

**IN THE TENTH JUDICIAL DISTRICT COURT OF KANSAS,  
JOHNSON COUNTY**

In the matter of the  
wrongful conviction of  
RICHARD JONES

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PETITION FOR CERTIFICATE OF INNOCENCE PURSUANT TO  
2018 Kansas Laws Ch. 108 (H.B. 2579)

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Following grant of post-conviction relief in  
*Jones v. Kansas*, No. 16 CV 7137 (10th Distr. Kans.) (Moriarty, J.)

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Russell Ainsworth (PHV forthcoming)  
Ruth Brown (PHV forthcoming)  
Josh Loevy  
Loevy & Loevy  
311 North Aberdeen Street, 3<sup>rd</sup> Floor  
Chicago, Illinois 60607  
(312) 243-5900

COUNSEL FOR CLAIMANT RICHARD JONES

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Claimant Richard Jones, through his attorneys, Loevy & Loevy, respectfully moves this Court for a certificate of innocence and other relief for wrongfully convicted persons pursuant to TORTS—WRONGFULLY CONVICTED PERSONS—DAMAGES, 2018 Kansas Laws Ch. 108 (H.B. 2579).

## INTRODUCTION

Petitioner Richard Jones was wrongfully convicted of an aggravated robbery in Kansas City, Kansas after being misidentified; the real perpetrator, a drug user previously known only as “Rick,” has now been identified by his co-participants in the robbery. Mr. Jones has maintained his innocence for decades; he was at his Missouri home at the time of the robbery, as witnesses corroborate, and no physical or forensic evidence of any kind tied him to it. Mr. Jones’s conviction rested entirely on unreliable identifications by witnesses who all recanted their identifications once presented with a photograph of the true perpetrator: a known drug user named Ricky Lee Amos who lived at the exact address where the robber was encountered by his co-offenders, and whose thinner build and longer hair at the time of the crime better matched the eyewitness descriptions of the robber. All of the eyewitnesses who misidentified Mr. Jones as “Rick” have since agreed that Ricky Lee Amos is the more likely perpetrator.

These circumstances led the trial prosecutor, John Cowles, to testify in support of Mr. Jones’s petition for post-conviction relief, and Judge Kevin Moriarty to grant the petition. Judge Moriarty found the eyewitness identifications unreliable, the photo lineup used against Mr. Jones improperly suggestive, and the evidence inculpatory Mr. Amos significant. He concluded:

[T]his court . . . has no doubt that a jury would not be able to reach a determination that this defendant was guilty, and this court does not believe any reasonable jury could have made such a decision in this case.

*See, e.g.,* Exh. A, Post-Conviction Hrg. Trans. at 113.

After enduring seventeen years of wrongful incarceration for a crime he did not commit, Mr. Jones brings this petition seeking a judicial pronouncement of his innocence and some measure of financial assistance as he seeks to rebuild his life. Mr. Jones easily meets the requirements for relief and thus this Court should grant his petition in full.

### **LEGAL STANDARD**

Kansas law allows wrongfully convicted persons to seek a certificate of innocence and other relief. TORTS—WRONGFULLY CONVICTED PERSONS—DAMAGES, 2018 Kansas Laws Ch. 108 (H.B. 2579). The statute was enacted so that “those innocent persons who can demonstrate . . . that they were mistakenly convicted and imprisoned be able to recover damages against the State.” *Id.*, preamble.

A meritorious claim requires demonstration of four elements:

- (A) The claimant was convicted of a felony crime and subsequently imprisoned;
- (B) the claimant’s judgment of conviction was reversed or vacated and either the charges were dismissed or on retrial the claimant was found to be not guilty;
- (C) the claimant did not commit the crime or crimes for which the claimant was convicted and was not an accessory or accomplice to the acts that were the basis of the conviction and resulted in a reversal or vacation of the judgment of conviction, dismissal of the charges or finding of not guilty on retrial; and
- (D) the claimant did not commit or suborn perjury, fabricate evidence, or by the claimant’s own conduct cause or bring about the conviction. Neither a confession nor admission later found to be false or a guilty plea shall constitute committing or suborning perjury, fabricating evidence or causing or bringing about the conviction under this subsection.

*Id.* 108(1)(c)(1). There is no requirement of proof beyond a reasonable doubt; rather, the claimant need only establish each element by a “preponderance of the evidence.” *Id.* 108(1)(c)(1), preamble. In addition, the Court “may, in the interest of justice, give due consideration to difficulties of proof caused by the passage of time, the death or unavailability of

witnesses, the destruction of evidence or other factors not caused by such persons or those acting on their behalf.” *Id.* 108(1)(c)(2).

Procedurally, claimants such as Mr. Jones who were released from their wrongful incarceration prior to July 1, 2018 enactment must file their petition no later than July 1, 2020. *Id.* 108(1)(d)(2). Claimants must also verify the petition and properly serve it on the attorney general. *Id.* 108(1)(d)(1), (d)(4).

The statute awards persons with meritorious claims the following mandatory relief: a certificate of innocence, *id.* 108(1)(g); an expungement order of the associated arrests and convictions, *id.* 108(1)(h); damages in the amount of \$65,000 for each year of imprisonment, *id.* 108(1)(e)(1); a tuition and fees waiver for postsecondary education, *id.* 108(1)(e)(4)(C), 108(2)(a); participation in the state health care benefits program, *id.* 108(1)(e)(4)(D); an order for the expungement and destruction of the associated biological samples, *id.* 108(1)(i); and reasonable attorney’s fees and costs, *id.* 108(1)(e)(4)(A). The statute also grants the Court discretion to order non-monetary relief such as counseling, housing assistance and personal financial literacy assistance, as appropriate. *Id.* 108(1)(e)(4)(D).

## **STATEMENT OF FACTS**

### **I. The Crime**

On May 31, 1999, Richard Jones celebrated Memorial Day with his girlfriend, Tia Kidd (“Tia”), at their home in Missouri. Exh. A, at 92; Exh. B, Trial Trans. Excerpts, at 158-60. Mr. Jones had thrown a birthday party for Tia the day before, May 30th, and the house needed to be cleaned. Exh. B, at 158-60, 171-72, 182-83. Thus, on May 31st, Mr. Jones and Tia stayed home. Exh. B, at 158-59, 182-83. Tia’s sister, Lisa Kidd, visited the house to help with the cleaning and saw Mr. Jones there that evening. *See* Exh. B, at 159-60; Exh. C, June 15, 2000 Police Report.

Tia's other sister, Chyna Kidd, stopped by on the evening of May 31st, a little after 7pm, and also saw Mr. Jones there, lying on the couch. Exh. B, at 160, 171-172.

That same day, at approximately 8:00 p.m., the victim, Tamara Scherer, pulled into a Walmart parking lot in Roeland Park, Kansas. Exh. A, at 14-15; Exh. B at 29-30. After exiting her vehicle, Ms. Scherer was approached from behind by a man who tried to grab her purse. Exh. A at 14-15; Exh. B at 32. A struggle ensued, and Ms. Scherer was forced to the ground and dropped her cell phone. Exh. A, at 14-15; Exh. B at 33-35. The man grabbed the cell phone, ran to an awaiting vehicle, and fled the parking lot. *Id.*

Only two witnesses saw the attack on Ms. Scherer. Ronald Coen, a Wal-Mart loss-prevention officer, witnessed the incident while patrolling the parking lot and told police he had observed the getaway car in the parking lot several times that afternoon. Exh. B at 53-54. Ron Wolters, a Wal-Mart customer, witnessed the incident from his vehicle in the parking lot. Exh. B at 50.

The victim and two witnesses gave descriptions of the suspect, as well as they could under the circumstances. Ms. Scherer did not see her attacker's face, and she told detectives on two separate occasions that she would be unable to identify him. Exh. B at 43-44, 134; Exh. A at 17; Exh. D, May 31, 1999 Police Report, at 1; Exh. E, June 14, 1999 Police Report, at 1. Ms. Scherer could only describe him as a Hispanic or tan-skinned male with a thin-to-medium build and dark hair pulled back from his face. Exh. B at 35-36. Mr. Coen described him as a light-complected black or dark-skinned Hispanic man with a goatee. Exh. B at 58. Mr. Wolters said he did not get a good look at the suspect's face because he had a baseball cap on. Exh. B at 49.

Detective Scott Atwell of the Johnson County Sheriff's Office investigated the case. Detective Atwell determined that the getaway vehicle belonged to a used car lot owner, David

Colvin, Sr. (“Colvin Sr.”). From there, Detective Atwell learned that the owner’s son, David Colvin, Jr., (“Colvin Jr.”) had been in possession of the vehicle at the time of the robbery. Exh. B at 68-69. Upon questioning, Colvin Jr. admitted his presence in the vehicle during the robbery. Exh. B at 95-97.

Colvin Jr. confessed that he had spent the day of May 31, 1999, smoking crack and driving around with his friend Edward Miller and Miller’s girlfriend. Exh. A at 59-60; Exh. B at 95-96; *see also* Exh. B at 87-88. When the three ran out of drugs, they drove to 2722 W. 41<sup>st</sup> Avenue of the Melrose Manor Apartments in Kansas City, Kansas, with the intention of acquiring more drugs, despite having little money. Exh. B at 96-99. At that address, they picked up a man they had never met before, who went by the name “Rick.” *Id.* at 96-99, 124.

At Rick’s request, Colvin Jr. drove the group to the Roeland Park Walmart. There, Rick got out of the car and robbed Ms. Scherer. Exh. B at 97-98. After he jumped back into the car, the group drove away from the scene. *Id.*

## **II. Police Search for “Rick”**

On August 21, 1999, nearly three months after the robbery, Detective Atwell took Colvin Jr. to the police department to try to identify the “Rick” that he had briefly encountered on May 31st while on drugs. Exh. B at 75; Exh. F, Aug. 25, 1999 Police Report. Atwell asked Colvin Jr. to review hundreds of photographs from a database of people with the description of a black male with the first name “Rick” or “Richard.”<sup>1</sup> Exh. B at 70; Exh. A at 35-37. After looking at many dozens of photographs, Colvin Jr. identified “Photograph 202,” which depicted Richard Jones, as the “Rick” from the incident. Exh. A at 36; Exh. B at 126.

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<sup>1</sup> None of the witnesses described the offender as a black male. The descriptions ranged from a light-complected black man, to a dark skinned Hispanic, to a tanned Caucasian.

Following Colvin Jr.'s identification, Detective Greg Lawson inserted Mr. Jones's photograph into a photo lineup alongside five fillers purportedly matching the perpetrator's description. Exh. B at 75-76, 125; Exh. F, at 1-2. Common throughout the eyewitness descriptions of "Rick" were three characteristics: a lighter complexion, possibly of Hispanic descent; hair that was long and pulled back; and a thin and lanky build. Exh. B at 35-36, 58. The five fillers in the lineup, however, were all much darker than Mr. Jones and did not match this description. *See* Exh. G, Photo Array. Only Mr. Jones's photo approximated the description of the perpetrator provided by the witnesses.

Later, Detective Atwell would testify that he had serious concerns about the photo array because Mr. Jones appeared "lighter skinned" than the five other fillers. Exh. A at 38-39. Detective Atwell's account was corroborated by the testimony of Detective Michael Bussell, a private investigator retained to review the Jones case. Detective Bussell testified that the five fillers alongside Mr. Jones were of "much darker pigmentation than Mr. Jones," even discounting the matter of poor quality photographs and copying, which made the discrepancy even greater. Exh. A at 88; *see also id.* (explaining that "photo number one is much lighter than the others" and that "it looks to me like five of the six in this lineup share the same darkness or pigmentation to their skin which is different than number one who appears to be much lighter"). When asked which of the six men depicted in the lineup would fit the description of a Hispanic and lighter-complected male, Bussell replied, "Photo number one which would be Mr. Jones." *Id.* In this way, the lineup suggested Mr. Jones's photograph as the only selection that even remotely resembled the perpetrator. Exh. A at 38.



Detective Atwell then took the suggestive lineup to Miller and stated that Miller identified Mr. Jones as the “Rick” he had encountered three months earlier while high on drugs. Exh. B at 81-83. Miller disputes that he made this identification. Exh. A at 51-56.

In October 1999, the prosecutor assigned to the case at the time, Roger Nordeen, declined prosecution on the basis that the Colvin Jr. and Miller eyewitness identifications provided insufficient evidence of guilt, explaining: “I don’t feel very comfortable with the fact that only Colvin Jr. and Miller have identified him as the suspect.” Exh. H, Notice of Declined Prosecution. Both Colvin Jr. and Miller were chronically unemployed drug users without a stable address at the time of their brief interaction with “Rick.” *See* Exh. A at 59-60; Exh. B at 95-96; Exh. I, June 1, 1999 Police Report, at 1-2. Colvin Jr. had been incarcerated multiple times on drug charges, and by the time of the lineup, Miller was in jail on an unrelated auto theft matter. Exh. I, at 1-2; Exh. A at 32. Colvin Jr. and Miller were also Caucasian, while the robber they were trying to identify, “Rick,” was not; and both had interacted with Rick only briefly, months earlier, while they were high on drugs.

Following the declined prosecution notice, Detective Atwell brought the suggestive lineup to witness Ronald Coen on October 21, 1999, nearly five months after the robbery. Mr. Coen, the loss prevention officer, had a dubious track record of describing the perpetrator. Coen’s initial description was categorically broad, describing the perpetrator as either a “dark Hispanic” or “light black” man. Exh. B at 57-58. Apart from testifying that he believed the perpetrator had a goatee, Mr. Coen was unable to provide any further description of the perpetrator based on his brief observation of Rick, omitting any account of his height, weight, or build. *Id.* However, the day after the crime, officers brought Mr. Coen to Colvin Sr.’s car lot, and Coen had misidentified one of Colvin Sr.’s employees’ faces as looking “exactly” like that of

one of the robbery perpetrators. Exh. I, at 1; Exh. B at 60-64. A week later, on June 7, 1999, officers prepared a photo lineup for Coen that included an admitted participant in the robbery, Colvin Jr., along with fillers. Mr. Coen failed to identify Colvin Jr. as a participant, and further misidentified a filler, stating that he was “almost positive” that the filler he identified “was the passenger in the car, and the subject who was involved in the robbery.” Exh. J, June 10, 1999 Police Report, at 1.

Months later, Coen identified Richard Jones from the flawed lineup in which Mr. Jones’s light-skinned photograph was placed next to five dark-skinned fillers. *See* Exh. K, Oct. 22, 1999 Police Report, at 1. Based solely on the flawed identifications of Colvin Jr., Miller, and Coen, Mr. Jones was charged with aggravated robbery. Exh. L, Affidavit of Roger Nordeen, at ¶5.

At Mr. Jones’s preliminary hearing, the victim, Tamara Scherer, viewed Mr. Jones as the defendant to the charges in court, and for the first time claimed that she could identify him definitively as the perpetrator. Exh. M, Prelim. Hrg. Trans. Excerpts, at 6. This was a startling reversal. On the night of the robbery, Ms. Scherer had told Detective Larsen that she “did not ever see the face of the suspect, she only saw the back of the subject as he was leaving.” Exh. D at 1. Two weeks later, Ms. Scherer told Detective Atwell that she did not think she would be able to identify the robber because she “was mainly focused on her purse and not the suspect’s face.” Exh. E at 1. Ms. Scherer had also erroneously thought the driver of the suspect vehicle was female. *Id.* Ms. Scherer was never provided with any identification procedure, such as a photo lineup, to test the validity of her identification of Mr. Jones. Exh. M at 16; *see also* Exh. A at 30-31. Rather, her identification came as the result of being confronted with the prosecution’s selected defendant for the crime, Mr. Jones, in court.

### III. Mr. Jones's Trial

Mr. Jones maintained his innocence and insisted on a jury trial. At trial, the prosecution presented eyewitness identifications as the only evidence tying Mr. Jones to the robbery. Exh. A at 8, 10. Ms. Scherer identified Mr. Jones as her attacker as she had at the preliminary hearing, despite previously stating on multiple occasions that she had not seen her attacker's face. Exh. B at 44; *see also supra* at 8. Mr. Coen identified Mr. Jones as the robber, despite his history of misidentifications. Exh. B at 55-56; *see also supra* at 7-8.

Neither Miller nor Colvin Jr.—the two men who were with “Rick” in the car on the day of the incident—could identify Mr. Jones as the perpetrator when they saw him in person at trial. Mr. Miller testified that he did not see the attacker in the courtroom. Exh. B at 82. When directed to look at Mr. Jones, Miller testified: “he don’t look nothing like -- if that is him, it don’t look like what he looked like back then.” Exh. B at 83. For his part, Mr. Colvin Jr. was no longer certain that Mr. Jones was the attacker, explaining: “I’m not sure. . . . The dude right there kind of looks like him, but I’m not saying it is”; that his hair was “a lot different”; and that “Like I said, I can’t even say positive it was him.” Exh. B at 102. Their prior identifications from the biased photo array, however, were admitted against Mr. Jones. Exh. B at 81-83, 102, 125-26.

Mr. Jones maintained his innocence and presented evidence of his alibi, corroborated by his girlfriend Tia and her two sisters, that he was at home in Missouri on the date of the robbery. *See*, Exh. B, at 131-32, 158-60, 171-72, 182-83; Exh. A at 91-92. No physical or forensic evidence of any kind tied him to the getaway vehicle, the victim, or the robbery. Exh. A at 8, 10. However, he was convicted based on the faulty identifications and sentenced to 228 months of imprisonment (19 years), plus \$343 in restitution. Exh. N, Sentencing Journal Entry of Judgment.

Mr. Jones filed a direct appeal, but the Kansas Court of Appeals affirmed his conviction. *See State v. Jones*, No. 88,573, unpublished opinion filed March 28, 2003, rev. denied 276 Kan. 972 (2003). He then filed a K.S.A. § 60-1507 motion on August 29, 2003, claiming ineffective assistance of counsel, but the Kansas Court of Appeals again affirmed. *Jones v. State*, 2010 WL 744887 at 1 (Kan. Ct. App. Feb. 26, 2010).

#### **IV. A New Suspect Emerges**

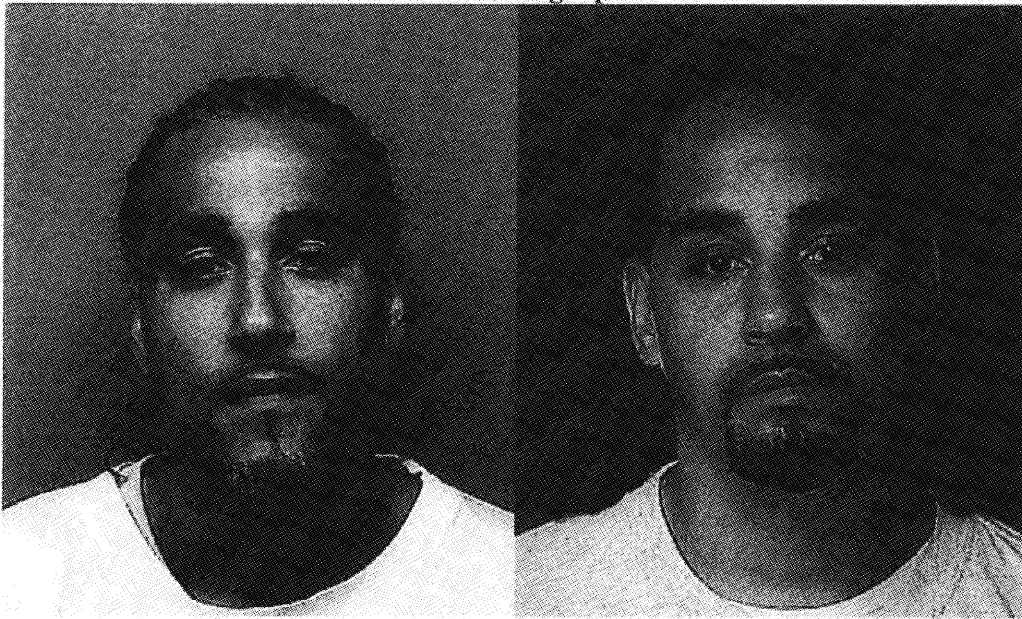
In the years following Mr. Jones's conviction, new exculpatory evidence surfaced. While incarcerated, Mr. Jones became aware of a man named "Ricky" who was also incarcerated in the Kansas Department of Corrections. Exh. O, Memo. in Support of Post-Conviction Relief, at 16. That man, Ricky Lee Amos, bears a resemblance to Mr. Jones. *Id.*

### 2000 & 2001 mug shots



Left: Picture of Richard Jones from JIMS, taken on March 31, 2000. Right: Picture of Ricky Amos from the Wyandotte County Jail Archives (State believes to have been taken in September of 2001).

### 2015 Photographs



The mugshots from the KDOC website, which were used by the Innocence Project in Jones's K.S.A. 60-1507 motion. Left: Picture of Jones taken on July 7, 2015. Right: Picture of Amos taken on June 5, 2015.

Exh. P, Stipulated Exhibit A from Post-Conviction Evidentiary Hearing.

Further information suggested Mr. Amos as the much more likely perpetrator. To begin, Mr. Amos resided at the Melrose Manor Apartments at 2722 West 41<sup>st</sup> Avenue, Kansas City, Kansas—the exact address where Colvin Jr. and Miller picked up “Rick” immediately prior to the robbery—at the time of the crime. *See* Exh. Q, Accurant Database Results for Ricky Lee Amos, at 2; Exh. A at 69-72. Alicia Surrell, Mr. Amos’s former housemate and a family relation, testified that Mr. Amos had lived with her family at that address for several years around the time of the May 1999 robbery. *Id.* Surrell also described Mr. Amos during that time period as a “[s]chemer,” a drug user, and someone who would do anything “to get money.” Exh. A at 73.

Richard Jones, in turn, has never been associated with the Melrose Manor Apartments at 2272 West 41<sup>st</sup> Avenue. Exh. R, Accurant Database Results for Richard Jones, at 3. Mr. Jones resided in Missouri on the date Ms. Scherer was robbed. Exh. B, at 157-58; Exh. A at 92.

Moreover, Mr. Amos’s appearance at the time of the robbery was more consistent with witness descriptions of the robber because Amos appeared “thinner” than Mr. Jones and had longer hair that “appears to have possibly braids or some kind of hair being pulled back.” *Id.* at 12-13 (testimony of trial prosecutor John Cowles); Exh. A at 47-48 (testimony of Detective Atwell); *see also* Exh. P.

## **V. Mr. Jones’s Exoneration**

Based on the new information, Mr. Jones filed a successive motion for post-conviction relief pursuant to K.S.A. § 60-1507(c). Judge Moriarty held an evidentiary hearing on June 7, 2017. Exh. A at 1. At the hearing, Ms. Scherer and Mr. Coen—the only two witnesses to identify Mr. Jones at trial—both recanted their identifications, as they had done in previous statements. *See* Exh. A at 17-20 (Scherer testimony); *id.* at 25-29 (Coen testimony); Exh. S, Tamara Scherer Affidavit; Exh. T, Chapman Williams Affidavit. When first showed photographs of Ricky Lee

Amos and Richard Jones, Scherer and Coen could not distinguish between them. *See id.* Both testified that they had identified Mr. Jones as the perpetrator based on his skin tone and not because of any facial recognition. Exh. A at 17-18, 25-28. Mr. Coen further testified that he had lacked certainty in his identification of Mr. Jones at the time he had made it. Exh. A at 25-28.

Miller and Colvin Jr.—the two men who had spent the most time with the robber and declined to identify Mr. Jones as such at trial—both testified that Mr. Amos was more likely the perpetrator. Exh. A at 56-57 (Miller testimony); *id.* at 66 (Colvin Jr. testimony). Miller testified that he had not definitively identified Mr. Jones, and that any suggestion of an identification was made because he “believed that if [the suspect] was arrested, then the law knows what they are doing.” Exh. A at 51-56. Colvin Jr. testified that after seeing Mr. Amos’s photograph, he is now “positive” that Mr. Jones was not the person in the car with him on the day of the robbery. Exh. A at 66.

The prosecutor from Mr. Jones’s trial, John Cowles, testified that his confidence in Mr. Jones’s guilt was undermined based on the new evidence. *See* Exh. A at 10-11; Exh. U, Cowles Affidavit. He expressed concern that the case against Mr. Jones had been built entirely on eyewitness identification, without biological or other corroborating evidence, explaining:

As a career prosecutor, I am familiar with the pitfalls of eyewitness identification, and in any case that I have ever prosecuted that was largely based on eyewitness identification, we were very focused on finding corroborating evidence . . . And although that case was a triable case and did go to trial, the issues of eyewitness identification, I think, are pretty broadly reported in the research that there are significant issues in eyewitness identification. . . .

Exh. A at 8. Mr. Cowles explained that eyewitness identifications are less reliable in stranger situations and when the identification is made across racial lines, both factors present in this case, as all of the witnesses identifying Mr. Jones were Caucasian. *Id.* at 10. Mr. Cowles further

testified that Mr. Amos's appearance around the time of the robbery was more consistent with witness descriptions of the robber. Exh. A at 12-13.

For his part, Detective Atwell, the lead detective on the case, also agreed that the lineup used to identify Mr. Jones was problematic, and that Mr. Amos fit the description of the attacker better than Mr. Jones. Exh. A at 37-38, 47-48.

These circumstances led Judge Moriarty to vacate Mr. Jones's conviction and release him after seventeen years of wrongful imprisonment. Judge Moriarty found the photo lineups to be suggestive and the original eyewitness identifications unreliable. *See, e.g.*, Exh. A at 111 ("I don't know how this lineup was established. It makes no sense whatsoever."); *id.* at 113. He concluded:

[T]his court . . . has no doubt that a jury would not be able to reach a determination that this defendant was guilty, and this court does not believe any reasonable jury could have made such a decision in this case.

*Id.* at 113. On the State's motion, Judge Moriarty dismissed the charges against Mr. Jones. Exh. V, Order of Dismissal.

## **VI. Mr. Jones Affirms His Innocence**

For nearly two decades, Mr. Jones has steadfastly maintained his innocence of the robbery of Tamara Scherer. By signing this document under penalty of perjury, Mr. Jones reaffirms yet again that he is innocent of that crime.

### **ELIGIBILITY FOR RELIEF**

Mr. Jones now asks this Court to officially recognize his innocence, so that he may close this painful chapter of his life and obtain the clean slate and financial support that the legislature intended for wrongfully convicted persons. As set forth below, Mr. Jones satisfies each of the statutory requirements. Justice requires that this Court find him eligible for relief.



## **I. Mr. Jones Satisfies the Statute's Procedural Requirements**

Mr. Jones satisfies the procedural requirements of the wrongful conviction statute. He was convicted of felony aggravated robbery of Tamara Scherer and he was sentenced to nineteen years of imprisonment. *Supra* at 9. Mr. Jones served seventeen years in prison before his conviction was vacated (Exh. A at 113) and the State dismissed all charges against him (Exh. V). Mr. Jones has filed his petition well before the due date of July 2020. 2018 Kansas Laws Ch. 108(d)(2). Furthermore, Mr. Jones has verified his petition and is in the process of serving it on the attorney general.

## **II. Mr. Jones Has Demonstrated His Innocence by a Preponderance of the Evidence**

Judge Moriarty's decision to vacate Mr. Jones's conviction was amply supported by all available evidence, as was the trial prosecutor's reassessment of the case and support for dismissal of the charges against Mr. Jones. *See supra* at 13-14; Exh. A at 112-113.

### **A. Mr. Jones Had a Verified Alibi**

From the beginning of this tragic ordeal, Mr. Jones has maintained his innocence, never wavering from his alibi that he was home with his girlfriend, along with two of her sisters, on the evening of the robbery, as all three have corroborated. *Supra* at 3-4, 9.

### **B. Mr. Jones's Conviction Rested Entirely on Unreliable Eyewitness Identifications**

Mr. Jones's conviction rested entirely on eyewitness identifications, a notoriously unreliable source of evidence. *See supra* at 13 (discussing trial prosecutor John Cowles's concerns about prosecutions based on eyewitness identification without corroborating evidence); *see also generally People v. Lerma*, 2014 Il App (1st) 121880, at ¶ 39 (Sept. 8, 2014) (noting that courts "around the country have recognized ... significant errors in eyewitness identifications" and collecting cases); Exh. W, Nat'l Research Council, Identifying the Culprit: Assessing

Eyewitness Identification, Nat'l Academies of Sciences 11 (2014) ("NAS Report"); Exh. X, Jacqueline McMurtrie, The Role of the Social Sciences in Preventing Wrongful Convictions, 42 Am. Crim. L. Rev. 1271, 1277 (2005) ("[M]istaken eyewitness identification is the leading cause of conviction of the innocent" and "misidentification played a major role in two-thirds of the first 138 DNA exonerations in the United States.").

Numerous factors render these eyewitness identifications unreliable. All four eyewitnesses have recanted their identifications and no longer believe they identified the true perpetrator. *Supra* at 12-13. The two witnesses in the best position to identify the perpetrator, Colvin Jr. and Miller, were both unable to do so when they observed Mr. Jones in open court. *Supra* at 9. Miller disputes that he even made a definitive lineup identification. Exh. A at 51-56. For his part, Coen misidentified two other people before, five months after the robbery, identifying Mr. Jones in a suggestive lineup array. The victim, Scherer, stated multiple times in the aftermath of the May 1999 crime that she had not seen the perpetrator's face and could not identify him, before going on to identify Mr. Jones for the first time at his preliminary hearing, one year later, and then at trial, two years after the robbery.

Moreover, the lineup identifications by Coen and Miller were obtained using an improper photo array that suggested Mr. Jones as the only plausible selection. *See supra* at 6-7; *see also* Exh. W NAS Report, at 91 (suggestive procedures impact both the accuracy of, and confidence expressed in, eyewitness identifications); *United States v. Wade*, 388 U.S. 229 (1967) ("the influence of improper suggestion upon identifying witnesses probably accounts for more miscarriages of justice than any other single factor—perhaps it is responsible for more such errors than all other factors combined"). In the case of Ms. Scherer, no technique was used at all to assess the validity of her identification, just an in-court presentment of Mr. Jones as the

defendant one year after the robbery at the pretrial hearing, and two years after the robbery, at trial. *Supra* at 8-9; *see also* Exh. W, NAS Report, at 28 (“Courts consider showups highly suggestive, and prosecutors urge the police to exercise caution when conducting them.”).

Still more factors undermine these eyewitness identifications. The robbery, in which the perpetrator attacked Ms. Scherer from behind and took her to the ground in front of her young daughter, was a highly stressful and traumatic event, likely impairing at least Ms. Scherer and Mr. Coen’s ability to identify the perpetrator. *See, e.g.*, Exh. W, NAS Report, at 94-96. All four witnesses’ identifications of Mr. Jones were cross-racial, further reducing their reliability. *See, e.g., id.* at 96-97; Exh. A at 10. The identifications were characterized by lengthy time periods between the initial observation and the moment of identification—from three months all the way to more than one year later—adversely affecting their accuracy. *See* Exh. W, NAS Report, at 98-99. Finally, all of the witnesses had only brief encounters with the perpetrator. *See id.* at 97-98. Mr. Miller and Mr. Colvin Jr. saw the perpetrator for a short period while they were using drugs; Ms. Scherer saw him for a matter of seconds as he accosted her from behind; and Mr. Coen saw him for a matter of seconds from a distance. In sum, the eyewitness identifications on which Mr. Jones’s prosecution hinged have been entirely discredited.

### **C. A Far More Likely Suspect Has Emerged**

All evidence suggests that the true perpetrator was Ricky Lee Amos, a known drug user who lived at the time of the robbery at the Melrose Manor Apartments where Colvin Jr. and Miller had picked up the perpetrator. *Supra* at 12. Both the trial prosecutor and lead detective testified that Mr. Amos’s appearance at the time was more consistent with the eyewitness descriptions of the robber. *Supra* at 12-14. When confronted with Amos’s photograph at the post-conviction hearing, neither Ms. Scherer nor Coen could say that Jones was the perpetrator

as compared to Amos. Colvin Jr. and Miller were more emphatic: they both implicated Amos as the robber upon viewing his photo. *Id.* Mr. Jones thus easily satisfies the requirement of a showing of innocence by a preponderance of the evidence.

### **III. Mr. Jones Did Not Commit or Suborn Perjury, Fabricate Evidence, or Cause or Bring About His Conviction**

Mr. Jones has not committed or suborned perjury or fabricated evidence. Nor has he caused or brought about his conviction. Rather, Mr. Jones has vigorously maintained his innocence from the date of his arrest to the present day. *Supra* at 9. He took his claims to trial and pursued all avenues of direct and post-conviction relief available to him. When new evidence of his innocence came to light, Mr. Jones promptly petitioned the court to vacate his conviction. *Id.* at 10-12. Thus, he remains eligible for relief.

### **REQUEST FOR RELIEF**

Given Mr. Jones's satisfaction of the requirements of the wrongful conviction statute, he respectfully asks this Court to award the statutory relief. It is hard to imagine how Mr. Jones can truly get a fresh start without the assistance sought, having lost so many years behind bars when he could have been getting an education, developing his skills, and pursuing and rising within his chosen profession.

Mr. Jones thus respectfully asks this Court for the following: (I) a certificate of innocence and an order for expungement of the associated arrests and convictions; (II) monetary relief in the amount of \$65,000 for each year of imprisonment; (III) a tuition and fees waiver for post-secondary education; (IV) the non-monetary relief of post-secondary educational assistance for his two daughters and counseling for himself; (V) health care benefits; (VI) an order mandating the expungement and destruction of any associated biological samples; and (VII) reasonable attorney's fees and costs.

## **I. Certificate of Innocence and Expungement Order**

Mr. Jones respectfully asks this Court for a certificate of innocence and an order for expungement of his arrest and criminal conviction associated with the Scherer case, pursuant to Sections 108(1)(g) and (h) of the wrongful conviction statute. There is no other way for Mr. Jones to expunge his unwarranted criminal record and get a fresh start, untainted by a wrongful murder conviction. Mr. Jones further requests that the expungement order “direct the Kansas bureau of investigation to purge the conviction and arrest information from the criminal justice information system central repository and all applicable state and federal databases” as required by Section 108(1)(h)(3).

## **II. Monetary Compensation**

Mr. Jones next asks this Court to award statutory damages as mandated by Section 108(1)(e)(1), for his seventeen years of wrongful incarceration.

Mr. Jones was first taken into custody on the date of his arrest, April 3, 2000. *See* Exh. Y, Appearance Docket. He remained behind bars through the date of his conviction (April 24, 2001) and sentencing (June 25, 2001), and until his release following the dismissal of charges against him on June 8, 2017 (6,275 days in total). *See* Exh. Y. Thus, Mr. Jones respectfully requests damages in the amount of  $\$65,000 \times \frac{6275}{365}$  years, or \$1,117,466, pursuant to the statutory mandate of Section 108(1)(e)(1).

This compensation is relatively small given the unfathomable hardship of seventeen years of wrongful imprisonment—years during which Mr. Jones was deprived of the opportunity to interact freely with his loved ones; to be present for holidays, births, deaths and other life events; to pursue his passions and interests; to engage in meaningful labor and develop a career; and to live freely, as an autonomous being, and instead endured detention in harsh, dangerous, and

isolating conditions. Nonetheless, the compensation would be incredibly significant to Mr. Jones and help him support himself and his family as he grapples with the trauma he has endured and continues to readjust to life in the free world.

### **III. Tuition Assistance**

Mr. Jones respectfully requests tuition assistance pursuant to Sections 108(1)(e)(4)(C) and 108(2)(a), which mandate that he receive a waiver of tuition and required fees for attendance at a postsecondary educational institution for up to 130 credit hours.

### **IV. Non-Monetary Relief**

Mr. Jones respectfully requests non-monetary relief in two forms: tuition assistance, housing assistance, and counseling for himself pursuant to 108(1)(e)(4)(B).

For his two daughters, Mr. Jones respectfully requests a waiver of tuition and required fees for attendance at a postsecondary educational institution for up to 130 credit hours, equivalent to that provided to wrongfully convicted persons in Sections 108(1)(e)(4)(C) and 108(2)(a). Such an award would allow Mr. Jones to provide for his children's educational needs and professional development, a responsibility that all parents seek to fulfill. Mr. Jones has been denied the opportunity to save for this purpose himself due to nearly two decades of wrongful imprisonment. Mr. Jones's daughters—who lost their father to imprisonment at a young age—have already suffered profoundly from his wrongful incarceration. This Court has the discretion to award such relief pursuant to Section 108(1)(e)(4)(B) and should do so to assist Mr. Jones in providing for them.

Second, Mr. Jones asks for this Court to award him counseling assistance pursuant to Section 108(1)(e)(4)(B), which specifically contemplates such an award. Mr. Jones seeks this assistance to help him overcome the extreme trauma and loss that he has endured over the past

nearly two decades as a result of his wrongful imprisonment, and this Court should grant the request to fulfill the State's statutory responsibility to help him successfully rebuild his life in the free world.

**V. Health Care Benefits**

Mr. Jones respectfully requests an order from this Court permitting him and his family to participate in the state health care benefits program, as mandated by Section 108(1)(e)(4).

**VI. Expungement of Biological Samples**

Mr. Jones respectfully requests that this Court enter an order for the expungement and destruction of any "biological samples authorized by and given to the Kansas bureau of investigation" associated with his wrongful conviction, as required by Section 108(1)(i).

**VII. Reasonable Attorney's Fees and Costs**

Finally, Mr. Jones respectfully requests compensation for reasonable attorney's fees and costs as mandated by Section 108(1)(e)(4)(A), and asks for leave to submit a petition for such fees and costs at the conclusion of this matter.

**CONCLUSION**

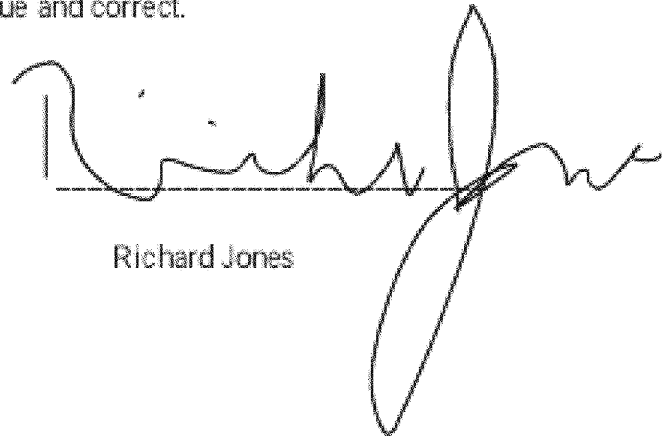
For the foregoing reasons, Mr. Jones respectfully requests that the Court enter an order finding that he is entitled to relief pursuant to the wrongful conviction statute, and ordering the above-described relief. If there are any factual disputes, Mr. Jones asks that the Court order an evidentiary hearing.

/s/ Josh Loevy  
Josh Loevy  
Loevy & Loevy  
311 North Aberdeen Street, 3<sup>rd</sup> Floor  
Chicago, Illinois 60607  
(312) 243-5900  
One of Claimant Richard Jones's Counsel

**VERIFICATION**

I verify under penalty of perjury that the foregoing is true and correct.

Executed on August 24, 2018.

A handwritten signature in black ink, appearing to read "Richard Jones", is written over a horizontal line. The signature is stylized with a large, looped "R" and a long, sweeping "J".

Richard Jones



1 IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS

2 CRIMINAL COURT DEPARTMENT

3 RICHARD JONES,

4 Petitioner,

Case No. 16CV7137

5 vs.

Division No. 14

6 STATE OF KANSAS,

7 Respondent.

8 TRANSCRIPT OF PROCEEDINGS

9 EVIDENTIARY HEARING

10 BE IT REMEMBERED that on the 7th day of  
11 June, 2017, the above-entitled matter comes on for  
12 hearing before the HONORABLE KEVIN P. MORIARTY, Judge of  
13 Court No. 14 of the Tenth Judicial District, State of  
14 Kansas, at Olathe, Kansas.

15  
16 APPEARANCES:

17 State of Kansas:

18 **MR. SEAN MINIHAN**

19 Assistant District Attorney  
20 Johnson County Courthouse  
Olathe, KS 66061

21 For the Petitioner:

22 **MS. ALICE CRAIG**

23 **MS. ELIZABETH CATEFORIS**

24 Paul E. Wilson Defender Project  
25 409 Green Hall  
University of Kansas Law School  
Lawrence, KS 66045

**Abby J. Ryan, RPR, CSR** *Clerk of the District Court, Johnson County Kansas*  
08/29/18 12:52pm SS

**EXHIBIT A**

I N D E X

Petitioner's Witnesses

**JOHN COWLES**

Direct Examination by Ms. Craig	Page 5
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Redirect Examination by Ms. Craig	Page 12

**TAMARA SCHERER**

Direct Examination by Ms. Craig	Page 14
Cross-Examination by Mr. Minihan	Page 21

**RON COEN**

Direct Examination by Ms. Craig	Page 22
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**SCOTT ATWELL**

Direct Examination by Mr. Craig	Page 29
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**EDWARD MILLER**

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**DAVID COLVIN**

Direct Examination by Mr. Craig	Page 59
Cross-Examination by Mr. Minihan	Page 66

**ALICIA SURRELL**

Direct Examination by Mr. Craig	Page 69
Cross-Examination by Mr. Minihan	Page 71

1     State's Witness (Out of Order)

2     **RICKY LEE AMOS, SR.**

3     Direct Examination by Mr. Minihan                     Page 74  
 4     Cross-Examination by Ms. Craig                     Page 77

5     Petitioner's Witnesses (continued)

6     **MICHAEL BUSSELL**

7     Direct Examination by Ms. Craig                     Page 80  
 8     Cross-Examination by Mr. Minihan                     Page 88  
 8     Redirect Examination by Ms. Craig                     Page 89

9     **RICHARD JONES**

10    Direct Examination by Ms. Craig                     Page 91  
 11    Cross-Examination by Mr. Minihan                     Page 95  
 11    Redirect Examination by Ms. Craig                     Page 97

12

13                                     E X H I B I T S

14		<u>Offered</u>	<u>Received</u>
15	Petitioner's Exhibit 1	7	7
16	Petitioner's Exhibit 2	8	8
17	Petitioner's Exhibit 3	21	21
18	Petitioner's Exhibit 4	28	28
19	Petitioner's Exhibit 5	26	26
20	Petitioner's Exhibit 6	61	62
21	Petitioner's Exhibit 7	56	56
22	Petitioner's Exhibit 9	66	66
23	Petitioner's Exhibit 10	83	83

24

25

P R O C E E D I N G S

THE COURT: We are here in Case No.  
16CV7137, Richard Jones vs. State of Kansas. Parties  
state their appearances, please.

MS. CRAIG: May it please the Court, the  
petitioner appears in person in custody with counsel  
Alice Craig and Beth Cateforis.

MR. MINIHAN: May it please the Court,  
Shawn Minihan for the State.

THE COURT: Very well. The Court has had  
an opportunity to look at all of the pleadings and I  
understand what the nature of the case is about. Are  
there any other preliminary issues that we should take up  
before we commence the testimony?

MS. CRAIG: Judge, I think Mr. Minihan is  
bringing you stipulations. We have stipulated to a  
number of the exhibits to make it easier for the Court  
today, and we will have one witness who hopefully will be  
testifying by telephone today.

THE COURT: Okay.

MR. MINIHAN: Only thing else I would ask  
is to take judicial notice of the underlying case which  
is 00CR131.

MS. CRAIG: Yes, and the transcripts in  
that case, Judge.

1 THE COURT: Would you give me that case  
2 number again?

3 MR. MINIHAN: 00CR131.

4 THE COURT: Very well. You may proceed.

5 MS. CRAIG: Thank you, Judge. At this  
6 time I'm going to call John Cowles to the witness stand.

7 JOHN COWLES,

8 called as a witness, having been first duly sworn to tell  
9 the truth, the whole truth and nothing but the truth, was  
10 examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MS. CRAIG:

13 Q. Would you state your name for the record.

14 A. My name is John Cowles, C-o-w-l-e-s.

15 Q. Mr. Cowles, could you tell us your association  
16 with this case?

17 A. I was the Assistant District Attorney who tried  
18 the case back in, I believe, 2001.

19 Q. Okay. Can you tell us a little bit about your  
20 background and work experience, please.

21 A. Most of my career has been as a prosecutor either  
22 in state or federal court. In the '80s I was a  
23 prosecutor in Sedgwick County in Wichita.  
24 Beginning in 1995, I believe, I was -- became a  
25 prosecutor in Johnson County, Kansas. I held that

1 position until 2003 when I became an Assistant  
2 United States Attorney for the Western District of  
3 Missouri in Kansas City, Missouri. I retired from  
4 that about a year and a half ago and have been in  
5 private practice since then.

6 Q. Okay. Did you hold any positions of seniority in  
7 the Johnson County District Attorney's Office?

8 A. Probably. I was not in charge of any section, but  
9 I think I was considered a senior attorney by the  
10 time I left.

11 Q. Do you have a memory of prosecuting this case?

12 A. I have a vague memory of this case. As I  
13 explained to you, this was towards the end of my  
14 career in Johnson County. I tried two purse  
15 snatch robbery cases, both of them in the Wal-Mart  
16 store off of Roe Avenue, both of them tried in  
17 front of John Anderson -- Judge Anderson. And the  
18 other one I remember pretty well because it was  
19 kind of a crazy trial.

20 This one I have very little memory of, and  
21 I think that has to do with the fact that myself  
22 and Sara Welch were working full-time on the  
23 Robinson serial murder case in the early 2000s and  
24 that took up virtually all of my time.

25 Q. Can you tell the Court how you got reinvolved in

1           this case?

2       A.     I got either an e-mail or a telephone call from  
3           you indicating that The Innocence Project at  
4           Kansas Law School felt that there might be a  
5           problem in this case, and you provided me with  
6           some materials -- trial transcripts, some booking  
7           photographs, and that is -- eventually that led me  
8           to prepare an affidavit for you.

9                       MR. CRAIG: Your Honor, if I can approach?

10                      THE COURT: Sure.

11       BY MS. CRAIG:

12       Q.     I am showing you what I have marked as Plaintiff's  
13           Exhibit No. 1. Do you recognize that?

14       A.     Yes, this is my affidavit.

15       Q.     Is it a complete copy of your affidavit?

16       A.     Yes.

17                      MS. CRAIG: Judge, at this time I would  
18       move to admit Plaintiff's Exhibit No. 1.

19                      MR. MINIHAN: No objection.

20                      THE COURT: It will be received.

21       BY MS. CRAIG:

22       Q.     What did you review as part of looking back at  
23           this case? Do you remember?

24       A.     I reviewed the trial transcripts. I also looked  
25           at police reports from the case and probably most

1                   importantly a booking photograph of Mr. Jones and  
2                   another individual.

3       Q.       What were your concerns about the case when you  
4                   reviewed it?

5       A.       My concern was how heavily the case focused upon  
6                   eyewitness identification.

7       Q.       On what? I am sorry.

8       A.       Eyewitness identification.

9       Q.       And looking back on it, was there any other  
10                  evidence beyond the eyewitness identification used  
11                  to convict Mr. Jones?

12      A.       No.

13      Q.       And I am showing you what I have marked as  
14                  Plaintiff's Exhibit No. 2. Do you recognize  
15                  that?

16      A.       Yes. I believe these were the mug shots that you  
17                  showed me. I don't believe I saw the side views,  
18                  but the full facial views of Mr. Jones and another  
19                  individual who looked very similar.

20                       MS. CRAIG: Your Honor, I would move to  
21                  admit Plaintiff's Exhibit No. 2.

22                       MR. MINIHAN: No objection.

23                       THE COURT: It will be received.

24      BY MS. CRAIG:

25      Q.       What are your concerns looking back on a case that



1 is solely prosecuted on eyewitness  
2 identification?

3 A. Well, that is a pretty large question. As a  
4 career prosecutor, I am familiar with the pitfalls  
5 of eyewitness identification, and in any case that  
6 I have ever prosecuted that was largely based on  
7 eyewitness identification, we were very focused on  
8 finding corroborating evidence either through  
9 biological evidence or, for example, that other  
10 purse snatch robbery that I tried during the same  
11 time frame, when they found the suspect's car,  
12 some of the victim's personal items were found  
13 inside the car.

14 So that -- that case was also based  
15 heavily on eyewitness identification, but we had  
16 that corroborating evidence that made us more  
17 convinced of the defendant's guilt. And although  
18 that case was a triable case and did go to trial,  
19 the issues of eyewitness identification, I think,  
20 are pretty broadly reported in the research that  
21 there are significant issues in eyewitness  
22 identification. In this case what made us more  
23 comfortable was that we had, I believe, four  
24 eyewitnesses that were -- all concurred. They all  
25 felt 100 percent positive. Mr. Jones, I believe,

1 had a criminal record that was consistent with  
2 this type of crime.

3 Q. But beyond that, was there any corroborating  
4 evidence?

5 A. No, there was no corroborating evidence, and I  
6 honestly do not remember trying a case either here  
7 or in Wichita that was solely based on eyewitness  
8 identification.

9 Q. Is your -- in your opinion is eyewitness  
10 identification less reliable when it is a stranger  
11 crime or a stranger situation?

12 A. I think the research that I have seen shows that  
13 yes, it is less reliable when it is a stranger  
14 situation. It is also less reliable when it is --  
15 the identification is made across racial lines,  
16 which was, I believe, the case here. I believe  
17 all of our witnesses were caucasians.

18 There are many other factors. There is a  
19 PIK instruction that covers many of the factors  
20 for eyewitness identification. The jury was given  
21 that PIK instruction as I reviewed the transcript,  
22 and they were convinced that four people all  
23 agreed 100 percent. I think that was able to  
24 convince them of the defendant's guilt.

25 Q. After reviewing the information that you have

1 provided, do you still have that same level of  
2 confidence in that conviction?

3 A. No, I don't.

4 MS. CRAIG: No further questions.

5 THE COURT: Cross-examination?

6 MR. MINIHAN: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. MINIHAN:

9 Q. I am handing you what is stipulated Exhibit B. If  
10 you look at that, do the bottom pictures align  
11 with two of the pictures that were in Plaintiff's  
12 Exhibit 2?

13 A. The bottom two, yes.

14 Q. Right. And those were taken in 2015?

15 A. That is what it says here. I don't know when they  
16 were taken.

17 Q. The above pictures were taken in 2001/2002. Do  
18 those -- do they look similar? Do Mr. Amos and  
19 Mr. Jones look as similar in those pictures as  
20 they do in 2015 pictures?

21 A. I would say no.

22 Q. All right. Can you describe the differences?

23 A. I would say the other individual, not Mr. Jones,  
24 has over the years -- if these dates are correct  
25 -- looks more like his older mug shot than

1 Mr. Jones does.

2 MR. MINIHAN: Thank you.

3 MS. CRAIG: Just briefly, Your Honor.

4 REDIRECT EXAMINATION

5 BY MS. CRAIG:

6 Q. Mr. Cowles, do you remember the description of the  
7 individual who committed the crime?

8 A. I remember the description from the victim.

9 Q. Okay.

10 A. It was an issue at the trial because she had  
11 originally identified him as possibly Hispanic.  
12 Then at trial I believe the testimony was she felt  
13 that he was a lighter-skinned black male. That  
14 issue was batted around during the trial as to  
15 whether Richard Jones looked Hispanic. I think at  
16 some point in the trial it was established that he  
17 had some Hispanic blood in him.

18 Q. Do you remember how the victim described the hair  
19 of the assailant?

20 A. She described it as being pulled back. Other  
21 people described -- other witnesses described it  
22 as being braids.

23 Q. Okay.

24 A. Or dreadlocks pulled back.

25 Q. Was the individual described as thin or heavy?

1 A. I believe he was described as being thin.

2 Q. Okay. Of the two photos that Mr. Minihan was  
3 discussing, the older photos --

4 A. Yes.

5 Q. Who fits that description in your opinion?

6 A. Well, it looks as if the other individual is  
7 thinner than Mr. Jones in this photograph. In the  
8 older photographs, Mr. Jones has a more normal  
9 afro cut and the other individual appears to have  
10 possibly braids or some kind of hair being pulled  
11 back.

12 MS. CRAIG: Thank you. No further  
13 questions.

14 THE COURT: Anything else?

15 MR. MINIHAN: No, Your Honor.

16 THE COURT: May he be excused?

17 MS. CRAIG: Yes, you may.

18 MR. MINIHAN: Yes.

19 THE COURT: At this time I would call  
20 Tamara Scherer.

21 **TAMARA SCHERER,**

22 called as a witness, having been first duly sworn to tell  
23 the truth, the whole truth and nothing but the truth, was  
24 examined and testified as follows:

25 **DIRECT EXAMINATION**

1 BY MS. CRAIG:

2 Q. Ma'am, can you tell us your name.

3 A. Tamara Scherer.

4 Q. And were you the victim of a robbery back in  
5 1999?

6 A. Yes.

7 Q. And where did that robbery take place?

8 A. Wal-Mart's parking lot.

9 Q. Do you remember what day?

10 A. May 31st.

11 Q. Can you describe for us what happened?

12 A. Like, what happened?

13 Q. Yeah.

14 A. Okay. It has been a long time. So it was myself  
15 and my daughter and we were pulling into  
16 Wal-Mart's parking lot. We're looking for a  
17 parking space, and we found a parking space. We  
18 stopped and I was standing at the back of my Jimmy  
19 waiting for my daughter to get out because she is  
20 slow. And then there was a car, and I had seen  
21 the car in the parking lot circle a couple times  
22 while I was looking for a space. And it, like,  
23 pulled up past me and then I felt behind me like a  
24 jerk on my shoulder.

25 Somebody tried to jerk my purse off, and

1           then I got into a struggle with them. They got my  
2           purse. I got my purse back. At some point my  
3           cell phone flew out. I ripped that person's shirt  
4           off. They grabbed my cell phone and took off.

5       Q.     From the description at the trial, I think you won  
6           the battle to a large extent. That was fair to  
7           say?

8       A.     I think so, but --

9       Q.     Okay. But the individual who did this did take  
10          your cell phone?

11      A.     Yes, picked it up off the ground and ran.

12      Q.     Do you know how long -- can you estimate -- I  
13          mean, I know our times are always sort of off.  
14          But how long that would have taken?

15      A.     Not really. It was so fast. It is such a blur at  
16          the time and it still is.

17      Q.     When --

18      A.     Maybe a minute. I don't know.

19      Q.     When that happened, do you remember what the  
20          description of the individual that you gave the  
21          police was?

22      A.     Yes. I said it was a Mexican; that I thought it  
23          was a Mexican. Thin, a little taller than me.  
24          That is about it.

25      Q.     Can you remember how their -- you described the

1 hair?

2 A. Dark hair. It was short, I believe. Maybe curly.

3 Q. Would it help if I showed you the information that  
4 you provided to law enforcement? Do you think  
5 that would help refresh your memory?

6 A. Maybe.

7 MS. CRAIG: Your Honor, if I might  
8 approach?

9 THE COURT: Yes.

10 THE WITNESS: It has been so long ago.

11 BY MS. CRAIG:

12 Q. This is the police report.

13 A. I have a tear in my cornea.

14 Q. That is that photograph. Just let me know if that  
15 helps you.

16 A. Yes and no. I mean, I believe what I said there.  
17 I think the hair might have been pulled back  
18 maybe. Maybe what I am thinking of curly might  
19 have been some baby flyaways. I don't know. I am  
20 sorry.

21 Q. No, that is okay. So you think maybe baby  
22 flyaways and the hair pulled back?

23 A. Maybe that might be. There was no, like, loose  
24 hair flying around. It wasn't like this. It  
25 wasn't --



- 1 Q. At that time did the officer ask whether you got a  
2 good look at the individual's face?
- 3 A. I don't recall what I told the officer, but I  
4 don't recall getting a good look at their face.  
5 It was skin tone and, I mean, that is why I said  
6 Mexican.
- 7 Q. Maybe their build?
- 8 A. Yes.
- 9 Q. Eventually you were interviewed -- you were called  
10 by a detective. Do you have a memory of that?
- 11 A. No.
- 12 Q. Okay. Did you ever look at a lineup?
- 13 A. I do remember looking at a lineup, yes.
- 14 Q. Was that before trial?
- 15 A. Yes, I believe so. It is hard to say.
- 16 Q. Do you remember if you picked -- I am going to  
17 approach. I am actually going to show you what  
18 we have marked as Plaintiff's Exhibit 4. If this  
19 looks familiar, let me know. If it doesn't, that  
20 is fine. Does that look like a lineup you looked  
21 at?
- 22 A. Possibly, yes.
- 23 Q. And do you have a memory of whether you picked  
24 anyone out of that lineup?
- 25 A. I don't. I honestly don't remember picking anyone

1 out of the lineup. But, if I was going to pick  
2 one out of the lineup, I mean, obviously this is a  
3 dark copy, but I would have picked the one  
4 lighter-skinned person. Because that is all I had  
5 to go on was skin tone.

6 Q. So if you were looking at this lineup, you would  
7 have gone with the skin tone as opposed to facial  
8 recognition?

9 A. Yes.

10 Q. Great. Thank you. Eventually this case went to  
11 trial. You made an identification in court; is  
12 that correct?

13 A. Yes.

14 Q. You identified my client here, Mr. Jones?

15 A. Yes.

16 Q. And is it fair to say that Mr. Jones has light  
17 skin?

18 A. Yes.

19 Q. Okay. At some point in time in the last couple  
20 years, were you contacted by someone from the KU  
21 Innocence Project?

22 A. Yes.

23 Q. Why don't you tell us about that?

24 A. I had a gentleman call me and I spoke with him.  
25 They asked if they could meet with me. They came

1 to my work a couple times actually and met with  
2 me. Just asked me some questions and similar to  
3 you, like what I remember, what I saw. They  
4 showed me a couple of pictures of two people that  
5 I thought was the same person.

6 Q. Okay. I'm going to approach and show you  
7 Plaintiff's Exhibit 2. Do those look like the  
8 photos?

9 A. Yes. This is what they showed me. They asked me  
10 if I could identify.

11 Q. Were you able to identify either of those  
12 individuals as the person who committed this  
13 crime?

14 A. Not confidently, no.

15 Q. Okay. Did you think those were all the same  
16 person?

17 A. I thought it was the same person. I thought it  
18 was just different years, you know, like, maybe  
19 from, you know, '99 and then now 2017. I thought  
20 it was the same person.

21 Q. Okay. And I am going to approach with what has  
22 been admitted -- it is a stipulation. Were you  
23 shown recently these two photographs? Do those  
24 look familiar? Do you have a memory of that?

25 A. They look familiar. Yeah, I believe so.

1 Q. Do those photographs cause you to recognize anyone  
2 who committed the crime?

3 A. No.

4 Q. Okay.

5 THE COURT: Can you tell me what  
6 stipulated exhibit number that is?

7 MS. CRAIG: I'm sorry, Judge. This is  
8 stipulated Exhibit No. -- Exhibit B.

9 THE COURT: B?

10 MS. CRAIG: Uh-huh.

11 BY MS. CRAIG:

12 Q. So those two photographs, the top two, you don't  
13 have any recognition of those two individuals?

14 A. No. I mean, no. If I am looking at them, I don't  
15 know.

16 Q. Is there one that would look more like the  
17 perpetrator just based on the photograph?

18 A. This one here on the right. Because he was  
19 thinner. This person's face is fuller.

20 Q. Okay. Now, did you complete an affidavit about  
21 this case recently or in the last year?

22 A. Yes, yes.

23 Q. I am going to show you what I have marked as  
24 Plaintiff's Exhibit No. 3. Let me know if this  
25 looks like the affidavit that you completed.

1 A. Yes, yes. With The Innocence Project, yes. This  
2 is it.

3 Q. Is that a fair and accurate copy? Do you see any  
4 changes?

5 A. Nothing noted. I didn't read every word, but that  
6 is my signature on there.

7 Q. At the back?

8 A. Yes.

9 MS. CRAIG: Your Honor, I move to admit  
10 Plaintiff's Exhibit 3.

11 MR. MINIHAN: No objection.

12 THE COURT: Received.

13 MS. CRAIG: Judge, I don't have any  
14 further questions.

15 THE COURT: Okay. Cross-examination?

16 CROSS-EXAMINATION

17 BY MR. MINIHAN:

18 Q. You identified on the top pictures the individual  
19 on the right, the thinner person, as the one that  
20 you thought was more likely the defendant;  
21 right?

22 A. Yes.

23 Q. But you didn't see the perpetrator's face when it  
24 occurred; correct?

25 A. I do not recall having a clear visual of his face,

1           like facial features. I mean, I -- literally skin  
2           tone and build.

3       Q.     Do you remember coming to court for the first  
4           time --

5       A.     Yes.

6       Q.     -- and seeing the defendant, Mr. Jones?

7       A.     Yes.

8       Q.     What was your reaction?

9       A.     Nervous. I mean, court is nerve-wracking  
10          anyway.

11                   THE COURT: You're kidding.

12                   THE WITNESS: I didn't do anything wrong  
13          and I was nervous to come in here.

14                   MR. MINIHAN: No further questions.

15                   THE COURT: Okay.

16                   MS. CRAIG: That is all.

17                   THE COURT: Okay. Watch your step.

18                           RON COEN,

19          called as a witness, having been first duly sworn to tell  
20          the truth, the whole truth and nothing but the truth, was  
21          examined and testified as follows:

22                           DIRECT EXAMINATION

23          BY MS. CRAIG:

24       Q.     Can you state your name for the record.

25       A.     Yes, Ron Coen.

1 Q. And did you work at the Wal-Mart on Roe Street?

2 A. I worked loss prevention for 19 years there.

3 Q. Were you working there in May of 1999?

4 A. Yes.

5 Q. Okay. Were you involved in a robbery that  
6 occurred in the parking lot?

7 A. Yes.

8 Q. Can you tell us about that and what you saw?

9 A. Well, that day I believe it was a holiday. I'm  
10 not quite sure, because we was really busy. We  
11 had a car come through the lot two times, but they  
12 didn't get out of the car. So anytime we have a  
13 suspicious vehicle, we write down the license  
14 plate number. Then when they leave, we just mark  
15 it out and go on with the day.

16 And I remember the car because it had  
17 dealer tags on it in the back window. It was a  
18 gray or blue Chrysler LeBaron. And the second  
19 time it came through the lot, I can't remember --  
20 first time it came through the lot they backed  
21 into a parking spot. I only seen two people in  
22 it, two people in the front seat.

23 And then the second time it came in, I  
24 can't quite remember if it parked or just drove  
25 through. It has been 17 years. It has been a

1 long time.

2 Q. Was the second time later or was it right after?

3 A. Oh, it seemed like within an hour or two. I can't  
4 quite remember. It has been so many years ago.

5 Q. What do you remember next happening?

6 A. Well, it has been a long time. Only time I  
7 remember the woman screaming, and I believe she  
8 was on the ground. And she said they took my  
9 purse, and I seen the car leaving the lot.

10 Q. How far away -- did you actually see the incident  
11 or did you just hear it?

12 A. Well, I was exactly on the very next aisle over.  
13 That car was there in this aisle, one aisle over  
14 from the main aisle. And I was in this case -- I  
15 was in a security car with a light blinking and  
16 security on the side at that time.

17 Q. Did you see this happen, the robbery?

18 A. I just seen the -- kind of caught it out of the  
19 corner of my eye. I didn't actually -- was  
20 straight looking at it when it happened.

21 Q. Did you get a good look at the individual who was  
22 involved?

23 A. Not really.

24 Q. Okay. At some point in time after that happened,  
25 were you taken to a car dealership to see if you



1           could recognize anyone?

2       A.     Yes.

3       Q.     Can you tell us what happened at the car  
4           dealership?

5       A.     I didn't recognize him at that time.

6       Q.     And were you shown an initial lineup?

7       A.     Yes.

8       Q.     Okay.

9                   THE COURT: Can we go back? Did you say  
10       you didn't recognize him at the car dealership?

11                   THE WITNESS: I didn't recognize nobody at  
12       car dealership at that time that was in the car.

13                   THE COURT: Okay.

14       BY MS. CRAIG:

15       Q.     I am going to show you -- I am going to show you  
16           what I have marked as Plaintiff's Exhibit No. 1  
17           and see if you remember it. This is a police  
18           report --

19       A.     Let me get the glasses on.

20       Q.     -- on the first lineup you looked at. And see if  
21           that looks familiar to you.

22       A.     I really don't remember 100 percent sure on none  
23           of this.

24       Q.     Okay. Would it refresh your memory if you looked  
25           at the report?

1 A. Let me see. I said I thought. It was not  
2 positive.

3 Q. Okay. So you thought -- can you tell us which one  
4 you thought?

5 A. No, I don't remember. I said I thought it was.  
6 I wasn't positive at all.

7 Q. Okay. So you identified somebody that you thought  
8 might have?

9 A. I thought was, yes. Not that it was.

10 MS. CRAIG: Your Honor, I move to admit  
11 Plaintiff's Exhibit No. 5.

12 MR. MINIHAN: No objection.

13 THE COURT: Okay. Received.

14 BY MS. CRAIG:

15 Q. And then were you given a second lineup? Do you  
16 remember?

17 A. I don't quite remember real good.

18 Q. Okay. I am going to approach and see if you  
19 recognize this. This is one that was marked as  
20 Plaintiff's Exhibit No. 4. Do you recognize that  
21 one? It isn't a great copy.

22 A. See, these people to me don't look alike.

23 Q. What doesn't look alike in that lineup? What is  
24 it about this lineup that concerns you?

25 A. Well, the people that I seen I couldn't tell if

1           they was Spanish or African American because of  
2           their complexion. You know, sometimes Mexicans  
3           are a little bit darker. Sometimes black people  
4           are a little bit lighter. It was hard for me to  
5           tell. When they show me a lineup, it is hard to  
6           tell because they actually show me two pictures of  
7           two different people at one time, but they didn't  
8           look alike because of the their ears and their  
9           nose.

10        Q.     Okay.

11        A.     I wasn't 100 percent sure.

12        Q.     So did you select -- do you know if you selected  
13                anyone out of this?

14        A.     I don't remember exactly.

15        Q.     Would it help if you looked and see?

16        A.     Okay. I said I thought it was. I didn't say it  
17                was.

18        Q.     So you thought it was photo number one?

19        A.     Yes, but I wasn't sure. I said I thought it was.

20        Q.     In that lineup what is different about photo  
21                number one than the others?

22        A.     Because of his complexion.

23        Q.     Is it more similar to the person that you saw at  
24                the scene?

25        A.     It is similar, but because of his complexion, that

1           is why, you know, when they show a lineup to me,  
2           after I got to thinking about it, some people are  
3           a lot darker than him. It really -- it is always  
4           that possibility, you know, you always pick out  
5           the wrong person in a lineup.

6                     MS. CRAIG: Thank you. I move to admit  
7           Plaintiff's Exhibit No. 4.

8                     MR. MINIHAN: No objection.

9                     MS. CRAIG: It wasn't admitted the first  
10          time, Judge.

11                    THE COURT: Right.

12                    MS. CRAIG: Thank you.

13          BY MS. CRAIG:

14          Q.        Were you contacted at some point in time by  
15                    individuals, two students from the KU Innocence  
16                    Project?

17          A.        Yes, about a year and a half ago before I moved.

18          Q.        I am going to approach with what is marked as --  
19                    admitted as Plaintiff's Exhibit 2. Do you  
20                    remember those photos that you were shown?

21          A.        Yes.

22          Q.        And did any of those individuals look familiar to  
23                    you?

24          A.        No.

25          Q.        Okay. And could you have associated any of those

1 individuals with the person you saw that day?

2 A. Not that I remember.

3 MS. CRAIG: Okay. Nothing further.

4 THE COURT: Cross-examination?

5 CROSS-EXAMINATION

6 BY MR. MINIHAN:

7 Q. Mr. Coen, do you remember testifying that you were  
8 100 percent sure that --

9 A. I don't remember saying that at all.

10 Q. Okay.

11 MR. MINIHAN: No further questions.

12 THE COURT: Anything else?

13 MS. CRAIG: Nothing further.

14 THE COURT: Okay. Watch your step.

15 SCOTT ATWELL,

16 called as a witness, having been first duly sworn to tell  
17 the truth, the whole truth and nothing but the truth, was  
18 examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MS. CRAIG:

21 Q. Could you state your name for the record.

22 A. Scott Atwell.

23 Q. Can you tell us what you did for a living?

24 A. I am a retired detective from the Johnson County,  
25 Kansas Sheriff's Office.

- 1 Q. How long did you work there?
- 2 A. Almost 34 years.
- 3 Q. Okay. And were you working there in May of '99?
- 4 A. Yes, ma'am.
- 5 Q. And did you investigate a robbery in Johnson
- 6 County at the Wal-Mart on Roe?
- 7 A. Yes, ma'am.
- 8 Q. Okay. Can you tell us a little bit about how you
- 9 got involved in the case, if you remember?
- 10 A. Well, I'm going to preface my testimony by saying
- 11 I don't remember this case, so I'm going to have
- 12 to go off my reports. And it appears that on
- 13 June 4th, 1999, I made contact with victim Tamara
- 14 Scherer --
- 15 Q. Okay.
- 16 A. -- asked her if she could identify the suspect,
- 17 and at that time she said no. She was too busy
- 18 focused on trying to gain custody of her purse
- 19 back from the suspect.
- 20 Q. Okay. So when you contacted Ms. Scherer, she
- 21 indicated to you she wouldn't be able to identify
- 22 the individual?
- 23 A. That is what she said according to the report back
- 24 at that time, yes, ma'am.
- 25 Q. According to your reports, did you ever show her a

1 lineup?

2 A. No, ma'am.

3 Q. Okay. Let's go back and step back a little bit.

4 How did you start finding who the person was? Was  
5 there a car that you investigated?

6 A. According to the report from Roeland Park Police  
7 Department, a witness had followed the suspect  
8 vehicle, gained the Kansas dealer plate. That was  
9 ran and it came back to a little dealership in  
10 Kansas City, Kansas, a guy by the name of David  
11 Colvin, I believe. Roeland Park Police Department  
12 had gone up there during their investigation and  
13 found the vehicle in the lot apparently and talked  
14 to the owner, David Colvin.

15 Q. Who did he indicate was driving the car?

16 A. David Colvin said his son -- and I am taking it to  
17 be David Colvin, Jr., had possession of the car at  
18 that time.

19 Q. Did you go talk to Mr. Colvin, Jr.?

20 A. Jr., yes, ma'am, on June 21st, 1999.

21 Q. And what did he initially tell you?

22 A. His initial statement was that he and a friend of  
23 his, Eddie Miller, and his girlfriend were doing  
24 -- I believe it was crack at some house off around  
25 38th and Thompson in Kansas City, Kansas.

1           Apparently Eddie Miller and his girlfriend at that  
2           time wanted to go to the Price Chopper there off  
3           of Roe north of Wal-Mart to buy something.

4                       And at that time a person there just  
5           introduced to him as a person named Rick wanted to  
6           go, too. They left. They came back, and  
7           according to David Colvin at that time, Jr., Eddie  
8           Miller seemed to be excited about something, like,  
9           something happened that he didn't know was going  
10          to happen. And apparently Rick had taken a phone  
11          from a lady in the Wal-Mart parking lot.

12       Q.       Okay. And they were -- he was very specific at  
13               that point on the first name; is that correct?  
14               Rick?

15       A.       Yes, ma'am. According to the report anyway.

16       Q.       And did they provide you any last name for Rick?

17       A.       No, ma'am.

18       Q.       Okay. And what was your next step?

19       A.       I asked David Colvin, Jr., how I could get ahold  
20               of Eddie Miller. He said that he was in the  
21               Wyandotte County lockup on some type of -- I think  
22               it was auto theft charge at that time. And so on  
23               June 22nd, the next day, I made contact with Eddie  
24               Miller in the Wyandotte County lockup.

25       Q.       What did Mr. Miller tell you?



1       A.       Mr. Miller told me that he and Colvin Jr. were  
2               going to initially lie about what happened, but he  
3               said since he is now in the county jail in  
4               Wyandotte County, that he was going to tell me the  
5               truth. That apparently he and his girlfriend and  
6               Colvin Jr. were at a drug house off of 38th and  
7               Thompson doing crack, I think it was. They met a  
8               guy named Rick and they all decided to go to  
9               Wal-Mart. Eddie Miller and his girlfriend were  
10              laying down in the back seat and apparently  
11              remained laying down and Colvin was driving.

12                      Eddie is in the passenger seat front, and  
13              Eddie said that he assumes that they got into the  
14              Wal-Mart parking lot since he had his head buried  
15              in the back seat. But he could hear Eddie --

16       Q.       I am sorry?

17       A.       Sorry. He could hear Rick tell Mr. Colvin that he  
18               was going to take a lady's purse and use it for  
19               money to get some crack. And the car stopped. He  
20               could hear Rick get out, and then when he came  
21               back, he is out of breath and they drive off.

22       Q.       And he was specific about the name at that point  
23               in time, wasn't he?

24       A.       Of Rick?

25       Q.       Yes.

1 A. Yes, ma'am.

2 Q. Okay. And then what did you do after that, after  
3 you talked to Mr. Miller?

4 A. That same day, June 2nd, 1999, I went back to  
5 David Colvin, Jr. I told him I just spoke with  
6 Eddie and their stories aren't matching. I need  
7 to hear the truth. And that is when Colvin Jr.  
8 said, yes, he was driving and -- but he said that  
9 he never heard Rick tell him he was going to steal  
10 a lady's purse. He was under the assumption that  
11 Rick was going to go into Wal-Mart, take some  
12 items and then possibly pawn them for money for  
13 crack.

14 Q. And from your reports did Mr. Colvin provide you  
15 with an address as to where he picked up Rick?

16 A. I couldn't find it in my reports that I have, but  
17 I did see in some e-mails between you folks that  
18 apparently he did. And I can't recall what that  
19 address was.

20 Q. Did you review reports that indicated that you had  
21 been looking at a house?

22 A. Yes, ma'am.

23 Q. And do you remember the address in those reports  
24 where you indicated you were looking or checking  
25 on a house?

1 A. I don't have that one memorized. I would have to  
2 refer.

3 Q. Would it help if you looked at it?

4 A. Yes, ma'am.

5 Q. Okay. This looks like your August 25th report.

6 A. And according to this report dated August 25th,  
7 1999, I was looking for Rick last name unknown at  
8 2722 West 41st Avenue, Kansas City, Kansas.

9 Q. Okay. And from your reports, is that -- does that  
10 appear to be of the address that Colvin would have  
11 provided you?

12 A. Apparently so, yes, ma'am.

13 Q. Okay. And I am --

14 MS. CRAIG: Your Honor, I am approaching  
15 with Plaintiff's Exhibit No. 6.

16 BY MS. CRAIG:

17 Q. If you remember, let me know if not. Does that  
18 look at all familiar to you?

19 A. No, ma'am.

20 Q. When -- after you talked to Colvin the second  
21 time, what was the next step in your  
22 investigation?

23 A. On August 24th, 1999, I recontacted Colvin Jr. in  
24 Kansas City, Kansas, and asked him if he would  
25 accompany me to the Kansas City, Kansas Police

1 Department where I had already prearranged with  
2 Detective Lawson at that time if he would help me  
3 with their mug shot system to gain a photo lineup  
4 should Mr. Colvin find a photograph or mug shot of  
5 the person he knows as Rick.

6 Q. How did that work? Was he looking at books,  
7 computers?

8 A. That would be a guess on my part. I don't  
9 remember being in a room. I don't remember  
10 anything about this case. I can't even tell you  
11 the kind of system Kansas City, Kansas has.

12 Q. Does your report indicate at all whether or not  
13 Mr. Colvin picked somebody out of a lineup?

14 A. Yes, ma'am.

15 Q. And who did he pick out?

16 A. He picked out a person by the name of Richard  
17 Jones.

18 Q. And do you know how many people he looked at  
19 before he made that selection?

20 A. Yes, ma'am. According to my report apparently  
21 he -- Mr. Jones' photograph was No. 202.

22 Q. So he must have looked at 202 photos before you  
23 got to that one?

24 A. Yes, ma'am.

25 Q. How did you sort the photographs for Mr. Colvin to

1 look at? Does your report indicate that?

2 A. No, ma'am. That would be a guess on my part how  
3 Detective Lawson got the other five mug shots.

4 Q. Well, I mean, looking in the computer or looking  
5 through all of the photographs, did you sort them  
6 somehow to your knowledge?

7 A. Oh, I see. Well, I had asked Detective Lawson if  
8 he could just come up with black males with the  
9 first name Rick to narrow the field down.

10 Q. It was just Rick or Richard as well?

11 A. It might have been either one. I don't know if  
12 Wyandotte County's system has both Rick and  
13 Richard. When you -- I have no idea.

14 Q. Was a lineup created from that selection?

15 A. Yes, ma'am.

16 MS. CRAIG: And, Your Honor, I think you  
17 have the lineup potentially.

18 THE COURT: Yes.

19 BY MS. CRAIG:

20 Q. I am showing you what has been admitted as  
21 Plaintiff's Exhibit No. 4. Does that look like  
22 the lineup that was used?

23 A. Yes. That is the copy of the one I have, too.

24 Q. Okay. And did you create that lineup?

25 A. No, ma'am.

- 1 Q. Okay. But you -- did you show it to certain  
2 individuals?
- 3 A. Yes, ma'am. Apparently I showed it to three.
- 4 Q. Okay. Who did you show it to?
- 5 A. I am sorry. Let me back up on you. The original  
6 lineup was made with the assistance of Mr. Colvin,  
7 Jr., so then I showed it to two other people --  
8 Eddie Miller and the loss prevention officer, Ron  
9 Coen.
- 10 Q. And did they make selections based on this  
11 lineup?
- 12 A. Yes, ma'am.
- 13 Q. And who did they pick out of this lineup?
- 14 A. Photograph number one, that being of Richard  
15 Jones.
- 16 Q. Okay. And do you have any concerns at this time  
17 about this lineup?
- 18 A. Yes, ma'am. When I first got my copy, I am  
19 looking at it and I am, you know -- granted it has  
20 been 18 years, but I am looking at it. Yours is  
21 even worse than the one I that I have. But it is,  
22 like, the more this thing gets copied, the darker  
23 2, 3, 5 -- I am sorry -- 2 through 6 get. And  
24 granted the first one gets darker, too, but not as  
25 dark.

1                   So curiosity being what it is, I contacted  
2                   the Sheriff's Office records division and asked  
3                   them to locate my original to see why the photo  
4                   lineup looks like it does. And apparently after  
5                   18 years, they have lost it. I don't know if it  
6                   was in the transition period when we went from the  
7                   Park Cherry Building to our new operations  
8                   building. I have no idea.

9           Q.       Okay. And in this lineup, would you say that  
10           No. 1 is much lighter skinned based on this copy  
11           at least?

12          A.       Yes, ma'am. In this -- yes, ma'am.

13          Q.       Okay. Thank you. At that point that you have now  
14           had -- you have identified Mr. Jones as your  
15           suspect, did you make an attempt to find  
16           Mr. Jones?

17          A.       Yes, ma'am.

18          Q.       Back in 1999 did you -- what types of databases or  
19           information could you use to search somebody?

20          A.       In '99 we would have had the ALERT system which is  
21           generated from the Kansas City, Missouri Police  
22           Department. But outside of that, apparently I was  
23           given an address there on, what, 41st Avenue,  
24           looking for him. And if I read my reports  
25           correctly, it is, like, after I exhausted that, I

1           just sent the report up to the DA's Office asking  
2           for their consideration.

3       Q.     Did you ever receive an address for Mr. Jones in  
4           Kansas City, Kansas?

5       A.     I do not recall that, no, ma'am.

6       Q.     Okay. You don't recall or it would help if you  
7           looked at your --

8       A.     I am recalling from my reports here, but I don't  
9           recall any Kansas City, Kansas address.

10      Q.     Where were they all located at? Because you went  
11           to several, didn't you?

12      A.     For Mr. Jones I was looking for Kansas City,  
13           Kansas, because that was --

14      Q.     I am sorry. What state?

15      A.     I am sorry. Kansas City, Missouri.

16      Q.     Yeah.

17      A.     I think because he was working at a grocery store  
18           over in Kansas City, Missouri. I think I got  
19           ahold of his sister or something and I couldn't  
20           locate him.

21      Q.     Okay. Were you provided at that time with the  
22           woman whose name was Tia as a possible contact for  
23           him?

24      A.     Yes, ma'am.

25      Q.     Okay. If you were to investigate somebody now,



1           would you have more resources to try and find who  
2           lived in residences and where they lived?

3       A.     Yes, ma'am.

4       Q.     What kind of reports would you look at?

5       A.     Well, apparently with the younger generations,  
6           they have these Facebook and Twitter and what not,  
7           and apparently -- I don't know how to use that.  
8           But I would have to get another detective that  
9           knew how to try and locate through that  
10          possibility.

11               We also have another -- when I left we had  
12           another computer system that is generated out of  
13           St. Louis.

14      Q.     Okay.

15      A.     That might be another avenue to go.

16      Q.     So have you heard of things like CLEAR or TLO as a  
17           way to investigate people?

18      A.     No, ma'am.

19      Q.     Okay. Once this case was actually charged, were  
20           you asked to investigate an alibi?

21      A.     Yes, ma'am.

22      Q.     And did you contact anyone?

23      A.     Yes, ma'am.

24      Q.     Who did you contact?

25      A.     I contacted what I believe to be three sisters.

1 One's name was China. I think she was the middle  
2 sister, and then Tia, I think, was the baby  
3 sister, and then there was another sister, I  
4 think, that was older by another year.

5 Q. And what did all three of them -- there was  
6 something specific about the date that all three  
7 of them -- why they remembered it.

8 A. The one -- I don't recall her being specific on a  
9 date, but the middle sister -- I think her name  
10 was China, I think, and Tia, the baby sister, both  
11 said that -- this was in an interview June 15th,  
12 2000, that they saw Richard Jones over at Tia's  
13 apartment, and I believe that was in Kansas City,  
14 Missouri on May 30th, 1999.

15 Q. Was there something on that date? Was there  
16 something going on? Do you remember?

17 A. Well, not so much the May 30th, I think. It was  
18 the May 31st which was, I think, Tia's birthday.  
19 And they celebrated according to Tia and China  
20 Tia's birthday at her apartment, at Tia's  
21 apartment.

22 Q. So that date was something they actually  
23 remembered because of Tia's birthday?

24 A. Yes, ma'am.

25 Q. And they actually remembered Mr. Jones being

1 present during that time; is that correct?

2 A. Yes, ma'am.

3 Q. Okay. You discounted those alibi witnesses in  
4 your reports, did you not?

5 A. Discounted?

6 Q. Did you consider them credible?

7 A. I made those follow-ups on a request by then ADA  
8 John Cowles. Apparently he got the information.  
9 The only thing I found interesting was they were  
10 referring to the May 31st date, and I had asked  
11 both Tia and China why they remember the date as  
12 this is the one that I am interested in. And  
13 China said that Tia told her that that was the  
14 date of the robbery. And when I asked Tia about  
15 it, she said that was the date of the robbery.  
16 How did you know that? She said, well, I have had  
17 occasionally a phone call from Richard Jones.

18 Q. Would it be unusual for someone in your experience  
19 to -- for somebody whose arrested to call family  
20 and friends?

21 A. Oh, no, ma'am.

22 Q. And would it be unusual if someone asked you to  
23 recall a date, a year in the past that was maybe  
24 somebody's birthday that you would contact that  
25 person?

- 1 A. No, ma'am.
- 2 Q. If it is your birthday, would you have a stronger  
3 memory of it?
- 4 A. Yes, ma'am.
- 5 Q. Okay. Let's go back to this residence on 41st  
6 Street. What did you do to locate any individuals  
7 at that residence?
- 8 A. Well, even back then there was a way you could do  
9 an address check through ALERT.
- 10 Q. Did you do that?
- 11 A. I am sure I did.
- 12 Q. Did you contact anyone who lived at the address at  
13 2722 West 41st street?
- 14 A. According to my report, I don't think I contacted  
15 anybody.
- 16 Q. Did you do anything to your knowledge more than  
17 putting a door hanger on the door?
- 18 A. That would have been about the only thing I could  
19 have done except repeatedly coming back and  
20 knocking.
- 21 Q. But you to your memory -- did you repeatedly go  
22 back and knock and see if anyone was home?
- 23 A. I don't know. I am assuming I did.
- 24 Q. Okay. But you don't have any indication of that  
25 in your reports?

1 A. No, ma'am.

2 MS. CRAIG: Okay. Nothing further.

3 CROSS-EXAMINATION

4 BY MR. MINIHAN:

5 Q. Handing you what has been marked as stipulated  
6 Exhibit B. Have you seen those photos?

7 A. Yes, sir.

8 Q. Where did you see them?

9 A. I originally saw them from Mike Bussell who served  
10 me the subpoena.

11 Q. And the bottom two pictures are mug shots taken in  
12 2015; right?

13 A. Yes, sir.

14 Q. And the top two are pictures taken in or around  
15 2001; is that correct?

16 A. Yes, sir.

17 Q. Those are mug shots of Richard Jones and Ricky  
18 Amos?

19 A. Yes, sir.

20 Q. Does -- do Rick Jones and Ricky Amos and Richard  
21 Jones look as similar in 2001 as they did in  
22 2015?

23 A. No, sir.

24 Q. All right. How are they different?

25 A. Mr. Jones -- his face seems to be fuller. He has

1 got shorter hair. I am just going off the mug  
2 shot here. Ears are pinned back. Mr. Amos has a  
3 thinner face, ears stick out a little bit more,  
4 not as much facial hair. The top two don't look  
5 near as close as the bottom two.

6 Q. This 2722 home -- it was your belief that there  
7 may be drugs being used in that home?

8 A. I probably did at the time since apparently that  
9 is why Mr. Colvin, I am assuming, sent me there.  
10 That is where he picked up Rick.

11 Q. Do you remember if Colvin had said that is the  
12 specific address where he was going to get drugs  
13 or that is just where he had picked the guy up?

14 A. If it is not in my report, I don't know. So I  
15 can't have an answer for you.

16 Q. In your experience is it unusual for a place that  
17 may have illegal drugs for people not to answer  
18 the door?

19 A. Yes, sir.

20 Q. All right. Yes, it is unusual or --

21 A. I was agreeing with you.

22 MR. MINIHAN: Thank you.

23 REDIRECT EXAMINATION

24 BY MS. CRAIG:

25 Q. So would you say leaving a door hanger is an

1 effective way to get somebody to call you?

2 A. I would. I am always hopeful.

3 Q. But it would be unlikely; is that correct?

4 A. That is correct.

5 Q. And do you have a memory of what the description  
6 of the -- the original description of the  
7 individual was that you were looking for?

8 A. I have would have to refer to my report --  
9 actually the Roeland Park report.

10 Q. I have it if you don't.

11 A. I have got it.

12 Q. Okay.

13 THE COURT: The original description by  
14 the Overland Park Police is a Hispanic male,  
15 approximately 5-9, 145 pounds, brown hair, white t-shirt,  
16 hair possibly in a ponytail and his shirt should be torn.

17 BY MS. CRAIG:

18 Q. In the exhibit that -- Exhibit B that Mr. Minihan  
19 just showed you of those top two pictures, who  
20 fits that description better in your opinion?

21 A. Well, I can't tell by the height. But if you are  
22 just going off of weight, 145 pounds, if you are  
23 just going off the two photographs, it appears  
24 that Mr. Amos weighs less than Mr. Jones. But  
25 then again, I don't know the heights of these

1 gentlemen.

2 Q. What about the hair?

3 A. It looks like Mr. Amos has got some hair down to  
4 the blanket for the photograph, and I don't see  
5 any hair below the ears on Mr. Jones.

6 MS. CRAIG: Okay. Thank you. No further  
7 questions.

8 MR. MINIHAN: No questions, Your Honor.

9 THE COURT: Okay. I have got a question.  
10 The cell phone -- was that ever located?

11 THE WITNESS: No, sir.

12 THE COURT: Okay. Back then were you able  
13 to -- if you knew the cell phone number, were you able to  
14 figure out who was called from that same cell phone  
15 number?

16 THE WITNESS: According to the reports, it  
17 appears that the victim had the phone turned off before  
18 the suspect even had a chance to use it.

19 THE COURT: Okay. And then if the phone  
20 was used by someone else other than the victim, could you  
21 determine who was called back then?

22 THE WITNESS: Yes, sir. If the phone had  
23 been activated and had been used, yes, sir, we could  
24 have.

25 THE COURT: Do you know if you guys ever



1 checked on that?

2 THE WITNESS: No, sir, we didn't because  
3 face value of her turning the phone off.

4 THE COURT: So you just went off the ID's  
5 and not -- not the possibility that somebody else was  
6 called from that cell phone.

7 THE WITNESS: Correct.

8 THE COURT: Any questions as a result of  
9 mine?

10 MS. CRAIG: No, Your Honor.

11 MR. MINIHAN: No.

12 THE COURT: You can step down. Watch your  
13 step.

14 MS. CRAIG: Your Honor, the next witness  
15 we call is Eddie Miller.

16 EDWARD MILLER,  
17 called as a witness, having been first duly sworn to tell  
18 the truth, the whole truth, and nothing but the truth,  
19 was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MS. CRAIG:

22 Q. Sir, could you state your name for the record.

23 A. Edward Miller.

24 Q. Mr. Miller, were you in the car that was involved  
25 in a robbery back in 1999?

1 A. I was, yes.

2 Q. Where was this at? Do you remember?

3 A. Where I was at?

4 Q. Where was the robbery at?

5 A. I don't know.

6 Q. Okay. Do you remember if it was at a Wal-Mart?

7 A. I know it was a retail store. We were all doped

8 out in those days, and it was a big thing to take

9 something and return it for money. So it might

10 have been a Wal-Mart. I don't know.

11 Q. Do you remember -- what do you remember about that

12 day?

13 A. The wild-ass car chase afterward. Somebody was

14 chasing us.

15 Q. Okay.

16 A. I was laying down in the back seat with a girl I

17 was with at the time. We had been up for days.

18 So we were sleeping in the back. All of a sudden

19 the car is going nuts and --

20 Q. Do you remember the individuals that were in the

21 car with you?

22 A. Not really. The driver was somebody we knew. I

23 don't even remember who that was, but he picked up

24 a friend of his and we didn't know him.

25 Q. Okay.

1 A. And as of now I can't remember that far back to  
2 tell you who it was.

3 Q. Okay. If I showed you a report of an interview,  
4 would that refresh your memory as to who the  
5 individual was that was in the car?

6 A. I can't answer that unless I see the report.

7 Q. Okay. I am showing you an interview that was done  
8 a few days afterwards. If it brings back any  
9 memories, just let me know.

10 A. I don't think I have ever in my life referred to  
11 that name.

12 THE COURT: I don't --

13 THE WITNESS: They said that -- I don't  
14 know if I can say this or not -- that dumb fucking nigger  
15 Rick. I don't think I have ever been in my life any kind  
16 of racist to say something like that. But, again, those  
17 days I don't remember.

18 BY MS. CRAIG:

19 Q. What was the name that you used?

20 A. I didn't -- I didn't -- I don't know. As far as I  
21 know, I didn't know the guy. I don't even know if  
22 I knew a name.

23 Q. Do you have any ability to describe that  
24 individual?

25 A. I told them then and I told him now that the only

1           thing that -- I mean, brief glances of him in the  
2           front seat.

3       Q.     How would you describe him?

4       A.     Skinny, lanky, not well kept bathing wise, and I  
5           don't know. Typical drug addict, I guess.

6       Q.     Okay. And do you remember being shown a lineup?

7       A.     I have been shown a lineup. I remember being  
8           shown a lineup. And --

9       Q.     I am going to approach and I just want to make  
10          sure this is the lineup that you were shown.

11      A.     Back then?

12      Q.     Yes.

13      A.     I wouldn't know.

14      Q.     I am showing Plaintiff's Exhibit No. 4 to the  
15          witness. Do you have any memory of that?

16      A.     I remember I was shown a lineup. I couldn't for  
17          the life of me tell you if it was this or not.

