comes back."

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[46] Deffenbacher, Bornstein, Penrod, S., & McGorty (2005). A meta-analytic review of the effects of high stress on eyewitness memory. *Law and Human Behavior, 28,* 687–706.
[47] Hope, Lewinski, Dixon, Blocksidge, & Gabbert (2012). Witnesses in action: The effect of physical exertion on recall and recognition. *Psychological Science, 4,* 386–390.

Thus, the factor of stress/fear is relevant in the assessment as to whether Mr. Gomez was able to accurately and sufficiently encode the details in order to make a reliable identification decision.

5. Cross-race identification

Decades of scientific research indicates that mistaken identifications are more prevalent under cross-race conditions. Christian Meissner and Jack Brigham[48] published a review of research on the problem that has been called other-race or cross-race, and own-race bias. Meissner and Brigham analyzed data from 39 research articles, using 91 independent samples and involving nearly 5,000 witness participants. Overall, they reported that the chance of a mistaken identification is 1.6 times greater in other-race situations than in same-race situations. Moreover, witnesses were 1.4 times more likely to correctly identify a previously viewed own-race face as compared with performance on other-race faces.[49] The 2014 National Research Council review of eyewitness identification also supports the conclusion that "own-race bias occurs in both visual discrimination and memory tasks, in laboratory and field studies, and across a range of races, ethnicities, and ages." (P. 96) Finally, data from the Innocence Project reveals that over 40% of DNA exoneration cases have involved cross-racial identification situations.[50]

Mr. Gomez

The defendant in this case, Mr. Lee, was African-American and Mr. Gomez is white.[51] Thus, cross-race identification is relevant for this witness and could have affected the accuracy of his selection of Mr. Lee from the photo array.

6. Description "Accuracy"

In Brandon Garrett's study of the first 250 DNA-based exonerations,[52] he found there was a substantial mismatch between the description provided by witnesses and the actual appearance of the innocent defendant in a full 62% of the 161 wrongful conviction cases that included eyewitness misidentification. This finding is consistent with scientific research showing that there is a correlation between the presence of incorrect descriptors and inaccurate identifications. That is, as the number of incorrect descriptors of a suspect increases, identification accuracy decreases.[53]

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[48] Meissner, C., & Brigham, J. (2001). Thirty years of investigation the own-race bias in memory for faces: A meta-analytic review. *Psychology, Public Policy, and Law, 7,* 3-35.

[49] Meissner and Brigham's study has been cited over 500 times in the scientific literature since its publication in 2001.

[50] www.innocenceproject.org

[51] See Officer Lewis police report number 93-2253 1F (2 pages).

[52] *Garrett* (n 13).

[53] For reviews of this literature, see Meissner, Sporer, & Susa (2008). A theoretical review and meta-analysis of the description-identification relationship in memory for faces. *European Journal of Cognitive Psychology, 20,* 414–455; Meissner, Sporer, & Schooler (2007). Person descriptions as eyewitness evidence. In Lindsay, Ross, Read & Toglia, *Handbook of eyewitness psychology: Memory for people* (p 3–34). Hillsdale, NJ: Lawrence Erlbaum Associates.

Mr. Andy Gomez

The description provided by Mr. Gomez was so vague that it would be difficult to find inconsistencies between his description and Mr. Lee – or any number of black men who may have been in the neighborhood at the time. By way of example that is not out of the ordinary for Mr. Gomez in this case (1st T.T. P. 95):

    Q. Can you describe the person to the ladies and gentlemen of the jury that entered the house?
    A. Like a slim build, a little tall, I guess, taller than me anyway, not at all tall, but just a little taller than me. He was black.

One explanation for the vague description provided above might be that his trial testimony was over a year after the events he witnessed and thus his memory likely faded over time. However, the record also shows that early descriptions provided by Mr. Gomez were also scant on detail (1st T.T.P. 111):

    Q. Isn't it true the only way you described him to Smiley was he had on a cap, had on jeans and a jacket with an emblem on the back?
    A. Yes.
    Q. Didn't say anything about height, weight, identifying characteristics, physical characteristics, did you?
    A. Not then, I don't think.[54]

The amount of information provided at the Suppression Hearing was not that much more detailed than that provided later at trial (Suppression Hearing P. 136):

    Q. Now, was this person that you saw, what kind of clothing as he wearing?
    A. Some kind of cap.
    Q. Like a ball cap?
    A. Yeah, ball cap, jeans and a dark jacket like either nylon or some kind of material.
    Q. Could you see what kind of shirt was under that jacket or if there was one, or was that jacket zipped up, or do you remember?
    A. I couldn't tell. Then there was like an emblem on the back of that jacket too.

When asked to describe what distinctive features the person who went into 212 Cherry Street had, Mr. Gomez said the following (Suppression T.P. 149-150):

    A. Cap, baseball cap, jeans, dark jacket with some kind of emblem on the back.
    Q. Uh-huh.
    A. That's it.
    Q. That's the only distinctive features you remember?
    A. Yes.
    Q. Are you thinking real hard?
    A. Yes.

In summary, Mr. Gomez recalled very few details about the person he saw: a tall, slim black male wearing a hat, dark jacket, and jeans. However, this is not particularly surprising given his limited opportunity to see the black male that were described in earlier sections of this report.

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[54] Some research indicates that when a male perpetrator is wearing a hat it can significantly reduce identification accuracy. E.g., Cutler & Penrod (1988). Improving the reliability of eyewitness identification: Lineup construction and presentation. *Journal of Applied Psychology, 73,* 281–290; Mansour, Beaudry, Bertrand, Kalmet, Melsom, & Lindsay (2012). Impact of disguise on identification decisions and confidence with simultaneous and sequential lineups. *Law and Human Behavior, 36,* 513–26.

Mr. William McCullough

The description Mr. McCullough provided in his handwritten statement – that was written the day after he viewed the photo array and made his selection of Mr. Lee - was **"dark complected, 6'1" about 180 pounds"**. In other words, I have not seen a description that Mr. McCullough provided before his memory was potentially influenced or contaminated by viewing the photo array. Mr. McCullough testified that the person he gave the tool to was probably wearing a short-sleeved shirt but he was *not* wearing a hat or a jacket or a coat (Suppression T.P. 10-11) and this is important because his clothing description differs in significant ways from the other witnesses in this case who saw a person walking up and down Cherry Street and from Ms. Pruitt (see below). In addition to Mr. Gomez who described seeing someone with a dark or black jacket, Ms. Stough saw a black male with dark clothes and a jacket (2nd T.T.P. 380) and Ms. Pruitt reported that the black male she spoke with was wearing a red plaid shirt and a jacket.

Ms. Glenda Pruitt

From the materials I have received, it is not clear whether Ms. Pruitt was asked to provide a description of the person she spoke with, whom she called Skip, before viewing a photo array containing Mr. Lee. In his Summary Report, Lt. Johnson wrote the following with respect to Ms. Pruitt's description of Skip and what he was wearing, but again it is unclear when this description was given: plaid shirt, blue jeans, and dark jacket, young, tall, thin black male. During her Suppression hearing testimony, she was again asked to describe the clothing worn by the individual she saw on February 9, 1993 (P.157-158):

> Q. What was he wearing that day?
> A. I didn't remember the incident very much. I just remember it vaguely. I remember telling them I didn't pay very much attention to his clothing. I just remember something like a red plaid shirt.
> Q. Do you remember telling them at the time what he was wearing?
> A. All I could remember was red plaid. I couldn't, you know, remember very much. It was hard for me to remember what he was wearing or anything. It was so fast, the meeting, you know, was really fast.

Description of Events

In addition to issues related to very limited descriptions of the person each witness viewed, there were inconsistencies in terms of the time when the various witnesses allegedly made their observations.

Mr. Andy Gomez

Mr. Gomez testified that he saw the black male walking towards his house on Cherry Street around 11:15am (Suppression T.P. 92, 2nd T.T.P. 347) and that this person left 212 Cherry Street around 11:45am-12:00pm (Suppression T.P. 108, 2nd T.T.P. 347). However, he also testified at the Suppression hearing that this person was inside 212 Cherry Street for approximately 20 minutes (Suppression T.P. 94, 2nd T.T.P. 345) and thus the timing of his observations of seeing someone enter and leave 212 Cherry Street may be inaccurate (as these times do not add up).

In addition, Mr. Gomez testified that he watched the black male until he got to about Cherry Court (Suppression T.P. 129-130) and then got in his car and drove around for 20-25 minutes following the

black male he saw leave 212 Cherry Street (2nd T.T.P. 346).[55] A Google directions inquiry indicates that the distance between the corner of Cherry Court and Ms. Pruitt's house (128 Galloway Circle) going down Pulaski Street (as Mr. Gomez described) is 0.4 miles and would take a person 9 minutes to walk that distance. However, both Pamela Gomez (2nd T.T.P. 377) and Chris Stough testified at the second trial that the black male they saw was walking *fast* in the direction away from 212 Cherry Street (2nd T.T.P. 382).

Therefore, walking quickly, it would take less than 9 minutes for a person to walk from the location where Mr. Gomez last saw the black male (before losing sight of him and getting in his car). Thus, it is unclear who Mr. Gomez saw after 20-25 minutes of driving around.

Mr. William McCullough

At the Suppression hearing, Mr. McCullough testified as follows (P. 4):
    Q. Approximately what time did you receive the knock on your door?
    A. It was probably around – it was probably before 10:00, because I went back to bed. It was 10:00
       o'clock when I went back to bed.

During the first trial, Mr. McCullough testified that the time was a little later (P. 82):
    Q. What time of the day was this approximately?
    A. At that time, after I left him, I went back to my room. As I was getting in the bed, I looked at the
       clock. It was about 10:00, between 10:00 and 11:00am.

And during his testimony at the second trial, Mr. McCullough testified that the person came to his house at 11:00am (P. 390):
    Q. Do you know about what time this was?
    A. I would approximately say around 11:00.

Ms. Glenda Pruitt

Despite the fact that Ms. Pruitt initially told police that she saw Skip around 11:00am (2nd T.T.P. 434 referring to a signed police report), by the time of the second trial, she testified that she saw Skip around noon (P. 433):
    Q. What time did you see Skip that day?
    A. After the housing inspector left, around noon.

Ms. Pruitt's initial statement of seeing Skip – who the State alleges to be Mr. Lee – at 11:00am would have made Mr. Gomez's observations of a black male at Galloway Circle, at best, completely inconsistent with her testimony, or at worst, completely irrelevant.

Ms. Pruitt also changed her testimony in important ways over time that had the effect of making the State's case against Mr. Lee stronger. For example, in her Suppression hearing testimony (P. 156):
    Q. So what did you do then?
    A. I continued talking to him. I was walking around him looking at him, talking to him. And I noticed
       he didn't stop. He kept walking. And I asked him, he said he doesn't smoke weed, he smoke cain. I
       asked him did he have it all through his bloodstream. He said, yes, it was in his bloodstream. I told

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[55] Consistent with this estimate, Mrs. Pamela Gomez, Mr. Gomez's wife who was at home with him during the events of February 9, 1993, testified at the second trial that Mr. Gomez was gone for 20-30 minutes (P. 377).

him, "Don't you know that's poison?" **He replied – I don't remember what he replied at that point.**

But Ms. Pruitt's memory at the second trial appears to have improved (2nd T.T.P. 442):
> Q. Sorry for the interruption, Ms. Pruitt. Again, what was his reply?
> A. You know, it has been a long time. So I don't really know word for word exactly. He said, "I told you I don't like weed. I like cocaine."
> Q. What did you say?
> A. I said, "Do you have it running all through your veins?" He said, "Yes. It is running all through me."
> Q. What did you say then?
> A. "Don't you know it is poison?"
> Q. And what did he respond?
> **A. "I'm going to get some now."**

Another notable change in Ms. Pruitt's testimony is how she – a self-proclaimed Rastafarian[56] – changed the description of her hairstyle over time in a way that was more consistent with Mr. Gomez's alleged observations of seeing a black person with braids (2nd T.T.P. 346, 353, 365). In her Suppression hearing testimony, she described her hairstyle (P. 164):
> Q. Ms. Pruitt, for the record, how are you wearing your hair today?
> A. Dreadlocks.
> Q. Those are called dreadlocks. How long have you worn your hair like that?
> A. A number of years, a lot of years.