18      Q.     Okay. Do you remember testifying in court?

19      A.     That is the one thing that I remember and the one  
20          reason that I am here is if there is an innocent  
21          man, I believe that she had been helped in the  
22          courtroom. That day they asked me if I saw this  
23          person, that didn't really leave me much choice.  
24          There is only a couple people in there. I said I  
25          think that is him right there, but if it is, he is

1           cleaned up a lot. I remember making that  
2           statement.

3                       So when I was asked if I might have made a  
4           mistake, I said yes, it is possible I might have  
5           made a mistake.

6       Q.       And did you have any assumptions when you went to  
7           court to testify about who was on trial?

8       A.       I don't understand you.

9       Q.       Did you have any assumptions that they had  
10          evidence to support that he was the individual who  
11          did it?

12      A.       I don't know how to answer that other than the  
13          fact that I always believed that he if he was  
14          arrested, then the law knows what they are doing.  
15          They have got the right person. So I answered the  
16          way I did.

17      Q.       Okay.

18      A.       I don't know if that is him or not. He must have  
19          cleaned up a lot under the idea that the law knows  
20          what they are doing. They got him.

21      Q.       Okay. So at the time you weren't sure in your  
22          identification?

23      A.       I never seen this guy before that incident. I  
24          only had brief glances during the time I was  
25          laying in the back seat. I wasn't 100 percent

1           sure, you know, other than pretty close. You know  
2           --

3       Q.     Okay. So your belief was it was pretty close?

4       A.     Yes, because it was still -- even when I got  
5           called into court to do that, it was quite a  
6           little while since the incident had happened  
7           anyway. For a couple brief glances, yes, that  
8           must be him but he is cleaned up a lot. You know,  
9           that is why I am here.

10      Q.     I am sorry?

11      A.     That is why I am here.

12      Q.     Do you remember being contacted by the someone  
13           from The Midwest Innocence Project? They came and  
14           talked to you?

15      A.     Yes, I do.

16                   MS. CRAIG: Okay. Your Honor, if I might  
17           approach?

18      BY MS. CRAIG:

19      Q.     Do you have a memory of looking at -- showing you  
20           what is marked as Plaintiff's Exhibit 2. Do you  
21           remember looking at those photographs?

22      A.     Yes.

23      Q.     Okay. And did those photos provide any  
24           recognition for you?

25      A.     Those photos provided he looked something like

1           that, but you know, I can't remember what I had  
2           for dinner last night let alone 17 years. That  
3           does have a similarity of the person that was with  
4           us.

5       Q.     Okay. And what is concerning about those four  
6           photographs?

7       A.     What is concerning about them?

8       Q.     Yes, or what is unusual about them?

9       A.     He is gray in one and not in the other.

10      Q.     Is that the same individual?

11      A.     Is it not? I don't know. Maybe gray is a  
12           different individual.

13      Q.     Okay.

14      A.     I don't know. With just brief glances I couldn't  
15           tell you. But that is why I am here. There could  
16           have been a mistake in the identification.

17      Q.     Okay. I'm showing you what I have marked as  
18           Plaintiff's Exhibit 7. Do you recognize that?

19      A.     Yes. Yes, I know my signature.

20      Q.     Is that an affidavit that you signed?

21      A.     Yeah. Yeah. I drew the line through the -- it  
22           said I had previously picked him out of a lineup.  
23           I said no, I didn't. I said that might be him.  
24           So it was kind of, like, words were being put in  
25           my mouth. I didn't say that directly. That is

1           why I drew the line through it and then I  
2           initialed it.

3       Q.     So you had the opportunity to edit and it you made  
4           those edits and then signed it.

5       A.     Yes.

6                   MS. CRAIG: Your Honor, I move to admit  
7       Plaintiff's Exhibit 7.

8                   MR. MINIHAN: No objection.

9                   THE COURT: Received.

10       BY MS. CRAIG:

11       Q.     Recently were you shown two additional photos when  
12           you were served a subpoena?

13       A.     I don't remember his name, but the guy who came  
14           down the last time I saw showed me photos, yes.

15       Q.     Okay. I am showing you what I have marked as  
16           Plaintiff's Exhibit 8. Are these the two  
17           photographs that you looked at?

18       A.     He showed me two photographs like that, and I  
19           would say, yes, those are the two photographs he  
20           showed me.

21       Q.     Did you write on the back of one of them?

22       A.     That would have been -- yes.

23       Q.     Okay. And on this photograph that -- on the two  
24           photographs, can you tell us what you wrote on the  
25           back?



1 A. I would have said I am not saying this is him. I  
2 am not saying this is the guy, but it would be my  
3 choice of the two photos.

4 Q. And you signed that on May --

5 A. 5-27-17.

6 Q. So of the two photographs in Plaintiff's Exhibit  
7 8, the one --

8 A. This would have been more my recollection of what  
9 the man looked like.

10 Q. Okay.

11 MS. CRAIG: Thank you. No further  
12 questions.

13 Your Honor, for the record we would like  
14 to identify that he picked out Ricky Amos. It is the two  
15 photographs that have been previously used.

16 THE COURT: Okay.

17 MS. CRAIG: They're just larger versions  
18 and then he wrote --

19 THE COURT: Okay.

20 Cross-examination?

21 CROSS-EXAMINATION

22 BY MR. MINIHAN:

23 Q. During that time what kind of drugs were you  
24 doing?

25 A. Drug of choice at the time was cocaine. Crack.

- 1 Q. Crack?
- 2 A. Yeah.
- 3 Q. Was there a discussion of going to a specific drug  
4 house or just going to an area where --
- 5 A. You could get that stuff in 50 different places,  
6 so a discussion of where to go to get it -- you  
7 just go to whichever one is closest.
- 8 Q. Okay.
- 9 A. I would have -- I wouldn't remember a discussion  
10 like that because that was talking about something  
11 like that 100 times a day back then.
- 12 Q. Right. It wasn't like you were going to a  
13 specific home as much as going to a  
14 neighborhood?
- 15 A. I couldn't even answer that. I could have got  
16 crack next door to where I lived.
- 17 Q. All right.
- 18 A. You have got to the have the money to get it. I  
19 believe that is what the whole thing was. We were  
20 going to take things from Wal-Mart and return it  
21 for cash. You could do that in those days.
- 22 Q. Right. How long -- I am sorry.
- 23 A. And I was not being very successful and up for  
24 days.
- 25 Q. So you had been up for days by that time?

1 A. I am going to say yes. I mean, I was all of the  
2 time back then. Those were the days I have put  
3 behind me. I am glad those are behind me, but in  
4 those days, yeah. Sad to say it, yes.

5 Q. Did that cause you to lose a lot of your memory  
6 during that time?

7 A. Yes.

8 MR. MINIHAN: All right. No further  
9 questions.

10 MS. CRAIG: Nothing further.

11 THE COURT: Okay. You can step down.  
12 Watch your step.

13 MS. CRAIG: Your Honor, my next witness is  
14 in the jury room.

15 DAVID COLVIN,  
16 called as a witness, having been first duly sworn to tell  
17 the truth, the whole truth, and nothing but the truth,  
18 was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MS. CRAIG:

21 Q. Would you state your name for the record.

22 A. David Colvin.

23 Q. Were you driving a car that was involved in a  
24 robbery back in '99?

25 A. Yeah.

1 Q. Can you tell me about that?

2 A. Ain't much to tell. We was all out getting high  
3 and decided to go to Wal-Mart and was gonna run in  
4 and grab something and go trade it for some -- on  
5 dope.

6 Q. What happened?

7 A. On the way out he was supposed to go in Wal-Mart  
8 and grab something. Instead he grabbed some  
9 lady's purse in the parking lot. And, I mean,  
10 lady put him on the ground. I don't -- I don't --  
11 didn't even think he got something. Anyway, come  
12 to find out it was supposed to be a cell phone or  
13 something he got.

14 Q. What did you do after you left Wal-Mart?

15 A. Huh?

16 Q. What did you do after you left Wal-Mart?

17 A. Got rid of him. Dropped him off.

18 Q. Let's go back. Who were you with that day?

19 A. Eddie Miller, his fiance at the time and a guy  
20 named Rick Jones.

21 Q. Did you know his last name at the time?

22 A. No. No, I didn't.

23 Q. Now, there is two individuals in this case. There  
24 is a Ricky Amos and there's Richard Jones. Do  
25 either of those names sound familiar to you?

1 A. Just Ricky is all I know, is Ricky.

2 Q. Okay. So when you initially picked him up, that

3 is the name that was provided to you?

4 A. Yes.

5 Q. Okay. And I am going to show you what we have

6 marked as Plaintiff's Exhibit No. 6. Do you

7 remember the area where you picked up Ricky?

8 A. Duplex?

9 Q. Yes.

10 A. Over there off Mission, top of Mission there --

11 what is the name of the apartments? Apartment

12 complex. They have got duplexes there.

13 Q. I am showing you Plaintiff's Exhibit 6.

14 A. That is it.

15 Q. Does that look familiar?

16 A. Yes, that is the duplex and then behind it are

17 apartments. Yes, that is it.

18 Q. Okay. Is that a fair and accurate picture of what

19 it looked like back in '99?

20 A. Oh, yeah, definitely.

21 Q. Okay.

22 A. Looks the same now.

23 Q. And was that where you picked up Ricky?

24 A. Yes.

25 MS. CRAIG: Okay. Your Honor, move to

1 admit Plaintiff's Exhibit No. 6.

2 MR. MINIHAN: No objection.

3 THE COURT: Received.

4 BY MS. CRAIG:

5 Q. Had you ever met Rick before, Ricky?

6 THE COURT: Can I see it?

7 MS. CRAIG: Sorry, Judge.

8 THE WITNESS: No.

9 BY MS. CRAIG:

10 Q. Okay. How long do you think you were with him?

11 A. Oh, I don't know. He was getting high. I don't  
12 know. Picked him up and was getting high. Ran  
13 out of money and went to the Wal-Mart. Grabbed  
14 something and, you know, more dope.

15 Q. Do you remember going with Detective Atwell to  
16 look at photographs?

17 A. Vaguely. Not really.

18 Q. Do you remember where you went?

19 A. Yes, a little room right outside the courtroom.

20 Q. Where was that? What courtroom?

21 A. I don't know. One of the courtrooms up here.

22 Q. So you're remembering when he came to court?

23 A. Yeah.

24 Q. Do you remember during the investigation looking  
25 at photographs?

- 1       A.       I remember seeing a couple papers, ones like what  
2               you had. Like, that paper has got 60 pictures on  
3               it. That is all I remember.
- 4       Q.       Okay. Remember I am going to approach with  
5               Plaintiff's Exhibit No. 4. Did you ever see this  
6               lineup?
- 7       A.       Yes, it was kind of pictures. Kind of like that.  
8               It was just six on it.
- 9       Q.       Okay. And to your knowledge did you pick anybody  
10              out?
- 11      A.       Hell, I can't remember. Hell, that was 20 years  
12              ago or something.
- 13      Q.       If I told you you picked out Mr. Jones, would you  
14              dispute that?
- 15      A.       This guy over here?
- 16      Q.       Yes.
- 17      A.       That isn't him. That isn't him. The guy was  
18              darker skinned than him. That isn't him.
- 19      Q.       That isn't the guy?
- 20      A.       No. He ain't never dark skinned.
- 21      Q.       The guy that was with you you believe had darker  
22              skin?
- 23      A.       Most definitely.
- 24      Q.       Okay.
- 25      A.       That isn't him.

1 Q. I am going to show you -- do you remember me  
2 coming to talk with you and showing you a group of  
3 pictures?

4 A. You came?

5 Q. Yes.

6 A. And you -- yeah.

7 MS. CRAIG: Judge, I'm going to show the  
8 witness what we believe is Exhibit C and D which is the  
9 mug shots that are in your packet.

10 BY MS. CRAIG:

11 Q. Do you remember looking at this whole packet of  
12 photos with me?

13 A. Yeah.

14 Q. What -- what was your understanding of those  
15 photos?

16 A. They all look like the same person.

17 Q. Okay. Did I ask you to go through and pick out  
18 anyone that looked most like the person who was in  
19 the car?

20 A. Yeah.

21 Q. Okay. And did you do that?

22 A. Yeah.

23 Q. Okay. And did you write on the back of any of  
24 those photographs?

25 A. I think, yeah, I signed my name or something.



1 Q. I am going to turn this one over. Can you read to  
2 us what is on the back of this one?

3 A. This looks like him. Dave Colvin, May 12th, 2017.

4 MS. CRAIG: Your Honor, for the record  
5 this is a picture of Mr. Amos.

6 BY MS. CRAIG:

7 Q. And you also picked out this one and wrote on the  
8 back of that.

9 A. Yes. Looks a lot heavier. Looks like the same  
10 guy but looks heavier. This was not that big at  
11 the time.

12 Q. Okay.

13 A. David Colvin.

14 Q. This was a picture of Mr. Jones. Those are the  
15 only two pictures that you wrote on; is that  
16 correct?

17 A. Yeah.

18 Q. And did the other pictures in the packet stand out  
19 to you at all?

20 A. They all looked the same. They all looked like  
21 the same guy. I mean --

22 Q. Do you remember testifying at trial?

23 A. Ma'am, come on. We was just coming of a major  
24 high. We was all -- I couldn't tell you anything  
25 about the trial.

1 Q. Okay.

2 A. For real.

3 MS. CRAIG: Your Honor, at this time I am  
4 going to move to admit Petitioner's Exhibit 9.

5 THE COURT: Nine?

6 MS. CRAIG: Yes.

7 THE COURT: Any objection?

8 MR. MINIHAN: No objection. Sorry.

9 THE COURT: Okay. It will be received.

10 MS. CRAIG: Thank you, Judge.

11 BY MS. CRAIG:

12 Q. In looking at Mr. Jones' now, is he the individual  
13 who was in the car with you that day?

14 A. No.

15 Q. Okay. Are you sure of that?

16 A. Positive. I am positive.

17 MS. CRAIG: Okay. Nothing further.

18 CROSS-EXAMINATION

19 BY MR. MINIHAN:

20 Q. Do you remember a lot about that day?

21 A. Man, we was all getting high. we were up for a  
22 few days. We was partying. I remember we just  
23 had to get the duplex -- we was up there buying  
24 dope. Ran out of money and went to Wal-Mart to  
25 try to get some more money. You know, we was

1 going to trade for some more dope.

2 Q. When you went to get dope and ended up picking up  
3 the perpetrator, did you go to a specific address  
4 or just a neighborhood where you knew --

5 A. Just went to apartments where everybody goes to  
6 buy dope.

7 Q. It isn't that particular one. It could have been  
8 any in that area?

9 A. That is where we picked up is that duplex.

10 Q. Right. But you weren't going directly to that  
11 duplex?

12 A. No, we were -- we was going to the apartments  
13 right there. The apartments all the way around  
14 there. Yeah.

15 Q. You had never seen the perpetrator before that  
16 day?

17 A. No, I never. I didn't know the guy.

18 MR. MINIHAN: No further questions.

19 THE COURT: Anything else?

20 MS. CRAIG: No, Your Honor.

21 THE COURT: You can step down.

22 MS. CRAIG: Judge, we have one witness  
23 that we're going to do by phone, and she is going to need  
24 to be called now. It is a little bit out of order. If  
25 we can do that.

1 THE COURT: We're going to take -- let's  
2 take a 20-minute break and then we will come back.  
3 During this time -- I cannot find the Court's  
4 instructions that were given at the time of the trial. I  
5 see the State's proposed instructions but I don't ever  
6 see the instructions that were provided. They are not in  
7 the system. Do you have them?

8 MS. CRAIG: I have my copy of the  
9 instructions that were given to the jury.

10 THE COURT: Yes.

11 MR. MINIHAN: Yes.

12 MS. CRAIG: I can provide them to the  
13 Court.

14 THE COURT: Okay. Yes, I would like to  
15 see a copy. Okay.

16 MS. CRAIG: I will find them in my bag.  
17 (THEREUPON, a recess was taken, after  
18 which the following proceedings continued  
19 in open court, the parties appearing as  
20 before:)

21 THE COURT: Okay. And the person we are  
22 calling?

23 MS. CRAIG: Judge, her name is Alicia  
24 S-u-r-r-e-l-l.

25 (THEREUPON, Judge Moriarty placed a phone

1 call from the bench in open court.)

2 THE COURT: Alicia, this is Judge  
3 Moriarty, and you are here to testify today. Would you  
4 raise your right hand and my court reporter will swear  
5 you in.

6 **ALICIA SURRELL,**  
7 called as a witness, having been first duly sworn to tell  
8 the truth, the whole truth, and nothing but the truth,  
9 was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MS. CRAIG:

12 Q. Very well. Alicia, this is Alice Craig. I'm  
13 going to ask you some questions for the record.  
14 Could you state your full name, please.

15 A. Alicia Surrell.

16 Q. And where did you grow up?

17 A. I grew up in Kansas City.

18 Q. Okay. Who is your mother?

19 A. Cynthia Riley.

20 Q. And when when you started high school, where did  
21 you live?

22 A. I lived in Kansas City on the Kansas side. We  
23 were actually in the projects, Rose Manor, which  
24 was off 41st Street.

25 Q. Do you remember the exact address?

1 A. 2722.

2 Q. West 41st?

3 A. 41st street.

4 Q. Okay. Who did you live there with?

5 A. It was me, my mother, my little sister for the

6 most part and then my mother asked Ricky Amos and

7 his mother Linda to live with us for a little

8 bit.

9 Q. Okay. Do you remember what years it would have

10 been that you were living at that address?

11 A. Roughly -- since it has been so long, I don't know

12 exact, but I know we were there in '98, '99.

13 Q. Okay. And was that your first year in high

14 school?

15 A. Yes, it was.

16 Q. And how do you know Ricky Amos?

17 A. He is actually my mother's husband's brother.

18 Q. Okay. So your mother was married to Mr. --

19 A. To Rick -- Danny Amos.

20 Q. Danny Amos was married to your mother?

21 A. Mm-hmm.

22 Q. Were they together in '98, '99?

23 A. No.

24 Q. Okay. But you still knew them?

25 A. Yes. They would come out and hang out with my

1 mom. You know, there was just a whole group of  
2 them that would come and play games and stuff and  
3 I would see them from time to time, yes.

4 Q. Okay. Where did Ricky Amos and his mother live to  
5 your knowledge?

6 A. From what I remember, they lived around the corner  
7 from us. I don't remember the street name.

8 Q. Okay. And when was it or do you remember why they  
9 came to live with you?

10 A. Because they got kicked out of their place.

11 Q. And are you -- do you still have any contact with  
12 any of the Amos family?

13 A. I do on occasion talk to Ricky, but lately it was  
14 just to let him know that my mother had passed so  
15 he could pass that to his family. I really don't  
16 want to keep in contact with them.

17 Q. Okay. And are you Facebook friends with him?

18 A. Yes.

19 MS. CRAIG: Okay. Judge, I don't have any  
20 further questions.

21 THE COURT: Okay.

22 CROSS-EXAMINATION

23 BY MR. MINIHAN:

24 Q. This is Shawn Minihan for the State. Do you  
25 remember when you first met Dan Amos?

1       A.       It was shortly after I came to live with my  
2               mother, and that was when I was -- let's see -- 10  
3               and a half, 11. So that would have been in '96,  
4               '97.

5       Q.       Okay. And is that the same time that you would  
6               have met Ricky?

7       A.       No, I actually met him, like, the next following  
8               year. Because Ricky was in and out of jail at the  
9               time, so I didn't get to meet him until a little  
10              bit later, the next following year.

11      Q.       And they were, I am assuming, friends of your  
12              mom?

13      A.       Yes.

14      Q.       How did you -- do you know how she met them?

15      A.       No, I don't.

16      Q.       Okay. But during the 1998/99 time period, they  
17              would -- Ricky and Danny would come over and play  
18              dominoes?

19      A.       Mm-hmm.

20      Q.       What point did Danny and your mom begin an  
21              intimate relationship, begin dating?

22      A.       It didn't really start getting serious until he  
23              was locked up, when he went to prison, and in  
24              October of 2002, they did the marriage -- the  
25              common law marriage through the prison system.



1 Q. Okay. So they signed some sort of a thing for the  
2 prison system so they -- DOC knew they were  
3 married?

4 A. Yes.

5 Q. Do you remember much about Ricky back then?

6 A. I knew that -- to me Ricky was the quiet one,  
7 sneaky. He was always getting into something.  
8 Schemer. There was nothing that he pretty much  
9 would not do to get money at the time. So, I  
10 mean, that was just my way of perceiving him from  
11 how he was making himself seen.

12 Q. Do you remember any drug use by Ricky or Danny  
13 during that time?

14 A. Not Danny because -- no, not Danny. But Ricky,  
15 yes.

16 Q. Okay. Do you remember what he used?

17 A. No, I don't.

18 MR. MINIHAN: I don't think I have any  
19 further questions.

20 MS. CRAIG: Nothing further, Judge.

21 THE COURT: All right. We have nothing  
22 else. Thank you for taking time.

23 THE WITNESS: Thank you.

24 THE COURT: Next witness.

25 MS. CRAIG: Judge, we are going to call a

1 witness out of order because he needs to get back. We  
2 have -- well, we have a copy of the instructions. I also  
3 have what was read in the transcript.

4 MS. CRAIG: I think Mr. Minihan is going  
5 to call a witness now, Judge.

6 THE COURT: Okay.

7 RICKY LEE AMOS, SR.,

8 called as a witness, having been first duly sworn to tell  
9 the truth, the whole truth, and nothing but the truth,  
10 was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. MINIHAN:

13 Q. Could you state your name for the record.

14 A. Ricky Lee Amos, Sr.

15 Q. Do you know why we called you here?

16 A. Yes. I believe we had a discussion, you and I.

17 Q. What was that about?

18 A. About a aggravated robbery 17 and a half years  
19 ago.

20 Q. All right. Do you know anything about that  
21 aggravated robbery?

22 A. No, I don't.

23 Q. Do you know Cynthia E. Riley?

24 A. Yes, I do.

25 Q. How do you know her?

1 A. That was my brother's wife.

2 Q. How about Alicia Surrell?

3 A. Yes, I do.

4 Q. And she has a sister; right?

5 A. Yes, she does.

6 Q. Do you remember her name?

7 A. Jennifer.

8 Q. Did you ever live with them?

9 A. Yes.

10 Q. Do you remember when that was?

11 A. I can't be exact on the time.

12 Q. I am sorry?

13 A. I can't be exact on the time.

14 Q. Any ballpark idea?

15 A. About 20 years ago.

16 Q. All right. Were you -- let me back up a little

17 bit. As an adult did you ever live with your

18 mother?

19 A. Yes.

20 Q. All right. And was that before or after you lived

21 with Cynthia and Alicia?

22 A. Before and after.

23 Q. Okay. So you lived there several times during

24 that period?

25 A. Lived there?

1 Q. With Alicia and Cynthia.

2 A. Yes. I have lived with them off and on, yes.

3 Q. Okay.

4 THE COURT: Which exhibit number are you  
5 looking for?

6 MS. CRAIG: The duplex. I have it.

7 BY MR. MINIHAN:

8 Q. What is the -- what is that marked?

9 A. Page 6.

10 Q. All right. Does that look familiar?

11 A. Yes, it looks like Melrose apartments.

12 Q. And the address for that is 2722 West 41st Street  
13 or avenue; right?

14 A. I can't -- yes, that is what's on the top, yes.

15 Q. Do you know if Cynthia and her kids lived there at  
16 one time?

17 A. Somewhere similar to that building, yes, they  
18 have.

19 Q. Did you ever live there with them?

20 A. Yes, in that apartment complex I did.

21 Q. In that specific one?

22 A. I can't be sure to tell you whether it was that  
23 specific apartment.

24 Q. And when you lived with their mother and your  
25 mother, that was pretty close to that area?

1 A. Yes. This is an apartment complex, so yes, it is  
2 somewhere in that vicinity.

3 Q. Does a 4021 address sound familiar? 4021  
4 Springfield?

5 A. Yes.

6 Q. That is where you and your mother lived?

7 A. That is where my mother lived.

8 Q. All right. Do you know David Colvin?

9 A. No, I don't.

10 Q. Do you know Eddie Miller?

11 A. No, I don't.

12 Q. Do you know the defendant here, Richard Jones?

13 A. No, I never seen him.

14 Q. All right. Back then were you using drugs?

15 A. I don't believe at that time I wasn't.

16 Q. During 1999 period?

17 A. Like I told you before, I believe I was  
18 incarcerated at that time.

19 Q. Okay. You believe you were incarcerated on  
20 May 31st, 1999?

21 A. I don't know about May, but in '99 I believe I  
22 was.

23 MR. MINIHAN: Okay. No further  
24 questions.

25 CROSS-EXAMINATION

1 BY MS. CRAIG:

2 Q. Do you have any ability to tell us the dates that  
3 you were incarcerated in '99?

4 A. No, I can't be exact.

5 Q. Okay. And can you tell us a little bit about the  
6 that neighborhood? Was there drug use going on in  
7 that neighborhood?

8 A. That is the projects, yes.

9 Q. Okay. And so would you say there is buying and  
10 selling that would go on in that area of drugs,  
11 illegal drugs?

12 A. Yeah, there was buying and selling drugs.

13 Q. Okay. And did people in that neighborhood use  
14 drugs?

15 A. I guess so.

16 Q. Okay. Did you have people or do you have a memory  
17 of people driving into that neighborhood maybe  
18 from outside to buy drugs?

19 A. I mean --

20 Q. That was a common occurrence?

21 A. Yeah, at the time it was.

22 Q. Okay. Did you ever participate in that?

23 A. No, I didn't.

24 MS. CRAIG: Okay. Judge, I don't have  
25 anything further.

1 THE COURT: In '99 you think you were in  
2 custody. Do you know where it would have been? Not  
3 when.

4 THE WITNESS: Maybe Missouri, I believe.

5 THE COURT: Okay. And did you -- how much  
6 did you flatten then? Do you remember?

7 THE WITNESS: I can't tell you, Your  
8 Honor.

9 THE COURT: Do you know what you were in  
10 custody for?

11 THE WITNESS: No. Like I told the DA when  
12 I spoke with him, he have to go in and if you could  
13 research that, because I have been incarcerated for  
14 numerous things.

15 THE COURT: Okay. Okay. I don't have  
16 anything else. Any questions as a result of mine?

17 MR. MINIHAN: Nothing.

18 MS. CRAIG: Nothing further.

19 THE COURT: Okay. Watch your step.

20 MR. MINIHAN: Can he be excused?

21 THE COURT: Yes. Okay. Next witness?

22 MS. CRAIG: Your Honor, at this time I  
23 would call Michael Bussell.

24 **MICHAEL BUSSELL,**

25 called as a witness, having been first duly sworn to tell

1 the truth, the whole truth and nothing but the truth, was  
2 examined and testified as follows:

3 DIRECT EXAMINATION

4 BY MS. CRAIG:

5 Q. Could you state your name for the record.

6 A. Michael Bussell.

7 Q. And can you tell us a little bit about your  
8 background?

9 A. I am a retired police detective from Lenexa Police  
10 Department.

11 Q. How long were you a detective or in law  
12 enforcement?

13 A. From '96 until October 7th, 2013.

14 Q. Okay. And what do you do now?

15 A. I own a private investigations firm.

16 Q. Okay. How did you get involved in this case?

17 A. I was contacted by you.

18 Q. Okay. And what was your primary your focus in  
19 this investigation?

20 A. To review the case. I was advised that there was  
21 another possible suspect in this case, a man named  
22 Ricky Amos. By reading the police reports, the  
23 one thing that wasn't in question was the  
24 witnesses took the detectives to an address of  
25 2722 North 41st Street. My goal was to see if



1           there was any connection between Ricky and that  
2           address.

3       Q.     How did you go about that doing that?

4       A.     I did TLO which is a database that I belong to as  
5           a private investigator. I did name checks. I did  
6           address checks. TLO gives an extensive history of  
7           who has lived there. I started doing background  
8           checks on the people who lived there, just trying  
9           to get any common thread or connection.

10      Q.     Okay. Let's start with the address on  
11           Springfield.

12      A.     Yes.

13      Q.     What was that address?

14      A.     I believe it was 4021 Springfield, I believe.

15      Q.     Who lived there?

16      A.     Linda K. Amos showed to be a resident there.

17      Q.     And was there anybody else that showed up  
18           associated with that address?

19      A.     A Ricky Amos.

20      Q.     Okay. What time period was that association?

21      A.     Between -- between February of 1997 and June of  
22           1999.

23      Q.     Okay. Could you determine from your investigation  
24           why they left in June of '99?

25      A.     I was told they got evicted --

1 Q. Okay.

2 A. -- by Ricky Amos.

3 Q. Okay. So you interviewed Mr. Amos?

4 A. I did.

5 Q. Okay. Did you see him here in the courtroom just

6 a few minutes ago?

7 A. I did.

8 Q. And he told you they were evicted?

9 A. Yes.

10 Q. Did he provide you any information as to where

11 they went after that?

12 A. He provided me another address that he said he and

13 his mother lived in then.

14 Q. Okay.

15 A. I had asked him if he -- if he had ever gone to

16 the 2722 address. He told me had never been to

17 that address.

18 Q. How far away is that Springfield address to the

19 2722 41st Street address?

20 A. Google Maps shows it -- following the street and

21 sidewalks, it shows it as 700 feet.

22 Q. Did you map that?

23 A. I did.

24 Q. I am showing you what I am going to mark as

25 Plaintiff's Exhibit 10. Do you recognize that?

1 A. Yes, I do.

2 Q. What is it?

3 A. This is a screen shot of the route from the  
4 Springfield address to the 41st Street address  
5 from Google Earth.

6 Q. At the time you made this, had you figured out any  
7 connection between Mr. Amos and the 41st Street  
8 address?

9 A. No, I had not.

10 MS. CRAIG: Your Honor, I would move to  
11 admit Plaintiff's Exhibit 10.

12 MR. MINIHAN: No objection.

13 THE COURT: Received.

14 BY MS. CRAIG:

15 Q. What did you do at that point in your  
16 investigation?

17 A. I responded to the address. I took a video from  
18 the Springfield address to the 41st Street address  
19 just to show the proximity on video. It took me,  
20 I believe, 51 seconds to drive it at about a  
21 walk's pace.

22 Q. Did you continue your investigation to try and tie  
23 Mr. Amos to the 41st Street address?

24 A. I did.

25 Q. What did you do?

1       A.       I took all of the residents that showed that lived  
2               at 2722 West 41st. I took all of those people and  
3               then I started doing a social media check,  
4               primarily Facebook. I noticed that one of the  
5               residents there was Cynthia Riley. Another  
6               resident that showed to live there or that showed  
7               to be one of Cynthia Riley's relatives from the  
8               TLO report was Alicia Surrell. So I did a  
9               Facebook check of Cynthia Riley. I saw pictures  
10              of who was identified to be Alicia Surrell, and I  
11              made the assumption that it may be -- may be  
12              mother and daughter.

13                       I then went to Alicia Surrell's Facebook  
14                      and looked at her friends list and saw that Ricky  
15                      Amos was a friend of Alicia Surrell.

16       Q.       What time period could you determine was Cynthia  
17               living at the 2722 41st Street address?

18       A.       According to TLO, it showed her there from 3-13 of  
19               1996 until 10-18 of 2000. However, TLO also  
20               showed that she had some judgments made against  
21               her in 1993 where she also listed that address  
22               during those judgments.

23       Q.       So it might have been earlier as well?

24       A.       Could have.

25       Q.       Okay. Did you interview Cynthia Riley?

1       A.       I did not.

2       Q.       Okay. Why not?

3       A.       I have determined that -- I found records that she

4               was -- she died in 2016.

5       Q.       Who did you contact after that?

6       A.       Via Facebook I sent an instant message to Alicia

7               Surrell, identified myself and asked her to please

8               contact me by phone.

9       Q.       Did she call you?

10      A.       She did.

11      Q.       Okay. And as part of that conversation, did you

12              discuss the address at 41st Street?

13      A.       Yes.

14      Q.       Okay. Did you determine when she lived there?

15      A.       Yes.

16      Q.       When did she live there?

17      A.       She said it was somewhere around '96 she believed

18              she must have lived there. I asked her

19              specific -- her relationships with Danny Amos.

20              She was able to tell me that her mother married

21              him in October of 2002. Then I asked if she knew

22              Ricky Amos. She said she did not only from the

23              neighborhood, but Ricky Amos and his mother, Linda

24              Amos, moved in with Cynthia Riley and Alicia when

25              they got evicted from their other address.

1 Q. Okay. So the two things in common were that Ricky  
2 said he moved out of Springfield when he was --  
3 when they were evicted?

4 A. Correct.

5 Q. And that Alicia said they moved in -- Ricky and  
6 his mother moved in with her after they were  
7 evicted?

8 A. Correct.

9 Q. And when again was it that you can determine they  
10 were evicted?

11 A. TLO shows that the last listed date for Linda K.  
12 Amos at the Springfield address was June of 1999.

13 Q. Okay. Based on your experience and background,  
14 what concerns you about this case, this  
15 conviction?

16 A. That the conviction was based solely on eyewitness  
17 testimony. There was no corroboration of evidence  
18 to support the eyewitness testimony. Another  
19 problem I have without benefit of seeing the  
20 original photo lineup that was used in my training  
21 and experience that would -- that would not be a  
22 righteous lineup.

23 Q. Let's take a look at that. Judge, do you have  
24 that?

25 THE COURT: I think you have that.

1 THE WITNESS: I don't have it.

2 THE COURT: Are you talking about this  
3 one?

4 MS. CRAIG: Yes.

5 THE COURT: I do have this one. There is  
6 two lineups.

7 MS. CRAIG: Yes, there are.

8 BY MS. CRAIG:

9 Q. Which exhibit are you looking at?

10 A. It is marked P as in Paul 4.

11 Q. And what concerns you about that lineup?

12 A. Through the training that I have received and my  
13 experience and having made up photo lineups in my  
14 career, the purpose is to find people that look  
15 similar to one another. What strikes out to me --  
16 and not have one photo stick out from the others.  
17 What is striking to me is that photo number one is  
18 much lighter than the others and not -- it looks  
19 to me like five of the six in this lineup share  
20 the same darkness or pigmentation to their skin  
21 which is different than number one who appears to  
22 be much lighter.

23 Q. Number one -- is that Mr. Jones?

24 A. That is Mr. Jones.

25 Q. Okay. And it is a bad copy, but do you feel that

1 the copy is making Mr. Jones stand out more for  
2 some reason?

3 A. No, I just -- just from seeing and looking at the  
4 other five individuals in this photo, I would  
5 believe although this is very dark, I would  
6 believe they would be much darker pigmentation  
7 than Mr. Jones appears in this photo.

8 Q. So if the original perpetrator was described as  
9 Hispanic and light-skinned, who's most reflective  
10 of that?

11 A. Photo number one which would be Mr. Jones.

12 Q. Okay. Is it common to put the suspect in position  
13 number one?

14 A. It is -- you can ask 10 different detectives and  
15 they will have 10 different answers. My favorite  
16 was always number five.

17 MS. CRAIG: Your Honor, I don't have any  
18 further questions.

19 THE COURT: Mr. Minihan?

20 CROSS-EXAMINATION

21 BY MR. MINIHAN:

22 Q. In your experience, do witnesses have a better  
23 memory closer in time to the event than they  
24 would, say, 15 years later?

25 A. Yes.



1 Q. The photo lineup that you have is darker mainly  
2 because of the photocopying, though; right?

3 A. Without seeing the original, I don't know.

4 Q. And were you an officer back in '99?

5 A. Yes.

6 Q. Back then did they not have a computer system that  
7 randomly chose the other pictures that are placed  
8 in a lineup and what position they are in?

9 A. I don't recall when that came out. I do know that  
10 the Johnson County Sheriff's Office came out with  
11 software that picked for you which was a very good  
12 program. They almost picked six people that could  
13 be identical brothers to one another, so you had  
14 to pick and choose which ones. But I don't  
15 remember when that came out.

16 Q. Okay. And do you remember who made this lineup?  
17 Which was it -- Wyandotte County or was it  
18 Johnson?

19 A. I believe it was detective -- I believe it was  
20 Detective Lawson with Kansas City, Kansas Police  
21 Department.

22 MR. MINIHAN: Okay. No further  
23 questions.

24 THE COURT: Anything else?

25 MS. CRAIG: Just briefly.

REDIRECT EXAMINATION

1

2 BY MS. CRAIG:

3 Q. Back in '99, would you have had address search  
4 engines at that time?

5 A. We did, but it was limited. It isn't like we have  
6 today.

7 Q. Would you have done a Facebook search?

8 A. In 1999 -- I know for a fact in 1999 I was working  
9 John Robinson. We were just beginning to  
10 understand how big the internet was back then.  
11 There was no Facebook back then.

12 Q. If you were going to find somebody at a location,  
13 how would you do it?

14 A. I would begin by going to the address and knocking  
15 on the door. If there was no response, if I did  
16 suspect there was maybe criminal activity, if I  
17 had the manpower and the time, perhaps I would do  
18 surveillance and watch to see what comes and goes  
19 from there. Maybe stop them down the road and ask  
20 them some questions about who lives there.

21 Q. From your information was Alicia Surrell living  
22 there at the time?

23 A. Yes.

24 Q. Okay. And she was in high school?

25 A. Yes.

1 Q. Okay. So there were people coming and going from  
2 that residence; is that correct?

3 A. From what I have been told, yes.

4 Q. And would you anticipate a door hanger from a  
5 police department would get a good response in  
6 that type of neighborhood?

7 A. Never did in my experience.

8 MS. CRAIG: Okay. Thank you. No further  
9 questions.

10 THE COURT: Anything else?

11 MR. MINIHAN: No, Your Honor.

12 Any other witnesses?

13 MS. CRAIG: Judge, we have one more,  
14 Mr. Jones.

15 RICHARD JONES,

16 called as witness, having been first duly sworn to tell  
17 the truth, the whole truth, and nothing but the truth,  
18 was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MS. CRAIG:

21 Q. Could you state your name for the record.

22 A. Richard Jones.

23 Q. Okay. And did you commit an aggravated robbery at  
24 the Wal-Mart on March 31st, 1999?

25 A. No.

- 1 Q. Okay. Where were you on March 31st?
- 2 A. I was at my daughter's mother's house where I
- 3 lived at the time, Tia Kidd.
- 4 Q. Why -- I am sorry. Did I say May 31st?
- 5 A. May 31st.
- 6 Q. I am sorry. So you didn't commit a robbery on
- 7 May 31st?
- 8 A. No.
- 9 Q. Why do you remember being at Tia's house?
- 10 A. Because May 31st is Memorial Day and her birthday
- 11 was May 30th.
- 12 Q. What did you do on the 30th?
- 13 A. Barbecue.
- 14 Q. Okay. And what did you do on the 31st?
- 15 A. Barbecue.
- 16 Q. Okay. How -- after you were convicted and our
- 17 office contacted you, how did you come to realize
- 18 that somebody else or who might have committed
- 19 this crime?
- 20 A. I was talking to a guy that I got close with over
- 21 the years and we was discussing my case, and just
- 22 out the blue he said he knew who did it. And I
- 23 asked him who did it. He said a guy named Ricky
- 24 Amos. And then by the time I was already in
- 25 contact with y'all office, I asked y'all to look

1           Ricky Amos up.

2       Q.     Had you ever seen him ever before?

3       A.     No.

4       Q.     You are still in prison on the aggravated robbery;  
5           is that correct?

6       A.     Yes.

7       Q.     Okay. And were you mistaken for Mr. Amos?

8       A.     In prison?

9       Q.     Yes.

10      A.     Yes.

11      Q.     Okay. Were you surprised when you did eventually  
12           see the photo of Mr. Amos?

13      A.     I was very surprised, but it made sense to me  
14           then.

15      Q.     Why does it make sense?

16      A.     Because just the skin complexion and the facial  
17           structure and the hair and just everything. Like,  
18           he even looked like me to me.

19      Q.     Okay. Have you ever lived in Kansas City,  
20           Kansas?

21      A.     No.

22      Q.     Okay. When you were charged with this crime, did  
23           you apply for indigent services?

24      A.     I think so.

25      Q.     Okay.

- 1 A. I don't know.
- 2 Q. I am going to show Mr. Jones Exhibit M in the  
3 stipulations. Do you recognize that?
- 4 A. Yeah. That isn't my writing but, yes, I recognize  
5 it.
- 6 Q. Do you recognize the address that is on here,  
7 2032 Spruce?
- 8 A. Yes.
- 9 Q. Whose address is that?
- 10 A. That was my mother's address.
- 11 Q. Okay. Were you living there at the time?
- 12 A. No.
- 13 Q. Okay. Where had you been prior to being arrested  
14 for this?
- 15 A. What do you mean?
- 16 Q. Were you living somewhere else?
- 17 A. Me and Tia Kidd was living together.
- 18 Q. Where was that?
- 19 A. 7645 Monroe.
- 20 Q. Where is that at?
- 21 A. Kansas City, Missouri.
- 22 Q. And after you were convicted for this crime, there  
23 was a presentence investigation interview?
- 24 A. Yes.
- 25 Q. Okay. And did they ask you for an address at that

1 point in time?

2 A. Yes.

3 Q. Whose address did you give them?

4 A. My mother's address.

5 Q. Where was that?

6 A. 3728 Eaton, Kansas City, Kansas.

7 Q. Okay. Did you ever live at that address?

8 A. No.

9 Q. Why did you give them that Eaton address?

10 A. My address -- the attorney said I had to have a  
11 Kansas address in order for the PSI to be  
12 completed, so I gave them my mother's address.

13 Q. Was your mother living there at the time?

14 A. I'm not sure if she was still living there at that  
15 time.

16 Q. That is the address you provided?

17 A. Right.

18 Q. You never lived there?

19 A. No.

20 MS. CRAIG: Okay. I don't have anything  
21 further, Judge.

22 THE COURT: Mr. Minihan?

23 CROSS-EXAMINATION

24 BY MR. MINIHAN:

25 Q. So you spent time in Kansas; right?

- 1 A. As far as --
- 2 Q. Well, early on when you were younger, you had some
- 3 convictions from Geary County?
- 4 A. Yes.
- 5 Q. And what city is that?
- 6 A. Junction City, Kansas.
- 7 Q. And it sounds like your mother lived in Kansas?
- 8 A. Yes.
- 9 Q. That was across from KU Med?
- 10 A. Yes.
- 11 Q. Do you know how far that is from this 2722
- 12 address?
- 13 A. No.
- 14 Q. Be within a mile or two?
- 15 A. I am not sure.
- 16 Q. Okay. Do you remember at trial that there was a
- 17 big deal about the suspect having a tattoo?
- 18 A. Right.
- 19 Q. And your attorney asked Walters who was the -- the
- 20 witness, he had a tattoo. Walters said yes, sir.
- 21 He said on his left forearm area and he said yes;
- 22 is that correct? Do you remember that?
- 23 A. Yes.
- 24 Q. And then later on, they asked you to show your
- 25 forearm?



1 A. Yes.

2 Q. Did you know that in the police report it said  
3 that it was a left arm but it was between his  
4 elbow and shoulder?

5 A. No. I believe they said it was between the  
6 forearm and the wrist.

7 Q. Right. At trial; right?

8 A. Yes.

9 Q. But did you know that the police report said it  
10 was between the elbow and shoulder?

11 A. No.

12 Q. All right. Could you raise up your left shoulder  
13 or left --

14 A. (Witness indicating.)

15 Q. Thank you. During that time were you doing any  
16 drugs?

17 A. Marijuana.

18 Q. Have you ever done cocaine?

19 A. No.

20 MR. MINIHAN: No further questions.

21 THE COURT: Anything else?

22 REDIRECT EXAMINATION

23 BY MS. CRAIG:

24 Q. At the time of trial, the witness specifically  
25 said that tattoo was between the wrist and the

1 elbow; is that correct?

2 A. Right.

3 Q. Do you have a tattoo between your wrist and your  
4 elbow?

5 A. I do now.

6 Q. Okay.

7 A. But these tattoos -- the one between my shoulder  
8 and my elbow and the one between my wrist and my  
9 forearm was all done after -- all this has been  
10 done since I have been incarcerated. These wasn't  
11 there when I went to trial.

12 Q. Do you remember when you got those?

13 A. I want to say in 2007. 2007, 2006.

14 Q. Okay. And do you remember at trial it was pretty  
15 clear that you did not have the tattoo at the  
16 time; is that correct?

17 A. Right.

18 MS. CRAIG: Nothing further.

19 MR. MINIHAN: No, Your Honor.

20 THE COURT: All right. Watch your step.

21 MS. CRAIG: Nothing further.

22 THE COURT: Will the State have any  
23 additional witnesses?

24 MR. MINIHAN: No, Your Honor.

25 THE COURT: Let's recess until 1:30 and

1       then I will have some statements of counsel at that time.

2       Okay. Come back at 1:30.

3                       (THEREUPON, the lunch recess was taken,  
4                       after which the following proceedings  
5                       continued in open court, the parties  
6                       appearing as before:)

7               THE COURT: Let me make sure I have all of  
8       the exhibits. I have the stipulated exhibits -- you guys  
9       don't have any on your table; correct?

10              MS. CRAIG: It is entirely possible I do.  
11       If you are missing something, it is probably in my --

12              THE COURT: Let me check here. Okay. I  
13       have the stipulated exhibits. I have 1, 2, 3, 4, 5, 6,  
14       7, 8, 9 and 10. Is that all the exhibits there were?

15              MS. CRAIG: Yes. That is all, Judge.

16              THE COURT: They have all been received  
17       along with the stipulated exhibits.

18              MS. CRAIG: Judge, we had meant to do this  
19       but forgot to do it prior to lunch, and I think the  
20       parties will stipulate that Mr. Amos was not in custody  
21       on May 31st of 1999.

22              MR. MINIHAN: That is correct, Your Honor.

23              THE COURT: Okay. And there was an  
24       instruction provided to the jury on witness  
25       identification.

1 MS. CRAIG: Yes, Judge.

2 THE COURT: Okay. Ms. Craig, how about --  
3 for both parties, as the facts relate to the law in this  
4 case, tell me how you think this should unfold, making  
5 sure that you focus on the law.

6 MS. CRAIG: Judge, I think Mr. Jones has  
7 previously filed a 1507 petition, and of course we're  
8 beyond the one-year statute of limitations. But 60-1507  
9 has been amended to include an actual innocence provision  
10 which is 1507(f)(2)(A). And essentially, the (F)(2)  
11 provision of 1507 allows for the Court to consider a --  
12 either successive or out of time habeas petition for  
13 manifest injustice and then under the totality of the  
14 circumstances.

15 What they have added in (f)(2)(A) is an  
16 actual innocence in that case. It is a new provision, so  
17 we don't have any case law for the Court to consider in  
18 regards to that. But the language that is in the statute  
19 is that it is more likely than not that no reasonable  
20 juror would have been -- would have convicted the  
21 prisoner in light of the evidence that was presented to  
22 the Court or the new evidence. If you go and look at  
23 some of the Supreme Court cases, Schlup vs. Delo which is  
24 -- I think is cited in our petition -- that is the exact  
25 language that ultimately is used in that case.

1                   And in those cases, essentially it gives  
2                   the Court some wide latitude to consider evidence. What  
3                   you are looking for is factual innocence and a claim and  
4                   that a petitioner must show a fair probability that the  
5                   trier of fact would have entertained reasonable doubt as  
6                   to the guilt of the individual knowing the new evidence.  
7                   In that opinion at least for constitutional purposes or  
8                   in looking at it under Schlup, one of the things they say  
9                   is that it is a lower burden than clear and convincing  
10                  for this Court to consider and also that a reasonable  
11                  juror when you are looking at going -- when you are  
12                  looking at that, that they consider a reasonable juror to  
13                  be a fair juror who would consider all of the evidence  
14                  and faithfully follow the instructions.

15                 And it also allows you as the habeas court  
16                 to consider the credibility of the witnesses because you  
17                 are essentially the trier of fact at this hearing.

18                 So from the petitioner's perspective, what  
19                 we are arguing the Court needs to look at is in light of  
20                 the evidence that was presented today, what would a  
21                 reasonable juror have done at the time. And confronted  
22                 with the evidence of the possibility that Mr. Amos  
23                 committed this crime rather than Mr. Jones and the ties  
24                 he had to the address where this started, I think it is  
25                 pretty clear that a reasonable juror would have found

1 reasonable doubt in convicting Mr. Jones of this crime.

2 THE COURT: Okay. Mr. Minihan?

3 MR. MINIHAN: I think the right test is  
4 whether a reasonable juror would have convicted the  
5 defendant, but you have to look at it through the prism  
6 of manifest injustice. So I will stand on the facts that  
7 were presented.

8 THE COURT: Okay. Here is what I am going  
9 to do. I am going to take a recess until about two  
10 o'clock. Then I will come back with a decision. Okay?

11 (THEREUPON, a recess was taken, after  
12 which the following proceedings continued  
13 in open court, the parties appearing as  
14 before:)

15 THE COURT: I want to remind everyone that  
16 this is a court and that you absolutely need to maintain  
17 your decorum and not say or do anything that is  
18 inappropriate after my ruling.

19 The court has reviewed the statute and the  
20 cases that have been cited and the facts. I will first  
21 state that in this matter under 60-1507(f)(2), the court  
22 does make a specific finding that this time -- this  
23 matter was not timely filed, however, that (f)(2) does  
24 apply in order to prevent manifest injustice. The court  
25 also notes that under paragraph 1507(2)(b), the court

1 makes -- if the court does make any findings, it must be  
2 stated in a factual and a legal basis and it must be in  
3 writing. The court is going to make some findings and  
4 determinations today. The writing will be the transcript  
5 that will be completed and forwarded to the parties  
6 immediately after the hearing or as soon as Abby can do  
7 that.

8 The court has looked at all of the  
9 exhibits and I will talk about them at the very end, but  
10 first I will talk about the facts in this case. Of  
11 course, the standard in this matter requires that the  
12 prisoner show it is more likely than not that no  
13 reasonable juror would have convicted him in the light of  
14 the new evidence.

15 In this matter, the first witness was  
16 Mr. Cowles. Mr. Cowles stated that he was in fact the  
17 prosecutor and that he worked on the case. He does not  
18 have specific recollections of this particular case  
19 because he was working on another matter at the time plus  
20 he was working on a case that involved a similar factual  
21 setting as the one that we have Mr. Jones here on.

22 Mr. Cowles stated that this was only an  
23 eyewitness identification case and that those always have  
24 pitfalls that you have to be concerned with. He felt  
25 comfortable in this case and he believed that given the

1 four eyewitnesses and the other information, that he had  
2 enough to pursue it and felt that he was within his  
3 ethical bounds of doing so.

4 The court did at the time provide the  
5 appropriate instructions to the jury on eyewitness  
6 identification. The prosecutor also stated that in this  
7 case, there was no corroborating evidence, either  
8 physical or scientific or otherwise, and the prosecutor  
9 is now concerned that when he has seen the two  
10 individuals, as to whether or not the appropriate person  
11 was convicted in this case.

12 The victim testified and she described the  
13 individual who perpetrated this crime as a Mexican, thin,  
14 taller than she was with short, dark hair. She did not  
15 get a good look at his face but does remember his skin  
16 tone. In making her identification, she relied mostly  
17 upon skin tone when she was looking at the photo lineup.  
18 Today the victim states that she is not certain that the  
19 person convicted is the same person who committed the  
20 crime. In fact, when presented with a photo lineup  
21 today, is uncertain that it was the right person and with  
22 a new lineup -- or not lineup, seeing a new picture --  
23 she identifies the person that most likely looks like the  
24 individual committing the robbery as Mr. Amos.

25 Mr. Coen, who worked for Wal-Mart and had



1       been there for some period of time working their  
2       security, did not see the entire event but was a few  
3       aisles away from the event when it happened when he  
4       overheard a shout, "He took my purse." Out of the corner  
5       of his eyes, he was able to glimpse at part of the  
6       incident. Although he did not see the incident, he was  
7       able to identify the car because the car had driven in  
8       the parking lot on two separate occasions that day and he  
9       was wise enough to write down the dealer tag number as it  
10      turned out to be a dealer tag.

11               He states that originally he thought it  
12      was Mr. Jones in the lineup, but he went on to say he did  
13      not -- he wasn't positive. In the second lineup, he does  
14      not identify Mr. Jones.

15               Scott Atwell, the sheriff detective who  
16      investigated this with 34 years of experience said that  
17      the way he began his investigation was to run down the  
18      tag which led to Mr. Colvin, the father who owned a car  
19      dealership. Mr. Colvin stated that his son had the car  
20      at that time and that he can talk to his son.  
21      Mr. Colvin, Jr., said that he was with Mr. Miller and his  
22      girlfriend and a guy named Rick; a guy Rick that he had  
23      never seen before. Mr. Colvin was high and does not  
24      recall much of the incident.

25               According to Mr. Colvin, Miller and Rick

1 took the phone and knew that that was taken but did not  
2 know any other specifics. It should be noted that the  
3 phone was never found and that it was never determined if  
4 that phone was used thereafter to make any calls to  
5 anyone that may be associated with this case in one  
6 manner or another.

7 Mr. Atwell visited Mr. Miller in custody  
8 and he said that originally he and Mr. Coleman were going  
9 to lie, but that he decided he was going to tell the  
10 truth at this time. Mr. Miller said that he was in the  
11 car at the time of the robbery but doesn't remember a lot  
12 except that he had met Rick that day and that he had been  
13 using drugs. Miller says that he was doped out and all  
14 he really remembers is a "wild-ass car chase." He also  
15 described Rick as a skinny, not-well-kept-up guy, "a  
16 typical drug addict." He did identify the defendant at  
17 the time of the trial but said that he had been cleaned  
18 up. But he said that today he would have not have picked  
19 him out as the person involved in the crime, but the  
20 person that he mostly remembers is the other individual,  
21 Mr. Amos, but still is not certain of any of that either.

22 After The Innocence Project became  
23 involved -- that should be noted -- Mr. Jones learned  
24 that there was an individual named Ricky Amos from other  
25 inmates that said that he looked like Mr. Amos.

1 Mr. Amos' photo was obtained and certainly throughout the  
2 years, they have maintained an uncanny resemblance to one  
3 another, and it would be difficult for some individuals  
4 as we have seen today to not be able to distinguish  
5 between the two and not be certain who is Mr. Jones today  
6 in the pictures.

7 With that information, the detective after  
8 learning all of this information submitted it to the  
9 prosecutor. It was noted that there was nothing else  
10 other than these witnesses and their identification and  
11 an address, an address that Rick was picked up from.  
12 That it was a drug house. And that address becomes  
13 significant later after all of this investigation for  
14 this current matter starts.

15 Retired police officer Mike Bussell  
16 investigated this matter on behalf of the defendant. He  
17 was able to run down the addresses where Mr. Amos was  
18 associated and it became clear that the addresses that  
19 Mr. Amos was associated with were at or near the place  
20 where the drugs were purchased. There was an address  
21 where the drugs were purchased, but to the court's  
22 standard, that may not be the exact address because the  
23 buildings, as two of the witnesses said, do all look  
24 alike because it is in the projects.

25 But it is clear that Mr. Amos was either

1 at that building that the drug activity was taking place  
2 or at another one that was close by. That is known  
3 because Alicia Surrell, whose mother was married to Danny  
4 Amos, said that Ricky stayed with them from time to time.  
5 Ricky had been at his mother's -- who he stayed with from  
6 time to time -- also had been evicted from a house that  
7 was close by. This ties Ricky to a house where the  
8 individuals, Mr. Colvin and Mr. Miller, said they  
9 purchased drugs and ran into Mr. Miller (sic), an  
10 individual who they have never seen before and had no  
11 knowledge of, and that from there, that drug house, they  
12 went on this robbery.

13 The defendant did provide alibi  
14 information to the prosecutor as required. Detective  
15 Atwell investigated the identification and provided a  
16 summary of what the witnesses told them at the time. And  
17 in fact, the witnesses, the three sisters, Tina --  
18 specifically Tina and China -- stated that Mr. Jones was  
19 with them on that day, and they remember that weekend  
20 because it was not only Memorial weekend, but it was also  
21 Tina's birthday and they were celebrating it on that day.  
22 The jurors, of course, heard the alibi witnesses and they  
23 heard that witness identification. But the jurors didn't  
24 believe the sisters' statements when confronted with the  
25 positive ID of victims -- of the victim, Mr. Coen and

1 others. The others including at least one individual who  
2 may have made identification during the time of trial.  
3 It is unclear how much credit or credibility the jurors  
4 gave to that other individual in the car.

5 What is clear is that what was not known  
6 to the jurors at the time was that there was a home, a  
7 house where an individual by the name of Rick did live or  
8 stay; that was the same area where they picked up drugs.  
9 That happens to be significant here. That was not known  
10 completely back then because the detective did in fact go  
11 to the house and then left his card there, but no one  
12 returned his call and because of manpower issues, they  
13 were not able to do much more than that apparently.

14 What happened, then, is that it became  
15 clear that at the time of the trial, that Ricky Amos'  
16 name was never known; that his address was never known;  
17 that the drug house that two other individuals said they  
18 went to was never known for certain; and that Mr. Amos  
19 was associated with that address. Most importantly is  
20 the uncanny resemblance of Mr. Amos to Mr. Jones.

21 The court has copies of the exhibits. P1  
22 is mostly a restatement of Mr. Cowles' statements that he  
23 provided today. P2 is a lineup -- or excuse me -- two  
24 pictures each of Mr. Amos and Mr. Jones, and the court  
25 can certainly understand how there can be some

1 misidentification that had somebody seen these pictures  
2 in the beginning, would have been perplexed and concerned  
3 at a very minimum.

4 The victim also provided an affidavit  
5 essentially laying out what she had provided here.

6 Police did provide a photo lineup of  
7 Detective Lawson in Exhibit P4, and in P4 that was  
8 Mr. Coen's identification and that the -- according to  
9 the reports, it says Mr. Coen looked at the photo lineup  
10 for approximately five seconds and then pointed to photo  
11 number one and at that time Mr. Coen said that he was  
12 positive. Today Mr. Coen would lean or suggest that he  
13 wasn't as positive as it may have been recorded, but it  
14 isn't through any type of -- it is unclear how he  
15 conveyed his identification to Detective Atwell.

16 The photo lineup is impossible as it  
17 exists today to determine if this is a good lineup or not  
18 because the quality is so poor and the originals have  
19 been lost.

20 The court also has looked at Exhibit No. 6  
21 which is 2722 West 41st, which is one of the houses where  
22 Mr. Amos and others may be associated with, and you can  
23 tell that the area that -- a lot of these homes in this  
24 area look almost identical not only in the roof lines, in  
25 the duplex nature, but also in the same brick.

1                   Mr. Miller provided an affidavit in P7  
2                   that is pretty consistent with what he testified here  
3                   today.

4                   We come to the first -- which I believe is  
5                   the first photo lineup that existed, which is P5. This  
6                   is an interesting photo lineup because by everybody's  
7                   first identification, the person who committed the  
8                   robbery was either a Hispanic individual or light-skinned  
9                   black individual. The photo lineup may have one black  
10                  individual and it may not. It is hard to tell. But no  
11                  one identified the defendant -- or excuse me, the person  
12                  involved in the robbery -- of having green or blue eyes.  
13                  In this photo lineup, four of the six individuals have  
14                  blue or green eyes and only two have brown, and I don't  
15                  know how this lineup was established. It makes no sense  
16                  whatsoever.

17                  The rest of the exhibits are just  
18                  photographs and the map -- Google map that shows the  
19                  close proximity, some 700 feet from one location to the  
20                  other and how that could have been walked quickly or  
21                  could have been misidentified as the same area or so  
22                  forth.

23                  The parties have also exhibited -- have  
24                  discussed and stipulated evidence, Exhibits A through M.  
25                  In the exhibits some comments need to be made about a

1 couple items. As it relates to the stipulated exhibits,  
2 there is pictures of the defendant. One of the witnesses  
3 identified the individual committing the crime of having  
4 a tattoo on his lower arm. Mr. Jones does have a tattoo  
5 today but did not have a tattoo then on his lower arm.  
6 There is a tattoo on his upper arm today, and it is  
7 unclear if one existed back then.

8 The court also notes that in his indigent  
9 forms, he gave an address in Kansas. He said he had  
10 never been in Kansas, that he had always been in  
11 Missouri, but he indicates that was his mother's address.  
12 And it makes -- at least to this court -- sense that  
13 would be an address that you would probably use if you  
14 were in trouble.

15 Finally, Mr. Amos has stated that he did  
16 not commit this crime and that he thought he was in  
17 custody or could have been in custody at the time of this  
18 robbery. The parties have agreed that he was not in  
19 custody at the time of the robbery and that he was some  
20 place in the metropolitan area. I will also point out  
21 that there is a copy of the photo lineup that is in  
22 Exhibit -- I believe it is F. That has a little bit  
23 better quality picture of the lineups but not much better  
24 of what was shown to the individuals who made  
25 implications.



1                   Although it is poor quality, it is clear  
2                   that the individuals pictured -- their hair is different  
3                   than what was identified and their skin tone is much  
4                   darker than they first told police officers about. In  
5                   fact, it would appear from these -- this photo lineup --  
6                   and I know that it is poor quality. I know it is maybe  
7                   multi-generations later copying, that it would appear  
8                   that Mr. Jones is the only individual that has a lighter  
9                   skin tone.

10                   The court finds that when reviewing the  
11                   statute, the court has to make a determination that  
12                   actual innocence requires the defendant to show that it  
13                   is more likely than not that no reasonable juror would  
14                   have convicted the prisoner in light of the new evidence.  
15                   The court does not believe a jury with today's evidence,  
16                   with the testimony of the victim and the others and the  
17                   fact that Mr. Amos has come into play, for the reasons I  
18                   have said before, this court has no doubt -- although  
19                   that isn't the standard -- has no doubt that a jury would  
20                   not be able to reach a determination that this defendant  
21                   was guilty, and this court does not believe any  
22                   reasonable jury could have made such a decision in this  
23                   case.

24                   For those reasons the court does in fact  
25                   find that the defendant should be released pursuant to

1 K.S.A. 60-1507(f)(2). Anything else?

2 MS. CRAIG: Judge, what we would ask -- I  
3 can come back to chambers. What we would ask is we get a  
4 minute sheet we can certify so we can get it to  
5 Department of Corrections.

6 THE COURT: She will have it done today.

7 MR. MINIHAN: OR bond?

8 THE COURT: Yes, I just said released. I  
9 will do a \$100 OR bond.

10 MS. CRAIG: Thank you, Judge.

11 (THEREUPON, proceedings were adjourned.)  
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C E R T I F I C A T E

STATE OF KANSAS )

JOHNSON COUNTY ) ss

I, Abby J. Ryan, a Certified Shorthand Reporter and the regularly appointed, qualified and acting Official Court Reporter of Court Division 10 of the Tenth Judicial District of the State of Kansas, do hereby certify that as such Official Court Reporter, I was present at and reported in machine shorthand, the above and foregoing proceedings.

I further certify that a transcript of my shorthand notes was typed and that the foregoing transcript is a true and correct copy of my notes in said proceedings to the best of my ability.

SIGNED, OFFICIALLY SEALED, AND FILED WITH THE CLERK OF THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS.

/s/ Abby J. Ryan

Abby J. Ryan, RPR, CSR  
OFFICIAL COURT REPORTER  
DIVISION NO. 14

Abby J. Ryan, *Clerk of the District Court, Johnson County Kansas*  
RPR, CSR 08/29/18 12:52pm SS

**EXHIBIT A**

1 IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS  
2 CRIMINAL COURT DEPARTMENT

3 STATE OF KANSAS,

4 Plaintiff,

5 v.

Case No. 00CR131

6 RICHARD ANTHONY JONES,

7 Defendant.

8 JURY TRIAL

9 VOLUME I

COMPUTER

10 BE IT REMEMBERED that on the 23rd  
11 day of April, 2001, the above-entitled  
12 matter comes on for jury trial before the  
13 HONORABLE JOHN ANDERSON, III, Judge  
of Division No. 16 of the Tenth Judicial  
District of the State of Kansas, at Olathe,  
Kansas.

14 APPEARANCES

15 For the Plaintiff: JOHN W. COWLES  
16 District Attorney's Office  
17 P.O. Box 728  
Olathe, KS 66051-0728

18 For the Defendant: MICHAEL BARTEE  
19 Public Defender's Office  
127 S. Kansas  
20 Olathe, KS 66061

21  
22  
23 ORIGINAL

24 Reported by April C. Shepard, CCR, CSR

25  
CLERK OF DISTRICT COURT  
OFFICIAL COURT REPORTER

2001 SEP 18 10:10  
Clerk of the District Court, Johnson County Kansas  
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EXHIBIT B

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1 she's still not letting go. And this episode  
2 lasted maybe a minute, but it's basically a  
3 fight over a purse. She gets knocked down to  
4 the ground. She gets scrapes on her elbows and  
5 knees from being knocked down. It's a warm  
6 night. She's wearing shorts, you know, the  
7 where the top part is overalls but it ends up  
8 being shorts, and a tank top. Her daughter is  
9 screaming. It causes a big commotion and some  
10 people see what's going on. There's a fellow in  
11 the parking lot by the name of Ron Wolters. He  
12 used to work for the water department. He was  
13 working for the water department when this  
14 happened, the water department in KCK. He's now  
15 retired. He saw what was going on and saw her,  
16 the way he described it to the police, was  
17 getting body slammed to the ground and this guy  
18 fighting her for her purse. And at first, he  
19 wondered if it was a husband and wife having  
20 some kind of problem. Then he saw it was much  
21 more serious than that.

22 About the time he was going to go over  
23 there and break them up, this guy runs away.  
24 What he does is, she's down on the ground and  
25 they're pulling on the purse, the cell phone

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**EXHIBIT B**

1 falls out laying on the ground. He scoops up  
2 that cell phone and runs, this perpetrator,  
3 jumps into this car that had been going by. And  
4 the car is very distinctive because it has  
5 dealer tags on it and has in the window,  
6 written, the price of the car. So it's a very  
7 distinctive automobile. Mr. Wolters remembers  
8 that car. He remembers basically the guy and he  
9 remembers that he had a tatoo on his arm. And  
10 he got the tag for the officers. He even  
11 followed the car for a little while. It started  
12 heading down into KCK to a neighborhood that  
13 Mr. Wolters thought that might be too dangerous  
14 to go in to. He went back to the Wal-Mart. He  
15 got the tag, the basic description of this car,  
16 which was very distinctive, and went back to  
17 help Tamara Scherer. The other person who saw  
18 this all happen was a guy named Ron Coen or  
19 Cowen, I think is how it's pronounced, C-O-E-N,  
20 and he works loss prevention for Wal-Mart. And  
21 the loss prevention guys, I believe the evidence  
22 is going to show, they spent quite a bit of time  
23 in that parking lot making sure that what  
24 happened doesn't happen, that is, people don't  
25 get their purses stolen and so forth.

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1 Q. Ms. Scherer, I want to direct your attention to  
2 last -- not last May but May 31st of 1999. Do  
3 you remember that day?

4 A. Yes.

5 Q. Where were you working at that time?

6 A. At Sonic Drive-in.

7 Q. Where is that located?

8 A. 3501 Strong Avenue, Kansas City, Kansas.

9 Q. And did you have occasion on May 31st, 1999, to  
10 be on a break from work, take your daughter up  
11 to Wal-Mart?

12 A. Yes.

13 Q. How old was your daughter?

14 A. She was eight.

15 Q. Eight years old?

16 A. (Witness nods head.)

17 Q. Why were you going up to the Wal-Mart store?

18 A. To buy her a sprinkler. It was a warm day.

19 Q. Is a sprinkler something cold to drink?

20 A. No. Like a lawn sprinkler to play in. She was  
21 going to my mother's.

22 Q. Something you put out on the lawn to run  
23 through?

24 A. Right.

25 Q. Which Wal-Mart store did you go to?

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**EXHIBIT B**

- 1 A. The one in Roeland Park, Kansas.
- 2 Q. Is that on Roe, just up the hill from I-35?
- 3 A. Yes.
- 4 Q. Is it inside Johnson County?
- 5 A. Yes.
- 6 Q. Do you recall approximately what time of day it
- 7 was that you got up to the Wal-Mart?
- 8 A. It was I believe a little before 8:00.
- 9 Q. 8:00 p.m.?
- 10 A. Yes, in the evening.
- 11 Q. And was it still light out?
- 12 A. Yes.
- 13 Q. Was the Wal-Mart store somewhere you'd been
- 14 before?
- 15 A. Yes.
- 16 Q. You were familiar with it?
- 17 A. Yes.
- 18 Q. Before we get to the details of what happened up
- 19 there, Ms. Scherer, can you tell me how tall you
- 20 are?
- 21 A. I'm five-two.
- 22 Q. Five-two. And this is not a gentlemanly
- 23 question, but I'd like to ask your approximate
- 24 weight back in May of 1999?
- 25 A. Approximately 145.

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1 noticed a car that was driving very slowly. I  
2 didn't think much of it. Maybe they were  
3 looking for a parking space.

4 Q. And did the car go right by where you were?

5 A. Yes. It drove past me slowly.

6 Q. Did it have anything -- was there anything  
7 unique about the car?

8 A. It had in the front on the windshield on the  
9 passenger side, it had one 0500BO. I think it  
10 was for sale.

11 Q. When the car went by you, what happened next?

12 A. My daughter came up to where I was at and  
13 crossed towards the right across the parking  
14 lot, and then I felt a strong tug on my  
15 shoulder. Someone came up behind me and yanked  
16 my purse.

17 Q. You had a purse with you?

18 A. Yes.

19 Q. It was on a shoulder strap?

20 A. Yes, on my right shoulder.

21 Q. And did you say you were starting to walk away  
22 from your car when this happened?

23 A. We were walking kind of at an angle,  
24 caddy-cornered to the right, crossing on the  
25 other side of the parking lot on the drive.

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1 Q. And had you walked very far away from your car  
2 when you felt this jerk?

3 A. No. I was probably right in the middle of the  
4 aisle, right in the middle of the drive.

5 Q. Of the area where the cars drive?

6 A. Right.

7 Q. What happened when you felt a yank on your  
8 shoulder?

9 A. I grabbed my purse, turned around, got into a  
10 struggle with a person who was trying to steal  
11 my purse.

12 Q. Can you describe this struggle for us?

13 A. Yes. It was -- well, he yanked on my purse. He  
14 grabbed it, and I turned around and kind of  
15 played tug of war with my purse, fighting,  
16 trying to keep my purse. I ripped the guy's  
17 shirt off. He pushed me to the ground at some  
18 point in time. My cell phone flew out at some  
19 point in the fight. Then when I was down on the  
20 ground, I had my purse held onto my chest and I  
21 seen him grab my cell phone and take off running  
22 back to the car.

23 Q. When he -- let me ask this question first.

24 What were you wearing that evening, do you  
25 remember?

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1 A. I had on jeans. It was shorts and overalls,  
2 like bib overalls at the top with shorts, tennis  
3 shoes and white tank top underneath it.

4 Q. Now, when he pushed you down, did that cause any  
5 injuries?

6 A. Yes. When I was pushed down, I had -- after I  
7 got up, I had, my elbows were scraped. My knees  
8 were scraped. I had blood running down one of  
9 my legs.

10 Q. But you were able to hold onto your purse the  
11 whole time?

12 A. Yes. Pretty much there was a point in time  
13 where he had it more than I had it, but I did  
14 get it back.

15 Q. How did he get ahold of your cell phone?

16 A. At some point in the fight my cell phone flew  
17 out of my purse. It was clipped on the outside  
18 pocket of my purse. It has a clip on the back.  
19 At some point in the struggle with him my  
20 telephone flew out into the parking lot.

21 Q. And that's when it got scooped up by this guy  
22 that attacked you?

23 A. Yes. I seen him grab it and he took off running  
24 to the car, and that's when I got up and seen  
25 the car. He jumped back in the car. The door

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1 was open.

2 Q. Now, how long did the -- I'll call it a fight,  
3 how long did this fight last?

4 A. It seemed to go by very, very quickly. A  
5 minute, two minutes at the most. It was very  
6 quick.

7 Q. What, if anything, did you notice about the guy  
8 that was attacking you?

9 A. As far as like a physical description?

10 Q. Yeah.

11 A. He was thin to medium build, tan skinned, dark  
12 hair, hair was back away from the face.

13 Q. You mean the hair was like pulled back?

14 A. I believe so. To the best I recall, it was back  
15 out of his face.

16 Q. Did the officers ask you -- and I take it the  
17 police came shortly after that?

18 A. Yes.

19 Q. And did the officers ask you what race this  
20 fellow was?

21 A. Yes, they did.

22 Q. What did you tell them?

23 A. I told him I believe him to be Hispanic by his  
24 skin color.

25 Q. Can you tell us about his skin color?

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1 A. Basically, I mean, like a -- what I consider to  
2 be a tanned Hispanic, tanned color.

3 Q. Did you later come to court in this case to see  
4 the defendant here?

5 A. Yes, I did.

6 Q. Did anything happen -- what went through your  
7 mind when you saw the defendant here in court?

8 A. We were -- I was seated in the pews back there  
9 when they brought them all out. I immediately  
10 recognized him. I got that wave of fear and  
11 nausea that comes over you when you --

12 Q. What do you mean when they brought them out,  
13 what are you talking about?

14 A. There was -- they had several. They had the  
15 seats filled with all different people. I think  
16 they called it a pretrial hearing. They brought  
17 out several people for different cases and then  
18 they called them up in order and they asked if  
19 they could be bonded out.

20 Q. And so you saw one guy in particular?

21 A. Yes.

22 Q. Were you sure at that point or what was going  
23 through your head about --

24 A. I was sure. I was sure when I seen him seated  
25 over there it was the same person.

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1 Q. Yeah.

2 A. I seen his face, yes. I was, you know, shy when  
3 they contacted me if I could point him out on a  
4 lineup. I was very upset. It was very  
5 traumatic.

6 Q. I understand that. Did you get a good look at  
7 his face?

8 A. I thought so.

9 Q. You testified before back in May of '99 that you  
10 got a good look at the guy's face. Do you  
11 remember?

12 A. Yes.

13 Q. Would you like to look at the transcript of your  
14 testimony about whether you got a good look?

15 A. For what purpose?

16 Q. Well, do you remember testifying before you got  
17 a good look at the guy's face?

18 A. Yes.

19 Q. And that's your testimony today as well, you got  
20 a good look at his face?

21 A. I believe so.

22 Q. Did you tell Officer Larson on the day of the  
23 robbery that you did not ever see the face of  
24 the suspect?

25 A. I don't recall.

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1 Q. Detective Atwell called you in June and talked  
2 to you about the incident, do you remember that?

3 A. I spoke with him several times.

4 Q. Do you remember Atwell asking you if you thought  
5 you could identify the suspect?

6 A. Yes.

7 Q. And do you remember telling him that you did not  
8 think so?

9 A. I told him I was unsure.

10 Q. Did you tell him that you were mainly focused on  
11 the purse, not on the suspect's face?

12 A. I do not recall.

13 Q. Did you get a look at the driver of the car?

14 A. Vaguely.

15 Q. What do you remember about the driver?

16 A. It was a white male, blondish hair, could have  
17 been light brown. I wasn't studying them. I  
18 was waiting for my daughter.

19 Q. I understand.

20 Did you tell Detective Atwell that you  
21 thought the driver was a woman because of the  
22 way the blond hair was pulled back into a  
23 ponytail?

24 A. No, not that I recall.

25 Q. That would have been in June of '99?

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1 Q. How far away from you were you at the time would  
2 you estimate?  
3 A. From the other car?  
4 Q. From the conflict that was going on.  
5 A. Anywhere from 15 and 20 feet. Maybe it wasn't  
6 that far from the conflict. The only car was 10  
7 or 15 feet in front of her.  
8 Q. Were you as far away as the jury right now?  
9 A. I'd say we're just a little bit closer, but,  
10 yes, about that far.  
11 Q. What, if anything, did you notice about the man  
12 who was attacking this woman?  
13 A. I couldn't recognize him. He had a ball cap on,  
14 but he had a tattoo on his left arm. But that's  
15 all I could tell was just a tattoo.  
16 Q. All right. When this attacker picked up the  
17 cell phone, did he run back to this car you had  
18 seen?  
19 A. Yes, sir. And he jumped in to the passenger  
20 side and then drove off.  
21 Q. Passenger front or passenger back?  
22 A. Passenger front.  
23 Q. And could you see who was driving the car?  
24 A. No, I couldn't tell who was driving.  
25 Q. Did you see anything distinctive about the car?

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1 A. I just noticed the license plate was up in the  
2 back window. I was going to get a license plate  
3 number. It was a smaller compact car, but I  
4 couldn't tell what kind of car it was.

5 Q. Was there anything unusual about the tag?

6 A. Not that I can remember.

7 Q. Was it a regular tag?

8 A. I can't remember that either. I know, as we  
9 followed them down the road, I read a number off  
10 and then my wife wrote it down and they repeated  
11 it to me to make sure we had the right license  
12 plate number. But it's been so long I don't  
13 remember what the license plate number was.  
14 When we got back up to Wal-Mart, I had just  
15 given it to the police officer up there. So I  
16 didn't even keep it for my own records.  
17 Q. Did you see anything written on the windshield  
18 of the car?

19 A. No, I don't think so, because I was behind it.

20 Q. The attack that you saw on the woman in the  
21 parking lot, you said she ended up on the  
22 ground. Can you describe how it was she ended  
23 up on the ground?

24 A. The man was hitting at her, was grabbing at her  
25 purse and couldn't get her purse. So he started

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**EXHIBIT B**

1 A. Coen.

2 Q. Coen?

3 A. Yes.

4 Q. Mr. Coen, what's your occupation?

5 A. I'm a loss prevention officer for Wal-Mart.

6 Q. How long have you had that job?

7 A. About 4 1/2 years.

8 Q. And you work at a particular Wal-Mart?

9 A. Roeland Park, 51st and Roe.

10 Q. All right. Is that located in Johnson County,  
11 Kansas?

12 A. Yes.

13 Q. Were you working there back in May of 1999?

14 A. Yes, I was.

15 Q. And that was Memorial Day of 1999.

16 Did you have occasion to see some unusual  
17 activity out in your parking lot?

18 A. Yes, I did.

19 Q. And, Mr. Coen, is your job, at least part of the  
20 time, to keep an eye on what's going on in the  
21 parking lot?

22 A. Yes, it is.

23 Q. Is that what you were doing that day?

24 A. Yes.

25 Q. Did you see a car in the parking lot that day

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**EXHIBIT B**

1           that you thought was a little suspicious?

2       A.    Yes, coming to the lot three or four times that  
3           day.

4       Q.    Did it come in the lot way early in the day or  
5           later?

6       A.    All afternoon time, not in the morning.

7       Q.    And then was it there in the evening about 8:00?

8       A.    Yes.

9       Q.    And this final time when it came at 8:00, what  
10          did you observe the car do?

11      A.    It was cruising through the lot slow, and a man  
12          got out of it down towards the front of the  
13          building and he started walking east. And then  
14          as a woman went by, he ran up behind her,  
15          knocked her to the ground and was fighting for  
16          her purse on the ground and she had a little  
17          girl with her.

18      Q.    She had a little girl with her?

19      A.    Yes.

20      Q.    And how far away were you?

21      A.    Like from here to that door or maybe just a  
22          little bit more (indicating).

23      Q.    And could you see if the man who was attacking  
24          the woman was a black man, white man or --

25      A.    He was dark.

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**EXHIBIT B**

1 Q. -- dark-complected dark man?

2 A. Yeah, dark-complected black man --  
3 light-complected man.

4 Q. Light-complected man?

5 A. Yes.

6 Q. What did you do when you saw this?

7 A. I started to run towards the woman that was  
8 being hurt on the ground. But that time, as I  
9 ran to it, a car came up to pick up the guy  
10 assaulting the woman and almost hit me because  
11 they opened the door as they was coming up to  
12 pick him up, the door of the car.

13 Q. All right. So you were pretty close then?

14 A. Oh, yes.

15 Q. And did you get a good look at the fellow who  
16 attacked the woman?

17 A. Yes, I did.

18 Q. Do you remember what he looks like?

19 A. Yes. That's him right there (indicating).

20 Q. Can you describe him for me what he's wearing  
21 today?

22 A. He's wearing a white shirt with a black vest  
23 (indicating).

24 MR. COWLES: Let the record show the  
25 witness has identified the defendant Richard

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SCAN DATE 2008-03-10 14:35

1 Jones.

2 Q. (By Mr. Cowles) Mr. Coen, was there a time after  
3 this attack the police showed you a lineup that  
4 contained pictures of several people in it?

5 A. Yes.

6 Q. And was one of those pictures the picture of  
7 Mr. Jones who you've pointed out here?

8 A. Yes, it was.

9 Q. Did you have any trouble picking out Mr. Jones?

10 A. No, very easy.

11 Q. Are you confident that Mr. Jones is the one that  
12 did this attack?

13 A. 100 percent.

14 Q. The Roeland Park Police gave you a lineup after  
15 this attack occurred that had some white males  
16 in it?

17 A. Yes.

18 Q. Now, I'm talking about a different -- there were  
19 two traffic lineups; is that right?

20 A. Yes. The original one, I thought, was the  
21 driver of the car because he -- the time before  
22 that he came to the lot he stood outside the car  
23 smoking a cigarette while the other guy walked  
24 through the lot.

25 Q. Now, you're talking about a time earlier in the

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1           afternoon?

2       A.    Yes.

3       Q.    So there was at least one white male?

4       A.    Yes, there was.

5       Q.    The lineup, the Roeland Park Police gave you,  
6           was of white males; is that right?

7       A.    Yes.

8       Q.    And were you trying to pick out a white male  
9           that was the fellow that was smoking the  
10          cigarette?

11      A.    Yes. That's the one I was trying to pick out  
12          the first time.

13      Q.    And the second time when Detective Atwell showed  
14          you a lineup that had black males in it --

15      A.    Yes.

16      Q.    -- were you trying to pick out the fellow who  
17          actually did the attack?

18      A.    The one who did the assault on the woman.

19      Q.    Now, Mr. Coen, is there any question in your  
20          mind, as you sit here, that the man you've  
21          identified is the actual one who did the attack?

22      A.    There's no doubt at all.

23               MR. COWLES: No further questions.

24               THE COURT: Mr. Bartee.

25

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SCAN DATE 2008-08-10 14:35



2 BY MR. BARTEE:

5 A. The guy who did the robbery, yes.

7 A. Yes, he did.

9 A. Yes.

11 A. I don't know which officer it was at the time.

13 A. Well, yeah -- well, he was light-complected.

15 A. Yes.

17 A. Well, I would say either a dark Hispanic or

19 Q. That's what you said to the police on the day of  
20 the robbery when they were doing their  
21 questioning?

23 Q. You used the term "black man"?

25 Q. You saw two people in the car, right?

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1 continue with the testimony?

2 MR. COWLES: Yes, your Honor.

3 MR. BARTEE: Yes.

4 THE COURT: Let the record reflect the  
5 jury is back with us in the courtroom. You may  
6 proceed.

7 MR. COWLES: I call Detective Atwell.

8 SCOTT ATWELL,  
9 a witness having first been duly sworn,  
10 testified as follows:

11 DIRECT EXAMINATION

12 BY MR. COWLES:

13 Q. State your full name and occupation, please.

14 A. Scott Atwell, deputy sheriff Johnson County  
15 Sheriff's office.

16 Q. And, Detective Atwell, I want to direct your  
17 attention to last May -- or excuse me. It's two  
18 Mays ago, 1999. There was a report of a robbery  
19 at a Wal-Mart up in Roeland Park. Were you  
20 assigned to the investigation of that case?

21 A. Yes.

22 Q. And in the course of that investigation, was  
23 information developed regarding a car that had  
24 been located up in KCK that belonged to a David  
25 Colvin, Sr., or his car lot?

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2 Q. And through that information did you locate a  
3 young man named David Colvin, Jr.?

5 Q. And did you eventually go visit Dave Colvin,  
6 Jr., with the idea of seeing whether or not he  
7 could look through the computer database at the  
8 KCK police department to see if you could figure  
9 out who this Rick, last name unknown, was?

11 Q. When was that? When did that occur?

13 Q. And up until that time had you been able to  
14 figure out the last name of the fellow named  
15 Rick, the information you had received from the  
16 other two people that had been in the car when  
17 the robbery was committed?

19 Q. Neither David Colvin, Jr., or Eddie Miller was  
20 able to provide you with a last name; is that  
21 correct?

23 Q. Was David Colvin, Jr., in custody in Wyandotte  
24 County when you went to see if he could pick out  
25 a photograph?

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## EXHIBIT B

1 A. No, sir.

2 Q. Does Kansas City, Kansas, maintain a  
3 computerized database where they can sort  
4 through their database for things like a first  
5 name Rick or Richard, that sort of thing?

6 A. Yes, sir.

7 Q. Is it a similar system to what Johnson County  
8 has?

9 A. Yes, sir.

10 Q. You said it was then in August that you decided  
11 to try to do that with David Colvin, Jr.?

12 A. Correct.

13 Q. And tell us how that went as far as how this  
14 computer works and how many photographs at that  
15 time you could look at and so forth. What do  
16 you recall about that?

17 A. I got with Detective Lawson of the Kansas City,  
18 Kansas, Police Department and he took us to the  
19 room where the computer is located. What he did  
20 is he put the parameters of a black male with  
21 the first name of Rick or Richard, and I can't  
22 remember the exact total that they had in their  
23 database, but when we got to photograph No. 202,  
24 Mr. Colvin said that's the person that he knows  
25 as Rick.

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- 1 August 24 of '99; is that right?
- 2 A. Yes, sir.
- 3 Q. That would have been about three months after
- 4 the robbery?
- 5 A. Pretty close, yes, sir.
- 6 Q. Did you compile the other photographs in State's
- 7 Exhibit No. 1, those other photos, did you do
- 8 that yourself?
- 9 A. No, sir. Detective Lawson did.
- 10 Q. I think State's Exhibit 1 has photos of six
- 11 black men in it; would you agree?
- 12 A. Well, six definitely appear to be black --
- 13 Mr. Jones, no offense, but I'd have to go with
- 14 part black or Hispanic.
- 15 Q. But the others?
- 16 A. The -- yeah, they're definitely black.
- 17 Q. You can see some hair hanging down in the back
- 18 of Mr. Jones, right?
- 19 A. Yes, sir.
- 20 Q. You can see some hair kind of hanging down the
- 21 back of the fifth one in that set?
- 22 A. Yes, sir.
- 23 Q. Those are the only two that have hair you can
- 24 see hanging down the back of their heads?
- 25 A. Yes, sir.

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1 Q. Mr. Jones has a fairly common goatee visual in  
2 this picture?

3 A. Yes, sir.

4 Q. And the others don't appear to have prominent  
5 goatees that you can clearly see?

6 A. Not as prominent, no, sir.

7 Q. There had been another lineup that Roeland Park  
8 had done. Did you include that in any of the  
9 steps that you took during this investigation?

10 A. No, sir.

11 MR. BARTEE: Thank you. Nothing further.

12 THE COURT: Redirect.

13 REDIRECT EXAMINATION

14 BY MR. COWLES:

15 Q. Do you know when the photograph was taken of  
16 Richard Jones, the one that was in the Kansas  
17 City, Kansas, computer?

18 A. No, sir, I don't.

19 MR. COWLES: Nothing further.

20 THE COURT: Follow up to that?

21 MR. BARTEE: No, thank you.

22 THE COURT: Thank you, Detective. You can  
23 step down. Next witness.

24

25

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25 A. I believe this one right here (indicating).

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## EXHIBIT B

25 Q. You can see what man here?

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08/29/18 12:52pm SS

**EXHIBIT B**



25 Q. And you're pointing toward the picture in

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## EXHIBIT B

1 right?

2 A. Yeah. David recognized him. I guess David knew  
3 him. David recognized him.

4 Q. You didn't know him?

5 A. No.

6 Q. You described him as a black man?

7 A. Yes.

8 Q. When Atwell asked you about it back in June of  
9 '99 while you were at the Wyandotte County  
10 jail, do you remember asking Atwell if this had  
11 to do with that dumb fucking nigger Rick trying  
12 to steal the woman's purse?

13 A. I can't really remember the conversation, but I  
14 believe I might have said something to that  
15 effect.

16 Q. Now, you told us earlier that you and Colvin and  
17 Prescilla had been riding around in a car for  
18 several days?

19 A. Yes. We were doing a lot of drugs.

20 Q. Whose car was it?

21 A. It was Dave's. Dave's father owns some kind of  
22 small car lot, and he just got vehicles from his  
23 lot that had dealer tags on them and it was one  
24 of them vehicles so --

25 Q. You guys were strung out?

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1 A. Very.

2 Q. Just driving around?

3 A. Yeah, yeah.

4 Q. Well, after you picked Richard or Rick up,

5 everybody talked about how to go get some more

6 drugs?

7 A. Yeah.

8 Q. And Richard said, "I got an idea, pull in here"?

9 A. Yes, yes.

10 Q. That's just minutes before the robbery happened?

11 A. Yes.

12 Q. And you were at the Wal-Mart parking lot, right?

13 A. On 18th Street, yes.

14 Q. Had you been in the car all day?

15 A. Yes.

16 Q. Had you been in the Wal-Mart parking lot before

17 that?

18 A. No.

19 Q. So this was your first and only trip to the

20 Wal-Mart parking lot that day?

21 A. Yes.

22 Q. You had no idea what Rick was going to do?

23 A. No. Really, we kind of thought he was going to

24 shoplift or something -- well, I'm not going to

25 say we thought. I'm going to say "I thought." I

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- 1 A. Yes, sir.
- 2 Q. Your dad is David Colvin that owns the car lot  
3 up in KCK?
- 4 A. Yes, sir.
- 5 Q. Mr. Colvin, I want to direct your attention to  
6 May the 31st, 1999, Memorial Day of 1999. Do  
7 you remember that day?
- 8 A. Vaguely, it's been quite a while.
- 9 Q. Do you remember an incident that happened up  
10 there at Wal-Mart parking lot in Roeland Park?
- 11 A. Yeah.
- 12 Q. And do you know a fellow by the name of Eddie  
13 Miller?
- 14 A. Yes, I do.
- 15 Q. Had you and Eddie been doing drugs that day?
- 16 A. Yeah.
- 17 Q. Do you know Prescilla Gray?
- 18 A. Yes.
- 19 Q. Who is she?
- 20 A. She is Eddie Miller's girlfriend.
- 21 Q. Were the three of you driving around that day in  
22 one of your dad's cars off the lot?
- 23 A. Yeah.
- 24 Q. And did you eventually meet a fellow by the name  
25 of Richard or Rick?

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1 A. I think it was Rick; he went by Rick.  
2 Q. And where did you meet him at?  
3 A. Over by Melrose Manor apartments.  
4 Q. Did he end up getting in the car with you guys  
5 and doing drugs with you fellows?  
6 A. He got in the car with us. We was supposed to  
7 take him to Wal-Mart. We was supposed to  
8 exchange and we was supposed to go get drugs  
9 after that, yeah.  
10 Q. So you were giving him a ride so you guys could  
11 get some money to go get more drugs?  
12 A. Yeah.  
13 Q. Was your understanding that he was going to  
14 steal something at the Wal-Mart?  
15 A. That's kind of the way I figured it. He didn't  
16 actually say that. He asked for a ride to  
17 Wal-Mart. He was going to take care of us so --  
18 Q. So who was driving the car?  
19 A. I was.  
20 Q. And who was in the passenger seat in front?  
21 A. Rick.  
22 Q. Who was in the backseat?  
23 A. Eddie and his girlfriend.  
24 Q. When you got up to the Wal-Mart parking lot,  
25 what do you remember happening?