Then in her testimony at the first trial, her description changes (P. 122):
> Q. I notice your hair right now. How were you wearing your hair back on the 9th?
> A. It was different.
> Q. How was it different?
> A. I wore it in braids, long braids. And I had been cleaning my house, so it probably was up.

And finally, her testimony at the second trial (P. 427):
> Q. How were you wearing your hair back then? I notice you have braids today. Was it the same way back in February of '93?
> A. No. I have dreadlocks now. I had braids, long braids.
> Q. About how long were they?
> A. Pretty long. But I had it up because I had been house cleaning.

In summary, as the witnesses' descriptions of the timing of their observations changed over time, these estimates became more consistent with one another. From a psychological perspective, these changes can be explained in part by memory contamination where witnesses come to learn information about the case (and perhaps the testimony of other witnesses) that in turn affects their subsequent recollection of events. As time passes, memories tend to weaken, resulting in increased susceptibility to contamination as well as forgetting.

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[56] Rastafari is a religious and political movement. Dreadlocks are highly symbolic in Rastifari and are considered part of the Nazarite Vow. (For example, see www.Jamaicans.com/dreadlocks)

7. Post-event Contamination

It is a well-established fact in the psychological literature that our memories for events can be altered by information we learn after the original event.[57] There are many sources of post-event memory contamination that can affect a witness's memory and reporting of an event. Witnesses and victims can learn information about the crime or the perpetrators from other witnesses, law enforcement, the media, etc.

In one research study that examined whether learning misinformation about a suspect could influence a person's memory and identification accuracy, Rachel Zajac and Nicola Henderson[58] found evidence that memory contamination can affect both descriptions and identifications. In this study, research participants were paired with a research confederate (who was working for the researchers) that the participants believed was another participant in the study. Together, they viewed a video clip of a staged theft. Then, half of the participants were misinformed by the confederate that the thief's accomplice had blue eyes when in fact they were brown. Next, individual participants described the accomplice and viewed a target-absent (the accomplice was not present) line-up comprised of blue-eyed lineup members only. Misinformed participants were eight times more likely than those who did not receive "blue-eyed" misinformation to describe the accomplice as having blue eyes, and twice as likely to falsely identify someone with blue eyes from the line-up. What is important about this study is that merely learning information from another source can influence memory, reports, and identifications made by witnesses to a crime.

The concern here is that it can be difficult to accurately remember the *source* of our memories and, thus, information learned from others is likely to contaminate our "original" memory for a person or event.

Mr. Andy Gomez

Initially, Mr. Gomez was not certain whether the person he saw at speaking with black male at Galloway Circle was a male or a female. But later, he testified that the person was a female (2nd T.T.P. 353):
> Q. Let the record reflect you are pointing to the very south side of Galloway Circle.
> A. And I was right over here. That's when I see him talking to her.

His testimony about the gender of this person continued (2nd T.T.P. 364-5):
> Q. Do you know if it was a man or a woman at all? I mean you don't know.
> A. Today.
> Q. Yeah.
> A. Yes, I know it was a woman.
> Q. From what people have told you, though, right?
> A. Yes…

Thus, Mr. Gomez came to learn information – from someone, after his initial observations – that the person he saw was female. This information likely have come from law enforcement, as there is no record that the three witnesses in this case knew each other before February 9, 1993 or interacted with one another after February 9, 1993. Learning this information about the person's gender assumes that law enforcement was correct and that there was no other person outside speaking to a black male. In fact, there is evidence to suggest that Mr. Gomez viewed someone other than Ms. Pruitt because Ms. Pruitt

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[57] *National Research Council* (n 9)
[58] Ibid.

testified consistently that Skip never stopped when she was speaking with him yet Mr. Gomez recalled seeing the black male he was following stop and speak with someone.

8. Lineup Bias

With respect to the selection of lineup members, a properly constructed lineup includes only one suspect (who might or might not be the actual perpetrator) and a minimum of five fillers (who are known to law enforcement to be innocent of the crime under investigation). According to scientific psychological research and the United States Department of Justice, it is critical to have only one suspect in each lineup so that law enforcement can assess whether a particular eyewitness is reliable. When an eyewitness makes a false identification of a lineup filler, law enforcement will know that that witness is unreliable.[59]

There are many choices law enforcement needs to make when deciding which fillers to select for a lineup including: how many should be used, and how similar should they be to the suspect and/or the description the witness provided. Regardless of the answer(s) to these questions, the overall principle in lineup construction is that no person should stand out, especially the suspect.[60]

When it comes to how similar the fillers should be, researchers have some preference to use a "rule" where all of the features included in the witness' description of the perpetrator should be matched[61] (e.g., gender, age, height, weight, etc.), and all fillers should be plausible alternatives for the suspect – but not clones – based on the witness's description.[62] When some of the lineup members are implausible alternatives, the "true" lineup size will be reduced, which in turn increases the chances that the suspect (innocent or guilty) will be chosen. Other factors to consider in creating fair lineups is the clothing worn by the suspect – and in particular whether it matches the clothing described by the witness – and whether the backgrounds and images are of similar size and quality.[63]

If a lineup is supposed to have 6 members, all 6 members should be plausible. These, of course, are subjective decisions and thus law enforcement training on how to fairly select fillers for photos and live lineups is highly recommended. In fact, "Train All Law Enforcement Officers in Eyewitness Identification" is the first of 11 recommendations in the National Research Council Report on eyewitness identification.[64]

Mr. Andy Gomez

Mr. Gomez told law enforcement and testified that he person he saw exit 212 Cherry Street (and the person he followed) was wearing a dark or black jacket (e.g., 2nd T.T.P. 345)

Ms. Glenda Pruitt

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[59] An alternative explanation as to why a witness would make a false identification of an innocent filler is that there is a coincidental resemblance between the filler and the actual perpetrator of the crime.

[60] For example, see *National Research Council* (n 9); *Wells, et al.* (n 19); Department of Justice (1999). Eyewitness evidence: A guide for law enforcement . Retrieved from https://www.ncjrs.gov/pdffiles1/nij/178240.pdf (hereafter DOJ Guide)

[61] For example, see *Wells et al.* (n 19); Wells, G., Rydell, & Seelau (1993). On the selection of distractors for eyewitness lineups. *Journal of Applied Psychology, 78,* 835–844.

[62] Steblay (2016). Eyewitness memory. In Cutler & Zapf (Eds.), *APA handbook of forensic psychology, Vol. 2: Criminal investigation, adjudication, and sentencing outcomes*, 187–224. APA.

[63] *Wells et al.* (n 19)

[64] *National Research Council* (n 9).

In his typed summary of the eyewitnesses in this case, Lt. Johnson wrote the following with respect to Ms. Pruitt's observations of Skip earlier that day: a plaid shirt, blue jeans, and a dark jacket.

In addition, according to Ms. Pruitt's Suppression hearing testimony, she recognized a couple of people in the array (P. 161-162):
Q. Why were you picking that person?
A. They showed me those guys, and I knew most of them from my neighborhood.
Q. In the photo spread, the guys that were in the photo spread?
A. Uh-huh, was from the neighborhood.
Q. How many of them were from your neighborhood? Do you remember?
A. Well, I saw Skip, but he was not from the neighborhood. But maybe two other guys were from the neighborhood.

The result of her recognizing other people from the neighborhood is that the true lineup size for Ms. Pruitt would have been reduced to four possible individuals who could be Skip.

*** Testing the Photo Array: Mock Witness Experiment Conducted for this Case ***

On September 4, 2018, I oversaw a mock witness experiment for this case. A mock witness experiment is conducted when researchers and experts want to evaluate the quality of a photo array. This often is done in experimental research so that researchers will know whether the photo array they created was fair or biased. Typical mock witness experiments provide individuals with a description of the perpetrator and then present those individuals with the photo array. The individuals are then asked to select the person in the array that best matches the description.[65]

For this case, the mock witnesses were 47 student volunteers in a graduate Psychology and Law course (PSY 700) at John Jay College of Criminal Justice. The class instructor, Dr. Thomas Kucharski, was the individual who conducted the mock witness experiment. I asked Dr. Kucharski to conduct the experiment on my behalf as I wanted a double-blind administrator collecting the data so that he could not influence the results.[66] Dr. Kucharski not aware of which person in the array was the suspect and was not previously familiar with Mr. Lee. I provided Dr. Kucharski with all the materials needed to conduct the experiment including a PowerPoint presentation and response sheets where mock witnesses could write their selection from the photo array (see Appendix B).

After receiving the response sheets, students were shown the 4-page PowerPoint presentation that included a color copy of the actual photo array shown to the witnesses in this case – with the exception that image 1 is missing from the array, as this was the only decipherable version of the array that I received.[67] A Screenshot of the page showing the description and the photo array is below. If the photo array was "fair" or unbiased, one would expect an even distribution of selections where each photo array member would receive 1/5 (20%) of the selections. By a significant margin, mock witnesses selected lineup member #5 as being the person who best matched the description provided. The person in position #5 is Mr. Lee. In fact, 83% of mock witnesses selected Mr. Lee's photograph, a significant deviation from the 20% that would have been expected if he did not unduly stand out in this procedure.

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[65] Another option is to show the array, without a description, and ask individuals who they believe is the police suspect or whether anyone "stands out" from the others.
[66] See Section 10 on page 28 of this Report.
[67] I also received a black and white photocopy of the 6-person array however it is not possible to see any of the individual's faces clearly in that document.

The results of this mock witness experiment reinforce my concern that the identification procedures used in this investigation could have led to a misidentification of Mr. Lee. In particular, filler bias is a concern here for Mr. Gomez and Ms. Pruitt, as he described the person he saw exit 212 Cherry Street as wearing a dark or black jacket. In the photo array he viewed, Mr. Lee was the only person wearing a dark or black jacket.

Black male, approximately 6 feet tall, wearing a dark jacket, ball cap & jeans
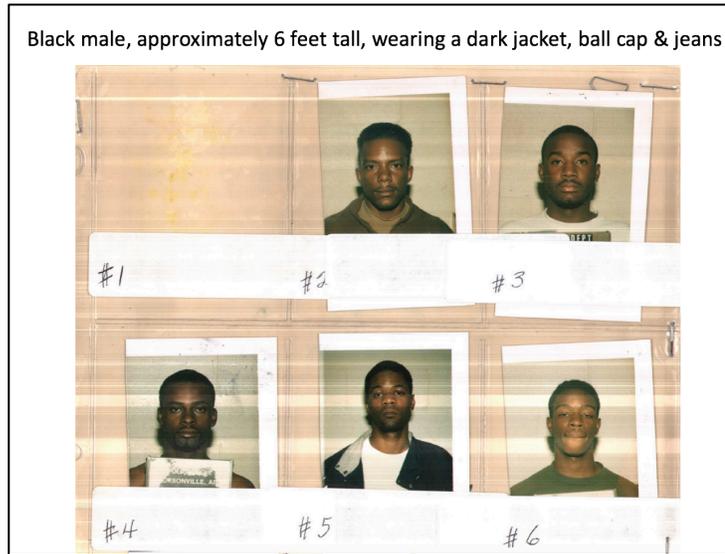
State's closing argument in Trial 1 (P. 621):
"Now, could William McCullough be mistaken? Could three eyewitnesses look at these pictures without any help from the police? These pictures don't include what you are wearing, what kind of pants you have on. These pictures are faces." (Then on P. 629:) "Those three eyewitness' IDs aren't coincidences because he was there."

The State's closing argument relied on the presumption that these eyewitness identifications were infallible. Yet the data from the mock witness experiment – as well as the presence of the other factors in this case that have been shown to reduced accuracy – demonstrated that random individuals (who were presented with Mr. Gomez's description) were able to figure out who the police suspect was in the photo array. In other words, a person did not need to have any memory of the black male whatsoever in order to be able to select Mr. Lee from this identification procedure. Thus, identification errors easily could have occurred in this case.