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- 1 A. Well, we pulled in to the parking lot and he got  
2 out and he said he would be right back.
- 3 Q. Who got out?
- 4 A. Rick.
- 5 Q. Okay.
- 6 A. He got out of the car. I went and pulled up  
7 waiting for someone to back out of the parking  
8 spot so I could pull in. I noticed in my mirror  
9 he was over there wrestling with some woman.
- 10 Q. So he was behind your car?
- 11 A. Quite a ways back. I don't know, 8 to 10  
12 parking spots behind me.
- 13 Q. You said he was wrestling with a woman?
- 14 A. Uh-huh.
- 15 Q. Could you tell us what he was doing?
- 16 A. No. I just seen him wrestle her.
- 17 Q. Did the woman end up on the ground?
- 18 A. The woman was probably whooping the shit out of  
19 him.
- 20 Q. You felt like the woman was doing better in the  
21 fight than he was?
- 22 A. Yeah.
- 23 Q. What happened next?
- 24 A. He got up and ran back to the car.
- 25 Q. Did he have anything with him when he got back

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1 to the car?

2 A. He had a cell phone.

3 Q. And what happened when he got back into the car  
4 with the cell phone?

5 A. Actually it scared us. We all took off. We  
6 took him back to the apartment and dropped him  
7 off and me and Eddie got the hell out of there.

8 Q. Took him back to the same spot when you found  
9 him?

10 A. Yep.

11 Q. Did he try to make the cell phone work?

12 A. He was messing with it in the car. I don't know  
13 if he called anybody or not. He was messing  
14 with it.

15 Q. We're talking about Rick now?

16 A. Yep.

17 Q. Had you known this fellow named Rick before that  
18 day?

19 A. No. The first I'd ever seen him.

20 Q. How did you know that he would be interested in  
21 drugs like you were or how did that happen? How  
22 did you two get together?

23 A. When people like me and Eddie with drug problems  
24 are out looking for drugs, we go to like Melrose  
25 Manor apartments or Silver City apartments, so

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1            somewhere where they run the drugs out to the  
2            car. They ask you what you need, you tell them  
3            what you need, you get it and go. That's how we  
4            got it. He ran out to the car, he was going to  
5            serve us. You give me a ride, I'll take care of  
6            you.

7        Q.    So you were just in a location where you thought  
8            you could buy some drugs?

9        A.    Yeah.

10       Q.    And this fellow Rick hopped in your car, but he  
11            didn't actually have drugs. He had to go with  
12            you to get some money for drugs?

13       A.    Yes.

14       Q.    What did this fellow Rick look like?

15       A.    He's a light-skinned black man.

16       Q.    What did his hair look like?

17       A.    Kind of long braided, probably about, oh, down  
18            to here, I guess (indicating).

19       Q.    What about facial hair?

20       A.    I think he had a mustache and a little bit right  
21            here (indicating).

22       Q.    Was it long or just like hadn't shaved in a  
23            couple of days?

24       A.    Shorter than mine, but like a goatee kind of.

25       Q.    Trying to get one going?

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SCAN DATE 2008/09/10 14:56



- 1 Q. Do you see him in the courtroom today?
- 2 A. I'm not sure. I mean, yeah. The dude right
- 3 there kind of looks like him, but I'm not saying
- 4 it is.
- 5 Q. You say "dude right there," who are you talking
- 6 about?
- 7 A. This guy over here (indicating) in the middle.
- 8 Q. What's he wearing today?
- 9 A. The black jacket there with a white shirt under
- 10 it.
- 11 MR. COWLES: Let the record reflect the
- 12 witness is referring to the defendant Richard
- 13 Jones.
- 14 Q. (By Mr. Cowles) Now, this fellow that's sitting
- 15 over here today, does his hair look different
- 16 than it did back then?
- 17 A. A lot different.
- 18 Q. Excuse me?
- 19 A. A lot different. Like I said, I can't even say
- 20 positive it was him. It looks like the guy,
- 21 but --
- 22 Q. Look at State's Exhibit 1, that photographic
- 23 array.
- 24 A. Uh-huh.
- 25 Q. Were those the photographs that you were looking

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1           there a time that David Colvin, Jr., went with  
2           you in a car to the area of where he said this  
3           fellow had been picked up in order to go buy  
4           drugs?

5       A.    Yes.

6       Q.    Where was that area?

7       A.    I believe the exact address was 2722 West 41st  
8           in Kansas City, Kansas.

9       Q.    And what kind of area are we talking about  
10          there?

11      A.    Low income.

12      Q.    Residential?

13      A.    Yes, sir.

14      Q.    And he pointed out a specific address where he  
15          had found this fellow Rick?

16      A.    Coming out of the door, yes, sir.

17      Q.    And did you attempt to contact the people at  
18          that residence?

19      A.    Yes, sir.

20      Q.    And did you have any success?

21      A.    No, sir.

22      Q.    Did you leave what are called door hangers at  
23          that address?

24      A.    Yes, I did.

25      Q.    Could you tell the jury what a door hanger is?

1 A. For the sheriff's office. It's basically a  
2 orange placard requesting someone at the  
3 residence to give me a call.

4 Q. Did you ever get any calls from anyone there?

5 A. No, sir.

6 Q. And was it after you didn't have any success  
7 with that that you went through this situation  
8 where you took Colvin down to the police station  
9 to look through the computerized database for  
10 photographs?

11 A. Correct.

12 Q. Now, Mr. Colvin's memory of that was he thought  
13 that towards the end of that process the  
14 officers were mixing up photographs and having  
15 him pick out a person in a different sequence.  
16 Was that your memory of it?

17 A. No, sir.

18 Q. Can you describe for the jury what happened once  
19 he identified the person that he said was the  
20 assailant of Ms. Scherer?

21 A. Once he got to that one particular photograph,  
22 he stopped looking. The detective from Kansas  
23 City, Kansas, basically had Mr. Colvin move out  
24 of the way so he could access the computer so he  
25 could make the photo lineup.

1 Q. All right. And so was that the end of the  
2 picking process as far as Mr. Colvin was  
3 concerned?

4 A. Yes, sir.

5 Q. There wasn't any of this mixing up and seeing if  
6 he could do it again, that kind of thing?

7 A. No, sir.

8 Q. Once again, that was photograph No. 202?

9 A. Yes, sir.

10 Q. After that occurred they had the information  
11 there in Kansas City, Kansas, on exactly who  
12 this Richard Jones was; is that right?

13 A. Yes, sir.

14 Q. And I think you said before it's the defendant  
15 here in court. Was that picture out of that  
16 computerized database?

17 A. Correct.

18 Q. And once you had that information did you also  
19 or did the Kansas City, Kansas, Police  
20 Department have information regarding possible  
21 addresses for Mr. Jones?

22 A. Yes, sir.

23 Q. And did you attempt to locate Mr. Jones with  
24 regard to this incident after you had that  
25 information?

1           that investigation?

2       A.    I was originally the responding officer to the  
3           call at the Wal-Mart.

4       Q.    Did you speak to a Tamara Scherer at the  
5           Wal-Mart parking lot?

6       A.    Yes, I did.

7       Q.    Did you talk to her about a description of her  
8           attacker?

9       A.    Yes, I did.

10      Q.    Do you recall how she described the man who  
11           attacked her and robbed her?

12      A.    If I could refer to my report?

13      Q.    Yeah, please do.

14      A.    She described him as a Hispanic male in his  
15           early 20's, about five-foot-nine, thin build  
16           with long hair, possibly was in a ponytail.

17      Q.    Did she give you a hair color?

18      A.    Yes, she did, brown.

19      Q.    Did you talk to her about whether she saw the  
20           face of the man who attacked her?

21      A.    Yes, I did.

22      Q.    What did she tell you?

23      X A.    She said she didn't see the suspect's face. She  
24           only saw the back of the subject as he was  
25           leaving the scene.

- 1 A. At the time, it was me and my three children and  
2 Richard Jones.
- 3 Q. When's your birthday?
- 4 A. My birthday is May 30th, 1975.
- 5 Q. If we can jump back to May 30th of 1999.
- 6 A. Uh-huh.
- 7 Q. That would have been another birthday for you?
- 8 A. Yes.
- 9 Q. Did you have any special activities that  
10 happened that day?
- 11 A. Yes. We had a birthday party for myself.
- 12 Q. Was this family and friends?
- 13 A. It was just family.
- 14 Q. How many people would you say?
- 15 A. I'd say about 8 to 10 people.
- 16 Q. Was Richard Jones there?
- 17 A. Yes, he was.
- 18 Q. Then if we go overnight to the 31st, did Richard  
19 Jones stay at the apartment overnight between  
20 the 30th and 31st?
- 21 A. Yes, he did.
- 22 Q. And then if we start again on the morning of the  
23 31st --
- 24 A. Uh-huh.
- 25 Q. -- was Mr. Jones there all day?

1 A. Yes, he was there all day.

2 Q. What did you do during the day on the 31st?

3 A. During the day on the 31st, I think I woke up  
4 that morning and Richard was still asleep and I  
5 had never had a birthday party before so I had  
6 made him breakfast in bed to do him a favor  
7 since he did that for me the day before. And I,  
8 you know, cleaned the apartment because of if  
9 you have a party there's going to be clutter. I  
10 cleaned the apartment and a couple of family  
11 members came over and watched television and  
12 things like that.

13 Q. Which family members came over that day?

14 A. One of my sisters, her name is Lisa Kidd; and  
15 another sister, Chyna Kidd, they both came over.

16 Q. When was Lisa Kidd there?

17 A. Lisa Kidd came over after she got off work and  
18 at that time she was working and she got off at  
19 about three o'clock, so she called me and said  
20 that she was going to come over, you know, to  
21 help me finish cleaning up the apartment because  
22 there was a lot of -- she came over after she  
23 came off work and helped clean the apartment  
24 along with myself.

25 Q. What time was it when Lisa left?

- 1 A. She stayed until it was kind of late. I'm not  
2 really sure of the exact time, but I would say  
3 around 10:30 or 11:00.
- 4 Q. How about you said another sister came over too?
- 5 A. Yes.
- 6 Q. Who was the other sister?
- 7 A. Chyna.
- 8 Q. What time did Chyna get there.
- 9 A. I'm going to say around 7:30, 8:00. They got  
10 there about that time.
- 11 Q. How long did she stay?
- 12 A. 30 minutes, maybe. She only came for a little  
13 while, just to drop off something.
- 14 Q. Was Richard there during that whole time span?
- 15 A. Yes.
- 16 Q. Did Richard spend the night at the apartment the  
17 night of the 31st going into the 1st?
- 18 A. Yes.
- 19 Q. Did he ever leave the apartment on the 31st?
- 20 A. No.
- 21 Q. I think you gave me some photographs of Richard  
22 Jones?
- 23 A. Uh-huh.
- 24 Q. Do you remember when those were taken?
- 25 A. Around of first of July when those photographs



1 Q. -- your sister?

2 I'd like to jump back to May of 1999.

3 Where was your sister Tia living then?

4 A. At East Hills Village. It's 75th and Monroe,  
5 Kansas City, Missouri.

6 Q. Was Richard Jones living there too?

7 A. Yes.

8 Q. Well, when is your sister's birthday?

9 A. May 30th.

10 Q. Was there a party on May 30th of '99 for her?

11 A. I heard it was. I wasn't there. I'm not  
12 over -- I don't go to Missouri very often, but  
13 it was her birthday.

14 Q. Did you end up going to the apartment on the  
15 31st?

16 A. Yes.

17 Q. What time did you get over there on that day, do  
18 you know?

19 A. It had to be like a little after 7 because I  
20 came straight from work. I would say anywhere  
21 from 7:15, maybe to 7:08, you know.

22 Q. Where were you working?

23 A. Oakwood Manor.

24 Q. Where was that located?

25 A. On 115th and Holmes.

1 Q. Did you drive straight from work to the  
2 apartment?  
3 A. Yes.  
4 Q. Who was at the apartment when you got there?  
5 A. Pierre and Tia.  
6 Q. And you're referring to "Pierre," is that him?  
7 A. That's him (indicating).  
8 Q. Okay. You know him as Pierre?  
9 A. Pierre, Richard, but mostly Pierre. Our family,  
10 we usually call him Pierre.  
11 Q. I'm sorry. Who was at the apartment when you  
12 went there?  
13 A. Pierre and Tia.  
14 Q. How long were you there?  
15 A. I wasn't there very long at all. I don't even  
16 think I was -- I would say maybe 20 or 30  
17 minutes. I just came to talk to my sister and I  
18 left.  
19 Q. Was Richard still there when you left?  
20 A. Yeah. He was laying on the couch in the living  
21 room.  
22 Q. Has Richard ever used the name Rick or gone by  
23 Rick?  
24 A. Rick, no. He used Pierre all the time.  
25 MR. BARTEE: Thank you.

1 other than that, I didn't go anywhere else.

2 Q. How about the night of the 30th leading into the

3 31st?

4 A. I was at home.

5 Q. Then jumping ahead to the day of May 31 of

6 '99 --

7 A. Uh-huh.

8 Q. -- did you leave that day?

9 A. Not that I recall.

10 Q. What happened on -- well, let's jump back to the

11 30th.

12 A. Okay.

13 Q. That night at some point the party would have

14 ended?

15 A. Yes.

16 Q. About what time did the party wind down?

17 A. I'd say at the latest, between 11:30 and 12:00,

18 if that.

19 Q. And you slept at the apartment that night?

20 A. Yes.

21 Q. And then the next day about what time did you

22 get up?

23 A. I got up between 11 and 12.

24 Q. Was Tia there when you got up?

25 A. Yes, sir.

1 Q. What did you and Tia do during the day on the  
2 31st?

3 A. I was basically lounging around. Tia was trying  
4 to clean up. I helped her a little bit. I was  
5 basically lounging around the whole day.

6 Q. Did you have visitors on the 31st?

7 A. Yes, sir.

8 Q. Who were those?

9 A. I only recall one, that was Lisa, her sister  
10 Lisa, she came over.

11 Q. When was Lisa there, from what you remember?

12 A. Lisa got there about three, three or four,  
13 sometime between there.

14 Q. How long did Lisa stay?

15 A. She stayed most of the day.

16 Q. What did you do that evening?

17 A. The same thing, basically lounged around,  
18 watched some movies. Other than that, I didn't  
19 do anything.

20 Q. Did you go over and walk around in KCK and get  
21 picked up by those guys who testified yesterday?

22 A. No, sir.

23 Q. Did you have anything to do with the robbery  
24 that we've heard testimony about?

25 A. No, sir.

## REPORT

JOHNSON COUNTY SHERIFF'S OFFICE  
OLATHE, KANSAS

COMPLAINT # 99006748

DATE OF REPORT	OFFICERS	DISTRICT OR UNIT	CHARACTER OF CASE
06-15-00	Det. Scott Atwell	Crimes Against Persons Unit	Progressive Investigation AGG ROBBERY
TITLE OF CASE (INCLUDE ALIASES)		VICTIMS	
JONES, RICHARD A., B/M, [REDACTED] 5'10, 160, Blk, Bro, SSN/[REDACTED] No permanent address		SCHERFF, TAMARA L., W/F, [REDACTED] [REDACTED] Kansas City, KS 66106 Telephone: [REDACTED] (H) POE/Sonic Drive In 3501 Strong Avenue, KCKS Telephone: 913-384-3663	

DETAILS (REPORT ALL FACTS IN LOGICAL SEQUENCE)

Names Mentioned: JONES, RICHARD  
KIDD, CHINA  
KIDD, TIA

I had received an e-mail from Assistant District Attorney John Cowles asking that I try to contact and interview three individuals who Richard Jones had mentioned in a Notice of Alibi.

Interviewed: KIDD, CHINA B/F, [REDACTED]  
[REDACTED]  
Kansas City, KS  
Telephone: [REDACTED]

On Wednesday, 06-14-00, I made telephone contact with a female who identified herself as China Kidd. I identified myself to China and told her I was calling in regard to her name being mentioned as a possible alibi for Richard Jones.

I asked China if she knew Richard Jones. She said she did and knew he was in trouble for taking a cellular phone. I asked China how she knew that and she said through her sister Tia Kidd.

I asked China if she could give me any information regarding being an alibi for Richard Jones. She said she had been at Tia's residence to celebrate Tia's birthday on 05-30-99, and had seen Richard Jones at Tia's apartment at that time, as he was living with Tia. China said she again saw Richard Jones on 05-31-99 for approximately 30 to 45 minutes sometime in the afternoon.

Continued on Page 2

JOHNSON COUNTY SHERIFF'S OFFICE  
Olathe, Kansas

## CONTINUATION REPORT

Date: 06-15-00

Case # 99006748

Page: 2

I asked China if she could be more precise on the time she was at Tia's apartment on 05-31-99. China said she didn't recall the exact time, but knew it was in the afternoon.


China told me she wanted me to understand that she is not saying Richard Jones did not commit the robbery, that she is just saying that she saw him for 30 to 45 minutes at Tia's apartment on 05-31-00.

China added she wouldn't put it past Richard Jones to do something like that. I told China that there is a possibility that when people are trying to obtain money for drugs they will commit robberies which they wouldn't normally do. China said that would not be Richard's case, as he would have committed a robbery whether or not he wanted drugs because "that's just the way he is."

As China had nothing further to add, I asked her if I could contact her again if necessary and she said I could. The phone call was then terminated.

Case Status: Closed.

Respectfully Submitted:

  
Detective Scott Atwell, #009  
Crimes Against Persons Unit  
Johnson County Sheriff's Office

335/99006748:aa

## REPORT

JOHNSON COUNTY SHERIFF'S OFFICE  
OLATHE, KANSAS

COMPLAINT # 99006748

DATE OF REPORT	OFFICERS	DISTRICT OR UNIT	CHARACTER OF CASE
06-15-00	Det. Scott Atwell	Crimes Against Persons Unit	Progressive Investigation AGG ROBBERY
TITLE OF CASE (INCLUDE ALIASES)		VICTIMS	
JONES, RICHARD A., B/M, [REDACTED] 5'10, 160, Blk, Bro, SSN/[REDACTED] No permanent address		SCHERER, TAMARA L., W/F, [REDACTED] [REDACTED] Kansas City, KS 66106 Telephone: [REDACTED] (H) POE/Sonic Drive In 3501 Strong Avenue, KCKS Telephone: 913-384-3663	

DETAILS (REPORT ALL FACTS IN LOGICAL SEQUENCE)

Names Mentioned: KIDD, LISA  
KIDD, TIA  
JONES, RICHARD

Interviewed: KIDD, LISA B/F, [REDACTED]  
[REDACTED]  
Kansas City, MO  
Telephone: [REDACTED]

On Wednesday, 06-14-00, I made telephone contact with Lisa Kidd at her residence. I identified myself to Lisa and told her that I was asked to interview her in regards to her name being used as an alibi for Richard Jones.

I asked Lisa if she knew Richard Jones. She said she did. I asked Lisa if she knew what kind of trouble Richard was in. She said for taking a cell phone. I asked Lisa how she knew this. She said through her sister, Tia Kidd. I asked Lisa if she could give me any information in regards to being an alibi for Richard Jones.

Lisa said she was at Tia's apartment for Tia's birthday on 05-30-99. She said while she was there she saw Richard Jones for approximately 2 hours in the afternoon. Lisa said she returned to her sister's residence on 05-31-99 between 1500 and 1515 hours and stayed until approximately 2200 to 2230 hours. Lisa said she stayed at Tia's apartment on that day to help her clean up after the birthday party and remembered watching a video titled Belly. Lisa said Richard was in and out of the apartment on that day, and that Richard was also ironing some of his clothes.

Continued on Page 2

Clerk of the District Court, Johnson County Kansas  
08/29/18 12:52pm SS

**EXHIBIT C**

JOHNSON COUNTY SHERIFF'S OFFICE  
Olathe, Kansas

CONTINUATION REPORT

Date: 06-15-00


Case # 99006748

Page: 2

I asked Lisa why she thinks I am interested in the date of 05-30-99 and 05-31-99. Lisa said it was her understanding that one of those two dates was the date of the robbery. I asked Lisa how she knew that information. Lisa said her sister Tia told her.

As Lisa had nothing further to add at the time, I asked her if I could contact her again if necessary and she said I could.

Case Status: Closed.

Respectfully Submitted: 

Detective Scott Atwell, #009  
Crimes Against Persons Unit  
Johnson County Sheriff's Office

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## REPORT

JOHNSON COUNTY SHERIFF'S OFFICE  
OLATHE, KANSAS

COMPLAINT # 99006748

DATE OF REPORT	OFFICERS	DISTRICT OR UNIT	CHARACTER OF CASE
06-15-00	Det. Scott Atwell	Crimes Against Persons Unit	Progressive Investigation AGG ROBBERY
TITLE OF CASE (INCLUDE ALIASES)		VICTIMS	
JONES, RICHARD A., B/M, [REDACTED] 5'10, 160, Blk, Bro, SSN/[REDACTED] No permanent address		SCHERER, TAMARA L., W/F, [REDACTED] [REDACTED] Kansas City, KS 66106 Telephone: [REDACTED] (H) POE/Sonic Drive In 3501 Strong Avenue, KCKS Telephone: 913-384-3663	

DETAILS (REPORT ALL FACTS IN LOGICAL SEQUENCE)

Names Mentioned: KIDD, TIA  
JONES, RICHARD  
KIDD, CHINA  
KIDD, LISA  
COLVIN, DAVID  
MILLER, EDDIE  
COEN, RONALD  
SCHERER, TAMARA

Interviewed: KIDD, TIA B/F, [REDACTED]  
[REDACTED]  
Kansas City, MO  
Telephone: [REDACTED]

On Thursday, 06-15-00, I made telephone contact with Tia Kidd at her residence. It should be noted that I attempted to make contact with Tia on Wednesday, 06-14-00, however there was no answer.

I identified myself to Tia and told her I was asked to call her in regards to her being mentioned as an alibi for Richard Jones in an upcoming trial. I asked Tia if she was familiar with Richard. She said she is as Richard used to live with her.

I asked Tia if she could give me any information regarding being an alibi for Richard Jones. Tia said Richard was at her apartment for her birthday party on 05-30-99 and was also with her on 05-31-99. Tia said Richard remained at their apartment on 05-31-99 cleaning up after the birthday party and they had watched two movies titled Belly and Jerry Springer: Ringmaster.

Continued on Page 2

Clerk of the District Court, Johnson County Kansas  
08/29/18 12:52pm SS

**EXHIBIT C**

JOHNSON COUNTY SHERIFF'S OFFICE  
Olathe, Kansas

CONTINUATION REPORT

Date: 06-15-00

Case #99006748


Page: 2

Tia said Richard never left the apartment and she doesn't understand why Richard is being blamed for the robbery.

I asked Tia what makes her think I am interested in the date of 05-31-99. Tia said because that was the date of the robbery that Richard was supposed to have committed. I asked Tia how she knew that. She said because she has talked with Richard over the phone since his arrest. I asked Tia how many times she and Richard have talked over the phone. Tia said she hasn't kept track, however they talk over the phone "every now and then."

At this time it appears it is possible that Tia, China Kidd, and Lisa Kidd are making these statements for Richard Jones out of friendship as Mr. Jones has been identified as being the suspect by his two acquaintances, David Colvin and Eddie Miller. Mr. Jones' photograph was also picked out of a photo line-up by Wal-Mart Security Officer, Ronald Coen as being the suspect who took Tamara Scherer's phone.

Case Status: Closed.

Respectfully Submitted: 

Detective Scott Atwell, #009  
Crimes Against Persons Unit  
Johnson County Sheriff's Office

335/99006748.cc

Narrative  
Roeland Park Police

Report Date  
05-31-1999

Case Number  
990685

Officer/Badge  
J.S. Larson #960

Page  
4 / 4

On 05-31-1999 at 2022 hrs, I arrived at Wal-Mart 5150 Roe, in reference to a purse theft. On arrival I contacted Wal-Mart loss prevention personnel in the parking lot. They told me that the victim, later identified as Tamara Scherer (w/f [REDACTED]), had her purse taken in the parking lot. They told me that the victim had fought with the subjects over the purse.

Ms. Scherer told me that she had pulled in a parking space on the northeast side of the building. She was waiting outside her vehicle for her daughter when she saw a car pull up next to her car and a subject got out of the car. She then felt someone attempting to take her purse from her shoulder. The subject was identified as a hispanic male in his early to mid 20's, about 5'09", thin build with long brown hair, that might have been in a pony tail. The victim tore the shirt of the suspect as the fight ensued, the suspect then pushed the victim to the ground. The victim fell to the ground and still had her purse, however a cellular phone had fallen out of the purse. The suspect left the scene with the cellular phone. The victim did not ever see the face of the suspect, she only saw the back of the subject as he was leaving.

As I was talking to Ms. Scherer, Ron Wolters (w/m [REDACTED]) pulled up in his vehicle and said that he had the license plate of the suspect vehicle. He said the license was KS dealer tag D [REDACTED] E, it was displayed on a Grey 80's model Chrysler Lebaron 2 door. The car had "1050 Cash" on the passenger side windshield, possibly written in shoe polish. He said he followed the car east on 47<sup>th</sup> street then the car went north on Puckett Rd from 47<sup>th</sup> Street. Mr. Wolters said he saw the suspect get out of his vehicle and grab the woman. Wolters said that the suspect "body slammed" the victim to the ground and was forcefully fighting with her in an attempt to get her purse.

Ronald Coen, Wal-Mart loss prevention, said that he observed the suspect vehicle in the lot at least three times since 1700 hrs on this date. He observed the car with two occupants in it and they appeared to be smoking. Coen thought the subjects were waiting for someone that was in the store. Coen saw the robbery take place and attempted to get to the victim to assist her, by the time he got to the scene the suspect had already left the scene. He did see the subjects and believes that he could identify them again.

The cellular phone that was taken is a Nokia PCS phone, with Aerial PCS service. It is an unknown model and has a serial number of [REDACTED]. While I was talking with the victim she had her cellular service shut off. The tag on the suspect vehicle returns to a DLC Enterprises Inc. at 1317 Kansas Ave. Kansas City, KS 66105. I could not locate a phone number for this business or the address, in the phone book or in the Cole directory.

The victim showed me a scrape on her left elbow from her being pushed to ground. It was about three inches in diameter and appeared to have scratched the skin and looked red in color. The right elbow was also scraped however it had not broken the skin.

An attempt to locate was broadcast and put out by the Johnson County Sheriffs Office.

Nothing further at this time.

  
Officer J.S. Larson #960

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EXPIRES IN 90 DAYS IT IS RECOMMENDED IT BE DE-  
STROYED AFTER THAT TIME.

PD

APR 10 2000

Clerk of the District Court, Johnson County Kansas  
08/29/18 12:52pm SS

**EXHIBIT D**

# REPORT

JOHNSON COUNTY SHERIFF'S OFFICE  
OLATHE, KANSAS

COMPLAINT # 99006748

183

DATE OF REPORT	OFFICERS	DISTRICT OR UNIT	CHARACTER OF CASE
06-14-99	Det. Scott Atwell	Crimes Against Persons Unit	PROGRESSIVE INVESTIGATION AGG. ROBBERY
TITLE OF CASE (INCLUDE ALIASES)		VICTIMS	
		SCHERER, TAMARA L., W/F, [REDACTED] SSN: [REDACTED] [REDACTED] Kansas City, KS 66106 Telephone: [REDACTED] POB: Sonic Drive In 3501 Strong Ave., Kansas City, KS Telephone: 913-384-3663	

DETAILS (REPORT ALL FACTS IN LOGICAL SEQUENCE)

COPIES TO: DET ( ) KCI ( )

SID ( ) S.M. ( )

AGENCY Rebord ( ) D.A. ( )

Perk 6-16-99/85

Interviewed: SCHERER, TAMARA L.  
(Victim)

On Friday, 06-04-99, I made telephone contact with Tamara Scherer. After identifying myself to Ms. Scherer, I asked if she thought she would be able to identify the suspect or the driver of the suspect vehicle. Ms. Scherer said she did not think so. Ms. Scherer said when she was wrestling the suspect over her purse, she was mainly focused on her purse and not the suspect's face. Ms. Scherer said at first she thought the driver of the suspect vehicle was a white female due to the way the blond hair was pulled back into a pony tail; however, she was told later that it was a white male. I told Ms. Scherer I would still like to compile a photo line-up and have her look at it to have her ascertain if she could identify the driver of the suspect vehicle. She said she would try.

Case Status: Open. Investigation to continue.

Respectfully Submitted:

Detective Scott Atwell, #000  
Crimes Against Persons Unit  
Johnson County Sheriff's Office

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PP

APR 10 2000

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DISTRICT ATTORNEY COPY

Clerk of the District Court, Johnson County Kansas  
08/29/18 12:52pm SS

EXHIBIT E

# REPORT

JOHNSON COUNTY SHERIFF'S OFFICE  
OLATHE, KANSAS

COMPLAINT # 99006748 *MS*

DATE OF REPORT 08-25-99	OFFICERS Det. Scott Atwell	DISTRICT OR UNIT Crimes Against Persons Unit	CHARACTER OF CASE PROGRESSIVE INVESTIGATION AGG. ROBBERY
TITLE OF CASE (INCLUDE ALIASES)		VICTIMS SCHERER, TAMARA L., W/F, [REDACTED] SSN: [REDACTED] Kansas City, KS 66106 Telephone: [REDACTED] POE: Sonic Drive In 3501 Strong Ave., Kansas City, KS Telephone: 913-384-3663	

DETAILS (REPORT ALL FACTS IN LOGICAL SEQUENCE)

Names Mentioned: COLVIN, DAVID  
(LNU), RICK

AD TO DET ( ) ( )  
9-29-99/ [REDACTED] ( ) ( )  
AD BY Poelard ( ) ( )  
Park

On Tuesday, 08-24-99, I had made contact with David Colvin at [REDACTED] Kansas City, KS and asked him if he would accompany me to the Kansas City, Kansas Police Department to look at mug shots to ascertain if the suspect Rick (LNU) is pictured there so as to gain more information relating to the last name, physical appearance, and possible address. Mr. Colvin said he would go.

It should be noted that I have been trying to make contact with Rick (LNU) at 2722 W. 41st Avenue, Kansas City, KS since Wednesday, 06-30-99, and as of the date of this report, I have been unable to contact Rick (LNU).

Upon arrival at the Kansas City, Kansas Police Department, contact was made with Homicide Detective Greg Lawson. Det. Lawson asked Mr. Colvin to look at the mug shots in their computer system to see if anyone resembled Rick (LNU). Det. Lawson had made a search in the computer system for all black males with the first name of Rick or Richard. After the 202nd mug shot, Mr. Colvin picked out the photograph of Richard A. Jones, B/M, [REDACTED]. Mr. Colvin said Mr. Jones is the person he knows as Rick. At the time of the Kansas City, Kansas mug shot, Mr. Jones had a goatee. Mr. Colvin said during the robbery Mr. Jones did not have the goatee.

I then asked Det. Lawson if he would make a photo line up witnesses.

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STROYED AFTER THAT TIME.

PD APR 10 2000

Continued on Page

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08/29/18 12:52pm SS

EXHIBIT F

*Atwell*

JOHNSON COUNTY SHERIFF'S OFFICE  
Olathe, Kansas

CONTINUATION REPORT

Date: 08-25-99

Case # 99006748

Page: 2

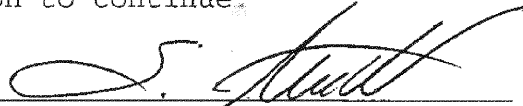
Det. Lawson then made a photo line up consisting of the following individuals.

1. Jones, Richard A. (Suspect)
2. Brown, Terry
3. Goodwin Jr., Michael
4. Palmer, Ronald
5. Grady, Maurice
6. Bell, Marcus

It should be noted that the mug shot system at the Kansas City, Kansas Police Department does not list the date of birth with the mug shot.

Case Status: Open. Investigation to continue.

Respectfully Submitted:

  
Detective Scott Atwell, #009  
Crimes Against Persons Unit  
Johnson County Sheriff's Office

335/99006748 f

PP APR 10 2000

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EXPIRES IN 90 DAYS IT IS RECOMMENDED IT BE DE-  
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Clerk of the District Court Johnson County Kansas  
08/29/18 12:52pm SS

**EXHIBIT F**

# Kansas City, Kansas Police Department



Photo Number: 106455  
Name: JONES  
RICHARD



Photo Number: 152671  
Name: BROWN  
TERRY

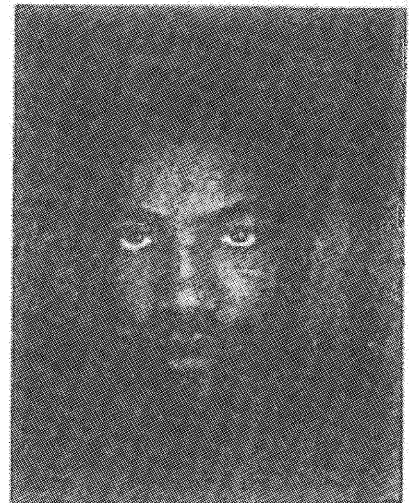


Photo Number: 152305  
Name: GOODWIN  
MICHAEL JR 021574



Photo Number: 149454  
Name: PALMER  
RONALD



Photo Number: 152755  
Name: GRADY  
MAURICE

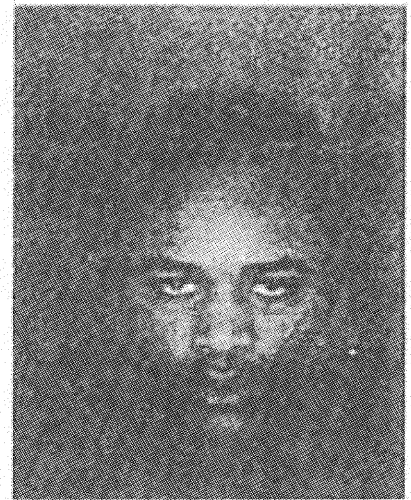


Photo Number: 150159  
Name: BELL  
MARCUS

ROELAND PARK POLICE COPY

Clerk of the District Court, Johnson County Kansas  
08/29/18 12:52pm SS

**Exhibit G**

STATE OF KANSAS  
Tenth Judicial District

OFFICE OF DISTRICT ATTORNEY  
PAUL J. MORRISON, DISTRICT ATTORNEY

NOTICE OF DECLINED PROSECUTION

INVESTIGATING AGENCY JCSO ATTN. S. Atwell  
SUSPECT(S) Richard Jones  
VICTIM(S) Tamara Scherer  
AGENCY CASE # 99006748 DATE RECEIVED 11 Oct 99

After reviewing the above listed reports, we have decided to decline prosecution for the following reason(s):

1. ☒ Further investigation needed
2. ☐ Insufficient evidence establishing accused as offender
3. ☐ Insufficient evidence establishing criminal offense
4. ☐ Evidence illegally obtained
5. ☐ Victim/witness unavailable/uncooperative
6. ☐ Statute of limitations bars action
7. ☐ Lack of jurisdiction/venue
8. ☐ Valid affirmative defense
9. ☐ Lack of credibility of victim/evidence/witness
10. ☐ Case dropped for prosecution/plea in another case
11. ☐ Referred to another jurisdiction for prosecution
12. ☐ Prosecution declined for investigative cooperation
13. ☐ Death of offender
14. ☐ Other \_\_\_\_\_

Comments Can the photo lineup of this suspect be  
shown to Ronald Coen? I do not feel very  
comfortable with the fact only Coen and Miller  
have identified him as the suspect.

Date 14 Oct 99

By: Roger A. Hordern  
Warrant Attorney / Assistant D.A.

PD

APR 10 2000

Clerk of the District Court, Johnson County Kansas  
08/29/18 12:52pm SS

EXHIBIT H



## REPORT

ROELAND PARK POLICE  
4600 West 51st Street  
Roeland Park, KS 66205

CASE # supp 990685

DATE AND TIME 06-01-1999 / 1930 hrs	OFFICERS Larson #960	UNIT 2311	CHARACTER OF CASE Investigation of Robbery
TITLE OF CASE (INCLUDE ALIASES) Dillon, George (w/m [REDACTED] KCKS (ID) [REDACTED] (W) [REDACTED])		VICTIM Scherer, Tamara L.	
Colvin, David (w/m [REDACTED] KCKS (H) [REDACTED] (W) [REDACTED])			
Colvin, David W. (w/m [REDACTED] KCKS 66106)			

On 06-01-1999 at 1855 hrs. Sgt. Stoker and I responded to DLC Enterprise Inc. at 1317 Kansas Ave., reference a follow up of an Aggravated Robbery that occurred on 05-31-1999. The tag on the suspect vehicle, KS D [REDACTED] E, returned to the business. When I approached the business from the west, I noticed a dark Grey Chrysler Lebaron in the parking lot of the business. The car did not have any tags on it and it did not have any writing on the windshield of the car. The VIN on the car was [REDACTED] and it was a 1987 Chrysler Lebaron. The car did not have hubcaps on the car and had black wheels on the car. I took photographs of the vehicle as it was in the lot. I attempted to make contact at the business, and no one was at the business. The sign on the building read DLC Enterprise Inc. then a phone number of 371-0445. I left the scene and returned to Roeland Park.

At approximately 1930 hrs. Sgt. Stoker and I returned to the business at 1317 Kansas Ave. Sgt. Stoker had Ronald Coen, a witness to the robbery, in his patrol car. When we arrived at the business, Coen immediately recognized the car described earlier as being the car involved in the robbery. He said that the car had a right rear quarter panel that was a different color than the rest of the car. He said he saw it three times on 05-31-1999 and said it was the same car. Also the car had black wheels on the car and no hub caps, at the time of the robbery the car had the numbers "1050 Cash" on the windshield of the car, similar to the other cars in the lot.

When we arrived at the business a man was inside the building, later identified as George Dillon (w/m [REDACTED]). He said that his mother called him and said that the police were at his business. So he came to the business to see what was going on. He told me that he runs the garage part of the business that is at 1317 Kansas Ave. He said that David Colvin owns the car sales part of the business and that he has control over the dealer tags and the vehicles. Dillon said that no cars were out of the lot in the last few days that he knew of, except a couple that were sent to the auto auction. He said that Colvin's son, also named David Colvin (w/m [REDACTED]), had taken the cars to the auction. Colvin is described by Dillon as skinny with long blonde hair, he said he was about 5'11 and 140 lbs (similar to the suspect description). Dillon did not know if David had taken any cars for the weekend. Dillon called David Colvin, the owner of the business, to come to the location to talk to me.

Mr. Colvin arrived and said that his son had taken the Grey Chrysler Lebaron and had it all weekend. He said that David (his son) picked the car up on Friday night and had the KS dealer tag of D 3309 E on the vehicle. The car was then returned to the lot by David on Tuesday (06-01-1999) morning. Mr. Colvin said that his son lives with him when he decides to come home. He said that his son is gone for days at a time and has been incarcerated several times for drug violations. Mr. Colvin said his son was clean shaving the last time he saw him which was Friday night (05-28-1999) and he described his son as 5'10 to 6'00 and a thin build with long hair and sometimes and he wears several earrings. Mr. Colvin said that no one else has driven a car over the weekend with his dealer plates and he has five dealer plates. Mr. Dillon has one of them and Mr. Colvin has the rest of them. No one has taken a car from his lot for an extended period of time (over one hour) for over a week. Mr. Colvin said that if his son was involved with some type of criminal activity he wants his son locked him and severely punished.   
 THIS INFORMATION IS UNCLASSIFIED  
 DISSEMINATION CIVILIAN AND FEDERAL AGENCIES  
 EXPIRES IN 90 DAYS IF IT IS RECOMMENDED IT BE DESTROYED AFTER THAT TIME.

PD APR 10 2000

Clerk of the District Court, Johnson County Kansas  
08/29/18 12:52pm SS

EXHIBIT I

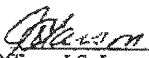
Mr. Coen said that Mr. Dillon looked as though he was the suspect in the vehicle. He said that the face looks exactly like the subject but that the physical characteristics do not match the subject.

I interviewed Mr. Dillon at the scene and he said that he was at his residence from 1730 hrs on 05-31-1999 and was there all evening long, with his wife and two sons. He was in his backyard on several occasions and was standing on his boat and several of his neighbors saw him at his residence. I took photographs of Mr. Dillon at the scene possibly for a photo line up.

Mr. Colvin was given a business card and is to call the Roeland Park Police Department when his son comes home.

I left the business around 2036 hrs and returned to Roeland Park.

The film was taken to the Johnson County Crime Lab for developing.

 #900  
Officer J.S. Larson #900  
Roeland Park Police Department

APR 10 2000

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STROYED AFTER THAT TIME.

DISTRICT ATTORNEY COPY

Clerk of the District Court, Johnson County Kansas  
08/29/18 12:52pm SS

**EXHIBIT I**

## REPORT

### ROELAND PARK POLICE

4600 West 51st Street  
Roeland Park, KS 66205

CASE # supp 990685

DATE AND TIME 06-10-1999 / 1830 hrs	OFFICERS Officer J.S. Larson #960	UNIT 2311	CHARACTER OF CASE Investigation of J-3
TITLE OF CASE (INCLUDE ALIASES) Colvin, David ( w/m [REDACTED])		VICTIM Scherer, Tamara L. (w/f [REDACTED])	

On 06-07-99 at 1840 hrs, I arrived at Wal-Mart 5150 Roe in reference to a follow-up of an Aggravated Robbery that occurred on 05-31-1999. I had a photo line-up consisting of six individuals for a witness, Ron Coen, to look at.

The photo line-up consisted of the following subjects:

1. Spruell, Danny ( w/m [REDACTED])
2. Colvin, David ( w/m [REDACTED])
3. Baber, Robert ( w/m [REDACTED])
4. Swneson, Mickle ( w/m [REDACTED])
5. Clark, Christopher ( w/m [REDACTED])
6. Knight, Dennie ( w/m [REDACTED])

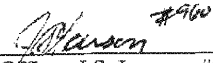
The witness, Ron Coen, was read the back of the photo line up folder and the RPPD Witness Lineup ID form and signed both, prior to looking at the photo line-up. The witness identified #4, MIKLE SWNESON, from the photo line up as the subject involved in the Robbery. The subject said that he was "almost positive" that he was the passenger in the car, and the subject who was involved in the Robbery. A copy of the ID form is attached.

On 06-09-1999 I spoke to another witness Ron Wolters, he said that he could not identify the subject's involved because he did not see their faces. He did add some additional information about the subject who was involved. Wolters said that the suspect who fought with the victim had a large tattoo on his arm, between his elbow and his shoulder. Wolters believed it was on his left shoulder.

After several attempts, I contacted the victim on 06-10-1999 and she said that Det. Atwell (JCSO) has already asked her about a photo-line up. So I did not pursue my photo-line up with the victim.

This case has been turned over to the Johnson County Sheriff's Officer for Investigation. A copy of the photo-line is attached to this report.

Nothing further at this time.

  
Officer J.S. Larson #960  
Roeland Park Police Department

COPY

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STROYED AFTER THAT TIME. 6-13-00

Clerk of the District Court, Johnson County Kansas  
08/29/18 12:52pm SS

EXHIBIT J

WYANDOTTE COUNTY DETENTION CENTER	
Name: DANNY SPRUELL	
DOB	SEX
	M MALE
EYES	WEIGHT
BLU	

WYANDOTTE COUNTY DETENTION CENTER	
Name: DAVID COLVIN	
DOB	SEX
	M MALE
EYES	WEIGHT
GRN	507

WYANDOTTE COUNTY DETENTION CENTER	
Name: ROBERT BABER	
DOB	SEX
	M MALE
EYES	WEIGHT
BRO	165

WYANDOTTE COUNTY DETENTION CENTER	
Name: DENNIE KNIGHT	
DOB	SEX
	M MALE
EYES	WEIGHT
BLU	180

WYANDOTTE COUNTY DETENTION CENTER	
Name: MIKLE SWNESON	
DOB	SEX
	M MALE
EYES	WEIGHT
BLU	135

WYANDOTTE COUNTY DETENTION CENTER	
Name: CHRISTOPHER CLARK	
DOB	SEX
	M MALE
EYES	WEIGHT
BRO	140

WYANDOTTE COUNTY DETENTION CENTER	
Name: DANNIE KNIGHT	
DOB	SEX
	M MALE
EYES	WEIGHT
BLU	180

WYANDOTTE COUNTY DETENTION CENTER	
Name: ROBERT BABER	
DOB	SEX
	M MALE
EYES	WEIGHT
BRO	165

# REPORT

JOHNSON COUNTY SHERIFF'S OFFICE  
OLATHE, KANSAS

COMPLAINT # 99006748

DATE OF REPORT 10-22-99	OFFICERS Det. Scott Atwell	DISTRICT OR UNIT Crimes Against Persons Unit	CHARACTER OF CASE PROGRESSIVE INVESTIGATION AGG. ROBBERY
TITLE OF CASE (INCLUDE ALIASES)		VICTIMS SCHERER, TAMARA L., W/F, [REDACTED] SSN: [REDACTED] [REDACTED] Kansas City, KS 66106 Telephone: [REDACTED] POE: Sonic Drive In 3501 Strong Ave., Kansas City, KS Telephone: 913-384-3663	

DETAILS (REPORT ALL FACTS IN LOGICAL SEQUENCE)

Names Mentioned: COEN, RONALD  
JONES, RICHARD

**CONFIDENTIAL**  
**NOT TO BE REPRODUCED**  
COPY TO D.A.

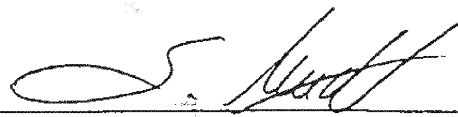
At 1716 hours, Thursday, 10-21-99, I made contact with Ronald Coen at Wal-Mart, 5150 Roe, Roeland Park, KS.

I identified myself to Mr. Coen who works Loss Prevention/Security at Wal Mart and asked if he could look at a photo line-up to see if he could recognize anyone who was involved in the robbery in the Wal Mart parking lot on 05-31-99.

Mr. Coen looked at the photo line-up for approximately 5 seconds and pointed to Photo #1, and said that was the person who tried to steal the victim's purse. I asked Mr. Coen if he was positive of that and he said he was.

It should be noted that Photo #1 is that of the suspect, Richard Jones.

Case Status: Closed.

Respectfully Submitted: 

Detective Scott Atwell, #009  
Crimes Against Persons Unit  
Johnson County Sheriff's Office

335/99006748.I

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STROYED AFTER THAT TIME

APR 10 2000  
Clerk of the District Court, Johnson County Kansas  
08/29/18 12:52pm SS

**EXHIBIT K**

Atwell

MB

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS  
CRIMINAL DEPARTMENT

STATE OF KANSAS,

Plaintiff,

00CRO131

VS.

No. \_\_\_\_\_

RICHARD A. JONES,

Defendant.

**AFFIDAVIT**

Comes now Roger A. Nordeen, an Assistant District Attorney for the Tenth Judicial District of the State of Kansas, of lawful age, being first duly sworn upon his oath, states as follows:

1. In the evening of May 31, 1999, the Roeland Park Police Department dispatched Officer Larson to Wal-Mart at 5150 Roe in Roeland Park, Johnson County, Kansas. Loss prevention officers reported a man just tried to take a woman's purse in the parking lot. Tamara Scherer said she waiting outside her car for her daughter when a car pulled up next to her car, a man got out of it, and she felt someone trying to take her purse from her shoulder. She didn't see his face. He pushed her down, but she kept her purse. Her cellular phone fell out of the purse, and the suspect took it and left. Tamara had a three-inch scrape on her elbow from the incident. She had her cellular service turned off immediately. Subsequent investigation implicated Richard A. Jones.

2. Ron Wolters said he pulled up in his vehicle and saw the suspect's 1980's Chrysler LeBaron. It had dealer tag # [REDACTED]

CLERK OF DISTRICT COURT  
JOHNSON COUNTY, KS.

2000 JAN 19 PM 2:13

Clerk of the District Court, Johnson County Kansas  
08/29/18 12:52pm SS

**EXHIBIT L**

and "1050 cash" written on the windshield. Ron saw the man "body slam" the woman to the ground and fight for her purse. Loss prevention officer Ronald Coen said he saw the robbery; the suspect's vehicle, with two occupants who appeared to be smoking, was in the parking lot at least three times that afternoon.

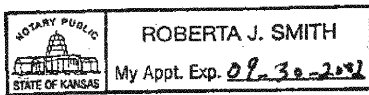
3. The tag on the suspect's vehicle returned to DLC Enterprises. Law enforcement officers went to the business and saw an older dark gray Chrysler LeBaron in the lot. They showed the car to Ronald Coen who said it was the one involved in the Wal-Mart robbery. David Colvin, Sr., owned the car sales part of the business and controlled the dealer tags. He said his son David Colvin, Jr., who had a drug problem, picked up the LeBaron with KS dealer tag # [REDACTED] on it on May 28 and returned it on June 1.

4. Detective Atwell of the Johnson County Sheriff's Department contacted David Colvin, Jr. David said he, Eddie Miller and Priscilla Gray were smoking crack during the evening of May 31. Eddie and Priscilla asked to borrow his car to drive to a Price Chopper on Roe. As they were leaving, a man they just met (named Rick LNU) got in the car. When they returned, Eddie said Rick talked them into driving through a Wal-Mart parking lot on Roe. Rick tried to rob a woman of her purse and took her cellular phone. Detective Atwell contacted Eddie Miller. Eddie said he and Priscilla were lying in the back seat while David Colvin drove his father's car. Eddie overheard Rick LNU tell David that he needed some money to buy more crack. Rick told David to drive through the Wal-Mart parking lot, and he would steal a woman's purse. David stopped the car, and Rick got out. He got back in the car and told

David to hurry up and leave. He had a cell phone and tried to use it, but it was turned off. Eddie said David didn't believe Rick was going to steal a purse; they agreed to say Rick borrowed the car and committed the robbery by himself. The detective contacted David Colvin again. He admitted he was driving the LeBaron but denied he heard Rick say he was going to steal a woman's purse.

5. David Colvin, Jr., Eddie Miller, and Ronald Coen individually viewed a photographic line-up and positively identified a photograph of Richard A. Jones as the suspect. Law enforcement officers were unable to contact Richard Jones.

6. The above information was provided from the reports of the Roeland Park Police Department.



*Roger A. Nordeen*  
Roger A. Nordeen/bjs #12841  
Assistant District Attorney  
P.O. Box 728  
Olathe, Kansas 66051  
(913) 715-3056

Subscribed and sworn to before me on this 13<sup>th</sup> day of January, 2000.

*Robert J. Smith*  
Notary Public/District Court Judge

jones:1



1 IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS  
2 CRIMINAL DEPARTMENT

3 STATE OF KANSAS,  
4 Plaintiff,

5 v. Case No. 00CR131  
6 RICHARD A. JONES,  
7 Defendant.

8 TRANSCRIPT OF PROCEEDINGS

9  
10 BE IT REMEMBERED that on the 3rd  
11 day of May, 2000, the above-entitled  
12 matter comes on for hearing before the  
13 HONORABLE JOHN ANDERSON, III, Judge of Court No.  
14 16 of the Tenth Judicial District of the State  
15 of Kansas, at Olathe, Kansas.

16 APPEARANCES

17 For the State: CHRISTOPHER McMULLIN  
18 ASSISTANT DISTRICT ATTORNEY  
19 P.O. Box 728  
Olathe, Kansas 66051

20 For the Defendant: MICHAEL BARTEE  
21 ASSISTANT PUBLIC DEFENDER  
127 S. Kansas  
22 Olathe, Kansas 66061

23 COPY

24 Reported by April C. Shepard, CCR, CSR.

25

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OFFICIAL COURT REPORTER

*Clerk of the District Court, Johnson County Kansas*  
08/29/18 12:52pm SS**EXHIBIT M**

1 THE COURT: 00CR131, State of Kansas v.  
2 Richard A. Jones.

3 MR. McMULLIN: Chris McMullin appears for  
4 the State of Kansas.

5 MR. BARTEE: Mr. Jones is in person with  
6 his attorney Michael Bartee.

7 THE COURT: This is on for preliminary  
8 hearing on one count of aggravated robbery.

9 MR. McMULLIN: That's correct, your Honor.

10 THE COURT: You may call your first  
11 witness.

12 TAMARA SCHERER,  
13 a witness, being first duly sworn, testified  
14 under oath as follows:

15 DIRECT EXAMINATION

16 BY MR. McMULLIN:

17 Q. Would you please state your full name.

18 A. Tamara Scherer.

19 Q. Ms. Scherer, I'd like to direct your attention,  
20 if you could, back to the 31st day of May of  
21 last year, 1999; do you recall that day?

22 A. Yes, I do.

23 Q. On that day did you have an occasion to go to a  
24 Wal-Mart location here in Johnson County?

25 A. Yes, I did.

- 1 Q. What Wal-Mart did you go to?
- 2 A. It was the one on Roe Avenue.
- 3 Q. Here in Johnson County?
- 4 A. Uh-huh, Roeland Park.
- 5 Q. What time of day or night did you go to
- 6 Wal-Mart?
- 7 A. It was approximately 7:30.
- 8 Q. A.m. or p.m.?
- 9 A. P.m.
- 10 Q. Who did you go with?
- 11 A. My eight-year-old daughter.
- 12 Q. And how did you get there?
- 13 A. I drove my Jimmy.
- 14 Q. That's some type of car?
- 15 A. It's an SUV.
- 16 Q. Did something happen when you got to Wal-Mart?
- 17 A. Yes.
- 18 Q. First of all, what did you have with you to go
- 19 to Wal-Mart other than your daughter?
- 20 A. I had my purse which had a billfold in it, cell
- 21 phone and a few miscellaneous items.
- 22 Q. What type of telephone?
- 23 A. A Nokia 2190 model.
- 24 Q. Your cell phone?
- 25 A. Uh-huh.

1 THE COURT: You need to say yes or no.

2 She can't take down uh-huh.

3 A. Yes.

4 Q. (By Mr. McMullin) Where did you keep that cell  
5 phone?

6 A. It was in my purse.

7 Q. Would you tell the Court please what happened  
8 when you got to Wal-Mart?

9 A. I stepped out of my vehicle, walked around to  
10 the rear, waited for my daughter to come out. I  
11 noticed a car going real slow that drove past me  
12 and then the next thing I know I felt somebody  
13 yank on my purse and got into a physical fight.

14 Q. Let's stop you there. You felt somebody yank on  
15 your purse?

16 A. Yes.

17 Q. Where was your purse at this time?

18 A. It was hanging on my shoulder, my right  
19 shoulder.

20 Q. And when you say "yanked," what do you mean by  
21 that?

22 A. Pulled very hard, left a mark on my shoulder.

23 Q. And you stated that you got into a physical  
24 altercation. What did you actually do at that  
25 point?

1 A. I screamed, grabbed my purse. I don't recall  
2 everything. I ripped his shirt off.

3 Q. When you say "his," were you able to see the  
4 person that did this?

5 A. Yes.

6 Q. What did this person look like?

7 A. Right there in the orange.

8 Q. Do you see the person that tried to take your  
9 purse in this courtroom today?

10 A. Yes.

11 Q. Where?

12 A. He's seated in the rear there in the white  
13 T-shirt with green pants -- orange pants.

14 Q. There are two people sitting at this table.  
15 You're saying the person in the orange is the  
16 person?

17 A. Orange.

18 Q. Is that what you're saying?

19 A. Yes.

20 Q. This person tried to pull your purse off of you  
21 and I take it you resisted?

22 A. Right.

23 Q. What else -- how did you resist him taking the  
24 purse?

25 A. I grabbed onto my purse. I swung at him, ripped.

1 his T-shirt off.

2 Q. Did you stay upright or did you fall down or --

3 A. I got pushed down. I was knocked to the ground.

4 Q. How?

5 A. Hands -- by his hands, he pushed me down,

6 grabbed a hold of my purse. I was holding my

7 purse to my chest at that time and I fell to the

8 ground.

9 Q. What was he doing when you were on the ground?

10 A. Trying to get my purse away from me.

11 Q. By the way, we're talking about the defendant --

12 A. Correct..

13 Q. -- who is sitting right there?

14 A. Correct.

15 Q. Was the defendant able to get your purse?

16 A. At one point he pulled it away from me, but I

17 got it back.

18 Q. How did you get it back?

19 A. Just yanking it.

20 Q. At any point did he get any of your property?

21 A. Yes.

22 Q. What?

23 A. At some point in the fight my cell phone came --

24 fell out of my purse, fell onto the ground.

25 After he knocked me to the ground, he grabbed my

- 1 cell phone and took off running.
- 2 Q. Did you see where he ran to?
- 3 A. He ran and got into a vehicle.
- 4 Q. What did that vehicle do at that point?
- 5 A. It sped off.
- 6 Q. Did this individual that's in this courtroom
- 7 here that you've identified have your permission
- 8 to take your cell phone?
- 9 A. No.
- 10 Q. After this was over and done with, did you have
- 11 any injuries to your person that you didn't have
- 12 prior to him trying to take your purse?
- 13 A. Yes.
- 14 Q. Tell the Court about that, please.
- 15 A. I had scrapes on my elbows and on my knees.
- 16 Q. You had said something previously, a mark?
- 17 A. On my shoulder, I had a mark across my shoulder
- 18 where my purse strap was.
- 19 Q. You're talking about scrapes. Are you talking
- 20 about something that broke the skin?
- 21 A. Yes, with blood.
- 22 Q. Do you know the individual that's sitting over
- 23 there at the table?
- 24 A. No, I don't.
- 25 Q. Had you been able to get your cell phone back?



1 A. No, I haven't.

2 Q. This all occurred here in Johnson County,  
3 Kansas?

4 A. Yes, it did.

5 MR. McMULLIN: I have nothing further,  
6 your Honor.

7 THE COURT: Mr. Bartee?

8 CROSS-EXAMINATION

9 BY MR. BARTEE:

10 Q. Ma'am, can you describe the car the person got  
11 into?

12 A. No -- I believe it was a LeBaron, Chrysler  
13 LeBaron.

14 Q. Is that from looking at it?

15 A. After I got out, after he took my cell phone and  
16 ran, I got up, turned around and looked.

17 Q. Okay. Was it a two-door or four-door?

18 A. I don't recall.

19 Q. Was anyone else inside the car besides that  
20 person?

21 A. Yes.

22 Q. Where was that person seated?

23 A. There was a person in the driver's seat that I  
24 saw whenever I stepped out of my vehicle. I was  
25 waiting for my daughter when they were pulling

1 up.

2 Q. Can you describe that person in the driver's

3 seat?

4 A. No.

5 Q. Can you describe anything about the person in

6 the driver's seat?

7 A. No.

8 Q. You don't remember anything about their hair?

9 A. No.

10 Q. You're nodding. You don't remember anything

11 about the person's face or person's build?

12 A. I believe they had blond hair.

13 Q. You believe they had blond hair?

14 A. It's been a long time ago.

15 Q. I understand. Was the blond hair short or was it

16 long, do you know?

17 A. I don't recall 100 percent, no.

18 Q. The taking of your purse happened at about -- I

19 think you said about 7:30?

20 A. I'm guessing. I had to be back to work at 8:00

21 that evening so it was prior to that, before

22 that.

23 Q. Where did you park in relation to the Wal-Mart,

24 the building?

25 A. Right by the basket corral, the one that's on

1 the farthest -- closest to the building.

2 Q. This is out in the parking lot away from the  
3 building or is it up against the building?

4 A. It's away from the building. I was -- I believe  
5 I was like the second or third parking space  
6 from the corner corral.

7 Q. Were there other cars around the area where you  
8 parked?

9 A. Yes.

10 Q. Now, you parked and got out of your car and  
11 started to walk toward the front door of  
12 Wal-Mart; is that right?

13 A. I was walking down the aisle. It was vehicles.

14 Q. But you're in the aisle between the parked cars?

15 A. Correct.

16 Q. This was when you felt the person tugging on  
17 your purse?

18 A. Correct.

19 Q. About how far away from the front door of  
20 Wal-Mart were you at that point?

21 A. I was a ways away from the front door. I only  
22 walked approximately one vehicle length from my  
23 Jimmy.

24 Q. So you were still about a car's length from the  
25 Jimmy --

1 A. (Witness nods head.)  
2 Q. -- is that right?  
3 How tall was the guy who wrestled you and  
4 took your purse?  
5 A. I don't know.  
6 Q. Do you remember the race of the guy who did  
7 that?  
8 A. Yes.  
9 Q. What's the race of the guy who did that?  
10 A. It's the man sitting right there (indicating).  
11 Q. What race is the man sitting here?  
12 A. I'm assuming he was black.  
13 Q. Is there -- (indicating) is there a reason  
14 you're assuming that?  
15 A. Because -- I don't know, the person to me, he  
16 appears to be black.  
17 Q. And you've looked at his face today?  
18 A. Yes.  
19 Q. Did you look at his face on May 31?  
20 A. Yes, I did.  
21 Q. You had a good look at his face?  
22 A. Yes, I did.  
23 Q. How would you describe the build of the guy who  
24 took your purse?  
25 A. Thin.

1 Q. How about the hair of the guy who took your  
2 purse?  
3 A. Black.  
4 Q. Can you describe that?  
5 A. Black.  
6 Q. Black, how was it styled?  
7 A. I believe it was pulled back.  
8 Q. Was it tied up or pulled back?  
9 A. I didn't see the back of his head. There was no  
10 hair hanging in his face.  
11 Q. You didn't see the back of the person?  
12 A. No, not a good look of the back of the person.  
13 Q. Was there any point when you did see the back of  
14 the person?  
15 A. Yes, when he was running to the vehicle after he  
16 took my cell phone.  
17 Q. From the look you got there, you're not able to  
18 tell us about the person's hair from the back?  
19 A. I don't recall.  
20 Q. Did the person have facial hair?  
21 A. I believe so.  
22 Q. Did you tell the police, did you give them a  
23 description of the guy?  
24 A. I gave the police the description at the time  
25 and there was a couple other witnesses, also.

- 1 Q. Did you tell the police about the guy's hair?
- 2 A. I don't recall at this point.
- 3 Q. Do you recall whether you told the police about
- 4 facial hair?
- 5 A. No, I don't.
- 6 Q. Can you tell me what kind of facial hair the man
- 7 had?
- 8 A. He just had like -- like I don't believe it was
- 9 quite as much as now, just a small amount.
- 10 Q. Can you describe whether it was a mustache?
- 11 Beard? Side burns? Stubble, what?
- 12 A. Just like a stubble across the jaw, a little bit
- 13 here (indicating), more of a goatee.
- 14 Q. By here, you are pointing to a mustasche?
- 15 A. Correct.
- 16 Q. And goatee?
- 17 A. Right.
- 18 Q. How far did the goatee extend to the person's
- 19 chin?
- 20 A. It was just stubble.
- 21 Q. Stubble?
- 22 A. Wasn't much.
- 23 Q. How about other whiskers besides the mustache
- 24 and goatee?
- 25 A. Not that I recall. I'm not sure.

- 1 Q. Was the person clean-shaven other than the  
2 mustache' and goatee?
- 3 A. I'm not sure.
- 4 Q. Could you see -- could you see any side burns?
- 5 A. I didn't look for side burns, no.
- 6 Q. You didn't notice any?
- 7 A. No.
- 8 Q. Was the person wearing an earring or any kind of  
9 jewelry?
- 10 A. I didn't notice.
- 11 Q. Was there anybody else in the car besides the  
12 guy who took your purse and the driver?
- 13 A. Not that I noticed.
- 14 Q. Was the driver a male or female that was  
15 driving?
- 16 A. I believe it was a male.
- 17 Q. That from the appearance of the person when you  
18 looked over at the driver?
- 19 A. I'm sorry?
- 20 Q. What's your basis for believing that it was a  
21 male?
- 22 A. I just glanced at them when I stepped out of my  
23 truck. I was waiting for my daughter. I  
24 noticed the car coming up and they were driving  
25 real slow. It said 1051050 OBO on the front

- 1 windshield in shoe polish. That's the only  
2 reason I noticed the vehicle.
- 3 Q. How long did you see the face of the man who  
4 took your purse?
- 5 A. I don't know.
- 6 Q. Do you remember looking at the guy's face?
- 7 A. Yes.
- 8 Q. Looking him in the face?
- 9 A. Yes.
- 10 Q. You got a good look at him?
- 11 A. Yes, I did.
- 12 Q. Did the police ever discuss with you looking at  
13 photographs to see if you could identify the  
14 person?
- 15 A. I don't recall.
- 16 Q. Have you seen photographs
- 17 A. No, I have not.
- 18 Q. at any point?
- 19 A. No.
- 20 Q. Did the police at any point ask you if you'd be  
21 able to identify the person if you saw him  
22 again?
- 23 A. Not that I recall.
- 24 Q. Okay. Would you have told them, yeah, because I  
25 got a good look at him?



1 A. I would have told them I would look at the  
2 pictures, yes.

3 Q. But were you confident that you could identify  
4 the man if you saw him again?

5 A. Fairly.

6 Q. I think you told us that when you were  
7 describing to the police officer what had  
8 happened while you were still at Wal-Mart there  
9 was some other people around --

10 A. Uh-huh.

11 Q. -- who were also talking to the police officer;  
12 is that correct? Is that right?

13 A. Yes.

14 Q. Do you remember how many other people described  
15 what had happened to the police officers when  
16 you were there?

17 A. No, not exactly. I know there was a security  
18 guard that seen what happened. There was  
19 another security guard that came out that I seen  
20 and there was a man and woman. I think they left  
21 before the police got there.

22 Q. Can you tell me on how many occasions you've  
23 talked to the police about this incident or  
24 about who committed the act against you?

25 A. I don't know, a couple of times.

OFFICIAL COURT REPORTER

Clerk of the District Court, Johnson County Kansas  
08/29/18 12:52pm SS

**EXHIBIT M**

- 1 Q. Do you remember who you spoke to when you  
2 described what had happened?
- 3 A. At Wal-Mart when the incident happened?
- 4 Q. Well, yeah, and since then on any other  
5 occasion.
- 6 A. I don't remember the officer's name, no. The  
7 officer that contacted me afterwards was Atwell,  
8 Detective Atwell.
- 9 Q. Do you know how many occasions Detective Atwell  
10 spoke to you?
- 11 A. No, I don't. Approximately two or three times.
- 12 Q. Did he speak to you in person or were these  
13 telephone conversations?
- 14 A. They were over the phone.
- 15 Q. All the time?
- 16 A. Yes.
- 17 Q. Did anyone notify you an arrest had been made in  
18 the case?
- 19 A. Yes. I received a letter in the mail.
- 20 Q. Did they talk to you about who had been charged  
21 in the case or did they just say we've arrested  
22 someone?
- 23 A. It was a letter -- I didn't bring it with me  
24 today -- it was a letter from the court stating  
25 the name, saying there had been an arrest.

1 MR. BARTEE: No further questions.

2 THE COURT: Redirect?

3 MR. McMULLIN: No, your Honor.

4 THE COURT: Thank you, ma'am. You can  
5 step down. Further witnesses?

6 MR. McMULLIN: The State rests.

7 THE COURT: Any evidence by defense?

8 MR. BARTEE: No.

9 THE COURT: Any argument?

10 MR. McMULLIN: I would ask the Court to  
11 find that the crime of aggravated robbery has  
12 been committed and there's probable cause to  
13 believe the defendant that's here today, Richard  
14 Jones, committed that crime. I'd ask the Court  
15 to bind the defendant over.

16 MR. BARTEE: We'd ask the Court to bind  
17 over on simple robbery rather than aggravated  
18 robbery based on the lack of substantial bodily  
19 harm.

20 THE COURT: The Court's ready to consider  
21 the evidence in the light favorable to the State  
22 with all reasonable inferences there are. The  
23 bodily harm issue is submissible to the trier of  
24 fact and jury.

25 The Court finds the State has sustained the

1           burden of proof to show probable cause to  
2           believe the felony charged in the complaint  
3           filed against the defendant was committed on or  
4           about the dates in Johnson County, Kansas;  
5           further, there's probable cause to believe that  
6           the defendant is the person that committed that  
7           offense. Accordingly, I bind the defendant over  
8           for arraignment and trial. Does the defendant  
9           desire to have a reading of the complaint?

10           MR. BARTEE: No, your Honor. We waive  
11           formal reading of the charge and plead not  
12           guilty.

13           THE COURT: Noted.

14           Do you anticipate motions, Mr. Bartee, or  
15           are you ready for a trial setting?

16           MR. BARTEE: I think we can set it for  
17           trial. I may have motions. There are not going  
18           to be a lot of those.

19           THE COURT: Day and a half? Two days?

20           MR. BARTEE: I'd say two or three -- three  
21           is probably safe.

22           MR. McMULLIN: That's a fair estimate,  
23           your Honor.

24           THE CLERK: June 19th, 8:45; pretrial,  
25           June 16th, 3:00.

1 THE COURT: Will that work for everybody?

2 MR. BARTEE: Yes, your Honor. I do move  
3 for a transcript of today's proceedings be  
4 prepared.

5 THE COURT: Granted.

6 MR. McMULLIN: Yes.

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08/29/18 12:52pm SS

**EXHIBIT M**

C E R T I F I C A T E

STATE OF KANSAS,  
COUNTY OF JOHNSON

I, April C. Shepard, a Certified  
Shorthand Reporter, and the regularly appointed,  
qualified and acting Official Reporter of  
Division No. 15 of the Tenth Judicial District  
of the State of Kansas, do hereby certify that  
as such Official Reporter, I was present at and  
reported in machine shorthand the above and  
foregoing proceedings

I further certify that a transcript of  
my shorthand notes was typed, and that the  
foregoing transcript is a true and correct  
transcript of my notes in said case to the best  
of my knowledge and ability.

SIGNED, OFFICIALLY SEALED, AND FILED  
WITH THE CLERK OF THE DISTRICT COURT OF JOHNSON  
COUNTY, KANSAS, this 5th day of June, 2000.

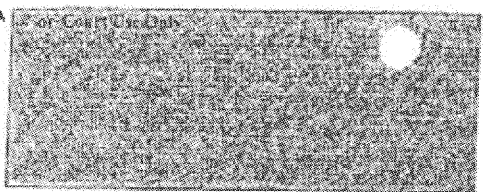
  
April C. Shepard  
Certified Shorthand Reporter

OFFICIAL COURT REPORTER

Clerk of the District Court, Johnson County Kansas  
08/29/18 12:52pm SS

**EXHIBIT M**

#310



*Commitment  
Transportation Order*

*WB*

**KANSAS SENTENCING GUIDELINES JOURNAL ENTRY OF JUDGMENT**

SECTION I: CASE IDENTIFYING INFORMATION			
Case Name STATE v. <i>Richard Anthony Jones</i>		Court O.R.I. Number <i>KS046015J</i>	K.B.I. Number <i>699809</i>
County <i>JOHNSON</i>	Court Case Number <i>DOCR 131</i>	Sentencing Judge <i>John Anderson III</i>	Sentencing Date <i>6/15/01</i>
Type of Counsel <input checked="" type="checkbox"/> Appointed <input type="checkbox"/> Retained <input type="checkbox"/> Self <input type="checkbox"/> Other	Type of Trial <input type="checkbox"/> Bench Trial <input checked="" type="checkbox"/> Jury Trial <input type="checkbox"/> Plea	Date of Conviction <i>4/24/01</i>	Pre-Trial Status of Offender <input checked="" type="checkbox"/> In Custody <input type="checkbox"/> Released on Bond <input type="checkbox"/> Other Release

SECTION II: CRIMINAL HISTORY	
Offender's Overall Criminal History Classification as Found by the Court (please circle):	Objection to Criminal History?
<p>Nondrug    A   <u>B</u>   C   D   E   F   G   H   I</p> <p>Drug       A   <u>B</u>   C   D   E   F   G   H   I</p>	<p><input checked="" type="checkbox"/> Yes   <input checked="" type="checkbox"/> No</p> <p>If Yes, By: <input checked="" type="checkbox"/> Defendant <input type="checkbox"/> State</p>
Court's Ruling on Objection:	
<p><input type="checkbox"/> Criminal history was amended.</p> <p><input checked="" type="checkbox"/> Criminal history was not amended.</p>	

SECTION III: OFFENSE IDENTIFYING INFORMATION				
Name of PRIMARY Offense of Conviction: <i>Agg Robbery</i>	K.S.A. Title, Section, Subsection(s) <i>21-3427</i>	Grade of Offense <input checked="" type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor Class _____	Offense Severity Level Level <u>3</u> <input checked="" type="checkbox"/> Nondrug <input type="checkbox"/> Drug	Case Tracking Number
Court No. <u>I</u>	<input type="checkbox"/> Attempt <input type="checkbox"/> Conspiracy <input type="checkbox"/> Solicitation	<input checked="" type="checkbox"/> Person <input type="checkbox"/> Nonperson	<input type="checkbox"/> Offgrid <input type="checkbox"/> Nongrid	
Date of Offense <i>5/31/99</i>				
Presumptive Sentencing Range:	Standard <u>216</u>	Aggravated <u>228</u>	Mitigated <u>206</u>	<input checked="" type="checkbox"/> Presumptive Prison <input type="checkbox"/> Presumptive Probation <input type="checkbox"/> Border Box

CLERK OF DISTRICT COURT  
JOHNSON COUNTY, KS

2001 JUN 25 Clerk of the District Court, Johnson County Kansas  
08/29/18 12:52pm SS

**EXHIBIT N**

**KANSAS SENTENCING GUIDELINES JOURNAL ENTRY OF JUDGMENT (PAGE 2)**

Sentence Imposed: ☒ **Prison - DOC** 22 8 months

Life Imprisonment (for Offgrid Crime)  
☐ Life 15 ☐ Life 20 ☐ Hard 10  
☐ Hard 25 ☐ Hard 40 ☐ Hard 50  
☐ Death Penalty

☐ County Jail \_\_\_\_\_ days \_\_\_\_\_ months  
 (for misdemeanor or nongrid felony)

☐ Standard Probation for:  
☐ 12 months ☐ 18 months ☐ 24 months  
☐ 36 months ☐ 60 months ☐ other \_\_\_\_\_

☐ Extended Probation under K.S.A. 21-4611(e)(5) for: \_\_\_\_\_ months

(Underlying prison term is \_\_\_\_\_ months.)

Guideline Range Imposed:

☐ Standard  
☒ Aggravated  
☐ Mitigated  
☐ Departure - Complete Section IV

Special Rule Applicable to Sentence, If Any:

☐ Person Felony Committed With a Firearm.  
☐ Aggravated Battery of a L.E.O.  
☐ Aggravated Assault of a L.E.O.  
☐ Crime Committed for Benefit of a Criminal Street Gang.  
☐ Persistent Sex Offender.  
☐ Felony D.U.I.  
☐ Felony Domestic Battery.  
☒ Crime Committed While on Probation, Parole, Etc.  
☐ Crime Committed While on Felony Bond.  
☐ Extended Juvenile Jurisdiction Imposed.  
☐ Second or Subsequent Manufacture of a Controlled Substance Conviction.  
☐ Residential Burglary With a Prior Residential, Nonresidential or Aggravated Burglary Conviction.  
☐ Other \_\_\_\_\_

Was the crime sexually motivated?

☐ Yes ☒ No

Postrelease Supervision Term:

☐ 12 months  
☐ 24 months  
☐ 36 months  
☐ 60 months (sex offense) -- Complete Section IV  
☐ Other \_\_\_\_\_

Probation to:

☐ Court Services  
☐ Community Corrections

County Jail Time Imposed as a Condition of Probation: \_\_\_\_\_ days

Comments:

\_\_\_\_\_  
 \_\_\_\_\_

**Assignment to Correctional Conservation Camp:**

\_\_\_\_\_ days

☐ Men's Camp ☐ Women's Camp

Comments:

\_\_\_\_\_  
 \_\_\_\_\_

Type of Departure: (Check all that apply.)

☐ Downward Durational ☐ Downward Dispositional ☐ Upward Durational ☐ Upward Dispositional  
☐ Postrelease Supervision (sex offense)



<b>Reasons Cited as Basis for Departure:</b>	
<b>SECTION IV - OTHER CONDITIONS</b>	
<b>General/Special Conditions of Probation (ATTACH ORDER OF PROBATION TO THIS JOURNAL ENTRY)</b>	
<b>Costs Ordered:</b>  Total Restitution    \$ <u>343.99</u> Total Court Costs    _____ Total Fines            _____ Total Fees            _____	<b>Comments:</b>


<b>SECTION V - RECORD OF CONFINEMENT</b>																											
<b>Total Period of Confinement in DOC (please state):</b>  <div style="font-size: 1.2em; font-family: cursive;">228 months</div>	<b>Prior Case(s) to Which the Current Sentence is to Run Concurrent or Consecutive (include Case No., County of Conviction, and Sentence Length, and State Whether Concurrent or Consecutive):</b>																										
<b>Standard Probation Period</b>  <input type="checkbox"/> 12 months <input type="checkbox"/> 18 months <input type="checkbox"/> 24 months <input type="checkbox"/> 36 months <input type="checkbox"/> 60 months <input type="checkbox"/> Extended Period under KSA 21-4611(c)(5) _____ <input type="checkbox"/> Other _____	<b>Postrelease Period</b>  <input type="checkbox"/> 12 months <input type="checkbox"/> 24 months <input checked="" type="checkbox"/> 36 months <input type="checkbox"/> 60 months <input type="checkbox"/> Other _____																										
<b>Sentence Begins Date (to include jail credit)</b>  _____	<b>Dates of Jail Credit Earned</b>  <table style="width: 100%; border: none;"> <tr> <td style="width: 40%;">From: _____</td> <td style="width: 10%;">To: _____</td> <td style="width: 10%;">=</td> <td style="width: 10%;">_____</td> <td style="width: 10%;">Days</td> </tr> <tr> <td>From: _____</td> <td>To: _____</td> <td>=</td> <td>_____</td> <td>Days</td> </tr> <tr> <td>From: _____</td> <td>To: _____</td> <td>=</td> <td>_____</td> <td>Days</td> </tr> <tr> <td>From: _____</td> <td>To: _____</td> <td>=</td> <td>_____</td> <td>Days</td> </tr> <tr> <td>From: _____</td> <td>To: _____</td> <td>=</td> <td>_____</td> <td>Days</td> </tr> </table> <p style="font-size: 0.8em;">(attach additional pages if necessary)</p> <p style="text-align: right; margin-top: 10px;">Total Days of Jail Credit Earned = <u>197</u> Days</p>		From: _____	To: _____	=	_____	Days	From: _____	To: _____	=	_____	Days	From: _____	To: _____	=	_____	Days	From: _____	To: _____	=	_____	Days	From: _____	To: _____	=	_____	Days
From: _____	To: _____	=	_____	Days																							
From: _____	To: _____	=	_____	Days																							
From: _____	To: _____	=	_____	Days																							
From: _____	To: _____	=	_____	Days																							
From: _____	To: _____	=	_____	Days																							
<b>Maximum Good Time Credit:</b>  <input checked="" type="checkbox"/> 15% <input type="checkbox"/> 20% <input type="checkbox"/> Under K.S.A. 22-3725	<b>Additional Comments:</b>  <input checked="" type="checkbox"/> The Johnson County, Kansas Sheriff's Office is hereby ordered to transport the defendant to the custody of the Kansas Secretary of Corrections to serve the sentence imposed herein.																										

Clerk of the District Court, Johnson County Kansas  
08/29/18 12:52pm SS

EXHIBIT N

Motion for New Trial Denied: ☒ Yes ☐ No      Motion for Judgment of Acquittal Denied? ☒ Yes ☐ No

**SECTION VII. SIGNATURES**

Judge's Signature:  Date: 6-15-01

Name of Prosecuting Attorney: John E. Cowles, AOA      Name of Defense Attorney: Michael A. [Signature]

Date: 6-15-01      Date: 6-15-01

By: [Signature] 11797      By: [Signature]

Address: P.O. Box 728      Address: Clerk Box Number 318  
Olathe, Kansas 66051

Phone No: (913) 715-3000      Phone No: Sb

Presumptive Sentencing Range (Use Criminal History Classification "T" for nonbase sentences.)	Standard	Aggravated	Mitigated	<input type="checkbox"/> Presumptive Prison <input type="checkbox"/> Presumptive Probation <input type="checkbox"/> Border Box
<b>Sentence Imposed</b> <input type="checkbox"/> Prison - DOC _____ months Life Imprisonment (for Offgrid crime) <input type="checkbox"/> Life 15 <input type="checkbox"/> Life 20 <input type="checkbox"/> Hard 10 <input type="checkbox"/> Hard 25 <input type="checkbox"/> Hard 40 <input type="checkbox"/> Hard 50 <input type="checkbox"/> Death Sentence <input type="checkbox"/> County Jail _____ days _____ months (for misdemeanor or nongrid felony) <input type="checkbox"/> Standard Probation for: <input type="checkbox"/> 12 months <input type="checkbox"/> 18 months <input type="checkbox"/> 24 months <input type="checkbox"/> 36 months <input type="checkbox"/> 60 months <input type="checkbox"/> Other _____ <input type="checkbox"/> Extended Probation under K.S.A. 21-4611(c)(5) for: _____ months (Underlying Prison Term is _____ months.)	<b>Guideline Range Imposed</b> <input type="checkbox"/> Standard <input type="checkbox"/> Aggravated <input type="checkbox"/> Mitigated <input type="checkbox"/> Departure - Complete Section IV	<b>Special Rule Applicable to Sentence, If Any:</b> <input type="checkbox"/> Person Felony Committed With a Firearm <input type="checkbox"/> Aggravated Battery L.E.O. <input type="checkbox"/> Aggravated Assault L.E.O. <input type="checkbox"/> Crime Committed for the Benefit of a Criminal Street Gang <input type="checkbox"/> Persistent Sex Offender <input type="checkbox"/> Felony DUI <input type="checkbox"/> Felony Domestic Battery <input type="checkbox"/> Crime Committed While on Probation, Parole, Etc. <input type="checkbox"/> Crime Committed While on Felony Bond <input type="checkbox"/> Extended Juvenile Jurisdiction Imposed <input type="checkbox"/> Second or Subsequent Manufacture of a Controlled Substance <input type="checkbox"/> Residential Burglary with a Prior Residential, Nonresidential or Aggravated Burglary Conviction <input type="checkbox"/> Other _____		

Clerk of the District Court, Johnson County Kansas  
 08/29/18 12:52pm SS

**EXHIBIT N**

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS  
CIVIL DIVISION

RICHARD A. JONES,	)	
Petitioner	)	
	)	
vs.	)	Case No.
	)	Court No.
STATE OF KANSAS,	)	
Defendant.	)	
	)	
	)	
	)	

**MEMORANDUM IN SUPPORT OF K.S.A. § 60-1507**

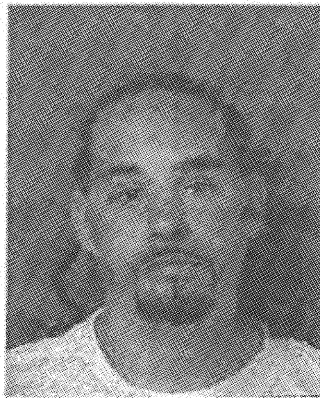
Richard Jones is innocent. From the beginning, he has never wavered from his confirmed statement that he was home with family and friends on the day of the attack. Richard Jones was convicted purely on eyewitness identification, which has been established as the most unreliable forms of evidence. There was no physical or forensic evidence recovered or presented at trial tying Mr. Jones to the vehicle, victim, or robbery. Mr. Jones's photo was picked out of a police computer database three months after the attack by a man who was admittedly on drugs during the only encounter he had with Mr. Jones. Since that questionable identification, the police never looked at another suspect. Mr. Jones was the victim of an unnecessarily suggestive police lineup, which is what the other witnesses identified him from.

New evidence has come forward suggesting a new suspect, Ricky.<sup>1</sup> Ricky bears a striking resemblance to Mr. Jones. Side by side photographs of the two men are below.

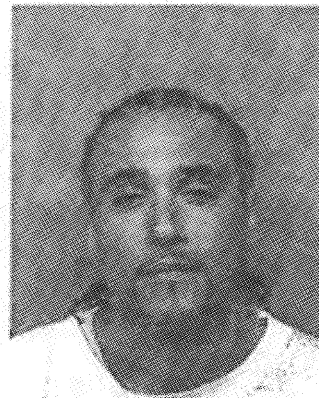
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<sup>1</sup> For purposes of this public filing, the alternate suspect will only be referred to as Ricky.

Ricky



Richard Jones



Witnesses who only saw the suspect for a brief few minutes during the attack likely would not be able to tell one man from the other, especially in the midst of a high pressure violent situation. Tamara Scherer, the victim of the robbery, testified at trial that Mr. Jones was her attacker. She has since signed a sworn affidavit stating that if she were presented with photographs of Mr. Jones and Ricky now, she would not be able to tell the difference and is not certain that she identified the right person at trial. Edward Miller, a passenger in the suspect's getaway vehicle at the time of the trial, says he would not have been able to tell the men apart. In a sworn affidavit, he said if he were forced to pick out the suspect, it would be the man on the left (referring to Ricky). Ronald Coen, a security guard at the Walmart at the time of the robbery, picked Mr. Jones out of the lineup and identified him as the attacker at trial. Chapman Williams, a KU Law Project for Innocence intern, has signed a sworn affidavit regarding a conversation he had with Mr. Coen about the photographs above. Mr. Coen asked if the men in the photographs were two different people, and admitted he would not be able to distinguish or choose between them if he had been presented a lineup with both men included. The prosecutor in the case, Mr. John Cowles, signed an affidavit, after seeing this newly discovered evidence, stating that he

believes it is appropriate for the KU Law Project for Innocence to pursue whatever relief might still be available to Mr. Jones.

Further, an Accurant background report was run on both Richard Jones and Ricky. Richard Jones is associated exclusively with addresses in Kansas City, Missouri, and Ricky is associated with addresses in Kansas City, Kansas. On the day of the robbery, the suspect, "Ricky," was picked up at a drug house in Kansas City, Kansas, and he directed the driver to the Roeland Park Walmart where the robbery occurred. Prosecutor John Cowles said that Roeland Park businesses were frequent victims of criminal activity from criminals emanating from drug houses in Kansas City, Kansas. Mr. Cowles further says that this seems more consistent with "Ricky" being a part of the Kansas City, Kansas community, which Mr. Cowles says fits the information for Ricky opposed to Mr. Jones. Ricky is connected to robbery not only by physical attributes, but also by his connection to the Kansas City, Kansas narcotics community.

The court should grant Richard Jones' K.S.A. § 60-1507 motion to vacate his conviction because Richard Jones has a colorable claim of actual innocence, and a denial would result in furthering manifest injustice against him.

#### **Statement of Facts**

On May 31, 1999, Richard Jones celebrated Memorial Day and his girlfriend's birthday with his family at his home in Kansas City, Missouri. He and his girlfriend, Tia Kidd, did not leave home that day. (TT at 182-83.)<sup>2</sup> Ms. Kidd's sister, Lisa Kidd, was also with Mr. Jones that day, including several hours on the evening of the 31<sup>st</sup>. (Johnson County Sheriff's Officer Rep. on June 15, 2000.)

---

<sup>2</sup> Trial Transcript (hereinafter "TT")

That same day, at approximately 8:00 p.m., Tamara Scherer and her daughter pulled into the Wal-Mart parking lot in Roeland Park, Kansas. After exiting her vehicle, Ms. Scherer was approached from behind by a man who tried to grab her purse. A struggle ensued, during which Ms. Scherer was forced to the ground and dropped her cell phone. The man grabbed the cell phone, ran to an awaiting vehicle, and fled the parking lot. (TT at 30-35.) Ms. Scherer did not see her attacker's face, and she told Detective Scott Atwell that she would be unable to identify him. (TT at 134; Johnson County Sheriff's Rep. on June 14, 1999. (Appendix A).)

There were only two witnesses to the attack on Ms. Scherer. Ronald Coen, a Wal-Mart loss-prevention officer, told police he observed the getaway car in the parking lot several times on the afternoon of May 31<sup>st</sup>, and he witnessed the incident while patrolling the parking lot. (TT at 54.) Ron Wolters, a Wal-Mart customer, witnessed the incident from his vehicle in the parking lot and followed the getaway car to get a license plate number. (TT at 50.)

The victim and the two witnesses gave the following descriptions of the suspect. Ms. Scherer described him as thin to medium build, Hispanic or tan-skinned, and dark hair pulled back away from the face. (TT at 35-36.) Mr. Coen described him as a light-complected black or Hispanic man with a goatee. (TT at 58.) Mr. Wolters said he did not get a good look at the suspect because he had a baseball cap on, but he stated the attacker had a tattoo on his left arm. (TT at 49.)

Detective Scott Atwell of the Johnson County Sheriff's Office was assigned to the case. (TT at 68.) During his initial investigation, he learned that the getaway vehicle, which displayed dealership plates, belonged to a used car lot owned by David Colvin, Sr. (TT at 68.) After speaking with Colvin Sr., Det. Atwell learned that David Colvin, Jr. was in possession of the vehicle on May 31<sup>st</sup> at the time of the incident. (TT at 68.) David Colvin denied having

possession of the vehicle that day. (TT at 68.) Instead, he claimed he loaned it to his friend Edward Miller. (TT at 68.) Mr. Miller also denied having possession of the vehicle on the 31<sup>st</sup>. (Johnson County Sheriff's Rep. on June 22, 1999. (Appendix B).) Eventually, both David Colvin and Mr. Miller admitted to being in the vehicle on the 31<sup>st</sup> and during the robbery of Ms. Scherer. (TT at 95-97.)

Edward Miller, his girlfriend Priscilla Gray, and David Colvin were smoking crack and driving around in that car all day on May 31, 1999. (TT at 96-97.) When they ran out of drugs, they drove to the Melrose Manor Apartments in Kansas City, Kansas with the intention of somehow acquiring more, as they had very little money. (TT at 96-97.) They picked up a man they referred to as "Rick" somewhere near these apartments in Kansas City, Kansas. (TT at 86-87.) David Colvin later took Det. Atwell to the place where Rick was picked up. The exact address was 2722 W. 41<sup>st</sup> Ave. in Kansas City, Kansas. (TT at 124.) Rick told them to take him to the parking lot of the Roeland Park Wal-Mart where he then attacked Ms. Scherer, stole her cell phone, and fled the scene with David Colvin and Mr. Miller. (TT at 98-99.)

#### *Identifications*

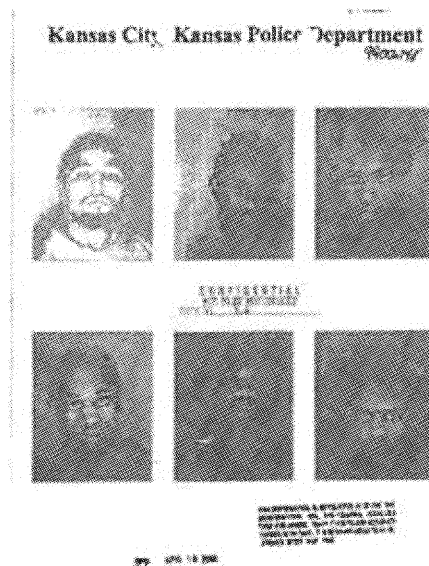
On June 1, 1999, Officer Larson visited Mr. Colvin Sr.'s car lot with Ronald Coen. (Roeland Park Police Rep. on June 1, 1999.) It was here that Mr. Coen first identified George Dillon, an employee of Mr. Colvin Sr. (Roeland Park Police Rep. on June 1, 1999.) Mr. Coen said that his face looked like the suspect's, but his physical characteristics did not match those of the suspect. (Roeland Park Police Rep. on June 1, 1999.)

On June 7, 1999, Officer Larson prepared a photo lineup for Mr. Coen. David Colvin, Jr. was among the men in the lineup. (Roeland Park Police Rep. on June 10, 1999.) Mr. Coen identified Mickle Swneson, a man we now know had absolutely nothing to do with this crime. He

failed to identify David Colvin, Jr., a man we know was present and was the driver of the getaway vehicle. (Roeland Park Police Rep. on June 1, 1999.)

On August 21, 1999, almost three months after the incident, David Colvin was taken to the police department in Kansas City, Kansas. (TT at 125.) He was asked to sift through a database of pictures prepared by Detective Greg Lawson. (TT at 125.) The database created a series of photographs of people matching the description of a black male with the first name "Rick" or "Richard." (TT at 125.) David Colvin identified the 202<sup>nd</sup> photograph as the "Rick" from the incident. (TT at 126.) Photograph 202 depicted Richard Jones. (TT at 126.)

Following Mr. Colvin Jr.'s identification, Det. Lawson created a six-photo lineup containing Mr. Jones and five other men that purportedly matched the witnesses' descriptions. (TT at 125.) However, Mr. Jones was the only man who truly matched the description. The following is the lineup created by Det. Lawson.



<sup>3</sup> The quality of the photo lineup was discussed in the court proceedings. (K.S.A. § 60-1507 hearing p.14-15). This is an accurate reflection of the lineup produced to trial counsel.



On August 30, 1999, Det. Atwell took this lineup to Edward Miller who was incarcerated at Ellsworth Penitentiary. (TT at 81-83.) Mr. Miller identified Richard Jones. (TT at 81-83.) On October 21, 1999, months after his initial failed identifications, Ronald Coen was shown the new lineup by Det. Atwell. (Johnson County Sheriff's Rep. on Oct. 22, 1999.) (Appendix E.) Mr. Coen also identified Richard Jones. (Johnson County Sheriff's Rep. on Oct. 22, 1999.)

Richard Jones was arrested on October 7, 1999 and charged with aggravated robbery. (Preliminary Hearing Tr. at 20.) Ms. Scherer was the only witness present at the preliminary hearing, and it was the first time she had ever seen Mr. Jones. (Preliminary Hearing Tr. at 6.) Despite initial statements that she could not identify her attacker because she did not see his face, she identified Mr. Jones. (Preliminary Hearing Tr. at 37.)

At trial, Ronald Coen again identified Mr. Jones as Ms. Scherer's attacker. (TT at 55.) However, both David Colvin and Edward Miller did not. (TT at 83, 96.) The two men who were with "Rick" and in the car on the day of the incident were unable to identify Mr. Jones as "Rick" at trial. (TT at 83.)

There was no physical evidence recovered from the scene or presented at trial that ties Richard Jones to the getaway vehicle, the victim, or the robbery. The state's case against Richard Jones hinged entirely on the eyewitness identification by witnesses. Those witnesses have since admitted that they may have made a mistake.

#### Procedural Background

At trial, Richard Jones was found guilty of aggravated robbery. *Jones v. State*, 2010 WL 744887 at 1 (Kan. Ct. App. Feb. 26, 2010). Mr. Jones filed a direct appeal of his conviction, and the Kansas Court of Appeals affirmed his conviction. See *State v. Jones*, No. 88,573, unpublished opinion filed March 28, 2003, rev. denied 276 Kan. 972 (2003).

Mr. Jones filed a K.S.A. § 60-1507 motion on August 29, 2003, claiming ineffective assistance of counsel of both his trial and appellate attorneys. *Jones v. State*, 2010 WL 744887 at 1 (Kan. Ct. App. Feb. 26, 2010). The district court held an evidentiary hearing and denied his motion. *Id.* Mr. Jones appealed on four issues. *Id.* First, Jones claimed ineffective assistance of counsel for failing to object to the photo line-up used by witnesses to identify him. Second, Jones claimed ineffective assistance of counsel for failing to properly object to his incorrect criminal history score. Third, Jones claimed ineffective assistance of counsel for failing to appeal the lack of evidentiary support for the bodily harm element of aggravated robbery. Finally, Jones claimed his sentence was illegal. The Kansas Court of Appeals affirmed the district court on all claims. *Id.*

#### Argument

**I. Richard Jones' motion pursuant to K.S.A. § 60-1507 should be granted because he did not commit the crimes of which he was convicted and because a denial of the motion would continue manifest injustice.**

Jones now files a successive motion and under K.S.A. § 60-1507(c) this court has the authority to consider successive petition. A second procedural question is the one-year time limitation for filing under K.S.A. § 60-1507(f). In order to overcome the one-year statute of limitations imposed upon K.S.A. § 60-1507 petitions, one must demonstrate he has suffered manifest injustice. K.S.A. § 60-1507(f)(2). In a habeas context, manifest injustice means "obviously unfair or shocking to the conscience." *Vontress v. State*, 299 Kan. 607, 614 (2014). Since *Vontress*, the Kansas Legislature has amended K.S.A. § 60-1507(f)(2)(A) to include an exception for a "colorable claim of actual innocence." The statutory burden for a claim of actual innocence is to show that it is more likely than not that no reasonable juror would have convicted the prisoner in light of new evidence. *Id.*

This statutory language mirrors the exact language used by the United States Supreme Court in *Murray v. Carrier*, 477 U.S. 478, 106 S.Ct. 2639 (1989). Under the *Carrier* standard, petitioner “must show that it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt.” *Schlup v. Delo*, 513 U.S. 298, 327 (1995). The *Carrier* standard focuses on the actual innocence claim of the petitioner rather than procedural roadblocks. *Id.* Courts must look to the factual evidence supporting the actual innocence claim of the petitioner.

In assessing the adequacy of the petitioners showing, therefore, the district court is not bound by the rules of admissibility that would govern at trial. Instead the emphasis on “actual innocence” allows the review tribunal also to consider the probative force of relevant evidence that was either excluded or unavailable at trial. *Id.* at 328-329.

Finally, in making this assessment a court must make an evaluation of the petitioner’s claim of actual innocence “in light of all the evidence.” *Schlup v. Delo*, 513 U.S. 298, 328, 327 (1995). This evaluation process leads this court back to *Vontress* holding that a court should view the “totality of the circumstances” in the case. *Vontress v. State*, 299 Kan. 607, 614 (2014).

**II. Jones has an actual innocence claim. Jones was convicted solely on eyewitness testimony, which has been found to be severely flawed, and new information has come forward suggesting an alternate suspect.**

Richard Jones has always maintained that he was home with family and friends on the day of the attack. Mr. Jones can remember this day because it was Memorial Day and the day after the birthday party he had thrown for his girlfriend. (TT at 181.) Alibi witnesses to support this were completely discounted by investigators simply because they knew Mr. Jones. (Johnson County Sheriff’s Office Report on June 15, 2000.) (Appendix F).

Richard Jones was arrested and convicted solely on eyewitness testimony, which has been proven to be dangerously unreliable. In the line-up created after the initial identification by

Colvin Jr., only one suspect matched the description of witnesses. From the moment that David Colvin, Jr. selected Mr. Jones from a photo line-up, the investigators did not consider any other alternate suspect. That man was Richard Jones. New information has come forward showing a likely suspect in this crime that was not investigated by police.

**A. The Court must examine the facts of the case and new information on the reliability of eyewitness identification.**

Courts across the country have had issues with eyewitness identification, and several have alluded to the fact that eyewitness identification is unreliable. In *Perry v. New Hampshire*, Justice Sotomayor states in her dissent that: "This Court has long recognized that eyewitness identifications' unique confluence of features—their unreliability, susceptibility to suggestion, powerful impact on the jury, and resistance to the ordinary tests of the adversarial process—can undermine the fairness of a trial. Our cases thus establish a clear rule: The admission at trial of out-of-court eyewitness identifications derived from impermissibly suggestive circumstances that pose a very substantial likelihood of misidentification violates due process." 565 U.S. 228, 249–250 (2012).

The National Academy of Sciences, a private, nonprofit organization comprised of top researchers around the country, was called upon in 2013 to assess and make recommendations on eyewitness identification. (National Research Council of the National Academies, *Identifying the Culprit: Assessing Eyewitness Identification*, 2 (National Academies Press 2014).) This research has identified two specific variables that seem to impact eyewitnesses: system variables and estimator variables. *Id.* at 1.

System variables are procedures put in place by law enforcement in order to obtain identifications. *Id.* This could include instructions given to a witness asked to make an identification or the protocols put in place when conducting a lineup. *Id.* at 16. Research has

consistently shown that the accuracy of these lineups can be skewed or influenced based on how lineups are presented, the type of presentation, how similar the suspect and non-suspects look in the lineup, where the suspect is placed in the presentation, nature of the instructions, and any feedback given to the eyewitness before or after the identification. *Id.* at 16–17.

The second type of variables said to have an influence on eyewitness identifications are estimator variables. These are the specific details of the conditions in which the crime took place, which can be but are not limited to, the level of stress and fear of the eyewitness felt at the time of the crime, the differences in race between the eyewitness and the perpetrator, the amount of time spent observing the perpetrator's face during the crime, and the amount of time between the first observation of the perpetrator and when the observation takes place in identifying the perpetrator. *See generally id.*

After completing a plethora of research, the National Academy of Sciences found that, while the law enforcement community is working on improving the accuracy of eyewitness identifications, these efforts “have not been uniform and often fall short as a result of insufficient training, the absence of standard operating procedures, and the continuing presence of actions and statements at the crime scene and elsewhere that may intentionally or unintentionally influence eyewitness’ identifications.” *Id.* at 3.

The National Academy of Sciences made several recommendations for law enforcement including: training all law enforcement officers in eyewitness identification, implementing double-blind lineup and photo array procedures, developing and using standardized witness instructions, documenting witness confidence judgments, and videotaping the witness identification process. *Id.* at 5. The committee further made recommendations for the court including: conducting pretrial inquiry, making juries aware of the prior identifications, using

scientific framework expert testimony, and using jury instructions as an alternative means to convey information. *Id.* System variables can be controlled across jurisdictions by the imposition of standardized procedures to improve accuracy that are based on scientific knowledge. *Id.* at 16. Research has consistently shown that eyewitness identification is one of the most unreliable forms of evidence, and the research done by the National Academy of Sciences helps support this claim.

A majority of courts have recognized problems with eyewitness identification. In *State v. Henderson*, the New Jersey Supreme Court unanimously found that a “vast body of scientific research about human memory has emerged in recent years that ‘casts doubt on some commonly held views relating to memory’ and ‘calls into question the vitality of the current legal framework for analyzing the reliability of eyewitness identifications.’” Doug Plank, *Criminal Law Update: Eyewitness Identification*, Crim. L. Blog (Dec. 19, 2011, 12:12 PM), <http://www.nlrg.com/criminal-law-legal-research/bid/72720/CRIMINAL-LAW-UPDATE-Eyewitness-Identification>. Kansas has always been concerned about the reliability of eyewitness identification. Jury Instruction 20 from the trial of Richard Jones lists seven factors to look at when determining the reliability of eyewitness identification. (Appendix G). If any of these factors exists, the extent to which they may impact the accuracy of eyewitness identification should be taken into account. The factors to be considered are:

- (1) The opportunity the witness had to observe. This includes any physical condition which could affect the ability of the witness to observe, the length of the time of observation, and any limitations on observation like an obstruction or poor lighting;
- (2) The emotional state of the witness at the time including that which might be caused by the use of a weapon or violence;
- (3) Whether the witness had observed the defendant on earlier occasions;
- (4) Whether a significant amount of time elapsed between the crime charged and any later identification

- (5) Whether the witness ever failed to identify the defendant or made any inconsistent identification;
- (6) The degree of certainty demonstrated by the witness at the time of the identification of the accused; and
- (7) Whether there are any other circumstances that may have affected the accuracy of the eyewitness identification. Jury Instruction 20.

Kansas has even gone so far as to recently enact new legislation pertaining to improving the reliability of eyewitness identification. Effective July 1, 2016, Kansas House Bill No. 2151 lays out structured procedures when dealing with eyewitness identification in order to increase consistency and maintain reliability in eyewitness identification. Some of these procedures include:

- (1) Use of blind and blinded procedures;
- (2) instructions to the witness that the perpetrator may or may not be present;
- (3) use of non-suspect fillers who are reasonably similar to the perpetrator and do not make the suspect stand out; and
- (4) after an identification is made by the witness, eliciting a confidence statement, in the witness's own words, regarding the level of certainty in the selection. H.B. 2151, 2016 Leg., (Ks. 2016).

Had these procedures been enacted when the investigation into Richard Jones took place, there is a high probability that he would not have been arrested or convicted. Multiple jurisdictions, including but not limited to, Georgia, Texas, Oregon, Maryland, New Jersey, North Carolina, and Connecticut, have enacted similar procedures on regulating eyewitness identification in order to improve its reliability. Eyewitness Identification Reform, Innocence Project (Oct. 6, 2016), <http://www.innocenceproject.org/eyewitness-identification-reform/>.

There are several systemic problems exemplified in this case. David Colvin, Jr., who had been doing drugs all day on the day of the robbery when he saw the suspect and did not come in to do a photo identification until three months after the crime, finally picked out Richard Jones from the police identification review after being shown 202 photographs. Law enforcement

officers took Colvin, Jr.'s identification and ran with it, never considering another suspect from then on out. They created a photo line up from that identification and showed it to Ron Coen. After Ron Coen picked out Richard Jones, he was arrested. This photo line-up is severely flawed. Witnesses at the scene of the robbery say they saw a light skinned male, who they say could be Hispanic, with dark hair pulled back. Richard Jones is the only male in the lineup with light skin, and the background of his photograph is also very light. The other five males have very dark brown skin, and the shadows and darkness of the photograph make it difficult to even see their faces or hairstyles. Richard Jones is the only one who comes close to the description of the suspect.

The jury instructions in this case, shown above, list several factors that could potentially influence eyewitness identification. These factors are the estimator variables written about by the National Academy of Science and discussed above. Several of those variables exist in this case and almost certainly have an enormous impact on the accuracy of the identification by the eyewitnesses.

Tamara Scherer, the victim of the robbery, was likely influenced by several factors that impacted her false identification of Richard Jones. First of all, Scherer was likely impacted by the stress and fear she had while her purse was being grabbed. The fact that her young daughter was with her could have also increased her stress level and made her more fearful for both of their safety. She was admittedly focused on her purse and not on looking at her attacker. She tells the police that she did not see the suspect's face, only the back of his head. When asked whether the suspect was wearing a ball cap at the time of the robbery, she says no. However, Ron Walters contradicts that by testifying that the suspect was wearing a ball cap at the time. It is unlikely Ms. Scherer could have seen the suspect's face and remembered it without realizing that he was



wearing a ball cap. There was also a long period of time between the robbery, May 1999, and when Ms. Scherer finally identified Richard Jones at the preliminary hearing in June 2000.

David Colvin, Jr. has a self-admitted drug problem and had been doing drugs all day on the day of the robbery, May 31, 1999. Three months after the robbery, Mr. Colvin was finally taken to the police station to try to pick "Ricky" out of a lineup. Eyewitness identification is flawed as is, but infinitely more so when done by someone who was admittedly impaired at the time of the interaction with the perpetrator and three months after the commission of the crime. Both Edward Miller and David Colvin, Jr., the two men who spent the most time that day with "Ricky," both fail to identify Richard Jones as "Ricky" at trial.

Ronald Coen, who was working security at Walmart at the time of the robbery and testified in this case, was also likely influenced by several factors that could impact the reliability of his eyewitness identification testimony. He was standing at the entrance to the Walmart when the robbery happened in the parking lot, so he was a distance away from everything happening. The encounter between the suspect and Ms. Scherer was also very brief, not giving Mr. Coen a lot of time to see the suspect. Mr. Coen also falsely identifies the driver of the vehicle, so his previous inconsistent identification should be taken into account when looking at his identification of the suspect.

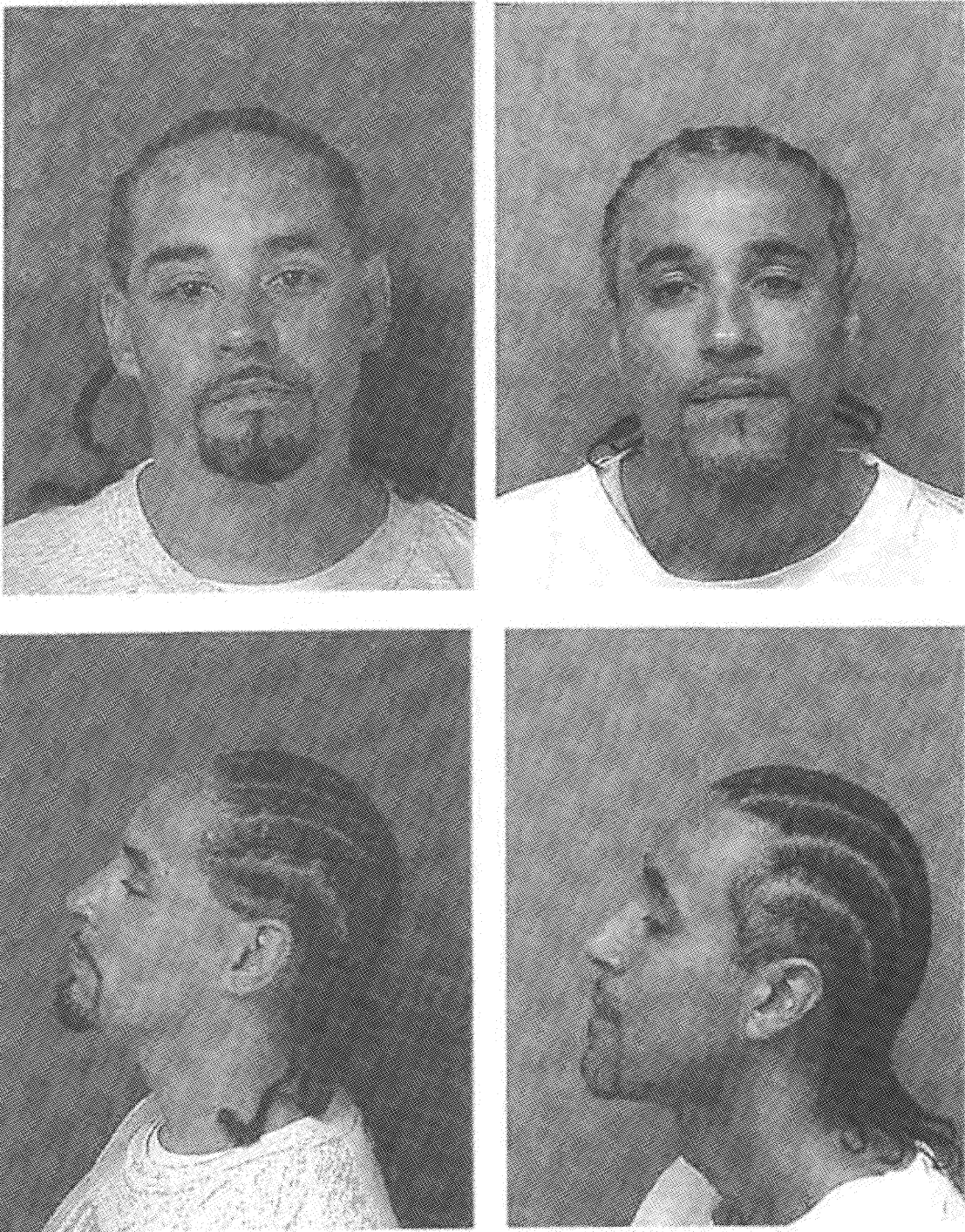
Ron Walters, one of the witnesses of the robbery, confidently testified at trial that the suspect had a tattoo on his left arm. Richard Jones did not have a tattoo on his arm at the time of the robbery.

Overall, several variables in this case have a detrimental impact on the reliability of the eyewitness identification of Richard Jones.

**B. Ongoing investigation has led to an alternate suspect that undermines the identifications presented at trial.**

**1. Alternate Suspect**

While incarcerated for this crime, Richard Jones was alerted to a possible look-alike, Ricky. Mr. Jones has never met the individual, but the name "Ricky" was enough for him to take the information seriously. The KU Project for Innocence received Mr. Jones's case for investigation in fall of 2015. Mr. Jones provided The Project with information on Ricky on September 28, 2015. A search of the KASPER database revealed a startling resemblance between the two men. The similarity in appearance is not the only thing that points to Ricky as an alternate suspect. Ricky's prior convictions are in Wyandotte County, which is where "Rick" was picked up on the day of the robbery that Richard Jones is incarcerated for. A search of the Accurant database indicated Ricky is associated with the 2722 West 41<sup>st</sup> Avenue in Kansas City, Kansas address. (Appendix H). A map attached as Appendix I lists the addresses associated with Ricky (1-3, 5, and 7), the address where "Rick" was picked up (4) and the location of the Wal-Mart where the crime occurred (6). (Appendix I). Colvin Jr. told investigators that address is where they picked "Rick" up the day of the incident. Richard Jones has never been associated with that address. (Appendix J). Below is a side-by-side picture of the alternate suspect Ricky (left) and Jones (right), followed by front and profile photographs of the two men.



2. The victim, Tamara Scherer, and witnesses, Ronald Coen and Edward Miller, have all claimed they cannot distinguish between Richard Jones and Ricky.

Based on the new information, the two photographs were presented to Tamara Scherer, the victim, Ronald Coen, a security guard working at the Walmart at the time in question, and Edward Miller, a passenger in the vehicle at the time of the robbery. All three individuals stated they could not tell the two men, Richard Jones and Ricky, apart.

Ms. Scherer edited and prepared her own affidavit. She stated that, if presented with the two photographs before trial, she would not be able to tell the two men apart. (Appendix K).

Mr. Miller was presented with two photographs by two interns for the Midwest Innocence Project on August 28, 2016. Mr. Miller said that if he had been given these two photographs before trial, he wouldn't have been able to tell them apart. Mr. Miller never identified Richard Jones as the perpetrator at trial. He said if he were forced to pick one, he would say that the person who committed the crime was the man on the left (referring to Ricky). (Appendix L).

Mr. Coen was presented with the two photographs on March 29, 2016 by two KU Law Project for Innocence interns. Mr. Coen also said that he would not have been able to tell the two men apart. Mr. Coen has been unavailable to sign his own affidavit regarding this conversation, but Chapman Williams, one of the two KU Law Project for Innocence interns who spoke with Mr. Coen on March 29, 2016, has signed an affidavit about the conversation. (Appendix M).

### Conclusion

Richard Jones has presented sufficient evidence to meet the standard of manifest injustice under K.S.A. § 60-1507. Mr. Jones was convicted solely on eyewitness testimony that has been proven to be inherently flawed and unreliable. Further, three key eyewitnesses have come forward stating that they would not have been able to pick Richard Jones as the suspect if they were presented with a lineup of Richard Jones and Ricky. Mr. Jones has a colorable claim of actual innocence and a denial would result in furthering manifest injustice against him. Therefore, the court should grant Mr. Jones' K.S.A. § 60-1507 motion to vacate his conviction.

Respectfully Submitted,

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Jean K. Gilles Phillips, #14540

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Elizabeth Seale Cateforis, #16687

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Alice Craig, # 17332  
Attorneys for Richard Jones  
Paul E. Wilson Project for Innocence and Post-  
Conviction Remedies  
University of Kansas School of Law  
409 Green Hall  
Lawrence, KS 66045  
(785) 864-5571

and

Midwest Innocence Project  
605 W. 47<sup>th</sup> Street, #222  
Kansas City, Missouri 64112

**CERTIFICATE OF SERVICE**

I hereby certify that I hand-delivered a true and correct copy of the foregoing Motion for New Trial on this \_\_\_\_th day of November, 2016 to the Johnson County Attorney, District Attorney's Office, 100 N. Kansas Avenue, Olathe, KS 66061.

\_\_\_\_\_  
Alice Craig

#### Appendix List (Richard Jones)

- Appendix A: Johnson County Sherriff's Officer Report (June 14, 1999).
- Appendix B: Johnson County Sherriff's Office Report (June 22, 1999).
- Appendix C: Roeland Park Police Report (June 1, 1999).
- Appendix D: Roeland Park Police Report (June 10, 1999).
- Appendix E: Johnson County Sheriff's Officer Report (October 22, 1999).
- Appendix F: Johnson County Sherriff's Officer Report (June 15, 2000).
- Appendix G: Jury Instruction 20 from the Trial of Richard Jones.
- Appendix H: Accurint of Ricky run on July 7, 2016.
- Appendix I: Map showing past addresses of Ricky and crime scene.
- Appendix J: Accurint of Richard Jones run on October 26, 2016.
- Appendix K: Affidavit of Tamara Scherer (March 24, 2016).
- Appendix L: Affidavit of Edward Miller (October 16, 2016).
- Appendix M: Affidavit of Chapman Williams (October 6, 2016).
- Appendix N: Affidavit of John Cowles (November 7, 2016).

**IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS**

RICHARD JONES,	)	
Petitioner-Defendant,	)	
	)	
	)	Case No. 16CV7137
v.	)	Underlying Case No.: 00CR131
	)	Division 14
	)	
STATE OF KANSAS,	)	
<u>Respondent-State.</u>	)	

**AGREED STIPULATION OF EXHIBITS**

**Part 1 of 5**

COMES NOW, the Petitioner, Richard Jones, by and through Counsel Alice Craig White, of the Paul E. Wilson Project for Innocence & Post-Conviction Remedies, and Respondent, State of Kansas, by and through counsel Shawn E. Minihan, Assistant District Attorney, Johnson County District Attorney's Office, and stipulates to admission of the following exhibits.



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<b>EXHIBIT A .....</b>	<b>3-4</b>
<b>EXHIBIT B .....</b>	<b>5-15</b>

# EXHIBIT A

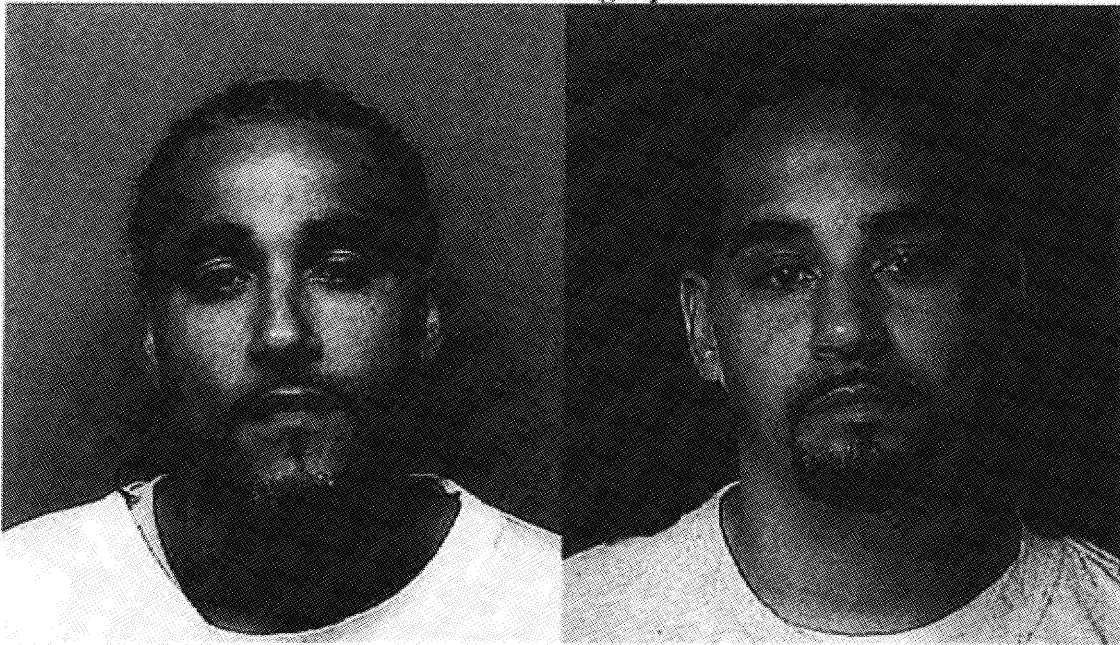
Side-by-side pictures of Richard Jones (left) (taken March 31, 2000) and Ricky Amos (right) (believed to be taken in September of 2001). Side-by-side pictures of Richard Jones (left) (July 7, 2015) and Ricky Amos (right) (June 5, 2015).

### 2000 & 2001 mug shots



Left: Picture of Richard Jones from JIMS, taken on March 31, 2000. Right: Picture of Ricky Amos from the Wyandotte County Jail Archives (State believes to have been taken in September of 2001).

### 2015 Photographs



The mugshots from the KDOC website, which were used by the Innocence Project in Jones's K.S.A. 60-1507 motion. Left: Picture of Jones taken on July 7, 2015. Right: Picture of Amos taken on June 5, 2015.

## Comprehensive Report

Exhibit H



**Important:** The Public Records and commercially available data sources used on reports have errors. Data is sometimes entered poorly, processed incorrectly and is generally not free from defect. This system should not be relied upon as definitively accurate. Before relying on any data this system supplies, it should be independently verified. For Secretary of State documents, the following data is for information purposes only and is not an official record. Certified copies may be obtained from that individual state's Department of State. The criminal record data in this product or service may include records that have been expunged, sealed, or otherwise have become inaccessible to the public since the date on which the data was last updated or collected.

Accurint does not constitute a "consumer report" as that term is defined in the federal Fair Credit Reporting Act, 15 USC 1681 et seq. (FCRA). Accordingly, Accurint may not be used in whole or in part as a factor in determining eligibility for credit, insurance, employment or another permissible purpose under the FCRA.

Your DPPA Permissible Use: Civil, Criminal, Administrative, or Arbitral Proceedings  
Your GLBA Permissible Use: Legal Compliance  
Your DMF Permissible Use: No Permissible Purpose

## Comprehensive Report

Date: 07/07/16

Report processed by:

Midwest Innocence Project, Inc.  
605 [REDACTED]  
KANSAS CITY, MO 64112  
816-221-2168 Main Phone

### Report Legend:

- Shared Address
- Deceased
- Probable Current Address

### Subject Information

(Best Information for Subject)

Name: RICKY LEE AMOS

Date of Birth: [REDACTED]

Age: 38

SSN: [REDACTED] issued in Missouri between  
1/1/1977 and 12/31/1979

### AKAs

(Names Associated with Subject)

RICKY L AMOS

Age: 38 SSN: [REDACTED]

Utility Locator - Connect Date: 10/1/2009

RICKY LEE AMOS

Age: 38 SSN: [REDACTED]

RICKY AMOS

Age: 38 SSN: [REDACTED]

### Indicators

Bankruptcy: No

Property: No

Corporate Affiliations: No

### Comprehensive Report Summary:

Bankruptcies:

None Found

Liens and Judgments:

3 Found

UCC Filings:

None Found

Phones Plus:

1 Found

People at Work:

None Found

Address(es) Found:

0 Verified and 15 Non-Verified Found

Possible Properties Owned:

None Found

Watercraft:

None Found

FAA Certifications:

None Found

FAA Aircraft:

Comprehensive Report

1

Clerk of the District Court, Johnson County Kansas  
08/29/18 12:52pm SS

**EXHIBIT Q**

## Comprehensive Report

None Found  
Possible Criminal Records:  
8 Found  
Sexual Offenses:  
1 Found  
Professional Licenses:  
None Found  
Voter Registration:  
None Found  
Hunting/Fishing Permit:  
None Found  
Concealed Weapons Permit:  
None Found  
Possible Associates:  
None Found  
DEA Controlled Substances:  
None Found  
Possible Relatives:  
1st Degree - 2 Found  
2nd Degree - 1 Found  
3rd Degree - 1 Found  
Neighbors:  
1st Neighborhood - 2 Found  
2nd Neighborhood - 6 Found  
3rd Neighborhood - 6 Found  
4th Neighborhood - 6 Found

### Others Associated With Subjects SSN:

(DOES NOT usually indicate any type of threat or description)

LINDA AMOS DOB: [REDACTED]  
[REDACTED] issued in Missouri between 1/1/1977 and 12/31/1979  
LINDA MITCHELL DOB: [REDACTED]  
[REDACTED] issued in Missouri between 1/1/1977 and 12/31/1979  
LINDA KAMOS DOB: [REDACTED]  
[REDACTED] issued in Missouri between 1/1/1977 and 12/31/1979

### Address Summary:

[REDACTED] DODGE CITY KS 67801-4404, FORD COUNTY (Jan 2010 - Jun 2016)  
1309 [REDACTED] KANSAS CITY KS 66102-2319, WYANDOTTE COUNTY (Dec 2000 - May 2016)  
[REDACTED] WICHITA KS 67214-2436, SEDGWICK COUNTY (Feb 2016)  
[REDACTED] WICHITA KS 67203-4513, SEDGWICK COUNTY (Feb 2016)  
[REDACTED] DODGE CITY KS 67801-3019, FORD COUNTY (Aug 2012 - Feb 2016)  
[REDACTED] HUTCHINSON KS 67504-1566, RENO COUNTY (Apr 2013)  
[REDACTED] DODGE CITY KS 67801-5320, FORD COUNTY (Oct 2012 - Mar 2013)  
[REDACTED] DODGE CITY KS 67801-4877, FORD COUNTY (Jul 2010 - Sep 2012)  
Utility Locator - Connect Date: 10/1/2009  
1812 [REDACTED] KANSAS CITY KS 66103-1014, WYANDOTTE COUNTY (Apr 2003 - May 2012)  
[REDACTED] DODGE CITY KS 67801-7037, FORD COUNTY (May 2011)  
4021 [REDACTED] KANSAS CITY KS 66103-2913, WYANDOTTE COUNTY (Jan 1994 - Apr 2011)  
6100 [REDACTED] KANSAS CITY KS 66104-1441, WYANDOTTE COUNTY (Aug 2008 - Jan 2010)  
[REDACTED] RIVERSIDE MO 64150-1233, PLATTE COUNTY (Sep 2000 - May 2008)  
2722 W 41ST AVE, KANSAS CITY KS 66103-2921, WYANDOTTE COUNTY (Jan 2002)  
1849 [REDACTED] KANSAS CITY KS 66102-4157, WYANDOTTE COUNTY (Jun 1998)

### Active Address(es):

[None Found]

### Previous And Non-Verified Address(es):

[REDACTED] DODGE CITY KS 67801-4404, FORD COUNTY (Jan 2010 - Jun 2016)  
Name Associated with Address:  
RICKY L AMOS

Comprehensive Report

## Comprehensive Report

### Current Residents at Address:

JOSE C ACOSTA  
RICKY LEE AMOS  
JEROD M CANTU  
MICHAEL J ELLIS  
KEENAN M GEISSER  
RUSSELL S KORCH  
DAVID W MANGELS  
JESSE D SIDEBOTTOM  
GRAHAM ROBIN TAYLOR II  
JOSE JAVIER VALDEZCASTELL JR

### Property Ownership Information for this Address

#### Property:

Parcel Number - [REDACTED]  
Owner Name: HENRY STRECKER  
Owner Name 2: DEBRA K STRECKER  
Property Address: [REDACTED], DODGE CITY KS 67801-4404, FORD COUNTY  
Owner Address: [REDACTED], DODGE CITY KS 67801-2182, FORD COUNTY  
Sale Price - \$65,000  
Subdivision Name - ORIGINAL TOWN OF D C SUPP  
Assessed Value - \$8,246  
Land Size - 5,663 Square Feet  
Year Built - 1900  
Legal Description - ORIGINAL TOWN OF D C SUPP, S26, T28, R25, BLOCK 27, LOT 8  
Data Source - A

1306 [REDACTED], KANSAS CITY KS 66102-2319, WYANDOTTE COUNTY (Dec 2000 - May 2016)

### Name Associated with Address:

RICKY L AMOS

### Current Residents at Address:

KELLY LEE ESTELL  
RIGOBERTO HERNANDEZ  
SARA CONTRERAS  
MAYRA ELIZABETH SAGARNAGA  
YESSICA CONTRERAS SAGARNAGA  
ANNIE SALAS

### Property Ownership Information for this Address

#### Property:

Parcel Number - [REDACTED]  
Book - 2982  
Page - 646  
Owner Name: REPAIR & MAINTENANCE INCORPORATED  
Property Address: - 1306 [REDACTED], KANSAS CITY KS 66102-2319, WYANDOTTE COUNTY  
Owner Address: 1306 [REDACTED], KANSAS CITY KS 66102-2319, WYANDOTTE COUNTY  
Sale Price - \$32,800  
Land Usage - SINGLE FAMILY RESIDENTIAL  
Subdivision Name - PLAT BK-PG: 2992-0646  
Total Market Value - \$55,000  
Assessed Value - \$8,325  
Land Value - \$5,800  
Improvement Value - \$49,200  
Land Size - 9583 SF  
Year Built - 1958  
Data Source - B

[REDACTED], WICHITA KS 67214-2439, SEDGWICK COUNTY (Feb 2016)

### Name Associated with Address:

RICKY L AMOS

### Current Residents at Address:

RICKY LEE AMOS  
LACRISHA SHAH LIVINGSTON  
JIMMY L LIVINGSTON  
JIMMY LIVINGSTON

### Property Ownership Information for this Address

#### Property:

Parcel Number [REDACTED]  
Owner Name: KIMMEL BEVERLY J TRUST  
Property Address: [REDACTED], WICHITA KS 67214-2439, SEDGWICK COUNTY  
Assessed Value - \$1,675  
Legal Description - [REDACTED] HILLSIDE, BLDG. I HILLSIDE MANOR TOWNHOUSES SITUATED ON PT EVEN LOTS 72 TO 82 INC.

DESC.ON FILM 505 PAGE 1546, HILLSIDE AVE. FAIRMOUNT ADD.

Data Source - A

Comprehensive Report

## Comprehensive Report

██████████, WICHITA KS 67203-4513, SEDGWICK COUNTY (Feb 2016)

Name Associated with Address:

RICKY L AMOS

Property Ownership Information for this Address

Property:

Parcel Number: ██████████

Owner Name: WEST PARK TOWER CO

Property Address: - ██████████, WICHITA KS 67203-4516, SEDGWICK COUNTY

Subdivision Name - HAMMER ADD

Assessed Value - \$405,950

Land Size - 76,408 Square Feet

Year Built - 1978

Legal Description - LOT 1 HAMMER ADD.

Data Source - A

██████████ DODGE CITY KS 67801-3019, FORD COUNTY (Aug 2012 - Feb 2016)

Name Associated with Address:

RICKY L AMOS

Current Residents at Address:

DAVIDA N AMARO

RICKY LEE AMOS

ALONDO DUWAN ROUSE

IDALIA CORRAL

CESAR DIAZ

Property Ownership Information for this Address

Property:

Parcel Number: ██████████

Owner Name: RICARDO CORRAL

Owner Name 2: RENE FAYE BOEHME

Property Address: - ██████████, DODGE CITY KS 67801-3019, FORD COUNTY

Sale Price - \$49,000

Subdivision Name - WESTLAWN ADD

Assessed Value - \$8,073

Land Size - 7,600 Square Feet

Year Built - 1943

Legal Description - WESTLAWN ADDITION, S27, T26, R25, BLOCK 17, LOT 22

Data Source - A

██████████, HUTCHINSON KS 67504-1558, RENO COUNTY (Apr 2013)

Name Associated with Address:

RICKY L AMOS

██████████ DODGE CITY KS 67801-5320, FORD COUNTY (Oct 2012 - Mar 2013)

Name Associated with Address:

RICKY L AMOS

Current Residents at Address:

JENO J BABCOCK

RICARDO R BARNHART

JOYCI R BRADSHAW

SHARLA RENEE MCDONALD

EDDIE CHARLES COLLINS

AJAN X HILL

CURTIS L LINDHOLM

SHAWNA R PHILLIPS

NATHAN POWERS

FRANKLIN HERRELL

Property Ownership Information for this Address

Property:

Parcel Number: ██████████

Book - 182

Page - 138

Owner Name: FORD COUNTY

Property Address: ██████████ DODGE CITY KS 67801-5320, FORD COUNTY

Owner Address: ██████████, DODGE CITY KS 67801-4401, FORD COUNTY

Land Usage - CORRECTIONAL FACILITY, JAILS, PRISON, ISANE ASYLUM

Subdivision Name - SUGHRUES ADD

Total Market Value - \$748,810

Land Value - \$37,170

Improvement Value - \$711,640

Legal Description - SUGHRUES ADDITION, S25, T26, R25, BLOCK 2, LOT 1 - 8, ACRES 1.5

Data Source - B

██████████ DODGE CITY KS 67801-4877, FORD COUNTY (Jul 2010 - Sep 2012)

Utility Locator - Connect Date: 10/1/2009

Comprehensive Report

## Comprehensive Report

### Name Associated with Address:

RICKY L AMOS

### Current Residents at Address:

MICHAEL ANDREW TURNER

JOHN A BOL JR

DEMARIO EARL GLADNEY

### Property Ownership Information for this Address

#### Property:

Parcel Number - [REDACTED]

Owner Name: LEON R LEE

Property Address: [REDACTED] DODGE CITY KS 67801-4876, FORD COUNTY

Owner Address: [REDACTED] DODGE CITY KS 67801-8530, FORD COUNTY

Legal Description - Sec-1wn-Rng: 28 -28 -25 Sub: SHINNS ADDN Blk: 15 Lot:

Data Source - B

1812 [REDACTED], KANSAS CITY KS 66103-1014, WYANDOTTE COUNTY (Apr 2003 - May 2012)

### Name Associated with Address:

RICKY AMOS

### Current Residents at Address:

AHNI KANAI

HUGO A CABRERA

### Property Ownership Information for this Address

#### Property:

Parcel Number - [REDACTED]

Owner Name: HUGO A CABRERA

Property Address: - 1812 [REDACTED], KANSAS CITY KS 66103-1014, WYANDOTTE COUNTY

Owner Address: 1812 [REDACTED], KANSAS CITY KS 66103-1014, WYANDOTTE COUNTY

Sale Date - 05/10/2011

Sale Price - \$77,766

Total Market Value - \$96,400

Assessed Value - \$11,086

Land Value - \$8,050

Improvement Value - \$87,350

Land Size - 8,712 Square Feet

Year Built - 1925

Seller Name: HUDHOUSING OF URBAN DEV

Legal Description - SEC-28 TWP-11 RNG-25, S28, T11, R25, ACRES 0.200000, 43B BEG 166FT S & 30FT W OF NE COR SE1/4 SW1/4;

W 135FT, S 65FT, E 135FT, N 65FT TO POB CONTG 8.2AC ML

Loan Amount - \$76,987

Loan Type - FEDERAL HOUSING AUTHORITY

Lender Name - LEADER ONE FIN'L CORP

Data Source - A

[REDACTED], DODGE CITY KS 67801-7037, FORD COUNTY (May 2011)

### Name Associated with Address:

RICKY L AMOS

### Current Residents at Address:

RICHARD L BARBER

GARY RAYMON BROWN

MICHAEL A BROWN

MATTHEW A CHAVEZ

CRISTOBAL SALDANA

RICHARD J FAGAN

TODD D DAVIS

JOHN PAUL DEINES

JAVIER GONZALEZ

CRAIG N HORN

620-225-0478 - CDT NEW CHANCE INC

### Property Ownership Information for this Address

#### Property:

Parcel Number - [REDACTED]

Book - 222

Page - 350

Owner Name: NEW CHANCE INCORPORATED

Property Address: [REDACTED] DODGE CITY KS 67801-7037, FORD COUNTY

Owner Address: [REDACTED] DODGE CITY KS 67801-0943, FORD COUNTY

Land Usage - MEDICAL BLDG

Subdivision Name - SHUMAN TRACTS

Total Market Value - \$1,223,460

Land Value - \$200,000

Improvement Value - \$1,023,460

Legal Description - SHUMAN TRACTS, S30, T26, R24, ACRES 6, TRS 11-14; W 62.5' TR 10

Comprehensive Report



## Comprehensive Report

Data Source - B  
4021 [REDACTED] KANSAS CITY KS 66103-2913, WYANDOTTE COUNTY (Jan 1994 - Apr 2011)

Name Associated with Address:

RICKY L AMOS

Current Residents at Address:

JILL CHRISTINE JOHNSON

TIMOTHY MICHAEL JOHNSON

JUAN DU

Property Ownership Information for this Address

Property:

Parcel Number - [REDACTED]

Owner Name: MARY CAROL FAGAN

Property Address: - 4021 [REDACTED]

[REDACTED] KANSAS CITY KS 66103-2913, WYANDOTTE COUNTY

Owner Address: 4021 [REDACTED] KANSAS CITY KS 66103-2913, WYANDOTTE COUNTY

Sale Date - 04/29/2013

Subdivision Name - COX ADD

Total Market Value - \$57,700

Assessed Value - \$6,636

Land Value - \$8,990

Improvement Value - \$47,710

Land Size - 6,534 Square Feet

Year Built - 1963

Seller Name: PEW

Legal Description - COX ADD, S34, T11, R26, ACRES 0.15, B1 L20, LESS S 1FT

Data Source - A

6100 [REDACTED] KANSAS CITY KS 66104-1441, WYANDOTTE COUNTY (Aug 2008 - Jan 2010)

Name Associated with Address:

RICKY L AMOS

913-786-8480 - COT POKRYWKA CYNTHIA

Property Ownership Information for this Address

Property:

Parcel Number - [REDACTED]

Book - 2562

Page - 716

Owner Name: HOUSING AUTHORITY OF KCK

Property Address: - 6100 [REDACTED]

[REDACTED] KANSAS CITY KS 66104-1480, WYANDOTTE COUNTY

Owner Address: 1124 [REDACTED] KANSAS CITY KS 66101-2120, WYANDOTTE COUNTY

Land Usage - HIGHRISE APARTMENTS

Subdivision Name - FRIEDBERG HEIGHTS

Total Market Value - \$2,912,400

Land Value - \$131,150

Improvement Value - \$2,781,250

Year Built - 1975

Legal Description - "FRIEDBERG HEIGHTS, S27, T10, R24, ACRES 3.190000, L1 TO L3, L4 LESS W 100FT"

Data Source - B

[REDACTED] RIVERSIDE MO 64150-1233, PLATTE COUNTY (Sep 2000 - May 2008)

Name Associated with Address:

RICKY LEE AMOS

Property Ownership Information for this Address

Property:

Parcel Number - [REDACTED]

Book - 1068

Page - 961

Owner Name: KC CLIFF VIEW LLC

Property Address: - 4800 [REDACTED]

[REDACTED] KANSAS CITY MO 64150-1201, PLATTE COUNTY

Sale Date - 08/21/2006

Sale Price - \$1,596,000

Land Usage - APARTMENT

Subdivision Name - CLIFF MANOR

Total Market Value - \$440,000

Assessed Value - \$63,600

Land Value - \$88,000

Improvement Value - \$352,000

Land Size - 65,776 Square Feet

Year Built - 1950

Seller Name: SKYLINE APARTMENTS LLC

Legal Description - CLIFF MANOR TRACT B

Loan Amount - \$1,200,000

Loan Type - CONVENTIONAL

Lender Name - CITIBANK FSB

Comprehensive Report

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Clerk of the District Court, Johnson County Kansas  
08/29/18 12:52pm SS

**EXHIBIT Q**

## Comprehensive Report

Data Source - A  
2722 W 41ST AVE, KANSAS CITY KS 66103-2921, WYANDOTTE COUNTY (Jan 2002)

Name Associated with Address:

RICKY L AMOS

Property Ownership Information for this Address

Property:

Parcel Number: [REDACTED]  
Owner Name: CITY OF KANSAS CITY KS  
Property Address: - 2722 W 41ST AVE, KANSAS CITY KS 66103-2921, WYANDOTTE COUNTY  
Owner Address: 701 [REDACTED], KANSAS CITY KS 66101-3035, WYANDOTTE COUNTY  
Total Market Value - \$2,295,870  
Land Value - \$1,303,230  
Improvement Value - \$992,640  
Legal Description - \*SEC-34 TWP-11 RNG-25, S34, T11, R25, ACRES 8.16, BRIGHAM & LLOYD'S ORCHARD HIGHLAND: B5 LS E 100FT OF N

136.3FT (VACATED);

Data Source - B

1849 [REDACTED] KANSAS CITY KS 66102-4167, WYANDOTTE COUNTY (Jun 1998)

Name Associated with Address:

RICKY L AMOS

Current Residents at Address:

DARLEAN J FULLER

Property Ownership Information for this Address

Property:

Parcel Number: [REDACTED]  
Owner Name: CHRISTOPHER J LEMMON  
Property Address: - 1849 [REDACTED], KANSAS CITY KS 66102-4143, WYANDOTTE COUNTY  
Owner Address: 1849 [REDACTED], KANSAS CITY KS 66102-4143, WYANDOTTE COUNTY  
Sale Date - 03/18/2013  
Subdivision Name - KERRS PARK ADD  
Total Market Value - \$83,900  
Assessed Value - \$7,349  
Land Value - \$8,720  
Improvement Value - \$54,180  
Land Size - 6,098 Square Feet  
Year Built - 1925  
Seller Name: CHRISTINE L JORDAN  
Seller Name 2: BRIAN C JORDAN  
Legal Description - KERRS PARK ADD & 0541, S8, T11, R25, ACRES 0.140000, B2 L37  
Data Source - A

Bankruptcies:

[None Found]

Liens and Judgments:

Filing Number: 12LM851  
Filing Type: CIVIL JUDGMENT  
Location: FORD DISTRICT MAGISTRATE  
State: KS  
Original Filing Date: 6/14/2012  
Amount: \$400  
Debtor Name: AMOS, RICKY LEE  
Debtor SSN: [REDACTED]  
Debtor Address: [REDACTED], DODGE CITY KS 67801-4877  
Creditor: MONEY LENDERS

Filing Number: 12LM580  
Filing Type: CIVIL JUDGMENT  
Location: FORD DISTRICT MAGISTRATE  
State: KS  
Original Filing Date: 6/22/2012  
Amount: \$83  
Debtor Name: AMOS, RICKY LEE  
Debtor SSN: [REDACTED]  
Debtor Address: [REDACTED], DODGE CITY KS 67801-4877  
Creditor: DILLON'S CORPORATION

Filing Number: 12LM519

Comprehensive Report

7  
Clerk of the District Court, Johnson County Kansas  
08/29/18 12:52pm SS

**EXHIBIT Q**

## Comprehensive Report

Filing Type: CIVIL JUDGMENT  
Location: FORD DISTRICT MAGISTRATE  
State: KS  
Original Filing Date: 5/15/2012  
Amount: \$181  
Debtor Name: AMOS, RICKY LEE  
Debtor SSN: [REDACTED]  
Debtor Address: [REDACTED], DODGE CITY KS 67801-4877  
Creditor: PAPA JOHN'S PIZZA DC

UCC Filings:  
[None Found]

Phones Plus:  
Name: AMOS, RICKY  
Address: [REDACTED], DODGE CITY KS 67801-4877  
Phone Number: 820-253-0293 - CDT  
Phone Type: Mobile  
Carrier: VERIZON WIRELESS-KS - (DODGE CITY, KS)

People at Work:  
Maximum 50 People at Work records returned  
[None Found]

Possible Properties Owned by Subject:  
[None Found]

Watercraft:  
[None Found]

FAA Certifications:  
[None Found]

FAA Aircrafts:  
[None Found]

Possible Criminal Records:  
Kansas Arrest Report:  
Name: RICKY L AMOS  
SSN: [REDACTED]  
Address: 2721 [REDACTED], KANSAS CITY KS 66108-4513  
State of Origin: Kansas  
County of Origin: JOHNSON  
Race: BLACK  
Sex: Male

### Arrests:

Arrest #1  
Case Type:  
Arrest Date: 10/18/2006  
Arresting Agency: KS0460600  
Arrest Type:  
Arrest Disposition Date:  
Court Fine:

Offense: DRIVING WHILE SUSPENDED/1ST OF  
Arrest Statute:  
Agency Case #: 06014325  
Arrest Level/Degree:  
Arrest Disposition: Warrant#: 113072

Arrest #2  
Case Type:  
Arrest Date: 10/16/2006  
Arresting Agency: KS0460600

Offense: DRIVING WHILE SUSPENDED/1ST OF  
Arrest Statute:  
Agency Case #: 06014325

Comprehensive Report

## Comprehensive Report

Arrest Type:  
Arrest Disposition Date:  
Court Fine:

Arrest Level/Degree:  
Arrest Disposition: Warrant#: 113072 BOND AMT: \$1000.00

### Kansas Arrest Report:

Name: RICKY LEE AMOS  
SSN: [REDACTED]  
Address: 1812 [REDACTED], KANSAS CITY KS 66108  
State of Origin: Kansas  
County of Origin: JOHNSON  
DOB: [REDACTED]  
Race: BLACK  
Sex: Male

### Arrests:

#### Arrest #1

Case Type:  
Arrest Date: 08/08/2007  
Arresting Agency: KS0480600  
Arrest Type:  
Arrest Disposition Date:  
Court Fine:

Offense: DRIVING WHILE SUSPENDED/1ST OF  
Arrest Statute:  
Agency Case #: 07011237  
Arrest Level/Degree:  
Arrest Disposition: Warrant#: 124192

#### Arrest #2

Case Type:  
Arrest Date: 08/08/2007  
Arresting Agency: KS0480600  
Arrest Type:  
Arrest Disposition Date:  
Court Fine:

Offense: DRIVING WHILE SUSPENDED/1ST OF  
Arrest Statute:  
Agency Case #: 07011237  
Arrest Level/Degree:  
Arrest Disposition: Warrant#: 124192 BOND AMT: \$2000.00

### Kansas Arrest Report:

Name: RICKY LEE AMOS  
SSN: [REDACTED]  
Address: [REDACTED] DODGE CITY KS 67801-4877  
State of Origin: Kansas  
County of Origin: JOHNSON  
DOB: [REDACTED]  
Race: WHITE  
Sex: Male

### Arrests:

#### Arrest #1

Case Type:  
Arrest Date: 10/01/2011  
Arresting Agency: KSKHP0100  
Arrest Type:  
Arrest Disposition Date:  
Court Fine:

Offense: DRIVING WHILE SUSPENDED/1ST OF  
Arrest Statute:  
Agency Case #: 11012079  
Arrest Level/Degree: MISDEMEANOR CLASS B  
Arrest Disposition: BOND AMT: \$750.00

### Kansas Arrest Report:

Name: RICKY L. AMOS  
SSN: [REDACTED]  
Aliases: RICKY L. AMOS RICKY LEE  
State of Origin: Kansas

## Comprehensive Report

## Comprehensive Report

County of Origin: WYANDOTTE  
Sex: Male  
Eyes: BROWN  
Height: 5' 10"  
Weight: 180

### Arrests:

#### Arrest #1:

Case Type:  
Arrest Date:  
Arresting Agency:  
Arrest Type:  
Arrest Disposition Date:  
Court Fine:

Offense: NOT SPECIFIED  
Arrest Statute:  
Agency Case #:  
Arrest Level/Degree:  
Arrest Disposition:

#### Arrest #2

Case Type:  
Arrest Date:  
Arresting Agency:  
Arrest Type:  
Arrest Disposition Date:  
Court Fine:

Offense: NOT SPECIFIED  
Arrest Statute:  
Agency Case #:  
Arrest Level/Degree:  
Arrest Disposition: BOND AMT: \$125.00

#### Arrest #3

Case Type:  
Arrest Date:  
Arresting Agency:  
Arrest Type:  
Arrest Disposition Date:  
Court Fine:

Offense: NOT SPECIFIED  
Arrest Statute:  
Agency Case #:  
Arrest Level/Degree:  
Arrest Disposition: BOND AMT: \$20,000.00

#### Arrest #4

Case Type:  
Arrest Date:  
Arresting Agency:  
Arrest Type:  
Arrest Disposition Date:  
Court Fine:

Offense: NOT SPECIFIED  
Arrest Statute:  
Agency Case #:  
Arrest Level/Degree:  
Arrest Disposition: BOND AMT: \$25,000.00

#### Arrest #5

Case Type:  
Arrest Date:  
Arresting Agency:  
Arrest Type:  
Arrest Disposition Date:  
Court Fine:

Offense: NOT SPECIFIED  
Arrest Statute:  
Agency Case #:  
Arrest Level/Degree:  
Arrest Disposition: BOND AMT: \$250.00

#### Arrest #6

Case Type:  
Arrest Date:  
Arresting Agency:  
Arrest Type:  
Arrest Disposition Date:  
Court Fine:

Offense: NOT SPECIFIED  
Arrest Statute:  
Agency Case #:  
Arrest Level/Degree:  
Arrest Disposition: BOND AMT: \$700.00

### Kansas Arrest Report:

Name: RICKY LEE AMOS  
SSN: [REDACTED]  
Aliases: RICKY AMOS RICKY LEE AMOS  
State of Origin: Kansas  
County of Origin: WYANDOTTE  
DOB: [REDACTED]  
Sex: Male  
Eyes: BROWN  
Height: 5' 10"

Comprehensive Report

## Comprehensive Report

Weight: 180

### Arrests:

#### Arrest #1

Case Type:  
Arrest Date:  
Arresting Agency:  
Arrest Type:  
Arrest Disposition Date:  
Court Fine:

Offense: NOT SPECIFIED  
Arrest Statute:  
Agency Case #:  
Arrest Level/Degree:  
Arrest Disposition:

### Kansas Department of Corrections:

Name: RICKY LEE AMOS  
SSN: [REDACTED]  
Aliases: RICKY LEE AMOS RICKY LEE  
State of Origin: Kansas  
DOC Number: 59925  
Party Status: PAROLE, POST INCARCERATION, 20150605  
DOB: [REDACTED]  
Sex: Male  
Eyes: BROWN  
Height: 5' 10"  
Weight: 211

Case Number: 01CR1816  
Case Type Description: Department Of Correction

#### Offenses:

Case Number: 01CR1816    Offense Date: 09/01/2001  
Offense: ATTEMPTED ROBBERY

Case Number: 03CR477    Offense Date: 02/12/2003  
Offense: ATTEMPTED AGGRAVATED SEXUAL BATTERY; INTENTIONAL TOUCHING GE18

Case Number: 12CR15    Offense Date: 12/01/2011  
Offense: VIOLTN OF THE KS OFFENDER REGISTRATION ACT 1ST CNV

Case Number: 12CR242    Offense Date: 05/19/2012  
Offense: CRIMINAL THREAT

Case Number: 94CR1106    Offense Date: 05/01/1994  
Offense: OPIATES, OPIUM OR NARCOTIC DRUGS; POSSESSION 1ST OFF

#### Parole/Probations:

[None Found]

#### Prison Inmate Records:

Scheduled Release Date: 06/05/2015  
Status: PAROLE, POST INCARCERATION, 20150605  
Prison Location: SEDGWICK COUNTY

\*  
Unknown  
Data

### Kansas Department of Corrections:

Name: RICKY LEE AMOS  
SSN: [REDACTED]  
Aliases: RICHARD L AMOS RICK AMOS RICK RICARD AMOS RICKY AMOS RICKY LEE AMOS RED BONE RICKY LEE  
State of Origin: Kansas  
DOC Number: 6031818  
Party Status: COMMUNITY CORR, DISCHARGED, 20121025

Comprehensive Report

## Comprehensive Report

DOB: [REDACTED]  
Sex: Male  
Eyes: BROWN  
Height: 5' 10"  
Weight: 175

Case Number: 01CR1616  
Case Type Description: Department Of Correction

### Offenses:

Case Number: 01CR1616  
Offense: ATTEMPTED ROBBERY

Case Number: 03CR0477 Offense Date: 02/12/2008  
Offense: ATTEMPTED AGGRAVATED SEXUAL BATTERY; INTENTIONAL TOUCHING, WITHOUT CONSENT, 16 YOA OR OLDER; FORCE, F

Case Number: 12CR15 Offense Date: 12/01/2011  
Offense: FAILURE TO REGISTER UNDER THE OFFENDER REGISTRATION ACT

Parole/Probation:  
[None Found]

Prison Inmate Records:  
Status: COMMUNITY CORR, DISCHARGED, 20121025  
Prison Location: SANTA FE TRAIL

Unknown  
Date

### Kansas Court:

Name: RICKY LEE AMOS SR  
SSN: [REDACTED]  
State of Origin: Kansas  
County of Origin: JOHNSON  
Party Status: P  
DOB: [REDACTED]  
Race: BLACK  
Sex: Male

Case Number: 10CR03051

### Offenses:

Offense #1  
Offense Date: 12/11/2010  
Court Case Number: 10CR03051  
Court Offense: AGGRAVATED ASSAULT  
Court Disposition: DISMISS BY JUDGE  
Court Level/Degree: FELONY SEVENTH DEGREE

Offense #2  
Offense Date: 12/11/2010  
Court Case Number: 10CR03051  
Court Offense: AGGRAVATED ASSAULT  
Court Disposition: DISMISS BY PROS  
Court Level/Degree: FELONY SEVENTH DEGREE

Court Activity:  
[NONE FOUND]

### Sexual Offenses:

Name: RICKY LEE AMOS  
AKAS: , RICK RICHARD AMOS , RICKY LEE AMOS SR , RICKY LEE , BONE RED

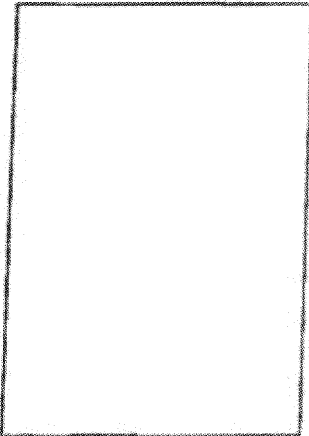
Comprehensive Report

## Comprehensive Report

Address: KS  
Date Last Seen: 6/21/2018  
SSN: [REDACTED]  
Sex: MALE  
DOB: [REDACTED]  
Hair Color: BROWN  
Eye Color: BROWN  
Scars: SCAR: ELBOW, LEFT SCAR ON LEFT ELBOW  
Height: 5'10"  
Weight: 180 lbs  
Race: BLACK  
Offender ID: KSSOR165595  
State of Origin: Kansas

### Convictions:

Offense: ATTEMPTED AGGRAVATED SEXUAL BATTERY  
Offense Date: 2/11/2003  
Conviction Date: 7/21/2003  
Victim's Age: 24  
Victim's Sex: Female



Professional License(s):  
[None Found]

Voter Registration:  
[None Found]

Hunting/Fishing Permit:  
[None Found]

Concealed Weapons Permit:  
[None Found]

Firearms and Explosives:  
[None Found]

DEA Controlled Substances:  
[None Found]

Possible Associates:  
[None Found]

Possible Relative Summary:  
➤ DANNY LEE AMOS , Age 36

Comprehensive Report



## Comprehensive Report

> LINDA K AMOS, Age 63

- >> **D** MARGARET A AMOS, Age 90
- >>> **D** M AMOS - (AKA), Age 90
- >>> **D** BARBARA ANN MONTOYA, Age 54
- >>>> **D** BARB MONTOYA - (AKA), Age 54
- >>>> **D** BARBARA A AMOS - (AKA), Age 54
- >>>> **D** BARBIE AMOS - (AKA), Age 54
- >>>> **D** BARBRA MONTOYA - (AKA), Age 54

### Possible Relatives:

DANNY LEE AMOS DOB: [REDACTED]

[REDACTED] issued in Kansas between 1/1/1980 and 12/31/1981

#### Previous And Non-Verified Address(es):

[REDACTED] WICHITA KS 67203-4513, SEDGWICK COUNTY (Nov 2015 - May 2016)  
[REDACTED] WICHITA KS 67214-2032, SEDGWICK COUNTY (Nov 2014 - May 2016)

#### Current Residents at Address:

RICHARD D WILLIAMS  
SHEENA R PRICE  
STEVEN D SMALL  
DANNY LEE AMOS

[REDACTED] WICHITA KS 67206-3508, SEDGWICK COUNTY (Dec 2014 - Feb 2015)

#### Current Residents at Address:

ALICIA SURRELL  
BER EL CARR  
MARSHON CURRY  
HUONG T VU

LINDA K AMOS DOB: [REDACTED]

[REDACTED] issued in Missouri between 1/1/1968 and 12/31/1970

#### Previous And Non-Verified Address(es):

8100 [REDACTED] KANSAS CITY KS 66104-1441, WYANDOTTE COUNTY (Oct 2003 - May 2016)  
6100 [REDACTED] KANSAS CITY KS 66104-1490, WYANDOTTE COUNTY (Sep 2001 - May 2016)  
8575 [REDACTED] KANSAS CITY MO 64154-1235, PLATTE COUNTY (Feb 2015 - Jun 2015)  
653 [REDACTED] KANSAS CITY KS 66101-3152, WYANDOTTE COUNTY (Oct 1998 - Jan 2002)

#### Current Residents at Address:

SELVIN O MOLINA  
AJRA HERNANDEZ

2224 [REDACTED] KANSAS CITY KS 66106-2998, WYANDOTTE COUNTY (Jan 1990 - Jan 1995)

#### Current Residents at Address:

BARBARA SUE GIFFORD  
ELISABETH MARIA HARRIS  
KEIANA R SMITH

#### Current phones listed at this address:

913-722-2808 - CDT SMITH KEIANA R  
913-232-6782 - CDT GIFFORD BARBARA S

**S** 4021 [REDACTED] KANSAS CITY KS 66103-2913, WYANDOTTE COUNTY (Dec 1993)

#### Current Residents at Address:

JILL CHRISTINE JOHNSON  
TIMOTHY MICHAEL JOHNSON  
JUAN DU

1225 [REDACTED] KANSAS CITY MO (Jan 1990)

### Possible Relative:

**D** MARGARET A AMOS DOB: [REDACTED] (MO) Age: 90  
[REDACTED] issued in Missouri between 1/1/1936 and 12/31/1951  
Names Associated with Relative:

**D** M AMOS DOB: [REDACTED] (MO) Age: 90  
[REDACTED] issued in Missouri between 1/1/1936 and 12/31/1951

#### Previous And Non-Verified Address(es):

3000 [REDACTED] KANSAS CITY MO 64119-1569, CLAY COUNTY (Sep 2001 - Mar 2015)

#### Current Residents at Address:

JEANETTE J BRUNSON  
DEBRA A DESSERT

## Comprehensive Report

CRISTY LEE DESSERT  
JAMES F HAWKINS  
WILLIAM DOYLE HAYES  
PATTY MCQUEEN LOUGHNANE  
VIRGIL L LUCE  
NELDA I MAIN  
JOHN MICHAEL MCGETTIGAN  
SHERRIANN MORRIS PERO

8575 [REDACTED], KANSAS CITY MO 64154-1235, PLATTE COUNTY (Aug 2007 - Sep 2011)  
3000 [REDACTED], KANSAS CITY MO 64119-1559, CLAY COUNTY (Nov 2002 - Oct 2010)  
Current Residents at Address:  
BETTY JEAN MCGETTIGAN  
GEORGE MONROE TAYLOR

3000 [REDACTED], KANSAS CITY MO 64119-1560, CLAY COUNTY (Jan 1997 - Dec 2003)  
Current Residents at Address:  
LUCILLE HELEN WARD

3000 [REDACTED], KANSAS CITY MO 64151-2026, PLATTE COUNTY (Jun 2000 - Feb 2003)  
4672 [REDACTED], KANSAS CITY MO 64118-2001, CLAY COUNTY (Aug 1998 - Aug 2001)  
Current Residents at Address:  
JASON GROVER DOBBS  
ASHLEY KRISANNE KELLEY  
RAWSON BERNETA DOBBS

6100 [REDACTED], KANSAS CITY KS 66104-1441, WYANDOTTE COUNTY (Jun 2001)

Possible Relative:

**D** BARBARA ANN MONTOKA DOB: [REDACTED] DOD:10/8/2009 (CLAY, MO) Age at Death: 47 (Born 54 years ago) - Verified  
[REDACTED] Issued in Missouri between 1/1/1977 and 12/31/1977  
\*SSN belongs to a person reported as deceased.

Names Associated with Relative:

**D** BARB MONTOKA DOB: [REDACTED] DOD:10/8/2009 (CLAY, MO) Age at Death: 47 (Born 54 years ago) - Verified  
[REDACTED] Issued in Missouri between 1/1/1977 and 12/31/1977  
\*SSN belongs to a person reported as deceased.

**D** BARBARA A AMOS DOB: [REDACTED] DOD:10/8/2009 (CLAY, MO) Age at Death: 47 (Born 54 years ago) - Verified  
[REDACTED] Issued in Missouri between 1/1/1977 and 12/31/1977  
\*SSN belongs to a person reported as deceased.

**D** BARBIE AMOS DOB: [REDACTED] DOD:10/8/2009 (CLAY, MO) Age at Death: 47 (Born 54 years ago) - Verified  
[REDACTED] Issued in Missouri between 1/1/1977 and 12/31/1977  
\*SSN belongs to a person reported as deceased.

**D** BARBRA MONTOKA DOB: [REDACTED] DOD:10/8/2009 (CLAY, MO) Age at Death: 47 (Born 54 years ago) - Verified  
[REDACTED] Issued in Missouri between 1/1/1977 and 12/31/1977  
\*SSN belongs to a person reported as deceased.

Previous And Non-Verified Address(es):  
[REDACTED], GLENDALE CA 91205-1147, LOS ANGELES COUNTY (May 2015 - May 2016)  
Current Residents at Address:  
BARBARA ANN MONTOKA  
ALLEN EDWARD BALL  
GEVORK K KHZMALIAN  
MARINE M KHZMALIAN  
ANQINEH SOLEYMANI  
SERJIK DILANCHIAN

PO BOX [REDACTED], KANSAS CITY MO 64188-6613, CLAY COUNTY (Dec 1985 - May 2016)  
7633 [REDACTED], KANSAS CITY MO 64151-1372, PLATTE COUNTY (Apr 2010 - Mar 2013)  
Current Residents at Address:  
MISTY ANGELA BRYANT  
GREGORY LAWRENCE BURRESS  
ERIC ANDREW JONES  
JAMES C LULLIE  
DAVID CARTER MAHAFFEY  
MICHAEL DAVID RYAN  
MERRY ELIZABETH BARNETT  
AARON DESMOND MCNEALY  
ALEXANDER THADDEUS STANLEY  
LEWIS WILLIAMS

709 [REDACTED], KANSAS CITY MO 64116-1801, CLAY COUNTY (Dec 1989 - Oct 2009)  
Current Residents at Address:  
MATTHEW DAVID BENHAM  
REBECCA J THURSTON  
DANIEL GEORGE THURSTON

## Comprehensive Report

816-413-7807

709 [REDACTED], KANSAS CITY MO 64116-1801, CLAY COUNTY (Oct 2008)  
8736 [REDACTED], KANSAS CITY MO 64155-2322, CLAY COUNTY (Jul 2004 - Feb 2008)

**Current Residents at Address:**

STEVEN KEITH FISHER  
ERIC ENRICO MONTOYA  
JUSTIN MICHAEL FISHER  
KEITH K FISHER

4872 [REDACTED], KANSAS CITY MO 64116-2001, CLAY COUNTY (Jun 1986 - Aug 2003)

**Current Residents at Address:**

JASON GROVER DOBBS  
ASHLEY KRISANNE KELLEY  
RAWSON BERNETA DOBBS

**Neighbors:**

**Neighborhood:**

[REDACTED], DODGE CITY KS 67801-4404, FORD COUNTY (Jan 2010 - Jun 2016)

**Residents:**

JOSE C ACOSTA DOB: [REDACTED]  
[REDACTED] issued in Kansas between 8/2/1997 and 5/3/1999  
  
RICKY LEE AMOS DOB: [REDACTED]  
[REDACTED] issued in Missouri between 1/1/1977 and 12/31/1979  
JEROD M CANTU DOB: [REDACTED]  
[REDACTED] issued in Kansas between 1/1/1981 and 12/31/1982  
MICHAEL J ELLIS DOB: [REDACTED]  
[REDACTED] issued in Kansas between 1/1/1987 and 12/31/1987  
KEENAN M GEISSER DOB: [REDACTED]  
[REDACTED] issued in Kansas between 1/1/1967 and 12/31/1966  
RUSSELL S KORCH DOB: [REDACTED]  
[REDACTED] issued in Kansas between 1/1/1973 and 12/31/1973  
DAVID W MANGELS DOB: [REDACTED]  
[REDACTED] issued in Tennessee between 1/1/1974 and 12/31/1975  
JESSE D SIDEBOTTOM DOB: [REDACTED]  
[REDACTED] issued in Kansas between 1/1/1963 and 12/31/1994  
GRAHAM ROBIN TAYLOR II DOB: [REDACTED]  
[REDACTED] issued in Washington between 1/1/1976 and 12/31/1977  
  
JOSE JAVIER VALDEZCASTELL JR DOB: [REDACTED]  
[REDACTED] issued in Nebraska between 1/1/1990 and 12/31/1992

**Address(es):**

[REDACTED], DODGE CITY KS 67801-4403, FORD COUNTY (Mar 1988 - May 2015)

**Residents:**

RENEA FAYE BOEHME DOB: [REDACTED]  
[REDACTED] issued in Kansas between 1/1/1967 and 12/31/1968  
RICARDO CORRAL DOB: [REDACTED]  
[REDACTED] issued in Kansas between 4/2/1994 and 11/30/1995  
316-227-9630

[REDACTED], DODGE CITY KS 67801-4404, FORD COUNTY (Mar 2007 - May 2016)

**Residents:**

GILDARDO B BARRAGAN DOB: [REDACTED]  
[REDACTED] issued in California between 1/1/1990 and 12/31/1990  
MIGUEL A CAHRASQUILLO DOB: [REDACTED]  
LUZ AMERICA ESPINOZA DEFR  
[REDACTED] issued in Arizona between 11/1/1994 and 3/16/1995  
GABRIELA MEDINA  
THOMAS A CORTEZ  
THOMAS CORTEZ  
[REDACTED] issued in Puerto Rico between 1/1/1976 and 12/31/1978  
620-272-6635

**Neighborhood:**

1309 [REDACTED], KANSAS CITY KS 68102-2319, WYANDOTTE COUNTY (Dec 2000 - May 2016)

**Residents:**

KELLY LEE ESTELL DOB: 3/ox/1982

Comprehensive Report

## Comprehensive Report

██████ issued in Kansas between 1/1/1982 and 12/31/1983

RIGOBERTO HERNANDEZ DOB: ██████

██████ issued in California between 1/1/1957 and 12/31/1958

SSN was linked to more than 2 people.

SARA CONTRERAS DOB: ██████

██████ issued in Kansas between 1/2/1995 and 9/3/1996

MAYRA ELIZABETH SAGARNAGA

YESSICA CONTRERAS SAGARNAGA

ANNIE SALAS DOB: ██████

██████ issued in Kansas between 1/2/1995 and 9/3/1996

██████ - SSN potentially randomly issued by the SSA. DOB: ██████

### Address(es):

✓ 1307 ██████ KANSAS CITY KS 66102-2319, WYANDOTTE COUNTY (Jan 1990 - May 2016)

#### Residents:

LARRY CONRAD KEMPER DOB: ██████

██████ issued in Missouri between 1/1/1965 and 12/31/1966

VERNICE M KEMPER DOB: ██████

██████ issued in Kansas between 1/1/1967 and 12/31/1968

MELISSA M KEMPER DOB: ██████

██████ issued in Kansas between 1/1/1967 and 12/31/1968

VERNICE M KEMPER

██████ issued in Kansas between 1/1/1963 and 12/31/1964

JOHN LEE KEMPLER DOB: ██████

██████ issued in Kansas between 4/4/1995 and 11/1/1996

913-321-6317 - CDT KEMPER LARRY C

1305 ██████ KANSAS CITY KS 66102-2319, WYANDOTTE COUNTY (Jun 2011 - May 2016)

LUIS LEWIS

██████ issued in Ohio between 1/1/1978 and 12/31/1979

1315 ██████ KANSAS CITY KS 66102-2319, WYANDOTTE COUNTY (Apr 1995 - May 2016)

#### Residents:

FAULA F GOODWIN DOB: ██████

██████ issued in Kansas between 1/1/1983 and 12/31/1984

JONATHAN LUNA

██████ issued in Colorado between 1/1/1976 and 12/31/1976

NANCY LUNA

MATTIE LEE COLEMAN DOB: ██████

██████ issued in Kansas between 1/1/1973 and 12/31/1973

913-281-2842

✓ 1301 ██████ KANSAS CITY KS 66102-2319, WYANDOTTE COUNTY (Oct 1984 - May 2016)

#### Res

MAXINE B HOLLOWAY DOB: ██████

██████ issued in Missouri between 1/1/1936 and 12/31/1951

RAYMOND HOLLOWAY

913-371-1883 - CDT HOLLOWAY MAXINE

1318 ██████ KANSAS CITY KS 66102-2320, WYANDOTTE COUNTY (Sep 1994 - May 2016)

#### Residents:

JENNIFER E LAMB DOB: 8/xx/1973

██████ issued in Kansas between 1/1/1976 and 12/31/1977

ANNA R STARNES DOB: ██████

██████ issued in Kansas between 1/1/1987 and 12/31/1989

Current phone(s) listed at this address:

913-232-8919 - CDT STARNES ANNA

913-321-4378

1319 ██████ KANSAS CITY KS 66102-2319, WYANDOTTE COUNTY (Jul 2003 - May 2016)

#### Residents:

JACQUELINE WEST

SYLVIA J GREEN DOB: ██████

██████ issued in Kansas between 1/1/1973 and 12/31/1973

LACHANDRA TENNILLE HILL DOB: ██████

██████ issued in Kansas between 1/1/1983 and 12/31/1984

RAYVON GREEN

## Comprehensive Report

### Neighborhood:

WICHITA KS 67203-4513, SEDGWICK COUNTY (Feb 2016)

### Address(es):

WICHITA KS 67203-4513, SEDGWICK COUNTY (Aug 2011 - May 2016)

PATRICIA A PERICOL DOB: [REDACTED]

[REDACTED] Issued in Kansas between 1/1/1960 and 12/31/1961

[REDACTED], WICHITA KS 67203-4513, SEDGWICK COUNTY (Nov 1988 - May 2016)

### Residents:

**D** RAYMOND P DOLD DOB: [REDACTED] DOD: 5/14/2002 (SEDGWICK, KS) Age at Death: 76 (Born 80 years ago) - Verified  
[REDACTED] Issued in Kansas between 1/1/1936 and 12/31/1951

**D** JOHN EDGAR FENN DOB: [REDACTED] DOD: 12/20/2004 (SEDGWICK, KS) Age at Death: 72 (Born 84 years ago) - Verified  
[REDACTED] Issued in Pennsylvania between 1/1/1936 and 12/31/1951  
\*SSN belongs to a person reported as deceased.

**D** SHIRLEY M FENN DOB: [REDACTED] DOD: 4/28/2007 (SEDGWICK, KS) Age at Death: 74 (Born 83 years ago) - Verified  
[REDACTED] Issued in Nebraska between 1/1/1936 and 12/31/1951  
\*SSN belongs to a person reported as deceased.

CHARLES L HOLMAN

[REDACTED] Issued in Missouri between 1/1/1936 and 12/31/1951

316-942-9719

[REDACTED] WICHITA KS 67203-4513, SEDGWICK COUNTY (Mar 2005 - May 2016)

### Residents:

**D** EMMA JEAN BROWN DOB: [REDACTED] DOD: 10/24/2014 (KS) Age at Death: 90 (Born 92 years ago)  
[REDACTED] Issued in Iowa between 1/1/1936 and 12/31/1951

CHRISTA C KAHE DOB: [REDACTED]

[REDACTED] Issued in New Jersey between 1/1/1955 and 12/31/1957

[REDACTED], WICHITA KS 67203-4513, SEDGWICK COUNTY (Jan 2012 - May 2016)

### Residents:

JOE M JOHNSON DOB: [REDACTED]  
[REDACTED] Issued in Kansas between 1/1/1936 and 12/31/1951

AGNES A MURPHY DOB: [REDACTED]  
[REDACTED] Issued in Colorado between 1/1/1936 and 12/31/1951

**D** PARK N MURPHY DOD: 10/1988 (KAY, OK) Age at Death: 69 (Born years ago)  
[REDACTED] Issued in Connecticut between 1/1/1936 and 12/31/1951

[REDACTED] WICHITA KS 67203-4513, SEDGWICK COUNTY (Sep 2002 - May 2016)

### Residents:

LEE GARLAND

[REDACTED] Issued in Nebraska between 1/1/1936 and 12/31/1951

LEONIDA J GARLAND

[REDACTED] Issued in Nebraska between 1/1/1936 and 12/31/1951

[REDACTED] WICHITA KS 67203-4513, SEDGWICK COUNTY (Sep 1999 - May 2016)

L COPELAND V DOB: [REDACTED]

[REDACTED] Issued in Kansas between 1/1/1936 and 12/31/1951

### Neighborhood:

[REDACTED] WICHITA KS 67214-2439, SEDGWICK COUNTY (Feb 2016)

### Residents:

RICKY LEE AMOS DOB: [REDACTED]  
[REDACTED] Issued in Missouri between 1/1/1977 and 12/31/1979

LACRISHA SHAN LIVINGSTON DOB: [REDACTED]  
[REDACTED] Issued in Arizona between 1/1/1984 and 12/31/1984

JIMMY L LIVINGSTON DOB: [REDACTED]  
[REDACTED] Issued in Kansas between 1/1/1979 and 12/31/1980

JIMMY LIVINGSTON  
[REDACTED] Issued in Kansas between 1/1/1983 and 12/31/1984

### Address(es):

[REDACTED] WICHITA KS 67214-2438, SEDGWICK COUNTY (Feb 1985 - May 2016)

### Residents:

## Comprehensive Report

## Comprehensive Report

SHARON FAYE JONES DOB: [REDACTED]  
[REDACTED] issued in Kansas between 1/1/1985 and 12/31/1986  
TORRAN DELANE BISHOP DOB: [REDACTED]  
[REDACTED] issued in Kansas between 1/1/1983 and 12/31/1984  
OLIVER W KEMP DOB: [REDACTED]  
[REDACTED] issued in Kansas between 1/1/1988 and 12/31/1989

[REDACTED], WICHITA KS 67214-2438, SEDGWICK COUNTY (Dec 2010 - May 2016)

### Residents:

TANYA E DAVIS DOB: [REDACTED]  
[REDACTED] issued in Kansas between 1/1/1977 and 12/31/1979  
NOWASHIA TYJEAN STEWART DOB: [REDACTED]  
[REDACTED] issued in Kansas between 8/1/1985 and 4/1/1997  
LYNEEA C WHITE DOB: [REDACTED]  
[REDACTED] issued in New York between 1/1/1987 and 12/31/1988  
CARL J WHITE III DOB: [REDACTED]  
[REDACTED] issued in Missouri between 1/1/1984 and 12/31/1986  
CLAUNASHIA DAVIS [REDACTED] - SSN potentially randomly issued by the SSA.

[REDACTED], WICHITA KS 67214-2438, SEDGWICK COUNTY (Dec 1990 - May 2016)

LOUIS J REYNOLDS DOB: [REDACTED]  
[REDACTED] issued in Kansas between 1/1/1970 and 12/31/1971

[REDACTED], WICHITA KS 67214-2439, SEDGWICK COUNTY (Mar 2004 - May 2016)

### Residents:

KEITHER SOLRENCE  
JUAN A HORN DOB: [REDACTED]  
[REDACTED] issued in Kansas between 1/1/1977 and 12/31/1979  
ADRIAN JACKSON  
[REDACTED] issued in Washington between 1/1/1983 and 12/31/1984  
SN belongs to a person reported as deceased.  
EDWARD C MCNEAL  
[REDACTED] issued in Kansas between 1/1/1957 and 12/31/1959  
JOYE DEVAN PACKER DOB: [REDACTED]  
[REDACTED] issued in Kansas between 1/1/1973 and 12/31/1973  
BRITTNEY NICHOLE WHITE DOB: [REDACTED]  
[REDACTED] issued in Kansas between 1/1/1988 and 12/31/1989

[REDACTED], WICHITA KS 67214-2438, SEDGWICK COUNTY (Dec 1989 - May 2016)

### Residents:

DARLENE WEBB COOPER DOB: [REDACTED]  
LOQUISHA ROSHAW ROBINSON DOB: [REDACTED]  
[REDACTED] issued in Kansas between 1/1/1974 and 12/31/1975  
THOMAS I WILLARD DOB: [REDACTED]  
[REDACTED] issued in Kansas between 1/1/1955 and 12/31/1951  
\* SSN belongs to a person reported as deceased.

[REDACTED], WICHITA KS 67214-2439, SEDGWICK COUNTY (May 2015 - May 2016)

JEREMY EYONNE LOVE DOB: [REDACTED]  
[REDACTED] issued in Kansas between 1/1/1992 and 3/1/1994



**Important:** The Public Records and commercially available data sources used on reports have errors. Data is sometimes entered poorly, processed incorrectly and is generally not free from defect. This system should not be relied upon as definitively accurate. Before relying on any data this system supplies, it should be independently verified. For Secretary of State documents, the following data is for information purposes only and is not an official record. Certified copies may be obtained from that individual state's Department of State. The criminal record data in this product or service may include records that have been expunged, sealed, or otherwise have become inaccessible to the public since the date on which the data was last updated or collected.

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Your DPPA Permissible Use: Civil, Criminal, Administrative, or Arbitral Proceedings

Your GLBA Permissible Use: Legal Compliance

Your DMF Permissible Use: No Permissible Purpose

## Comprehensive Report

Date: 10/26/16

Report processed by:

Midwest Innocence Project, Inc.  
 100 W 47TH ST  
 KANSAS CITY, MO 64112  
 816-221-2166 Main Phone

Report Legend:



- Shared Address

- Deceased

- Probable Current Address

### Subject Information (Best Information for Subject)

Name: RICHARD A JONES

Date of Birth: [REDACTED]

Age: 40

SSN: [REDACTED] issued in Missouri between  
 1/1/1977 and 12/31/1977

### AKAs (Names Associated with Subject)

RICHARD JONES

Age: 40 SSN: [REDACTED]

### Indicators

Bankruptcy: No

Property: No

Corporate Affiliations: No

### Comprehensive Report Summary:

Bankruptcies:

None Found

Liens and Judgments:

None Found

UCC Filings:

None Found

Phones Plus:

None Found

People at Work:

None Found

Address(es) Found:

0 Verified and 2 Non-Verified Found

FAA Certifications:

None Found

Possible Criminal Records:

3 Found

Sexual Offenses:

None Found

Professional Licenses:

Comprehensive Report

1

Clerk of the District Court, Johnson County Kansas  
 08/29/18 12:52pm SS

**EXHIBIT R**

## Comprehensive Report

None Found  
Voter Registration:  
None Found  
Hunting/Fishing Permit:  
None Found  
Concealed Weapons Permit:  
None Found  
Possible Associates:  
None Found  
DEA Controlled Substances:  
None Found  
Neighbors:  
1st Neighborhood - 3 Found  
2nd Neighborhood - 6 Found

### Others Associated With Subjects SSN:

(DOES NOT usually indicate any type of fraud or deception)

[None Found]

### Address Summary:

MYRTLE AVE, KANSAS CITY MO 64127-4452, JACKSON COUNTY (Sep 2001 - May 2008)  
MONROE AVE APT KANSAS CITY MO 64132-3938, JACKSON COUNTY (Mar 2004 - Jul 2004)

### Active Address(es):

[None Found]

### Previous And Non-Verified Address(es):

MYRTLE AVE, KANSAS CITY MO 64127-4452, JACKSON COUNTY (Sep 2001 - May 2008)  
Name Associated with Address:  
RICHARD A JONES  
Neighborhood Profile (2010 Census)  
Average Age: 47  
Median Household Income: \$36,164  
Median Owner Occupied Home Value: \$54,423  
Average Years of Education: 12  
MONROE AVE APT KANSAS CITY MO 64132-3938, JACKSON COUNTY (Mar 2004 - Jul 2004)  
Name Associated with Address:  
RICHARD JONES  
Current Residents at Address:  
TOYA LEONDRIA THOMAS  
LAMONT SANDERS  
JAMESHA SANDERS  
Neighborhood Profile (2010 Census)  
Average Age: 24  
Median Household Income: \$16,538  
Median Owner Occupied Home Value: \$58,654  
Average Years of Education: 11

### Bankruptcies:

[None Found]

### Liens and Judgments:

[None Found]

### UCC Filings:

[None Found]

## Comprehensive Report



## Comprehensive Report

**Phones Plus:**  
[None Found]

**People at Work:**  
*Maximum 50 People at Work records returned*  
[None Found]

**FAA Certifications:**  
[None Found]

### Possible Criminal Records:

#### Missouri Court:

Name: RICHARD A JONES  
SSN: [REDACTED]  
State of Origin: Missouri  
DOB: [REDACTED]

Case Number: 05CR03000792  
Case Type Description: CRIMINAL/INFRACT

#### Offenses:

Offense #1  
Court Description: 5TH JUDICIAL CIRCUIT  
Court Case Number: 05CR03000792  
Court Offense: NOT SPECIFIED  
Court Disposition: OTHER FINAL DISPOSITION  
Court Disposition Date: 04/05/2000

**Court Activity:**  
[NONE FOUND]

#### Missouri Department of Corrections:

Name: RICHARD JONES  
SSN: [REDACTED]  
State of Origin: Missouri  
DOC Number: 00519534  
DOB: [REDACTED]  
Race: BLACK  
Sex: Male

Case Number: CR956804  
Case Type Description: Department Of Correction

#### Offenses:

Case Number: CR956804      Convicted County: JACKSON  
Offense: ROBBERY IN THE SECOND DEGREE      Sentence Date: 02/16/1996

**Parole/Probations:**  
[None Found]

#### Prison Inmate Records:

Scheduled Release Date: 10/03/2000

Unknown  
Date

#### Kansas Arrest Report:

Name: RICHARD ANTHONY JONES  
SSN: [REDACTED]  
Address: [REDACTED] HARDESTY AVE, KANSAS CITY MO 64130-1755  
State of Origin: Kansas  
County of Origin: JOHNSON  
DOB: [REDACTED]  
Race: BLACK  
Sex: Male

Comprehensive Report

## Comprehensive Report

### Arrests:

#### Arrest #1

Case Type:  
Arrest Date: 02/21/2008  
Arresting Agency: K90460000  
Arrest Type:  
Arrest Disposition Date:  
Court Fine:

Offense: PRISONER-SENTENCED  
Arrest Statute:  
Agency Case #: 06002598  
Arrest Level/Degree:  
Arrest Disposition: Warrant#: 03CV06193

Sexual Offenses:  
[None Found]

Professional License(s):  
[None Found]

Voter Registration:  
[None Found]

Hunting/Fishing Permit:  
[None Found]

Concealed Weapons Permit:  
[None Found]

Firearms and Explosives:  
[None Found]

DEA Controlled Substances:  
[None Found]

Possible Associates:  
[None Found]

### Neighbors:

Neighborhood:  
[REDACTED] MYRTLE AVE, KANSAS CITY MO 64127-4452, JACKSON COUNTY (Sep 2001 - May 2006)

#### Address(es):

[REDACTED] MYRTLE AVE, KANSAS CITY MO 64127-4452, JACKSON COUNTY (Jan 1990 - Aug 2016)

CLYDE CALVERT BETTS DOB: [REDACTED]

[REDACTED] issued in Missouri between 1/1/1964 and 12/31/1965

[REDACTED] MYRTLE AVE, KANSAS CITY MO 64127-4452, JACKSON COUNTY (Sep 1992 - Aug 2016)

#### Residents:

MORRIS CHESTINE DOB: [REDACTED]

[REDACTED] issued in Mississippi between 1/1/1936 and 12/31/1951

DALE RENEE M HILL DOB: [REDACTED]

[REDACTED] issued in Missouri between 1/1/1977 and 12/31/1977

TYESHA NICHE FRANKLIN DOB: [REDACTED]

[REDACTED] issued in Missouri between 1/1/1990 and 12/31/1992

KYLE NATHAN MORRIS DOB: [REDACTED]

[REDACTED] issued in Missouri between 1/1/1991 and 12/31/1992

LONDON LEROY BLAYLOCK DOB: [REDACTED]

[REDACTED] issued in Missouri between 3/9/1993 and 11/30/1994  
816-734-8212

[REDACTED] MYRTLE AVE, KANSAS CITY MO 64127-4453, JACKSON COUNTY (Feb 2012 - Aug 2016)

#### Residents:

MELINDA MARIE TABRON DOB: [REDACTED]

## Comprehensive Report

██████ issued in Kansas between 1/1/1976 and 12/31/1976  
MCAUTHERA WOODS DOB: ██████  
██████ issued in Missouri between 1/1/1977 and 12/31/1977  
816-569-0373 - CDT WOODS MELINDA

### Neighborhood:

██████ MONROE AVE APT ██████ KANSAS CITY MO 64132-3936, JACKSON COUNTY (Mar 2004 - Jul 2004)

#### Residents:

TOYA LEONORIA THOMAS DOB: ██████  
██████ issued in Missouri between 1/1/1980 and 12/31/1982  
LAMONT SANDERS DOB: ██████  
██████ issued in Missouri between 1/1/1991 and 12/31/1992  
JAMESHA SANDERS  
██████ issued in Missouri between 1/1/1936 and 12/31/1951

### Address(es):

██████ MONROE AVE APT ██████ KANSAS CITY MO 64132-3938, JACKSON COUNTY (Sep 2009 - Aug 2016)

#### Residents:

KELLY DENISE KITCHEN DOB: ██████  
██████ issued in Kansas between 1/1/1977 and 12/31/1979  
CHANTE MARIE HILL DOB: ██████  
██████ issued in Kansas between 1/1/1986 and 12/31/1987  
ROBERT HALBERT

██████ MONROE AVE APT ██████ KANSAS CITY MO 64132-3938, JACKSON COUNTY (Nov 2002 - Aug 2016)

WILLIS TARENCE

██████ issued in Kansas between 1/1/1973 and 12/31/1974

██████ MONROE AVE APT ██████ KANSAS CITY MO 64132-3938, JACKSON COUNTY (Nov 2001 - Aug 2016)

#### Residents:

MARLA MASHON CADENHEAD DOB: ██████  
██████ issued in Missouri between 1/1/1974 and 12/31/1974  
CHANEISE L SWOPES DOB: ██████  
██████ issued in Kansas between 1/1/1982 and 12/31/1983  
TERRIA ROBINSON  
TERRIA R ROBINSON  
CYNTHIA MARIE ROBINSON DOB: ██████ ██████ - SSN potentially randomly issued by the SSA.  
██████ issued in Mississippi between 1/1/1992 and 12/31/1993  
816-444-7120

██████ MONROE AVE APT, KANSAS CITY MO 64132-2089, JACKSON COUNTY (Mar 2011 - Jul 2016)

#### Residents:

LISA A CODENHEAD DOB: ██████  
██████ issued in Missouri between 1/1/1974 and 12/31/1974  
SSN belongs to a person reported as deceased.  
KEVIN D DEAN  
██████ issued in Missouri between 1/1/1991 and 12/31/1993

██████ MONROE AVE APT, KANSAS CITY MO 64132-2089, JACKSON COUNTY (Mar 2016 - Aug 2016)

#### Residents:

SHERMIKA D PHOENIX DOB: ██████  
██████ issued in Kansas between 1/1/1989 and 12/31/1990  
TRANIKA SANDERS  
██████ issued in Missouri between 5/2/1996 and 4/2/1998

██████ MONROE AVE APT ██████ KANSAS CITY MO 64132-2089, JACKSON COUNTY (Aug 2016)

CYNTHIA ROBINSON M ROBINSON JR

## Exhibit K

MAR 23 2016

Affidavit of Tamara Scherer

I, Tamara Scherer, being of lawful age and of sound mind, am making this declaration of my own free will.