9. Pre-identification Warnings/Instructions

Failing to tell a witness that the actual perpetrator may or may not be present in a lineup is suggestive because it implies that the perpetrator is in the identification task. Implying in any way to eyewitnesses that the perpetrator is in the photo array (or that their task merely is to find the perpetrator among the set) encourages witnesses to make a selection from the array. Instead, eyewitnesses should be told explicitly that the person in question might not be in the photo array and that they should not feel compelled to make an identification. This pre-lineup warning/instruction follows from decades of empirical data

showing that eyewitnesses are less likely to identify an innocent suspect when they are warned that the actual culprit might not be present.[68] Taken as a whole, the results show the power of pre-identification warnings and how, when properly issued, they can prevent mistaken identification decisions from happening to begin with. Further, witnesses should also be told that the person administering the photo array does not know which person is the suspect in the case (i.e., that the photo array is double-blind).

In 1992, the International Association of Chiefs of Police issued Training Key (#414) on how to conduct identification procedures and that training key included recommendations for pre-identification warnings. Later, in 1999, the Department of Justice's National Institute of Justice (NIJ) issued a report that outlined several methods for minimizing mistaken eyewitness identification when collecting evidence.[69] These best practices also recommend among other things, that cautionary instructions be provided to the eyewitness that the culprit may not be in the lineup and that the police will continue to investigate the case even if no identification is made, so as to minimize natural inclination to guess or to be guided by suggestion simply because the witness believes that the police suspect must be in the lineup or photo array.

In the materials I reviewed, there is no indication that the three witnesses were given any pre-identification warnings prior to viewing the photo array with Mr. Lee that the actual perpetrator *may or may not be present.* In fact, witnesses may have been led to believe that the "perpetrator" was in the group of photos because research shows that when pre-identification warnings are absent, witness are likely to believe that the perpetrator is present.

Mr. Andy Gomez

Mr. Gomez described the photo array procedure in his Suppression hearing testimony (P. 132):
   Q. Tell me about the sheet with pictures on it. Do you recall how many pictures were on it?
   A. Six or eight.
   Q. Did a detective show it to you or a police officer show it to you?
   A. Yes.
   Q. How did he show it to you?
   A. He just asked me to look at it, see if there was anybody in there that I could identify.

Mr. William McCullough:

In Mr. McCullough's handwritten statement (Feb 10, 1993), he said he was asked "to come to the police department to pick out a photo and the photo I picked out was photo #5." In his Suppression Hearing testimony, Mr. McCullough testified to the following regarding the instructions he received (P. 6):

   Q. Tell me exactly how it was done with you, the photographs were done with you.
   A. He gave me the photos, told me to pick out the person that came to my door. And I got the
      envelope, opened it up, looked in it. I picked out the individual.

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[68] Steblay (1997). Social influence in eyewitness recall: A meta-analytic review of lineup instruction effects. *Law and Human Behavior, 21,* 283–297; Clark (2005). A re-examination of the effects of biased lineup instructions in eyewitness identification, *Law and Human Behavior, 25,* 575–604; Steblay (2013). Lineup Instructions*,* in Cutler (Ed)., *Reform of eyewitness identification procedures* (65–86). American Psychological Association.

[69] *DOJ Guide* (n 60).

The lack of pre-identification warnings telling witnesses that the actual "perpetrator" may or may be present could have significantly influenced the choice that the witnesses made. Evidence of this is the testimony from Mr. McCullough that he took up to a minute to make his decision and from Ms. Pruitt who testified that it took her 10 minutes to make the decision. These long decision times indicate that witnesses likely continued to examine the photo array because they did not have an immediate recognition of Mr. Lee.[70] Instead, they likely believed that the "right answer" was in front of them and that their job was to make a selection.

10. Use of a Non-blind Lineup Administrator Rather Than a Double-blind Administrator

Contemporary guidelines (e.g., IACP, 2006), and in some states the law, for conducting identification procedures states that the police officer conducting the proceedings should not know who the suspect is. This procedure eliminates the possibility that the officer can influence the witness' selection. We need not assume that a lineup administrator's influence is conscious or deliberate in order to see the value of the "double-blind" procedure. In other words, the influence by the administrator may be unintentional and it may be outside of the officer's awareness (for example, nodding and smiling), or it may be purposeful and explicit. We know that police sometimes conduct lineups in a manner that clearly shows how their knowledge of which person is the suspect can lead them to say things that focus the eyewitness on the suspect.[71] We also know that what the person administering the lineup says to the eyewitness at the time the eyewitness makes a selection has strong effects on the confidence of the witness, easily leading a "tentative identification" eyewitness to become positive in their identification, even when the identification is of an innocent person.[72] The most effective method of eliminating police bias or suggestion is to have an officer who does not know the identity of the suspect conduct the identification procedure.

The potential impact of administrator knowledge on witness behavior is illustrated in a study by Greathouse and Kovera[73] in which 234 witnesses viewed a videotaped speech, that was interrupted by a man trying to take the projector and were later administered a photo array to see if they could recognize the thief. The "administrators" were an additional 234 people who viewed a lineup training video and received further instruction on how to administer the photo array to the witnesses. The administrators were given some background on the "case" and were told they would receive a $20 reward if the witness chose the suspect (but that they would not receive the award if they blatantly led the witness). Half of the administrators knew who the suspect was (non-blind presentation) and half did not (double-blind presentation). Unbeknownst to the administrators, half of the time the suspect was the perpetrator (target-present arrays) and half the time the suspect was not the perpetrator (target-absent arrays). In the double-blind administrator/target-absent condition 9% of the witnesses chose the innocent suspect. In the non-blind target-absent condition 21% of the witnesses chose the innocent suspect – thus, the non-blind administrators were able to subtly steer a large number of witnesses to the suspect. The non-blind administrators were most successful in steering witnesses to the suspect when the witnesses were given

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[70] See Section 11 below for additional information on decision speed.

[71] See Wells & Seelau (1995). Eyewitness identification: Psychological research and legal policy on lineups. *Psychology, Public Policy, and Law, 1(4),* 765–791.

[72] Luus & Wells (1994). Eyewitness identification confidence. In Ross, Read & Toglia (Eds.), *Adult eyewitness testimony: Current trends and developments* (348–361). Cambridge University Press; Wells & Bradfield (1998). 'Good, you identified the suspect': Feedback to eyewitnesses distorts their reports of the witnessing experience. *Journal of Applied Psychology, 83,* 360–376.

[73] Greathouse & Kovera (2009). Instruction bias and lineup presentation moderate the effects of administrator knowledge on eyewitness identification. *Law and Human Behavior, 33,* 70–82.

biased instructions (see discussion below) and photos were presented simultaneously – under these conditions 36% of witnesses chose the innocent suspect.
All Three Witnesses:

At the February 9, 1993 photo array procedure, Detective Smiley - who administered the array to Ms. Pruitt and Mr. Gomez - was aware that Mr. Lee was the suspect in the photo array procedure. Mr. McCullough viewed the same array on February 10, 1993 and Lt. Johnson who conducted his procedure was aware that 1) Mr. Lee was the suspect, and 2) that both Mr. Gomez and Ms. Pruitt had selected Mr. Lee's photograph the day before.

In this particular case, it is my understanding that the identification procedures were not recorded and thus it is not possible to determine with exact certainty whether any influence – conscious or unconscious – occurred during the identification procedures. However, if double-blind administration had been used in this case, it would have eliminated the possibility of the administering detective having influenced the witnesses – again, either consciously or unconsciously – to identify Mr. Lee.

In conclusion, it is likely that the non-blind nature of the identification procedures – a factor that is known to increase the risk of misidentification – contributed to the selection of Mr. Lee from the photo arrays viewed by witnesses in this case.

11. Decision Speed

When a witness makes a quick identification decision from a fair, unbiased double-blind procedure, the speed in which the witness makes her identification is useful information. That is, quick identifications from "good" procedures are more likely to be accurate. With respect to what constitutes a "quick" identification decision, early research suggested that identifications made with 10-12 seconds are quite likely to be accurate. Additional research suggests that the time might be extended somewhat but decisions that take much longer than this are less likely being made based on recognition – instead they are more likely to be made due to comparisons between the lineup members. In other words, slower decisions are more likely to reflect witnesses who are trying to figure out who to select. But when suggestive identification procedures are used, the speed of the identification no longer becomes a reliable indicator of accuracy because biased procedures can influence decision speed.[74] Despite the likelihood of biased procedures influencing the speed of the identification decision, neither Ms. Pruitt nor Mr. McCullough recalled making a quick identification decision.

Mr. William McCullough

During his testimony at the Suppression hearing, Mr. McCullough testified to the following (P. 5):
    Q. And, after you looked at those pictures, did you find the individual that came to your house?
    A. Yes, I did.
    Q. How long did it take for you to find that individual?
    A. Approximately between 30 seconds to a minute or so.

Ms. Glenda Pruitt
At the second trial Ms. Pruitt testified that it took her **10 minutes** to pick Skip out of the pictures (P. 428). But then (on direct) she stated the following (P. 430):
    Q. Ms. Pruitt, did you have any trouble identifying Skip in the photo spread?

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[74] Key, Wetmore, Neuschatz, Gronlund, Cash & Lane (2017). Line-up fairness affects postdictor validity and 'don't know' responses. *Applied Cognitive Psychology, 31,* 59-68.

A. No. I don't remember. I think I just identified him. I'm pretty sure.

12. Witness Confidence

Research shows that there is a relatively strong relationship between the accuracy of an eyewitness's positive identification and their confidence in that identification *at the time of the identification when certain conditions are met.*[75] An eyewitness who expresses high confidence in their identification is expressing a strong belief that the identified person and the perpetrator are the same individual. This belief can arise out of pure memory judgments (i.e., a perception of remarkable resemblance between the identified person and the eyewitness's memory of the culprit) or for reasons other than the eyewitness's memory.[76] It should be noted here that there is no record in the materials I reviewed that any of the three eyewitnesses in this case were asked to provide a confidence statement after they made their selection of Mr. Lee. Further, there are no references to witness confidence in the police reports I have received.

But this relationship can be significantly affected by pre- and post-identification factors. Expressions of confidence *at trial*, however, are relatively **meaningless**[77] because confidence is *malleable*, easily affected by external sources. The lack of a meaningful relationship between confidence and accuracy at trial is concerning because there is significant evidence, going back decades, showing that witness confidence is the single most powerful determinant of whether or not observers/jurors will believe that the eyewitness made an accurate identification.[78]

Confidence malleability is the tendency for an eyewitness to become more (or less) confident in his or her identification as a function of events that occur after the identification decision. For example, in an early demonstration of confidence malleability, researchers found that witnesses who were questioned repeatedly grew more confident about the accuracy of details in their reports.[79] Even stronger and broader effects of confidence malleability have been shown to emerge when eyewitnesses are told or led to believe that they identified the suspect (versus being told nothing about the alleged accuracy of their decision), known as *post-identification feedback*.

Post-identification feedback is any information provided to a witness or victim that suggests whether their identification decision was accurate. In the first research on this phenomenon, Wells and Bradfield[80] found that eyewitnesses who received confirming feedback (such as that used in this case) were not only much more confident than were witnesses who received no or disconfirming feedback – the confirming

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[75] See, *Wells et al* (n 19); Wixted, & Wells (2017). The relationship between eyewitness confidence and identification accuracy: A new synthesis. *Psychological Science in the Public Interest, 18,* 10–65.

[76] E.g., Leippe (1980). Effects of integrative memorial and cognitive processes on the correspondence of eyewitness accuracy and confidence. *Law and Human Behavior, 4,* 261–274; Luus & Wells (1994). Eyewitness identification confidence. In Ross, Read & Toglia (Eds.), *Adult eyewitness testimony: Current trends and developments* (348–361). Cambridge University Press; Wells & Bradfield (1998). 'Good, you identified the suspect': Feedback to eyewitnesses distorts their reports of the witnessing experience. *Journal of Applied Psychology, 83,* 360–376; Wells, Ferguson, & Lindsay (1981). The tractability of eyewitness confidence and its implications for triers of fact. *Journal of Applied Psychology, 66,* 688–696.

[77] Ibid.