1. On May 31, 1999 around 8pm, my daughter and I drove into the parking lot of the Wal-Mart at 5150 Roe Boulevard in Roeland Park, Kansas. I got out of my car and walked to the aisle where I waited for my daughter to join me. As I waited, a man came up behind me and grabbed my purse hanging from my shoulder. He spun me around and we fought over my purse. I tore off his shirt but held on to my purse. He pushed me to the ground and I still held on to my purse. He gave up and let go of the purse but grabbed my cellphone which had fallen to the ground. He then ran to a car that drove out of the parking lot. A security officer from Wal-Mart called the police and I spoke with the police briefly at the scene. I gave a statement to the police.
2. Later, I believe I spoke with a detective by phone a couple times. I also spoke with a prosecutor by phone at least once. They asked if I would look at a line-up of suspects. I told them I would try but they never asked me to look at a line-up. I received a letter telling me about the preliminary hearing for the person they believed attacked me. I went to the hearing. I was sitting in the courtroom and they brought in several people in white t-shirts and orange pants.
3. I was called to testify at the preliminary hearing. The prosecutor asked me to describe the person who attacked me. I told him he was sitting right there in the white t-shirt and orange pants. The prosecutor said I was identifying the defendant. At the time I believed that person was my attacker. I was later told his name was Richard Jones. At his trial, I identified Richard Jones as my attacker.
4. In October of 2015, I was contacted by two student interns from the Paul E. Wilson Project for Innocence wishing to discuss Richard Jones's case. They were Chad Neswick and Chapman Williams. I agreed to meet with them. The interview happened on November 6, 2015 and took place at my job, Global Aerospace, at their offices located at 10895 Grandview Blvd, Building 24, Suite 150. The two interns and I were the only people at this meeting. At the interview, I told the interns I would still be able to identify the person who attacked me on May 31, 1999. I believed that to be true.
5. The interns then showed me four photographs, the front and profile pictures of two individuals. Copies of these photos are attached as Exhibits A, B, C, D. They never told me who the men in the pictures were. I looked at each picture carefully. The men the photos look very similar.
6. Looking at the photos, I could not tell the two individuals apart. If I were presented photos of a line-up of these two men, I would not be able to identify my attacker. I am no longer certain I identified the right person at the preliminary hearing and trial. If I had seen both men at the

Clerk of the District Court, Johnson County Kansas  
08/29/18 12:52pm SS

**EXHIBIT S**

time, I would not have felt comfortable choosing between the two men and possibly sending a man to prison.

Tamara Scherer 3-24-16  
Tamara Scherer

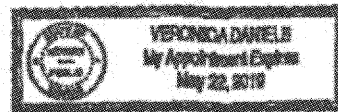
State of Kansas )

County of Johnson )ss

Subscribed and sworn before me, a notary public in and for the State of Kansas, this 24<sup>th</sup> day of March, 2016.

Veronica Daniels  
Notary public

My commission expires: 5-22-2019



## Exhibit M

### Affidavit of Chapman Williams

I, Chapman Williams, being of lawful age and of sound mind, am making this declaration of my own free will.

1. During the 2015-2016 school year at the University of Kansas School of Law, I was a student intern for the Paul E. Wilson Project for Innocence. One of the cases I worked on was that of Richard Jones. On March 29, 2016, Chad Neswick, another Project for Innocence intern, and I contacted Ronald Coen about his testimony in the case of Richard Jones. We visited his house in Roeland Park and had the opportunity to speak with him.
2. Coen was a loss prevention officer working at the Walmart when the robbery that Jones was convicted of took place. Coen testified at the trial of Richard Jones that on May 31, 1999, he saw a dark man run up behind a woman and knock her to the ground in the Walmart parking lot. Coen testified that he ran towards the woman and was pretty close to her assailant. He said he had gotten a good look at the man who attacked the woman. At trial, Coen pointed to Richard Jones as the man who had attacked the woman in the Walmart parking lot. He claimed to be 100 percent certain and said there was no doubt in his mind that Mr. Jones was the one who committed this crime.
3. When Chad Neswick and I met with Coen on March 29, 2016, he told me that he did not remember the incident because, as a security guard, he dealt with a number of incidents like this. However, as we spoke, he remembered a few details from the incident because they were unusual. The car had dealer plates. The car drove through the parking lot several times that day before the incident took place. At the time of the incident, the car drove around the parking lot. No one got in or out and then parked at the back of the lot. That was unusual and got his attention. He began to remember more as we refreshed his memory about the case. He said he would not be able to identify the suspect today. However, when we showed him the pictures of Jones and Amos side by side, he asked if they were two different people. He admitted he would not have been able to distinguish or choose between the two men if he had been presented a line up with both included.

  
Chapman Williams

State of Kansas     )  
                              )ss  
County of Douglas

Clerk of the District Court, Johnson County Kansas  
08/29/18 12:52pm SS

**EXHIBIT T**

Subscribed and sworn before me, a notary public in and for the State of Kansas, this 10 day of  
September, 2016.  
October (4)  
a

My commission expires: July 29, 2017  
Notary public

Yolanda L. Higgins  
Notary Public  
State of Kansas  
My Appt. Exp. 07-29-17

# AFFIDAVIT

Exhibit N

State of Kansas     )  
                                  ) ss  
County of Johnson )

1. I am John Cowles, attorney-at-law, Rokusek Law, LLC, 11658 W. 75<sup>th</sup> Street, Shawnee, Kansas.
2. In April, 2001, I was an Assistant District Attorney for Johnson County, Kansas, in the adult felony division, where I was assigned to prosecute the case of State of Kansas v. Richard Jones, Case Number 00-CR-131 ("the Jones case"). The Jones case was tried to a jury, whereupon a guilty verdict was returned convicting Jones of Aggravated Robbery in connection with a forcible purse snatching from victim, Tamara Scherer, that had occurred on May 31, 1999.
3. My law career has consisted mostly of prosecuting criminal cases, with approximately 10 years as an Assistant District Attorney in Sedgwick and Johnson Counties in Kansas, followed by approximately 13 years as an Assistant United States Attorney in the Western District of Missouri (Kansas City).
4. On October 25, 2016, attorney Alice Craig of the Paul E. Wilson Project for Innocence and Post Conviction Remedies met with me in my office to show me the jury trial transcript and police reports from the Jones case, as well as some current investigative materials regarding her belief that a Ricky Amos might have actually committed the offense for which Richard Jones was convicted.
5. I have only a vague memory of the Jones case. For example, I do remember the unusual situation in which the jury failed to correctly mark the verdict form and had to redo it. However, I do not remember my personal assessment of the strength of the State's case at that time, nor any memory of preparing the case for trial, nor much of the trial itself. During the early 2000's, I was working almost exclusively on a very large serial murder case, which I believe contributes to my lack of memory of many of the details of the Jones case.

*Clerk of the District Court, Johnson County Kansas*  
08/29/18 12:52pm SS

**EXHIBIT U**



6. However, in reviewing the materials from the Jones case provided by Ms. Craig, it is apparent to me that the State's case was based exclusively on the eyewitness identification testimony of the victim and several witnesses, none of whom were previously acquainted with defendant Jones prior to the date of the offense. In my experience this is important because eyewitness identification becomes more questionable when the witness has not previously known the suspect. In particular, in the context of witnesses who have observed a violent offense, eyewitness identification becomes even more problematic. Having multiple identifications from several witnesses helps strengthen the State's case, but does not completely remove the concern about stranger identification.
7. It was rare for me to prosecute a criminal case based exclusively on eyewitness identification, because of the pitfalls described in the preceding paragraph. Any prosecutor would want at least some corroborating evidence independent from eyewitness testimony.
8. Ms. Craig also showed me credit bureau reports for both Richard Jones and Ricky Amos, which showed Jones being associated almost exclusively with addresses in Kansas City, Missouri, and Amos being associated with addresses in Kansas City, Kansas. The State's witness, David Colvin, Jr., testified that he and Eddie Miller picked up "Ricky" at a drug house in Kansas City, Kansas, and that "Ricky" directed them to the Roeland Park Walmart where the robbery occurred. (Trial Tr., pp. 96 – 98). At that time (and probably still), businesses in northern Roeland Park were frequent victims of criminals emanating from drug houses in Kansas City, Kansas, making the short drive down Highway 69 from inner Kansas City, Kansas into Roeland Park. This seems consistent with "Ricky" being part of the Kansas City, Kansas narcotics community, which fits the information for Rick Amos as opposed to Richard Jones. Far from corroborating the eyewitnesses, this information tends to cast further doubt on the identification of Jones.
9. Finally, Ms. Craig showed me booking photographs for both Richard Jones and Ricky Amos. The two men bear a striking resemblance.

10. The guiding principle of all prosecutors should be to achieve a just result, not just to "win" a case. The information provided to me by Ms. Craig has undermined whatever confidence I had at the time that trial of Richard Jones resulted in a just result. It is not my place to reach a conclusion that the new information proves Mr. Jones' "innocence," but I do believe that it would be appropriate for Ms. Craig to pursue whatever relief might still be available to Mr. Jones.



John E. Cowles

Subscribed and sworn before me, a notary public, in and for the State of Kansas, this 7<sup>th</sup> day of November, 2016.

  
Notary Public

My commission expires:



IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS  
CRIMINAL DEPARTMENT

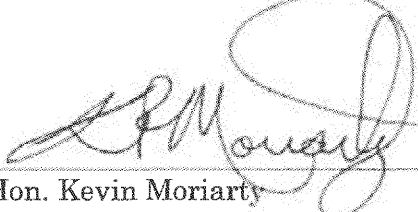
STATE OF KANSAS,	)
Plaintiff,	)
	)
VS.	) Case No.: 00CR131
	) Division: 14
	)
RICHARD ANTHONY JONES,	)
Defendant.	)

**ORDER OF DISMISSAL**

Now on this 19<sup>th</sup> day of June, 2017, this matter comes on for further proceedings before the Honorable Judge Kevin Moriarty, of the District Court of Johnson County, Kansas. The State appears by its attorney, Shawn E. Minihan, an Assistant District Attorney. The Defendant, Richard Anthony Jones, appears not.

Pursuant to a request by the State, this Court hereby dismisses Johnson County Case No. 00CR131.

**IT IS THEREFORE BY THE COURT ORDERED, ADJUDGED, AND DECREED** that District Court Case No. 00CR131 should be and is hereby dismissed.

  
\_\_\_\_\_  
Hon. Kevin Moriarty  
Court Number 14  
Johnson County District Court

# Identifying the Culprit

## **Assessing Eyewitness Identification**

Committee on Scientific Approaches to Understanding and Maximizing  
the Validity and Reliability of Eyewitness Identification  
in Law Enforcement and the Courts

Committee on Science, Technology, and Law

Policy and Global Affairs

Committee on Law and Justice

Division of Behavioral and Social Sciences and Education

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This study was funded by a grant between the National Academy of Sciences and the Laura and John Arnold Foundation. Any opinions, findings, conclusions, or recommendations expressed in this publication are those of the author and do not necessarily reflect the views of the organization that provided support for the project.

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Identifying the Culprit: Assessing Eyewitness Identification

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**MARK KLEIMAN**, Professor of Public Policy, University of California, Los Angeles

**GARY LAFREE**, Director, National Consortium for the Study of Terrorism and Responses to Terrorism (START) and Professor, Criminology and Criminal Justice, University of Maryland

**JANET L. LAURITSEN**, Professor, Department of Criminology and Criminal Justice, University of Missouri

**GLENN C. LOURY**, Merton P. Stoltz Professor of the Social Sciences, Department of Economics, Brown University

**JAMES P. LYNCH**, Professor and Chair, Department of Criminology and Criminal Justice, University of Maryland

**CHARLES F. MANSKI (NAS)**, Board of Trustees Professor in Economics, Department of Economics, Northwestern University

**DANIEL S. NAGIN**, Teresa and H. John Heinz III University Professor of Public Policy and Statistics, Carnegie Mellon University

**ANNE MORRISON PIEHL**, Associate Professor, Department of Economics and Program in Criminal Justice, Rutgers University

**DANIEL B. PRIETO**, Director, Cybersecurity and Technology and Director, Defense Industrial Base Cyber Security/Information Assurance, Office of the Secretary of Defense Chief Information Officer

**SUSAN B. SORENSON**, Professor, University of Pennsylvania

**DAVID WEISBURD**, Distinguished Professor, Department of  
Criminology, Law and Society and Director, Center for Evidence-  
Based Crime Policy, George Mason University; Walter E. Meyer  
Professor of Law and Criminal Justice, The Hebrew University  
Faculty of Law

**CATHY SPATZ WIDOM**, Distinguished Professor, Psychology  
Department, John Jay College of Criminal Justice, The City  
University of New York

**PAUL K. WORMELI**, Executive Director, Integrated Justice Information  
Systems

*Staff*

**ARLENE F. LEE**, Director

**EMILY BACKES**, Research Associate

**MALAY MAJMUNDAR**, Senior Program Officer

**STEVE REDBURN**, Scholar

**JULIE SCHUCK**, Senior Program Associate

**DANIEL TALMAGE**, Program Officer

**TINA M. LATIMER**, Program Coordinator

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This report has been reviewed in draft form by individuals chosen for their diverse perspectives and technical expertise, in accordance with procedures approved by the National Academies' Report Review Committee. The purpose of this independent review is to provide candid and critical comments that will assist the institution in making its published report as sound as possible and to ensure that the report meets institutional standards for objectivity, evidence, and responsiveness to the study charge. The review comments and draft manuscript remain confidential to protect the integrity of the process.

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## Preface

Eyewitness identifications play an important role in the investigation and prosecution of crimes, but they have also led to erroneous convictions. In the fall of 2013, the Laura and John Arnold Foundation called upon the National Academy of Sciences (NAS) to assess the state of research on eyewitness identification and, when appropriate, make recommendations. In response to this request, the NAS appointed an ad hoc study committee that we have been privileged to co-chair.

The committee's review analyzed relevant published and unpublished research, external submissions, and presentations made by various experts and interested parties. The research examined fell into two general categories: (1) basic research on vision and memory and (2) applied research directed at the specific problem of eyewitness identification.

Basic research has progressed for many decades, is of high quality, and is largely definitive. Research of this category identifies principled and insurmountable limits of vision and memory that inevitably affect eyewitness accounts, bear on conclusions regarding accuracy, and provide a broad foundation for the committee's recommendations.

Through its review, the committee came to recognize that applied eyewitness identification research has identified key variables affecting the accuracy of eyewitness identifications. This research has been instrumental in informing law enforcement, the bar, and the judiciary of the frailties of eyewitness identification testimony. Such past research has appropriately identified the variables that may affect an individual's ability to make an accurate identification. However, given the complex nature of eyewitness identification, the practical difficulties it poses for experimental research,



and the still ongoing evolution of statistical procedures in the field of eyewitness identification research, there remains at the time of this review substantial uncertainty about the effect and the interplay of these variables on eyewitness identification. Nonetheless, a range of practices has been validated by scientific methods and research and represents a starting place for efforts to improve eyewitness identification procedures.

In this report, the committee offers recommendations on how law enforcement and the courts may increase the accuracy and utility of eyewitness identifications. In addition, the committee identifies areas for future research and for collaboration between the scientific and law enforcement communities.

We are indebted to those who addressed the committee and to those who submitted materials to the committee, and we are particularly indebted to the members of the committee. These individuals devoted untold hours to the review of materials, meetings, conference calls, analyses, and report writing. This report is very much the result of the enormous contributions of an engaged community of scholars and practitioners who reached their findings and recommendations after many vigorous and thoughtful discussions. We also would like to thank the project staff, Karolina Konarzewska, Steven Kendall, Arlene Lee, and Anne-Marie Mazza, and editor Susanna Carey for their dedication to the project and to the work of the committee.

Thomas D. Albright and Jed S. Rakoff  
Committee Co-chairs

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## Summary

Eyewitnesses play an important role in criminal cases when they can identify culprits.<sup>1</sup> Yet it is well known that eyewitnesses make mistakes and that their memories can be affected by various factors including the very law enforcement procedures designed to test their memories. For several decades, scientists have conducted research on the factors that affect the accuracy of eyewitness identification procedures. Basic research on the processes that underlie human visual perception and memory have given us an increasingly clear picture of how eyewitness identifications are made and, more important, an improved understanding of the principled limits on vision and memory that may lead to failures of identification. Basic research has been complemented by a growing body of applied research on eyewitness identification, which has examined those variables that particularly affect eyewitnesses to crimes: *system variables* (conditions such as the procedures followed to obtain identifications that can be controlled by law enforcement) and *estimator variables* (conditions associated with the actual crime, such as viewing conditions, or factors specific to the eyewitness, such as the race of the victim relative to that of the perpetrator, that cannot be controlled by law enforcement).

Through such scientific research, we have learned that many factors influence the visual perceptual experience: dim illumination and brief viewing times, large viewing distances, duress, elevated emotions, and the presence of a visually distracting element such as a gun or a knife. Gaps in sensory

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<sup>1</sup>Throughout this report, the term *identification* denotes person recognition. *Eyewitness identification* refers to recognition by a witness to a crime of a culprit unknown to the witness.

input are filled by expectations that are based on prior experiences with the world. Prior experiences are capable of biasing the visual perceptual experience and reinforcing an individual's conception of what was seen. We also have learned that these qualified perceptual experiences are stored by a system of memory that is highly malleable and continuously evolving, neither retaining nor divulging content in an informational vacuum. The fidelity of our memories to actual events may be compromised by many factors at all stages of processing, from encoding to storage to retrieval. Unknown to the individual, memories are forgotten, reconstructed, updated, and distorted. Therefore, caution must be exercised when utilizing eyewitness procedures and when relying on eyewitness identifications in a judicial context.

In 2013, the Laura and John Arnold Foundation called on the National Academy of Sciences (NAS) to appoint an ad hoc study committee to:

1. critically assess the existing body of scientific research as it relates to eyewitness identification;
2. identify any gaps in the existing body of literature and suggest appropriate research questions to pursue that will further our understanding of eyewitness identification and that might offer additional insight into law enforcement and courtroom practice;
3. provide an assessment of what can be learned from research fields outside of eyewitness identification;
4. offer recommendations for best practices in the handling of eyewitness identifications by law enforcement;
5. offer recommendations for developing jury instructions;
6. offer advice regarding the scope of a Phase II consideration of neuroscience research as well as any other areas of research that might have a bearing on eyewitness identification; and
7. write a consensus report with appropriate findings and recommendations.

The committee heard from numerous experts, practitioners, and stakeholders and reviewed relevant published and unpublished literature as well as submissions provided to the committee. In this report, the committee offers its findings and recommendations for:

- identifying and facilitating best practices in eyewitness procedures for the law enforcement community;
- strengthening the value of eyewitness identification evidence in court; and
- improving the scientific foundation underpinning eyewitness identification.

## OVERARCHING FINDINGS

The committee is confident that the law enforcement community, while operating under considerable pressure and resource constraints, is working to improve the accuracy of eyewitness identifications. These efforts, however, have not been uniform and often fall short as a result of insufficient training, the absence of standard operating procedures, and the continuing presence of actions and statements at the crime scene and elsewhere that may intentionally or unintentionally influence eyewitness' identifications.

Basic scientific research on human visual perception and memory has provided an increasingly sophisticated understanding of how these systems work and how they place principled limits on the accuracy of eyewitness identification.<sup>2</sup> Basic research alone is insufficient for understanding conditions in the field, and thus has been augmented by studies applied to the specific practical problem of eyewitness identification. Applied research has identified key variables that affect the accuracy and reliability of eyewitness identifications and has been instrumental in informing law enforcement, the bar, and the judiciary of the frailties of eyewitness identification testimony.

A range of best practices has been validated by scientific methods and research and represents a starting place for efforts to improve eyewitness identification procedures. A number of law enforcement agencies have, in fact, adopted research-based best practices. This report makes actionable recommendations on, for example, the importance of adopting "blinded" eyewitness identification procedures. It further recommends that standardized and easily understood instructions be provided to eyewitnesses and calls for the careful documentation of eyewitness' confidence statements. Such improvements may be broadly implemented by law enforcement now. It is important to recognize, however, that, in certain cases, the state of scientific research on eyewitness identification is unsettled. For example, the relative superiority of competing identification procedures (i.e., simultaneous versus sequential lineups) is unresolved.

The field would benefit from collaborative research among scientists and law enforcement personnel in the identification and validation of new best practices that can improve eyewitness identification procedures. Such a foundation can be solidified through the use of more effective research designs (e.g., those that consider more than one variable at a time, and in

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<sup>2</sup>Basic research on vision and memory seeks a comprehensive understanding of how these systems are organized and how they operate generally. The understanding derived from basic research includes principles that enable one to predict how a system (such as vision or memory) might behave under specific conditions (such as those associated with witnessing a crime) and to identify the conditions under which it will operate most effectively and those under which it will fail. Applied research, by contrast, empirically evaluates specific hypotheses about how a system will behave under a particular set of real-world conditions.

different study populations to ensure reproducibility and generalizability), more informative statistical measures and analyses (i.e., methods from statistical machine learning and signal detection theory to evaluate the performance of binary classification tasks), more probing analyses of research findings (such as analyses of consequences of data uncertainties), and more sophisticated systematic reviews and meta-analyses (that take account of current guidelines, including transparency and reproducibility of methods).

In view of the complexity of the effects of both system and estimator variables and their interactions on eyewitness identification accuracy, better experimental designs that incorporate selected combinations of these variables (e.g., presence or absence of a weapon, lighting conditions, etc.) will elucidate those variables with meaningful influence on eyewitness performance, which can, in turn, inform law enforcement practice of eyewitness identification procedures. To date, the eyewitness literature has evaluated procedures mostly in terms of a single diagnosticity ratio or an ROC (Receiver Operating Characteristic) curve; even if uncertainty is incorporated into the analysis, many other powerful tools for evaluating a “binary classifier” are available and worthy of consideration.<sup>3</sup> Finally, syntheses of eyewitness research has been limited to meta-analyses that have not been conducted in the context of systematic reviews. Systematic reviews of stronger research studies need to conform to current standards and be translated into terms that are useful for decision makers.

The committee here offers a summary of its key recommendations to strengthen the effectiveness of policies and procedures used to obtain accurate eyewitness identifications.

### RECOMMENDATIONS TO ESTABLISH BEST PRACTICES FOR THE LAW ENFORCEMENT COMMUNITY

The committee’s review of law enforcement practices and procedures, coupled with its consideration of the scientific literature, has identified a number of areas where eyewitness identification procedures could be strengthened. The practices and procedures considered here involve acquisition of data that reflect a witness’ identification and the contextual factors that bear on that identification. A recurrent theme underlying the committee’s recommendations is development of and adherence to guidelines that are consistent with scientific standards for data collection and reporting.

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<sup>3</sup>T. Hastie, R. Tibshirani, and J. H. Friedman, *The Elements of Statistical Learning: Data Mining, Inference, and Prediction* (New York: Springer, 2009).

***Recommendation #1: Train All Law Enforcement Officers in Eyewitness Identification***

The committee **recommends** that all law enforcement agencies provide their officers and agents with training on vision and memory and the variables that affect them, on practices for minimizing contamination, and on effective eyewitness identification protocols.

***Recommendation #2: Implement Double-Blind Lineup and Photo Array Procedures***

The committee **recommends** blind (double-blind or blinded) administration of both photo arrays and live lineups and the adoption of clear, written policies and training on photo array and live lineup administration.

***Recommendation #3: Develop and Use Standardized Witness Instructions***

The committee **recommends** the development of a standard set of easily understood instructions to use when engaging a witness in an identification procedure.

***Recommendation #4: Document Witness Confidence Judgments***

The committee **recommends** that law enforcement document the witness' level of confidence verbatim at the time when she or he first identifies a suspect.

***Recommendation #5: Videotape the Witness Identification Process***

The committee **recommends** that the video recording of eyewitness identification procedures become standard practice.

**RECOMMENDATIONS TO STRENGTHEN THE VALUE OF EYEWITNESS IDENTIFICATION EVIDENCE IN COURT**

The best guidance for legal regulation of eyewitness identification evidence comes not from constitutional rulings, but from the careful use and understanding of scientific evidence to guide fact-finders and decision-makers. The *Manson v. Brathwaite* test under the Due Process Clause of the U.S. Constitution for assessing eyewitness identification evidence was established in 1977, before much applied research on eyewitness identification had been conducted. This test evaluates the “reliability” of eyewitness iden-



tifications using factors derived from prior rulings and not from empirically validated sources. As critics have pointed out, the *Manson v. Brathwaite* test includes factors that are not diagnostic of reliability. Moreover, the test treats factors such as the confidence of a witness as independent markers of reliability when, in fact, it is now well established that confidence judgments may vary over time and can be powerfully swayed by many factors. While some states have made minor changes to the due process framework, wholesale reconsideration of this framework is only a recent development.

***Recommendation #6: Conduct Pretrial Judicial Inquiry***

The committee **recommends** that, as appropriate, a judge make basic inquiries when eyewitness identification evidence is offered.

***Recommendation #7: Make Juries Aware of Prior Identifications***

The committee **recommends** that judges take all necessary steps to make juries aware of prior identifications, the manner and time frame in which they were conducted, and the confidence level expressed by the eyewitness at the time.

***Recommendation #8: Use Scientific Framework Expert Testimony***

The committee **recommends** that judges have the discretion to allow expert testimony on relevant precepts of eyewitness memory and identifications.

***Recommendation #9: Use Jury Instructions as an Alternative Means to Convey Information***

The committee **recommends** the use of clear and concise jury instructions as an alternative means of conveying information regarding the factors that the jury should consider.

**RECOMMENDATIONS TO IMPROVE THE  
SCIENTIFIC FOUNDATION UNDERPINNING  
EYEWITNESS IDENTIFICATION RESEARCH**

Basic scientific research on visual perception and memory provides important insight into the factors that can limit the fidelity of eyewitness identification. Research targeting the specific problem of eyewitness identification complements basic scientific research. However, this strong scientific foundation remains insufficient for understanding the strengths and

limitations of eyewitness identification procedures in the field. Many of the applied studies on key factors that directly affect eyewitness performance in the laboratory are not readily applicable to actual practice and policy. Applied research falls short because of a lack of reliable or standardized data from the field, a failure to include a range of practitioners in the establishment of research agendas, the use of disparate research methodologies, failure to use transparent and reproducible research procedures, and inadequate reporting of research data. The task of guiding eyewitness identification research toward the goal of evidence-based policy and practice will require collaboration in the setting of research agendas and agreement on methods for acquiring, handling, and sharing data.

***Recommendation #10: Establish a National Research Initiative on Eyewitness Identification***

The committee **recommends** the establishment of a National Research Initiative on Eyewitness Identification.

***Recommendation #11: Conduct Additional Research on System and Estimator Variables***

The committee **recommends** broad use of statistical tools that can render a discriminability measure to evaluate eyewitness performance and a rigorous exploration of methods that can lead to more conservative responding. The committee further **recommends** that caution and care be used when considering changes to any existing lineup procedure, until such time as there is clear evidence for the advantages of doing so.

## CONCLUSION

Eyewitness identification can be a powerful tool. As this report indicates, however, the malleable nature of human visual perception, memory, and confidence; the imperfect ability to recognize individuals; and policies governing law enforcement procedures can result in mistaken identifications with significant consequences. New law enforcement training protocols, standardized procedures for administering lineups, improvements in the handling of eyewitness identification in court, and better data collection and research on eyewitness identification can improve the accuracy of eyewitness identifications.

Identifying the Culprit: Assessing Eyewitness Identification

# 1

## Introduction

**A**ccurate eyewitness identifications<sup>1</sup> may aid in the apprehension and prosecution of the perpetrators of crimes. However, inaccurate identifications may lead to the prosecution of innocent persons while the guilty party goes free. It is therefore crucial to develop eyewitness identification procedures that achieve maximum accuracy and reliability.

Eyewitness evidence is not infallible. In 1932, Yale University law professor Edwin M. Borchard documented nearly seventy cases of miscarriage of justice caused by eyewitness errors in his book, *Convicting the Innocent*.<sup>2</sup> Years later, in 1967, the U.S. Supreme Court highlighted the danger of erroneous eyewitness identification in *United States v. Wade*, stating, “The vagaries of eyewitness identification are well-known; the annals of criminal law are rife with instances of mistaken identification.”<sup>3</sup>

The Federal Bureau of Investigation (FBI) estimates that U.S. law enforcement made 12,196,959 arrests in 2012. The FBI estimates that 521,196 of these arrests were for violent crimes.<sup>4</sup> Accurate data on the number of crimes observed by eyewitnesses are not available. If only a fraction of the violent crimes in the United States involve an eyewitness, the number must

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<sup>1</sup>Throughout this report, the term *identification* denotes person recognition. *Eyewitness identification* refers to recognition by a witness to a crime of a culprit unknown to the witness.

<sup>2</sup>Edwin M. Borchard, *Convicting the Innocent: Sixty-Five Actual Errors of Criminal Justice* (New York: Garden City Publishing Company, Inc., 1932).

<sup>3</sup>*United States v. Wade*, 388 U.S. 230, 288 (1967).

<sup>4</sup>Federal Bureau of Investigation, “Crime in the United States 2012: Persons Arrested,” available at: <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/persons-arrested/persons-arrested>.

**BOX 1-1**  
**The Ronald Cotton Case<sup>a</sup>**

In 1984, a college student named Jennifer Thompson was raped in her apartment in Burlington, North Carolina. The police asked her to help create a composite sketch of the rapist. The police then received a tip that a local man named Ronald Cotton resembled the composite, and shortly after the crime, Thompson was shown a photo array containing six photos. With some difficulty, she chose two pictures, one of which was of Cotton. Finally, she said, "I think this is the guy," pointing to Cotton. "You're sure," the lead detective asked, and she responded, "Positive." Thompson asked, "Did I do OK?" The detectives responded, "You did great." She has described how those encouraging remarks had the effect of making her more confident in her identification.

The police then showed Thompson a live lineup. Cotton was the only person repeated from the prior photo array. This would make Cotton more familiar and might suggest that he was the prime suspect. Nevertheless, Thompson remained hesitant and was having trouble deciding between two people. After several minutes, she told the police that Cotton "looks the most like him." The lead detective asked "if she was certain," and she said, "Yes." Again, the detectives further reinforced her decision. The lead detective told Thompson, "It's the same person you picked from the photos." She later described feeling a "huge amount of relief" when told that she had again picked the right person.

At Ronald Cotton's criminal trial, Thompson agreed she was "absolutely sure" that he was the rapist. Cotton was sentenced to life in prison plus 54 years. He served 10.5 years before DNA tests exonerated him and implicated another man, Bobby Poole. Not only did the identification procedures increase Thompson's confidence in the mistaken memory event, but they also resulted in her rejection of the actual culprit. Poole had been presented to Thompson at a post-trial hearing, and she could not recognize him. "I have never seen him in my life," she said at the time.

In response to this error, the lead detective in the case, Mike Gauldin, later as police chief, was the first in the state to institute a series of new practices, including double-blind lineup procedures. In the years that followed, North Carolina adopted such practices statewide. Ronald Cotton and Jennifer Thompson have since written a book, *Picking Cotton*, that describes their case and experiences.

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<sup>a</sup>See, generally, <http://www.cbsnews.com/news/eyewitness-how-accurate-is-visual-memory/> and [http://www.slate.com/articles/news\\_and\\_politics/jurisprudence/features/2011/getting\\_it\\_wrong\\_convicting\\_the\\_innocent/how\\_eyewitnesses\\_can\\_send\\_innocents\\_to\\_jail.html](http://www.slate.com/articles/news_and_politics/jurisprudence/features/2011/getting_it_wrong_convicting_the_innocent/how_eyewitnesses_can_send_innocents_to_jail.html).

be sizable. One estimate based on a 1989 survey of prosecutors suggests that at least 80,000 eyewitnesses make identifications of suspects in criminal investigations each year.<sup>5</sup>

Recently, post-conviction DNA exonerations of innocent persons have dramatically highlighted the problems with eyewitness identifications.<sup>6,7</sup> In the United States, more than 300 exonerations have resulted from post-conviction DNA testing since 1989.<sup>8</sup> According to the Innocence Project, at least one mistaken eyewitness identification was present in almost three-quarters of DNA exonerations.<sup>9</sup> In many of these cases, eyewitness identification played a significant evidentiary role, and almost without exception, the eyewitnesses who testified expressed complete confidence that they had chosen the perpetrator. Many eyewitnesses testified with high confidence despite earlier expressions of uncertainty.<sup>10</sup> For example, in the well-known case of Ronald Cotton (see Box 1-1), Jennifer Thompson (the victim) has described how she was initially quite unsure of her eyewitness identification of Cotton, a man later exonerated by DNA testing. She became certain it was Cotton only after the police made confirmatory remarks and had her participate in two identification procedures where Cotton was the only person shown both times.

Erroneous eyewitness identifications can occur across the range of criminal convictions in which eyewitness evidence is presented, but most of these cases lack the biological material that can be tested for DNA and used for exoneration purposes. While eyewitness misidentifications may have been a dominant factor in some erroneous convictions, it is important to note that other factors, including errors at various stages of the legal and judicial processes, may have contributed to the erroneous convictions.

## CHARGE TO THE COMMITTEE

In 2013, the Laura and John Arnold Foundation called on the National Research Council (NRC) to assess the state of scientific research on

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<sup>5</sup>A. G. Goldstein, J. E. Chance, and G. R. Schneller, "Frequency of Eyewitness Identification in Criminal Cases: A Survey of Prosecutors," *Bulletin of the Psychonomic Society* 27(1): 71, 73 (January 1989).

<sup>6</sup>CNN, "Exonerated: Cases by the Numbers," December 4, 2013, available at: <http://www.cnn.com/2013/12/04/justice/prisoner-exonerations-facts-innocence-project/>.

<sup>7</sup>Taryn Simon, "Freedom Row," *New York Times Magazine*, January 26, 2003.

<sup>8</sup>The Innocence Project, "DNA Exoneree Case Profiles," available at: <http://www.innocenceproject.org/know/>.

<sup>9</sup>The Innocence Project, "Eyewitness Identification," available at: <http://www.innocenceproject.org/fix/Eyewitness-Identification.php>.

<sup>10</sup>Brandon L. Garrett, *Convicting the Innocent: Where Criminal Prosecutions Go Wrong* 63–68 (Cambridge, MA: Harvard University Press, 2011).

**BOX 1-2**  
**Charge to the Committee**

The charge to the NRC was to:

1. critically assess the existing body of scientific research as it relates to eyewitness identification;
2. identify any gaps in the existing body of literature and suggest, as appropriate, research questions to pursue that will further our understanding of eyewitness identification and that might offer additional insight into law enforcement and courtroom practice;
3. provide an assessment of what can be learned from research fields outside of eyewitness identification;
4. offer recommendations for best practices in the handling of eyewitness identifications by law enforcement;
5. offer recommendations for developing jury instructions;
6. offer advice regarding the scope of a Phase II consideration of neuroscience research as well as any other areas of research that might have a bearing on eyewitness identification; and
7. write a consensus report with appropriate findings and recommendations.

eyewitness identification and to recommend best practices<sup>11</sup> for handling eyewitness identifications by law enforcement and the courts. The goal of this effort was to evaluate the scientific basis for eyewitness identification, to help establish the scientific foundation for effective real-world practices, and to facilitate the development of policies to improve eyewitness identification validity in the context of the American justice system.

In response to this charge, the NRC appointed an ad hoc committee, the Committee on Scientific Approaches to Understanding and Maximizing the Validity and Reliability of Eyewitness Identification in Law Enforcement and the Courts (hereinafter, the committee), to undertake this study (see Box 1-2 for the committee's charge). The committee met three times, held numerous conference calls, heard from various stakeholders (see Appendix B), and reviewed extensive research on eyewitness identification before reaching its findings and recommendations.

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<sup>11</sup>For the purposes of this report, the committee characterizes *best practice* as the adoption of standardized procedures based on scientific principles. The committee does not make any endorsement of practices designated as best practices by other bodies.

## SCIENCE AND LAW

Law enforcement officers investigating crimes rely on eyewitness identification procedures to verify that a suspect is the individual seen by an eyewitness.<sup>12</sup> Such procedures can take place under conditions that may have significant effects on the accuracy and reliability of an eyewitness' identification. Unlike officers in the field, laboratory researchers have, in theory, greater control over influences that might contaminate the visual perceptual experience and memory of an eyewitness.

Science is a self-correcting enterprise. Researchers formulate and test hypotheses using observations and experiments, which are then subject to independent review. In science, evidence and data are analyzed and experiments are repeated to ensure that biases or other factors do not lead to incorrect conclusions. Scientific progress results from the review and revision of earlier results and conclusions.

The culture of scientific research is markedly different from a legal culture that must seek definitive results in individual cases. In 1993, in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, the U.S. Supreme Court ruled that, under Rule 702 of the Federal Rules of Evidence (which covers both civil and criminal trials in the federal courts), a "trial judge must ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable."<sup>13</sup>

Criminal justice and legal personnel have come to rely on eyewitness evidence. Law enforcement officials have first-hand experience with eyewitnesses in criminal investigations and trials, and over the years, some jurisdictions have implemented and strengthened practices and procedures in an attempt to improve accuracy. Consequently, the law enforcement and legal communities have made important contributions to our understanding of eyewitness identifications and the improvements of practices in the field. Researchers have become increasingly involved in assessing eyewitness identification procedures as law enforcement, lawyers, and judges have themselves sought more accurate procedures and approaches. In the 2009 National Research Council report, *Strengthening Forensic Science in the United States: A Path Forward*, the committee noted, "in addition to protecting innocent persons from being convicted of crimes that they did not commit, we are also seeking to protect society from persons who have

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<sup>12</sup>For ease of reading, throughout the report the committee will use the term *officer* to mean law enforcement officials and professionals.

<sup>13</sup>*Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). The Court also noted that "there are important differences between the quest for truth in the courtroom and the quest for truth in the laboratory. Scientific conclusions are subject to perpetual revision. Law, on the other hand, must resolve disputes finally and quickly."



committed criminal acts.”<sup>14</sup> This shared common goal of protecting innocent persons and society makes collaboration between the scientific, law enforcement, and legal communities critically important.

### IDENTIFYING THE CULPRIT

Officers typically use three procedures to identify a perpetrator whose identity is unknown: (1) showups; (2) presentations of photo arrays; and (3) live lineups. A showup is a procedure in which officers present a single criminal suspect to a witness. This procedure usually occurs near the crime location and immediately or shortly after the crime has occurred. Officers also use photo arrays and live lineups, in which they ask the witness to view numerous individuals, one of whom may be the perpetrator. The suspect is presented along with *fillers* (known non-suspects). Currently, photo arrays are used more often than live lineups.<sup>15,16</sup>

If the eyewitness makes a positive identification during a showup, a photo array, or a lineup, the identification may constitute evidence about a suspect’s involvement in a crime. The eyewitness identification may, when considered with other available evidence, establish probable cause to support an arrest. Such evidence may play a pivotal role in enabling the prosecution to meet its burden of proof in a subsequent trial.

In recent years, more law enforcement agencies have created written eyewitness identification policies and have adopted formalized training. However, there are many agencies that do not have standard written policies or formalized training for the administration of identification procedures or for ongoing interactions with witnesses.<sup>17</sup>

### VISION AND MEMORY

At its core, eyewitness identification relies on brain systems for visual perception and memory: The witness perceives the face and other aspects of the perpetrator’s physical appearance and bearing, stores that informa-

<sup>14</sup>National Research Council, *Strengthening Forensic Science in the United States: A Path Forward* (Washington, DC: The National Academies Press, 2009), p. 12.

<sup>15</sup>Police Executive Research Forum, “A National Survey of Eyewitness Identification Procedures in Law Enforcement Agencies,” March 2013, p. 48. The survey indicates that 94.1 percent of responding law enforcement agencies reported that they use photo arrays, while only 21.4 percent reported using live lineups. Sixty-one point eight percent of agencies reported that they use showups. See also J. S. Neuschatz et al., “Comprehensive Evaluation of Showups,” in *Advances in Psychology and Law*, ed. M. Miller and B. Bornstein (New York: Springer, in press).

<sup>16</sup>Throughout the report, unless otherwise specified, references to *lineups* refer to both photo arrays and live lineups.

<sup>17</sup>Police Executive Research Forum, p. 65.

tion in memory, and later retrieves the information for comparison with the visual percept of an individual in a lineup. Recent years have seen great advances in our scientific understanding of the basic mechanisms, operational strategies, and limitations of human vision and memory. These advances inform our understanding of the accuracy of eyewitness identification.

Human vision does not capture a perfect, error-free “trace” of a witnessed event. What an individual actually perceives can be heavily influenced by bias<sup>18</sup> and expectations derived from cultural factors, behavioral goals, emotions, and prior experiences with the world. For eyewitness identification to take place, perceived information must be encoded in memory, stored, and subsequently retrieved. As time passes, memories become less stable. In addition, suggestion and the exposure to new information may influence and distort what the individual believes she or he has seen.

Several factors are known to affect the fidelity of visual perception and the integrity of memory. In particular, vision and memory are constrained by processing bottlenecks and various sources of noise.<sup>19</sup> Noise comes from a variety of sources, some associated with the structure of the visual environment, some inherent in the optical and neuronal processes involved, some reflecting sensory content not relevant to the observer’s goals, and some originating with incorrect expectations derived from memory. The concept of noise has profound significance for understanding eyewitness identification, as the accuracy of information about the environment gained through vision and stored in memory is necessarily, and often sharply, limited by noise.

The recognition of one person by another—a seemingly commonplace and unremarkable everyday occurrence—involves complex processes that are limited by noise and subject to many extraneous influences. Eyewitness identification research confronts methodological challenges that some other basic experimental sciences do not encounter, as well as practical challenges

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<sup>18</sup>*Bias* is defined as any tendency that prevents unprejudiced consideration of a question (see Dictionary.com; <http://dictionary.reference.com/browse/bias>). *Response bias* is a general term for a wide range of influences that moderate the responses of participants away from an accurate or truthful response. Response bias can be induced or caused by a number of factors, all relating to the idea that humans do not respond passively to stimuli, but rather actively integrate multiple sources of information to generate a response in a given situation [(see M. Orne, “On the Social Psychology of the Psychological Experiment: With Particular Reference to Demand Characteristics and Their Implications,” *American Psychologist* 17: 776–783, (1962)]. In research, bias is seen in sampling or testing when circumstances select or encourage one outcome or answer over another (see Merriam-Webster.com; <http://www.merriam-webster.com/dictionary/bias>).

<sup>19</sup>*Noise* refers here to factors that cause uncertainty on the part of an individual about whether a particular signal (e.g. a specific visual stimulus) is present. This use of the term follows the definition used in electronic signal transmission, in which noise refers to random or irrelevant elements that interfere with detection of coherent and informative signals.

in establishing adequate experimental controls over the numerous variables that affect visual perception and memory.

### APPLIED RESEARCH ON EYEWITNESS IDENTIFICATION: SYSTEM AND ESTIMATOR VARIABLES

Our understanding of the underlying processes and limits of eyewitness identification, derived from basic research on vision and memory, is complemented by research directed specifically at the problem of eyewitness identification. The modern era of eyewitness identification research began in the 1970s. Today, eyewitness identification is generally viewed as a behavioral output. The accuracy and reliability of eyewitness identification are critically modulated by variables that include a witness' extant cognition and memory and related psychological and situational factors at the time of the event, over the ensuing intervals, and at all stages of recall (see Figure 1-1). Because a crime is an unexpected event, one can draw a natural distinction between variables that reflect the witness' unplanned situational or cognitive state at the time of the crime and the variables that reflect controllable conditions and internal states following the witnessed events. Researchers categorize these factors, respectively, as *estimator variables* and *system variables*.<sup>20</sup>

*System variables* describe the characteristics of specific procedures and practices (e.g., the content and nature of instructions given to witnesses who are asked if they are able to make an identification). The criminal justice system can exert some control over system variables by following standardized procedures that are based on scientific knowledge and strengthened through education and training.

One important category of system variables concerns the conditions and protocols for lineup identification. Under current law enforcement practice, eyewitness identification procedures involve having a witness view individuals or images of individuals. Research indicates that accuracy and reliability of eyewitness identifications may be influenced by the type of presentation (e.g., lineup) used, the likeness of non-suspect lineup participants (fillers) to the suspect, the number of fillers, and the suspect's physical location in the presentation.<sup>21,22</sup> Eyewitness performance may be affected by how the lineup images are presented—simultaneously (as a group) or

<sup>20</sup>G. L. Wells, "Applied Eyewitness-Testimony Research: System Variables and Estimator Variables," *Journal of Personality and Social Psychology* 36(12):1546–1557 (1978).

<sup>21</sup>N. K. Steblay et al., "Eyewitness Accuracy Rates in Police Showup and Lineup Presentations: A Meta-Analytic Comparison," *Law and Human Behavior* 27(5): 523–540 (October 2003).

<sup>22</sup>R. J. Fitzgerald et al., "The Effect of Suspect-Filler Similarity on Eyewitness Identification Decisions: A Meta-analysis," *Psychology, Public Policy, and Law* 19(2): 151–164 (May 2013).

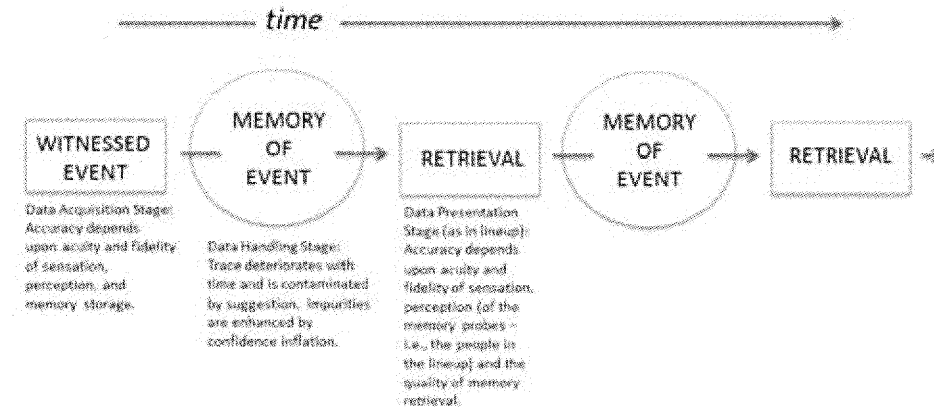


FIGURE 1-1 Memory accuracy and time.  
SOURCE: Courtesy of Thomas D. Albright.

sequentially (one at a time). System variables, such as the nature of the instructions and feedback provided before and after the identification procedure, may also affect the eyewitness' identification.

*Estimator variables* affect the accuracy of eyewitness identification, but they are beyond the control of the criminal justice system. Estimator variables tend to be associated with characteristics of the witness or factors that are operating either at the time of the criminal event (perhaps relating to memory encoding) or the retention interval (the time between witnessing an event and the identification process). Specific examples include the eyewitness' level of stress or trauma at the time of the incident, the light level and nature of the visual conditions that affect visibility and the clarity of a perpetrator's features, and the physical distance between the witness and the perpetrator. Both system and estimator variables will be discussed in detail in subsequent chapters.

## EFFORTS AT IMPROVEMENT

In response to insights gained from research on erroneous convictions, there have been attempts to provide recommendations for improving the reliability and validity of eyewitness identifications. An effort of particular note is the National Institute of Justice's (NIJ) Technical Working Group for Eyewitness Evidence (TWGEYEE). Called together by then-U.S. Attorney General Janet Reno in 1998, members of the working group were asked to develop and publish guidance for improving eyewitness identification

procedures.<sup>23</sup> The working group recognized the role that memory plays in the mistaken interpretation and remembrance of events and offered guidance based on the practical experiences of the law enforcement community and insights gained from behavioral and psychological research. The NIJ provided detailed instructions for each step of the eyewitness identification procedure to the approximately 18,000 state and local law enforcement agencies across the nation. After the report was issued, only a few states conducted evaluations and engaged in improvement efforts, including the implementation of new laws and the issuance of corrective guidelines and policies. Consequently, eyewitness identification policies remain fragmented by jurisdiction, except in a minority of states that have adopted state-wide policies. At present, the United States does not have a uniform national set of protocols.<sup>24</sup>

### JUDICIAL CONSIDERATION OF EYEWITNESS IDENTIFICATION EVIDENCE

The U.S. Supreme Court's 1977 ruling in *Manson v. Brathwaite* provides the current framework for judicial review of eyewitness identification under the Due Process Clause of the U.S. Constitution.<sup>25</sup> The *Manson v. Brathwaite* test asks judges to evaluate the "reliability" of eyewitness identifications using factors derived from prior rulings and not from empirically validated sources. The *Manson v. Brathwaite* ruling was not based on much of the research conducted by scientists on visual perception, memory, and eyewitness identification, and it fails to include important advances that have strengthened standards for judicial review of eyewitness identification evidence at the state level.

In 2011, the Justices of the Massachusetts Supreme Judicial Court convened the Study Group on Eyewitness Identification to "offer guidance as to how our courts can most effectively deter unnecessarily suggestive identification procedures and minimize the risk of a wrongful conviction." The report made five recommendations to minimize inaccurate identifications: (1) acknowledge variables affecting identification accuracy; (2) develop a model policy and implement best practices for police departments; (3) expand use of pretrial hearings; (4) expand use of improved jury instructions; and (5) offer continuing education.<sup>26</sup>

<sup>23</sup>U.S. Department of Justice, Office of Justice Programs, *Eyewitness Evidence: A Guide for Law Enforcement* (Washington, DC, 1999).

<sup>24</sup>Police Executive Research Forum, p. 65.

<sup>25</sup>*Manson v. Brathwaite*, 432 U.S. 98, 114 (1977).

<sup>26</sup>Massachusetts Supreme Judicial Court Study Group on Eyewitness Identification, *Report and Recommendations to the Justices*, July 24, 2013, available at: <http://www.mass.gov/courts/docs/sjc/docs/eyewitness-evidence-report-2013.pdf>.

In 2011, the New Jersey Supreme Court issued a unanimous decision in *State v. Larry R. Henderson*. The opinion revised the legal framework for evaluating and admitting eyewitness identification evidence and directed that improved jury instructions be prepared to help jurors evaluate such evidence. *Henderson* drew on an extensive review of scientific evidence regarding human vision, memory, and the various factors that can affect the reliability of eyewitness identifications. In July 2012, the court released expanded jury instructions and revised court rules relating to eyewitness identifications in criminal cases.<sup>27</sup>

In fall 2012, the Oregon Supreme Court also established a new procedure for evaluating whether eyewitness identifications could be used in court. In *State v. Lawson*, the Court reviewed eyewitness identification research conducted over the past 30 years, determined that the *Manson v. Brathwaite* test “does not accomplish its goal of ensuring that only sufficiently reliable identifications are admitted into evidence,” and offered a revised procedure that requires the court to make a determination of whether investigators used “suggestive” tactics to get an identification and the extent to which other information supports the identification.<sup>28</sup>

Despite these improvements and judicial decisions, policies and practices across the country remain inconsistent.

## ORGANIZATION OF THE REPORT

This report begins with a description of law enforcement protocols for eyewitness identification (Chapter 2). Chapter 3 presents the legal framework for eyewitness identification evidence. A discussion of the current scientific understanding of visual perception and memory follows in Chapter 4. In Chapter 5, the committee provides an assessment of eyewitness identification research. The report concludes with the committee’s findings and recommendations (Chapter 6).

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<sup>27</sup>New Jersey Judiciary, “Supreme Court Releases Eyewitness Identification Criteria for Criminal Cases,” July 19, 2012, available at: <http://www.judiciary.state.nj.us/pressrel/2012/pr120719a.htm>.

<sup>28</sup>*State v. Lawson*, 352 Or. 724 (Or. 2012).

Identifying the Culprit: Assessing Eyewitness Identification

## 2

# Eyewitness Identification Procedures

Police in the United States investigate millions of crimes each year.<sup>1</sup> Only a small percentage of the police-investigated crimes involve the use of police-arranged identification procedures. Identification procedures are unnecessary when, for example, the perpetrator is caught during the commission of the criminal act, as in the crime of driving while intoxicated, or when the victim knows the perpetrator, as in crimes of domestic violence.<sup>2</sup>

Police use identification procedures for numerous reasons. In some circumstances, the police identify a suspect during an investigation and use the identification procedure to test a witness' ability to identify the suspect as the perpetrator. In other instances, the identification procedure is used as an investigative tool to further an investigation. A positive identification might form probable cause for a search warrant or the apprehension and subsequent questioning of a suspect, or both. Most significant for the purposes of this report are the circumstances in which a witness positively identifies the police suspect as the perpetrator, and the identification serves as compelling evidence in the prosecution of a case.

Data on the number of eyewitness identification procedures are not systematically or uniformly collected. While the exact number of eyewitness

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<sup>1</sup>Federal Bureau of Investigation, "Crime in the United States 2012: Persons Arrested," available at: <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/persons-arrested/persons-arrested>.

<sup>2</sup>Throughout Chapter 2, the terms *law enforcement* and *police* are used interchangeably and refer to all law enforcement agencies at the local, state, and federal levels.



identification procedures related to crimes involving strangers is unknown, mistaken identifications have disastrous effects for those wrongly accused of crimes and for society should a guilty person go free. Mistaken identifications may also erode public confidence in the criminal justice system as a whole.<sup>3</sup> Recently, some police departments and prosecutors have implemented stringent eyewitness identification procedures in an effort to reduce erroneous convictions.<sup>4</sup>

Police-arranged eyewitness identification procedures vary greatly depending on the nature of the case. In some cases, a police-arranged identification is conducted at the very early stages of an investigation. For instance, consider the circumstance in which police respond to a bank robbery in progress. The perpetrator is described as a white male, approximately 6 feet, 2 inches in height wearing an orange shirt. As the police arrive at the crime scene, an officer observes and apprehends a man fleeing the bank wearing an orange shirt and exhibiting similar physical characteristics. In this situation, a police-arranged identification procedure may be conducted on the scene and prior to any significant investigation. At the other extreme are, for example, lengthy homicide or rape cases that include extensive investigations, forensic testing, and eyewitness interviews conducted over a protracted period of time. Such efforts may culminate in the identification of a suspect and the suspect's inclusion in a photo array identification procedure. In such a circumstance, an eyewitness may not be asked to identify a perpetrator until months after the commission of the crime—and often after repeated probes of her or his memory by, for example, police, family members, and others.

Identification procedures may be used in different ways for different purposes. They are not always used to identify an unknown perpetrator of a crime. The police may, for example, use photo arrays and confirmatory single photographs to clarify the legal identity (birth name/government name) of an individual who is well known to a witness, but only by a street name. In such examples, a witness may know (and may have known) the perpetrator for years but may only be able to identify him by a common

<sup>3</sup>See, generally, The International Association of Chiefs of Police, “National Summit on Wrongful Convictions: Building a Systemic Approach to Prevent Wrongful Convictions,” August 2013.

<sup>4</sup>See The Innocence Project, *Eyewitness Identification*, available at: <http://www.innocenceproject.org/fix/Eyewitness-Identification.php>; U.S. Department of Justice, Office of Justice Programs, *Eyewitness Evidence: A Guide for Law Enforcement* (Washington, DC, 1999); Metropolitan Police—District of Columbia, *General Order—Procedures for Obtaining Pretrial Eyewitness Identification*, April 18, 2013; New York State District Attorneys Association Best Practice Committee, *New York State Photo Identification Guidelines*, October 2010; Rhode Island Police Chiefs Association, *Lineup and Showup Procedures (Eyewitness Identification)*, November 2011; and Innocence Project of Texas, *Eyewitness Identification Reform*, available at: <http://www.ipoftexas.org/eyewitness-id>.

street name, such as “Prince.” The police typically will use an identification procedure to identify the “Prince” to which the witness is referring before they make an arrest or take other investigative measures such as the execution of a search warrant.

This chapter reviews the eyewitness identification procedures commonly used by the police and concludes with a brief discussion of situations in which citizens engage in identifying perpetrators without police assistance.

### PHOTOGRAPHIC ARRAY

The photo array is the most common police-arranged identification procedure used in the United States.<sup>5</sup> A photo array consists of six to nine photographs displayed to a witness. An officer might create an array by selecting photographs of persons deemed to resemble the perpetrator.<sup>6</sup> Officers might then display the photographs one at a time to the witness and ask whether she or he recognizes each one. This method is known as a sequential procedure. Officers might also create photo arrays by cutting six square holes in a folder and taping the photographs to the back of the folder so that the faces of the fillers (non-suspects) and suspect are displayed together. When such photographs are presented simultaneously as a two by three matrix, this type of array is referred to as a “six pack.” When, as in this instance, photographs are displayed together, this is referred to as a simultaneous procedure.

In 1999, Attorney General Janet Reno released the U.S. Department of Justice, *Eyewitness Evidence: A Guide for Law Enforcement*,<sup>7</sup> one of the earliest efforts to establish standardized procedures for police-arranged eyewitness identification. The guide set forth rigorous criteria and basic procedures to promote accuracy in eyewitness evidence.<sup>8</sup> However, after the guide was released, most police departments in the United States did not adopt these procedures.

Today, many police departments use computer systems to access image databases and assemble photo arrays. Officers enter physical characteristics (e.g., race, gender, hair color) specific to the suspect into a computer, and the system retrieves filler photographs with the desired attributes. If an officer determines that a photograph in the array is suggestive or otherwise inappropriate, she or he can reject one or more fillers and instruct the system

<sup>5</sup>Police Executive Research Forum, “A National Survey of Eyewitness Identification Procedures in Law Enforcement Agencies,” March 2013, p. 48.

<sup>6</sup>Historically, the photographs were mug shots in the possession of a police department.

<sup>7</sup>U.S. Department of Justice, Office of Justice Programs, *Eyewitness Evidence: A Guide for Law Enforcement* (Washington, DC, 1999).

<sup>8</sup>*Ibid.*, pp. 11–38.

to provide alternate photographs. Departments may conduct the procedure without revealing to the witness how many photographs she or he will view.

In recent decades, many police agencies and prosecutors have adopted sequential presentation of photographs, based on the belief that this approach improves the performance of an eyewitness. Currently, however, there is no consensus among law enforcement professionals as to whether the sequential presentation procedure is superior to the simultaneous procedure (see Chapter 5). The District of Columbia Metropolitan Police Department, for example, does not endorse either simultaneous or sequential procedures in its *Procedures for Obtaining Pretrial Eyewitness Identification*.<sup>9</sup> The District Attorneys Association of the State of New York in 2010 adopted recommended policies for New York State and endorsed the simultaneous method.<sup>10</sup> On the other hand, in North Carolina, legislation was passed that requires that lineup photographs be presented sequentially,<sup>11</sup> and in Massachusetts, the Supreme Judicial Court Study Group on Eyewitness Identification recommended sequential procedures as best practice for Massachusetts Police Departments.<sup>12</sup>

The committee was presented with information regarding improvement efforts from states including New Jersey, Oregon, Rhode Island, Texas, New York, and Massachusetts. However, the committee is unable to determine the percentage of police departments that have adopted policies for eyewitness identification procedures and instituted training in these procedures.<sup>13</sup> Some police departments require that photo arrays be presented to the witness during a procedure that is either “double blind” or “blinded.”<sup>14</sup> (See Box 2-1 for a discussion of blinding as used in scientific practice and blinding as used in eyewitness identification procedures.) Blinding is used to prevent conscious and unconscious cues from being given to the witness. In a double-blind procedure, an individual who does not know the identity of the suspect or the suspect’s position in the photo array shows a photo array to the eyewitness. In cases where such a double-blind procedure is

<sup>9</sup>See Metropolitan Police—District of Columbia, *General Order—Procedures for Obtaining Pretrial Eyewitness Identification*, April 18, 2013.

<sup>10</sup>See New York State District Attorneys Association Best Practice Committee, *New York State Photo Identification Guidelines*, October 2010.

<sup>11</sup>N.C. Gen. Stat. § 15A-284.52 (West 2007).

<sup>12</sup>See Massachusetts Supreme Judicial Court Study Group on Eyewitness Identification, *Report and Recommendations to the Justices* (2013).

<sup>13</sup>The Police Executive Research Forum’s 2013 survey of eyewitness identification procedures in law enforcement agencies [Police Executive Research Forum, *A National Survey of Eyewitness Identification Procedures in Law Enforcement Agencies*, (2013)], notes that most agencies that completed the survey have no written policy for eyewitness identification procedures and that more agencies provide training to their employees than have written policies. See pp. 79–80.

<sup>14</sup>Police Executive Research Forum, p. 64.

not feasible, a “blinded” procedure will approximate the condition of double-blinding. For example, the photo array may be administered by an individual who knows who the suspect is, but is unable to tell when the witness is looking at the suspect’s photo and so is unable to provide even subconscious feedback to the witness. In one common “blinded” procedure, the officer places each photo in a separate envelope or folder and then shuffles the envelopes/folders so that only the witness sees the images therein. Additional recommendations to minimize the possibility of biasing feedback to the witness include requiring that the officer read instructions to the witness from a pre-printed form.<sup>15</sup>

If the witness identifies someone from the photo array, some departments ask the witness for a confidence statement. Based upon information presented to the committee, it appears that police departments do not always document identification procedures in instances when an identification is not made. Further, if a witness does make an identification, practices differ as to how such information is documented and preserved. Some agencies, for example, require officers to document this information in a written report. Others make audio or video recordings of the identification procedure.

### LIVE LINEUP

A live lineup is a police-arranged identification procedure in which the physical suspect and fillers stand or sit in front of the witness (either individually, i.e., sequentially or en masse, i.e., simultaneously). The police generally use at least five fillers. Fillers are selected for their physical similarities to the suspect (gender, race, hair length and color, facial hair, height, skin tone, and other distinguishing features). The fillers are presumed to be unknown to the witness. Traditionally, the suspect and fillers are seated or stood in a row, and the witness views the lineup from behind a two-way mirror. Police use both simultaneous and sequential procedures for live lineups.

Live lineups are used in some jurisdictions, but they are not the predominant method used by law enforcement.<sup>16</sup> The use of these police identification procedures is limited for a variety of reasons. First, in certain circumstances, legal counsel may be required at a lineup, thereby making it less attractive to police and prosecutors. Second, in smaller jurisdictions, it may be difficult to obtain suitable fillers (e.g., those with appropriate

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<sup>15</sup>As discussed in Chapter 3, the courts have been sensitive to the potential for misidentification resulting from “suggestive” identification procedures and have set standards for admissibility of evidence.

<sup>16</sup>Police Executive Research Forum, p. 48.

### BOX 2-1 Blinding

Empirical evidence<sup>a</sup> has shown that the beliefs, desires, and expectations of researchers can influence, often subconsciously, how they observe and interpret the phenomena they study and thus the outcomes of experiments. This evidence has influenced how scientists carry out their experiments, resulting in the use of blind or double-blind procedures to control for this form of bias. Blind assessment<sup>b</sup> has been used since the late 18th century; an early medical trial in 1835 used double-blind assessment, and psychologists started using blinding in the 20th century.<sup>c</sup> By the 1950s, blind assessment in randomized controlled trials was considered standard procedure in both psychological and medical research. Currently, virtually all of science uses some form of blinding.

In single-blind experiments, participants do not know which treatment they are receiving; this form of blinding is used widely across scientific fields. In experiments involving humans, as in medical or psychological research, double-blind procedures are used to guard against “expectancy effects” for both participants and researchers. In a classic double-blind clinical trial, some patients receive active medication and others are given an alternative (either a “standard treatment” or a similar-looking placebo without active ingredients), but neither researchers nor participants know who is receiving which treatment.

In an eyewitness identification setting, double-blinding can be used to prevent a lineup administrator from either intentionally or unintentionally influencing a witness. In these cases, neither the eyewitness nor the administrator knows which persons in a photo array or live lineup are the suspected culprits and which are the fillers.<sup>d,e</sup> In eyewitness identification procedures, as in science, the purpose of double-blinding is to prevent the conscious or subconscious expectations of the administrator from influencing the witness or research outcomes.

In a double-blind photo array, the officer or detective conducting the investigation reads a set of standard instructions to the witness. The instructions may include an advisory that the officer about to show the photos does not know whether any of the photos are of the person who committed the crime. The officer then leaves the room and a second officer—perhaps a patrol officer—displays the

physical similarities to the suspect). Third, conducting a lineup requires a significant amount of time and labor,<sup>17</sup> thereby making photo arrays a more attractive alternative that may be undertaken promptly and with less demand on department resources.

<sup>17</sup>Live lineup construction may be further constrained by the inability to hold a suspect in custody without probable cause. See Chapter 3.

photos. It is the duty of this second officer (the “blind administrator”) to show the photos and, if an identification is made, document what the witness said and ask the witness how certain she or he is of their identification. Once all photos have been shown, the officer reports the result of the procedure to the investigating officer (preferably out of earshot from the witness).

As an alternative to a double-blind array, some departments use “blinded” procedures. A blinded procedure prevents an officer from knowing when the witness is viewing a photo of the suspect, but can be conducted by the investigating officer. A common approach is the so-called “folder shuffle.” With a six-photo array, an officer uses eight manila folders. A photograph of a filler is placed in the top folder, and a photograph of the suspect and four additional fillers are placed in the next five folders. The six folders are then shuffled so that the officer does not know which folder contains the image of the suspect. Two folders with blank paper are placed on the bottom of the stack so that the witness is led to believe that there are more than six images in the array (this is referred to as back-loading, and it prevents the witness from knowing when she or he is about to view the last photograph). After reading instructions to the witness, the administering officer sits to the witness’ left and hands him or her one folder at a time and instructs him/her to open each folder and look at the enclosed photo. The cover of the folder blocks the officer from viewing the photo that the witness is viewing. When an identification occurs, the officer notes the witness’ words and reaction and asks about the witness’ confidence in his or her identification.

<sup>a</sup>R. Rosenthal, *Experimenter Effects in Behavioral Research* (New York: John Wiley, 1976).

<sup>b</sup>M. Stolberg, “Inventing the Randomized Double-Blind Trial: The Nürnberg Salt Test of 1835,” *James Lind Library Bulletin* (2006), available at: <http://www.jameslindlibrary.org/illustrating/articles/inventing-the-randomized-double-blind-trial-the-nurnberg-salt>.

<sup>c</sup>T. J. Kaptchuk, “Intentional ignorance: A History of Blind Assessment and Placebo Controls in Medicine,” *Bulletin of the History of Medicine* 72(3): 389–433 (1998).

<sup>d</sup>P. Kilmartin, Presentation to the committee, February 6, 2014.

<sup>e</sup>K. Hamann, Presentation to the committee, December 2, 2013.

## SHOWUP

A showup is a police-arranged identification procedure in which the police show one person to a witness and ask if she or he recognizes that person. This procedure typically is used when the police locate a suspect shortly after the commission of a crime and within close proximity to the scene. Case law limits the time and distance from a crime during which such a procedure will pass legal standards. In response to such case law, police typically restrict showups to a two-hour time period after the commis-

sion of a crime. Ideally, officials take the witness to the location where the suspect has been detained and do not display the suspect in a suggestive manner (e.g., not in a police car, not handcuffed, without drawn weapons). However, as chases, fights, or disarmaments frequently precede showups, the apprehension of a suspect can raise safety issues that make it difficult to adhere to recommended procedures. Further, the nature of a showup does not lend itself to the use of a blinded procedure. A showup is designed to promptly clear innocent suspects, thereby sparing them from a prolonged period of detention as the investigation continues. Delaying the showup to locate an uninvolved officer may defeat that purpose. While some law enforcement agencies use a standard procedure with written instructions when conducting a showup, there is no indication that such procedures are used uniformly. Courts consider showups highly suggestive, and prosecutors urge the police to exercise caution when conducting them.

### CONFIRMATORY PHOTOGRAPH

Police will, on occasion, display a single photograph to a witness in an effort to confirm the identity of a perpetrator. Police typically limit this method to situations in which the perpetrator is previously known to or acquainted with the witness.

### FIELD VIEW

Police also use field views in attempts to identify perpetrators. The method, which involves inviting a witness to view many people in a context where the perpetrator is thought likely to appear, is used when the police do not have a suspect but believe that the offender frequents a particular location. For example, police investigating a purse snatching may obtain information that the perpetrator frequents a particular recreation site during the lunch hour. A plainclothes officer or investigator might take the eyewitness to the site and walk around with him or her during the lunch hour without directing his or her attention to any specific individual.

### OTHER PROCEDURES—MUG BOOKS AND YEARBOOKS

At times, police use other means to identify perpetrators. In the past, police sometimes had witnesses review mug shot books. Mug books have since been largely replaced by digitized images displayed on computer screens. Nonetheless, there are situations in which the police will have a witness review a large collection of photographs in an effort to identify a perpetrator. Witnesses who identify a perpetrator as being a student at a specific school might be asked to review a yearbook for that school in an

effort to identify the perpetrator. When using this method, police typically attempt to mask the names of the students. Similarly, if the offender is believed to be an individual from a certain profession, then the police might have the witness review photographs from the suspect's professional society. Social media sites also serve as the catalyst for police-arranged identification procedures. If a witness knows that the perpetrator is a "friend" of Jane Doe through social media, then the police might have the witness review all friends of Jane Doe to see if she or he recognizes the individual.

All of these additional procedures (i.e., confirmatory photo, field view, mug books, yearbooks) have the potential to introduce biases of the sort that blind lineup procedures are designed to avoid.

### NON-POLICE IDENTIFICATION PROCEDURES

In some cases, the victims or witnesses, or both, identify suspects without involving the police. A private citizen, organization, or corporation may conduct an investigation before, during, or even after reporting a crime to the police. The identification of suspects by entities other than law enforcement has become increasingly common as more businesses and private citizens use security cameras to identify criminal actors. High-resolution cameras coupled with high-capacity hard drives allow for real-time streaming of video with superior clarity. Such systems are relatively inexpensive and within financial reach of many home and business owners. Additionally, the proliferation of smart phones has put the ability to create a spontaneous, high-quality video record of an event into the hands of more and more people.

The rise of social media has resulted in the rise of private investigations and identifications using this resource. In one recent case, a stabbing victim drew a picture of her assailant and showed it to her husband.<sup>18</sup> Upon viewing the picture, the husband believed that the assailant looked familiar and might be his ex-girlfriend. He obtained several photographs of the ex-girlfriend from her personal website and showed them to the victim who, after looking at those and other online images, identified the suspect at a lineup and at trial.

### CONCLUSION

Many local, state, and federal law enforcement agencies have adopted policies and practices to address the issue of misidentification. However, efforts are not uniform or systemic.<sup>19</sup> Many agencies are unfamiliar with

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<sup>18</sup>*New Jersey v. Chen*, 27 A.3d 930 (N.J. 2011).

<sup>19</sup>See Massachusetts Supreme Judicial Court Study Group on Eyewitness Evidence, p. 2.



the science that has emerged during the past few decades of research on eyewitness identifications. Questions remain about the optimal design of photo array procedures, including the size of the array, the contents of the photographs, and their relationship to the context of the crime scene. Similar questions apply to the design of live lineups.<sup>20</sup> Eyewitness identification is further complicated by the increasing number of situations in which victims and witnesses seek to identify the perpetrator of a crime without the aid of law enforcement. Such identifications raise new concerns about reliability and accuracy of the identification of individuals. Inconsistent and nonstandard practices might easily add noise to the eyewitness identification process, contaminate the witness, and bias the outcome of an identification procedure.

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<sup>20</sup>The design of a live lineup is subject to more practical constraints than a photo array.

### 3

## The Legal Framework for Assessment of Eyewitness Identification Evidence

**T**he admissibility of eyewitness testimony at a criminal trial may be challenged on the basis of procedures used by law enforcement officials in obtaining the eyewitness identification. The U.S. Supreme Court, in its 1977 ruling in *Manson v. Brathwaite*, set out the modern test under the Due Process Clause of the U.S. Constitution that regulates the fairness and the reliability of eyewitness identification evidence.<sup>1</sup> The Court also specified five reliability factors, discussed below, that a judge must consider when deciding whether to exclude the identification evidence at trial.<sup>2</sup>

Although the constitutional standards for assessing eyewitness testimony have remained unchanged in the decades since the *Manson v. Brathwaite* decision, a body of research has shed light on the extent to which each of the five reliability factors supports a reliable eyewitness identification. Research has cast doubt, for instance, on the belief that the apparent certainty displayed in the courtroom by an eyewitness is an indicator of an accurate identification, and has found that a number of factors may enhance the certainty of the eyewitness.

Recently, state courts and lower federal courts have taken the lead in developing standards relating to the admissibility of expert evidence, jury instructions, and judicial notice of scientific evidence. Some states have adopted more stringent standards for regulating eyewitness identification evidence than the U.S. Constitution requires, either by legislative statutes or by state court decisions, and have modified or entirely supplanted the *Man-*

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<sup>1</sup>*Manson v. Brathwaite*, 432 U.S. 98, 113–114 (1977).

<sup>2</sup>*Manson v. Brathwaite* at 114.

*son v. Brathwaite* test to take account of advances in the growing body of scientific research. This chapter describes the changes in the legal standards for eyewitness identification and explores the relationship between the state of the scientific research and the law regulating procedures and evidence.

### EYEWITNESS EVIDENCE AND DUE PROCESS UNDER THE U.S. CONSTITUTION

Beginning with rulings in 1967, the U.S. Supreme Court set out a standard under the Due Process Clause of the Fourteenth Amendment for reviewing eyewitness identification evidence.<sup>3</sup> In *Manson v. Brathwaite*, the Court emphasized that “reliability is the linchpin in determining the admissibility of identification testimony.”<sup>4</sup> First, the Court instructed judges to examine whether the identification procedures were unnecessarily suggestive. Second, to assess whether an identification is reliable, judges were instructed to examine the following five factors: (1) the opportunity of the witness to view the criminal at the time of the crime; (2) the witness’ degree of attention; (3) the accuracy of the witness’ prior description of the criminal; (4) the level of certainty demonstrated at the confrontation; and (5) the time between the crime and the identification procedure.<sup>5</sup> The five factors were drawn from earlier judicial rulings and not from scientific research.<sup>6</sup>

Eyewitness identification evidence continues to be litigated primarily under the flexible two-part *Manson v. Brathwaite* Due Process test.<sup>7</sup> It is

<sup>3</sup>In *Stovall v. Denno*, 388 U.S. 293, 302 (1967), the U.S. Supreme Court first set out a due process rule asking whether identification procedures used were “so unnecessarily suggestive and conducive to irreparable mistaken identification.” The Court elaborated that rule in decisions such as *Simmons v. U.S.*, 390 U.S. 377, 384 (1968) and *Foster v. California*, 394 U.S. 440, 442 (1969), and then adopted an approach setting out “reliability” considerations in *Neil v. Biggers*, 409 U.S. 188 (1972). For a description of the development of this doctrine, see, e.g., B. L. Garrett, “Eyewitnesses and Exclusion,” *Vanderbilt Law Review* 65(2): 451, 463–467 (2012).

<sup>4</sup>*Brathwaite*, 423 U.S. at 114.

<sup>5</sup>*Id.* at 114.

<sup>6</sup>*Id.* at 114. Justice Thurgood Marshall dissented, noting studies indicated that unnecessarily suggestive eyewitness identifications had resulted in “repeated miscarriages of justice resulting from juries’ willingness to credit inaccurate eyewitness testimony.” 432 U.S. at 125–27 (Marshall, J., dissenting).

<sup>7</sup>Due process is the most important constitutional right that arises in challenges to eyewitness identification, but rights under the Fourth and Sixth Amendments also may be implicated. The Fourth Amendment protects individuals “against unreasonable searches and seizures,” and the probable cause typically required to seize and arrest a suspect may arise from an eyewitness identification. U.S. Const. Amend. IV. The few lower courts to address the question are divided on whether probable cause is needed to place individuals in a live lineup procedure. *Biehunik v. Felicetta*, 441 F.2d 228, 230 (2d Cir. 1971); but see, e.g., *Wise v. Murphy*, 275 A.2d 205, 212–15 (D.C. 1971); *State v. Hall*, 461 A.2d 1155 (N.J. 1983). In contrast,

important to note, however, that the vast majority of criminal cases are settled through plea bargaining. The role that evidence type and strength play in plea bargaining is complex and necessarily difficult to study. Because eyewitness identification evidence may never be tested at trial, it is doubly important for lawyers and judges to understand the credibility of the proffered evidence.<sup>8</sup>

In the most recent U.S. Supreme Court ruling addressing a challenge to an eyewitness identification (*Perry v. New Hampshire*),<sup>9</sup> the Court ruled that a due process analysis was not triggered. In that case, while the police were obtaining a description of the suspect, the eyewitness looked out of the apartment window and recognized the suspect standing outside. The police had not intended to conduct an identification procedure. In those circumstances, the Court ruled that the Due Process Clause does not require a preliminary judicial review of the reliability of an eyewitness identification.<sup>10</sup>

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probable cause is not required to place a person's photograph in an array, since doing so does not involve a seizure. However, courts may also rule that an illegal stop or seizure renders a subsequent identification inadmissible, absent an "independent" source for the courtroom identification. *U.S. v. Crews*, 445 U.S. 463, 473 (1980).

In addition, the Sixth Amendment provides that, in all criminal prosecutions, the accused has the right "to have the assistance of counsel for his defense." In *United States v. Wade*, the Supreme Court held that, once indicted, a person has a right to have a lawyer present at a lineup, reasoning that the right to counsel applies at all "critical" stages of the criminal process. 388 U.S. 218, 235–37 (1967). However, the Court subsequently held that a photo array procedure, of the type now most commonly used by police agencies, does not implicate the *Wade* right to counsel. *U.S. v. Ash*, 413 U.S. 300, 321 (1973).

<sup>8</sup>As the current report demonstrates, a comparative consideration of evidence value is particularly important in the case of eyewitness identification evidence. Similar consideration should be given when other adjudication mechanisms are used (e.g., bench trials).

<sup>9</sup>*Perry v. New Hampshire*, 132 S. Ct. 716, 718 (2012). In that case, the eyewitness happened to look out her window and see the suspect standing at the crime scene where the police had told him to wait. The Court held that the Due Process Clause did not regulate such a situation, since the police did not intend to conduct an identification procedure. *Id.* at 729. The Court indicated that the reliability of the evidence could be addressed by federal and state evidentiary standards, and added: "In appropriate cases, some States also permit defendants to present expert testimony on the hazards of eyewitness identification evidence." *Id.*

<sup>10</sup>Justice Sotomayor dissented, arguing, "Our due process concern . . . arises not from the act of suggestion, but rather from the corrosive effects of suggestion on the reliability of the resulting identification," and the manner in which "[a]t trial, an eyewitness' artificially inflated confidence in an identification's accuracy complicates the jury's task of assessing witness credibility and reliability." *Perry*, 132 S. Ct. at 731–32 (Sotomayor, J., dissenting). Justice Sotomayor also emphasized: "A vast body of scientific literature has reinforced every concern our precedents articulated nearly a half-century ago." *Id.* at 738.

## STATE LAW REGULATION OF EYEWITNESS EVIDENCE

## State Supreme Court Standards

Several state supreme courts have altered or supplemented the federal *Manson v. Brathwaite* due process rule to focus more on the effects of suggestion, to emphasize certain factors in specific circumstances,<sup>11</sup> or to focus on showup identifications in particular.<sup>12</sup> New Jersey and Oregon have now supplemented the *Manson v. Brathwaite* test with separate state law standards regulating eyewitness identification evidence.

In 2011, the New Jersey Supreme Court issued a unanimous decision in *State v. Larry R. Henderson* that revised the legal framework for admitting eyewitness identification evidence and directed that revised jury instructions be prepared to help jurors evaluate such evidence.<sup>13</sup> The new framework was based on the record of hearings before a Special Master that considered an extensive review of scientific research regarding eyewitness identifications.<sup>14</sup> The legal framework established by the *Henderson* opinion relies on pretrial hearings to review eyewitness evidence and more comprehensive jury instructions at trial.<sup>15</sup> To obtain a pretrial hearing, a defendant must show some evidence of suggestiveness related to either estimator or system

<sup>11</sup>See *State v. Ramirez*, 817 P.2d 774, 780–81 (Utah 1991) (altering three of the reliability factors to focus on effects of suggestion); *State v. Marquez*, 967 A.2d 56, 69–71 (Conn. 2009) (adopting criteria for assessing suggestion); *Brodes v. State*, 614 S.E.2d 766, 771 & n.8 (Ga. 2005) (rejecting eyewitness certainty jury instruction); *State v. Hunt*, 69 P.3d 571, 576 (Kan. 2003) (adopting Utah’s five factor “refinement” of the *Biggers* factors); *State v. Cromedy*, 727 A.2d 457, 467 (N.J. 1999) (requiring, when applicable, instruction on cross-racial misidentifications).

<sup>12</sup>See, e.g., *State v. Dubose*, 285 Wis.2d 143, 166 (Wis. 2005); *Commonwealth v. Johnson*, 650 N.E.2d 1257, 1261 (Mass. 1995); *People v. Adams*, 423 N.E.2d 379, 383–84 (N.Y. 1981).

<sup>13</sup>*State v. Henderson*, 27 A.3d 872 (N.J. 2011). The *Henderson* opinion described criticisms of the *Manson v. Brathwaite* test, including that suggestion may itself affect the seeming “reliability” of the identification. *Id.* at 877–78. For examples of scholarly criticism of the *Manson v. Brathwaite* test in light of scientific research, see, e.g., G. L. Wells and D. S. Quinlivan, “Suggestive Eyewitness Identification Procedures and the Supreme Court’s Reliability Test in Light of Eyewitness Science: 30 Years Later,” *Law and Human Behavior* 33(1): 1, 16 (February 2009); T. P. O’Toole and G. Shay, “*Manson v. Brathwaite* Revisited: Towards a New Rule of Decision for Due Process Challenges to Eyewitness Identification Procedures,” *Valparaiso University Law Review* 41(1): 109 (2006).

<sup>14</sup>See Report of the Special Master at 16–17, *State v. Henderson*, No. A-8-08 (N.J. June 18, 2011, available at: [http://www.judiciary.state.nj.us/pressrel/HENDERSON%20FINAL%20BRIEF%20.PDF%20\(00621142\).pdf](http://www.judiciary.state.nj.us/pressrel/HENDERSON%20FINAL%20BRIEF%20.PDF%20(00621142).pdf)).

<sup>15</sup>In the companion case, *State v. Chen*, 27 A.3d 930, 932 (N.J. 2011), the New Jersey Supreme Court took an approach that departed from that of the U.S. Supreme Court in *Perry*, ruling that the defendant may be entitled to a hearing in a case in which the eyewitness identified the defendant using social media, not a police-orchestrated identification procedure.

variables that could lead to mistaken identification.<sup>16</sup> At the pretrial hearing, the State must offer proof that the eyewitness identification is reliable. However, the ultimate burden of proving a “very substantial likelihood of irreparable misidentification” is on the defendant.<sup>17</sup>

In July 2012, the New Jersey Supreme Court released an expanded set of jury instructions and related rules that govern the use of suggestive identifications.<sup>18</sup> The jury instructions state that “[r]esearch has shown that there are risks of making mistaken identifications” and noted that eyewitness evidence “must be scrutinized carefully.”<sup>19</sup> Human memory involves three stages—encoding, storage, and retrieval. At “each of these stages, memory can be affected by a variety of factors.”<sup>20</sup> The Court identified a set of factors that jurors should consider when deciding whether eyewitness identification evidence is reliable, including estimator variables (e.g., stress, exposure duration, weapon focus, distance, lighting, intoxication, disguises or changed appearance of the perpetrator, time since the incident, and cross-racial effects) and system variables (e.g., lineup composition, fillers, use of multiple viewings, presence of feedback, use of double-blind procedures, and use of showup identifications). The instructions also noted the possible influence of outside opinions, descriptions or identifications by other witnesses, and photographs or media accounts.<sup>21</sup>

In 2012, in *Oregon v. Lawson*, the Oregon Supreme Court established a new procedure for evaluating the admissibility of eyewitness identifications. In a unanimous decision, the Court found “serious questions” about the reliability of eyewitness identification, citing research conducted over the past 30 years.<sup>22</sup> The Court determined that the *Manson v. Brathwaite* two-step process for weighing eyewitness identification “does not accomplish its goal of ensuring that only sufficiently reliable identifications are admitted into evidence,” because it relies on an eyewitness’ self-reports to determine whether the threshold level of suggestiveness is reached, rendering the identification unreliable.<sup>23</sup> The Court set forth a process that requires the trial court to examine whether investigators used “suggestive”

<sup>16</sup>*Henderson*, 27 A.3d. at 878.

<sup>17</sup>*Id.*

<sup>18</sup>New Jersey Criminal Model Jury Instructions, *Identification* (July 19, 2012), available at: [http://www.judiciary.state.nj.us/pressrel/2012/jury\\_instruction.pdf](http://www.judiciary.state.nj.us/pressrel/2012/jury_instruction.pdf); New Jersey Court Rule 3:11, *Record of an Out-of-Court Identification Procedure* (July 19, 2012), available at: [http://www.judiciary.state.nj.us/pressrel/2012/new\\_rule.pdf](http://www.judiciary.state.nj.us/pressrel/2012/new_rule.pdf); New Jersey Court Rule 3:13-3, *Discovery and Inspection* (July 19, 2012), available at: [http://www.judiciary.state.nj.us/pressrel/2012/rev\\_rule.pdf](http://www.judiciary.state.nj.us/pressrel/2012/rev_rule.pdf).

<sup>19</sup>See New Jersey Criminal Model Jury Instructions, *Identification*, *supra* at 2.

<sup>20</sup>*Id.*

<sup>21</sup>*Id.* at 9.

<sup>22</sup>*State v. Lawson*, 352 Ore. 724 (Or. 2012).

<sup>23</sup>*Id.* at 746–748.

identification procedures and whether other factors, such as estimator variables, may have affected the reliability of the identification.<sup>24</sup> The Court ruled that “intermediate remedies,” including the use of expert testimony, should be available even if the trial judge concludes that the identification is admissible. The Court also briefly noted that judges might use “case-specific jury instructions.”<sup>25</sup>

Other states continue to explore possible changes to the judicial review of eyewitness identification evidence. In 2013, the Massachusetts Supreme Judicial Court Study Group on Eyewitness Identification offered guidance on the adjudication of eyewitness identification evidence.<sup>26</sup> The report adopted *Lawson’s* approach of taking judicial notice of “certain scientifically-established facts about eyewitness identification.”<sup>27</sup> The report recommended that trial judges conduct pretrial hearings to determine whether suggestive identification procedures were used, and if so, whether these procedures impaired the reliability of identification evidence. Pretrial hearings would consider the effects of both estimator variables (relating to viewing at the crime scene) and system variables (relating to the lineup or showup procedures) on the identification. The report also recommended that the state adopt a set of recommended practices for conducting identification procedures, create new model jury instructions on eyewitness identifications, and set limitations on the admissibility of certainty statements and in-court identifications.<sup>28</sup>

### State Statutes Regulating Identification Procedures

Judicial rulings regulating admissibility of eyewitness evidence in the courtroom do not specify the identification procedures to be used by law enforcement officials. However, 14 states have adopted legislation regarding eyewitness identification procedures. Of the 14, 11 states (Connecticut, Illinois, Maryland, North Carolina, Ohio, Texas, Virginia, West Virginia, Wisconsin, Utah, and Vermont) have enacted statutes directly requiring that

<sup>24</sup>*Id.* at 747–748, 755–756.

<sup>25</sup>*Id.* at 759, 763.

<sup>26</sup>See Massachusetts Supreme Judicial Court Study Group on Eyewitness Evidence, *Report and Recommendations to the Justices* (2013).

<sup>27</sup>*Id.* at 48.

<sup>28</sup>*Id.* at 28. In the courtroom, the eyewitness can easily see where the defendant is sitting. Thus, in-court identifications do not reliably test an eyewitness’ memory. Nevertheless, courts have shown great tolerance of in-court identifications, deeming them based on “independent” memory, and even following suggestive out-of-court procedures. Garrett, *Eyewitnesses and Exclusion*, *supra*. For example, the New York Court of Appeals ruled that “[e]xcluding evidence of a suggestive showup does not deprive the prosecutor of reliable evidence of guilt. The witness would still be permitted to identify the defendant in court if that identification is based on an independent source.” *People v. Adams*, 423 N.E.2d 379, 384 (N.Y. 1981).

law enforcement officials adopt written procedures for eyewitness identifications and regulating the particular procedures to be used.<sup>29</sup> Three more states (Georgia, Nevada, and Rhode Island) have passed statutes recommending further study, tasking a group with developing best practices, or requiring some form of written policy.<sup>30</sup>

State statutes typically assert that a trial judge may consider the failure to follow the prescribed procedures as a factor in assessing admissibility and informing the jury. The statutes rarely require that a trial judge exclude such identification evidence from consideration by the jury. However, some of the more detailed statutes, such as those in Ohio, North Carolina, and West Virginia, require that law enforcement officials use particular practices (e.g., eyewitness instructions, a blind administrator). Other statutes require adherence to model policies or guidelines. Utah requires that lineup procedures be recorded. Some jurisdictions and departments also have voluntarily adopted guidelines or policies regulating eyewitness identifications.<sup>31</sup> Several state courts have issued rulings regulating lineup practices (e.g., New Jersey's Supreme Court has required documentation of identification procedures).<sup>32</sup>

## AIDING JURORS IN ASSESSMENT OF EYEWITNESS TESTIMONY

### Expert Witness Testimony Regarding Eyewitness Identification

The standards for assessing the admissibility of testimony by expert witnesses have undergone great changes in the past two decades. Before 1993, the *Frye* test allowed scientific expert testimony in federal courts if it met the standard of “general acceptance” in the relevant scientific community.<sup>33</sup> In 1993, the Supreme Court, in *Daubert v. Merrell Dow*

<sup>29</sup>See Conn. Gen. Stat. § 54-1p (West 2012); 725 Ill. Comp. Stat. § 5/107A-5 (West 2003); Md. Code Ann., Pub. Safety § 3-506 (West 2007); N.C. Gen. Stat. § 15A-284.52 (West 2007); Ohio Rev. Code Ann. § 2933.83 (West 2010); Tex. Code Crim. Proc. Ann. art. 38.20 (West 2011); Utah Code Ann. § 77-8-4 (West 1980); Va. Code Ann. § 19.2-390.02 (West 2005); Va. Code Ann. § 9.1-102.54; 13 V.S.A. § 5581; W. Va. Code Ann. § 62-1E-1 (West 2013); Wis. Stat. § 175.50 (West 2005).

<sup>30</sup>GA. H.R. 352, 149th Gen. Assem., Reg. Sess. (April 20, 2007); Nev. Rev. Stat. § 171.1237 (West 2011); R.I. Gen. Laws § 12-1-16 (West 2012); 2010 Leg. Reg. Sess. (Vt. 2010).

<sup>31</sup>See, e.g., John J. Farmer, Jr., Attorney General of the State of New Jersey, “Letter to All County Prosecutors: Attorney General Guidelines for Preparing and Conducting Photo and Live Lineup Identification Procedures” (April 18, 2001), available at: <http://www.state.nj.us/lps/dcj/agguide/photoid.pdf>; CALEA Standards for Law Enforcement Agencies: 42.2.11 Lineups, available at: <http://www.calea.org/content/standards-titles>; International Association of Chiefs of Police, Model Policy: Eyewitness Identification (2010).

<sup>32</sup>*State v. Delgado*, 188 N.J. 48, 63–64, 902 A.2d 888 (2006).

<sup>33</sup>*Frye v. United States*, 54 App. D.C. 46, 293 F. 1013 (1923).



*Pharmaceuticals, Inc.*,<sup>34</sup> ruled that, under Federal Rule of Evidence 702, a “trial judge must ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable.”<sup>35</sup> Judges determine reliability by assessing the scientific foundation of the expert’s testimony prior to trial, so that “*evidentiary reliability* will be based upon *scientific validity*.”<sup>36</sup> Many states have adopted *Daubert*, and many of those that have not formally adopted *Daubert* have revised their *Frye* test to adopt much of the *Daubert* standard. In turn, Federal Rule of Evidence 702 has been revised to incorporate the holding in *Daubert*.<sup>37</sup> Federal and state courts remain divided on whether expert testimony on eyewitness identifications is admissible under *Daubert* or *Frye*, and on the proper exercise of trial court discretion when deciding whether to admit such expert testimony. Appellate rulings emphasize that a trial judge should use discretion when deciding whether proffered expert evidence satisfies the *Daubert* or *Frye* standards. An increasing number of rulings emphasize the value of presenting expert testimony regarding eyewitness identification. Some courts have held that it can be an abuse of discretion for a trial judge to bar the defense from admitting such testimony.<sup>38</sup> Detailed descriptions of the relevant scientific research findings accompany such decisions.<sup>39</sup> There are also many federal and state courts that continue to follow the traditional approach, emphasizing that credibility of eyewitnesses is a matter within the “province of the jury” and insisting that information regarding valid scientific research in this area will not assist the jury in its task.<sup>40</sup>

<sup>34</sup>509 U.S. 579 (1993).

<sup>35</sup>*Id.* at 589.

<sup>36</sup>*Id.* at 590 n.9.

<sup>37</sup>Fed. R. Evid. 702. Rule 702 now provides:

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if: (a) the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case.

<sup>38</sup>See, e.g., *Tillman v. State*, 354 S.W.3d 425, 441 (Tex. Crim. App. 2011); *People v. LeGrand*, 835 N.Y.S.2d 523, 524 (2007); *State v. Clopten*, 223 P.3d 1103, 1117 (Utah 2009); *U.S. v. Smithers*, 212 F.3d 306, 311–14 (6th Cir. 2000).

<sup>39</sup>See, e.g., *State v. Copeland*, 226 S.W.3d 287, 299–300 (Tenn. 2007); *Tillman*, 354 S.W.3d at 441; *Clopten*, 223 P.3d at 1108.

<sup>40</sup>For scholarly examination of this case law, see, e.g., “The Province of the Jurist: Judicial Resistance to Expert Testimony on Eyewitnesses as Institutional Rivalry,” *Harvard Law Review* 126(8): 2381 (2013); R. Simmons, “Conquering the Province of the Jury: Expert Testimony and the Professionalization of Fact-Finding,” *University of Cincinnati Law Review* 74: 1013 (2006); G. Vallas, “A Survey of Federal and State Standards for the Admission of Expert Testimony on the Reliability of Eyewitnesses,” *American Journal of Criminal Law* 39(1): 97 (2011).

The trend is toward greater acceptance of expert testimony regarding the factors that may affect eyewitness identification. In a 2012 decision, the Connecticut Supreme Court disavowed earlier rulings restricting expert testimony and stated that such rulings are now “out of step with the widespread judicial recognition that eyewitness identifications are potentially unreliable in a variety of ways unknown to the average juror.”<sup>41</sup> Similarly, the Pennsylvania Supreme Court recently held that expert testimony on eyewitness identifications was no longer *per se* inadmissible, emphasizing that “courts in 44 states and the District of Columbia have permitted such testimony at the discretion of the trial judge,” and that “all federal circuits that have considered the issue, with the possible exception of the 11th Circuit, have embraced this approach.”<sup>42</sup> As the Seventh Circuit Court of Appeals recently explained:

It will not do to reply that jurors know from their daily lives that memory is fallible. The question that social science can address is how fallible, and thus how deeply any given identification should be discounted. That jurors have beliefs about this does not make expert evidence irrelevant; to the contrary, it may make such evidence vital, for if jurors’ beliefs are mistaken then they may reach incorrect conclusions. Expert evidence can help jurors evaluate whether their beliefs about the reliability of eyewitness testimony are correct.<sup>43</sup>

Courts also have allowed expert witnesses to testify about particular issues concerning eyewitness identifications, such as cross-race effects, stress, weapons focus, suggestive lineup procedures, and the like.<sup>44</sup> Rarely have experts conducted eyewitness identification research related to the specific case before the court. However, in one such case, in which an experiment

<sup>41</sup>*State v. Guilbert*, 306 Conn. 218, 234 (Conn. 2012). Prior to that decision, the Connecticut Supreme Court had long ruled that “the reliability of eyewitness identification is within the knowledge of jurors and expert testimony generally would not assist them in determining the question” (*State v. Kemp*, *supra* 199 Conn. at 473, 477), and that factors affecting eyewitness memory are “nothing outside the common experience of mankind” (*State v. McClendon*, *supra* 248 Conn. at 572, 586).

<sup>42</sup>*Com. v. Walker*, 2014 WL 2208139 \*13 (Pa. 2014) (collecting authorities).

<sup>43</sup>*U.S. v. Bartless*, 567 F.3d 901, 906 (7th Cir. 2009). Other federal courts have found it a proper exercise of discretion to exclude expert testimony on eyewitness identifications. See, e.g., *United States v. Lumpkin*, 192 F.3d 280, 289 (2d Cir. 1999). Most federal courts treat the subject as one of considerable trial discretion; see, e.g., *United States v. Rodriguez-Berrios*, 573 F.3d 55, 71–72 (1st Cir. 2006). For a survey of federal decisions, see Lauren Tallent, Note, *Through the Lens of Federal Evidence Rule 403: An Examination of Eyewitness Identification Expert Testimony Admissibility in the Federal Circuit Courts*, Washington & Lee Law Review 68 (2): 765 (2011); see also Walker, 2014 WL 2208139 \*13.

<sup>44</sup>See, e.g., *Loftus, Doyle & Dysart* at § 14-8[a]-[b] p. 408 n. 41–42, 410, n. 53 (5th Edition, 2013) (collecting cases).

was conducted with the actual photo array used in the case, the federal courts found expert testimony admissible where it was directed not only to general research, but also by the question of whether suggestive procedures affected the identification in that case.<sup>45</sup>

Expert witnesses who explain the complications of eyewitness identification can be expensive. Most criminal defendants are indigent and cannot afford such assistance.<sup>46</sup> In *Ake v. Oklahoma*, the Supreme Court held that an indigent defendant has a constitutional due process right to assistance by an expert witness only if that expert assistance is so crucial to the defense (or such a “significant factor”) that its denial would deprive the defendant of a fundamentally fair trial.<sup>47</sup> In federal courts, funding for expert witnesses is available, and requests by indigent defendants are common.<sup>48</sup> In state courts, such assistance is uncommon, especially in state courts that rarely find denial of expert assistance on eyewitness matters to be a due process violation.

Expert testimony on eyewitness memory and identifications has many advantages over jury instructions as a method to explain relevant scientific framework evidence to the jury: (1) Expert witnesses can explain scientific research in a more flexible manner, by presenting only the relevant research to the jury; (2) Expert witnesses are familiar with the research and can describe it in detail; (3) Expert witnesses can convey the state of the research at the time of the trial; (4) Expert witnesses can be cross-examined by the other side; and (5) Expert witnesses can more clearly describe the limitations of the research. The benefits of expert testimony are offset somewhat by the expense. However, conflicting testimony by opposing experts may lead to confusion among the jurors. Nonetheless, trial judges have discretion to determine whether the potential benefits of expert testimony outweigh the cost.

### Jury Instructions Regarding Eyewitness Identification

Some courts restricting expert testimony have found jury instructions regarding the fallible nature of eyewitness identifications to be an acceptable substitute for expert testimony.<sup>49</sup> At the conclusion of a criminal trial,

<sup>45</sup>*Newsome v. McCabe*, 319 F.3d 301 (7th Cir. 2003).

<sup>46</sup>See, e.g., Bureau of Justice Statistics, “Indigent Defense,” available at: <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=995>.

<sup>47</sup>470 U.S. 68, 82–83 (1985). Even if an indigent defendant receives funding to retain an expert, the judge may ultimately decide that the expert testimony is not admissible at trial.

<sup>48</sup>18 U.S.C. § 3006A(e)(1).

<sup>49</sup>See, e.g., *U.S. v. Jones*, 689 F.3d 12, 20 (1st Cir. 2012) (“The judge was fully entitled to conclude that this general information could be more reliably and efficiently conveyed by instructions rather than through dueling experts.”).

the trial judge can instruct jurors on the factors that may result in an erroneous identification while also offering instructions on the legal principles jurors must apply when assessing the factual record. Such instructions may be given when the witness testifies. Judges tend to rely on model or pattern instructions, because any departure from these standard instructions may be a ground for appellate reversal.

The New Jersey Supreme Court viewed jury instructions as preferable to expert testimony.<sup>50</sup> The New Jersey instructions adopted, following the *Henderson* decision, are by far the most detailed set of jury instructions regarding eyewitness identification evidence. Traditionally, instructions regarding eyewitness identifications have been brief and remind the jurors to consider the following: (1) the credibility of an eyewitness is like that of any other witness and (2) any eyewitness identification is part of the prosecutor's burden of proof in a criminal case.<sup>51</sup> Many state courts have held that, although general jury instructions regarding credibility and the burden of proof are appropriate, more specific instructions on eyewitness identifications are considered an inappropriate judicial comment on the evidence.<sup>52</sup> Following the U.S. Supreme Court's decision in *Manson v. Brathwaite*, some state courts supplemented their jury instructions by including the five reliability factors named by the Supreme Court.<sup>53</sup>

In 1972, in *U.S. v. Telfaire*, the D.C. Circuit Court of Appeals adopted a set of influential model jury instructions to be used in appropriate federal cases involving eyewitness identifications.<sup>54</sup> The instructions emphasized the following:

You must consider the credibility of each identification witness in the same way as any other witness, consider whether he is truthful, and consider

<sup>50</sup>The New Jersey Supreme Court indicated: "Jury charges offer a number of advantages: they are focused and concise, authoritative (in that juries hear them from the trial judge, not a witness called by one side), and cost-free; they avoid possible confusion to jurors created by dueling experts; and they eliminate the risk of an expert invading the jury's role or opining on an eyewitness' credibility." *Henderson*, 27 A.3d at 925.

<sup>51</sup>New Jersey courts used such instructions a decade before *Henderson*. See, e.g., *State v. Robinson*, 165 N.J. 32, 46–47 (N.J. 2000). Some states have also approved instructions informing the jury that there may be an "independent source" for an in-court identification. See, e.g., *State v. Cannon*, 713 P.2d 273, 281 (Ariz. 1985).

<sup>52</sup>*Brodes v. State*, 279 Ga. 435, 439 & n.6 (Ga. 2005) (surveying state case law).

<sup>53</sup>*State v. Tatum*, 219 Conn. 721 (1991).

<sup>54</sup>*U.S. v. Telfaire*, 469 F.2d 552, 558 (D.C. Cir. 1972). Some federal courts follow that approach, while others adopt a "flexible approach." See, e.g., *United States v. Luis*, 835 F.2d 37, 41 (2d Cir. 1987). Some more recent federal model instructions include added detail, reflecting variables such as stress and cross-race identifications. See, e.g., Third Circuit Model Criminal Jury Instructions, 4.15 (Jan. 2014), available at: <http://www.ca3.uscourts.gov/sites/ca3/files/2013%20Chapter%204%20final%20revised.pdf>.

whether he had the capacity and opportunity to make a reliable observation on the matter covered in his testimony.<sup>55</sup>

The *Telfaire* instructions departed from the brief traditional instruction by adding that the jury should consider factors related to the initial sighting, including “how long or short a time was available, how far or close the witness was, how good were lighting conditions, [and] whether the witness had had occasion to see or know the person in the past.” The decision also noted that an identification is more reliable if the witness is able to pick the defendant out of a group, rather than at a showup, and that the jury should consider the length of time between the crime and the identification.<sup>56</sup>

Some states have adopted cautionary instructions on specific issues related to eyewitness identification evidence. In *State v. Ledbetter*, the Connecticut Supreme Court ordered lower courts to use a special instruction in cases in which law enforcement failed to instruct the eyewitness that the perpetrator may or may not be present in a lineup.<sup>57</sup> The Georgia Supreme Court concluded in 2005 that one particular use of the *Manson v. Brathwaite* factors must no longer be permitted: “we can no longer endorse an instruction authorizing jurors to consider the witness’ certainty in his/her identification as a factor to be used in deciding the reliability of that identification.”<sup>58</sup> Other courts have done the same.<sup>59</sup> In 1999, the New Jersey Supreme Court ruled in *State v. Cromedy* that instructions on cross-racial identifications are required in certain cases.<sup>60</sup>

Expert testimony on eyewitness memory and identifications appears to have many advantages when used as a method to explain relevant scientific framework evidence to the jury. However, when expert testimony is not available to the defense, jury instructions may be a preferable alternative means to inform the jury of the findings of scientific research in this area.

<sup>55</sup>*U.S. v. Telfaire*, 469 F.2d at 559.

<sup>56</sup>*Id.* at 558.

<sup>57</sup>*State v. Ledbetter*, 275 Conn. 534, 579–580 (2005) (The instruction reads, in part, “the individual conducting the procedure either indicated to the witness that a suspect was present in the procedure or failed to warn the witness that the perpetrator may or may not be in the procedure. Psychological studies have shown that indicating to a witness that a suspect is present in an identification procedure or failing to warn the witness that the perpetrator may or may not be in the procedure increases the likelihood that the witness will select one of the individuals in the procedure, even when the perpetrator is not present. Thus, such behavior on the part of the procedure administrator tends to increase the probability of a misidentification.”)

<sup>58</sup>*Brodes*, 279 Ga. at 442.

<sup>59</sup>See, e.g., *supra* *Commonwealth v. Payne*, 426 Mass. 692 (1998); *State v. Romero*, 191 N.J. 59 (2007).

<sup>60</sup>*State v. Cromedy*, 158 N.J. 112 (1999); see also Innocence Project, “Know the Cases: McKinley Cromedy,” available at: [http://www.innocenceproject.org/Content/McKinley\\_Cromedy.php](http://www.innocenceproject.org/Content/McKinley_Cromedy.php).

Brief instructions may not, however, provide sufficient guidance to explain the relevant scientific evidence to the jury, but lengthy instructions may be cumbersome and complex.

More research is warranted to better understand how best to communicate to jurors the factors that may affect the validity of eyewitness testimony and support a more sensitive discrimination of the strengths and weaknesses of eyewitness testimony in individual cases. Indeed, research findings on the effectiveness of jury instructions on assessment of eyewitness identification evidence have been mixed. In general, such studies find that jury instructions cause jurors to become more suspicious of all eyewitness identification evidence.<sup>61</sup> A recent study of the effect of the New Jersey jury instructions used in *Henderson* found that the instructions reduced juror reliance on *both* strong and weak eyewitness identification evidence.<sup>62</sup> Among the few studies finding that jury instructions succeed in increasing jurors' sensitivity to the strength of such evidence are those that study the effect of jury instructions presented before the eyewitness testimony rather than at the end of the case before deliberation.<sup>63</sup> Such studies also have examined instructions that use visual aids rather than rely on a judge's recitation of written instructions.<sup>64</sup> In addition, research studies might explore the use of videotape as an alternative way to present such information<sup>65</sup> and the effects of moving jury instructions to precede the introduction of the testimony by the eyewitness.

<sup>61</sup>For a review of this research, see K. A. Martire and R. I. Kemp, "The Impact of Eyewitness Expert Evidence and Judicial Instruction on Juror Ability to Evaluate Eyewitness Testimony," *Law and Human Behavior* 33:225–236, 226 (reviewing studies of jury instructions on eyewitness identification and concluding that increased skepticism and confusion is a common result); see also J. L. Devenport, C. D. Kimbrough, and B. L. Cutler, "Effectiveness of traditional safeguards against erroneous conviction arising from mistaken eyewitness identification," in *Expert testimony on the psychology of eyewitness identification*, ed. B. L. Cutler (New York: Oxford University Press, 2009), 51–68 (summarizing research studying the *Telfair* jury instruction and concluding that "cautionary jury instructions may be an ineffective safeguard against erroneous convictions resulting from mistaken eyewitness identifications.").

<sup>62</sup>A. P. Papailiou, D. V. Yokum, C. T. Robertson, "The Novel New Jersey Eyewitness Instruction Induces Skepticism But Not Sensitivity," August 2014, available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2475217](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2475217).

<sup>63</sup>See, e.g., N. B. Pawlenko, M. A. Safer, R. A. Wise, and B. Holfeld, "A Teaching Aid for Improving Jurors' Assessments of Eyewitness Accuracy," *Applied Cognitive Psychology* 27(2): 190–197. Other studies are reviewed in Martire and Kemp, *supra* note 105 at 226.

<sup>64</sup>Pawlenko et al., *supra* note 107.

<sup>65</sup>For an example of videotaped instructions, see Federal Judicial Center, *The Patent Process: An Overview for Jurors*, available at: <http://www.youtube.com/watch?v=ax7QHQTbKQE>.

## CONCLUSION

The *Manson v. Brathwaite* test under the Due Process Clause of the U.S. Constitution set out the modern test that regulates the fairness and the reliability of eyewitness identification evidence. The test evaluates the “reliability” of eyewitness identifications using factors derived from prior rulings and not from empirically validated sources. It includes factors that are not diagnostic of reliability and treats factors such as the confidence of a witness as independent markers of reliability when, in fact, it is now well established that confidence judgments may vary over time and can be powerfully swayed by many factors. The best guidance for legal regulation of eyewitness identification evidence comes not, however, from constitutional rulings, but from the careful use and understanding of scientific evidence to guide fact-finders and decision makers.

## 4

# Basic Research on Vision and Memory

**A**ccurate eyewitness identification requires that a witness to a crime correctly sense, perceive, and remember objects and events that occurred and recall them later. The veracity of the witness' identification thus depends on the limits of sensation, perception, and memory. Recent scientific studies have yielded great advances in our understanding of how vision and memory work. This chapter provides a brief overview of current knowledge, identifies areas in which vision and memory are imperfect, and describes implications for the accuracy of eyewitness identification. These implications, in turn, have guided much of the applied research on this topic (see Chapter 5) and provide a general framework for the recommendations made herein (see Chapter 6).

### VISION AND MEMORY IN CONTEXT

This chapter begins by offering a concrete example to place the body of basic scientific research on vision and memory in context so as to better communicate its relevance to eyewitness identification. In the sections that follow the example, the different functional steps of the sequence (highlighted in italics) are dissected in some detail, with special reference to its limitations and the ways in which it may fail to deliver accurate eyewitness identification.

While returning home late, you hear a muffled scream from around the street corner. Seconds later, you come face-to-face with a man turning the corner and moving swiftly past you. Instantaneously, properties of the



scene are conveyed to you through patterns of light cast on the backs of your eyes and *sensed by photoreceptors* in your retina. Only a fraction of the information sensed is selected for further processing; in this case you *focus your attention* on certain features of the man's face. Those features are *integrated and interpreted to yield a coherent percept* of the man. As you round the corner, you perceive, through an identical process, the victim slumped lifelessly against a wall. You quickly grasp the meaning of these perceptual experiences, and they immediately elicit both cognitive and visceral components (e.g., increased heart rate) of fear and anxiety. Your percepts are initially *encoded in short-term working memory*, where content is limited and labile. Your elevated level of arousal may cause interference and some loss of content, but with time and recognition of the importance of the experience, your percepts are *consolidated into long-term memory*. Long-term memories are *maintained in storage* but subject to ongoing updates and modifications resulting from new experiences and perhaps distortions caused by sustained levels of stress.

At a later date, you are asked to look at a police lineup that includes a suspect apprehended near the crime scene. Visual features of the men in the lineup are *sensed, selectively attended, and perceived*, using the same visual processes engaged on the night in question. Some of these features—the high brow and sharp cheekbones of one man in the lineup—*elicit retrieval* of memories of your visual experiences on the night of the crime. The simultaneously perceived and retrieved experiences are implicitly compared, leading to a cycle of greater visual scrutiny of the man in front of you and retrieval of additional details of the original percept. The context of the lineup procedure, the sight of the man, and the retrieved memories trigger latent emotions and anxiety, which may interfere with your comparison of percept and memory. Eventually, the comparison reaches your internal criterion for identification: You decide, with an implicit level of certainty, that your current visual percept and the percept from the night of the crime were caused by the same external source (the man now in front of you), and you assert that you have *identified the person you witnessed at the crime scene*.

## VISION

### Functional Processes of Vision

To understand the contributions and limitations of vision to eyewitness identification, it is useful to consider the workings of three functional stages of visual processing—sensation, attention, and perception—bearing in mind that they comprise highly interdependent elements of a continuous operation. *Sensation* is the initial process of detecting light and extracting basic image features. Sensations themselves are evanescent, and only a small

fraction of what is sensed is actually perceived. *Attention* is the process by which information sensed by the visual system is selected for further processing. *Perception* is the process by which attended visual information is integrated, linked to environmental cause, made coherent, and categorized through the assignment of meaning, utility, value, and emotional valence. In addition, memories and emotions resulting from prior experiences with the world can influence all stages of visual processing and thus define a thread that weaves throughout the following discussions.

All of the functional processes of vision are beset by noise, which affects the quality and types of information accessible from the visual environment, and bears heavily on the validity of eyewitness identification. Before considering the processes of sensation, attention, and perception in greater detail, consideration is given to the concept of noise in visual processing and to ways of interpreting its impact on visual experience.

### The Fundamental Role of Noise

Vision is usefully understood as the process of detecting informative signals about the external world and using those signals to recognize objects, make decisions, and guide behavior. As with any signal detection, there are occasionally factors that lead to uncertainty on the part of the observer about whether a particular signal is present. These factors are generically termed *noise*, following the definition used in electronic signal transmission, in which noise refers to random or irrelevant elements that interfere with detection of coherent and informative signals. In vision, noise comes from a variety of sources, some associated with the structure of the visual environment (e.g., occluding surfaces, glare, shadows), some inherent to the optical and neuronal processes involved (e.g., scattering of light in the eye), some reflecting sensory content not relevant to the observer's goals (e.g., a distracting sign or a loud sound), and some originating with incorrect expectations derived from memory. Consider, for example, the seemingly simple problem of detecting a green light while waiting at a traffic signal. In this case, your ability to "see" the green light may be compromised by glare or dust on your windshield, by poor visual acuity, by your eyes having been aimed instead at the driver of the adjacent car, by the presence of other (irrelevant) colored lights in your field of view (e.g., a traffic signal at a different intersection or the lights of a nearby restaurant), by a cell phone conversation, or by the news on the car radio. The significance of this view for eyewitness identification is profound, as it helps us to realize that the accuracy of information about the environment—the face

of a criminal, for example—gained through vision is necessarily, and often sharply, limited by noise.<sup>1</sup>

The fact that vision is noise-limited suggests a familiar statistical framework—signal detection theory—for assessing and understanding the effects of noise on visual perception and recognition ability.<sup>2</sup> Signal detection theory has long been successfully applied to analogous problems in electronic signal reception.<sup>3</sup> To illustrate these principles as applied to sensory processing, consider the problem of detecting a vibrating cell phone in your pocket. Anyone who has operated a cell phone in vibrate mode will be familiar with two types of signal detection errors: (1) the occasional sense that the phone is vibrating in your pocket, only to discover that it is not, and, conversely, (2) the phone call that is sometimes missed because you attribute the vibration to some other cause. *Signal*, in this example, is a subtle tactile stimulus resulting from an incoming phone call. *Noise*, in this example, is all of the other things in your environment that may also lead to subtle tactile stimulation, such as vibration of your car seat, a shift of keys in your pocket, or the touch of another person.

Signal detection theory posits that there are three main factors that determine whether a signal will be detected: (1) the distribution of stimuli (e.g., the variety of stimulus magnitudes) that reflect noise only, (2) the distribution of stimuli that reflect signal, and (3) the observer's criterion for “deciding” that a specific stimulus resulted from noise sources or signal. An important factor for the fidelity of signal detection is the degree to which noise and signal distributions overlap with one another. In the case of the vibrating cell phone, if the distributions of tactile stimuli resulting from noise and signal overlap, as is often the case, then there will always be some cases in which you believe the phone is vibrating when it is not (noise stimuli attributed to signal source), and there will be some cases in which the phone is vibrating and you miss the call (signal stimuli attributed to noise source).

The third factor that influences signal detection in the presence of noise is the observer's decision criterion, which is simply the value (e.g., stimulus amplitude) above which a stimulus is attributed to signal, and below which a stimulus is attributed to noise. In the same sense that your car radio is programmed to “decide” (and allow you to hear) when informative patterns of electromagnetic radiation (signal) are sufficiently different from random fluctuations (noise), an observer adopts a criterion for deciding whether a

<sup>1</sup>W. S. Geisler, “Sequential Ideal-Observer Analysis of Visual Discriminations,” *Psychological Review* 96(2): 267–314 (1989).

<sup>2</sup>D. M. Green and J. A. Swets, *Signal Detection Theory and Psychophysics* (New York: Wiley, 1966).

<sup>3</sup>W. Peterson, T. G. Birdsall, and W. C. Fox, “The Theory of Signal Detectability,” *Proceedings of the IRE Professional Group on Information Theory* 4(4): 171–212 (1954).

stimulus is caused by a signal or is simply a manifestation of noise. This criterion reflects the level of precision acceptable for the observer's needs, given uncertainty about whether a given stimulus reflects a real signal.

In practice, the criterion<sup>4</sup> used is determined by a host of factors unique to the circumstances, including psychological and social demands and behavioral goals. These factors collectively determine the relative "costs" of incorrect attributions of signal as noise ("misses") and of noise as signal ("false alarms").

If an individual places high value on not missing a phone call, then she or he will adopt a very *liberal* criterion, in which all stimuli reflecting real incoming calls (signal) are successfully detected, but many noise stimuli (e.g., shifting keys in a pocket) are erroneously (and frustratingly) believed to be incoming calls. By contrast, if an individual places little value on detecting incoming phone calls, she or he will adopt a *conservative* criterion, in which many calls are missed and noise stimuli rarely elicit an effort to answer the phone, which may be of value to the individual who wishes to avoid distraction.

The example of the signal detection logic used for the vibrating cell phone applies similarly to all aspects of visual perceptual experience, including the conditions of witnessing criminal events. The uncertainty about visual events caused by manifold sources of noise will inevitably lead to inaccurate visual perceptual experiences, which result from conditions in which an observer fails to detect a critically informative stimulus as "real" (attributing the stimulus instead to a source of noise) or confidently perceives a noise stimulus to have originated from an informative source. The latter instance is problematic because it increases the likelihood that observers will unwittingly "construct," on the basis of expectations derived from memory and situational context, perceptual experiences to account for noise erroneously interpreted as signal.

What follows from this consideration of uncertainty and decision criteria for visual perception is that the actual impact of factors that limit the amount of visual information available to an eyewitness (factors considered in more detail below) will depend on the criterion adopted. The criterion may reflect the values and prejudices of the eyewitness, his or her motivational and emotional state, and a variety of behavioral goals. In principle, the observer's criterion can be altered by instruction or incentives, but it is important to note that the criterion held by an observer witnessing a crime scene cannot be anticipated, nor can it be altered after the fact. It is an "estimator variable," which simply needs to be recognized and understood when evaluating eyewitness reports. By contrast, the decision criterion held

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<sup>4</sup>The criterion is sometimes referred to as bias.

by an observer at the time of identification can be controlled, and there may be valid reasons for doing so (see Chapter 5).<sup>5</sup>

In the following discussions of sensation, attention, and perception, the various means and conditions under which many different types of noise introduce uncertainty in visual signal detection (and thus fundamentally limit the accuracy of eyewitness identification) are addressed.

### Visual Sensation

When an observer views an object of any sort (such as a person) or events involving the object (a criminal act), patterns of light reflected from the environment are focused by the lens at the front of the eye and projected onto the back surface of the eye (the retina) to form the retinal image. Light in the image is initially “sensed” by the activation of photoreceptors, and early stages of sensory processing function to detect spatial and temporal contrast along a number of dimensions, including intensity and wavelength of light.<sup>6</sup> These contrast measurements are integrated by subsequent processing stages in the brain to yield representations of basic image features, or primitives, such as oriented image contours.<sup>7</sup>

Several sources of noise, or factors that limit the ratio of signal to noise, can restrict the visual information accessible to these early sensory processes. Some factors are inherent to the visual system and largely uncontrollable (e.g., the scattering of light by the fluid and tissues of the eye) and can be exacerbated by common observer-specific visual deficits (e.g., myopia, poor contrast sensitivity, or color blindness). Others factors are dependent on viewing conditions (e.g., the effects of viewing time and level of illumination).<sup>8</sup> Both of these types of factors predictably influence the quantity of information—the visual signal strength—that a viewer gains from a visual scene, and thus the degree to which the perceptual experi-

<sup>5</sup>L. Mickes, H. D. Flowe, and J. T. Wixted, “Receiver Operating Characteristic Analysis of Eyewitness Memory: Comparing the Diagnostic Accuracy of Simultaneous and Sequential Lineups,” *Journal of Experimental Psychology: Applied* 18(4): 361–376 (2012).

<sup>6</sup>M. Meister and M. Tessier-Lavigne, “Low-level Visual Processing: The Retina,” in *Principles of Neuroscience*, 5th Edition, ed. E. Kandel, J. H. Schwartz, T. M. Jessell, S. A. Siegelbaum, and A. J. Hudspeth (New York: McGraw-Hill Professional, 2012), 577–601.

<sup>7</sup>C. D. Gilbert, “Intermediate-level Visual Processing and Visual Primitives,” in *Principles of Neuroscience*, 5th Edition, ed. E. Kandel, J. H. Schwartz, T. M. Jessell, S. A. Siegelbaum, and A. J. Hudspeth (New York: McGraw-Hill Professional, 2012), 602–620.

<sup>8</sup>D. G. Pelli, “Uncertainty Explains Many Aspects of Visual Contrast Detection and Discrimination” *Journal of the Optical Society of America* A2(9): 1508–32 (1985). D. G. Pelli, “The Quantum Efficiency of Vision,” in *Vision: Coding and Efficiency*, ed. C. Blakemore (Cambridge: Cambridge University Press, 1990), 3–24. G. Sperling, “The Information Available in Brief Visual Presentations,” *Psychological Monographs: General and Applied* 74(11, Whole No. 498): 1–29 (1960).

ence can accurately reflect the properties of the external world.<sup>9</sup> At the extreme, short viewing times and low levels of illumination simply reduce the number of correlated photons reaching the retina to the point where they scarcely exceed photon noise, and uncertainty is very high.<sup>10</sup> At slightly longer viewing times and greater illumination levels, signal-to-noise levels improve, but there may remain marked limits on visual sensitivity. Visual acuity, for example, which is a measure of the ability to resolve the fine spatial details of a visual pattern, is known to decline significantly with decreases in illumination.<sup>11</sup>

Signal-to-noise loss can depend on the direction of the observer's gaze. Visual acuity is highest at the observer's center of gaze. The center is the part of your visual system that is used for fine sensing, such as reading or scrutinizing faces in a social context. Acuity drops off markedly with angular distance from this center, such that the quality and quantity of information sensed a mere 10 degrees from center are far less than what is available at the center of gaze.<sup>12</sup>

Under unrestricted viewing conditions, the movements of the eyes largely overcome the effects of gaze direction. However, under the viewing conditions associated with a typical crime, this source of noise may place severe limitations on the ability of the observer to sense key pieces of information that are not present at the center of gaze. To appreciate the impact of these limitations, consider that patients with macular degeneration are effectively blinded in the region of the visual field possessing highest acuity, and must rely instead on the much-reduced quality of visual information gained from the peripheral visual field. To compensate for this clinical loss, images and text must be greatly magnified to enable comprehension—an option that is clearly not available to an eyewitness.

### Visual Attention

Light falling on all parts of the retina is available to be sensed—and *must* be sensed for it to be available for further processing—but only a

<sup>9</sup>G. Sperling, "A Signal-to-Noise Theory of the Effects of Luminance on Picture Memory: Comment on Loftus," *Journal of Experimental Psychology: General* 115(2): 189–192 (1986).

<sup>10</sup>S. Hecht, S. Schlaer, and M. H. Pirenne, "Energy, Quanta, and Vision," *Journal of General Physiology* 25(6): 819–840 (1942).

<sup>11</sup>P. W. Cobb, "The Influence of Illumination of the Eye on Visual Acuity," *American Journal of Physiology* 29: 76–99 (1911). S. Hecht, "A Quantitative Basis for the Relation Between Visual Acuity and Illumination," *Proceedings of the National Academy of Sciences* 13: 569–574 (1927). S. Shlaer, "The Relation Between Visual Acuity and Illumination," *Journal of General Physiology* 21 (2): 165–188 (1937).

<sup>12</sup>H. Strasburger, I. Rentschler, and M. Jüttner, "Peripheral Vision and Pattern Recognition: A Review," *Journal of Vision* 11(5):13, 1–82 (2011).

small fraction of the information sensed reaches awareness or is used by the observer for recognition, action, or storage in memory. This limited access to visual sensory information is a product of selective attention.<sup>13</sup> Attention is an active process that can be directed by external factors—visual attributes with high salience, such as a bright light or an unfamiliar object—or by internal control.<sup>14</sup> If you are searching for a coffee cup, for example, you may explicitly direct your attention to the table where it was last seen. Attention can be directed to different types of image content, including specific locations in space,<sup>15</sup> specific image features (such as a specific color),<sup>16</sup> or to specific objects (such as the coffee cup).<sup>17</sup>

Attended image content is transiently enhanced to increase the fidelity of visual experience.<sup>18</sup> Attention interacts with sensory processing, for example, by selectively enhancing contrast<sup>19</sup> and potentially overcoming low signal-to-noise levels resulting from limited viewing time or illumination.<sup>20</sup> The effects of attention on contrast enhancement can be potentiated further when attention is commanded by emotionally laden stimuli.<sup>21</sup> Image con-

<sup>13</sup>W. James, *Principles of Psychology* (New York: Henry Holt, 1890); H. Pashler, J. Johnston, and E. Ruthruff, "Attention and Performance," *Annual Review of Psychology* 52: 629–651 (2001).

<sup>14</sup>M. I. Posner, "Orienting of Attention," *Quarterly Journal of Experimental Psychology* 32: 3–25 (1980).

<sup>15</sup>*Ibid.*

<sup>16</sup>A. F. Rossi and M. A. Paradiso, "Feature-specific Effects of Selective Visual Attention," *Vision Research* 35(5): 621–634 (1995).

<sup>17</sup>J. Duncan, "Selective Attention and the Organization of Visual Information," *Journal of Experimental Psychology: General* 113(4): 501–517 (1984).

<sup>18</sup>H. Pashler, J. Johnston, and E. Ruthruff, "Attention and Performance," *Annual Review of Psychology* 52: 629–651 (2001).

<sup>19</sup>M. Carrasco et al., "Attention Alters Appearance" *Nature Neuroscience* 7: 308–313 (2004).

<sup>20</sup>M. I. Posner, C. R. Snyder, and B. J. Davidson, "Attention and the Detection of Signals," *Journal of Experimental Psychology* 109(2): 160–174 (1980). M. Carrasco and B. McElree, "Covert Attention Accelerates the Rate of Visual Information Processing," *Proceedings of the National Academies of Science* 98(9): 5363–5367 (2001). Y. Yeshurun and M. Carrasco, "Attention Improves or Impairs Visual Performance by Enhancing Spatial Resolution," *Nature* 396, 72–75 (1998). M. Carrasco et al., "Covert Attention Increases Spatial Resolution with or without Masks: Support for Signal Enhancement," *Journal of Vision* 2(6): 467–79 (2002). E. Blaser et al., "Measuring the Amplification of Attention," *Proceedings of the National Academies of Science* 96(20): 11681–11686 (1999). K. Anton-Erxleben and M. Carrasco, "Attentional Enhancement of Spatial Resolution: Linking Behavioural and Neurophysiological Evidence," *Nature Reviews Neuroscience* 14(3):188–200 (2013). J. W. Couperus and G. R. Mangun, "Signal Enhancement and Suppression During Visual-Spatial Selective Attention," *Brain Research* 1359:155–177 (2010).

<sup>21</sup>E. A. Phelps, S. Ling, and M. Carrasco, "Emotion Facilitates Perception and Potentiates: The Perceptual Benefits of Attention," *Psychological Science* 17(4): 292 (2006).

tent *not* falling within the focus of attention is processed with less fidelity.<sup>22</sup> In some cases, unattended content is effectively invisible: It does not reach awareness, it is not perceived, and it is not available for use in guiding decisions or actions, or for storage in memory.<sup>23</sup>

Different pieces of visual information compete for selection,<sup>24</sup> as their attributes of physical salience, location in space, novelty, and relevance to the observer's needs and behavioral goals are always changing.<sup>25</sup> The outcome of the competition is highly susceptible to noise (in this instance, noise is defined as uncontrolled factors that bias the focus of attention and create uncertainty about the content of a visual scene), because the informational content of the visual image vastly exceeds what can be attended at any point in time. The implications of such noise for eyewitness identification are profound. An observer must "select" what to attend to, often within a short window of time, without advance warning, in the presence of many novel objects and events, and under such confounding influences as anxiety and fear.

The signal detection framework is readily adaptable to the problem of noise in visual attention and provides some insights into the limits of attentional selection in the presence of noise.<sup>26</sup> In essence, this signal detection approach quantifies the extent to which multiple items competing with one another for attention affect attentional enhancement for any one of the items.<sup>27</sup> Reductions in efficiency are common under such noise conditions. Indeed, sensitivity to unattended items can be markedly reduced under conditions of high "perceptual load," in which there are many objects si-

<sup>22</sup>Posner, Snyder, and Davidson, "Attention and the Detection of Signals." Y. Yeshurun and M. Carrasco, "Attention Improves or Impairs Visual Performance by Enhancing Spatial Resolution," *Nature* 396: 72–75 (November 1998).

<sup>23</sup>A. Mack and I. Rock, *Inattentional Blindness* (Cambridge, MA: MIT Press, 1998).

<sup>24</sup>R. Desimone and J. Duncan, "Neural Mechanism of Selective Visual Attention," *Annual Review of Neuroscience* 18: 193–222 (March 1995).

<sup>25</sup>J. M. Wolfe and T. S. Horowitz, "What Attributes Guide the Deployment of Visual Attention and How Do They Do It?" *Nature Reviews Neuroscience* 5: 495–501 (June 2004). H. E. Egeth and S. Yantis, "Visual Attention: Control, Representation, and Time Course," *Annual Review of Psychology* 48(1): 269–297 (February 1997). M. I. Posner, "Orienting in Attention," *Quarterly Journal of Experimental Psychology* 32(1): 3–25 (1980). A. Treisman and G. Gelade, "A Feature Integration Theory of Attention," *Cognitive Psychology* 12(1):97–136 (January 1980). L. Itti and C. Koch, "A Saliency-based Search Mechanism for Overt and Covert Shifts of Visual Attention," *Vision Research* 40(10–12): 1489–1506 (June 2000).

<sup>26</sup>G. Sperling and M. J. Melchner, "The Attention Operating Characteristic: Examples from Visual Search," *Science* 202(4365): 315–318 (October 1978). G. Sperling and B. A. Doshier, "Strategy and Optimization in Human Information Processing," in *Handbook of Perception and Human Performance*, ed. K. Boff, L. Kaufman, and J. Thomas (New York: Wiley, 1986).

<sup>27</sup>*Ibid.*



multaneously competing for attention.<sup>28</sup> The spacing of items in the visual field also impacts visual sensitivity.<sup>29</sup> When objects are closely spaced, their discriminability is reduced. One explanation offered for this “crowding effect” is that the spacing of visual items is smaller than the resolution of visual attention.<sup>30</sup> The visual phenomenon of crowding suggests that a crime committed in a visually complex scene, such as a sporting event, could easily place limits on the ability of a witness to accurately perceive the facial features of a perpetrator.

A related consequence of attentional noise is that competing interests can readily hijack the attentional focus. The technique of *misdirection*—one of the original mainstays of performance magic—directs attention to uninformative image content and exploits the invisibility of unattended features.<sup>31</sup> The well-studied *inattention blindness* effect is another example of this phenomenon, in which attention that is pre-directed to one behaviorally significant property of a visual scene precludes awareness of other features that also may be important.<sup>32</sup> (For a dramatic demonstration of this effect, produced by Simons and Chabris,<sup>33</sup> see <http://tinyurl.com/inattentional-blindness>.)

Inattention blindness effects translate well to real-world interactions between people. An individual can be surprisingly unaware of surreptitious changes to the physical appearance of another person while engaged in conversation.<sup>34</sup> One demonstration of this phenomenon involved two strangers (experimenter and pedestrian) in a brief face-to-face conversation on a sidewalk. At some point in the conversation an opaque door was carried between the two individuals, and another person with different appearance, clothing, and voice quickly replaced the experimenter. More than half of

<sup>28</sup>N. Lavie, “Perceptual Load as a Necessary Condition for Selective Attention,” *Journal of Experimental Psychology: Human Perception and Performance* 21(3): 451–468 (June 1995). J. W. Couperus, “Perceptual Load Influences Selective Attention Across Development,” *Developmental Psychology* 47(5):1431–1439 (September 2011).

<sup>29</sup>D. M. Levi, “Crowding—An Essential Bottleneck for Object Recognition: A Mini-review,” *Vision Research* 48: 635–654 (2008).

<sup>30</sup>J. Intriligator and P. Cavanagh, “The Spatial Resolution of Visual Attention,” *Cognitive Psychology* 43: 171–216 (2001).

<sup>31</sup>G. Kuhn et al., “Misdirection in Magic: Implications for the Relationship Between Eye Gaze and Attention,” *Visual Cognition* 16(2–3): 391–405 (2008). S. L. Macknik, S. Martinez-Conde, and S. Blakeslee, *Sleights of Mind: What the Neuroscience of Magic Reveals About Our Everyday Deceptions* (New York: Henry Holt and Co., 2010).

<sup>32</sup>A. Mack and I. Rock, *Inattention Blindness* (Cambridge, MA: MIT Press, 1998). U. Neisser and R. Becklen, “Selective Looking: Attending to Visually Specified Events,” *Cognitive Psychology* 7(4): 480–494 (October 1975). D. Simons, “Attentional Capture and Inattentional Blindness,” *Trends in Cognitive Sciences* 4(4): 147–155 (April 2000).

<sup>33</sup>D. J. Simons and C. F. Chabris, “Gorillas in Our Midst: Sustained Inattention Blindness for Dynamic Events,” *Perception* 28: 1059–1074 (1999).

<sup>34</sup>D. J. Simons and D. T. Levin, “Failure to Detect Changes to People During a Real-World Interaction,” *Psychonomic Bulletin and Review* 5(4): 644–649 (1998).

the participants (pedestrians) failed to notice that their conversation partner had changed. This finding suggests that naturally occurring events that briefly divert attention have the potential to markedly impair the accuracy of eyewitness identifications.

Attentional hijacking is particularly characteristic of stimuli that elicit strong emotional responses, such as fear and arousal.<sup>35</sup> Visual stimuli that trigger fear responses act as powerful external cues that command attention.<sup>36</sup> While this potentiates sensitivity to those stimuli, at the considerable expense of sensitivity to others, it is often the case that the attended emotional stimuli are not the ones with relevant informational content.<sup>37</sup> The so-called weapon focus is a real-world case in point for eyewitness identification, in which attention is compellingly drawn to emotionally laden stimuli, such as a gun or a knife, at the expense of acquiring greater visual information about the face of the perpetrator (see also discussion of weapon focus in Chapter 5).<sup>38</sup> (One might argue that this is an adaptation that benefits immediate action or engagement with a threatening stimulus, but is surely detrimental to one's efforts to bear witness.)

### Visual Perception

Visual perception is the conscious functional result of efforts to identify the environmental causes of the pattern of light cast onto the back of the eye.<sup>39</sup> Perception does not reflect the sensory world passively, as camera film detects patterns of light. On the contrary, visual perception is constructive

<sup>35</sup>C. H. Hansen and R. D. Hansen, "Finding the Face in the Crowd: An Anger Superiority Effect," *Journal of Personality and Social Psychology* 54: 917–924 (1988). E. Fox et al., "Facial Expressions of Emotion: Are Angry Faces Detected More Efficiently?" *Cognition and Emotion* 14(1): 61–92 (2000). R. Compton, "The Interface Between Emotion and Attention: A Review of Evidence from Psychology and Neuroscience," *Behavioral and Cognitive Neuroscience Reviews* 2(2): 115–129 (2003). R. L. Bannerman, E. V. Temminck, and A. Sahraie, "Emotional Stimuli Capture Spatial Attention But Do Not Modulate Spatial Memory," *Vision Research* 65: 12–20 (15 July 2012).

<sup>36</sup>J. A. Easterbrook, "The Effects of Emotion on Cue Utilization and the Organization of Behavior," *Psychological Review* 66(3): 183–201 (1959).

<sup>37</sup>E. Ferneyhough et al., "Anxiety Modulates the Effects of Emotion and Attention on Early Vision," *Cognition and Emotion* 27(1): 166–176 (2013). G. Pourtois and P. Vuilleumier, "Dynamics of Emotional Effects on Spatial Attention in the Human Visual Cortex," *Progress in Brain Research* 156: 67–91 (2006).

<sup>38</sup>T. Kramer, R. Buckhout, and P. Eugenio, "Weapon Focus, Arousal, and Eyewitness Memory: Attention Must Be Paid," *Law and Human Behavior* 14(2): 167–184 (1990). R. S. Truelove, "Do Weapons Automatically Capture Attention," *Applied Cognitive Psychology* 20(7): 871–893 (2006). E. F. Loftus, G. R. Loftus, and J. Messo, "Some Facts About 'Weapon Focus'," *Law and Human Behavior* 11(1): 55–62 (1987).

<sup>39</sup>W. James, *Principles of Psychology* (New York: Henry Holt, 1890). S. Harnad, ed., *Categorical Perception: The Groundwork of Cognition* (New York: Cambridge University Press, 1987). T. D. Albright, "Perceiving," *Daedalus* (in press).

and entails (1) integrating and segmenting attended attributes of the visual image into objects, (2) complementing and interpreting the product with expectations derived from memory of prior experiences with the world, and (3) assigning meaning and emotional valence by reference to prior knowledge of function and value.<sup>40</sup> All of these perceptual processes are affected by noise. Because the things perceived are the things we place into memory, perceptual noise can dramatically limit the accuracy of eyewitness identification.

The process of feature integration and interpretation may be distorted by images of an object unique to a specific angle of view.<sup>41</sup> The retinal pattern generated by a face viewed directly from the front differs considerably—with changes in aspect ratio and relative placement of facial features—from that generated by a face viewed from an oblique side angle. Viewing a face from an angle above or below center (as might be the case if the criminal were standing over you, or below you on the stairs) also yields retinal distortions of facial features. In this case, the distortions prominently mimic facial gestures of smiling versus frowning, and perhaps cause incorrect inferences about the emotional state of the person observed and his or her intentions and motivations. (This distortion is the basis for the Japanese Noh Theatre mask effect, in which a rigid mask tilted forward leads to the appearance of a smile and backward leads to the appearance of a frown—an effect you can simulate by simply looking into the mirror and tilting your face up or down.)<sup>42</sup>

Viewing conditions can also affect the perception of face, gender, and age.<sup>43</sup> Investigators found that faces that were physically identical—and particularly those bordering on androgyny—were perceived as unambiguously male or female depending on where they appeared in the observer's visual field. The spatial patterning of these effects was distinctive and stable for each observer. Perceptual distortions of this sort are a source of noise that may have important implications for the accuracy of eyewitness identification.

Perceptual distortions also may be introduced through memory recall.

<sup>40</sup>C. D. Gilbert, "The Constructive Nature of Visual Processing," in *Principles of Neuroscience*, 5th Edition, ed. E. Kandel, J. H. Schwartz, T. M. Jessell, S. A. Siegelbaum, and A. J. Hudspeth (New York: McGraw-Hill Professional, 2012). T. D. Albright, "On the Perception of Probable Things: Neural Substrates of Associative Memory, Imagery, and Perception," *Neuron* 74 (2): 227–245 (2012).

<sup>41</sup>W. G. Hayward and P. Williams, "Viewpoint Dependence and Object Discriminability," *Psychological Science* 11(1): 7–12 (2000).

<sup>42</sup>M. J. Lyons et al., "The Noh Mask Effect: Vertical Viewpoint Dependence on Facial Expression Perception," *Proceedings of the Royal Society B: Biological Sciences* 267(1459): 2239–2245 (2000).

<sup>43</sup>A. Afraz, M. Vaziri-Pashkam, and P. Cavanagh, "Spatial Heterogeneity in the Perception of Face and Form Attributes," *Current Biology* 20(23): 2112–2116 (2010).

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. There are good reasons why this is true. As noted above, the sensory input (the pattern of light received) is often noisy, incomplete, and ambiguous, and memories of what is *likely* to be out there, given the context, are called on to fill in the blanks, reconcile ambiguities, and leave clear and coherent percepts.<sup>44</sup> This perceptual completion is probabilistic.<sup>45</sup> It is an hypothesis, and the accuracy naturally depends on the degree to which the observer's expectations match the noisy sensory data.

What is implied is that the same mechanism that grants the certainty of perceptual experience in the face of noise and ambiguity is also capable of implicitly fabricating content that does not correspond to external reality and yet is experienced with no less certainty. Performance magic relies on this constructive nature of perceptual experience, and that nature is also the foundation for many visual illusions and forms of visual art.<sup>46</sup> In a classic experiment that drives home the point, Bruner and Postman looked at the ability of observers to recognize “trick” playing cards.<sup>47</sup> The trick cards were created by altering the color of a given suit (e.g., a red seven of spades). Observers were shown a series of cards with brief presentations. Some cards were trick, and the remainder normal. With astonishing frequency, observers reported that the trick cards were normal. When questioned, observers defended their reports, even after being allowed to scrutinize the trick cards, thus demonstrating that learned properties of the world are capable of sharply altering our experience and, moreover, reinforcing our convictions about what we have seen, even in the face of countermanding sensory evidence. 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

<sup>44</sup>Albright, “On the Perception of Probable Things.”

<sup>45</sup>D. C. Knill and W. Richards, *Perception as Bayesian Inference*, ed. D. C. Knill and W. Richards (Cambridge: Cambridge University Press, 1996). D. Kersten “High-level Vision as Statistical Inference,” in *The New Cognitive Neurosciences*, 2nd Edition, ed. M. S. Gazzaniga (Cambridge: MIT Press, 1999), 353–363. D. Kersten, P. Mamassian, and A. Yuille, “Object Perception as Bayesian Inference,” *Annual Review of Psychology* 55: 271–304 (February 2004).

<sup>46</sup>E. H. Gombrich, *Art and Illusion. A Study in the Psychology of Pictorial Representation* (London: Phaidon 1960). T. D. Albright, “The Veiled Christ of Cappella Sansevero: On Art, Vision and Reality,” *Leonardo* 46(1): 19–23 (2013). Macknik, Martinez-Conde, and Blakeslee, *Sleights of Mind: What the Neuroscience of Magic Reveals About Our Everyday Deceptions* (New York: Henry Holt and Co., 2010).

<sup>47</sup>J. S. Bruner and L. Postman, “On the Perception of Incongruity: A Paradigm,” *Journal of Personality* 18(2): 206–223 (1949).

the “ground truth” of the external world—it appears that accurate eyewitness identification may be difficult to achieve.

Additional noise (in this case defined as uncertainty resulting from loss of perceptual resolution) may result from the fact that visual perception is categorical.<sup>48</sup> Although the objects of our experience vary broadly along multiple sensory dimensions, we lump them into categories based upon prior associations, many of which stem from common functions, physical properties, meanings, or emotional valence. Apples in a basket or the many typographic fonts for the letter “A” are visually distinct, yet we readily perceive them as categorically identical. For most behavioral and cognitive goals, perceptual processing is greatly simplified by treating all members of a category as the same, despite their differences. It rarely matters, for example, whether the apple we choose is dappled on one side or irregular in shape, nor does the font used bear greatly on our ability to read. One of the functional corollaries of categorical perception is that observers are far better at discriminating between objects from different categories than objects from the same category.<sup>49</sup> Evidence indicates that the structure of object memory is also categorical, suggesting that perceived objects are encoded in memory as a category type, often without specific detail.<sup>50</sup>

Perceptual categorization naturally applies to faces.<sup>51</sup> We readily categorize faces by distinctions along the obvious dimensions of gender, age,

<sup>48</sup>W. James, *Principles of Psychology* (New York: Henry Holt, 1980). S. Harnad, ed., *Categorical Perception: The Groundwork of Cognition* (New York: Cambridge University Press, 1987).

<sup>49</sup>R. Goldstone, “Influences of Categorization on Perceptual Discrimination,” *Journal of Experimental Psychology: General* 123(2): 178–200 (1994). R. Goldstone, Y. Lippa, and R. M. Shiffrin, “Altering Object Representations Through Category Learning,” *Cognition* 78(1): 27–43 (2001).

<sup>50</sup>E. Tulving, “Episodic and Semantic Memory,” in *Organization of Memory*, ed. E. Tulving and W. Donaldson (New York: Academic Press, 1972), 381–403. L. K. Tyler et al., “Processing Objects at Different Levels of Specificity,” *Journal of Cognitive Neuroscience* 16(3): 351–362 (2004). M. J. Farah and J. L. McClelland, “A Computational Model of Semantic Memory Impairment: Modality Specificity and Emergent Category Specificity,” *Journal of Experimental Psychology: General* 120 (4): 339–357 (1991). C. Gerlach et al., “Categorization and Category Effects in Normal Object Recognition: A PET Study,” *Neuropsychologia* 38(13): 1693–1703 (2000). G. W. Humphreys and E. M. Forde, “Hierarchies, Similarity, and Interactivity in Object Recognition: ‘Category-Specific’ Neuropsychological Deficits,” *Behavioral and Brain Sciences* 24(3): 453–476 (2001).

<sup>51</sup>J. M. Beale and F. C. Keil, “Categorical Effects in the Perception of Faces,” *Cognition* 57(3): 217–239 (1995). D. T. Levin, “Classifying Faces by Race: The Structure of Face Categories,” *Journal of Experimental Psychology: Learning, Memory, and Cognition* 22(6):1364–1382 (1996). D. T. Levin and J. Beale, “Categorical Perception Occurs in Newly Learned Faces, Cross-Race Faces, and Inverted Faces,” *Perception and Psychophysics* 62: 386–401 (2000). M. A. Webster et al., “Adaptation to Natural Facial Categories,” *Nature* 428(6982): 557–561 (2004). Y. Lee et al., “Broadly Tuned Face Representation in Older Adults Assessed by Categorical Perception,” *Journal of Experimental Psychology: Human Perception and Performance* 40(3): 1060–1071 (2014).

and race, but we also draw distinctions along dimensions such as skin tone, hair color and style, presence and type of facial hair, such subtler factors as shape of cheeks and jaw, and subjective qualities such as attractiveness. The practical consequence of this for eyewitness identification is that the precision of a perceptual experience may be reduced within any of these categories, particularly because we typically witness criminal events for such a brief period of time. The ensuing memory of the experience will likely reflect that reduced precision, and the memory retrieved may regress to a category prototype or to other exemplars of the perceived category.<sup>52</sup> The witness may categorically perceive a square jawed man with a moustache, but the fine details needed for individuation of a suspect are neither perceived nor encoded in memory. For example, although you may have seen the iconic Marlboro Man countless times on billboards and in magazines, it is unlikely that you could distinguish him in a lineup from other square jawed mustachioed men.

## MEMORY

### Functional Processes of Memory

Conscious visual perceptual experiences, rendered by the processes described in the previous section on vision, are commonly stored as *declarative memories*, meaning that they can be consciously accessed and expressed as knowledge about the world (as distinct from *procedural memories*, such as motor skills).<sup>53</sup> Declarative memories are of two types, semantic and episodic, reflecting a distinction between memories of meanings, facts, and concepts versus memories of events (such as those witnessed during a crime).<sup>54</sup> Declarative memories are conceptualized as involving three core processes—encoding, storage, and retrieval—which refer to the placement of items in memory, their maintenance therein, and subsequent access to the stored information.<sup>55</sup>

Like vision, memory is also beset by noise. Encoding, storage, and remembering are not passive, static processes that record, retain, and divulge

<sup>52</sup>J. Huttenlocher, L. V. Hedges, and J. L. Vevea, “Why Do Categories Affect Stimulus Judgment?” *Journal of Experimental Psychology: General* 129(2): 220–241 (2000). R. Goldstone, Y. Lippa, and R. M. Shiffrin, “Altering Object Representations Through Category Learning,” *Cognition* 78(1): 27–43 (2001).

<sup>53</sup>W. James, *Principles of Psychology* (New York: Henry Holt, 1890). B. Milner, *Physiologie de l'hippocampe*, ed. P. Passouant (Paris: Centre National de la Recherche Scientifique, 1962), 257–272. L. R. Squire and J. Wixted, “The Cognitive Neuroscience of Human Memory since H.M.,” *Annual Review of Neuroscience* 34: 259–288 (2011).

<sup>54</sup>Tulving, “Episodic and Semantic Memory.”

<sup>55</sup>E. Tulving, “Organization of Memory: Quo vadis?” in *The Cognitive Neurosciences*, ed. M. S. Gazzaniga (Cambridge, MA: MIT Press, 1995), 839–847.

their contents in an informational vacuum, unaffected by outside influences. The contents cannot be treated as a veridical permanent record, like photographs stored in a safe. On the contrary, the fidelity of our memories for real events may be compromised by many factors at all stages of processing, from encoding through storage, to the final stages of retrieval. Without awareness, we regularly encode events in a biased manner and subsequently forget, reconstruct, update, and distort the things we believe to be true.<sup>56</sup>

The following sections discuss memory encoding, storage, and retrieval, with emphasis on the limits of these processes as they pertain to eyewitness identification. Emotions can strongly influence these processes of memory; some specific actions are highlighted. The phenomenon of “recognition memory” is also discussed. This refers to the specific type of memory retrieval in which a stimulus (e.g., a face) is used to probe memory, and the rememberer (e.g., an eyewitness) must decide whether the strength of the elicited memory evidence is sufficient to declare that the stimulus was previously encountered or is novel. Recognition memory underlies eyewitness identification, as the witness must make a recognition decision.

### Memory Encoding

Memory encoding refers to the process whereby perceived objects and events are initially placed into storage. The encoding process involves two stages, which are commonly distinguished by the quantity of information stored, the duration of storage, and the susceptibility to interference.<sup>57</sup> Short-term or working memory is the conscious content of recent perceptual experiences or information recently recalled from long-term storage. Information that remains at the focus of attention persists in and forms the contents of short-term memory. This form of memory is of limited duration

<sup>56</sup>J. T. Wixted, “The Psychology and Neuroscience of Forgetting,” *Annual Review of Psychology* 55: 235–269 (2004). E. Tulving and D. M. Thomson, “Encoding Specificity and Retrieval Processes in Episodic Memory,” *Psychological Review* 80(5): 352–373 (1973). Y. Dudai, “Reconsolidation: The Advantage of Being Refocused,” *Current Opinion in Neurobiology* 16(2): 174–178 (2006). E. F. Loftus, “Planting Misinformation in the Human Mind: A 30-Year Investigation of the Malleability of Memory,” *Learning and Memory* 12(4): 361–366 (2005). R. A. Bjork, “Interference and Memory,” in *Encyclopedia of Learning and Memory*, ed. L. R. Squire (New York: Macmillan, 1992), 283–288. J. A. McGeoch, “Forgetting and the Law of Disuse,” *Psychological Review* 39(4): 352–370 (1932). J. G. Jenkins and K. M. Dallenbach, “Obliviscence during Sleep and Waking,” *The American Journal of Psychology* 35(4): 605–612 (1924). B. J. Underwood and L. Postman, “Extra-Experimental Sources of Interference in Forgetting,” *Psychological Review* 67 (2): 73–95 (1960).

<sup>57</sup>R. C. Atkinson and R. M. Shiffrin, “Human Memory: A Proposed System and its Control Processes,” in *The Psychology of Learning and Motivation* (Volume 2), ed. K. W. Spence and J. T. Spence (New York: Academic Press, 1968), 89–195. W. James, *Principles of Psychology* (New York: Henry Holt, 1890). A. Baddeley, “Working Memory: Looking Back and Looking Forward,” *Nature Reviews Neuroscience* 4(10): 829–839 (2003). A. Baddeley, *Working Memory* (New York: Oxford University Press, 1986).

and capacity<sup>58</sup> and labile, decaying quickly with time and easily disrupted by other perceptual or cognitive processes.<sup>59</sup> Through cellular and molecular events that play out over time, the contents of short-term memories may be encoded and consolidated into long-term memory,<sup>60</sup> which is more enduring (albeit evolving with ongoing experience), and of greater capacity.

The structure of an individual's full library of long-term declarative memories can be thought of as a collection of associations between items of specific semantic (e.g., the fact that that person X is a 34-year-old female) or episodic content (e.g., the fact that person X was at location Y on the night of the witnessed crime).<sup>61</sup> As the individual gains new experiences, long-term declarative memories may be updated by adding new content to the existing library or by forming new associations between existing content.<sup>62</sup>

Memories are particularly labile during the encoding process. The contents of short-term memory are limited and highly subject to interference by subsequent sensory, cognitive, emotional, or behavioral events; the contents can also be biased by prior knowledge, expectations, or beliefs, resulting in a distorted representation of experience. Short-term memories of events that happened early in a witnessed proceeding may simply be forgotten with the passage of time or badly compromised by attention directed to subsequent emotional events or cognitive and behavioral demands (e.g., anxiety, fear, the need to escape). In such cases, the compromised information may never be consolidated fully into long-term storage or that storage may contain distorted content.<sup>63</sup> At the same time, the quality of encoding of stimuli that are attended is commonly enhanced by highly emotional content.<sup>64</sup>

<sup>58</sup>G. A. Miller, "The Magical Number Seven," *The Psychological Review* 63(2): 81–97 (1956).

<sup>59</sup>J. Jonides et al., "The Mind and Brain of Short-Term Memory," *Annual Review of Psychology* 59: 193–224 (2008).

<sup>60</sup>E. Kandel and L. Squire, *Memory: From Mind to Molecules* (New York: Scientific American Library, 2008).

<sup>61</sup>J. R. Anderson, *The Architecture of Cognition* (Cambridge: Harvard University Press, 1983). J. R. Anderson and C. Lebiere, *The Atomic Components of Thought* (Mahwah: Lawrence Erlbaum Associates, 1998).

<sup>62</sup>M. P. Walker et al., "Dissociable Stages of Human Memory Consolidation and Reconsolidation," *Nature* 425: 616 (2003).

<sup>63</sup>J. L. McGaugh, "Memory—a Century of Consolidation," *Science* 287(5451): 248–251 (2000). J. L. McGaugh and B. Roozendaal, "Role of Adrenal Stress Hormones in Forming Lasting Memories in the Brain," *Current Opinion in Neurobiology* 12(2): 205–210 (2002).

<sup>64</sup>K. N. Ochsner, "Are Affective Events Richly Recollected or Simply Familiar? The Experience and Process of Recognizing Feelings Past," *Journal of Experimental Psychology: General* 129 (2): 242–261 (2000). D. Talmi, et al., "Immediate Memory Consequences of the Effect of Emotion on Attention to Pictures," *Learning and Memory* 15(2008): 172–182. E. A. Kensinger and D. L. Schacter, "Neural Processes Supporting Young and Older Adults' Emotional Memories," *Journal of Cognitive Neuroscience* 7 (2008): 1–13. E. A. Phelps, "Emotion and Cognition: Insights from Studies of the Human Amygdala," *Annual Review of Psychology* 57: 27–53 (2006).



### Memory Storage

Memory storage refers to the long-term retention of information after encoding. The stability of stored information is continuously challenged and subject to modification. We forget, qualify, or distort existing memories as we acquire new perceptual experiences and encode new content and associations into memory.<sup>65</sup>

Forgetting can be partially mitigated, and memories stabilized, by habits of retrieval (or reactivation) and reconsolidation, which happen whenever we tell the story of our experiences.<sup>66</sup> Reactivation is not perfect. With each implicit retrieval or explicit telling of a story, we may unconsciously smooth over inconsistencies or modify content based on our prior beliefs, the accounts of others, or through the lens of new information. We may add embellishments that reflect opinions, emotions, or prejudices<sup>67</sup> rather than observed facts; or we may simply omit disturbing content and pass over fine details.<sup>68</sup>

A second threat to the stability of long-term memories is, ironically, our life-long ability to learn new things. Because memory mechanisms are inherently plastic throughout life, content stored for the long term is surprisingly labile in the face of new information. Our memories are thus an ever-evolving account of our experiences. A memory that reflects witnessing person X at location Y on a particular evening might be readily and notably updated by subsequent learning that location Y is the home of a business associate of person X. Our memories of the witnessed actions of person

<sup>65</sup>J. T. Wixted, "The Psychology and Neuroscience of Forgetting," *Annual Review of Psychology* 55: 235–269 (2004). Tulving and Thomson, "Encoding Specificity and Retrieval Processes." Y. Dudai, "Reconsolidation: The Advantage of Being Refocused," *Current Opinion in Neurobiology* 16(2): 174–178 (2006). E. F. Loftus, "Planting Misinformation in the Human Mind: A 30-Year Investigation of the Malleability of Memory," *Learning and Memory* 12(4): 361–366 (2005). R. A. Bjork, "Interference and Memory," in *Encyclopedia of Learning and Memory*, ed. L. R. Squire (New York: Macmillan, 1992), 283–288. J. A. McGeoch, "Forgetting and the Law of Disuse," *Psychological Review* 39(4): 352–370 (1932). J. G. Jenkins and K. M. Dallenbach, "Obliviscence During Sleep and Waking," *The American Journal of Psychology* 35 (1924): 605–612. B. J. Underwood and L. Postman, "Extra-Experimental Sources of Interference in Forgetting," *Psychological Review* 67(2): 73–95 (1960). E. F. Loftus, "The Malleability of Human Memory," *American Scientist* 67(3): 312–320 (1979). D. J. Yi et al., "When a Thought Equals a Look: Refreshing Enhances Perceptual Memory," *Journal of Cognitive Neuroscience* 20(8): 1371–1380 (2008).

<sup>66</sup>C. M. Alberini, *Memory Reconsolidation* (Waltham: Academic Press, 2013).

<sup>67</sup>D. L. Schacter, *Psychology*, Second Edition (New York: Worth Publishers, 2011), 253–254. E. F. Loftus and H. G. Hoffman, "Misinformation and Memory, the Creation of New Memories," *Journal of Experimental Psychology* 118(1): 100–104 (1989). G. Mazzoni and A. Memon, "Imagination Can Create False Autobiographical Memories," *Psychological Science* 14(2): 186–188 (2003).

<sup>68</sup>F. C. Bartlett, *Remembering: A Study in Experimental and Social Psychology* (London: Cambridge University Press, 1932).

X may be qualified by new knowledge of his or her life history. Moreover, because new content can be added and the source of that content forgotten, we may attribute our updated memories to the originally witnessed events—in some cases substantially changing what we believe we have seen.<sup>69</sup> It is thus not surprising that newly incorporated information need not be true to fact. Research on *false memories* shows that it is possible to plant fabricated content in memory, which leads us to recall things we never experienced.<sup>70</sup>

The emotional content of stored memories is a factor that appears to promote long-term retention; memories of highly arousing emotional stimuli, such as those associated with a witnessed crime, tend to be more enduring than memories of non-arousing stimuli.<sup>71</sup> Highly salient, unexpected, or arousing events—such as the Kennedy assassination or the Space Shuttle disaster—are commonly more strongly stored in memory, and their later retrieval is often associated with the subjective experience

<sup>69</sup>D. S. Lindsay and M. K. Johnson, "Recognition Memory and Source Monitoring," *Bulletin of the Psychonomic Society* 29(3): 203–205 (1991). D. L. Schacter and C. S. Dodson, "Misattribution, False Recognition and the Sins of Memory," *Philosophical Transactions of the Royal Society: Biological Sciences* 356(1413): 1385–1393 (2001). L. A. Henkel, N. Franklin, and M. K. Johnson, "Cross-Modal Source Monitoring Confusions Between Perceived and Imagined Events," *Journal of Experimental Psychology: Learning, Memory, and Cognition* 26(2): 321–335 (2000). D. L. Schacter, ed., *Memory Distortion: How Minds, Brains, and Societies Reconstruct the Past* (Cambridge, MA: Harvard University Press, 1995). K. J. Mitchell and M. K. Johnson, "Source Monitoring: Attributing Mental Experiences," in *The Oxford Handbook of Memory*, ed. E. Tulving and F. I. M. Craik (New York: Oxford University Press, 2000), 179–195. H. L. Roediger III and K. B. McDermott, "Creating False Memories: Remembering Words Not Presented in Lists," *Journal of Experimental Psychology: Learning, Memory, and Cognition* 21(4): 803–814 (1985).

<sup>70</sup>Loftus, "Planting Misinformation in the Human Mind." E. F. Loftus and J. E. Pickrell, "The Formation of False Memories," *Psychiatric Annals* 25(12): 720–725 (1995). M. K. Johnson and C. L. Raye, "False Memories and Confabulation," *Trends in Cognitive Sciences* 2(4): 137–145 (1998).

<sup>71</sup>L. J. Kleinsmith and S. Kaplan, "Paired-Associate Learning as a Function of Arousal and Interpolated Interval" *Journal of Experimental Psychology* 65(2): 190–193 (1963). M. W. Eysenck, "Arousal, Learning, and Memory," *Psychological Bulletin* 83(3): 389–404 (1976). F. Heuer and D. Reisberg, "Vivid Memories of Emotional Events: The Accuracy of Remembered Minutiae," *Memory and Cognition* 18(5): 496–450 (1990). T. Sharot and E. A. Phelps, "How Arousal Modulates Memory: Disentangling the Effects of Attention and Retention," *Cognitive, Affective, and Behavioral Neuroscience* 4(3): 294–306 (2004). E. A. Kensinger, R. J. Garoff-Eaton, and D. L. Schacter, "Memory for Specific Visual Details Can Be Enhanced by Negative Arousing Content," *Journal of Memory and Language* 54(1): 99–112 (2006). E. Kensinger, "Remembering Emotional Experiences: The Contribution of Valence and Arousal," *Reviews in the Neurosciences* 15(4): 241–251 (2004).

of high vividness and a sense of reliving<sup>72</sup> (although not necessarily with greater accuracy, as detailed below). The stronger encoding and storage of emotional memories results from the engagement of a specialized system of stress hormones (glucocorticoids) which is triggered by arousing content and has potentiating effects on the neuronal processes underlying memory consolidation and storage.<sup>73</sup> Despite the vividness and the sense of reliving that characterizes retrieval of emotional memories, there are many indications that such memories are just as prone to errors.<sup>74</sup> This may reflect, in part, memory enhancements, of the sort described above, which accompany frequent re-consolidation or re-telling of the story of the emotional experience, and often include details (some true to fact, some not) learned after the experience.<sup>75</sup> Although emotional memories are often inaccurate in detail, one important corollary of their vividness is that they are frequently

<sup>72</sup>G. Wolters and J. J. Goudsmit, "Flashbulb and Event Memory of September 11, 2001: Consistency, Confidence and Age Effect," *Psychological Report* 96: 605–619 (2005). E. A. Kensinger, A. C. Krendl, and S. Corkin, "Memories of an Emotional and a Nonemotional Event: Effects of Aging and Delay Interval," *Experimental Aging Research* 32: 23–45 (2006). U. Neisser and N. Harsch, "Phantom Flashbulbs: False Recollections of Hearing the News about Challenger," in *Affect and Accuracy in Recall: Studies of "Flashbulb" Memories*, ed. E. Winograd and U. Neisser (New York: Cambridge University Press, 1992): 9–31. K. S. LaBar and E. A. Phelps, "Arousal-Mediated Memory Consolidation: Role of the Medial Temporal Lobe in Humans," *Psychological Science* 9(6): 490–493 (1998).

<sup>73</sup>J. L. McGaugh, "Memory: A Century of Consolidation," *Science* 287(5451): 248–251 (2000). J. L. McGaugh and B. Roozendaal, "Role of Adrenal Stress Hormones in Forming Lasting Memories in the Brain," *Current Opinion in Neurobiology* 12(2): 205–210 (2002).

<sup>74</sup>E. A. Kensinger, "Remembering the Details: Effects of Emotion," *Emotion Review* 1(2): 99–113 (2009). T. Sharot, M. R. Delgado, and E. A. Phelps, "How Emotion Enhances the Feeling of Remembering," *Nature Neuroscience* 7(12): 1376–1380 (2004). H. Schmolck, E. A. Buffalo, and L. R. Squire, "Memory Distortions Develop over Time: Recollections of the O. J. Simpson Trial Verdict after 15 And 32 Months," *Psychological Science* 11 (1): 39–45 (2000). S. R. Schmidt, "Autobiographical Memories for the September 11th Attacks: Reconstructive Errors and Emotional Impairment of Memory," *Memory and Cognition* 32(3): 443–454 (2004). T. W. Buchanan and R. Adolphs, "The Role of the Human Amygdala in Emotional Modulation of Long-Term Declarative Memory," in *Emotional Cognition: From Brain to Behavior*, ed. S. Moore and M. Oaksford (Amsterdam: John Benjamins Publishing, 2002), 9–34.

<sup>75</sup>E. Soleti et al., "Does Talking About Emotions Influence Eyewitness Memory? The Role of Emotional vs. Factual Retelling on Memory Accuracy," *Europe's Journal of Psychology* 8(4): 632–640 (2012).

held with high confidence.<sup>76</sup> This breakdown of the relationship between accuracy and confidence can obviously undermine eyewitness accounts.<sup>77</sup>

The enduring plasticity of stored memories is a serious concern for the validity of eyewitness identification. A witness' inevitable interactions with law enforcement and legal counsel, not to mention communications from journalists, family, and friends, have the potential to significantly modify the witness' memory of faces encountered and of other event details at the scene of the crime.<sup>78</sup> Thus, the fidelity of retrieved events—and the accuracy of identification—is likely to be greater when retrieval occurs closer to the time of the witnessed events. The conclusion above has important implications for law enforcement and the legal process and calls into question the validity of in-court identifications and their appropriateness as statements of fact.

### Memory Retrieval

Memory retrieval refers to the process by which stored information is accessed and brought into consciousness, where it can be used to make decisions and guide actions. Retrieval of long-term declarative memories is often triggered through association with an external stimulus (i.e., a retrieval cue).<sup>79</sup> For example, the slight stubble on a lineup participant's face may be enough to elicit retrieval of a suspect's entire face. These same retrieval processes can also be engaged internally—a verbally triggered stream of thought related to a witnessed crime may readily bring to mind visual features of the perpetrator. A corollary of this association-based phenomenon is that memory retrieval is often context dependent; a memory may be more

<sup>76</sup>U. Rimele et al., "Emotion Enhances the Subjective Feeling of Remembering, Despite Lower Accuracy for Contextual Details," *Emotion* 11(3): 553–562 (2011). Kensinger, "Remembering the Detail." Neisser and Harsh, *Affect and Accuracy in Recall*. E. A. Phelps and T. Sharot, "How (and Why) Emotion Enhances the Subjective Sense of Recollection," *Current Directions in Psychological Science* 17(2): 147–152 (2008).

<sup>77</sup>K. A. Houston et al., "The Emotional Eyewitness: The Effects of Emotion on Specific Aspects of Eyewitness Recall and Recognition Performance," *Emotion* 13(1): 118–128 (2013). R. B. Edelstein et al., "Emotion and Eyewitness Memory," in *Memory and Emotion*, ed. D. Reisberg and P. Hertel (New York: Oxford University Press, 2004): 308–346. S-A. Christianson, "Emotional Stress and Eyewitness Memory: A Critical Review," *Psychological Bulletin* 112(2): 284–309 (1992).

<sup>78</sup>M. S. Zaragoza and S. M. Lane, "Sources of Misattribution and Suggestibility of Eyewitness Memory," *Journal of Experimental Psychology: Learning, Memory, and Cognition* 20(4): 934–945 (1994). W. C. Thompson, K. A. Clarke-Stewart, and S. J. Lepore, "What Did the Janitor Do? Suggestive Interviewing and the Accuracy of Children's Accounts," *Law and Human Behaviour* 21(4): 405–426 (1997). D. S. Lindsay and M. K. Johnson, "The Eyewitness Suggestibility Effect and Memory for Source," *Memory and Cognition* 17(3): 349–358 (1989).

<sup>79</sup>E. Tulving and Z. Pearlstone, "Availability Versus Accessibility of Information in Memory for Words," *Journal of Verbal Learning and Verbal Behaviour* 5: 381–391 (1966).

readily retrieved if the observer is in physical surroundings that are the same as or similar to those in which the original experiences took place (because the surroundings provide additional cues to trigger memory retrieval).<sup>80</sup>

Memory retrieval is heavily affected by various sources of noise. Similarities of meaning or appearance between retrieval cues and items in memory can easily lead to retrieval of the wrong item, producing a false memory.<sup>81</sup> This is particularly a problem given the categorical nature of memory.<sup>82</sup> The rugged mustachioed man in the lineup may lead to retrieval of the familiar categorical prototype—the Marlboro Man—rather than the specific person perceived at the scene of the crime, which in turn could interfere with or lead to errors in recognition (i.e., identification). Another type of memory retrieval failure is caused by “intrusion errors,” in which information known to be commonly associated with events of a general type becomes incorporated into the retrieved content of a specific memory (and subsequently incorporated into the reconsolidated memory). For example, because guns are often associated with robbery, an observer may readily and unwittingly incorporate a gun into the retrieved version of his or her memory of a witnessed robbery.

Intrusion errors are one manifestation of a larger retrieval problem in which there is loss of information about the source of a memory. In cases of “source memory failure,” we effectively forget how we know things (forget when and where we learned the content of our memories). What this means practically is that we may attribute later acquisition of information to earlier experiences. An eyewitness might learn from the police or some other source that a potential suspect has a moustache and then attribute

<sup>80</sup>D. Godden and A. Baddeley, “Context Dependent Memory in Two Natural Environments,” *British Journal of Psychology* 66(3): 325–331 (1975). S. M. Smith and E. Vela, “Environmental Context-Dependent Eyewitness Recognition,” *Applied Cognitive Psychology* 6: 125–139 (1992). S. M. Smith and E. Vela, “Environmental Context-Dependent Memory: A Review and Meta-Analysis,” *Psychonomic Bulletin Review* 8 (2): 203–220 (2001). Tulving and Thomson, “Encoding Specificity and Retrieval Processes.”

<sup>81</sup>J. R. Anderson, “A Spreading Activation Theory of Memory,” *Journal of Verbal Learning and Verbal Behavior* 22(3): 261–295 (1983). A. M. Collins and E. F. Loftus, “A Spreading-Activation Theory of Semantic Processing,” *Psychological Review* 82(6):407–428 (1975). H. L. Roediger III, D. A. Balota, and J. M. Watson, “Spreading Activation and Arousal of False Memories,” in *The Nature of Remembering: Essays in Honor of Robert G. Crowder*, ed. H. L. Roediger III, J. Nairne, I. Neath, and A. Surprenant (Washington, DC: American Psychological Association, 2001): 95–115. C. J. Brainerd and V. F. Reyna, *The Science of False Memory* (New York: Oxford University Press, 2005).

<sup>82</sup>Tulving, “Episodic and Semantic Memory.” M. J. Farah and J. L. McClelland, “A Computational Model of Semantic Memory Impairment: Modality Specificity and Emergent Category Specificity,” *Journal of Experimental Psychology: General* 120(4): 339–357 (1991). G. W. Humphreys and E. M. Forde, “Hierarchies, Similarity, and Interactivity in Object Recognition: ‘Category-Specific’ Neuropsychological Deficits,” *Behavioral and Brain Sciences* 24(3): 453–476 (2001).

that knowledge to the witnessed events, which may, in turn, have disastrous consequences for the ability of the eyewitness to accurately report what she or he has seen.

As for the processes of memory encoding and storage, the emotional content of memory also affects memory retrieval. As noted above, memory retrieval is commonly context dependent. A related and well-documented phenomenon that bears on emotional memories is *state dependent memory*, in which retrieval accuracy is best if the individual's cognitive state at the time of retrieval matches cognitive state at the time of encoding.<sup>83</sup> When memories have an emotional component, retrieval may be best when the individual is induced to a corresponding emotional state (*mood dependent memory*),<sup>84</sup> which is accomplished by verbally or physically placing him or her in the same context, and may offer a valuable investigative tool for probing eyewitness accounts.<sup>85</sup>

### Recognition Memory

Recognition memory is a specific type of declarative memory retrieval in which a sensory stimulus (a "cue" stimulus) elicits a memory of the stimulus stored following a prior encounter and often the sequence of events involving the stimulus, the spatial context in which the stimulus was experienced, and the presence of other objects, people, or thoughts that had appeared with the stimulus during the event.<sup>86</sup> Recognition memory decisions are based on the retrieved memory evidence, which can be triggered by the stimulus and can also emerge from an active search of items

<sup>83</sup>D. W. Goodwin et al., "Alcohol and Recall: State-Dependent Effects in Man," *Science* 163(3873): 1358–1360 (1969). Tulving and Thomson, "Encoding Specificity and Retrieval Processes," *Psychological Review* 80(5): 352–373 (1973). E. Girden and E. Culler, "Conditioned Responses in Curarized Striate Muscle in Dogs," *Journal of Comparative Psychology* 23(2): 261–274 (1937). D. A. Overton, "State-Dependent or 'Dissociated' Learning Produced with Pentobarbital," *Journal of Comparative and Physiological Psychology* 57(1): 3–12 (1964).

<sup>84</sup>P. M. Kenealy, "Mood State-Dependent Retrieval: The Effects of Induced Mood on Memory Reconsidered," *The Quarterly Journal of Experimental Psychology Section A: Human Experimental Psychology* 50(2): 290–317 (1997). P. A. Lewis and H. D. Critchley, "Mood-Dependent Memory," *Trends in Cognitive Sciences* 7(10): 431–433 (2003). G. H. Bower, "Mood and Memory," *American Psychologist* 36(2): 129–148 (1981). F. I. M. Craik and R. S. Lockhart, "Levels of Processing: A Framework for Memory Research," *Journal of Verbal Learning and Verbal Behavior* 11(6):671–684 (1972). Kensinger, "Remembering the Detail." K. A. Leight and H. C. Ellis "Emotional Mood States, Strategies, and State-Dependency in Memory," *Journal of Verbal Learning and Verbal Behavior* 20(3): 251–266 (1981).

<sup>85</sup>S. M. Smith and E. Vela, "Environmental Context-Dependent Eyewitness Recognition," *Applied Cognitive Psychology* 6: 125–139 (1992).

<sup>86</sup>G. Mandler, "Recognizing: The Judgment of Previous Occurrence," *Psychological Review* 87(3): 252–271 (1980).

in memory. One factor affecting the strength of the evidence retrieved is the similarity between the cue stimulus and the stimulus or stimuli that was/were previously encountered during the event. An observer engaged in this process holds an implicit criterion for the strength of evidence required to reach a positive decision. In the case of eyewitness identification, this process is routinely elicited by viewing faces in a lineup. When the evidence retrieved is insufficient to reach a decision, this can lead to a cycle of ever-greater scrutiny of the cue stimulus and efforts to recollect additional details of the original event. Ultimately a decision must be made about whether the retrieved evidence is sufficient to declare that the stimulus was previously experienced (or previously experienced in the particular event of interest) or whether the stimulus is novel (or not from the event of interest). If a recognition event occurs—that is, if the memory search triggered by one of the faces in the lineup leads to a strong enough subjective experience that the face is familiar and/or the recollection of sufficient event details—then the witness may declare that they recognize the face as having been previously encountered. Recognition memory decisions can thus be thought of as the final stage in the process of eyewitness identification.

Because it is a form of memory retrieval, recognition memory is susceptible to all of the factors summarized above that are known to interfere with retrieval. Recognition memory differs from other forms of retrieval (such as recalling a phone number or a cake recipe), however, in that a comparison must be made between the retrieved evidence and a decision threshold. That is, as noted above, recognition judgments require a decision criterion, an understanding of which presents a unique set of challenges for eyewitness identification (and recognition memory, generally). In particular, an observer's report of recognition (or, in a lineup setting, of identification) is influenced not simply by the strength or quality of the recalled memory evidence. The report of recognition (identification of a lineup member) is also influenced by the level of evidence that the observer finds acceptable to reach such a decision, i.e., by his or her decision criterion, or bias. An observer who holds a liberal criterion will likely recognize many true targets (i.e., the guilty), but will frequently err by reporting recognition of many false targets (i.e., innocents). Conversely, an observer who holds a conservative criterion will avoid the problem of erroneous recognition (identification), but will fail to identify some true targets. Estimating (or controlling) the observer's decision criterion is thus a critical step in efforts to judge the validity of an identification (see also Chapter 5).

Recognition memory for faces differs greatly between familiar and unfamiliar faces.<sup>87</sup> Because we often identify familiar individuals with ease,

<sup>87</sup>P. J. B. Hancock, V. Bruce, and A. M. Burton, "Recognition of Unfamiliar Faces," *Trends in Cognitive Sciences* 4(9): 330–337 (2000).

we tend to think we are generally very good at face recognition. However, we are not as good with unfamiliar faces.<sup>88</sup> All of the sources of noise that influence perception and memory contribute to these difficulties, and they are exacerbated by the attempts by criminals to conceal their identity (even a change in hairstyle and clothing can have a major effect on recognition).

The ability to recognize unfamiliar faces differs widely across individuals. At one extreme are those people, referred to as “super recognizers,” who rarely forget a face.<sup>89</sup> At the other end of the spectrum are “face-blind people (prosopagnosics),” who have great difficulty recognizing even highly familiar faces.<sup>90</sup> Current estimates of the fraction of the general population afflicted by prosopagnosia are as high as ~2 percent.<sup>91</sup> The ability of an eyewitness to identify a suspect may thus differ greatly from individual to individual simply as a consequence of general variations in face recognition ability.

## CONCLUSION

The shortcomings of eyewitness identification present a societal problem that has profound implications for our systems of law and justice. Ultimately, a solution to this problem must be informed by a thorough understanding of human vision and memory. The processes of vision and memory, which are fundamental to human experience, have been frequent targets of scientific investigation since the 19th century. The past few decades have seen an explosion of additional research that has led to important insights into how vision and memory work, what we see and remember best, and what causes these processes to fail. The committee has reviewed much of this research, as it pertains to eyewitness identification, and has identified restrictions on what can be seen under specific environmental and behavioral conditions (e.g., as poor illumination, limited viewing duration, viewing angle), factors that impede the ability to attend to critically informative features of a visual scene (e.g., the deleterious effect of an attention-grabbing element, such as a weapon, on the ability to correctly perceive the features of the assailant’s face), distortions of perceptual experience derived from expectations, and ways in which emotion and stress enhance or suppress specific perceptual experiences. Memory is often far

<sup>88</sup>V. Bruce, “Changing Faces: Visual and Non-Visual Coding Processes in Face Recognition,” *British Journal of Psychology* 73: 105–116 (1982).

<sup>89</sup>R. Russell, B. Duchaine, and K. Nakayama, “Super-Recognisers: People with Extraordinary Face Recognition Ability,” *Psychonomic Bulletin and Review* 16(2): 252–272 (2009).

<sup>90</sup>T. Susilo and B. Duchaine, “Advances in Developmental Prosopagnosia Research,” *Current Opinion in Neurobiology* 2(3):423–429 (2013).

<sup>91</sup>I. Kennerknecht et al., “First Report of Prevalence of Nonsyndromic Hereditary Prosopagnosia (HPA),” *American Journal of Medical Genetics Part A* 140(15): 1617–1622 (2006).



from a faithful record of what was perceived through the sense of sight: its contents can be forgotten or contaminated at multiple stages, it can be biased by the very practices designed to elicit recall, and it is heavily swayed by emotional states associated with witnessed events and their recall. From this analysis, the committee must conclude that there are insurmountable limits on vision and memory imposed by our biological nature and the properties of the world we inhabit. With this knowledge, it is possible to more fully appreciate the value and risks associated with eyewitness reports and accordingly advise those who collect, handle, defend, consider, and adjudicate such reports.