[78] See Cutler, Penrod & Dexter, 1990; Leippe & Romanczyk, 1989; Leippe, Manion, & Romanczyk, 1991; Lindsay, Wells, & O'Connor, 1989; Lindsay, Wells, & Rumpel, 1981; Turtle & Wells, 1988; Wells, Ferguson, & Lindsay, 1981; Wells, Lindsay, & Ferguson, 1979; Wells & Murray, 1984

[79] Hastie, Landsman, & Loftus (1978). Eyewitness testimony: The dangers of guessing. *Jurimetrics Journal, 19,* 1–8.

[80] *Wells & Bradfield* (n 75).

feedback witnesses also distorted their reports of their witnessing conditions by exaggerating how good their view was of the culprit, how much attention they paid to the culprit's face while observing the event, and so on. The results of this study have been replicated many times and also with real witnesses in real ongoing criminal investigations.[81]

In sum, post-identification feedback or confirmation of an identification decision can lead a witness to believe that they had a better opportunity to see a perpetrator than was actually the case and can make them more confident in their identification decision (along with a host of other effects outlined above). The impacts of feedback are some of the strongest effects that have been found in eyewitness research.[82] One of the most effective methods of reducing feedback effects is to eliminate police suggestion/ communications by having an officer who does not know the identity of the suspect conduct the identification procedure (i.e., use a double-blind administrator). This safeguard was not used in this case.

As stated above, none of the witnesses in this case were asked to provide a contemporaneous confidence statement. However, all three were asked about their confidence in various court proceedings. As discussed above, statements of confidence at trial are meaningless with respect to their utility in determining eyewitness accuracy.

Mr. Andy Gomez

During his testimony at the second trial, Mr. Gomez was asked about how certain he is about his identification of Mr. Lee (P. 356):
> Q. If you would, Mr. Gomez, tell the ladies and gentlemen of the jury how you feel about this identification.
> A. I'm positive. You know, I know what I seen. I'm positive. There's no other answer.

Mr. William McCullough

Mr. McCullough was asked multiple times about how he feels about his identification of Mr. Lee: (Suppression T.P. 6):
> Q. Okay. How sure were you at the time you picked that individual out?
> A. I was very sure.

And again at the second trial (P. 394):
> Q. How do you feel about your identification?
> A. Very sure.

During the State's closing statement at the first trial, they refer to McCullough: "How sure are you? I am very positive." As a critical reminder, there is no contemporaneous record of his confidence and experts agree that expressions of confidence at trial are meaningless.

Ms. Glenda Pruitt

[81] Wright & Skagerberg (2007). Postidentification feedback affects real eyewitnesses. *Psychological Science, 18,* 172–178.

[82] See Steblay, Wells & Douglass (2014). The eyewitness post identification feedback effect 15 years later: Theoretical and policy implications. *Psychology, Public Policy, and Law, 20,* 1–18; Douglass & Steblay (2006). Memory Distortion in Eyewitnesses: A Meta-Analysis of the Post-Identification Feedback Effect. *Applied Cognitive Psychology, 20,* 859–869.

During her testimony at the first trial, Ms. Pruitt readily changes her level of confidence in her identification decision (P. 122):

Q. Did you find Skip in those pictures?
A. Yes, I did.
Q. And how sure were you then that the picture that you saw was Skip?
A. Pretty sure.
Q. Pretty sure?
A. Sure

13. Repeated Identification Procedures and Commitment Effects

If an individual has been identified in one identification procedure, he is considerably more likely to be identified in a subsequent procedure regardless of whether or not he is the actual perpetrator;[83] this is known as "commitment."[84] Thus, it is possible that Mr. Lee was identified in court (Suppression Hearing, Trial 1 and Trial 2) merely because he was previously identified from the photo array. In fact, there are other instances in wrongful conviction cases when the victim was ultimately presented with the actual perpetrator who was responsible for the crime and rejected the guilty person, maintaining their incorrect identification of an innocent person.[85] Psychologists view in-court identifications as mere theatre and not as independent tests of a witness's memory or ability to identify perpetrators.[86]

Further, it appears that Mr. Lee was wearing an orange uniform for some portion of the first trial. Besides the fact that in-court identification procedures are inherently suggestive,[87] it would have been even more

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[83] For a review, see Steblay & Dysart (2016). Repeated eyewitness identification procedures with the same suspect. *Journal of Applied Research in Memory and Cognition, 5,* 284–289.

[84] Brigham & Cairns (1988). The effect of mugshot inspections on eyewitness identification accuracy. *Journal of Applied Social Psychology, 18,* 1393–1410; Deffenbacher, Bornstein, & Penrod, (2006). Mugshot exposure effects: Retroactive interference, source confusion, and unconscious transference. *Law & Human Behavior*, *30,* 287–307; Dysart, Lindsay, Hammond, & Dupuis (2001). Mugshot exposure prior to lineup identification: Interference, transference, and commitment effects. *Journal of Applied Psychology, 86,* 1280–1284; Gorenstein, & Ellsworth (1980). Effect of choosing an incorrect photograph on a later identification by an eyewitness. *Journal of Applied Psychology, 65,* 616–622; Behrman & Vayder (1994). The biasing influence of a police showup: Does the observation of a single suspect taint later identification? *Perceptual and Motor Skills, 79,* 1239–1248; Godfrey & Clark (2010). Repeated eyewitness identification procedures: Memory decision making, and probative value. *Law and Human Behavior, 34,* 241–258; Haw, Dickinson, & Meissner (2007). The phenomenology of carryover effects between show-up and line-up identifications. *Memory, 15,* 117–127.

[85] The wrongful convictions of Ronald Cotton and John Jerome White are two such examples. See https://www.innocenceproject.org/cases/john-jerome-white/ (the rape victim incorrectly selected John White from a lineup and did *not* select James Parham from the same lineup, even though Parham was present; Parham was later identified by DNA testing as the actual rapist, and White was exonerated); Jennifer Thompson, "I Was Certain, but I Was Wrong," *N.Y. Times*, June 8, 2000 (rape victim describing her misidentification of Ronald Cotton as her assailant, and how she subsequently testified at a second trial in which the real assailant (later identified through DNA), Bobby Poole, was brought to court, at which Thompson testified, "I have never seen [Poole] in my life" and maintained she was still positive that Cotton was her assailant; DNA testing later exonerated Cotton and implicated Poole, proving that Thompson was incorrect in her identification of Cotton and her non-identification of Poole).

[86] See *Steblay & Dysart* (n 82).

[87] In-court identification procedures are akin to show-up procedures, which are inherently suggestive. Ibid. See also Lawson, & Dysart (2015). Searching for suspects: Mug-shot files and showups (street

suggestive if Mr. Lee were shown in clothing that is commonly known to be worn by people who are in prison. Mr. Gomez pointed to Mr. Lee at the first trial and said "I observed the guy in the orange suit walking down the street towards 212 Cherry Street, and he was talking to a woman." (P. 129). Ms. Pruitt testified at the first trial that the person she knows as Skip was wearing an orange uniform (P. 154).[88]

VII. Conclusion

The evidentiary value of an eyewitness identification can be assessed by the existence or absence of factors known – empirically – to influence the strength of the witness's memory, the reliability of the identification, and the reliability of the in-court testimony. Evidentiary value of an identification is undermined when factors that have been shown to decrease reliability are present in a particular case, and the more factors present, the less probative an identification will be.

In this case, there are several estimator and system variable factors that have been shown to negatively affect witness accuracy. In fact, this case has one of the largest number of factors than any case I have reviewed as an expert witness over the last 13 years. These factors include: a limited opportunity to see the person alleged to be the perpetrator due to distance and time, stress and fear, post-event contamination, lineup filler bias, pre-identification instruction bias, the use of a non-blind photo array with no pre-lineup warnings that the actual perpetrator may or may not be there, and commitment related to repeated identification procedures with the same suspect, Mr. Lee. In summary, the combination of all of these factors significantly decreased the likelihood that an accurate identification was made by the witnesses in this case. As demonstrated in the DNA exoneration cases described above, the presence of multiple witness in a case – who all make the same selection from a photo array – does not conclusively demonstrate that all the witnesses were accurate.

VIII. Supplemental Materials

If additional materials are provided to me in reference to this case, I reserve the right to supplement this report in the future.

If called to testify, I would swear to the truth of these facts.
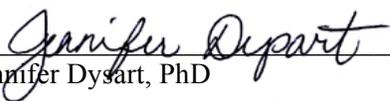
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Jennifer Dysart, PhD

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identifications). In T. Valentine, & J. Davis (Eds.), *Forensic facial identification: Theory and practice of identification from eyewitnesses, composites and CCTV* (pp. 71-92). Chichester, England: Wiley-Blackwell.

[88] It appears that Mr. Lee's clothing was changed when Mr. McCullough testified and made his in-court identification at the first trial, as he described the clothing as being a blue suit and tie (P. 82).

Appendix A

Curriculum Vitae of Jennifer E. Dysart

JENNIFER E. DYSART

Curriculum Vitae

University Address:
Department of Psychology
John Jay College of Criminal Justice
524 West 59th Street, 10th Floor
New York, NY 10019

Email: jdysart@jjay.cuny.edu
Phone: 212.484.1160

Academic Work Experience

2006 – present	Associate Professor of Psychology, John Jay College of Criminal Justice, CUNY, New York, NY
2016 – 2019	Director, Baccalaureate/Master's (BA/MA) Degree Program, John Jay College of Criminal Justice, CUNY, New York, NY
2013 – 2016	Deputy Chair, Department of Psychology, John Jay College of Criminal Justice, CUNY, New York, NY
2011 – 2012	Deputy Chair, Department of Psychology, John Jay College of Criminal Justice, CUNY, New York, NY
2008 – 2010	Associate Chair, Department of Psychology, John Jay College of Criminal Justice, CUNY, New York, NY
2006 – 2008	Deputy Chair of Undergraduate Education, Department of Psychology, John Jay College of Criminal Justice
2003 – 2006	Assistant Professor of Psychology, Southern Connecticut State University, New Haven, CT
2005	Adjunct Professor, Quinnipiac University, Hamden, CT

Education

PhD	2004, Queen's University, Kingston, Ontario (Social Psychology) *Dissertation Title:* Intoxicated Witnesses: Exploring the Effects of Alcohol on Identification Accuracy
MA	1999, Queen's University (Brain, Behavior and Cognitive Science)
BA	1998, St. Thomas University, Fredericton, New Brunswick (First Class Honors in Psychology)

Peer-Reviewed Journal Publications

Steblay, N. M., & Dysart, J. E. (2016). Repeated eyewitness identification procedures with the same suspect. *Journal of Applied Research in Memory and Cognition, 5,* 284-289.

Steblay, N. M., Dysart, J. E., & Wells, G. L. (2015). An unrepresentative sample is unrepresentative regardless of the reason: A rejoinder to Amendola and Wixted. *Journal of Experimental Criminology, 11,* 295-298.

Wells, G. L., Steblay, N. M., & Dysart, J. E. (2015). The flaw in Amendola and Wixted's conclusion on simultaneous versus sequential lineups. *Journal of Experimental Criminology, 11,* 285-289.

Wells, G. L., Steblay, N. M., & Dysart, J. E. (2015). Double-blind photo-lineups using actual eyewitnesses: An experimental test of a sequential versus simultaneous lineup procedure. *Law and Human Behavior, 39*, 1-14.

Lawson, V. Z., & Dysart, J. E. (2014). The showup identification procedure: An exploration of systematic biases. *Legal and Criminological Psychology, 19*, 54-68.

Strange, D., Dysart, J. E., & Loftus, E. F. (2014). Why errors in alibis are not necessarily evidence of guilt [Special issue]. *Zeitschrift Fur Psychologie, 222,* 82-89.

Dysart, J. E., & Strange, D. (2012). Beliefs about alibis and alibi investigations: A survey of law enforcement [Special issue]. *Psychology, Crime and Law, 18,* 11-25.

Dysart, J. E., Lawson, V. Z., & Rainey, A. (2012). Blind lineup administration as a prophylactic against the post-identification feedback effect. *Law and Human Behavior, 36,* 312-319.

Wells, G. L., Steblay, N. M., & Dysart, J. E. (2012). Eyewitness identification reforms: Are suggestiveness-induced hits and guesses true hits? *Perspectives on Psychological Science, 7,* 264-271.

Steblay, N. M., Dysart, J. E., & Wells, G. L. (2011). Seventy-two tests of the sequential superiority effect: A meta-analysis and policy discussion. *Psychology, Public Policy and Law, 17,* 99-139.

Dysart, J. E., Lindsay, R. C. L., & Dupuis, P. R. (2006). Show-ups: The critical issue of clothing bias. *Applied Cognitive Psychology, 20*, 1009-1023.

Pryke, S., Lindsay, R. C. L., Dysart, J. E., & Dupuis, P. R. (2004). Multiple independent identification decisions: A method of calibrating eyewitness identifications. *Journal of Applied Psychology, 89,* 73-84.

Steblay, N., Dysart, J. E., Fulero, S., & Lindsay, R. C. L. (2003).Eyewitness accuracy rates in police showup and lineup presentations: A meta-analytic comparison. *Law and Human Behavior, 27,* 523-540.

Dysart, J. E., Lindsay, R. C. L., MacDonald, T. K., & Wicke, C. (2002). The intoxicated witness: Effects of alcohol on identification accuracy. *Journal of Applied Psychology, 87,* 170-175.

Dysart, J. E. & Lindsay, R. C. L. (2001). A pre-identification questioning effect: Serendipitously increasing correct rejections. *Law and Human Behavior, 25,* 155-165.

Dysart, J. E., Lindsay, R. C. L., Hammond, R., & Dupuis, P. (2001). Mug shot exposure prior to lineup identification: Interference, transference, and commitment effects. *Journal of Applied Psychology, 86,* 1280-1284.

Smith, S. M., Lindsay, R. C. L., Pryke, S., & Dysart, J. E. (2001). Postdictors of eyewitness errors: Can false identifications be diagnosed in the cross-race situation? *Psychology, Public Policy, and Law, 7,* 153-169.

Steblay, N., Dysart, J. E., Fulero, S., & Lindsay, R. C. L. (2001). Eyewitness accuracy rates in sequential and simultaneous line-up presentations: A meta-analytic comparison. *Law and Human Behavior, 25,* 459-473.

Books

Loftus, E. F., Doyle, J. M., Dysart, J. E., & Newirth, K. (forthcoming). *Eyewitness testimony: Civil and criminal* (6th Ed.). Charlottesville, VA: LexisNexis.

Loftus, E. F., Doyle, J. M., & Dysart, J. E. (2013). *Eyewitness testimony: Civil and criminal* (5th Ed.). Charlottesville, VA: LexisNexis.

Loftus, E. F., Doyle, J. M., & Dysart, J. E. (2007). *Eyewitness testimony: Civil and criminal* (4th Ed.). Charlottesville, VA: LexisNexis.

Book Chapters

Dysart, J. E. (2018). The psychology of eyewitness identification. In W. Koen & M. Bowers (Eds.), *The psychology and sociology of wrongful convictions: forensic science reform.*

Lawson, V. Z., & Dysart, J. E. (2015). Searching for suspects: Mug-shot files and showups (street identifications). In T. Valentine, & J. Davis (Eds.), *Forensic facial identification: Theory and practice of identification from eyewitnesses, composites and CCTV* (pp. 71-92)*.* Chichester, England: Wiley-Blackwell.

Dysart, J. E. & Lawson, V. Z. (2014). Eyewitness research. In G. Bruinsma, & D. Weisburd (Eds.), *Encyclopedia of Criminology and Criminal Justice, Vol 9, Psychology of Law* (pp. 1530-1538). New York: Springer.

Dysart, J. E., & Lindsay, R. C. L. (2007). The effects of delay on eyewitness identification accuracy: Should we be concerned? In R. C. L. Lindsay, D. R. Ross, J. D. Read, & M. P. Toglia (Eds.), *The handbook of eyewitness psychology, Vol II, Memory for people* (pp. 361-376). Mahwah, NJ: Lawrence Erlbaum.

Dysart, J. E., & Lindsay, R. C. L. (2007). Show-up identifications: Suggestive technique or reliable method? In R. C. L. Lindsay, D. R. Ross, J. D. Read, & M. P. Toglia (Eds.), *The handbook of eyewitness psychology, Vol II, Memory for people* (pp. 137-154). Mahwah, NJ: Lawrence Erlbaum.

Other Publications

Dysart, J. E. (2019). A primer on the psychology of eyewitness memory. *Loyola Law Review, 64.*

Loftus, E., Doyle, J. M., Dysart, J. E., & Newirth, K. (2018). *Eyewitness testimony: Civil and criminal: Cumulative supplement 2017.* Charlottesville, VA: LexisNexis.

Loftus, E., Doyle, J. M., & Dysart, J. E. (2017). *Eyewitness testimony: Civil and criminal: Cumulative supplement 2016.* Charlottesville, VA: LexisNexis.

Loftus, E., Doyle, J. M., & Dysart, J. E. (2016). *Eyewitness testimony: Civil and criminal: Cumulative supplement 2015.* Charlottesville, VA: LexisNexis.

Loftus, E., Doyle, J. M., & Dysart, J. E. (2015). *Eyewitness testimony: Civil and criminal: Cumulative supplement 2014.* Charlottesville, VA: LexisNexis.

Wells, G. L., Steblay, N. M., & Dysart, J. E. (2011). A test of the simultaneous vs. sequential lineup methods: An initial report of the AJS national eyewitness identification field study.

Doyle, J. M., & Dysart, J. E. (2011). *Eyewitness testimony: Civil and criminal: Cumulative supplement 2010.* Charlottesville, VA: LexisNexis.

Doyle, J. M., & Dysart, J. E. (2010). *Eyewitness testimony: Civil and criminal: Cumulative supplement 2009.* Charlottesville, VA: LexisNexis.

Doyle, J. M., & Dysart, J. E. (2009). *Eyewitness testimony: Civil and criminal: Cumulative supplement 2008.* Charlottesville, VA: LexisNexis.

Doyle, J. M., & Dysart, J. E. (2008). *Eyewitness testimony: Civil and criminal: Cumulative supplement 2007.* Charlottesville, VA: LexisNexis.

Dysart, J. E. (2007). Mugshots. *Encyclopedia of Psychology and Law, Vol 2* (pp. 551-552). Thousand Oaks, CA: Sage.

Dysart, J. E. (2007). Alcohol intoxication and eyewitness identification. *Encyclopedia of Psychology and Law, Vol. 1* (pp. 11-13)*.* Thousand Oaks, CA: Sage.

Peer-Reviewed Conference Presentations

Jaross, M., & Dysart, J. E. (2019, March). *What U.S defense attorneys know about facial composites.* Poster to be presented at the American Psychology-Law Society annual conference, Portland, OR.

Despodova, N., Lee, J., Khogali, M., Dysart, J. E., & Penrod, S. (2019, March). *Are perceptions of alibi credibility affected by defendant and alibi witness race, and defendant-alibi witness relationship?* Poster to be presented at the American Psychology-Law Society annual conference, Portland, OR.

Dysart, J. E., & Kassis, B. (2018, March). *911: What is your emergency?* Poster presented at the American Psychology-Law Society annual conference, Memphis, TN.

Dysart, J. E. (2015, June). *Showup identification procedures: Applied and methodological implications.* Symposium Discussant at the biennial meeting of the Society for Applied Research in Memory and Cognition, Victoria, BC.

Dysart, J. E. (2015, March). *NAS recommendations for expert witnesses in eyewitness identification.* Paper presented at the American Psychology-Law Society annual conference, San Diego, CA.

Dysart, J. E. (2012, March). *Eyewitness research in the courts: The Troy Davis story.* Paper presented at the American Psychology-Law Society annual conference, San Juan, PR.

Dysart, J. E., Wells, G. L., Steblay, N. K., & Mitchell, D. (2012, March). *A double-blind experiment of simultaneous versus sequential lineups using actual eyewitnesses: Lab – field differences.* Paper presented at the American Psychology-Law Society annual conference, San Juan, PR.

Steblay, N. K., Wells, G. L., Dysart, J. E., & Mitchell, D. R. (2012, March). *A double-blind experiment of simultaneous versus sequential lineups using actual eyewitnesses: Principal results.* Paper presented at the American Psychology-Law Society annual conference, San Juan, PR.

Dumas, R., Dysart, J. E., Py, J., & Penrod, S. D. (2011, March). *Eyewitness identification strategies: Contribution of implicit personality theories and emotional expression.* Poster presented at the American Psychology-Law Society annual conference, Miami, FL.

Dysart, J. E., Lawson, V. Z., & Yang, N. (2011, March). *Weapon focus effect: Theoretical insights from eye-tracking research.* Poster presented at the American Psychology-Law Society annual conference, Miami, FL.

Lawson, V. Z., Dysart, J. E., & Butera, L. (2011, March). *The clothing bias effect in lineups: What can eye-tracking research teach us?* Poster presented at the American Psychology-Law Society annual conference, Miami, FL.

Wong, Y., & Dysart, J. E. (2010, May). *Witness descriptions: Is there a cross-race effect for hair?* Poster presented at the Association for Psychological Science convention in Boston, MA.

DeCarlo, J., & Dysart, J. E. (2010, March). *Weapon-focus effect: Are police and civilians differentially affected?* Paper presented at the American Psychology-Law Society annual conference, Vancouver, British Columbia, Canada.

Dysart, J. E., & Strange, D. (2010, March). *A survey of police officers' beliefs about alibis and alibi investigations.* Paper presented at the American Psychology-Law Society annual conference, Vancouver, British Columbia, Canada.

Lawson, V. Z., & Dysart, J. E. (2010, March). *The effects of race, misinformation, and feedback on eyewitness descriptions.* Poster presented at the American Psychology-Law Society annual conference, Vancouver, British Columbia, Canada.

Strange, D., Dysart, J. E., & Loftus, E. F. (2010, March). *Where were you? Alibi generation, accuracy and consistency.* Paper presented at the American Psychology-Law Society annual conference, Vancouver, British Columbia, Canada.

Dysart, J. E., Rainey, A. M., & Penrod, S. D. (2009, May). *CSI effect: Real or not real?* Poster presented at the Association for Psychological Science convention in San Francisco, CA.

Dysart, J. E. (2009, May). *Naked truth: What to do after graduate school.* Invited panelist at the Association for Psychological Science convention in San Francisco, CA.

Chong, K., & Dysart, J. E. (2009, March). *Stranger alibis and eyewitness identification: What is the difference?* Paper presented at the American Psychology-Law Society annual conference, San Antonio, TX.

Lawson, V. Z., Dysart, J. E., & Rainey, A. M. (2009, March). *Showups: A Cross-race investigation into the identification accuracy of eyewitnesses.* Poster presented at the American Psychology-Law Society annual conference, San Antonio, TX.

Mandelbaum, J., Dysart, J. E., & Vitriol, J. A. (2009, March). *Recall of specific facial features in cross-race eyewitness descriptions.* Poster presented at the American Psychology-Law Society annual conference, San Antonio, TX.

Owens, J., Rainey, A. M., & Dysart, J. E. (2009, March). *Is three really a crowd? The effects of multiple perpetrators on eyewitness identification accuracy and confidence.* Poster presented at the American Psychology-Law Society annual conference, San Antonio, TX.

Wallace, D. B., & Dysart, J. E. (2009, March). *The effects of framing on eyewitness believability.* Paper presented at the American Psychology-Law Society annual conference, San Antonio, TX.

Dysart, J. E., & Rainey, A. M. (2008, May). *Eyewitness identification: Testing a new method of presentation.* Poster presented at the Association for Psychological Science convention,

Chicago, IL.

Mandelbaum, J., & Dysart, J. E. (2008, May). *Mug shot interference in a cross-race eyewitness identification.* Poster presented at the Association for Psychological Science convention in Chicago, IL.

Dysart, J. E., Rainey, A., Owens, J., Chong, K., & Lawson, V. (2008, March). *Lineup issues: Double-blind administration and the post-identification feedback effect.* Paper presented at the American Psychology-Law Society annual conference, Jacksonville, FL.