## Applied Eyewitness Identification Research

The committee was tasked with (1) critically assessing the existing body of scientific research on eyewitness identification; (2) identifying gaps in the literature; and (3) suggesting other research that would further the understanding of eyewitness identification and improve law enforcement and courtroom practice. Eyewitness identification research resides in both the scientific literature and the law and justice-related scholarly literature. Although experiential, anecdotal, and some administrative records from law enforcement and the judiciary could contribute to a better understanding of eyewitness identification, the committee did not comprehensively review this more qualitative material. The committee did, however, examine select examples of law enforcement policies and influential judicial rulings.

In late 2013, the committee compiled an extensive and comprehensive bibliography from the following nine electronic databases, with the search limited to publications over the past two decades (i.e., since 1993): Academic Search Premier (EBSCO), Embase (Elsevier), MEDLINE (National Library of Medicine), NCJRS Abstracts Database (U.S. Department of Justice), PsycINFO (American Psychological Association), PubMed (National Institutes of Health), Scopus (Elsevier), Web of Science (Thomson Reuters), and LexisNexis.<sup>1</sup> Papers were drawn from such fields as social science, cognitive science, behavioral science, neuroscience, criminology, and law

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<sup>1</sup>The law review literature was represented by the citations from the LexisNexis search. While all these materials were not reviewed in detail, several of the documents informed Chapter 3 of this report (The Legal Framework for Assessment of Eyewitness Identification).

using Boolean-logic-based search strategies designed to identify empirical research reports, review articles, systematic reviews, meta-analyses, and articles in law reviews and legal journals.

The committee concentrated its review on the subset of the bibliography deemed most important to its task, focusing more on the scientific literature than on the law review literature. These materials included meta-analyses and systematic reviews and primary research in neuroscience, statistics, and eyewitness identification. This report also was informed by several early foundational papers and written comments from, and presentations to, the committee by representatives from science, law enforcement, state courts and government, private organizations, and other interested parties. The comments and presentations revealed additional highly relevant new findings, some recently published or in press and others in submission. The agenda for each committee meeting is available in Appendix B. All materials submitted to the committee are retained in the Academies' public access file and are available upon request.

### COMMITTEE ASSESSMENT

Many factors affect eyewitness accuracy. Some factors are related to protocols within the law enforcement and legal systems, while others are related to characteristics associated with the crime scene, perpetrator, and witness.

System variables are those that the criminal justice system can influence through the enforcement of standards and through education and training of law enforcement personnel in the use of best practices<sup>2</sup> and procedures (e.g., by specifying the content and nature of instructions given to witnesses prior to a lineup identification). Estimator variables include factors operating either at the time of the criminal event (relating to visual experience or memory encoding) or during the retention interval (the time between witnessing an event and the identification process). Specific examples include the eyewitness' level of stress or trauma at the time of the incident, the light level and nature of the visual conditions that affect visibility and clarity of a perpetrator's features, similarity of age and race of the witness and perpetrator, presence or absence of a weapon during the incident, and the physical distance separating the witness from the perpetrator.

A scientific consensus about the effects of some factors has emerged, but no such consensus exists for many other factors. One method of assessing scientific consensus is by surveys of experts. A 2001 survey collected

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<sup>2</sup>As noted in Chapter 1, for the purposes of this report, the committee characterizes *best practice* as the adoption of standardized procedures based on scientific principles. The committee does not make any endorsement of practices designated as best practices by other bodies.

responses from 64 psychologists about their courtroom experiences and their opinions on 30 eyewitness-related phenomena to determine the “general acceptance” of these phenomena within the eyewitness identification research community.<sup>3</sup> General acceptance is relevant to whether scientific testimony is admissible as evidence in court (see Chapter 3). The survey revealed substantial agreement about which findings these experts felt were sufficiently reliable to present in court.<sup>4</sup>

The committee examined the scientific literature on eyewitness identification, focusing first on quantitative syntheses, largely systematic reviews and meta-analyses, which were identified in a comprehensive search of electronic databases designed to locate research on both estimator and system variables. In addition, primary research studies were identified in this database search, many of which were also highlighted in the relevant systematic reviews and meta-analyses. Finally, some researchers forwarded manuscripts to the committee that have been submitted for peer-review or are in press. In their examination of this body of literature, the committee examined the quality of the identified research and, where possible, worked to derive summary empirical generalizations related to variables of interest.

### Quantitative Syntheses of Eyewitness Identification Research

The committee first evaluated the consistency of research findings across studies for system and estimator variables by studying published quantitative reviews of empirical research. Systematic reviews, which collect and appraise available research on specific hypotheses or research questions, are efforts to synthesize the effects of variables across studies. Within systematic reviews, meta-analysis is often, but not always, used to compute the effects of variables as well as to identify factors that explain differences across studies. When assumptions about consistency of data collected across studies are met, meta-analysis provides a quantitative summary of empirical findings by statistically averaging effect sizes across individual studies, thereby increasing the precision of the effect size estimate as well

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<sup>3</sup>S. M. Kassin et al., “On the ‘General Acceptance’ of Eyewitness Testimony Research: A New Survey of the Experts,” *American Psychologist* 56(5): 405–416 (2001).

<sup>4</sup>Kassin et al. also compared the reliability assessments of the 2001 survey to assessments from a similar 1989 survey and noted that, for the 17 propositions retested, there was a remarkable degree of consistency: “most experts saw as sufficiently reliable expert testimony on the wording of questions,” lineup instructions, attitudes and expectations, the accuracy-confidence correlation, the forgetting curve, exposure time, and unconscious transference. “There was less, if any, consensus on the effects of color perception in monochromatic light,” “observer training, high levels of stress, the accuracy of hypnotically refreshed testimony, and event violence.” The authors observed that two phenomena were seen as significantly more reliable than had been the case when the initial survey was conducted: weapon focus effect and hypnotic suggestibility effects. See p. 410.

as the statistical power to detect effects. Done well, systematic reviews with or without meta-analysis provide evidence for practice and policy for such fields as health care,<sup>5</sup> crime and justice, social welfare, and education.<sup>6</sup> The utility of systematic reviews for informing practice and policy is predicated on the included studies being transparently reported, conducted so as to minimize risk of bias, and representing as complete a sample as possible of research conducted on the central question, including both published and unpublished studies. In turn, systematic reviews should specify inclusion criteria and data extraction procedures a priori, use independent and duplicate procedures for study selection and data extraction, rigorously evaluate potential biases in included studies, and interpret results of meta-analyses in terms that are useful to decision-makers. Further, meta-analyses should not be conducted outside the context of systematic reviews. In short, both systematic reviews and the studies they include need to be transparent and reproducible in order to best inform practice and policy decisions about eyewitness identification.

The committee examined quantitative reviews that covered decades of research on both estimator variables (exposure duration,<sup>7</sup> retention interval,<sup>8</sup> stress,<sup>9</sup> weapon focus,<sup>10</sup> own-race bias,<sup>11</sup> and own-age bias<sup>12</sup>) and system variables (identification test medium, i.e., live lineup versus photo array,<sup>13</sup>

<sup>5</sup>See the Cochrane Collaboration, available at: <http://www.cochrane.org>.

<sup>6</sup>See the Campbell Collaboration, available at: <http://www.campbellcollaboration.org>.

<sup>7</sup>B. H. Bornstein et al., "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* 18(5): 473–490 (2012).

<sup>8</sup>K. A. Deffenbacher et al., "Forgetting the Once-Seen Face: Estimating the Strength of an Eyewitness's Memory Representation," *Journal of Experimental Psychology: Applied* 14(2): 139–150 (2008).

<sup>9</sup>K. A. Deffenbacher et al., "A Meta-Analytic Review of the Effects of High Stress on Eyewitness Memory," *Law and Human Behavior* 28(6): 687–706 (2004).

<sup>10</sup>J. M. Fawcett et al., "Of Guns and Geese: A Meta-Analytic Review of the 'Weapon Focus' Literature," *Psychology, Crime and Law* 19(1): 35–66 (2013).

<sup>11</sup>C. A. Meissner and J. C. Brigham, "Thirty Years of Investigating the Own-Race Bias in Memory for Faces—A Meta-Analytic Review," *Psychology, Public Policy, and Law* 7(1): 3–35 (2001).

<sup>12</sup>M. G. Rhodes and J. S. Anastasi, "The Own-Age Bias in Face Recognition: A Meta-Analytic and Theoretical Review," *Psychological Bulletin* 138(1): 146–174 (2012).

<sup>13</sup>B. L. Cutler et al., "Conceptual, Practical, and Empirical Issues Associated with Eyewitness Identification Test Media," in *Adult Eyewitness Testimony: Current Trends and Developments*, ed. D. F. Ross (New York: Press Syndicate of the University of Cambridge, 1994), 163–181.

biased and unbiased lineup instructions,<sup>14</sup> post-identification feedback,<sup>15</sup> simultaneous versus sequential lineup presentation,<sup>16</sup> target absent versus target present lineups,<sup>17</sup> foil similarity,<sup>18</sup> blinding,<sup>19</sup> showup versus lineup,<sup>20</sup> prior mug shot exposure,<sup>21</sup> verbal description and identification,<sup>22</sup> and the cognitive interview<sup>23</sup>). Many of these quantitative reviews were published recently, with more than one-third published since 2010. However, none of the reviews met all current standards for conducting and reporting sys-

<sup>14</sup>S. E. Clark, "A Re-Examination of the Effects of Biased Lineup Instructions in Eyewitness Identification," *Law and Human Behavior* 29(4): 395–424 (2005). S. E. Clark, "Costs and Benefits of Eyewitness Identification Reform: Psychological Science and Public Policy," *Perspectives on Psychological Science* 7(3): 238–259 (2012). N. K. Steblay, "Social Influence in Eyewitness Recall: A Meta-Analytic Review of Lineup Instruction Effects," *Law and Human Behavior* 21(3): 283–297 (1997). N. K. Steblay, G. L. Wells, and A. B. Douglass, "The Eyewitness Post Identification Feedback Effect 15 Years Later: Theoretical and Policy Implications," *Psychology, Public Policy, and Law* 20(1): 1–18 (2014).

<sup>15</sup>S. E. Clark and R. D. Godfrey, "Eyewitness Identification Evidence and Innocence Risk," *Psychonomic Bulletin and Review* 16(1): 22–42 (2009). A. B. Douglass and N. K. Steblay, "Memory Distortion in Eyewitnesses: A Meta-Analysis of the Post-Identification Feedback Effect," *Applied Cognitive Psychology* 20(7): 859–869 (2006).

<sup>16</sup>Clark, "Costs and Benefits of Eyewitness Identification Reform." S. E. Clark, R. T. Howell, and S. L. Davey, "Regularities in Eyewitness Identification," *Law and Human Behavior* 32(3): 187–218 (2008). N. K. Steblay et al., "Eyewitness Accuracy Rates In Sequential and Simultaneous Lineup Presentations: A Meta-Analytic Comparison," *Law and Human Behavior* 25(5): 459–473 (2001). N. K. Steblay et al., "Seventy-two Tests of the Sequential Lineup Superiority Effect: A Meta-Analysis and Policy Discussion," *Psychology, Public Policy, and Law* 17(1): 99–139 (2011).

<sup>17</sup>Clark, "A Re-Examination of the Effects of Biased Lineup Instructions in Eyewitness Identification." Clark, Howell, and Davey, "Regularities in Eyewitness Identification." Clark and Godfrey, "Eyewitness Identification Evidence and Innocence Risk."

<sup>18</sup>Clark, "Costs and Benefits of Eyewitness Identification Reform." Clark and Godfrey, "Eyewitness Identification Evidence and Innocence Risk." Clark, Howell, and Davey, "Regularities in Eyewitness Identification." R. J. Fitzgerald et al., "The Effect of Suspect-Filler Similarity on Eyewitness Identification Decisions: A Meta-Analysis," *Psychology, Public Policy, and Law* 19(2): 151–164 (2013). S. L. Sporer et al., "Choosing, Confidence, and Accuracy: A Meta-Analysis of the Confidence-Accuracy Relation in Eyewitness Identification Studies," *Psychological Bulletin* 118(3): 315–327 (1995).

<sup>19</sup>Clark, "Costs and Benefits of Eyewitness Identification Reform."

<sup>20</sup>Clark, "Costs and Benefits of Eyewitness Identification Reform." N. K. Steblay et al., "Eyewitness Accuracy Rates in Police Showup and Lineup Presentations: A Meta-Analytic Comparison," *Law and Human Behavior* 27(5): 523–540 (2003).

<sup>21</sup>K. A. Deffenbacher et al., "Mugshot Exposure Effects: Retroactive Interference, Mugshot Commitment, Source Confusion, and Unconscious Transference," *Law and Human Behavior* 30(3): 287–307 (2006).

<sup>22</sup>C. A. Meissner, S. L. Sporer, and K. J. Susa, "A Theoretical Review and Meta-Analysis of the Description-Identification Relationship in Memory for Faces," *European Journal of Cognitive Psychology* 20(3): 414–455 (2008).

<sup>23</sup>A. Memon et al., "The Cognitive Interview: A Meta-Analytic Review and Study Space Analysis of the Past 25 Years," *Psychology, Public Policy, and Law* 16(4): 340–372 (2010).

tematic reviews,<sup>24</sup> and few met even a majority of these standards, making assessment of the credibility of their findings problematic.

After examining the reviews, the committee concluded that the findings may be subject to unintended biases and that the conclusions are less credible than was hoped. In many cases, the data from the studies cited were not readily available or were not clearly presented. Nevertheless, these reviews were helpful in highlighting some of the issues associated with specific research questions and in identifying primary studies that might be both credible and important.

### RESEARCH STUDIES ON SYSTEM VARIABLES

After its assessment of the systematic reviews and meta-analytic studies, the committee's review focused on the most-studied system variables. Key system variables, such as lineup procedures (e.g., simultaneous vs. sequential lineups, blinded vs. non-blinded lineup administration) and the collection/use of witness confidence statements, can have a marked influence over the validity of eyewitness identifications. In the following section, one of the most important practical issues raised by this influence is addressed: What is the best way to evaluate the effects of system variables on the diagnostic accuracy of eyewitness reports, and how might we use the results of such an evaluation to optimize the states of key system variables and thus maximize performance of an eyewitness? This question is, in principle, relevant to all system variables, but we address it first in the timely and controversial context of simultaneous versus sequential lineup presentations and in the role of eyewitness confidence judgments in evaluation of identification performance. This examination of lineup procedures and confidence reports is followed by a brief discussion of the effects on eyewitness performance of another important system variable: the extent and content of communications between the witness and the larger community (law enforcement, legal defense, the press, family and friends, etc.).

### Evaluating Eyewitness Performance

Perhaps the most important empirical question that can be asked about eyewitness identification is: How well do witnesses perform as a function of different system and estimator variables? For example, do factors such as the structure of a lineup, stress, or weapon focus affect the ability of

<sup>24</sup>See, e.g., Institute of Medicine, *Finding What Works in Health Care: Standards for Systematic Reviews* (Washington, DC: The National Academies Press, 2011) and B. J. Shea et al., *Development of AMSTAR: A Measurement Tool to Assess the Methodological Quality of Systematic Reviews*, BMC Medical Research Methodology 2007, 7:10 doi:10.1186/1471-2288-7-10.

a witness to provide reliable information? If so, what practices will yield the best performance? The issues are multifaceted, and the answers likely depend upon many factors. Given the complexity of these issues, the experimental literature to date has focused largely on one of the more tractable problems: How do different lineup identification procedures affect witness identifications? The committee will use this focus (and its eminent practical relevance) to illustrate how one might go about evaluating eyewitness performance generally.

Most lineup identification procedures take one of two forms: *simultaneous* or *sequential*. In a simultaneous procedure, the witness views all individuals in the lineup at the same time and either identifies one (or more) as the perpetrator or reports that the person she or he saw at the crime scene was not in the lineup. In a sequential procedure, the witness views individuals one at a time and reports whether or not each one is the person from the crime scene. Rigorous evaluation of eyewitness identification performance as a function of these two procedures requires a formal understanding of the task that the witness confronts, and it requires criteria for assessing the outcome.

The task of a witness viewing a lineup is an example of what is known as a binary classification problem.<sup>25</sup> Each eyewitness faces two possible (binary) states associated with each person in the lineup (guilt or innocence), and the witness must assign each person to one of two classes (guilty or innocent). For each decision, the witness can be correct or incorrect, yielding four possible outcomes: a correct classification as guilty (“hit”), an incorrect classification as guilty (“false alarm”), a correct classification as innocent (“correct rejection”), and an incorrect classification as innocent (“miss”). These outcomes are commonly presented in a contingency table<sup>26</sup> (see Figure 5-1), and the frequencies in each part of that table are the raw data used to evaluate performance on a binary classification task, such as eyewitness identification.<sup>27</sup>

There are many different performance measures that can be derived from data of this sort—indeed, the fields of statistical classification and machine learning are replete with tools for the evaluation of binary classifiers.<sup>28</sup>

<sup>25</sup>The binary classifier in this context is defined as the witness operating under a specific set of conditions, such as lineup procedures.

<sup>26</sup>Also termed “confusion matrix.”

<sup>27</sup>The prevalence or “base-rate”—the fraction of individuals in each category (guilty or innocent, in the eyewitness problem) in the population is also a factor that may come into play when evaluating binary classification performance.

<sup>28</sup>See, e.g., T. Hastie, R. Tibshirani, and J. H. Friedman, *The Elements of Statistical Learning: Data Mining, Inference, and Prediction* (New York: Springer, 2009) and A. Smola and S. V. N. Vishwanathan, *Introduction to Machine Learning* (Cambridge: Cambridge University Press, 2008).



		Witness Classification of Lineup Participant	
		guilty	innocent
True Status of Lineup Participant	guilty	"Hit" (true positive)	"Miss" (false negative)
	innocent	"False Alarm" (false positive)	"Correct Rejection" (true negative)

FIGURE 5-1 Contingency table for possible eyewitness identification outcomes.  
SOURCE: Courtesy of Thomas D. Albright.

The preferred measure will depend to a large degree upon the criteria one adopts for performance evaluation.

Perhaps the simplest measure of binary classification performance is the ratio of hit rates (HR) to false alarm rates (FAR), i.e., HR/FAR.<sup>29</sup> The magnitude of this measure, which is known in the eyewitness identification literature as the "diagnosticity ratio," is proportional to the likelihood that a classification is correct, i.e., that the person identified as guilty is actually guilty.<sup>30</sup> The diagnosticity ratio is appealing if the most critical criterion is avoiding erroneous identifications.

<sup>29</sup>The "rate" associated with each cell of the contingency table is computed as the number of counts within that cell (e.g., number of people correctly classified as guilty) divided by the number of instances that are truly in that class (e.g., total number of guilty people being classified). Thus, hit rates (HR) = number of hits / (number of hits+number of misses), and false alarm rate (FAR) = number of false alarms / (number of false alarms+number of correct rejections).

<sup>30</sup>The "diagnosticity ratio" is also known in other disciplines by other names; e.g., "positive likelihood ratio" or "LR+ = Likelihood Ratio of a Positive Call;" see Peter Lee, *Bayesian Statistics: An Introduction* (Chichester: Wiley, 2012), Sec 4.1.

Not surprisingly, the diagnosticity ratio was adopted in pioneering efforts to identify lineup conditions that would yield better witness identification performance.<sup>31</sup> Most laboratory-based studies and meta-analyses of the effects of lineup procedures on eyewitness identification performance show that, with standard lineup instructions informing the witness that the perpetrator may or may not be present, the sequential procedure produces a higher diagnosticity ratio.<sup>32</sup> That is, when considering only those cases in which a witness actually selects someone from a lineup, the ratio of correct to false identifications is commonly higher with the sequential than with the simultaneous procedure.<sup>33</sup>

A higher diagnosticity ratio could result from a higher hit rate, a lower false alarm rate, or some combination of the two. Some early reports suggested that sequential procedures (relative to simultaneous) lead to fewer false alarms without changing the frequency of hits, which would result in a higher diagnosticity ratio.<sup>34</sup> More recent laboratory-based studies and meta-analyses typically show that sequential procedures (relative to simultaneous) are associated with a somewhat reduced hit rate accompanied by a larger reduction in the false alarm rate, thereby resulting in diagnosticity ratios higher than those yielded by simultaneous procedures.<sup>35</sup> In other

<sup>31</sup>R. C. L. Lindsay and G. L. Wells, "Improving Eyewitness Identifications from Lineups: Simultaneous Versus Sequential Lineup Presentation," *Journal of Applied Psychology* 70(3), 556–564 (1985).

<sup>32</sup>Stebly et al. "Eyewitness Accuracy Rates in Sequential and Simultaneous Lineup Presentations." Steblay, et al., "Seventy-two Tests of the Sequential Lineup Superiority Effect." S. D. Gronlund et al., "Robustness of the Sequential Lineup Advantage," *Journal of Experimental Psychology: Applied* 15(2): 140–152 (2009). S. D. Gronlund, J. T. Wixted, and L. Mickes, "Evaluating Eyewitness Identification Procedures Using ROC Analysis," *Current Directions in Psychological Science* 23(1): 3–10 (2014).

<sup>33</sup>But see C. A. Carlson, S. D. Gronlund, and S. E. Clark, "Lineup Composition, Suspect Position, and the Sequential Lineup Advantage," *Journal of Experimental Psychology-Applied* 14(2): 118–128 (2008), for a counterexample. Also, Clark, Moreland, and Gronlund have demonstrated that the accuracy advantage of sequential lineups as measured by diagnosticity ratios has decreased over time since the original report. Reanalysis of diagnosticity data for sequential studies showed slight, non-significant decreases in correct identification effects and increases in false identification effects, which together combine to produce a significant decrease in the advantage of sequential over simultaneous lineup methods. See S. E. Clark, M. B. Moreland, and S. D. Gronlund, "Evolution of the Empirical and Theoretical Foundations of Eyewitness Identification Reform," *Psychonomic Bulletin and Review* 21(2): 251–267 (2014).

<sup>34</sup>R. C. L. Lindsay, "Applying Applied Research: Selling the Sequential Lineup," *Applied Cognitive Psychology* 13(3): 219–225 (1999). G. L. Wells, S. M. Rydell, and E. P. Seelau, "The Selection of Distractors for Eyewitness Lineups," *Journal of Applied Psychology* 78(5): 835–844 (1993).

<sup>35</sup>A recent field-based study comparing sequential to simultaneous procedures in a limited number of jurisdictions computed the diagnosticity ratio using filler identifications as the false alarm rate (because the innocence or guilt of the suspect is unknown in such situations). See G. L. Wells, N. K. Steblay, J. E. Dysart, "Double-Blind Photo-Lineups Using Actual

words, when using a single diagnosticity ratio as a measure of eyewitness performance, the sequential procedure (relative to simultaneous) comes closer to satisfying the popular criterion that those identified as guilty are actually guilty. In light of these findings, many policy makers have advocated sequential procedures, and those procedures have been adopted by law enforcement in many jurisdictions.

While policy decisions and practice have been influenced by the aforementioned studies, there are other criteria worthy of consideration when evaluating eyewitness performance. One alternative is revealed by asking *why* the diagnosticity ratio changes across lineup conditions. This question can be addressed given a plausible model of the mechanisms underlying human recognition memory. Most models of recognition memory are based on the idea that a cue (e.g., a face in a lineup) results in the retrieval of information stored in memory (see Chapter 4). When the retrieved information provides enough evidence to satisfy the observer, they make an identification—that is, they decide that the stimulus is “recognized.” Explicit in this model are two important parameters: the observer’s memory sensitivity (that is, the “discriminability” between the strength of memory evidence elicited by a previously encountered stimulus and that elicited by novel stimuli), and the degree of evidence that the observer requires to make an identification (“response criterion” or “bias”) (see Box 5-1).

The first of these two parameters—discriminability—is important for evaluating eyewitness performance. It tells whether a difference in performance under different task conditions reflects a true improvement in memory-based discrimination, i.e., *an improvement in the strength of the observer’s retrieved memory evidence of the perpetrator*.

The fact that these two measures (the likelihood that an identified person is guilty vs. discriminability) do not assess the same thing is counterintuitive—a fact that has generated controversy in the field of eyewitness

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Eyewitnesses: An Experimental Test of a Sequential versus Simultaneous Lineup Procedure,” *Law and Human Behavior*, 15 June 2014, doi: 10.1037/lhb0000096. When computed in this manner, the data revealed a modest diagnosticity ratio advantage for the sequential procedure. However, Amendola and Wixted re-analyzed a subset of the data for which proxy measures of ground truth were available [K. Amendola and J. T. Wixted, “Comparing the Diagnostic Accuracy of Suspect Identifications Made by Actual Eyewitnesses from Simultaneous and Sequential Lineups,” accepted by *Journal of Experimental Criminology* (2014)]. Their analyses suggested that identification of innocent suspects is less likely and identification of guilty suspects is more likely when using the simultaneous procedures. While future field studies are needed, these latter findings raise the possibility that diagnosticity is higher for the simultaneous procedure. See also Clark, Moreland, and Gronlund, who report that published diagnosticity ratios have changed over time, reflecting a significant decrease in the advantage of sequential over simultaneous lineup procedures. (Clark, Moreland, and Gronlund, “Evolution of the Empirical and Theoretical Foundations of Eyewitness Identification Reform.”)

**BOX 5-1****The Influences of Discriminability and Response Bias on Human Binary Classification Decisions**

All human decisions about the classification of objects based on memory—including a witness' classifications of guilt or innocence for faces in a lineup, an individual's decision as to whether a piece of luggage is his or her own, a botanist's recognition of a specific type of fern, a radiologist's detection of a tumor in a mammogram, or the determination of the sex of a newly-hatched chicken—can be distilled down to the influence of two factors that are rooted in causal models of recognition memory: the degree to which the relevant objects are discriminable by the decider (the decider's *sensitivity* to the difference between them), and the decider's criterion for making a decision (response bias, or the decider's degree of *specificity* in making choices).<sup>a</sup> There are, of course, many other variables that will affect the outcome (e.g., levels of stress, attentional focus, potential rewards or expectations), but all of these are believed to exert their influence over memory-based classification decisions by affecting discriminability and/or response bias.

To illustrate the distinction between discrimination and response bias as applied to a real-world decision problem, consider how an audiologist conducts a hearing test. In a hearing test, an individual might be asked to detect sounds along a continuum of loudness and to indicate when a sound is present. The audiologist wants to know how well someone can discriminate presence versus absence of a sound, but that assessment is complicated by the criterion people use when deciding to say that they heard a sound (response bias). Some people are hesitant to respond positively, saying "I hear it" only when they are absolutely certain ("conservative" responders). Others are more willing to respond positively, saying "I hear it" with less information and greater uncertainty ("liberal" responders). Those with a conservative bias are less likely to report hearing a sound in general, so they will have both fewer correct detections ("hits") and fewer overt mistakes ("false alarms"). By contrast, those with a liberal bias are more likely to say that they heard a sound, so they will have more hits but also more false alarms. Importantly, this can occur even if the conservative and liberal responders do not differ in their ability to discriminate the presence or absence of sound.

<sup>a</sup>See, e.g., W. P. Banks, "Signal Detection Theory and Human Memory," *Psychological Bulletin* 74(2): 81–99 (1970); J. P. Egan, *Recognition Memory and the Operating Characteristic* (Bloomington: Indiana University Hearing and Communication Laboratory, 1958); D. M. Green and J. A. Swets, *Signal Detection Theory and Psychophysics* (New York: Wiley, 1966).

identification research.<sup>36</sup> Intuitively, if sequential lineups yield a higher likelihood that an identified person is guilty (as quantified by a higher diagnosticity ratio), then it seems as if that procedure yields objectively better performance. The problem with this intuition is that it fails to take into account the second of the two parameters of recognition memory models—the response bias or degree of evidence that the observer finds acceptable to make an identification. This parameter, which is distinct from discriminability, reflects the witness' tendency to pick or not to pick someone from the lineup. If a witness sets a high bar for acceptable evidence—a conservative bias—then he or she will be unlikely to select anyone from the lineup (low pick frequency), meaning that they will have more misses (will be more likely to fail to select the suspect because they are less likely to make a selection at all) and fewer false alarms.

Conversely, if a witness sets a low bar for acceptable evidence—a liberal bias—then she or he will be more likely to make a selection from the lineup (a high pick frequency), meaning he or she will have more hits and will make more false identifications. Differences in pick frequency can, and generally do, lead to differences in the ratio of hit rates to false alarm rates; all else being equal, the diagnosticity ratio will be higher for a conservative bias than for a liberal bias.<sup>37</sup> In other words, simply by inducing a witness to adopt a more conservative bias, it is possible to increase the likelihood that an identified person is actually guilty. Importantly, this may be true even if the procedure yields no better, or potentially worse, discriminability.<sup>38</sup>

Despite its merits, a single diagnosticity ratio thus conflates the influences of discriminability and response bias on binary classification, which muddies the determination of which procedure, if any, yields objectively better discriminability in eyewitness performance. To overcome this problem, some investigators have recently adopted a technique from signal detection

<sup>36</sup> See, e.g., J. T. Wixted and L. Mickes, "The Field of Eyewitness Memory Should Abandon Probative Value and Embrace Receiver Operating Characteristic Analysis," *Perspectives on Psychological Science* 7(3): 275-278 (2012); Clark, "Costs and Benefits of Eyewitness Identification Reform"; G. L. Wells, "Eyewitness Identification Probative Value, Criterion Shifts, and Policy Regarding the Sequential Lineup," *Current Directions in Psychological Science* 23(1): 11-16 (2014); and Steblay, et al. "Seventy-two Tests of the Sequential Lineup Superiority Effect."

<sup>37</sup>The sole exception to this rule is the case in which classifications are made at chance level of performance, i.e., when the observer exhibits no ability to discriminate.

<sup>38</sup>L. Mickes, H. D. Flowe, and J. T. Wixted, "Receiver Operating Characteristic Analysis of Eyewitness Memory: Comparing the Diagnostic Accuracy of Simultaneous vs. Sequential Lineups," *Journal of Experimental Psychology: Applied* 18 (4): 361-376 (2012). C. A. Meissner et al., "Eyewitness Decisions In Simultaneous and Sequential Lineups: A Dual Process Signal Detection Theory Analysis," *Memory and Cognition* 33(5): 783-792 (2005). M. A. Palmer and N. Brewer, "Sequential Lineup Presentation Promotes Less-Biased Criterion Setting but Does Not Improve Discriminability," *Law and Human Behavior* 36(3): 247-255 (2012).

theory, which distinguishes the relative influences of discriminability and bias on binary classification.<sup>39</sup> This technique involves analysis of Receiver Operating Characteristics (see Box 5-2). ROC analysis has been used extensively in multiple contexts of human decision-making, notably in basic research on visual perception and memory and applied studies of medical diagnostic procedures.<sup>40</sup> In essence, ROC analysis examines diagnosticity ratios integrated over different response biases. This approach to eyewitness research has been promoted based on the claim that it can enable lineup procedures to be evaluated by their effect on discrimination, separate from response bias, and—importantly—because the dimensions of analysis (discriminability and response bias) correspond to the mechanistic parameters of causal models of human recognition memory.

Use of ROC analysis to evaluate eyewitness performance requires calculating the diagnosticity ratio for different response bias conditions (see Box 5-2). Using expressed confidence level (ECL) as a proxy for response bias (see below), a small set of recent studies using ROC analysis has reported that discriminability (area under the ROC curve) for simultaneous lineups is as high, or higher, than that for sequential lineups.<sup>41</sup> In other words, when eyewitness identification performance is evaluated based on a criterion of bias-free discriminability, the results differ from those based on a single diagnosticity ratio, and they do so because the latter fails to account for response bias.

Looking broadly at the many empirical studies that have used a single diagnosticity ratio to evaluate eyewitness performance, as well as the more recent findings using ROC analysis, it appears that the practical advantage of one lineup procedure over another depends to a large degree upon the performance criterion that one adopts. From the perspective of many, the ideal lineup procedure would elicit a conservative bias (thus reducing false identifications) and high discriminability (that is, optimizing memory sensitivity). If there exists no discriminability advantage for one lineup

<sup>39</sup>D. M. Green and J. A. Swets, *Signal Detection Theory and Psychophysics* (New York: Wiley, 1966); D. McNicol, *A Primer of Signal Detection Theory* (London: George Allen and Unwin, 1972).

<sup>40</sup>J. A. Swets, "ROC Analysis Applied to the Evaluation of Medical Imaging Techniques," *Investigative Radiology* 14(2): 109–121 (1979).

<sup>41</sup>Mickes, Flowe, and Wixted, "Receiver Operating Characteristic Analysis of Eyewitness Memory." C. A. Carlson and M. A. Carlson, "An Evaluation of Lineup Presentation, Weapon Presence, and a Distinctive Feature Using ROC Analysis," *Journal of Applied Research in Memory and Cognition* 3(2): 45–53 (2014). D. G. Dobolyi and C. S. Dodson, "Eyewitness Confidence in Simultaneous and Sequential Lineups: A Criterion Shift Account for Sequential Mistaken Identification Overconfidence," *Journal of Experimental Psychology: Applied* 19(4): 345–357 (2013). S. D. Gronlund et al., "Showups Versus Lineups: An Evaluation Using ROC Analysis," *Journal of Applied Research in Memory and Cognition* 1(4): 221–228 (2012).

### BOX 5-2 Analysis of Receiver Operating Characteristics (ROCs)

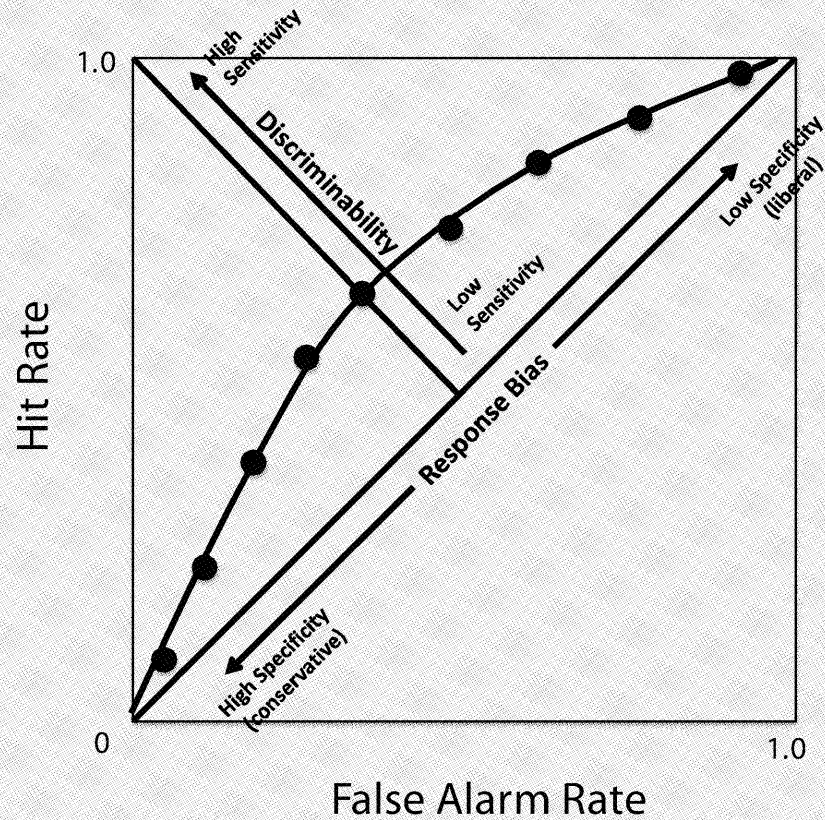
Binary classification decisions by human observers are affected by both discriminability (the observer's sensitivity to the difference between target and non-targets) and response bias (the observer's degree of specificity in making a response). Analysis of Receiver Operating Characteristics (ROCs) is a method from signal detection theory that enables one to distinguish the relative influences of discriminability and response bias on binary classification decisions. ROC analysis is performed by plotting the frequency of decisions that are hits (correctly detecting a target) versus the frequency of decisions that are false alarms (incorrectly classifying a non-target as a target).

The positive diagonal in an ROC plot (see figure next page) corresponds to response bias, moving from high specificity at the lower left corner [no detection of targets (hit rate = 0) and no incorrect attribution of non-targets as targets (false alarm rate = 0)], to low specificity at the upper right corner [all targets detected (hit rate = 1.0) and all non-targets attributed as targets (false alarm rate = 1.0)]. Because all points along this positive diagonal reflect equal ratios of hits to false alarms, they vary in response bias (i.e., the frequency of lineup picks, or "pick frequency"), but they do not manifest differences in discriminability. The negative diagonal in an ROC plot corresponds, by contrast, to discriminability, moving from chance discriminability at the intersection with the positive diagonal, where hits and false alarms are equally likely, to the highest discriminability in the upper left corner, where all targets are detected (hit rate = 1.0), but no non-targets are attributed as targets (false alarm rate = 0).

To see how measured hit and false alarm rates vary over different conditions of discriminability and response bias in laboratory experiments, one can manipulate or estimate these conditions and record a diagnosticity ratio (HR/FAR) for each condition. The typical result is a set of diagnosticity ratios that, when plotted in the ROC space (represented by the dots in the figure at right), form a curve spanning from lower left to upper right. The extent to which that curve deviates (bows above and away) from the positive diagonal is a quantitative measure of discriminability (assessed as the area under the curve) for which response bias has been factored out.

ROC analysis has been used extensively in basic and applied research on recognition memory. In these experiments, response bias is sometimes manipulated explicitly by encouraging observers to be more or less selective in

their responses. Frequently, however, “expressed confidence level” (ECL)—the confidence that an observer holds in his or her classification—is used as a proxy for response bias, based on the assumption that more confident observers are likely to be more specific (conservative) in their responses, whereas less confident observers are likely to be less specific (liberal) in their responses.



Receiver Operating Characteristic (ROC) curve.  
SOURCE: Courtesy of Thomas D. Albright.



procedure over another,<sup>42</sup> then eyewitness performance may benefit from any procedure (such as sequential) that elicits a more conservative response bias.<sup>43</sup> But one can only make that judgment after having applied an empirical test to determine whether a procedure offers a discriminability advantage. Future research might explore the possibility that other methods of inducing a conservative response bias (such as verbal instructions to the witness to be cautious in making an identification) might be combined with procedures that improve discriminability in order to optimize eyewitness identification performance.

Perhaps the greatest practical benefit of recent debate over the utility of different lineup procedures is that it has opened the door to a broader consideration of methods for evaluating and enhancing eyewitness identification performance. ROC analysis is a positive and promising step with numerous advantages. For example, the area under the ROC curve is a single-number index of discriminability. Moreover, this index reflects a parameter-free approach to binary classification performance; the outcome is entirely data-dependent and thus identical across all users drawing from

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<sup>42</sup>The committee notes that some of the few recent reports using ROC analysis indeed claim improved discriminability for simultaneous lineup conditions, but the reported discriminability improvements are small.

<sup>43</sup>In reality, a more conservative bias may not always be beneficial, and whether it is or not depends upon a number of factors that have an impact distinct from diagnostic accuracy and are difficult to quantify. All else being equal, the “best” response bias will be one that maximizes the “expected value” of the outcome (Green and Swets, *Signal Detection Theory and Psychophysics*; Swets, “ROC Analysis Applied to the Evaluation of Medical Imaging Techniques”). For the problem of eyewitness identification, the response bias that maximizes expected value can be computed from the prevalence of guilty suspects in lineups and from societal *values* or *costs* associated with each of the possible eyewitness decisions (errors and correct assignments). Reliable data on prevalence are difficult to come by, and value/cost quantities are difficult to assign and likely to vary significantly across crimes and cultures. One can nonetheless gain an intuition for how these factors might define the best response bias conditions. Consider, for example, the consequences of decreasing the prevalence of guilty suspects in lineups. In this case, expected value can be maximized by inducing a conservative bias—i.e., if innocence is a priori likely, then there is value gained by being more selective in your response. Similarly, the optimal response bias will depend upon normative costs associated with different types of eyewitness errors. Generally speaking, if a society places greater emphasis on not identifying the innocent, relative to failing to identify the guilty, then expected value can be increased by inducing a more conservative response bias. But the opposite would be true if there were greater societal pressures for identifying the guilty, relative to protecting the innocent. Although an understanding of the relationship between response bias and expected value is important, expected value in this case has little to do with the diagnostic accuracy of an eyewitness report. But it does nonetheless bear on decisions about which lineup procedure should be employed.

the same data set.<sup>44</sup> Most importantly for its application to the problem of evaluating eyewitness performance, the ROC approach possesses a distinct advantage because the dimensions of analysis—discriminability and response bias—map directly onto the mechanistic parameters of causal models of human recognition memory (see Chapter 4). In other words, the approach affords insight into and quantification of the sensory and cognitive processes that are believed to underlie memory-based classification decisions (see Box 5-1), such as eyewitness identifications.

Despite these merits, as a general statistical procedure for evaluation of binary classification performance and as a tool for evaluation of eyewitness performance, the ROC approach has some well-documented quantitative shortcomings. For example, ROC analysis depends on the ability to manipulate response bias or to estimate it from some other variable, and in the case of eyewitness identification that ability has been the subject of some debate. Recent studies have used expressed confidence level (ECL)—a measure of a witness' confidence in his or her selection—as a proxy for response bias,<sup>45</sup> based on the common-sense logic that a witness who has high confidence in their lineup selection should manifest a more conservative response bias than a witness who selected someone from the lineup despite lacking confidence in that selection (i.e., someone who made a selection even though they were not certain—a liberal response bias). This proxy relationship is inherently noisy within individuals, and the noisy relationship is exacerbated by the fact that the eyewitness identification ROC is population-based; individual data points are obtained from different people who may scale their confidence reports differently.<sup>46</sup> On the other hand, it is empirically clear that, when scaled appropriately (within and across individuals), different levels of expressed confidence do, in fact, correspond to different pick frequencies and response biases.<sup>47</sup>

<sup>44</sup>Green and Swets, *Signal Detection Theory and Psychophysics*. D. J. Hand, "Measuring Classifier Performance: A Coherent Alternative to the Area under the ROC Curve," *Machine Learning* 77, 103–123 (2009).

<sup>45</sup>See, e.g., N. Brewer and G. L. Wells, "The Confidence-Accuracy Relationship in Eyewitness Identification: Effects of Lineup Instructions, Foil Similarity, and Target-Absent Base Rates," *Journal of Experimental Psychology: Applied* 12(1): 11–30 (2012); Mickes, Flowe, and Wixted, "Receiver Operating Characteristic Analysis of Eyewitness Memory"; and Carlson and Carlson, "An Evaluation of Lineup Presentation."

<sup>46</sup>ECL is affected by over-confidence and under-confidence at the individual level, and the current implementation of the ROC approach, combining results across subjects, does not build this measurement error into the analysis or the comparison of empirical ROC curves. See Appendix C.

<sup>47</sup>See, e.g., Table 1 of Mickes, Flowe, and Wixted, "Receiver Operating Characteristic Analysis of Eyewitness Memory," which summarizes confidence ratings, hit rates, false alarm rates, and diagnosticity ratios (HR/FAR) derived from data published in Brewer and Wells, "The Confidence-Accuracy Relationship in Eyewitness Identification." Brewer and Wells employed

An additional prerequisite for the use of ECL as a measure of response bias is that an orderly relationship exists between confidence and accuracy—that witnesses expressing greater confidence are more likely to be accurate in their identifications. Although this hypothesis conforms to intuition,<sup>48</sup> the existence of a significant confidence–accuracy relationship has been challenged repeatedly over the years.<sup>49</sup> Recent evidence, however, suggests ways of improving the confidence–accuracy relationship (and obtaining more reliable measurements of it).<sup>50</sup> While the ECL measure thus has potential, more research on this and other possible methods of estimating or controlling response bias is warranted to support efforts to extract a bias-free measure of discriminability.

Another technical concern raised by the use of ROC analysis to evaluate eyewitness identification performance is that it relies on a *partial*, rather than full, area under the ROC curve measure (see Box 5-2) as an index of discriminability that is separate from response bias. This is necessitated by the fact that the highest false alarm rates in eyewitness identification data are commonly well below 1.0, even under the most liberal response bias

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a “confidence calibration” technique to normalize scaling of expressed confidence across witnesses. Both hit rates and false alarm rates declined steeply—implying an increasingly conservative response bias—as confidence levels increased. Diagnosticity ratios increased monotonically with increasing confidence. An identical pattern can be seen in Table 3 of Mickes, Flowe, and Wixted, “Receiver Operating Characteristic Analysis of Eyewitness Memory.” See also H. L. Roediger III, J. T. Wixted, and K. A. DeSoto, “The Curious Complexity Between Confidence and Accuracy in Reports from Memory,” in *Memory and Law*, ed. L. Nadel and W. Sinnott-Armstrong (Oxford: Oxford University Press, 2012), 97.

<sup>48</sup>K. A. Deffenbacher and E. F. Loftus, “Do Jurors Share a Common Understanding Concerning Eyewitness Behavior?,” *Law and Human Behavior* 6: 15–30 (1982); and G. L. Wells, T. J. Ferguson, and R. C. L. Lindsay, “The Tractability of Eyewitness Confidence and Its Implication for Triers of Fact,” *Journal of Applied Psychology* 66: 688–696 (1981).

<sup>49</sup>G. L. Wells and D. M. Murray, “Eyewitness Confidence,” in *Eyewitness Testimony: Psychological Perspectives*, ed. G. L. Wells and E. F. Loftus (New York: Cambridge University Press, 1984). B. L. Cutler and S. D. Penrod, *Mistaken Identification: The Eyewitness, Psychology, and the Law* (Cambridge: Cambridge University Press, 1995). R. K. Bothwell, K. A. Deffenbacher, and J. C. Brigham, “Correlation of Eyewitness Accuracy and Confidence: Optimality Hypothesis Revisited,” *Journal of Applied Psychology* 72:691–695 (1987). S. L. Sporer et al., “Choosing, Confidence, and Accuracy: A Meta-Analysis of the Confidence-Accuracy Relation in Eyewitness Identification Studies,” *Psychological Bulletin* 118(3): 315–327 (1995). T. A. Busey et al., “Accounts of the Confidence-Accuracy Relation in Recognition Memory,” *Psychonomic Bulletin and Review* 7(1): 26–48 (2000).

<sup>50</sup>N. Brewer and G. L. Wells, “The Confidence-Accuracy Relationship in Eyewitness Identification. P. Juslin, N. Olsson, and A. Winman, “Calibration and Diagnosticity of Confidence in Eyewitness Identification: Comments on What Can Be Inferred From the Low Confidence-Accuracy Correlation,” *Journal of Experimental Psychology: Learning, Memory, and Cognition* 22(5): 1304–1316 (September 1996). Roediger, Wixted, and DeSoto, “The Curious Complexity between Confidence and Accuracy.” Mickes, Flowe, and Wixted, “Receiver Operating Characteristic Analysis of Eyewitness Memory.”

conditions.<sup>51</sup> In practice, partial area under the curve is computed by truncating the ROC curve at the highest false alarm rate obtained. Because the standard error of the partial area under the curve measure depends upon the degree of truncation, accuracy of this discriminability measure can easily vary across conditions and across studies, making the interpretation difficult.<sup>52</sup>

While ROC analysis has many recognized merits for the evaluation of binary classification, the residual concerns associated with its typical use for evaluating eyewitness performance merit consideration of other statistical approaches to this problem. As noted above, many methods have been proposed—and adopted in specific applications—for evaluation of binary classification performance.<sup>53</sup> The committee knows of no instance in which any of these alternative methods has been applied to the problem of eyewitness identification. Moreover, because they have not been vetted, the committee is not in a position to endorse any specific statistical tool, the committee nevertheless encourages a general exploration of these alternatives. These alternatives may have their own share of unforeseen problems, and/or the performance criteria employed by them may bear no meaningful relationship to the sensory and cognitive processes involved in eyewitness identification. Nonetheless, some of these methods may provide greater insight into the factors that affect eyewitness identification performance and may, in turn, suggest ways of improving performance. To illustrate this opportunity by example, we consider the following possibilities.

It has been argued that a basic weakness of the existing ROC approach to binary classification performance results from the fact that, in principle

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<sup>51</sup>Carlson and Carlson, “An Evaluation of Lineup Presentation.” Mickes, Flowe, and Wixted, “Receiver Operating Characteristic Analysis of Eyewitness Memory.”

<sup>52</sup>Along the same lines, accuracy of discriminability measures derived from ROC studies may be called into question when those studies do not take into account uncertainty in the data used to construct the ROC curves; see Appendix C. An argument has also been made that the area under the ROC curve can be a flawed metric for comparing binary classification conditions when the *costs* of classification errors are not precisely known and are different for different conditions (Hand, “Measuring Classifier Performance”). The costs of classification errors may be similar across some lineup comparisons and across some conditions of other systems variables, and for others they may be different. But for the most part they are not precisely known, and this is thus a topic that deserves greater attention given the growing use of ROC-based evaluation of eyewitness identification performance.

<sup>53</sup>Numerous methods for the evaluation of binary classifiers have been developed and applied in the field of machine learning, which seeks to optimize autonomous classification devices (such as, for example, the fingerprint lock access control on a smart phone, which must quickly and reliably distinguish the finger from another). This field has a long and rich history, and candidate methods are summarized in several texts on statistical classification and machine learning, such as Hastie, Tibshirani, and Friedman, *The Elements of Statistical Learning* and A. Smola and S. V. N. Vishwanathan, *Introduction to Machine Learning* (Cambridge: Cambridge University Press, 2009).

(and in practice under certain commonly unrecognized conditions), the area under the ROC curve is dependent on imprecise assumptions about the costs of classification errors across different classification conditions.<sup>54</sup> One might suppose, for example, that the cost of a miss for a crime of murder is greater than the cost of a miss for a stolen car. But without a precise understanding of these relative decision costs, the area under the ROC curve measure can be incoherent, in that it depends as much on the classification conditions as it does on the sensitivity of the classifier. An alternative method has been proposed to address this problem—derivation of the “H measure”—that enables the performance of binary classifiers to be compared using a common metric that is independent of the cost distributions for different types of classification errors.<sup>55</sup> The committee supports exploration of this alternative.

Another avenue for exploration emerges from the fact that the literature evaluating eyewitness identification performance has focused exclusively on the positive predictive value (PPV) of a witness’ classification as guilty. For a given response bias, PPV is related to the diagnosticity ratio, in that, given equal prevalence of the culprit in two conditions (e.g., lineup procedures) being compared, a higher diagnosticity ratio leads to a higher PPV. As discussed above, the diagnosticity ratio is a critical piece of information in efforts to evaluate eyewitness performance. As for any binary classification, however, there is also information associated with a *negative* response, which is the predictive value of a classifier’s assertion that a target is *not* present (in the eyewitness case, the witness’ assertion of innocence). This negative predictive value (NPV) is related to a different ratio of decisions, namely  $(1 - \text{HR}) / (1 - \text{FAR})$ ,<sup>56</sup> in that, given equal prevalence of the target in the two procedures being compared, higher values of this ratio correspond to higher values of NPV.

While NPV is commonly used to evaluate the accuracy of human classification decisions, such as in medical diagnosis, and is a source of information that may similarly be of additional value in efforts to evaluate lineup procedures, it has been largely neglected in the field of eyewitness identification.<sup>57</sup> One might hold the intuition that PPV and NPV are monotonically related to one another—believing that the likelihood that the

<sup>54</sup>See Hand, “Measuring Classifier Performance.”

<sup>55</sup>Ibid.

<sup>56</sup>The reciprocal of this ratio is called the “negative likelihood ratio.” See, e.g., T. Hoffmann, S. Bennett, and C. del Mar, *Evidence-Based Practice Across the Health Professionals* (Chatswood: Elsevier Australia, 2009).

<sup>57</sup>It seems likely that this neglect stems from the fact that the primary concern in eyewitness identification has been on incorrect assertions of guilt (i.e., false identifications) rather than incorrect assertions of innocence. There are normative values in society that reinforce this concern (as exemplified, for example, by Blackstone’s formulation: “Better that 10 guilty persons escape than that one innocent suffer.”)

witness will correctly identify the culprit is proportional to the likelihood that the witness will correctly identify lineup candidates as innocent—and thus conclude that evaluation of PPV alone is sufficient. Contrary to that intuition, however, evidence from studies of analogous binary classification problems reveals that these two predictive probabilities can vary with respect to one another in complex ways.<sup>58</sup>

In practice, NPV-related measures (quantified as negative likelihood ratios) can be subjected to ROC analysis to account for the effects of response bias in the same manner as PPV-related measures (quantified as positive likelihood ratios, i.e., diagnosticity ratios)—the ROC axes in the NPV case corresponding to 1-HR and 1-FAR. Consideration of NPV and its relationship to PPV, by this and other means, may provide additional insight into the ways in which estimator and system variables (such as lineup procedures) influence eyewitness identification performance.<sup>59</sup>

In sum, a formal understanding of the task facing an eyewitness, in conjunction with an appreciation of causal models of human recognition memory, has led to a potentially more comprehensive method—ROC analysis—for evaluating eyewitness identification performance. Despite these advances, it is important that practitioners in this field broadly explore the large and rich field of statistical tools for evaluation of binary classifiers. While the committee recognizes that these tools are uninvestigated for this application and may possess their own share of unforeseen problems or disadvantages, a move in this direction may be of great value for improving the validity of eyewitness identification.

### Interactions with Eyewitnesses (Feedback)

The nature of law enforcement interactions with the eyewitness before, during, and after the identification plays a role in the accuracy of eyewitness identifications and in the confidence expressed in the accuracy of those identifications by witnesses.<sup>60</sup> Law enforcement's maintenance of neutral pre-identification communications—relative to the identification of a suspect—is seen as vital to ensuring that the eyewitness is not subjected to conscious or unconscious verbal or behavioral cues that could influence the

<sup>58</sup>S-Y Shiu and C. Gatsonis, "The Predictive Receiver Operating Characteristic Curve for the Joint Assessment of the Positive and Negative Predictive Values," *Philosophical Transactions, Series A, Mathematical, Physical and Engineering Sciences* 366 (1874): 2313–2333 (2008).

<sup>59</sup>Another potentially informative analysis that combines PPV and NPV measures is known as a PROC (predictive ROC), which affords the opportunity to see how a given system or estimator variable may have interacting—synergistic or antagonistic—effects on assertions of guilt and innocence. See Shiu and Gatsonis, "The Predictive Receiver Operating Characteristic Curve."

<sup>60</sup>S. E. Clark, T. E. Marshall, and R. Rosenthal, "Lineup Administrator Influences on Eyewitness Identification Decisions," *Journal of Experimental Psychology: Applied* 15(1): 63 (2009).

eyewitness' identification (see Box 2-1).<sup>61</sup> If a witness happened to overhear an officer say, "We've got him, but before we finalize the arrest, let's have the witness confirm it," the witness might be biased to confirm the suspect's identity in a showup. Furthermore, some types of law enforcement communication with a witness, after the witness has made an identification (e.g., "Good work! You picked the right guy..."), can increase confidence in an identification, regardless of whether the identification is correct.<sup>62</sup>

As discussed in Chapter 2, use of "blinded" or "double-blind" lineup identification procedures is an effective strategy for reducing the likelihood that a witness will be exposed to cues from interactions with law enforcement (such as feedback) that could influence identifications and/or confidence in those identifications. More generally, efforts to maintain objectivity and eliminate potentially informative communication will help ensure that eyewitness reports are not contaminated by knowledge or opinions held by others.

### RESEARCH STUDIES ON ESTIMATOR VARIABLES

The impact of estimator variables on eyewitness accuracy is harder to measure in the field than the impact of system variables.<sup>63</sup> Consequently, estimator variables have been studied nearly exclusively in laboratory settings. The committee's review revealed the need for further empirical research in individual studies and systematic reviews of research on these factors.

The committee's review focused on the most-studied estimator variables: weapon focus, stress and fear, own-race bias, exposure, and retention interval. It is important to emphasize, however, that numerous other estimator variables may affect both the reliability and the accuracy of eyewitness identifications. Research has shown that the physical distance between the witness and the perpetrator is an important estimator variable, as it directly affects the ability of the eyewitness to discern visual details,<sup>64</sup> including features of the perpetrator<sup>65</sup> (see discussion of vision in Chapter 4). Re-

<sup>61</sup>Clark, Moreland, and Gronlund, "Evolution of the Empirical and Theoretical Foundations of Eyewitness Identification Reform": "...the performance advantage for unbiased instructions has decreased only slightly over the past 32 years. However, none of the correlations approached statistical significance." p. 258.

<sup>62</sup>Douglas and Steblay, "Memory Distortion in Eyewitnesses."

<sup>63</sup>G. L. Wells, "What Do We Know about Eyewitness Identification?" *American Psychologist* (May 1993): 553, 555.

<sup>64</sup>B. Uttl, P. Graf, and A. L. Siegenthaler, "Influence of Object Size on Baseline Identification, Priming, and Explicit Memory: Cognition and Neurosciences," *Scandinavian Journal of Psychology* 48(4): 281–288 (2007).

<sup>65</sup>C. L. Maclean et al., "Post-Identification Feedback Effects: Investigators and Evaluators," *Applied Cognitive Psychology* 25(5): 739–752 (2011).

search has also shown that an appearance change can greatly diminish the eyewitness' ability to recognize the perpetrator; the eyewitness' ability to remember faces of his or her own age group is often superior to his or her ability to remember faces of another age group (own-age bias); and if an eyewitness hears information or misinformation from another person before law enforcement involvement, his or her recollection of the event and confidence in the identification can be altered (co-witness contamination).<sup>66</sup> Interactions between and among these variables have not been addressed systematically by researchers.

### Weapon Focus

The presence of an unusual object at the scene of a crime can impair visual perception and memory of key features of the crime event. Research suggests that the presence of a weapon at the scene of a crime captures the visual attention of the witness and impedes the ability of the witness to attend to other important features of the visual scene, such as the face of the perpetrator (see also discussion of visual attention in Chapter 4). The ensuing lack of memory of these other key features may impair recognition of a perpetrator in a subsequent lineup.

A 1992 analysis of weapon focus studies found that the presence of a weapon reduced both identification accuracy and feature accuracy (e.g., the eyewitness' ability to recall clothing, facial features, and more).<sup>67</sup> A more recent analysis of the weapon focus literature concluded that the presence of a weapon has an inconsistent effect on identification accuracy, in that larger effect sizes were observed in threatening scenarios than in non-threatening ones.<sup>68</sup> As the retention interval increased, the weapon focus effect size decreased. The analysis further indicated that the effect of a weapon on accuracy is slight in actual crimes, slightly larger in laboratory studies, and largest for simulations.

One possible cause of the inconsistent effects of the presence of a weapon is suggested by a recent laboratory-based study that exposed participants to crime videos.<sup>69</sup> These investigators used ROC analysis to investigate discriminability as a function of (1) sequential versus simultaneous lineups; (2) the presence of a weapon; and (3) the presence of a distinctive facial feature. Importantly for the present discussion, discriminability was

<sup>66</sup>R. Zajac and N. Henderson, "Don't It Make My Brown Eyes Blue: Co-Witness Misinformation about a Target's Appearance Can Impair Target-Absent Lineup Performance," *Memory* 17(3): 266–278 (2009).

<sup>67</sup>N. K. Steblay, "A Meta-analytic Review of the Weapon Focus Effect," *Law and Human Behavior* 16(4): 413, 415–417 (1992).

<sup>68</sup>Fawcett et al., "Of Guns and Geese."

<sup>69</sup>Carlson and Carlson, "An Evaluation of Lineup Presentation."



reduced when the perpetrator possessed a weapon, but only when no distinctive facial feature was present. This interaction between weapon focus and distinctive feature highlights the importance of exploring the effects of interactions between different estimator variables on eyewitness identification performance.

Additional questions remain as to what is the cause of reduced eyewitness performance in cases where a weapon is present. Is the effect caused by a diversion of selective attention, as is suggested by basic research on the phenomenon of inattention blindness (see Chapter 4)? Is stress a significant factor, i.e., does anxiety cause the witness to focus less on the features of a person's face? To what extent is the prominence of the issue an artifact of the particular studies included in the meta-analysis? Is it possible, for example, that the magnitude of the weapon effect depends on whether the data are collected in a laboratory setting versus the real world? To this latter point, some analyses of weapon focus have been conducted using archival records of crimes involving weapons.<sup>70</sup> Unfortunately, such efforts often encounter serious methodological difficulties that include a lack of information about the crime (e.g., exposure duration) and the general lack of "ground truth" regarding accuracy of any identification, among other problems.

### Stress and Fear

High levels of stress or fear can affect eyewitness identification.<sup>71,72,73</sup> This finding is not surprising, given the known effects of fear and stress on vision and memory (see Chapter 4). Under conditions of high stress, a witness' ability to identify key characteristics of an individual's face (e.g., hair length, hair color, eye color, shape of face, presence of facial hair) may be significantly impaired.<sup>74</sup>

In the particular case of weapon focus, it may not be possible to sufficiently test the effects of stress and heightened stress in the laboratory because of limitations on human participant research that uses realistic and heightened threats. A meta-analysis of the effect of high stress on eyewitness

<sup>70</sup>See, e.g., Fawcett et al., "Of Guns and Geese."

<sup>71</sup>Deffenbacher et al., "A Meta-Analytic Review of the Effects of High Stress."

<sup>72</sup>C. A. Morgan III et al., "Accuracy of Eyewitness Memory for Persons Encountered During Exposure to Highly Intense Stress," *International Journal of Law and Psychiatry* 27(3): 265–279 (2004).

<sup>73</sup>C. A. Morgan III et al., "Accuracy of Eyewitness Identification Is Significantly Associated with Performance on a Standardized Test of Recognition," *International Journal of Law and Psychiatry* 30 (3): 213–223 (2007).

<sup>74</sup>C. A. Morgan III et al., "Misinformation Can Influence Memory for Recently Experienced, Highly Stressful Events," *International Journal of Law and Psychiatry* 36(1): 11–17 (2013).

memory nonetheless found some support for the notion that stress impairs both eyewitness recall and identification accuracy.<sup>75</sup> The study authors noted that lineup type “moderated the effect of heightened stress on the false alarm rate.”<sup>76</sup> They also suggested that the modest effect of stress may be caused by the fact that the analysis included many studies that involved modest stress-induction.<sup>77</sup>

Earlier studies were more mixed but with clearer results at “high levels of cognitive anxiety.”<sup>78</sup> The findings of an earlier study “provide a concrete illustration of catastrophic decline” of eyewitness identification performance at high anxiety levels.<sup>79</sup> The correct identification rate went from 75 percent for those with low-state anxiety to 18 percent rate for those with high-state anxiety.<sup>80</sup>

The effects of suggestion may be particularly important when the original memory is of a highly stressful event. A recent study looked at more than 850 active-duty military personnel participating in a mock POW camp phase of U.S. military survival school training, which included aggressive interrogation and physical isolation-related stress.<sup>81</sup> The study found that misinformative details of the interrogation event (e.g., regarding the identity of the interrogator), which were introduced after the event had been encoded into long-term memory, affected identification accuracy. The study also found that memories acquired during stressful events are highly vulnerable to modification by exposure to post-event misinformation, even in individuals whose level of training and experience might be considered relatively immune to such influences.

Another recent study comparing the eyewitness accuracy of officers and citizens, concentrated on the effects of stress and weapon focus.<sup>82</sup> The results of this study showed that officers were less stressed and aroused than

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<sup>75</sup>Deffenbacher et al., “A Meta-Analytic Review of the Effects Of High Stress.” It should be noted that the effect sizes for stress-induced support were small with wide confidence intervals, indicating considerable heterogeneity across studies. Although the authors assert that 300 studies with null findings would be required to negate the small effects found in this meta-analysis, fewer studies might be needed if they resulted in opposite effects.

<sup>76</sup>Ibid, 700.

<sup>77</sup>Ibid, 704.

<sup>78</sup>Ibid, 689.

<sup>79</sup>T. Valentine and J. Mesout, “Eyewitness Identification Under Stress in the London Dungeon,” *Applied Cognitive Psychology* 23(2): 151–161 (2009).

<sup>80</sup>K. A. Deffenbacher, “Estimating the Impact of Estimator Variables on Eyewitness Identification: A Fruitful Marriage of Practical Problem Solving and Psychological Theorizing,” *Applied Cognitive Psychology* 22(6): 822 (2008).

<sup>81</sup>Morgan et al., “Misinformation Can Influence Memory.”

<sup>82</sup>J. C. DeCarlo, “A Study Comparing the Eyewitness Accuracy of Police Officers and Citizens,” (PhD Diss, City University of New York, 2010).

citizens, but that both police and citizens made more errors when a weapon was inferred or present.

### Own-Race Bias

The race and ethnicity of a witness as it relates to that of the perpetrator is another important estimator variable. In eyewitness identification, own-race bias describes the phenomenon in which faces of people of races different from that of the eyewitness are harder to discriminate (and thus harder to identify accurately) than are faces of people of the same race as the eyewitness.<sup>83</sup> In the laboratory, this effect is manifested by higher hit rates and lower false alarm rates (higher diagnosticity ratio) in the recognition of an observer's own race relative to hits and false-alarms for recognition of other races.<sup>84</sup> 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. Recent analyses revealed that cross-racial (mis) identification was present in 42 percent of the cases in which an erroneous eyewitness identification was made.<sup>85</sup>

A recent meta-analysis of own-race bias found an interaction between own-race bias and the duration of viewing exposure: reducing the amount of time allowed for viewing of each face significantly increased the magnitude of the bias, largely manifested as an increase in the proportion of false alarm responses to other-race faces.<sup>86</sup> Own-race bias also interacts with the memory retention interval; cross-race errors of identification were greater when there were longer periods of time between the initial exposure and the memory retrieval.<sup>87</sup> A recent study found that "context reinstatement," wherein a researcher asks an individual to mentally re-create the context in which an incident occurred, failed to influence the identification of other-race faces.<sup>88</sup>

Although the existence of own-race bias is generally accepted, the causes for this effect are not fully understood. Some possible explanations are rooted in in-group/out-group models of human behavior (e.g., favorit-

<sup>83</sup>R. S. Malpass and J. Kravitz, "Recognition for Faces of Own and Other Race," *Journal of Personality and Social Psychology* 13(4): 330-334 (1969).

<sup>84</sup>Meissner and Brigham, "Thirty Years of Investigating the Own-Race Bias."

<sup>85</sup>The Innocence Project, "What Wrongful Convictions Teach Us About Racial Inequality," available at: [http://www.innocenceproject.org/Content/What\\_Wrongful\\_Convictions\\_Teach\\_Us\\_About\\_Racial\\_Inequality.php](http://www.innocenceproject.org/Content/What_Wrongful_Convictions_Teach_Us_About_Racial_Inequality.php).

<sup>86</sup>Meissner and Brigham, "Thirty Years of Investigating the Own-Race Bias."

<sup>87</sup>*Ibid.*

<sup>88</sup>J. R. Evans, J. L. Marcon, and C.A. Meissner, "Cross-Racial Lineup Identification: Assessing the Potential Benefits of Context Reinstatement," *Psychology, Crime, and Law* 15 (1): 19-28 (2009).

ism in which decisions regarding members of one's own "group" are regarded as having greater importance than decisions regarding members of a different "group") and differential perceptual expertise that results from different degrees of exposure to and familiarity with same versus other races.

Recent work has examined the role that stereotyping might play.<sup>89</sup> One study suggests that, in general, cross-race identification is further impaired when faces are presented in a group (as opposed to one at a time).<sup>90</sup> Additional research is needed to identify procedures that may help estimate the degree of own-race biases in individual eyewitnesses following an identification procedure. Until the scientific basis for these effects is better understood, great care may be warranted when constructing lineups in instances where the race of the suspect differs from that of the eyewitness.

### Exposure Duration

Eyewitness identification researchers have long believed that exposure duration (e.g., time spent observing a perpetrator's face during a crime) is correlated with greater accuracy of eyewitness identification. The courts also have assumed that exposure duration has an effect on identification accuracy.<sup>91</sup> Meta-analyses on the effects of exposure time have found that relatively long exposure durations produce greater accuracy<sup>92</sup> and a larger and more stable effect size for exposure duration on eyewitness identi-

<sup>89</sup>H. M. Kleider, S. E. Cavrak, and L. R. Knuycky, "Looking Like a Criminal: Stereotypical Black Facial Features Promote Face Source Memory Error," *Memory and Cognition* 40(8): 1200–1213 (2012).

<sup>90</sup>K. Pezdek, M. O'Brien, and C. Wasson, "Cross-Race (but Not Same-Race) Face Identification Is Impaired by Presenting Faces in a Group Rather Than Individually," *Law and Human Behavior* 36(6): 488–495 (2012).

<sup>91</sup>*Manson v. Brathwaite*, 432 U.S. 98, 114 (1977), for example, included as a factor for assessing the reliability and admissibility of an identification, "the opportunity of the witness to view the criminal at the time of the crime" and explained that this factor includes both the length of time and the viewing conditions.

<sup>92</sup>B. H. Bornstein et al., "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* 18 (5): 473–490 (2012). The authors state, "We used  $z$  as the primary effect size measure for differences between proportions correct, but we also converted  $z$  to Pearson's  $r$  for comparability to other meta-analyses (see Tables 1 and 2). The  $r$ s were then normalized and averaged to obtain the overall mean effect sizes. We also report the value of Cohen's  $d$  associated with each mean effect size" (Bornstein et al., "Effects of Exposure Time and Cognitive Operations). Although not defined, presumably  $z$  refers to the usual difference in means divided by its standard error, and, from their tables, their  $r$  was calculated as  $z$  divided by the square root of the report sample size.

fication accuracy.<sup>93</sup> Longer exposures were associated with higher rates of correct identifications and lower false alarm rates. Exposure duration may affect, or interact with, other variables, including own-race bias and the confidence–accuracy relationship assessed immediately after the lineup decision.<sup>94</sup>

The findings and conclusions from eyewitness identification studies of exposure duration are in keeping with much of the basic research on visual system function (reviewed in Chapter 4). This basic research indicates that the additional information available from longer viewing times reduces uncertainty and enables better detection and discrimination of visual stimuli.

### Retention Interval

Retention interval, or the amount of time that passes from the initial observation and encoding of a memory to a future time when the initial observation must be recalled from memory, can affect identification accuracy. Laboratory studies have demonstrated that stored memories are more likely to be forgotten with the increasing passage of time and can easily become “enhanced” or distorted by events that take place during this retention interval (see discussion of memory in Chapter 4). The amount of time between viewing a crime and the subsequent identification procedure can be expected to similarly affect the accuracy of the eyewitness identification, either independently or in combination with other variables.<sup>95</sup>

It is difficult to specify the precise relationship between retention interval and the accuracy of eyewitness identification testimony and to estimate when a lengthy retention interval will significantly impair the accuracy of identification. Although, in general, it appears that longer retention intervals are associated with poorer eyewitness identification performance, the strength of this association appears to vary greatly across the circumstances of the initial encounter, identification procedures, and research method-

<sup>93</sup>B. H. Bornstein, K. A. Deffenbacher, E. K. McGorty, and S. D. Penrod, “The Effect of Cognitive Processing on Facial Identification Accuracy: A Meta-Analysis” (Unpublished manuscript, University of Nebraska-Lincoln, 2007).

<sup>94</sup>M. A. Palmer, et al., “The Confidence–Accuracy Relationship for Eyewitness Identification Decisions: Effects of Exposure Duration, Retention Interval, and Divided Attention,” *Journal of Experimental Psychology: Applied* 19(1): 55–71 (2013).

<sup>95</sup>One month is the most commonly encountered delay by British police. G. Pike, N. Brace, and S. Kynan, *The Visual Identification of Suspects: Procedures and Practice* (London: Policing and Reducing Crime Unit, 2002), cited by Deffenbacher et al., “Forgetting the Once-Seen Face.” Law enforcement authorities may have little control over the time required to identify a suspect and obtain the cooperation of the eyewitness to participate in an identification procedure. Thus, retention interval has commonly been considered an estimator variable in eyewitness identification studies.

ologies.<sup>96</sup> A meta-analysis of published facial recognition and eyewitness identification studies found, for example, that an increase in the retention interval was associated with a decreased probability of an accurate identification of a previously seen but otherwise unfamiliar face.<sup>97</sup> This same study also found that the rate of forgetting for an unfamiliar face is greatest soon after the initial observation and tends to level off over time, but was unable to specify the shape of this function.

The effect of the retention interval also is influenced by the strength and quality of the initial memory that is encoded, which, in turn, may be influenced by other estimator variables associated with witnessing the crime (such as the degree of visual attention) and viewing factors (such as distance, lighting, and exposure duration). As the retention interval becomes longer, the opportunity for intervening events to alter the memory also becomes greater, and other variables may interact with the retention interval to impair performance (see also discussion of memory in Chapter 4). During the retention interval, the ability to accurately identify faces of other races drops off especially quickly, relative to same-race accuracy.<sup>98</sup> Also, for those eyewitnesses who initially express less confidence in their identification, there is a greater decrease in accuracy of identification when the retention interval is longer.<sup>99</sup>

## CONCLUSION

Research on eyewitness identification has appropriately identified the variables that may affect an individual's ability to make an accurate identification. Early research findings played an important role in alerting law enforcement, prosecutors, defense counsel, and the judiciary to factors that

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<sup>96</sup>See J. Dysart and R. C. L. Lindsay, "The Effects of Delay on Eyewitness Identification Accuracy: Should We Be Concerned?" in *The Handbook of Eyewitness Psychology: Volume II: Memory for People*, ed. R. C. L. Lindsay, D. F. Ross, J. D. Read, and M. P. Toglia. (Mahwah: Lawrence Erlbaum and Associates, 2006), 361–373.

<sup>97</sup>Deffenbacher et al., "Forgetting the Once-Seen Face." More than 20 of the published studies included in the meta-analysis found no significant effect of retention interval.

<sup>98</sup>J. L. Marcon et al., "Perceptual Identification and the Cross-Race Effect," *Visual Cognition* 18(5): 767–779 (2010) (finding that the cross-race effect was more pronounced when the retention interval was lengthened). Meissner and Brigham, "Thirty Years of Investigating the Own-race Bias" [meta-analysis finding that as retention time increased "participants increasingly adopted a more liberal response criterion when responding to other-race faces. This liberal response criterion indicated that participants required less evidence from memory (e.g., familiarity or memorability of the face) to respond that they had previously seen an other-race face."].

<sup>99</sup>J. Sauer et al., "The Effect of Retention Interval on the Confidence–Accuracy Relationship for Eyewitness Identification," *Law and Human Behavior* 34: 337–347 (2010) (finding greater overconfidence at lengthy retention intervals).

might influence the accuracy of identifications. In some jurisdictions, eyewitness identification research was used to improve policies and procedures and to educate and train officers. However, much remains unsettled in many areas of eyewitness identification research.

While past research appropriately identified system and estimator variables that may affect an individual's ability to make an accurate identification, this research might be strengthened in several ways. Greater collaboration between the police, courts, and researchers might lead to increased consensus on research agendas and the conceptualization of variables to be examined. More attention to reproducibility and transparency is needed in the selection of data collection strategies and reporting of data. Analyses need to be reported completely, including estimates of effects, confidence intervals, and significance levels. Further, in order to be useful to stakeholders, the statistical findings of this research need to be translated back into terms that can be readily understood by practice and policy decision-makers.

Further, our understanding of errors in eyewitness identification will benefit from more effective research designs, more informative statistical measures and analyses, more probing analyses of research findings, and more sophisticated systematic reviews and meta-analyses. In view of the complexity of the effects of both system and estimator variables, and their interactions, on eyewitness identification accuracy, better experimental designs that incorporate selected combinations of these variables (e.g., presence or absence of a weapon, lighting conditions, etc.) will elucidate those variables with meaningful influence on eyewitness performance, which can inform law enforcement practice of eyewitness identification procedures. To date, the eyewitness literature has evaluated procedures mostly in terms of a single diagnosticity ratio or an ROC curve; even if uncertainty is incorporated into the analysis, many other powerful tools for evaluating a "binary classifier" are worthy of consideration.<sup>100</sup>

When primary studies such as those described above are available in sufficient quantities, it is important that their results are synthesized using systematic reviews that conform to current best standards.<sup>101</sup> These quantitative reviews would necessarily employ transparent, reproducible procedures for locating all relevant published and unpublished research; employ independent, duplicate procedures for selection of studies, extraction of data, and assessment of risk of bias; use meta-analytic procedures

<sup>100</sup>Hastie, Tibshirani, and Friedman, *The Elements of Statistical Learning*.

<sup>101</sup>See, e.g., A. Liberati, et al., "The PRISMA Statement for Reporting Systematic Reviews and Meta-Analyses of Studies That Evaluate Health Care Interventions: Explanation and Elaboration," *PLoS Medicine* 6(7): e1000100. doi:10.1371/journal.pmed.1000100 (2009) and Institute of Medicine, *Finding What Works in Health Care: Standards For Systematic Reviews* (Washington, DC: The National Academies Press, 2011).

that account for the heterogeneity of outcomes both within and across studies; and interpret confidence intervals around pooled effects in a way that is readily understandable by stakeholders. These systematic reviews (which would be regularly updated as new studies are conducted) can be used to further refine the research agenda in eyewitness identification research and to establish priorities for funding of additional primary research.



Identifying the Culprit: Assessing Eyewitness Identification

## 6

# Findings and Recommendations

Eyewitnesses make mistakes. Our understanding of how to improve the accuracy of eyewitness identifications is imperfect and evolving. In the previous chapters, we described law enforcement procedures to elicit accurate eyewitness identifications; the courts' handling of eyewitness identification evidence; the science of visual perception and memory as it applies to eyewitness identifications; and the contributions of scientific research to our understanding of the variables that affect the accuracy of identifications. On the basis of its review, the committee offers its findings and recommendations for

- identifying and facilitating best practices in eyewitness procedures for the law enforcement community;
- strengthening the value of eyewitness identification evidence in court; and
- improving the scientific foundation underpinning eyewitness identification.

### OVERARCHING FINDINGS

The committee is confident that the law enforcement community, while operating under considerable pressure and resource constraints, is working to improve the accuracy of eyewitness identifications. These efforts, however, have not been uniform and often fall short as a result of insufficient training, the absence of standard operating procedures, and the continuing

presence of actions and statements at the crime scene and elsewhere that may intentionally or unintentionally influence eyewitness' identifications.

Basic scientific research on human visual perception and memory has provided an increasingly sophisticated understanding of how these systems work and how they place principled limits on the accuracy of eyewitness identification (see Chapter 4).<sup>1</sup> Basic research alone is insufficient for understanding conditions in the field and thus has been augmented by studies applied to such specific practical problem of eyewitness identification (see Chapter 5). Such applied research has identified key variables that affect the accuracy and reliability of eyewitness identifications and has been instrumental in informing law enforcement, the bar, and the judiciary of the frailties of eyewitness identification testimony.

A range of best practices has been validated by scientific methods and research and represents a starting place for efforts to improve eyewitness identification procedures. A number of law enforcement agencies have, in fact, adopted research-based best practices. This report makes actionable recommendations on, for example, the importance of adopting "blinded" eyewitness identification procedures. It further recommends that standardized and easily understood instructions be provided to eyewitnesses and calls for the careful documentation of eyewitness' confidence statements. Such improvements may be broadly implemented by law enforcement now. It is important to recognize, however, that, in certain cases, the state of scientific research on eyewitness identification is unsettled. For example, the relative superiority of competing identification procedures (i.e., simultaneous versus sequential lineups) is unresolved.

The field would benefit from collaborative research among scientists and law enforcement personnel in the identification and validation of new best practices that can improve eyewitness identification procedures. Such a foundation can be solidified through the use of more effective research designs (for example, those that consider more than one variable at a time, and in different study populations to ensure reproducibility and generalizability), more informative statistical measures and analyses (i.e., methods from statistical machine learning and signal detection theory to evaluate the performance of binary classification tasks), more probing analyses of research findings (such as analyses of consequences of data uncertainties), and more sophisticated systematic reviews and meta-analyses (that take

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<sup>1</sup>Basic research on vision and memory seeks a comprehensive understanding of how these systems are organized and how they operate generally. The understanding derived from basic research includes principles that enable one to predict how a system (such as vision or memory) might behave under specific conditions (such as those associated with witnessing a crime), and to identify the conditions under which it will operate most effectively and those under which it will fail. Applied research, by contrast, empirically evaluates specific hypotheses about how a system will behave under a particular set of real-world conditions.

account of current guidelines, including transparency and reproducibility of methods).

In view of the complexity of the effects of both system and estimator variables and their interactions on eyewitness identification accuracy, better experimental designs that incorporate selected combinations of these variables (e.g., presence or absence of a weapon, lighting conditions, etc.) will elucidate those variables with meaningful influence on eyewitness performance, which can, in turn, inform law enforcement practice of eyewitness identification procedures. To date, the eyewitness literature has evaluated procedures mostly in terms of a single diagnosticity ratio or an ROC (Receiver Operating Characteristic) curve; even if uncertainty is incorporated into the analysis, many other powerful tools for evaluating a “binary classifier” are available and worthy of consideration.<sup>2</sup> Finally, syntheses of eyewitness research has been limited to meta-analyses that have not been conducted in the context of systematic reviews. Systematic reviews of stronger research studies need to conform to current standards and be translated into terms that are useful for decision-makers.

The committee offers the following recommendations to strengthen the effectiveness of policies and procedures used to obtain accurate eyewitness identifications.

### RECOMMENDATIONS TO ESTABLISH BEST PRACTICES FOR THE LAW ENFORCEMENT COMMUNITY

The committee’s review of law enforcement practices and procedures, coupled with its consideration of the scientific literature, has identified a number of areas where eyewitness identification procedures could be strengthened. The practices and procedures considered here involve acquisition of data that reflect a witness’ identification and the contextual factors that bear on that identification. A recurrent theme underlying the committee’s recommendations is development of, and adherence to, guidelines that are consistent with scientific standards for data collection and reporting.

#### *Recommendation #1: Train All Law Enforcement Officers in Eyewitness Identification*

The resolution and accuracy of visual perceptual experience, as well as the fidelity of our memories to events perceived, may be compromised by many factors at all stages of processing (see Chapter 4). Perceptual experiences are limited by uncertainties and biased by expectations. Unknown

<sup>2</sup>T. Hastie, R. Tibshirani, and J. H. Friedman, *The Elements of Statistical Learning: Data Mining, Inference, and Prediction* (New York: Springer, 2009).

to the individual, memories are forgotten, reconstructed, updated, and distorted. An eyewitness's memory can be contaminated by a wide variety of influences, including interaction with the police.

The committee **recommends** that all law enforcement agencies provide their officers and agents with training on vision and memory and the variables that affect them, on practices for minimizing contamination, and on effective eyewitness identification protocols. In addition to instruction at the police academy, officers should receive periodic refresher training, and officers assigned to investigative units should receive in-depth instruction. Dispatchers should be trained not to "leak" information from one caller to the next and to ask for information in a non-leading way. Police officers should be trained to ask open-ended questions, avoid suggestiveness, and efficiently manage scenes with multiple witnesses (e.g., minimize interactions among witnesses).

### ***Recommendation #2: Implement Double-Blind Lineup and Photo Array Procedures***

Decades of scientific evidence demonstrate that expectations can bias perception and judgment and that expectations can be inadvertently communicated.<sup>3</sup> Even when lineup administrators scrupulously avoid comments that could identify which person is the suspect, unintended body gestures, facial expressions, or other nonverbal cues have the potential to inform the witness of his or her location in the lineup or photo array.

Double-blinding is central to the scientific method because it minimizes the risk that experimenters might inadvertently bias the outcome of their research, finding only what they expected to find. For example, in medical clinical trials, double-blind designs are crucial to account for experimenter biases, interpersonal influences, and placebo effects.

To minimize inadvertent bias, double-blinding procedures are sometimes used in which the test administrator does not know the composition of the photo array or lineup. If administrators are not involved with construction of the lineup and are unaware of the placement of the potential suspect in the sequence, then they cannot influence the witness.

Some in the law enforcement community have responded to calls for double-blind lineup administration with concern, citing the potential for increased financial costs and human resource demands. The committee believes there are ways to reduce these costs and **recommends** that police departments consider procedures and new technologies that increase efficiency of data acquisition under double-blind procedures or those procedures that closely approximate double-blind procedures. If an administrator who does

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<sup>3</sup>See Box 2-1.

not know the identity of the suspect cannot be assigned to the task, then a non-blind administrator (one knowing the status of the individuals in the lineup) might use a computer-automated presentation of lineup photos. If computer-based presentation technology is unavailable, then the administrator could place photos in numbered folders that are then shuffled, as is current practice in some jurisdictions.

The committee **recommends** blind (double-blind or blinded) administration of both photo arrays and live lineups and the adoption of clear, written policies and training on photo array and live lineup administration. Police should use blind procedures to avoid the unintentional or intentional exchange of information that might bias an eyewitness. The “blinded” procedure minimizes the possibility of either intentional or inadvertent suggestiveness and thus enhances the fairness of the criminal justice system. Suggestiveness during an identification procedure can result in suppression of both out-of-court and in-court identifications and thereby seriously impair the prosecutions’s ability to prove its case beyond a reasonable doubt. The use of double-blind procedures will eliminate a line of cross-examination of officers in court.

### ***Recommendation #3: Develop and Use Standardized Witness Instructions***

The committee **recommends** the development of a standard set of easily understood instructions to use when engaging a witness in an identification procedure.

Witnesses should be instructed that the perpetrator may or may not be in the photo array or lineup and that the criminal investigation will continue regardless of whether the witness selects a suspect. Administrators should use witness instructions consistently in all photo arrays or lineups, and can use pre-recorded instructions or read instructions aloud, in the manner of the mandatory reading of Miranda Rights. Accommodations should be made when questioning non-English speakers or those with restricted linguistic ability. Additionally, the committee **recommends** the development and use of a standard set of instructions for use with a witness in a showup.

***Recommendation #4: Document Witness Confidence Judgments***

Evidence indicates that self-reported confidence at the time of trial is not a reliable predictor of eyewitness accuracy.<sup>4</sup> The relationship between the witness' stated confidence and accuracy of identifications may be greater at the moment of initial identification than at the time of trial. However, the strength of the confidence-accuracy relationship varies, as it depends on complex interactions among such factors as environmental conditions, persons involved, individual emotional states, and more.<sup>5</sup> Expressions of confidence in the courtroom often deviate substantially from a witness' initial confidence judgment, and confidence levels reported long after the initial identification can be inflated by factors other than the memory of the suspect. Thus, the committee **recommends** that law enforcement document the witness' level of confidence verbatim at the time when she or he first identifies a suspect, as confidence levels expressed at later times are subject to recall bias, enhancements stemming from opinions voiced by law enforcement, counsel and the press, and to a host of other factors that render confidence statements less reliable. During the period between the commission of a crime and the formal identification procedure, officers should avoid communications that might affect a witness' confidence level. In addition, to avoid increasing a witness' confidence, the administrator of an identification procedure should not provide feedback to a witness. Following a formal identification, the administrator should obtain level of confidence by witness' self-report (this report should be given in the witness' own words) and document this confidence statement verbatim. Accommodations should be made for non-English speakers or those with restricted linguistic ability.

***Recommendation #5: Videotape the Witness Identification Process***

The committee **recommends** that the video recording of eyewitness identification procedures become standard practice.

<sup>4</sup>See, e.g., C. M. Allwood, J. Knutsson, and P. A. Granhag, "Eyewitnesses Under Influence: How Feedback Affects the Realism in Confidence Judgements," *Psychology, Crime, and Law* 12(1): 25–38 (2006); B. H. Bornstein and D. J. Zickafoose, "I Know I Know It, I Know I Saw It": The Stability of the Confidence-Accuracy Relationship Across Domain," *Journal of Experimental Psychology-Applied* 5(1): 76–88 (1999); P. A. Granhag, L. A. Stromwall, and C. M. Allwood, "Effects of Reiteration, Hindsight Bias, and Memory on Realism in Eyewitness Confidence," *Applied Cognitive Psychology* 14(5): 397–420 (2000); and H. L. Roediger III, J. T. Wixted, and K. A. DeSoto, "The Curious Complexity between Confidence and Accuracy in Reports from Memory" in *Memory and Law*, ed. L. Nadel and W. P. Sinnott-Armstrong (Oxford: Oxford University Press, 2012).

<sup>5</sup>See, e.g., J. M. Talarico and D. C. Rubin, "Confidence, Not Consistency, Characterizes Flashbulb Memories," *Psychological Science* 14(5): 455–461 (September 2003).

Although videotaping does have drawbacks (e.g., costs, witness advocates opposing videotaping of witnesses' faces, and witnesses not wanting to be videotaped), it is necessary to obtain and preserve a permanent record of the conditions associated with the initial identification. When necessary, efforts should be made to obtain non-intrusive recordings of the initial identification process and to accommodate non-English speakers or those with restricted linguistic ability. Measures should also be taken to protect the identity of eyewitnesses who may be at risk of harm because they make an identification.

### RECOMMENDATIONS TO STRENGTHEN THE VALUE OF EYEWITNESS IDENTIFICATION EVIDENCE IN COURT

The best guidance for legal regulation of eyewitness identification evidence comes not from constitutional rulings, but from the careful use and understanding of scientific evidence to guide fact-finders and decision-makers. The *Manson v. Brathwaite* test under the Due Process Clause of the U.S. Constitution for assessing eyewitness identification evidence was established in 1977, before much applied research on eyewitness identification had been conducted. That test evaluates the "reliability" of eyewitness identifications using factors derived from prior rulings and not from empirically validated sources. As critics have pointed out, the *Manson v. Brathwaite* test includes factors that are not diagnostic of reliability. Moreover, the test treats factors such as the confidence of a witness as independent markers of reliability when, in fact, it is now well established that confidence judgments may vary over time and can be powerfully swayed by many factors. While some states have made minor changes to the due process framework, (e.g., by altering the list of acceptable "reliability" factors; see Chapter 3), wholesale reconsideration of this framework is only a recent development (e.g., the recent decisions by state supreme courts in New Jersey and Oregon; see Chapter 3).

#### *Recommendation #6: Conduct Pretrial Judicial Inquiry*

Eyewitness testimony is a type of evidence where (as with forms of forensic trace evidence) contamination may occur pre-trial. Judges rarely make pre-trial inquiries about evidence in criminal cases without one of the parties first raising an objection. In cases involving eyewitness evidence, however, parties may not be sufficiently knowledgeable about the relevant scientific research to raise concerns.

Judges have an affirmative obligation to insure the reliability of evidence presented at trial. To meet this obligation, the committee **recommends** that, as appropriate, a judge make basic inquiries when eyewitness



identification evidence is offered. While the contours of such an inquiry would need to be established on a case-by-case basis, at a minimum, the judge could inquire about prior lineups, what information had been given to the eyewitness before the lineup, what instructions had been given to the eyewitness in connection with administering the lineup, and whether the lineup had been administered “blindly.” The judge could also entertain requests from the parties for additional discovery and could ask the parties to brief any issues raised by these inquiries. A judge also could review reports of the eyewitness’ confidence and any recordings of the identification procedures. When assessing the reliability of an identification, a judge could also inquire as to what eyewitness identification procedures the agency had in place and the degree to which they were followed. Both pre-trial judicial inquiries and any subsequent judicial review would create an incentive for agencies to adopt written eyewitness identification procedures and to document the identifications themselves.

If these initial inquiries raise issues with the identification process, a judge could conduct a pre-trial hearing to review the reliability and admissibility of eyewitness identification evidence and to assess how it should be treated at trial if found admissible. If indicia of unreliable eyewitness identifications are present, the judge should apply applicable law in deciding whether to exclude the identifications or whether some lesser sanction is appropriate. As discussed in the sections that follow, a judge may limit portions of the testimony of the eyewitness. A judge can also ensure that the jury is provided with a scientific framework within which to evaluate the evidence.