Rainey, A., Dysart, J. E., (2008, March). *The intoxicated witness: Alcohol intoxication and person description accuracy.* Paper presented at the American Psychology-Law Society annual conference, Jacksonville, FL.

Kopelovich, S., & Dysart, J. E. (2008, March). *Voice identification as a unique contributor to eyewitness identification: Exploring the cross-accent effect.* Paper presented at the American Psychology-Law Society annual conference, Jacksonville, FL.

Dysart, J. E., & Fugal, L. (2006, March). *Improving the sequential lineup? The effects of double-blind testing and the envelope technique on post-identification feedback.* Paper presented at the American Psychology-Law Society annual conference, St. Petersburg, FL.

Rainey, A., & Dysart, J. E. (2006, March). *Now you see me: The relationship between social hierarchies, social contact, and the cross-race effect.* Paper presented at the American Psychology-Law Society annual conference, St. Petersburg, FL.

Wallace, D. B., & Dysart, J. E. (2006, March). *The effects of show-up eyewitness testimony, alibi eyewitness testimony, and alibi language bias on alibi believability.* Paper presented at the American Psychology-Law Society annual conference, St. Petersburg, FL.

Dysart, J. E., & Lindsay, R. C. L. (2005, March). *Intoxicated witnesses: Exploring the effects of procedural bias and alcohol intoxication on identification accuracy.* Paper presented at the American Psychology-Law Society annual conference, La Jolla, CA.

Dysart, J. E. (2004, March). *The effects of verbal overshadowing on unconscious transference from mug-shots.* Paper presented at the American Psychology-Law Society annual conference, Scottsdale, AZ.

Dysart, J. E., Lindsay, R. C. L., & Sinclair, M. (2003, July). *Unconscious transference from mug shot searches: Does is really exist?* Paper presented at the biennial meeting of the Society for Applied Research in Memory and Cognition, Aberdeen, Scotland.

Dysart, J. E., Lindsay, R. C. L., & MacDonald, T. K. (2002, March). *The effects of alcohol intoxication on identification accuracy from show-ups: A field study.* Paper presented at the biennial meeting for the American Psychology-Law Society annual conference, Austin, TX.

Dysart, J. E., Steblay, N., Fulero, S., & Lindsay, R. C. L. (2002, March). *Eyewitness accuracy in sequential versus simultaneous lineups: A meta-analytic review.* Paper presented at the biennial meeting for the American Psychology-Law Society, Austin, TX.

Steblay, N., Dysart, J. E., Fulero, S., & Lindsay, R. C. L. (2002, March). *A meta-analytic comparison of showup and lineup identification accuracy.* Paper presented at the biennial meeting for the American Psychology-Law Society, Austin, TX.

Dupuis, P. R., Lindsay, R. C. L., & Dysart, J. E. (2002, March). *Examining the use of rank combined lineups in cross-racial identification.* Paper presented at the biennial meeting for the American Psychology-Law Society, Austin, TX.

Dysart, J. E., Lindsay, R. C. L., & Dupuis, P. (2001, June). *Clothing bias and showup identifications: Does clothing type make a difference?* Paper presented at the biennial meeting for the Society for Applied Research in Memory and Cognition, Kingston, ON.

Dupuis, P., Dysart, J. E., & Lindsay, R. C. L. (2001, June). *Instruction bias effects in showup identification.* Paper presented at the biennial meeting for the Society for Applied Research in Memory and Cognition, Kingston, ON.

Dupuis, P., Lindsay, R. C. L., & Dysart, J. E. (2001, June). *Rank combined lineups: Calibrating the accuracy of individual eyewitness "identification" decisions.* Paper presented at the biennial meeting of the Society for Applied Research in Memory and Cognition, Kingston, ON.

Dysart, J. E., Lindsay, R. C. L., Bala, N., & Lee, K. (2001, June). *Qualifying child witnesses to testify: A survey of Canadian judges.* Paper presented at the annual meeting for the Canadian Psychological Association, Ste-Foy, QC.

Dysart, J. E., Lindsay, R. C. L. & Hammond, R. (2000, March). *Mug shot exposure prior to lineup identification: Interference, transference and commitment effects.* Paper presented at the biennial meeting of the American Psychology-Law Society, New Orleans, LA.

Lindsay, R. C. L., Aylen, M., Lee, K., Bala, N., & Dysart, J. E. (2000, March). *The relation between children's moral understanding of lying and their lie-telling behavior: Does the competence examination matter?* Paper presented at the biennial meeting of the American Psychology-Law Society, New Orleans, LA.

Lindsay, R. C. L., Smith, S., Pryke, S., & Dysart, J. E. (2000, March). *Are postdictors of eyewitness accuracy as useful for cross-race as same-race identification?* Paper resented at the biennial meeting of the American Psychology-Law Society, New Orleans, LA.

Dysart, J. E. & Lindsay, R. C. L. (1999, July). *The effects of delay on eyewitness identification accuracy.* Paper presented at the biennial meeting of the Society for Applied Research in Memory and Cognition, Boulder, CO.

Dysart, J. E. (1998, May). *The effect of verbal cues on face recognition: Implications for eyewitness testimony.* Poster presented at the annual meeting of the Atlantic Provinces

Council on the Sciences, Antigonish, NS.

Invited Judicial Presentations

Dysart, J. E. (2019, November). *The science of eyewitness identification.* Invited speaker at the Academia Judicial Puertorriqueña. San Juan, PR.

Dysart, J. E. (2019, June). *Eyewitness misidentifications: How research informs policy so the judge and jury see what the witness could not.* Invited speaker at the Louisiana Judicial College and Louisiana State Bar Association joint summer school conference, Destin, FL.

Dysart, J. E. (2019, February). *The science of eyewitness identification.* Invited speaker and panelist at the "Reducing the Risk of Wrongful Convictions" session. Conference of Chief Judges Midyear Meeting, Clearwater, FL.

Dysart, J. E. (2018, October). *The science of eyewitness identification.* Invited speaker at the National Judicial Institute "Preventing Wrongful Convictions" Judicial Seminar, Vancouver, British Columbia, Canada.

Dysart, J. E. (2017, October). *The science of memory and eyewitness identification.* Invited speaker at the Fall Circuit Judges Education Conference sponsored by the Supreme Court of Appeals of West Virginia and the West Virginia Judicial Association, Charleston, WV.

Dysart, J. E. (2017, June). *Eyewitness identification: Applied scientific research.* Invited speaker at the 2017 D.C. Circuit Judicial Conference, Lancaster, PA.

Dysart, J. E. (2017, April). *The science of eyewitness identification: Reducing wrongful convictions.* Invited speaker at the 3rd Circuit Annual Judicial Conference, Lancaster, PA.

Dysart, J. E. (2017, March). *The science of eyewitness identification.* Invited speaker at the National Judicial Institute "Preventing Wrongful Convictions" Judicial Seminar, Vancouver, British Columbia, Canada.

Dysart, J. E. (2015, July). *The science of eyewitness identification*. Invited speaker at the Pennsylvania Conference of State Trial Judges, Hershey, PA.

Dysart, J. E. (2013, June). *The psychology of eyewitness identification*. Invited speaker at the Annual NYC Criminal Court Judges Association meeting, Montauk, NY.

Dysart, J. E. (2013, February). *The psychology of (eyewitness) memory*. Invited speaker at the 2013 Louisiana Judicial College, Evidence and Procedure Conference, New Orleans, LA.

Dysart, J. E. (2012, October). *Identification evidence and eyewitness memory*. Invited speaker at the National Conference of Metropolitan Courts, Pittsburgh, PA.

Dysart, J. E. (2012, October). *The science of eyewitness identification*. Invited speaker at the New York County Lawyers Association Judicial Section CLE Symposium, NY, NY.

Dysart, J. E. (2011, June). *Eyewitness identification*. Invited speaker at the Arizona State Judicial conference, Scottsdale, AZ.

Dysart, J. E. (2011, May). *Eyewitness identification*. Invited speaker at the Ontario Judges Annual conference, Niagara Falls, Ontario, Canada.

Dysart, J. E. (2010, November). *Identification evidence: Eyewitness memory*. Invited speaker at the Philadelphia Municipal Court Judicial conference, Philadelphia, PA.

Dysart, J. E. (2010, October). *Eyewitness identification evidence*. Invited speaker at the National Judicial Institute "Preventing Wrongful Convictions" Seminar, St. John's, Newfoundland, Canada.

Dysart, J. E. (2010, June). *Eyewitness identification*. Invited speaker at the Arizona Judicial conference/State Bar Association Convention, Glendale, AZ.

Dysart, J. E. (2010, May). *Eyewitness identification*. Invited speaker at the D.C. Superior Court Judicial Training Program, Washington, DC.

Dysart, J. E. (2010, February). *An examination of eyewitness identification procedures: Perspectives on wrongful convictions*. Invited speaker at the Pennsylvania conference of State Trial Judges Mid-Annual Meeting, Philadelphia, PA.

Dysart, J. E. (2009, October). *Identification evidence*. Invited speaker at the Ontario Court of Justice West Regional Seminar, Ontario, Canada.

Dysart, J. E. (2009, March). *Identification evidence*. Invited speaker at the National Judicial Institute "Preventing Wrongful Convictions" Seminar, Victoria, BC, Canada.

Dysart, J. E., Garcia, R., & Lieberman, S. (2008, June). *Cross-racial identification*. Invited panelist at the 2008 New York State Summer Judicial Seminar, Rye Brook, NY.

Dysart, J. E. (2007, November). *Eyewitness identification*. Invited speaker at the Atlantic Courts Education Seminar sponsored by the Canadian National Judicial Institute, St. John's, Newfoundland, Canada.

Dysart, J. E. (2007, July). *"He had a mug you couldn't forget": The psychological dynamics of mistaken eyewitness testimony*. Pennsylvania conference of State Trial Judges Annual Meeting, Hershey, PA.

Dysart, J. E. (2006, July). *Eyewitness identification*. Invited speaker at Judicial Education Institute training conference for Magistrates, Port of Spain, Trinidad and Tobago.

Dysart, J. E. (2006, April). *Eyewitness errors*. Invited speaker at the Canadian National Judicial Institute Judges training workshop on eyewitness identification, Montreal, Quebec, Canada.

Dysart, J. E. (2005, November). *Eyewitness errors*. Invited speaker at the Canadian National Judicial Institute Judges training workshop on eyewitness identification, Regina, Saskatchewan, Canada.

Dysart, J. E. (2005, September). *Eyewitness errors*. Invited speaker at the Canadian National Judicial Institute Judges training workshop on eyewitness identification, Charlottetown, Prince Edward Island, Canada.

Dysart, J. E. (2005, June). *Eyewitness identification and testimony: A matter for the experts?* Invited speaker at the Connecticut Judges Institute conference, Quinnipiac University, Hamden, CT.

Invited Bar Association Presentations

Dysart, J. E. (2016, April). *Eyewitness identification*. Invited panelist at the annual meeting of the American Bar Association, Chicago, IL.

Dysart, J. E. (2012, October). *The science of eyewitness identification*. Invited speaker at the New York State Bar Association program on "Forensics and the Law", New York, NY.

Dysart, J. E. (2012, June). *Eyewitness identification: A psychological perspective.* Invited speaker at the State Bar of Michigan Eyewitness Identification Task Force meeting, Lansing, MI.

Dysart, J. E. (2013, February). *Identification evidence and eyewitness testimony*. Invited speaker at the Kings County Bar Association meeting, Brooklyn, NY.

Dysart, J. E. (2012), June. *Eyewitness identification: A psychological perspective.* Invited keynote speaker and panelist at the Pennsylvania Bar Institute's 20th Annual Criminal Law Symposium, Harrisburg, PA.

Dysart, J. E. (2011, November). *Eyewitness identification.* Invited speaker at the Louisiana State Bar Association conference, New York, NY.

Dysart, J. E. (2011, September). *Eyewitness identification*. Invited speaker at the Montgomery County Bar Association Bench Bar conference, Hamburg, NJ.

Dysart, J. E. (2008, March). *Eyewitness identification*. Invited speaker at the Nassau County Bar Association meeting, Mineola, NY.

Dysart, J. E. (2007, November). *Eyewitness identification*. Invited speaker at the Suffolk County Bar Association CLE program titled "Police encounters of the first kind", Hauppauge, NY.

Dysart, J. E. (2006, July). *Eyewitness identification*. Invited speaker at Judicial Education Institute training conference for the Bar Association, Port of Spain, Trinidad and Tobago.

Invited Presentations for Combined Judicial, Law Enforcement, and Attorney Audiences

Dysart, J. E. (2016, June). Moderator on '*Emerging Issues'* panel. Invited speaker at the National Symposium on Eyewitness Identification Reform, Yale University, New Haven, CT.

Dysart, J. E. (2014, May). *Eyewitness identification: A psychological perspective.* Invited speaker at the Eyewitness Identification Best Practices Symposium, San Francisco, CA.

Dysart, J. E. (2014, May). *The science of eyewitness identification.* Invited speaker at the Joint Eyewitness Identification Statewide Training Symposium, co-sponsored by the Connecticut State Eyewitness Identification Task Force, Hartford, CT.

Dysart, J. E. (2013, April). *Eyewitness memory and the social science research.* Invited speaker at the Annual Virginia Journal of Criminal Law Symposium at the University of Virginia School of Law, Charlottesville, VA.

Dysart, J. E. (2012, May). *Best practices in eyewitness ID: Model policy and procedures.* Invited speaker and panelist at the Best Practices in Law Enforcement Investigations Program, Center for American and International Law, Plano, TX.

Dysart, J. E. (2011, October). *Eyewitness identification.* Invited speaker at the Newfoundland Department of Justice conference, St. Johns, Newfoundland, Canada.

Dysart, J. E. (2011, July). *Eyewitness identification.* Invited speaker at the "Eyewitness Identification and False Confession" conference, sponsored by the Center for American and International Law, Plano, TX.

Dysart, J. E. (2011, March). *Eyewitness identification.* Invited speaker at the "Actual Innocence: Establishing Innocence or Guilt August - Causes of and Solutions to Wrongful Convictions" conference, sponsored by the Center for American and International Law, Plano, TX.

Dysart, J. E. (2010, March). *Eyewitness identification – What is its value in criminal cases?* Invited speaker at the "Actual Innocence: Establishing Innocence or Guilt" conference, sponsored by the Center for American and International Law, Plano, TX.

Dysart, J. E., & Patenaude, K. (2009, March). *Eyewitness identification.* Invited speaker at the "Actual Innocence: Establishing Innocence or Guilt. Future of Forensic Science, Eye-Witness Identification and the Impact of the NAS report" conference, sponsored by the Center for American and International Law, Austin, TX.

Dysart, J. E., & Edwards, E. (2009, January). *Eyewitness identification: New science and new litigation strategies.* Invited speaker at the Fifth National Seminar on Forensic Evidence and the Criminal Law, Philadelphia, PA.

Dysart, J. E. (2008, August). *Why eyewitnesses make mistakes*. Invited speaker at The Center for American and International Law conference, "Actual Innocence: Forensics, False Confessions, and Eyewitness Identification", Plano, TX.

Invited Law Enforcement/Investigator Presentations

Dysart, J. E. (2019, April). *The science of eyewitness memory: Understanding and preventing identification errors.* Invited speaker at the National Defender Investigator Association 2019 National Meeting, San Diego, CA.

Dysart, J. E. (2017, May). *The science of eyewitness identification.* Invited speaker/trainer at the Denver Fire Investigators Conference, Denver, CO.

Dysart, J. E. (2016, September). *Eyewitness identification: A psychological perspective.* Invited speaker at the National Defender Investigator Association Regional conference, Newport Beach, CA.

Dysart, J. E. (2014, June). *Eyewitness identification: A psychological perspective.* Invited speaker at the Michigan Association of Chiefs of Police Annual Training Conference, Traverse City, MI.

Dysart, J. E. (2014, May). *Eyewitness identification: A psychological perspective.* Invited speaker at the Las Vegas Metropolitan Police Department, Las Vegas, NV.

Dysart, J. E. (2013, June). *The psychology of eyewitness identification.* Invited speaker at the Pennsylvania Chiefs of Police Association Annual Conference, Harrisburg, PA.

Dysart, J. E. (2013, June). *The science of eyewitness identification*. Invited speaker at the Baltimore City Police Department training seminar on Eyewitness Identification, Baltimore, MD.

Dysart, J. E. (2013, March). *The psychology of eyewitness identification*. Invited speaker at the NYPD training meeting on Wrongful Convictions, New York, NY.

Dysart, J. E. (2013, March). *The psychology of eyewitness identification*. Invited speaker at the "Enhancing Law Enforcement's Ability to Ensure Accurate Convictions – Techniques & Scientific Developments" Seminar for WV Law Enforcement, Charleston, WV.

Dysart, J. E. (2012, November). *Eyewitness identification: A psychological perspective*. Invited speaker at the seminar "How Idaho Law Enforcement Can Ensure More Accurate Identifications: Practice Techniques & Scientific Developments", Boise, ID.

Dysart, J. E. (2012, April). *Eyewitness identification: A psychological perspective.* Invited speaker at the 2012 National Defender Investigator Association conference, Atlanta, GA.

Dysart, J. E. (2011, December). *Enhancing law enforcement's ability to ensure accurate convictions – Techniques & Scientific Developments: Evidence that the updates work.* Invited speaker at the Mississippi Chiefs of Police conference, Oxford, MS.

Dysart, J. E. (2011, May). *Eyewitness identification.* Invited speaker at the Committee for Public Counsel Services conference, Worcester, MA.

Dysart, J. E. (2011, April). *Eyewitness identification*: A scientific review. Invited speaker at the joint Innocence Project, The Palmetto Innocence Project & The South Carolina Law Enforcement Division conference, Columbia, SC.

Dysart, J. E. (2011, February). *Eyewitness identification: A scientific review.* Invited speaker at the Society of Professional Investigators monthly meeting, New York, NY.

Dysart, J. E. (2010, September). *Eyewitness identification procedures.* Invited speaker at the National Defender Investigator Association annual training conference, Savannah, GA.

Dysart, J. E. (2010, February). *False identifications: A scientific approach to limiting mistakes.* Invited speaker at the Texas District and County Attorneys Association Investigator School conference, Odessa, TX.

Dysart, J. E. (2008, November). *Eyewitness identification.* Invited speaker at the Royal Canadian Mounted Police's Major Crime conference, Halifax, Nova Scotia, Canada.

Dysart, J. E. (2008, September). *The psychology of eyewitness identification.* Invited speaker at the Denver Fire Department's Annual Advanced Fire Investigation Seminar, Denver, CO.

Dysart, J. E. (2006, September). *Eyewitness identification.* Invited talk at the International Association of Women in Policing conference, Saskatoon, Saskatchewan, Canada.

Dysart, J. E. (2006, July). *Eyewitness identification.* Invited speaker at Judicial Education Institute training conference for Senior Police Officers, Trinidad and Tobago.

Invited Prosecutor Presentations

Dysart, J. E. (2013, September). *The science of eyewitness identification.* Invited speaker at the Eyewitness Identification Best Practices Seminar for law enforcement and prosecutors, Forsyth, GA.

Dysart, J. E. (2013, February). *Identification evidence and eyewitness memory.* Invited speaker at the Pennsylvania District Attorneys Annual Conference, Pittsburgh, PA.

Dysart, J. E. (2010, October). *Eyewitness identification.* Invited speaker at the Pennsylvania District Attorneys Association meeting, College Park, PA.

Invited Defense Attorney Presentations

Dysart, J. E. (2016, June). *Eyewitness memory and perception.* Invited speaker at the National Forensic College third annual conference, NACDL and Benjamin N. Cardozo School of Law, Yeshiva University, New York, NY.

Dysart, J. E. (2014, November). *Eyewitness identification: A psychological perspective.* Invited keynote speaker at the Wisconsin State Public Defender's Annual Criminal Defense Conference, Milwaukee, WI.

Dysart, J. E. (2014, June). *Eyewitness memory and perception.* Invited speaker at the National Forensic College Conference, Benjamin N. Cardozo School of Law, Yeshiva University, New York, NY.

Dysart, J. E. (2013, April). *The psychology of eyewitness identification.* Invited speaker at the Ohio Association of Criminal Defense Lawyers "Eyewitness Identification" Seminar, Columbus, OH.

Dysart, J. E. (2012, December). *The science of eyewitness identification.* Invited speaker at the Delaware County Association of Criminal Defense Lawyers meeting, Media, PA.

Dysart, J. E. (2012, August). *The science of eyewitness identification.* Invited speaker at the Texas Criminal Defense Lawyers Association conference, Austin, TX.

Dysart, J. E. (2012, June). *Eyewitness identification: A psychological perspective.* Invited keynote speaker at the Public Defender Service Forensic Science conference, Washington, DC.

Dysart, J. E. (2012, April). *Eyewitness identification: Why innocent people are wrongly identified.* Invited speaker at the 2012 New York State Wrongful Convictions conference, Rochester Institute of Technology, Rochester, NY.

Dysart, J. E. (2011, August). *Eyewitness identification.* Invited speaker at the Florida Defender Summer School 2011 conference, Orlando, FL.

Dysart, J. E. (2011, February). *Eyewitness identification: A scientific review.* Invited speaker at the Manhattan Legal Aid Society training seminar, New York, NY.

Dysart, J. E. (2011, February). *Eyewitness identification.* Invited speaker at the California Capital Case Defense Seminar, Monterey, CA.

Dysart, J. E. (2010, April). *The science of eyewitness evidence.* Invited speaker at the Missouri Association of Criminal Defense Attorneys convention titled "Eyewitness Identification Litigation Training", Branson, MO.

Dysart, J. E. (2009, November). *Eyewitness identification.* Invited speaker at the Rochester Institute of Technology Public Defender CLE program, Rochester, NY.

Dysart, J. E. (2009, October). *Eyewitness identification.* Invited speaker for the Criminal Appeals Bureau CLE program, New York, NY.

Dysart, J. E. (2009, September). *The investigative process and eyewitness evidence.* Invited speaker at the Short Course in Crime Scene Analysis for Trial Lawyers in Criminal Cases, New York, NY.

Dysart, J. E. (2009, May). *Eyewitness identification.* Invited speaker at the Bronx Legal Aid Society CLE program on Eyewitness Identification, Bronx, NY.

Dysart, J. E (2009, May). *Eyewitness (mis)identification.* Invited speaker at the Nassau County Legal Aid Society CLE Program on Eyewitness Identification, Mineola, NY.

Dysart, J. E. (2009, March). *Eyewitness identification.* Invited speaker at the Brooklyn Legal Aid Society CLE Program on Eyewitness Identification, Brooklyn, NY.

Dysart, J. E., & Perrone, A. (2008, October). *Changing strategies to change the law of identification evidence.* Invited speaker at the New Jersey Office of the Public Defender Annual training conference, "Changing Times – Changing Strategies: Striking a New Balance, Kean University, Union, NJ.

Dysart, J. E., & Schecter, M. (2008, October). *Everything you always wanted to know but were afraid to ask about ID evidence.* Invited speaker at the New Jersey Office of the Public Defender Annual training conference, "Changing Times – Changing Strategies: Striking a New Balance, Kean University, Union, NJ.

Dysart, J. E. (2008, August). *Eyewitness identification.* Invited speaker at the Federal Defender Services of Idaho, Capital Habeas Unit's Annual Death Penalty conference, Boise, ID.

Stetler, R., Friedman, J., Garcia, R., & Dysart, J. E. (2008, March). *Developing the right facts: Investigation and discovery.* Invited panelist at the National Association of Criminal Defense Lawyers CLE conference, "A new legal architecture: Litigating eyewitness identification cases in the 21st Century", New York University, New York, NY.

Dysart, J. E. (2007, July). *Misidentification and eyewitness testimony.* Invited speaker at the Georgia Capital Public Defenders Association seminar, Atlanta, GA.

Dysart, J. E., & Carroll, P. (2006, May). *Eyewitness evidence.* Invited speaker at the Maryland Public Defender conference, Ocean City, MD.

Invited Law School and University Presentations

Dysart, J. E. (2018, November). *The science of eyewitness identification.* Invited speaker at the "Protecting the Innocent: Louisiana's Reform of Eyewitness Identification" conference,

Loyola University New Orleans College of Law, New Orleans, LA.

Dysart, J. E. (2016, November). *Eyewitness identification.* Invited speaker at the Department of Psychology sponsored colloquium titled "Faculty Perceptions: Eyewitnesses, Juries, and Consequences." John Jay College of Criminal Justice, New York, NY.

Dysart, J. E. (2014, January). *The science of eyewitness identification*. Invited speaker at the Association of American Law Schools Annual Conference, New York, NY.

Dysart, J. E. (2013, August). *The science of eyewitness identification.* Invited speaker at the Social Justice Workshop Seminar, Santa Clara Law School, Santa Clara, CA.

Dysart, J. E. (2012, April). *The science of eyewitness identification.* Invited speaker at the "Eyewitness Identification Symposium" sponsored by Emory Law School, Atlanta, GA.

Dysart, J. E. (2012, February). Invited panelist at the 7th Annual H.F. Guggenheim Symposium on Crime in America session titled "Did You See That Man? The Challenge to Eyewitness ID", New York, NY.

Dysart, J. E. (2010, April). *The science of eyewitness identification*. Invited panelist speaker at the Brown University Eyewitness Identification Summit, The Taubman Center for Public Policy Brown University, Providence, RI.

Dysart, J. E. (2009, September). *The psychology, law, and ethics of eyewitness identification cases.* Invited speaker at the Innocence and Forensics CLE program, Widener Law School, Wilmington, DE.

Dysart, J. E. (2007, May). *Eyewitness identification*. Invited speaker at "Wrongful Convictions: Causing Pain, Allowing Gain", sponsored by The Arlin M. Adams Center for Law and Society at Susquehanna University, Ceremonial Courtroom, Federal District Court, Philadelphia, PA.

Dysart, J. E. (2007, February). *Understanding eyewitness identification*. Invited speaker at Susquehanna University seminar "Wrongful Convictions", Selinsgrove, PA.

Dysart, J. E. (2006, November). *Understanding the science of memory: Distinguishing eyewitness confidence from accuracy.* Invited talk at Emory Law School, Atlanta, GA.

Dysart, J. E. (2006, March). *The effects of alcohol on eyewitness identification accuracy from show-ups.* Invited talk for the Department of Psychology at Lehman College, CUNY, Bronx, NY.

Invited Non-Profit Presentations

Dysart, J. E. (2017, November). *The science of eyewitness identification.* Invited speaker at the Innocence Project 25th Anniversary Conference, Cardozo Law School, New York, NY.

Dysart, J. E. (2013, May). *The psychology of eyewitness identification*. Invited speaker at the Innocence Project Staff Training seminar, New York, NY.

Dysart, J. E. (2012, June). *Psychology of misidentification*. Invited speaker at the 2012 Innocence Policy Network conference, New Orleans, LA.

Dysart, J. E. (2011, October). *Eyewitness identification*. Invited Shea Lecturer, sponsored by the Charter Oak State College Foundation, Hartford, CT.

Supervision of Doctoral Students at John Jay College of Criminal Justice

2010   John DeCarlo (Criminal Justice Doctoral Student)
                       Topic: Eyewitness Identification Accuracy of Police Officers & Citizens

2009-2011   Victoria Lawson (Forensic Psychology Doctoral Student)
                       Topic: Eyewitness Identification

2006-2009   Anna Rainey (Forensic Psychology Doctoral Student)
                       Topics: Showups; Cross-race identification

2006-2009   Brian Wallace (Forensic Psychology Doctoral Student)
                       Topics: Alibi believability; Mug shot searching.

Supervision of Masters Theses at John Jay College of Criminal Justice

2018 – present Elena Christofi
                       Topic: 911 Transcripts in Eyewitness Calls

2018 – 2019   Samantha Kosziollek
                       Topic: 911 Dispatchers

2016 – 2018   Marisa Jaross
                       Topic: Composite sketches

2016 – 2017   Brittany Kassis
                       Topic: 911 Dispatchers

2011 – 2012   Tamara Andrade
                       Topic: Composite creation in cross-race identifications

2010 – 2011   Jennifer Savion
                       Topic: Composite creation in cross-race identifications

2009 – 2010   Lindsey Butera
                       Topic: Eye-tracking and lineup accuracy with biased lineups

Yinglee Wong
> Topic: Cross-race description accuracy of hair/hairstyles

Nancy Yang
> Topic: Eye-tracking and weapon focus effect

2008 – 2009   Alexander Buijsrogge
> Topic: Cross-race composite creation of famous faces

Kristin Chong
> Topic: Stranger alibis and identification accuracy

Victoria Lawson
> Topic: Cross-race showup and lineup accuracy

Jessica Owens
> Topic: Multiple-perpetrator crimes and identification accuracy

2007 – 2008   Sarah Kopelovich
> Topic: Cross-race and Accent effects on identification accuracy

Jason Mandelbaum
> Topic: Cross-race effects in mug shot searching

Supervision of Master's Theses at Southern Connecticut State University

2005   Lisbeth Fugal
> Topic: Post-identification feedback

Anna Rainey
> Topic: Cross-race identification and "contact" with other groups

2004   Sandra Soucie
> Topic: CSI Effect

Supervision of Undergraduate Honor's Thesis at Southern Connecticut State University

2005   Daniel Csuka
> Topic: Multiple Independent Identification Accuracy

Awards and Scholarships

2017   PSC CUNY research grant ($3,500)

2008   John Jay College Research Assistance Program Grant ($1,000)

2005   Connecticut State University Research Grant ($4,400)

2005	Junior Faculty Research Fellowship, Southern Connecticut State University (9 credits teaching release time for Fall 2005)
2003-2005	Social Sciences and Humanities Research Council of Canada (SSHRC) Post- Doctoral Fellowship ($40,000 and $35,000 annually; declined)
2002	American Psychological Foundation/Council of Graduate Departments of Psychology (APF/COGDOP) Graduate research scholarship ($1,500)
2002	American Psychology-Law Society Grants-in-Aid award ($650)
2001-2003	Social Sciences and Humanities Research Council of Canada (SSHRC) Doctoral Award ($17,900 annually)
2000-2001	Ontario Graduate Scholarship ($15,000)
1999-2000	Natural Sciences and Engineering Research Council of Canada (NSERC) PGS-B scholarship ($18,900)
1998-1999	Natural Sciences and Engineering Research Council of Canada (NSERC) PGS-A scholarship ($17,300)

Courses Taught

John Jay College of Criminal Justice, New York, NY
- Introduction to Psychology (undergraduate course)
- Psychology and Law (undergraduate course)
- Forensic Social and Experimental Psychology (undergraduate course)
- Mental Health Professionals, Social Science and the Law (Masters course)
- Eyewitness Identification (Masters course)
- Prospectus Seminar (Masters course)
- Research Methods and Design (Psychology doctoral course)
- Survey of Psychology and Criminal Justice (Criminal Justice doctoral course)

Southern Connecticut State University, New Haven, CT
- Experimental Methods (undergraduate course)
- Social Psychology (undergraduate course)
- Experimental Research Internship (undergraduate course)
- Psychology and Law (undergraduate course)
- Issues in Psychology, Law, and Ethics (Masters course)

Quinnipiac University, Hamden, CT
- Introduction to Psychology (undergraduate course)

University Committee Service

2016 – 2019	Graduate Studies Council, John Jay College of Criminal Justice
2013 – 2016	College Council Member, John Jay College of Criminal Justice
2013 – 2016	Faculty Senate Member, John Jay College of Criminal Justice
2013 – 2014	College Council Executive Committee Member, John Jay College of Criminal Justice
2010 – 2012	College Council Executive Committee Member, John Jay College of Criminal Justice
2010 – 2012	College Council Member, John Jay College of Criminal Justice
2010 – 2012	Faculty Senate Executive Committee Member, John Jay College of Criminal Justice
2010 – 2012	Faculty Senate Member, John Jay College of Criminal Justice
2008 – 2012	College Scholarships and Awards Committee, John Jay College of Criminal Justice
2010 – 2011	Task Force on the Year-round College, John Jay College of Criminal Justice
2007 – 2010	Department Curriculum Committee, Department of Psychology, John Jay College of Criminal Justice
2007 – 2010	College Curriculum Committee Member, John Jay College of Criminal Justice
2006 – 2008	Coordinated Undergraduate Education (CUE) Committee Member, John Jay College of Criminal Justice
2006 – 2007	College Council Member, John Jay College of Criminal Justice
2006 – 2007	Faculty Senate Member, John Jay College of Criminal Justice
2006 – 2007	Major/Minor Fair Committee, John Jay College of Criminal Justice
2004 – 2005	Subject Pool Ad Hoc Committee, Department of Psychology, Southern Connecticut State University

2004 – 2005	Faculty Development Advisory Committee – Arts and Sciences Rep, Southern Connecticut State University
2004 – 2005	New Faculty Orientation Committee, Southern CT State University
2004 – 2005	New Faculty Mentor, Southern Connecticut State University
2004	New Student Orientation Committee, Southern Connecticut State University
2003 – 2005	Department of Psychology Web-site Committee, Southern Connecticut State University
2003 – 2004	Connecticut State University Psychology Day Research Conference – Organizing Committee
1999 – 2003	Graduate Student Representative at Department of Psychology Meetings, Queen's University

Professional Activities

2016 – present	Appointed Member of the 3rd Circuit Task Force on Eyewitness Identification
2009 – present	Research Advisory Board Member, Innocence Project, New York, NY
2006 – present	Consultant, eyewitness identification expert
2016	Testified at City Council - joint hearing of the Committee on Public Safety and Committee on Courts and Legal Services on "Wrongful Convictions: Using Evidence-Based procedures and Technology to Keep Innocent People Out of Jail", New York, NY.
2012	Testified before the Maryland House and Senate Judiciary Committees, Annapolis, MD
2011	Testified before Connecticut Eyewitness Identification Task Force, Hartford, CT
2011	Reviewed model policy for Texas HB 215 on eyewitness identification
2007 – 2012	Member of a national field study team led by Dr. Gary Wells of Iowa State University investigating the use of simultaneous and sequential double-blind lineups in the field.

2010 – 2011	Site scientist in Austin, TX for National eyewitness field study (above)
2010 – 2011	Conference Co-Chair for the 9th biennial conference for the Society for Applied Research in Memory and Cognition, New York City, June 2011
2007	Conference Chair and Organizer: "Off the Witness Stand: Using Psychology in the Practice of Justice", New York, NY

Reviewing (past and current)

Law and Human Behavior
Psychology, Public Policy and Law
Applied Cognitive Psychology
Journal of Experimental Psychology: Applied
Psychology, Crime & Law
National Science Foundation
American Psychology-Law Society annual meetings
Society for Applied Research in Memory and Cognition meetings

Professional Affiliations

American Psychology–Law Society
Society for Applied Research in Memory and Cognition

Appendix B

Mock Witness Experiment Materials

Witness Task

September 4, 2018

Please indicate the photograph number that best matches the witness' description provided on the Powerpoint slide by placing an "X" in the corresponding line below.

_____ Photograph #2

_____ Photograph #3

_____ Photograph #4

_____ Photograph #5

_____ Photograph #6

Thank you for your time

Your responses to this exercise may be used in an actual wrongful conviction case. Please be as honest as possible.

All responses will be anonymous.

Instructions

- On the next slide, you will be provided with a witness' description of a perpetrator in an actual case.
- You will also be shown 5 color photographs that were used in the criminal investigation.
  - Note photo #1 is missing from this array.
- Please read the description and then select the person from the photographs that you believe best matches the witness' description.
- Record your answer on the sheet provided.

Black male, approximately 6 feet tall, wearing a dark jacket, ball cap & jeans

Thank you for your time.

If you have any questions, please contact Dr. Jennifer Dysart at jdysart@jjay.cuny.edu