### *Recommendation #7: Make Juries Aware of Prior Identifications*

The accepted practice of in-court eyewitness identifications can influence juries in ways that cross-examination, expert testimony, or jury instructions are unable to counter effectively. Moreover, as research suggests (see Chapters 4 and 5), the passage of time since the initial identification may mean that a courtroom identification is a less accurate reflection of an eyewitness’ memory. In-court confidence statements may also be less reliable than confidence judgments made at the time of an initial out-of-court identification; as memory fails and/or confidence grows disproportionately. The confidence of an eyewitness may increase by the time of the trial as a result of learning more information about the case, participating in trial preparation, and experiencing the pressures of being placed on the stand.

An identification of the kind dealt with in this report typically should not occur for the first time in the courtroom. If no identification procedure was conducted during the investigation, a judge should consider ordering that an identification procedure be conducted before trial. In any case,

whenever the eyewitness identifies a suspect in the courtroom, it is important for jurors to hear detailed information about any earlier identification, including the procedures used and the confidence expressed by the witness at that time. The descriptions of prior identifications and confidence at the time of those earlier out-of-court identifications provide more useful information to the fact-finders and decision-makers. Accordingly, the committee **recommends** that judges take all necessary steps to make juries aware of prior identifications, the manner and time frame in which they were conducted, and the confidence level expressed by the eyewitness at the time.

***Recommendation #8: Use Scientific Framework Expert Testimony***

The committee finds that a scientific framework describing what factors may influence a witness' visual experience of an event and the resolution and fidelity of that experience, as well as factors that underlie and influence subsequent encoding, storage, and recall of memories of an event, can inform the fact-finder in a criminal case. As discussed throughout this report, many scientifically established aspects of eyewitness memory are counter-intuitive and may defy expectations. Jurors will likely need assistance in understanding the factors that may affect the accuracy of an identification. In many cases this information can be most effectively conveyed by expert testimony.

Contrary to the suggestion of some courts, the committee **recommends** that judges have the discretion to allow expert testimony on relevant precepts of eyewitness memory and identifications. Expert witnesses can explain scientific research in detail, capture the nuances of the research, and focus their testimony on the most relevant research. Expert witnesses can convey current information based on the state of the research at the time of a trial. Expert witnesses can also be cross-examined, and limitations of the research can be expressed to the jury.

Certainly, qualified experts will not be easy to locate in a given jurisdiction; and indigent defendants may not be able to afford experts absent court funds. Moreover, once the defense secures an expert, the prosecution may retain a rebuttal expert, adding complexity to the litigation. Further investigation may explore the effectiveness of expert witness presentation of relevant scientific findings compared with jury instructions. Until there is a clearer understanding of the strengths and weaknesses of this technique, the committee views expert testimony as an appropriate and effective means of providing the jury with information to assess the strength of the eyewitness identification.

Expert witnesses should not be permitted to testify without limits. An expert explaining the relevant scientific framework can describe the state of the research and focus on the factors that are particularly relevant in a

given case. However, an expert must not be allowed to testify beyond the limits of his or her expertise. Although current scientific knowledge would allow an expert to inform the jury of factors bearing on their evaluation of an eyewitness' identification, the committee has seen no evidence that the scientific research has reached the point that would properly permit an expert to opine, directly or through an equivalent hypothetical question, on the accuracy of an identification by an eyewitness in a specific case.

In many jurisdictions, expert witnesses who can testify regarding eyewitness identification evidence may be unavailable. In state courts, funding for expert witnesses may be far more limited than funding in federal courts. The committee **recommends** that local jurisdictions make efforts to ensure that defendants receive funding to obtain access to qualified experts.

***Recommendation #9: Use Jury Instructions as an Alternative Means to Convey Information***

The committee **recommends** the use of clear and concise jury instructions as an alternative means of conveying information regarding the factors that the jury should consider.

Jury instructions should explain, in clear language, the relevant principles. Like the New Jersey instructions,<sup>6</sup> the instructions should allow judges to focus on factors relevant to the specific case, since not all cases implicate the same factors. Jury instructions do not need to be as detailed as the New Jersey model instructions and do not need to omit all reference to underlying research. With the exception of the New Jersey instructions, jury instructions have tended to address only certain subjects, or to repeat the problematic *Manson v. Brathwaite* language, which was not intended as instructions for jurors.

Appropriate legal organizations, together with law enforcement, prosecutors, defense counsel, and judges, should convene a body to establish model jury instructions regarding eyewitness identifications.

<sup>6</sup>New Jersey Criminal Model Jury Instructions, *Identification* (July 19, 2012), available at: [http://www.judiciary.state.nj.us/pressrel/2012/jury\\_instruction.pdf](http://www.judiciary.state.nj.us/pressrel/2012/jury_instruction.pdf). New Jersey Court Rule 3:11, *Record of an Out-of-Court Identification Procedure* (July 19, 2012), available at: [http://www.judiciary.state.nj.us/pressrel/2012/new\\_rule.pdf](http://www.judiciary.state.nj.us/pressrel/2012/new_rule.pdf), New Jersey Court Rule 3:13-3. *Discovery and Inspection* (July 19, 2012), available at: [http://www.judiciary.state.nj.us/pressrel/2012/rev\\_rule.pdf](http://www.judiciary.state.nj.us/pressrel/2012/rev_rule.pdf).

### RECOMMENDATIONS TO IMPROVE THE SCIENTIFIC FOUNDATION UNDERPINNING EYEWITNESS IDENTIFICATION RESEARCH

Basic scientific research on visual perception and memory provides important insight into the factors that can limit the fidelity of eyewitness identification (see Chapter 4). Research targeting the specific problem of eyewitness identification (see Chapter 5) complements basic scientific research. However, this strong scientific foundation remains insufficient for understanding the strengths and limitations of eyewitness identification procedures in the field. Many of the applied studies on key factors that directly affect eyewitness performance in the laboratory are not readily applicable to actual practice and policy. Applied research falls short because of a lack of reliable or standardized data from the field, a failure to include a range of practitioners in the establishment of research agendas, the use of disparate research methodologies, failure to use transparent and reproducible research procedures, and inadequate reporting of research data. The task of guiding eyewitness identification research toward the goal of evidence-based policy and practice will require collaboration in the setting of research agendas and agreement on methods for acquiring, handling, and sharing data.

#### *Recommendation #10: Establish a National Research Initiative on Eyewitness Identification*

To further our understanding of eyewitness identification, the committee **recommends** the establishment of a National Research Initiative on Eyewitness Identification (hereinafter, the Initiative). The Initiative should involve the academic research community, law enforcement community, the federal government, and philanthropic organizations. The Initiative should (1) establish a research agenda to guide research for the next decade; (2) formulate practice- and policy-relevant research questions; (3) identify opportunities for additional data collection; (4) systematically review research to examine emerging findings on the impact of system and estimator variables; (5) translate research findings into policies and procedures that are both practical and appropriate for law enforcement; and (6) set priorities and timelines for issues to be addressed, the conduct of research, the development of best practices, and formal assessments.

The committee notes that there appear to be few existing partnerships between the scientific community and law enforcement organizations and therefore **recommends** that the National Science Foundation (NSF) and the National Institute of Standards and Technology (NIST) take a leadership role working with other federal agencies, such as the National Institute of

Justice (NIJ), the Bureau of Justice Statistics (BJS), and the Federal Bureau of Investigation (FBI), to support such collaborations.

The impact on society of innocents being incarcerated while perpetrators remain free, in conjunction with limited federal resources, highlights the need for both public and private support for this Initiative.

To enhance the scientific foundation of eyewitness identification research and practice, the Initiative should commit to the following:

- a. **Include a practice- and data-informed research agenda** that incorporates input from law enforcement and the courts and establishes methodological and reporting standards for research to assess the fundamental performance of various aspects of eyewitness identification procedures as well as synthesize research findings across studies.
- b. **Develop protocols and policies for the collection, preservation, and exchange of field data** that can be used jointly by the scientific and law enforcement communities. Data collection procedures used in the field should be developed to ensure the relevance of the collected data, to facilitate analysis of the data, and to minimize potential bias and loss of data through incomplete recording strategies.

Law enforcement agencies should take the lead in collecting, maintaining, and sharing relevant data from the field. Much of the data that would be useful for the evaluation of eyewitness identification procedures have been collected in the form of administrative records and may be readily adapted for use in research. Comprehensive data should be collected on lineup composition and witness selections (i.e., fillers, non-identifications, and position of suspect in lineup).

- c. **Develop and adopt guidelines for the conduct and reporting of applied scientific research** on eyewitness identification that conform to the highest scientific standards. All eyewitness research, including field-based studies, laboratory-based studies, and research synthesis, should use rigorous research methods and provide detailed reporting of both methods and results, including (1) pre-registration of all study protocols; (2) investigation of research questions and hypotheses informed by the needs of practice and policy; (3) adoption of strict operationalization of key measures and objective data collection; (4) development of experimental designs informed by analytical concerns; (5) use of proper statistical procedures that account for the often nontraditional nature of data in this field (e.g., estimates of effects with appropriate state-

ments of uncertainty, multiple responses from different scenarios from the same individuals, effects of order and time of presentation when important, treatment of extreme observations or outliers); (6) reporting of participant recruitment and selection and assignment to conditions; (7) complete reporting of findings including effect sizes and associated confidence intervals for both significant and non-significant effects; and (8) derivation of conclusions that are grounded firmly in the findings of the study, are framed in the context of the strengths and limitations of study methodology, and clearly state their implications for practice and policy decisions.

Strict adherence to guidelines for eyewitness identification research will result in more credible research findings that can guide policy and practice. Research that conforms to guidelines will withstand rigorous scrutiny by peers, will be verifiable through replication, and will permit inclusion in systematic reviews, leading to greater confidence in the validity and generalizability of findings.

- d. **Adopt rigorous standards for systematic reviews and meta-analytic studies.** Meta-analyses of primary studies should be conducted only in the context of systematic reviews that locate and critically appraise *all* research findings, including those from unpublished studies. Analyses should consistently appraise and account for possible biases in the included research. Studies that do not adequately conduct or report research methods, such as randomization, should be identified in the findings. Sensitivity analyses considering impacts of lower quality or inadequately reported studies on pooled effect estimates should be conducted and reported. When attempting to draw conclusions from studies with missing data, reviewers should first attempt to contact the authors of the research for additional information. When missing data cannot be retrieved from researchers, imputation methods should, if used, be specific, transparent, and reproducible. Statistical methods for meta-analysis should conform to current best practice, using models appropriate to the level of heterogeneity of results across studies, computing both point estimates and confidence intervals around effect sizes, and translating the results of meta-analyses into terms that are both understandable and useful to practice and policy decision makers.
- e. **Provide basic instruction** for police, prosecutors, defense counsel, and judges on aspects of the scientific method relevant to eyewitness identifications procedures (e.g., the rationale for blinded administration), including principles of research design and the uncertainties associated with data analysis. Training should cover the

importance of data collection and interpretation, including the role of standardized eyewitness identification procedures and documentation of witness statements of confidence. Competencies acquired through such training (quantitative reasoning, understanding principles of research design, and recognition of data uncertainties) are likely to apply to issues beyond eyewitness identification. For example, the knowledge and skills from training can be applied to other issues that personnel face, either in forensic science technologies or in process administration, evaluation, and quality improvement. Similarly, scientists will benefit from a greater knowledge of legal issues, standards, and procedures related to the problem of eyewitness identification. Training of both communities (law and science) will enhance communication and lead to productive collaborations.

The collaborative research initiative between researchers and law enforcement communities will be challenging as it will necessitate (1) standardized police procedures;<sup>7</sup> (2) systematic valid evidence collection and data entry and analysis; and (3) education and training for both researchers and law enforcement professionals on the differences between these two communities in their use of terms and considerations of standards of evidence and uncertainties in data. These three elements of a collaborative initiative are critical to advancing the science related to eyewitness identifications, as each bears directly on the integrity of the foundation upon which the efficacy and validity of current and future practices will be judged. Without such a foundation, practical advances in our scientific understanding are unlikely to occur.

The committee further **recommends** that the Initiative support research to better understand the following: (1) the variables that affect the accuracy, precision, and reliability of eyewitness identifications, and how those variables interact and vary in practice; (2) the (possibly joint) impact of estimator and system variables on both identification accuracy and response bias; (3) best practices for probing witness memory with the least potential for bias or contamination; (4) best strategies to assess witnesses' confidence levels when making an identification; (5) appropriate types of instructions for police, witnesses, and juries to best inform and facilitate the collection and interpretation of eyewitness identifications; (6) photo array composi-

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<sup>7</sup>The term *standardized procedures* refers to the notion that professionals reliably follow the same set of steps or procedures. Such standardization ensures that data across cases can be considered comparable and, to a greater extent, more reliable. Although reliability is not equivalent to validity, it is essential before researchers can assess questions of validity. Without standardized procedures, valid comparisons between departments and regions of the country cannot be achieved.

tion and procedures; (7) identification procedures in the field (showups); (8) innovative technologies that might increase the reliability of eyewitness testimony (e.g., algorithm-based computer face recognition software, computer administered photo arrays, and mobile technologies with photo identification programs); and (9) the most effective means of informing jurors how to consider the factors that affect the strengths and weaknesses of eyewitness identification evidence.

***Recommendation #11: Conduct Additional Research on System and Estimator Variables***

Among the many variables that can affect eyewitness identification, the procedures for constructing a lineup have received the greatest attention in recent years. As discussed in Chapter 5, the question as to whether a simultaneous or sequential lineup is preferred is a specific case of the more general question of what conditions might improve the performance of an eyewitness. The answer to that question depends upon the criteria used to evaluate performance, and much of the debate has thus focused on the analysis tools for evaluation. These tools have improved significantly over the years, beginning with the use of a diagnosticity ratio, which uses the likelihood that the person identified is actually guilty as an evaluation criterion. More recently, the diagnosticity ratio approach has been augmented by analysis of Receiver Operating Characteristics (ROC analysis), which uses a measure of discriminability (i.e., a measure of how well the witness can discriminate between different possible matches to his or her memory of the face of the culprit) as an evaluation criterion. In principle, ROC analysis is a positive step, if only because it incorporates more information (i.e., the earlier diagnosticity ratio is one component of the ROC analysis). But a more complex question concerns how policy-makers and practitioners should weigh the two evaluation criteria that have been considered thus far—likelihood of guilt and discriminability—when making a decision about which lineup procedures to adopt. The answer is particularly nuanced because the two criteria do not always lead to the same conclusion; one lineup procedure may yield poorer discriminability while at the same time increasing the likelihood that the identified person is actually guilty.

The committee concludes that there should be no debate about the value of greater discriminability—to promote a lineup procedure that yields less discriminability would be akin to advocating that the lineup be performed in dim instead of bright light. For this reason, the committee **recommends** broad use of statistical tools that can render a discriminability measure to evaluate eyewitness performance. But a lineup procedure that improves discriminability can yield greater or lesser likelihood of correct identification, depending on how the procedure is applied (see Chapter 5).



For lineup procedures that yield greater discriminability, greater likelihood of correct identification would appear preferable and can be achieved by methods that elicit a more conservative response bias, such as a sequential (relative to simultaneous) lineup procedure.<sup>8</sup> The committee thus **recommends** a rigorous exploration of methods that can lead to more conservative responding (such as witness instructions) but do not compromise discriminability.

In view of these considerations of performance criteria and recommendations about analysis tools, can we draw definitive conclusions about which lineup procedure (sequential or simultaneous) is preferable? At this point, the answer is no. Using discriminability as a criterion, there is, as yet, not enough evidence for the advantage of one procedure over another. The committee thus **recommends** that caution and care be used when considering changes to any existing lineup procedure, until such time as there is clear evidence for the advantages of doing so. From a larger perspective, the identification of factors (such as specific lineup procedures or states of other system variables) that can objectively improve eyewitness identification performance must be among the top priorities for this field. This leads us to three additional recommendations.

- a. The committee **recommends** a broad exploration of the merits of different statistical tools for use in the evaluation of eyewitness performance. ROC analysis represents an improvement over a single diagnosticity ratio, yet there are well-documented quantitative shortcomings to the ROC approach. But are there alternatives? As noted in Chapter 5, the task facing an eyewitness is a binary classification task and there exist many powerful statistical tools for evaluation of binary classification performance that are widely used, for example, in the field of machine learning. While none of these tools has been vetted for application to the problem of eyewitness identification, they offer a potentially rich resource for future investigation in this field.
- b. The alternative (sequential) lineup procedure was introduced as part of an effort to improve eyewitness performance. While, as noted above, it remains unclear whether the procedure has improved eyewitness performance, that goal is still primary. In an effort to achieve that goal, many studies over the past three decades have explored the possibility that other factors may also affect performance, but until recently these investigations have not

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<sup>8</sup>The committee stresses, however, that adoption of a more conservative response bias necessitates a compromise by which fewer lineup “picks” are made overall and thus fewer guilty suspects are identified (see Chapter 5).

evaluated performance using a discriminability measure. The committee therefore **recommends** a broad exploration of the effects of different system variables (e.g., additional variants on lineup procedures, witness lineup instructions) and estimator variables (e.g. presence or absence of weapon, elapsed time between incident and identification task, levels of stress) and—importantly—interactions between these variables using either the ROC approach or other tools for evaluation of binary classifiers that can be shown to have advantages over existing analytical methods.

- c. Building upon the committee's call for a practice- and data-informed research agenda that incorporates input from law enforcement and the courts and establishes methodological and reporting standards for research, the committee **recommends** that the scientific community engaged in studies of eyewitness identification performance work closely with law enforcement to identify other system and estimator variables that might influence performance and practical issues that might preclude certain strategies for influencing performance. In addition, the committee **recommends** that policy decisions regarding changes in procedure should be made on the basis of evidence of superiority and should be made in consultation with police departments to determine which procedure yields the best combination of performance and practicality.

## CONCLUSION

Eyewitness identification can be a powerful tool. As this report indicates, however, the malleable nature of human visual perception, memory, and confidence; the imperfect ability to recognize individuals; and policies governing law enforcement procedures can result in mistaken identifications with significant consequences. New law enforcement training protocols, standardized procedures for administering lineups, improvements in the handling of eyewitness identification in court, and better data collection and research on eyewitness identification can improve the accuracy of eyewitness identifications.

Identifying the Culprit: Assessing Eyewitness Identification

## Appendixes

Identifying the Culprit: Assessing Eyewitness Identification

## Appendix A

### Biographical Information of Committee and Staff

#### CO-CHAIRS

**Thomas D. Albright**, Ph.D., (NAS) is Professor and Conrad T. Prebys Chair in Vision Research at the Salk Institute for Biological Studies, where he joined the faculty in 1986. Dr. Albright is also Director of the Salk Institute Center for the Neurobiology of Vision, Adjunct Professor of Psychology and Neurosciences at the University of California, San Diego, and Visiting Centenary Professor at the Indian Institute of Science, Bangalore.

Dr. Albright is an authority on the neural basis of visual perception, memory, and visually guided behavior. Probing the relationship between the activity of brain cells and perceptual state, his laboratory seeks to understand how visual perception is affected by attention, behavioral goals, and memories of previous experiences. His discoveries address the ways in which context influences visual perceptual experience and the mechanisms of visual associative memory and visual imagery. An important goal of this work is the development of therapies for blindness and perceptual impairments resulting from disease, trauma, or developmental disorders of the brain. A second aim of Dr. Albright's work is to use our growing knowledge of brain, perception, and memory to inform design in architecture and the arts, and to leverage societal decisions and public policy.

Albright received a Ph.D. in psychology and neuroscience from Princeton University in 1983. He is a recipient of numerous honors for his work, including the National Academy of Sciences Award for Initiatives in Research. Dr. Albright is a member of the National Academy of Sciences, a fellow of the American Academy of Arts and Sciences, a fellow of the

American Association for the Advancement of Science, and an associate of the Neuroscience Research Program. He is currently president of the Academy of Neuroscience for Architecture; a member of the National Academy of Sciences Committee on Science, Technology, and Law; and serves on the Scientific Advisory Committee for the Indian National Brain Research Center.

**Jed S. Rakoff, J.D.**, has been a United States District Judge for the Southern District of New York since 1996. Prior to his appointment, he was a federal prosecutor (1973–1980) and a criminal defense lawyer at two large New York law firms (1980–1995). Judge Rakoff is coauthor of 5 books and the author of more than 110 published articles, 500 speeches, and 1,200 judicial opinions. He has been an Adjunct Professor at Columbia Law School since 1988, teaching upper class seminars in science and the law, class actions, white collar crime, and the interplay of civil and criminal law.

Judge Rakoff is a Commissioner on the National Commission on Forensic Science and is a former member of the Governance Board of the MacArthur Foundation Initiative on Law and Neuroscience. He was a member of the National Research Council Committee on the Development of the Third Edition of the Reference Manual on Scientific Evidence and the Committee on the Review of the Scientific Approaches Used During the FBI's Investigation of the 2001 *Bacillus anthracis* Mailings. He is a member of the American Academy of Arts and Sciences and the American Law Institute. He is a Judicial Fellow at the American College of Trial Lawyers, a former director of the New York Council of Defense Lawyers, and former chair of the Criminal Law Committee, New York City Bar Association.

Judge Rakoff received a B.A. from Swarthmore College in 1964, an M.Phil. from Oxford University in 1966, and a J.D. from Harvard Law School in 1969.

## MEMBERS

**William G. Brooks III** is the Chief of the Norwood, Massachusetts Police Department. He began his tenure on May 1, 2012. He served as the Deputy Chief with the Wellesley Police Department from 2000 to 2012. As Deputy Chief, Brooks was involved in hiring, discipline, administration, budgeting, training, and multi-agency coordination. Prior to 2000, he served as a patrolman with the Westwood Police Department from 1977 to 1982 and as an officer with the Norwood Police Department from 1982 to 2000. In Norwood, he served as a patrolman and sergeant and as a detective sergeant for 14 years, supervising all criminal investigations conducted by detectives. Chief Brooks has been a police academy instructor for 30 years and a presenter on eyewitness identification for 6 years. He presents nation-

ally on behalf of the Innocence Project, is a member of the Massachusetts Supreme Judicial Court's Study Committee on Eyewitness Identification, and was the 2012 recipient of the Innocence Network's Champion of Justice Award. Chief Brooks holds a master's degree in criminal justice and is a graduate of the FBI National Academy.

**Joe S. Cecil, Ph.D., J.D.**, is a Project Director in the Division of Research at the Federal Judicial Center. Currently, he is directing the Center's Program on Scientific and Technical Evidence. As director, Dr. Cecil is responsible for judicial education and training in the area of scientific and technical evidence and served as principal editor of the first two editions of the Center's *Reference Manual on Scientific Evidence*, which is the primary source book on evidence for federal judges. He also has published several articles on the use of court-appointed experts. Dr. Cecil is currently directing a research project that examines the difficulties that arise with expert testimony in federal courts, with an emphasis on clinical medical testimony and forensic science evidence. Other areas of research interest include federal civil and appellate procedure, jury competence in complex civil litigation, and assessment of rule of law in emerging democracies. Dr. Cecil serves on the editorial boards of social science and legal journals. He previously served on the National Academies' Panel on Confidentiality and Data Access and the Committee on Identifying the Needs of the Forensic Sciences Community. He currently is a member of the National Academy of Sciences' Committee on Science, Technology, and Law and was a member of its Access to Research Data: Balancing Risks and Opportunities subcommittee. Dr. Cecil received his doctorate (in psychology) and law degree from Northwestern University.

**Winrich Freiwald, Ph.D.**, is Assistant Professor, Laboratory of Neural Systems, The Rockefeller University. Dr. Freiwald is interested in the neural processes that form object representations as well as those that allow attention to make those representations available for social behavior and cognition. Dr. Freiwald co-discovered a specialized neural machinery for face processing located in the temporal and frontal lobes of the brain. He and his colleagues further showed that this machinery is composed of a small network of a fixed number of face selective regions, termed face patches, each dedicated to a different aspect of face processing and all closely connected with each other. Dr. Freiwald's laboratory aims to understand the inner workings of this system, from the level of individual cells to the interactions of brain areas, in order to answer questions such as: How does face selectivity emerge in a single cell? How is information transformed from one face patch to another? What is the contribution of each face patch to different face recognition abilities like the recognition of



a friend or a smile? How do the different face patches interact in different tasks? And how is information extracted from a patch when a perceptual decision is made?

Dr. Freiwald, a native of Oldenburg, Germany, performed his graduate work at the Max Planck Institute for Brain Research in Frankfurt and received his Ph.D. from Tübingen University in 1998. He then joined the Institute for Brain Research at the University of Bremen as a lecturer. Starting in 2001, he worked as a postdoctoral fellow at the Massachusetts Institute of Technology, Massachusetts General Hospital, Harvard Medical School, and the Hanse Institute for Advanced Study in Delmenhorst, Germany. He was head of the primate brain imaging group at the Centers for Advanced Imaging and Cognitive Sciences in Bremen from 2004 to 2008 and a visiting associate at the California Institute of Technology in 2009. He joined The Rockefeller University as assistant professor in 2009. Dr. Freiwald was named a Pew Scholar in 2010, a McKnight Scholar in 2011, and a NYSCF—Robertson Neuroscience Investigator in 2013.

**Brandon L. Garrett** is the Roy L. and Rosamond Woodruff Morgan Professor of Law at the University of Virginia Law School. Garrett joined the law faculty in 2005. His research and teaching interests include criminal procedure, wrongful convictions, habeas corpus, corporate crime, scientific evidence, civil rights, civil procedure, and constitutional law.

Mr. Garrett's recent research includes studies of DNA exonerations, organizational prosecutions, and eyewitness identification procedures in Virginia. In 2011, Harvard University Press published Mr. Garrett's book, *Convicting the Innocent: Where Criminal Prosecutions Go Wrong*, examining the cases of the first 250 people to be exonerated by DNA testing. In 2013, Foundation Press published his co-authored casebook, *Federal Habeas Corpus: Executive Detention and Post-Conviction Litigation*. Mr. Garrett is currently completing a new book, in contract with Harvard University Press, examining corporate prosecutions.

Mr. Garrett attended Columbia Law School, where he was an articles editor of the *Columbia Law Review* and a Kent Scholar. After graduating, he clerked for the Honorable Pierre N. Leval of the United States Court of Appeals for the Second Circuit. He then worked as an associate at Neufeld, Scheck & Brustin LLP in New York City.

**Karen Kafadar**, Ph.D., is Commonwealth Professor and Chair of Statistics at the University of Virginia. Dr. Kafadar received her B.S. in mathematics and M.S. in statistics at Stanford University and her Ph.D. in statistics from Princeton University. Before joining the Statistics Department in 2014, she was Mathematical Statistician at the National Institute of Standards and Technology, member of the technical staff at Hewlett Packard's

RF/Microwave R&D Department, Fellow in the Division of Cancer Prevention at National Cancer Institute, Professor and Chancellor's Scholar at University of Colorado-Denver, and Rudy Professor of Statistics at Indiana University-Bloomington. Her research focuses on robust methods, exploratory data analysis, characterization of uncertainty in the physical, chemical, biological, and engineering sciences, and methodology for the analysis of screening trials, with awards from CDC, American Statistical Association (ASA), and American Society for Quality.

Kafadar was editor of *Technometrics* and the review section of the *Journal of the American Statistical Association* and is currently Biology, Medicine, and Genetics Editor for *The Annals for Applied Statistics*. She has served on several National Research Council committees and is a past or present member on the governing boards for ASA, Institute of Mathematical Statistics, International Statistical Institute, and National Institute of Statistical Sciences. She is a Fellow of the ASA, the American Association for the Advancement of Science, and the International Statistics Institute; she has authored more than 100 journal articles and book chapters; and has advised numerous M.S. and Ph.D. students.

**A.J. Kramer, J.D.**, is Federal Public Defender for the District of Columbia. He earned a Bachelor's of Arts from Stanford University (1975), followed by a Juris Doctorate from the Boalt Hall School of Law at the University of California at Berkeley (1979). Mr. Kramer clerked for the Honorable Procter Hug, Jr., at the United States Court of Appeals for the Ninth Circuit in Reno, Nevada. He spent seven years as an Assistant Federal Public Defender in San Francisco, California, followed by three years as the Chief Assistant Federal Public Defender in Sacramento, California. He taught legal research and writing at Hastings College of the Law, University of California, San Francisco from 1982 to 1988. Mr. Kramer was appointed Federal Public Defender for the District of Columbia in 1990.

A permanent faculty member at the National Criminal Defense College in Macon, Georgia, and at the Western Trial Advocacy Institute in Laramie, Wyoming, Mr. Kramer is a Fellow of the American College of Trial Lawyers. He is currently a member of the American Bar Association Criminal Justice Section Council and a member of the United States Judicial Conference Advisory Committee on the Rules of Evidence.

**Scott McNamara, J.D.**, graduated from Syracuse University with a major in mathematics. Mr. McNamara attended Vermont Law School, graduating *cum laude* in 1991. On July 20, 1992, he became an Oneida County Assistant District Attorney. As such, he handled thousands of cases with a concentration in narcotic and homicide prosecutions. McNamara was the Bureau Chief of the Narcotics Unit for twelve years, and he was also

the First Assistant District Attorney for six years. During his years in the District Attorney's Office, he was a member and the lead prosecutor assigned to the Oneida County Drug Task Force. He also chaired the Oneida County District Attorney's Office Death Penalty Committee. From 2001 to 2006, Mr. McNamara represented the District Attorney's Office on the Joint Terrorism Task Force. In January of 2007, Mr. McNamara took office as the Oneida County District Attorney and has since been elected, and re-elected, by the citizens of Oneida County. His tenure as District Attorney has been one of proactive engagement and problem-solving. He has created an Economic Crime Unit, a Conviction Integrity Unit, and he has appointed a community liaison to improve communication and accessibility between the District Attorney's Office and the diverse population it serves. In addition, Mr. McNamara initiated a strategy of video recording all police interrogations in Oneida County. He has always maintained that his goal as the county's chief law enforcement officer is to continue the legacy of bringing justice to those victimized by crime while recognizing the need to safeguard and enhance fairness within the legal system.

For 10 years, Mr. McNamara taught search and seizure at the Mohawk Valley Police Academy. He was also an adjunct instructor at Mohawk Valley Community College, where he taught both criminal law and constitutional criminal procedural law. McNamara currently is an adjunct instructor at Utica College, where he teaches legal concepts of criminal fraud.

**Charles Alexander Morgan III, M.D.**, is Associate Clinical Professor of Psychiatry, Yale University School of Medicine. Over the course of twenty years at Yale University and the Neurobiological Studies Unit of National Center for Posttraumatic Stress Disorder, Dr. Morgan's neurobiological and forensic research has established him as an international expert in posttraumatic stress disorder (PTSD), in eyewitness memory, and in human performance under conditions of high stress. He is a forensic psychiatrist and has testified as an expert on memory and PTSD at the International Tribunal on War Crimes, the Hague, Netherlands. Dr. Morgan is subject matter expert in the selection and assessment of U.S. Military Special Operations and Special Mission Units. His work has provided insight into the psycho-neurobiology of resilience in elite soldiers and has contributed to the training mission of U.S. Army special programs. For his work in the special operations community, Dr. Morgan was awarded the U.S. Army Award for Patriotic Service in 2008. In 2010, Dr. Morgan was awarded the Sir Henry Wellcome Medal and Prize for his research on enhancing cognitive performance under stress in special operations personnel. In 2011, Dr. Morgan deployed to Afghanistan as an operational advisor with the Asymmetric Warfare Group.

**Elizabeth A. Phelps, Ph.D.**, is Silver Professor of Psychology and Neural Science at New York University. Her research examines the cognitive neuroscience of emotion, learning, and memory. Her primary focus has been to understand how human learning and memory are changed by emotion and to investigate the neural systems mediating their interactions. She has approached this topic from a number of different perspectives, with an aim of achieving a more global understanding of the complex relations between emotion and memory. As much as possible, Dr. Phelps has tried to let the questions drive the research, not the techniques or traditional definitions of research areas. Dr. Phelps has used a number of techniques (behavioral studies, physiological measurements, brain-lesion studies, fMRI) and has collaborated with a number of people in other domains (social and clinical psychologists, psychiatrists, neuroscientists, economists, physicists). Dr. Phelps received a Ph.D. in neuroscience from Princeton University.

**Daniel J. Simons, Ph.D.**, is a professor in the department of psychology at the University of Illinois, where he heads the Visual Cognition Laboratory. His research explores the limits of awareness and memory, the reasons why we often are unaware of those limits, and the implications of such limits for our personal and professional lives. He is best known for his research that demonstrates how people are far less aware of their visual surroundings than they think.

Dr. Simons received his B.A. from Carleton College and his Ph.D. in experimental psychology from Cornell University. He then spent 5 years on the faculty at Harvard University before being recruited to Illinois in 2002. He has published more than 50 articles for professional journals, and his work has been supported by the National Institutes of Health, the National Science Foundation, and the Office of Naval Research. He is a Fellow and Charter Member of the Association for Psychological Science and an Alfred P. Sloan Fellow, and he has received many awards for his research and teaching, including the 2003 Early Career Award from the American Psychological Association. His research adopts methods ranging from real-world and video-based approaches to computer-based psychophysical techniques, and it includes basic behavioral measures, survey and individual difference methods, simulator studies, and training studies. This diversity of approaches helps establish closer links between basic research on the mechanisms of attention, perception, memory, and awareness and how those mechanisms operate in the real world.

In addition to his scholarly research, Dr. Simons is the co-author (with Christopher Chabris) of the *New York Times* bestselling book, *The Invisible Gorilla*. He has penned articles for the *New York Times*, the *Wall Street Journal*, the *Los Angeles Times*, and the *Chicago Tribune* (among others), and he appears regularly on radio and television.

**Anthony D. Wagner, Ph.D.**, is a Professor of Psychology and Neuroscience and Co-Director, Center for Cognitive and Neurobiological Imaging, Stanford University. He is also Director of the Stanford Memory Laboratory. At Stanford since 2003, Dr. Wagner's research explores how the brain supports learning, memory, and executive function. In addition to his basic science, his research examines memory dysfunction in clinical populations and the role of neuroscience evidence in legal and educational settings. He is on the faculty in the Psychology Department and participates in the Neurosciences Program, the Symbolic Systems Program, the Human Biology Program, and the Stanford Center for Longevity. Externally, he is a member of the MacArthur Foundation's Research Network on Law and Neuroscience. He is a Fellow of the American Association for the Advancement of Science, and a recipient of the American Psychological Association's Distinguished Scientific Award for Early Career Contribution, among other honors. Dr. Wagner received a Ph.D. in psychology from Stanford University in 1997.

**Joanne Yaffe, Ph.D.**, is Professor, College of Social Work, University of Utah and Adjunct Professor of Psychiatry, College of Medicine, University of Utah. Her scholarly interests are in evidence based practice and using scientific knowledge for policy and practice decisions. She is particularly interested in the synthesis of research through systematic reviews and meta-analysis, and, with colleagues in the United Kingdom, was funded by the Cochrane Collaboration to develop guidelines for reporting systematic reviews without included studies. She is affiliated with the Social Welfare Coordinating Group and the Knowledge Translation Group of the Campbell Collaboration and has worked with the Methods Group of the Cochrane Collaboration. Dr. Yaffe is a member of the International Advisory Group for CONSORT-SPI, which has developed guidelines for the reporting of randomized trials for complex social and psychological interventions. Dr. Yaffe received a B.S. in Psychology from University of Massachusetts, an M.S.W. from the University of Michigan, and a Ph.D. in Social Work and Psychology from the University of Michigan. She has advanced training in systematic reviews and meta-analysis.

#### STAFF

**Anne-Marie Mazza, Ph.D.**, is the Director of the Committee on Science, Technology, and Law. Dr. Mazza joined the National Academies in 1995. She has served as Senior Program Officer with both the Committee on Science, Engineering and Public Policy and the Government-University-Industry Research Roundtable. In 1999, she was named the first director of the Committee on Science, Technology, and Law, a newly created activity

designed to foster communication and analysis among scientists, engineers, and members of the legal community. Dr. Mazza has been the study director on numerous Academy reports including, *Reference Manual on Scientific Evidence*, 3rd Edition (2011); *Review of the Scientific Approaches Used During the FBI's Investigation of the 2001 Anthrax Letters* (2011); *Managing University Intellectual Property in the Public Interest* (2010); *Strengthening Forensic Science in the United States: A Path Forward* (2009); *Science and Security in A Post 9/11 World* (2007); *Reaping the Benefits of Genomic and Proteomic Research: Intellectual Property Rights, Innovation, and Public Health* (2005); and *Intentional Human Dosing Studies for EPA Regulatory Purposes: Scientific and Ethical Issues* (2004). Between October 1999 and October 2000, Dr. Mazza divided her time between the National Academies and the White House Office of Science and Technology Policy, where she served as a Senior Policy Analyst responsible for issues associated with a Presidential Review Directive on the government-university research partnership. Before joining the Academy, Dr. Mazza was a Senior Consultant with Resource Planning Corporation. She is a fellow of the American Association for the Advancement of Science. Dr. Mazza was awarded a B.A., M.A., and Ph.D. from The George Washington University.

**Arlene F. Lee, J.D.**, is the Board Director for the Committee on Law and Justice (CLAJ). Prior to joining CLAJ, Ms. Lee was the Director of Policy at the Center for the Study of Social Policy, where she focused on helping federal and state elected officials develop research-informed policies and funding to improve results for children and families. In this capacity, she oversaw PolicyforResults.org, a leading national resource for results-based policy. Previously she was the Executive Director of the Maryland Governor's Office for Children, where she chaired the Children's Cabinet and was responsible for the cabinet's fund of 60+ million dollars annually. She has served as the Deputy Director of the Georgetown University Center for Juvenile Justice Reform, Director of the Federal Resource Center for Children of Prisoners, and Youth Strategies Manager for the Governor's Office of Crime Control and Prevention. Ms. Lee is also the author of numerous articles and coauthored *The Impact of the Adoption and Safe Families Act on Children of Incarcerated Parents*. She has a B.A. in Sociology from Washington College and a J.D. from Washington College of Law, American University. As a result of her work, Ms. Lee was named one of Maryland's Top 100 Women and has received three Governor's Citations.

**Steven Kendall, Ph.D.**, is Program Officer for the Committee on Science, Technology, and Law. Dr. Kendall has contributed to numerous Academy reports including the *Reference Manual on Scientific Evidence*, 3rd Edition (2011); *Review of the Scientific Approaches Used During the FBI's Inves-*

*tigation of the 2001 Anthrax Mailings* (2011); *Managing University Intellectual Property in the Public Interest* (2010); and *Strengthening Forensic Science in the United States: A Path Forward* (2009). Dr. Kendall received his Ph.D. from the Department of the History of Art and Architecture at the University of California, Santa Barbara, where he wrote a dissertation on 19th century British painting. He received his M.A. in Victorian Art and Architecture at the University of London. Prior to joining the National Research Council in 2007, Dr. Kendall worked at the Smithsonian American Art Museum and The Huntington in San Marino, California.

**Karolina Konarzewska** is Program Coordinator for the Committee on Science, Technology, and Law. Ms. Konarzewska received a B.A. in Political Science from the College of Staten Island, City University of New York and an M.A. in International Relations, New York University. Prior to joining The National Academies, she worked at various research institutions in Washington, DC, where she covered political and economic issues pertaining to Europe, Russia, and Eurasia.

## Appendix B

### Committee Meeting Agendas

**Meeting 1**  
**Washington, DC**  
**Monday, 2 December 2013**

**OPEN SESSION**

- 8:00 Continental Breakfast
- 8:30 Opening Remarks and Introductions
- Co-chairs:
- Thomas D. Albright, Salk Institute for Biological Studies  
Jed S. Rakoff, U.S. District Court for the Southern District  
of New York
- 8:45–9:30 Charge to the Committee
- Speaker:
- Anne Milgram, Laura and John Arnold Foundation
- 9:30–11:00 The Science of Memory—A Dynamic Process



Speakers:

Daniel L. Schacter, Harvard University (via  
videoconference)  
John T. Wixted, University of California, San Diego

11:00–11:15 Break

11:15–12:00 Overview of Eyewitness Identification

Speaker:

Gary L. Wells, Iowa State University

12:00–1:00 Lunch

1:00–2:30 Meta-Analytical Reviews of System and Estimator  
Variables

Speakers:

Nancy K. Steblay, Augsburg College  
Christian A. Meissner, Iowa State University  
Kenneth Deffenbacher, University of Nebraska at Omaha

2:30–3:00 Strengths and Weaknesses of Eyewitness Research  
Methodologies

Speaker:

Steven D. Penrod, John Jay College of Criminal Justice

3:00–3:30 General Acceptance of Eyewitness Testimony Research

Speaker:

Saul Kassin, John Jay College of Criminal Justice

3:30–3:45 Break

3:45–4:15 Simultaneous and Sequential Lineups

Speaker:

Roy S. Malpass, University of Texas at El Paso

4:15–5:15 Perspectives on Eyewitness Identification

Speakers:

John Firman, International Association of Chiefs of Police

David LaBahn, Association of Prosecuting Attorneys

Kristine Hamann, National District Attorney's Association

Barry Scheck, The Innocence Project

**Tuesday, 3 December 2013**

CLOSED SESSION: 8:00–9:15

OPEN SESSION

9:30–10:15 Police Practices

Speakers:

Joseph Salemme, Chicago Police Department

Rob Davis, Police Executive Research Forum

10:15–11:45 Judicial Findings and Recommendations—Including Jury Instructions

Speakers:

The Honorable Robert J. Kane, Supreme Judicial Study Group on Eyewitness Identification (MA)

The Honorable Geoffrey Gaulkin, Special Master, *State v. Henderson* (NJ)

The Honorable Paul De Muniz, Oregon Supreme Court

The Honorable Barbara Hervey, Texas Court of Criminal Appeals

11:45–12:30 Research on Jury Instructions

Speakers:

Shari Seidman Diamond, Northwestern University and  
American Bar Foundation

David V. Yokum, University of Arizona

CLOSED SESSION: 12:30–2:00

Meeting 2  
Washington, DC  
Thursday, 6 February 2014

OPEN SESSION

8:30–8:45 Opening Remarks and Introductions

Co-chairs:

Thomas D. Albright, Salk Institute for Biological Studies

Jed S. Rakoff, U.S. District Court for the Southern District  
of New York

8:45–9:30 The Illinois Pilot Program on Sequential Double-Blind  
Identification Procedures

Speaker:

Sheri Mecklenburg, U.S. Department of Justice

9:30–10:15 Face Recognition and Human Identification

Speaker:

P. Jonathon Phillips, National Institute of Standards and  
Technology

10:15–10:30 Break

10:30–11:15 Evaluating Eyewitness Research in Court: Moving from  
General to Specific Inference

Speaker:

John Monahan, University of Virginia

11:15–12:00 Eyewitness Identification from the Perspective of State  
Attorney Generals

Speaker:

Peter Kilmartin, State of Rhode Island

12:00–12:45 Lunch

12:45–1:30 Costs and Benefits of Eyewitness Identification Reforms

Speaker:

Steven E. Clark, University of California, Riverside

1:30–2:30 Misinformation and the Creation of False Memories

Speaker:

Elizabeth Loftus, University of California, Irvine—via  
videoconference

2:30–3:15 Obtaining Better Descriptive Information: The Use of the  
Cognitive Interview

Speaker:

Ronald Fisher, Florida International University

CLOSED SESSION: 3:30–5:30

Friday, 7 February 2014

CLOSED SESSION: 8:00–2:00

Meeting 3  
Washington, DC  
Thursday, 24 April 2014

OPEN SESSION

10:30 Welcome

Co-chairs:

Thomas D. Albright, Salk Institute for Biological Studies  
Jed S. Rakoff, U.S. District Court for the Southern District  
of New York

10:35–11:30 Photo Arrays in Eyewitness Identification Procedures

Speaker:

Karen L. Amendola, Police Foundation

CLOSED SESSION: 11:45–5:00

Friday, 25 April 2014

CLOSED SESSION: 8:30–3:00

## Appendix C

### Consideration of Uncertainty in Data on the Confidence-Accuracy Relationship and the Receiver Operating Characteristic (ROC) Curve

*What has happened is history. What might have happened is science and technology. So what you are really interested in is what might have happened if you could do it all over again.*

John W. Tukey, 18 November 1992, in a  
discussion of assessing the uncertainty in cancer  
mortality rates at the National Cancer Institute

Both the Receiver Operating Characteristic (ROC) and the confidence–accuracy relationship involve data (usually, as the proportions of participants in a given study that meet some criterion) and hence are subject to various sources of uncertainty, including measurement error, random variations from external conditions, and biases (such as the tendency to respond “conservatively” or “liberally”; see examples of these biases in Chapter 5). Appendix C focuses on quantification of uncertainty in some of the errors caused by measurement and other random sources. Because the confidence-based ROC curve is justified by an implicit assumption that confidence and accuracy are related, the first section of this appendix discusses the incorporation of uncertainty when assessing the strength of the confidence–accuracy relationship, and the second section does the same for the ROC curve. In what follows, *HR* denotes the hit rate (or “sensitivity” of a procedure on which the confidence–accuracy relationship or ROC is

being constructed), and *FAR* (or,  $1 - \text{specificity}$ ; see Chapter 5) denotes the false alarm rate.<sup>1</sup>

### CONFIDENCE–ACCURACY RELATIONSHIP

When authors talk about the confidence–accuracy relationship, they usually are referring to a correlation coefficient or to a slope of the line fitted to the points (C, A), where a measure of the eyewitness’ expressed confidence level C is on the x-axis, and a measure of the witnesses’ accuracy A is on the y-axis. However one measures the significance of the confidence–accuracy relationship (e.g., in either a correlation coefficient or a slope of the line fitted to the [C, A] points), it is important to note that both expressed confidence level (C) and reported accuracy (A) are based on data and thus are subject to uncertainty, both from random and systematic sources of variation and from biases (see, e.g., Chapter 5 for examples of biases and other variables, such as the type of lineup procedure). In this appendix, we consider the effects of uncertainty in only “A” and “C” in assessing the strength of the confidence–accuracy relationship. Ideally, one would repeat the incident multiple times and assess the error in the repetitions. Unfortunately, such repetition is usually not possible, and one must rely on approximate measures of uncertainty with regard to the (C, A) points. Approaches for characterizing the uncertainty in the confidence–accuracy relationship, using data in the published literature, follow.

Consider the following data:<sup>2</sup>

- 1)  $n_1 = 44$  participants who expressed “Low” confidence (confidence ratings 1,2,3); their overall accuracy was stated as 61%. Taking the median of these three confidence ratings,  $C_1 = 2$  and  $A_1 = 0.61$ . The estimated standard error of this proportion is  $(0.61 \cdot 0.39/44)^{1/2} = 0.0735$ .

<sup>1</sup>The data cited here are used for convenience, as the source publications provided sufficient details about the illustrations.

<sup>2</sup>These data are cited in H. L. Roediger III, J. T. Wixted, and K. A. DeSoto, “The Curious Complexity Between Confidence and Accuracy in Reports from Memory” in *Memory and Law*, ed. L. Nadel and W. P. Sinnott-Armstrong (Oxford: Oxford University Press, 2012), p. 109, who in turn cite Odionot, Wolters, and van Koppen [G. Odionot, G. Wolters, and P. J. van Koppen, “Eyewitness Memory of a Supermarket Robbery: A Case Study of Accuracy And Confidence after 3 Months,” *Law and Human Behavior* 33: 506–514 (2009)] as the source of these data, from nine “central witnesses” (five other witnesses were not interviewed by the police). The sample sizes (44, 203, 326) apparently arise from having “averaged across different categories (person descriptions, object descriptions, and action details) for the nine central witnesses interviewed in that study”; see J. T. Wixted et al., “Confidence Judgments Are Useful in Eyewitness Identifications: A New Perspective,” submitted to *Applied Psychology* 2014, p. 17.

- 2)  $n_2 = 203$  participants who expressed “Medium” confidence (confidence ratings 4,5,6); their overall accuracy was stated as 71%. Taking the median of these three confidence ratings,  $C_2 = 5$  and  $A_2 = 0.71$ . The estimated standard error of this proportion is  $(0.71 \cdot 0.29/203)^{1/2} = 0.0318$ .
- 3)  $n_3 = 326$  participants who expressed “High” confidence (confidence rating 7); their overall accuracy was stated as 85%. Thus,  $C_3 = 7$  and  $A_3 = 0.85$ . The estimated standard error of this proportion is  $(0.85 \cdot 0.15/326)^{1/2} = 0.0198$ .

A plot of these three data points might suggest a highly convincing relationship between accuracy and confidence. However, the relationship is not “statistically significant” when assessed via a weighted linear regression (where weights are inversely proportional to either the standard errors or the variances), nor via an unweighted Pearson correlation coefficient or a Spearman’s rank correlation coefficient (which depends less on the assignment of “Low,” “Medium,” and “High” as 2, 5, 7, respectively, than do the other two methods). Separate tests comparing the proportions 0.85 (“High”) versus either 0.71 (“Medium”) or 0.61 (“Low”) are “statistically significant,” but not the test for comparing the proportions 0.71 (“Medium”) and 0.61 (“Low”). Statistical significance is difficult to achieve with only three data points. Moreover, none of these tests takes into account the potential for error in the self-reported “C” values (2,5,7), which, as discussed in the previous paragraph, is likely to exist.

Consider a second set of data, reported in Juslin, Olsson, and Winman.<sup>3</sup> In this article, the authors considered two lineup conditions, denoted as “suspect-similarity” and “culprit-description.” The authors correctly note that the identification rates at each expressed confidence level for these two conditions are very similar; hence, as the condition had no effect on identification accuracy, one might as well pool “successes/trials” across the two conditions to reduce the uncertainty in each of the accuracy rates and thus gain greater power.

Even after combining the two conditions, however, the numbers of trials in the 10 ECL categories (0.1 = “10% confident,” 0.2 = “20% confident” ... 1.0 = “100% confident”) are not very high (the 10 numbers range from 7 for ECL = 20% to 45 for ECL = 90%). To increase the chances of seeing a meaningful relationship between confidence and accuracy, the authors pool 0.1 with 0.2, 0.3 with 0.4, 0.5 with 0.6, 0.7 with 0.8, and 0.9 with

<sup>3</sup>P. Juslin, N. Olsson, and A. Winman, “Calibration and Diagnosticity of Confidence in Eyewitness Identification: Comments on What Can Be Inferred from the Low Confidence-Accuracy Correlation,” *Journal of Experimental Psychology: Learning, Memory, and Cognition* 22(5): 1304–1316 (September 1996).

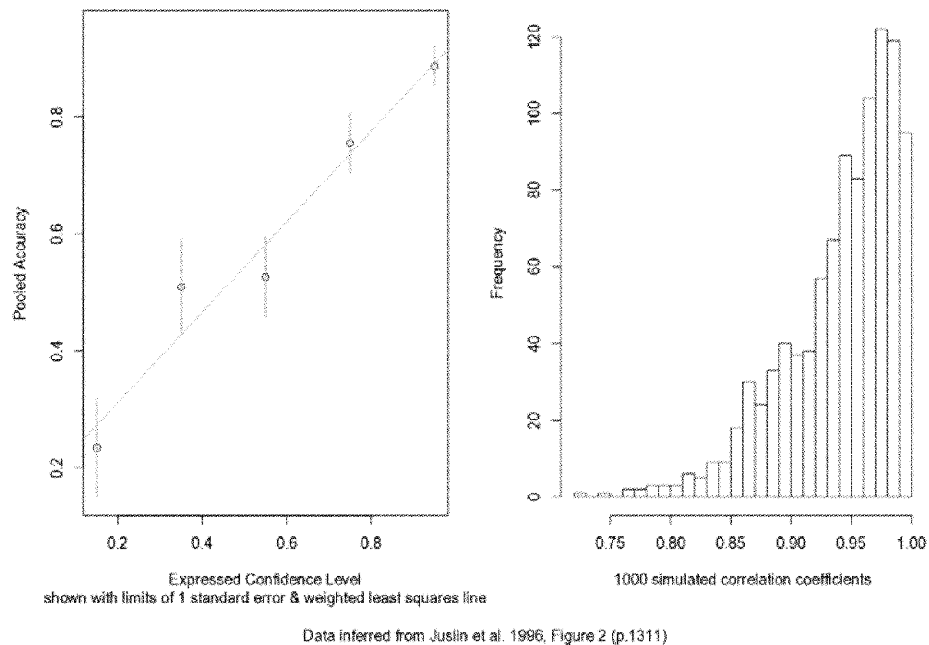


1.0. Although Table 2 in Juslin, Olsson, and Winman provides the counts (numbers of trials), it does not tabulate the accuracies (numbers of correct responses). One can estimate these accuracies by weighted averages of the displayed percentages shown in the plots in their Figure 2<sup>4</sup> for the “suspect-similarity condition” (“A” = 0.27, 0.38, 0.51, 0.55, 0.87;  $n = 15, 21, 25, 29, 51$ ) and for the “culprit-description condition” (“A” = 0.18, 0.66, 0.63, 0.90, 0.91;  $n = 10, 18, 28, 41, 37$ ). In the confidence level categories (15%, 35%, 55%, 75%, 95%), the accuracies (with their standard errors and the total sample sizes on which they are based following them in parentheses) are, respectively, 23.4% (8.5%,  $n = 25$ ), 50.9% (8.0%,  $n = 39$ ), 52.6% (6.9%,  $n = 53$ ), 75.5% (5.1%,  $n = 70$ ), and 88.7% (3.4%,  $n = 88$ ). For these data, both the unweighted correlation coefficient, 0.9766 ( $t$ -statistic = 7.865,  $p$ -value 0.004), and the slope of the weighted linear regression (points weighted inversely proportional to their standard errors), 0.773 (standard error 0.085,  $p$ -value 0.003), are statistically significant, in that such convincing data of a relationship between correlation and accuracy would be unlikely to arise if, in fact, no association existed.

Another method for assessing the significance of the unweighted correlation is through the simulation of a large number of trials on the basis of the data that were observed. For each trial, one can first simulate five confidence values, uniformly distributed between the endpoints that were observed:  $c_1$  is uniformly distributed between (0.05, 0.25) (mean is the observed 0.15);  $c_2$  is uniformly distributed between (0.25, 0.45) (mean is the observed 0.35); ...  $c_5$  is uniformly distributed between (0.85, 1.00). Next, one simulates five proportions using the observed conditions:  $a_1$  is a binomial variate ( $n = 25$ ,  $p = 0.234$ ) divided by  $n = 25$ ;  $a_2$  is a binomial variate ( $n = 39$ ,  $p = 0.509$ ) divided by  $n = 39$ ; ...  $a_5$  is a binomial variate ( $n = 88$ ,  $p = 0.887$ ) divided by  $n = 88$ . For each trial with five simulated  $c$  values and their five corresponding  $a$  values, one calculates a Pearson correlation coefficient. Figure C-1 shows a plot of the five data points, with limits of one standard error on the estimated accuracies (left panel) and the histogram of the 1,000 simulated Pearson correlation coefficients (right panel). The median is 0.9534 (close to the observed 0.9766), the upper and lower quartiles are 0.916 and 0.977, and the central 90% of the 1,000 values lie between 0.8650 and 0.993. Thus, an approximate 90% confidence interval for the true correlation coefficient (0.865, 0.993) definitely does not include zero, a further indication of the significance of the Pearson correlation coefficient.

The example above illustrates the importance of incorporating known uncertainty in the estimated accuracy for the confidence level category. The relationship between confidence and accuracy should take into account (1)

<sup>4</sup>See pages 1310–1311 of Juslin, Olsson, and Winman for the data in their Table 2 and Figure 2, respectively.



**FIGURE C-1** Data Inferred from Juslin, Olsson, and Winman.

NOTE: Adapted from Juslin, Olsson, and Winman, “Calibration and Diagnosticity of Confidence in Eyewitness Identification.” The left panel plots confidence-accuracy data from p. 1311. Data are pooled into five categories; accuracies are inferred from p. 1313. Data are shown with limits of one standard error and weighted least squares regression line. The right panel is a histogram of 1000 simulated Pearson correlation coefficients, using data from 5 categories shown in right panel. The central 90% of the simulated values lie between 0.853 and 0.993, indicating that the true unweighted Pearson correlation coefficient is significantly different from zero. Courtesy of Karen Kafadar.

the repeated responses of a limited number of “eyewitnesses” in the study and (2) the uncertainty in an eyewitness’ “expressed confidence level.” The 2009 National Research Council report, *Strengthening Forensic Science in the United States: A Path Forward*, cited studies in which fingerprint examiners reached different conclusions when presented with exactly the same evidence at a later time.<sup>5</sup> Quite possibly, in many of these laboratory studies on which these confidence-accuracy relationships are based, participants

<sup>5</sup>National Research Council, *Strengthening Forensic Science in the United States: A Path Forward* (Washington, DC: The National Academies Press, 2009), p. 139.

may express different levels of confidence if presented with exactly the same set of circumstances and procedures 6 months later.

The existing literature varies in its assessment of the significance of the confidence–accuracy relationship, with some articles suggesting a very strong relationship and many others suggesting that the relationship is weak or nonexistent. The lack of significance in the confidence–accuracy relationship may result from other factors not taken into account. For example, Smalarz and Wells suggest that restricting the plot to only those data corresponding to “choosers” may strengthen the relationship.<sup>6</sup> Other factors that might affect the relationship include the presence or absence of weapon, the level of stress during the incident, and the length of exposure to the perpetrator. Roediger and colleagues state that

the simple assumption usually made that confidence and accuracy are always tightly linked is wrong...the relation between confidence and accuracy depends on the method of analysis, on the target material being remembered, on who is doing the remembering, and (in situations where memory is tested by recognition) on the nature of the lures and distractors. In addition, there is more than one way to measure the relationship between confidence and accuracy, and not every way is equally relevant to what courts of law would like to know about the issue.<sup>7</sup>

Studies that incorporate numerous variables, as well as soliciting a confidence statement at various times (e.g., immediately, or 10 minutes after the incident, or 1 hour after the incident), would be valuable.

### RECEIVER OPERATING CHARACTERISTIC ANALYSIS

A receiver operator characteristic (ROC) is a reliable, time-honored assessment of test performance. ROC has been used for decades in the medical test diagnostic literature. Conventionally, as noted in Chapter 5, two procedures were compared using a single diagnosticity ratio:  $DR = HR / FAR = \text{hit rate} / \text{false alarm rate}$ , or  $\text{sensitivity} / (1 - \text{specificity})$ . Wixted and colleagues observed that the diagnosticity ratio,  $DR$ , can vary depending

<sup>6</sup>L. Smalarz and G. L. Wells, “Eyewitness Certainty as a System Variable,” in *Reform of Eyewitness Identification Procedures*, ed. B. L. Cutler (Washington, DC: American Psychological Association, 2013), 161–177.

<sup>7</sup>Roediger, Wixted, and DeSoto, “The Curious Complexity Between Confidence and Accuracy in Reports from Memory.

on an eyewitness' ECL and hence proposed the use of an ECL-based ROC curve to compare two lineup procedures (simultaneous versus sequential).<sup>8</sup>

The ECL-based ROC curve for a given procedure (e.g., simultaneous) is constructed as follows:

- 1) Collect participants in a study and subject them to the experimental conditions.
- 2) For each participant, record whether she or he accurately selected the correct suspect or accurately passed over the filler and the expressed confidence level in the decision.
- 3) Collect all the responses for participants who answered "100% confident" (say,  $n_1$  of them) and record the combined *FAR* (false alarm rate, or  $1 - \text{specificity}$ ) and *HR* (hit rate, or sensitivity) across  $n_1$  participants ( $FAR_1, HR_1$ ).
- 4) Repeat step 3 for all participants who answered "90% confident" (or higher; say,  $n_{0.9}$  of them), resulting in the data pair ( $FAR_{0.9}, HR_{0.9}$ ).
- 5) Repeat step 3 for all participants who answered "80% confident" (or higher; say,  $n_{0.8}$ ), resulting in the data pair ( $FAR_{0.8}, HR_{0.8}$ ).
- 6) Continue to repeat step 3 for the groups of participants who answered "70% confident" ... "10% confident" (or higher; say,  $n_{0.7} \dots n_{0.1}$  of them).
- 7) Plot the 10 data pairs, ( $FAR_1, HR_1$ ), ..., ( $FAR_{0.1}, HR_{0.1}$ ).

This plot results in the ROC curve, whose points (*HR*, *FAR*) correspond to different ECLs.

The plotted points usually are connected by straight lines, and the slope of the ROC curve at each of those plotted points represents the *DR* corresponding to that confidence category. The ROC curve illustrates the separate *DR*s rather than calculating a single *DR* collapsed across all confidence categories. As with the confidence-accuracy relationship, it is important to recognize the uncertainty in the estimated (*FAR*, *HR*) data points. How does the uncertainty in *FAR* and *HR*, and hence in the diagnosticity ratio ( $DR = HR/FAR$ ), translate into uncertainty into the ROC curve?

The effect of uncertainty in estimates of *HR*, *FAR*, *DR* ( $= HR/FAR$ ) on the ROC curve can be seen by simulating new *HR* and *FAR* rates,

<sup>8</sup>L. Mickes, H. D. Flowe, and J. T. Wixted, "Receiver Operating Characteristic Analysis of Eyewitness Memory: Comparing the Diagnostic Accuracy of Simultaneous and Sequential Lineups," *Journal of Experimental Psychology: Applied* 18: 361–376 (2012). See especially pp. 362–365 for a description of ROC analysis in the medical literature and applied to the eyewitness identifications.

assuming that the observed *HR* and *FAR* rates are true “means” from the simulated distributions. As a first example, consider the set of data from Brewer and Wells<sup>9</sup> which is cited by Mickes, Flowe, and Wixted in their Table 1.<sup>10</sup> The data are: *HR* = (.090,.237,.320,.355,.370); *FAR* = (.002,.015,.030,.038,.041), leading to five diagnosticity ratios (rounded) *DR* = ( 45,16,11,9,9). The article states that the experiment involved 1,200 participants.

As above, one can simulate each of the five hit rates and the five false alarm rates, with 4,000 independent trials and 1,200 participants, in such a way that the means of the five distributions of hit rates (*HRs*) and the means of the five distributions of false alarm rates (*FARs*) equal the values observed in the experiment [e.g., 0.090, 0.237, 0.320, 0.355, 0.370 for *HR* and (0.002, 0.015, 0.030, 0.038, 0.041) for *FAR*], leading to five distributions of 4,000 diagnosticity ratios (*HR/FAR*). For example, consider simulating 1,200 individuals whose *HR* is 0.090 = 9.0%. One expects that, on average, about  $(9\%) \times 1,200 = 108$  of the simulated 1,200 participants will have “hits.” When repeating this trial of 1,200 individuals, the number might be 110, or 95, or some other number around, but usually not exactly, 108. Repeating the trial 4,000 times, one can average the 4,000 numbers (e.g., 108, 110, 95...) and divide by 1,200, yielding a mean simulated *HR*. The advantage is that one can also use the 4,000 numbers to calculate a standard deviation.<sup>11</sup> One repeats exactly the same exercise for the five *FAR* rates, yielding a mean *FAR* and a standard deviation,  $SD_{FAR}$ . As noted in Chapter 5, in real life, *HR* and *FAR* will be estimated on the same set of 1,200 participants, so the two numbers, *HR* and *FAR*, in the five (*HR*, *FAR*) pairs, will be correlated. In the simulation, *HR* and *FAR* are independent, so the estimated uncertainties are likely to be optimistic; the real uncertainties could well be larger. One can then plot three sets of points (each set contains five points): (1) (mean *HR*, mean *FAR*) (this plot should look qualitatively similar to the one in Figure 6(A) in Mickes, Flowe and Wixted;<sup>12</sup> (2) (mean *HR* -  $SD_{HR}$ , mean *FAR* -  $SD_{FAR}$ ) [these points should lie somewhat below the points plotted in (1)]; and (3) (mean *HR* +  $SD_{HR}$ , mean *FAR* +  $SD_{FAR}$ ) [these points should lie somewhat above the points plotted in (1)].

<sup>9</sup>N. Brewer and G. L. Wells, “The Confidence-Accuracy Relationship in Eyewitness Identification: Effects of Lineup Instructions, Foil Similarity, and Target-Absent Base Rates,” *Journal of Experimental Psychology: Applied* 12(1): 11–30 (2012) (as cited by Mickes et al., Table 1, p. 367).

<sup>10</sup>Mickes, Flowe, and Wixted, p. 367.

<sup>11</sup>Or Standard Deviation Hit Rate ( $SD_{HR}$ ), which also can be obtained from standard formulas for the standard deviation of the binomial distribution. See G. Snedecor and W. Cochran, *Statistical Methods, Sixth Ed.* (Ames, Iowa: Iowa State University Press, 1967).

<sup>12</sup>Mickes, Flowe, and Wixted, p. 371.

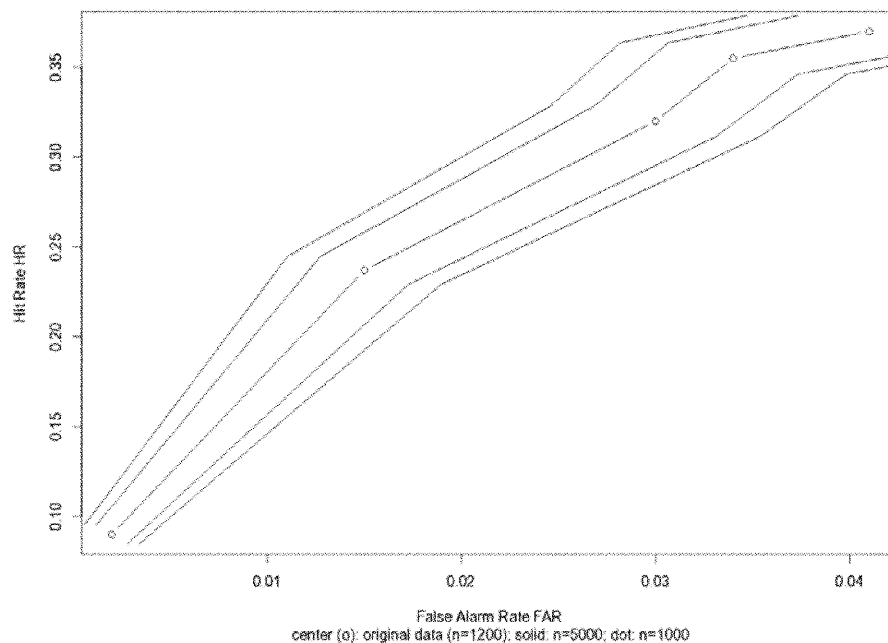


FIGURE C-2 Data from Brewer and Wells.

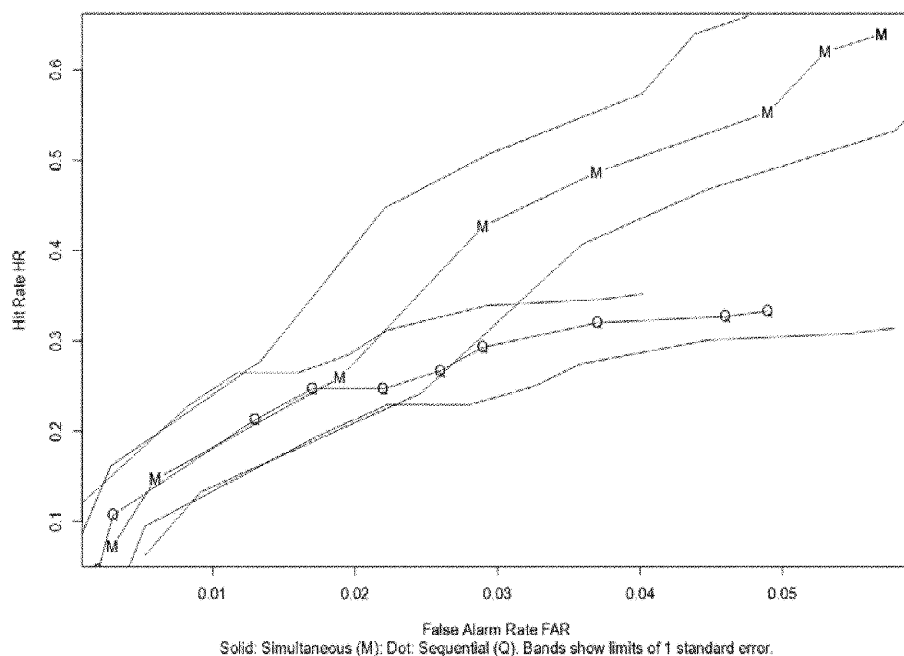
NOTE: Adapted from Brewer and Wells, "The confidence-accuracy relationship in eyewitness identification." The data are cited by Mickes, Flowe, and Wixted, "Receiver Operating Characteristic Analysis of Eyewitness Memory." Courtesy of Karen Kafadar.

Figure C-2 shows bands of one standard error in both *HR* and *FAR*, illustrating one source of uncertainty in the ROC curve due to estimating *HR* and *FAR*. The same approach to calculating uncertainties was used for the two sets of (*HR*, *FAR*) values given by the "simultaneous" and "sequential" data in Mickes, Flowe, and Wixted, Table 3.<sup>13</sup> The text indicates that Experiment 1A used  $n = 598$  participants, so the simulation assumed  $n = 600$ . In Figure C-3, "M" refers to "siMultaneous," and "Q" refers to "seQuential." Note that the "M" and "Q" points fall roughly in the same pattern as in Mickes, Flowe, and Wixted's Figure 6A.<sup>14</sup> Note the substantial overlap in the bands of "one standard deviation" surrounding each of the data points, indicating no "statistically significant" differences between the "M" (simultaneous) and "Q" (sequential) points.<sup>15</sup> If one were to take

<sup>13</sup>Ibid, p. 372.

<sup>14</sup>Ibid, p. 371.

<sup>15</sup>The bands of two standard deviations would overlap even more.



**FIGURE C-3** Data from Experiment 1A in Mickes, Flowe, and Wixted.  
 NOTE: Adapted from Mickes, Flowe, and Wixted, “Receiver Operating Characteristic Analysis of Eyewitness Memory.” Courtesy of Karen Kafadar.

into account the effects of using the *same* eyewitness in the same study with different responses to different tasks, the variability would be even larger.

When the same exercise is repeated for the data in Experiment 2 ( $n=631$ ), similarly ambiguous results (see Figure C-4) are obtained. As Mickes and colleagues suggest, the differences between simultaneous and sequential are even less impressive, and especially so once bands of one standard errors around the points are shown.

These further analyses on these published data sets suggest the following conclusions.

- 1) The strength of the confidence-accuracy relationship involves uncertainty in the measures of both A (accuracy) and C (confidence), as well as other factors that can influence the relationship.
- 2) A ROC curve incorporates more information than a single DR (diagnosticity ratio =  $HR/FAR$ ) using a third variable [different test thresholds in the medical literature; in the present context, different expressed confidence levels (ECLs); i.e.,  $HR$  and  $FAR$  at

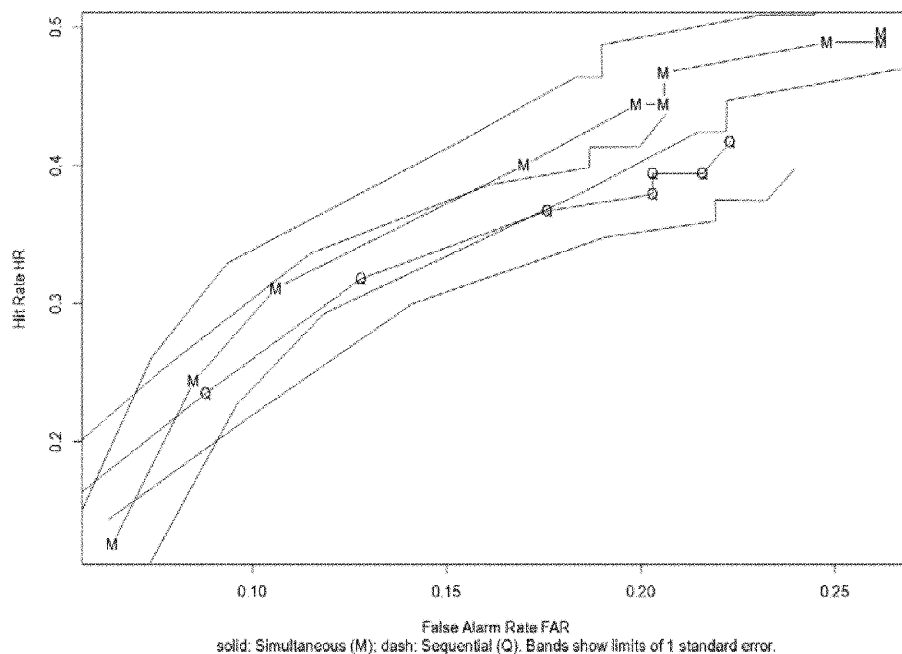


FIGURE C-4 Data from Experiment 2 in Mickes, Flowe, and Wixted.  
NOTE: Adapted from Mickes, Flowe, and Wixted, “Receiver Operating Characteristic Analysis of Eyewitness Memory.” Courtesy of Karen Kafadar.

different expressed confidence levels]. As is true with any data, the data from which a ROC is constructed (*FARs*, *HRs*, expressed confidence levels) have uncertainty, and that uncertainty is passed on to the ROC. A comparison of two ROCs without recognizing that uncertainty can be misleading. As with any tool, one must be careful in how one draws inferences when comparing ROC curves.

- 3) Other methods for comparing two procedures (in which the outcome is a binary classification such as “identification” / “no identification” of an individual) exist in other literature.<sup>16</sup>

These analyses considered only the most obvious form of random measurement error. The ROC may be influenced by other sources of bias; these sources are not considered or displayed in the plots shown here (see Chapter 5). Also, the ROC curve takes into consideration only the prob-

<sup>16</sup>See, e.g., T. Hastie, R. Tibshirani, and J.H. Friedman, *The Elements of Statistical Learning: Data Mining, Inference, and Prediction* (New York: Springer, 2009) for a discussion on classification and evaluation methods of statistical machine learning research.



ability that an eyewitness who makes a positive identification of a suspect has correctly identified the true culprit (positive predictive value); it does not take into consideration the rule-out probability that an eyewitness who fails to make an identification of a suspect has correctly recognized that the suspect is *not* the true culprit (negative predictive value) (see Chapter 5).

### ALTERNATIVE ANALYSIS TO CONFIDENCE-BASED ROC FOR COMPARING PROCEDURES

As noted in Chapter 5, the diagnosticity ratio [hit rate/false alarm rate =  $HR/FAR$  = sensitivity/(1 – specificity)] can depend not only on an eyewitness' tendency toward “conservative” or “liberal” identification (as measured by expressed confidence level), but also on numerous other factors, including: (1) lineup procedure (e.g., two levels: simultaneous versus sequential); (2) presence or absence of a weapon (two levels; more levels could be considered, such as gun, knife, towel, none); (3) stress (e.g., three levels: high, medium, low); (4) elapsed time between incident and exam (e.g., three levels: 30 min, 2 hours, 1 day); (5) race difference (e.g., two levels: same or different race or four levels: eyewitness/culprit = white/white; white/non-white; non-white/white; non-white/non-white; non-white/white); (6) participant (e.g.,  $N$  levels, corresponding to  $N$  participants).

If a study is sufficiently large, one could develop a performance metric for each participant in the study corresponding to each of these conditions. For example, one could construct a ROC curve and calculate as the performance metric the logarithm of the area under the curve, or  $\log(AUC)$ , for each person and each condition in the study. One could also use as a performance metric the logarithm of the odds (log odds) of a correct decision; e.g.,  $\log(HR/(1-HR))$  or  $\log((1-FAR)/FAR)$ .

Consider the following approach:

Let  $y_{ijklmnr}$  denote the  $\log(AUC)$  or a log odds (or another performance metric) for the  $r^{th}$  trial using participant  $n$  ( $n = 1, \dots, N$ ) for procedure  $i$ , weapon level  $j$ , stress level  $k$ , time condition  $l$ , and cross-race effect  $m$ .<sup>17</sup> One could write:

$$y_{ijklmnr} = \mu + \alpha_i + \beta_j + \gamma_k + \delta_l + \phi_m + (\alpha\beta)_{ij} + \dots(\text{interactions})\dots + \epsilon_{ijklmnr}$$

<sup>17</sup>When the performance metric is a log odds, this model is known as logistic regression; see, e.g., F. Harrell, *Regression Modeling Strategies* (New York: Springer-Verlag, 2001). A model where the performance metric is  $\log(AUC)$  was studied by F. Wang and C. Gatsonis. See F. Wang and C. Gatsonis, “Hierarchical Models for ROC Curve Summary Measures: Design and Analysis of Multi-Reader, Multi-Modality Studies of Medical Tests,” *Statistics in Medicine* 27: 243-256 (2008).

where  $\mu$  represents the overall average  $\log(\text{AUC})$  or log odds across all conditions, the next six terms reflect the main effects of A (lineup procedure:  $i = 1$  for sequential and  $i = 2$  for simultaneous); B (weapon:  $j = 1$  for presence and  $j = 2$  for absence of weapon); C (stress level:  $k = 1$  for low,  $k = 2$  for medium,  $k = 3$  for high); D (elapsed time between incident and report:  $\ell = 1$  for 30 minutes,  $\ell = 2$  for 2 hours,  $\ell = 3$  for 1 day); E (cross-race effect:  $m = 1$  for same race and  $m = 2$  for different races); F (participant effect:  $n = 1, 2, \dots, N$  participants); “(interactions)” reflects the joint effect of two or more factors together; and the last term,  $\epsilon_{ijklmnr}$  represents any random error in the  $r^{\text{th}}$  trial that is not specified from the previous terms (e.g., measurement, “ECL,” multiple trials). This approach would allow one to separate the effects of the different factors, to assess which factors have the greatest influence on the outcome (here, logarithm of the area under the ROC curve: bigger is better), and to evaluate the importance of these factors relative to variation among “eyewitnesses.” It may be that eyewitnesses are the greatest source of variability, dominating the effects of all other factors. Or it may be that, in spite of person-to-person variability, one or more factors still stand out as having strong influence on the outcome. Note that (1) other covariates could be included, such as age and gender of participant; and (2) the ROC curve need not be defined in terms of expressed confidence level thresholds if a more sensitive measure of response bias (tendency toward “liberal” versus “conservative” identifications) can be developed.

For example, C. A. Carlson and M. A. Carlson<sup>18</sup> use *partial area under the curve*, or *pAUC*, as a summary measure of the information in an ROC curve (bigger is better), for each of twelve different conditions defined by three factors: (1) Procedure, three levels: simultaneous (SIM: suspect in position 4), sequential (SEQ2: suspect in position 2), sequential (SEQ5: suspect in position 5); (2) Weapon focus, two levels: present versus absent; (3) Distinctive feature, two levels: present versus absent. The data are provided in their Table 3, along with 95% confidence intervals.<sup>19</sup> Because the length of a confidence interval is proportional to the standard error, *pAUC* values with shorter confidence intervals correspond to smaller standard errors and hence should have higher weights. The logarithms of the reported *pAUC* values and weights (reciprocals of the lengths of the reported confidence intervals) are given below in Table C-1.

For the Carlson study, the data on all  $N = 2,675$  participants (720 undergraduates and 1,955 SurveyMonkey respondents) were combined, and

<sup>18</sup>C. A. Carlson and M. A. Carlson, “An Evaluation of Lineup Presentation, Weapon Presence, and a Distinctive Feature Using ROC Analysis,” *Journal of Applied Research in Memory and Cognition* 3(2): 45–53 (2014).

<sup>19</sup>*Ibid.*, p. 49.

TABLE C-1 Conditions and Logarithms of Reported  $pAUC$  Values<sup>a</sup>

Condition	Procedure	Weapon	Feature	$5 + \log(pAUC)$	Weight
1	SIM	Yes	Yes	1.31112	47.6
2	SIM	Yes	No	1.72983	33.3
3	SIM	No	Yes	0.92546	55.6
4	SIM	No	No	1.87643	45.5
5	SEQ2	Yes	Yes	1.49344	47.6
6	SEQ2	Yes	No	1.22774	47.6
7	SEQ2	No	Yes	1.08798	52.6
8	SEQ2	No	No	1.58875	41.7
9	SEQ5	Yes	Yes	1.70316	38.5
10	SEQ5	Yes	No	0.98262	58.8
11	SEQ5	No	Yes	0.65719	66.7
12	SEQ5	No	No	1.49344	55.6

<sup>a</sup>Adapted from data on  $pAUC$  from Table 3 in C. A. Carlson and M. A. Carlson. "An Evaluation of Lineup Presentation, Weapon Presence, and a Distinctive Feature Using ROC Analysis," *Journal of Applied Research in Memory and Cognition* 3(2): 45–53 (2014). The addition of "5" to  $\log(pAUC)$  is simply to avoid negative numbers; the inferences from the analysis remain unchanged. Courtesy of Karen Kafadar.

expressed confidence levels were solicited on a 7-point scale. Variations in the twelve  $\log(pAUC)$  values can be decomposed into three main effects (one each for procedure, weapon, and feature), and their two-way interactions. (The raw data may permit a more detailed analysis.) The data can be analyzed using a less complex model than that stated above (because the model has fewer terms):

$$y_{ijk} = \mu + \alpha_i + \beta_j + \gamma_k + (\alpha\beta)_{ij} + (\alpha\gamma)_{ik} + (\beta\gamma)_{jk} + \varepsilon_{ijk}$$

where  $y_{ijk}$  denotes  $(5 + \log(pAUC))$  for procedure  $i$  ( $i = 1, 2, 3$ ), weapon condition  $j$  ( $j = 1, 2$ ), and feature  $k$  ( $k = 1, 2$ );  $\mu$  represents the overall average  $\log(pAUC)$  across all conditions;  $\alpha_i$  represents the effect of procedure  $i$ ;  $\beta_j$  represents the effect of weapon condition  $j$ ;  $\gamma_k$  represents the effect of feature condition  $k$ ; and the next three terms reflect the three two-factor interactions between the main factors. The analysis of variance, where  $\log(pAUC)$  values are weighted according to the values in the last column of Table C-1, is given in Table C-2 below. None of the factors is significant.<sup>20</sup> It must be stressed that the complete set of raw data may yield a more powerful analysis with different results, as might a different summary measure of the ROC curve, such as  $AUC$ , or area under the ROC curve.<sup>21</sup>

<sup>20</sup>We can decompose the two degrees of freedom in the sum of squares for *Procedure* (three levels), 8.04, into two single degree of freedom contrasts, *SEQ2* versus *SEQ5* (4.14), and *sim* versus the average of *SEQ2* and *SEQ5* (3.90), and consider all pairwise interaction terms among the four “main effects.” All single degree-of-freedom effects remain non-significant, in either this weighted analysis or in an unweighted analysis.

<sup>21</sup>For a discussion of the advantages and disadvantages of using  $AUC$  versus  $pAUC$  as a summary measure, see S. D. Walter, “The Partial Area Under the Summary ROC Curve,” *Statistics in Medicine* 24(13): 2025–2040 (July 2005).

TABLE C-2 Analysis of Variance Table for  $\log(pAUC)^a$ 

Source of Variation	Degrees of Freedom	Sum of Squares	Mean Square	F-statistic	p-value
Procedure	2	8.04	4.02	1.129	0.470
Weapon	1	2.94	2.94	0.826	0.460
Feature	1	14.72	14.72	4.138	0.179
Procedure×Weapon	2	0.59	0.30	0.083	0.923
Procedure×Feature	2	10.41	5.21	1.463	0.406
Weapon×Feature	1	34.80	34.80	9.780	0.089
Residuals	2	7.12	3.56		

<sup>a</sup>Adapted from data on  $pAUC$  from Table 3 in C. A. Carlson and M. A. Carlson. "An Evaluation of Lineup Presentation, Weapon Presence, and a Distinctive Feature Using ROC Analysis," *Journal of Applied Research in Memory and Cognition* 3(2): 45–53 (2014). Courtesy of Karen Kafadar.

## THE ROLE OF THE SOCIAL SCIENCES IN PREVENTING WRONGFUL CONVICTIONS

Jacqueline McMurtrie\*

The lawyer alone is obdurate. The lawyer and the judge and the juryman are sure that they do not need the experimental psychologist. They do not wish to see that in this field preeminently applied experimental psychology has made strong strides . . . . They go on thinking that their legal instinct and their common sense supplies them with all that is needed and somewhat more . . . . The Court would rather listen for whole days to the "science" of the handwriting experts than allow a witness to be examined with regard to his memory and his power of perception, his attention and his association, his volition and his suggestibility, with methods which are in accord with the exact work of experimental psychology.

Hugo Münsterberg, *On the Witness Stand* 10, 46 (1908)

### I. INTRODUCTION

The legal profession's reluctance to acknowledge the findings of social scientists, while accepting other "sciences" on little other than blind faith has contributed to the phenomena of erroneous convictions. It is undisputed that people are convicted and sentenced sometimes to death<sup>1</sup> for crimes they did not commit.<sup>2</sup> The advent of deoxyribonucleic (DNA) testing and rapid improvements in DNA technology have resulted in the exoneration of over 163 people in the United States.<sup>3</sup> As forensic DNA technology continues to evolve and improve, other forensic sciences, long accepted by courts as scientific proof of identification in

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Assistant Professor of Law, Director: Innocence Project Northwest Clinic University of Washington School of Law, J.D., University of Michigan Law School, B.G.S., University of Michigan.

1. See Death Penalty Information Center, for a current list of death penalty exonerates, <http://www.deathpenaltyinfo.org/article.php?did=412&scid=6>, (last visited Sept. 9, 2005); see also MICHAEL L. RADALET, HUGO A. BEDEAU & CONNIE PUTMAN, *IN SPITE OF INNOCENCE: ERRONEOUS CONVICTIONS IN CAPITAL CASES* (Northeastern University Press 1992) (identifying 416 cases of erroneous conviction in capital or potentially capital cases between 1900 and 1991).

2. See Samuel R. Gross et al., *Exonerations in the United States: 1989 through 2003*, 95 J.L. & CRIM 524 (2005) (identifying 340 exonerations between 1989 and 2003, 144 of which were exonerations based on post-conviction DNA testing, and 196 cases where individuals were freed through other types of evidence); RADALET ET AL., *supra* note 1 at 17; Arye Rattner, *Convicted But Innocent*, 12 LAW & HUM. BEHAV. 283, 287 (1988) (identifying 205 wrongful convictions); C. Ronald Huff, *Wrongful Conviction: Societal Tolerance of Injustice*, 4 RES. SOC. PROBS. & PUB. POL'Y. 99 (1987) (examining 500 wrongful convictions); JEROME FRANK & BARBARA FRANK, *NOT GUILTY* (Doubleday & Company, Inc. 1957) (discussing thirty-six cases of erroneous conviction); EDWIN M. BORCHARD, *CONVICTING THE INNOCENT* (Garden City Publishing Company 1932) (discussing sixty-five cases of wrongful conviction).

3. See The Innocence Project, <http://www.innocenceproject.org> (last visited Oct. 14, 2005), for a current list of DNA exonerations.

criminal cases, have come under scrutiny. Individuals convicted on the basis of expert forensic testimony on comparisons of bitemarks,<sup>4</sup> hairs, voiceprints, earprints<sup>5</sup> and fingerprints,<sup>6</sup> were freed after post-conviction DNA tests established their innocence and proved the "scientific" evidence wrong. In one example, prosecutors stated that hairs found at a rape scene were "indistinguishable" from Jimmy Ray Bromgard's. With faulty statistics to bolster this bold statement, Bromgard at eighteen, was sentenced to forty years in prison. Fifteen years later

4. Ray Krone was convicted and sentenced to death for the murder of a woman who was stabbed to death and left in the restroom of a bar where she worked. Little physical evidence was found, except for bitemarks left on the neck and the breast of the victim. Investigators heard that Krone helped the victim close the bar on the night of the murder and he was arrested and charged. Styrofoam impressions of Krone's teeth were taken for comparison with the bitemarks on the victim. At trial, an odontologist testified that the bitemarks on the victim matched the impression Krone made on the Styrofoam. Krone, who testified he was at home at the time of the murder, was convicted and sentenced to death. Krone was successful in obtaining a new trial, but was convicted after re-trial and sentenced to life imprisonment. In 2002, DNA testing done on the saliva and blood found on the victim exonerated Krone and implicated a man named Kenneth Phillips, who worked near the scene of the crime, and who was already in prison for another sex offense. Krone spent ten years in prison, including some years on death row, before he was exonerated and released. *See State v. Krone*, 897 P.2d 621, 622 (Ariz. 1995) (ordering a new trial because Krone had been prejudiced by the state's failure to disclose a crucial piece of evidence in the form of a videotape which "attempted to show match between Krone's teeth" and the victim's wounds); Henry Weinstein, *The Nation's Death Penalty Foes Mark a Milestone Crime: Arizona Convict Freed on DNA Tests is Said to be the 100th Known Condemned U.S. Prisoner to be Exonerated Since Executions Resumed*, LOS ANGELES TIMES, April 10, 2002, at A16 (reporting on the exoneration of Ray Krone); Craig M. Cooley, *Reforming the Forensic Science Community to Avert the Ultimate Injustice*, 15 STAN. L. & POL'Y REV. 381, 437 (2004) (using Ray Krone's story as an example of the potential fallacies of bite mark identification).

5. *See* Bob Woffinden, *Earprint Landed Innocent Man in Jail for Murder: Grotesque Miscarriage of Justice Resolved after Seven Years*, GUARDIAN (LONDON), Jan. 23, 2004, at 13 ("A man who spent seven years in prison after being convicted of murder on the strength of an earprint walked free from the Old Bailey yesterday after the charges against him were formally dropped . . . [Mark Dallagher] was convicted primarily on the basis of earprints found on the glass of the window through which the intruder had entered the house. The prosecution expert . . . told the court he was "absolutely convinced" that the prints were those of Mr. Dallagher's ears. . . . A DNA profile obtained from the earprint [in 2004] proved that it was not Dallagher's.").

6. Stephan Cowans was convicted of multiple crimes associated with an assault on a police officer. Jurors heard that the assailant shot a police officer after wrestling the gun away from the officer during a physical struggle. The assailant then shot at a resident of the neighborhood, before breaking into a home. The assailant drank from a glass of water in the house and left behind a baseball cap, the gun and a sweatshirt. Two weeks after the assault, the police officer identified Cowans from a photo array and then picked him out of a lineup. The other victim did not pick Cowans' picture in the photo array, but later selected him from a lineup and identified him at trial. None of the other eyewitnesses, including the residents of the home which was invaded, identified Cowans as the assailant. Two fingerprint technicians testified that a fingerprint lifted from a glass used by the assailant matched Cowans' print. A fingerprint expert hired by the defense confirmed the match. Cowans was convicted and sentenced to thirty to forty-five years in prison. In 2003, the state agreed to release the glass, baseball hat and sweatshirt for DNA testing. Profiles obtained from the glass and the hat matched each other, but did not match Cowans. The state asked to have the sweatshirt tested, and again, the profile matched the profiles from the glass and the hat, but did not match Cowans. In 2004, Cowans was exonerated after serving six years in prison. *See* Jonathan Saltzman & Mac Daniel, *Man Freed in 1997 Shooting of Officer Judge Gives Ruling After Fingerprint Revelation*, BOSTON GLOBE, Jan. 24, 2004, at A1 (reporting that the prosecutor at Cowans' court hearing stated "I can conclusively and unequivocally state, your honor, that the purported match was a mistake"); *see also* Sandy L. Zabell, *Fingerprint Evidence*, 13 J.L. & POL'Y 143, 146-47 (2005) (discussing two case studies of fingerprint misidentification).

he was exonerated when DNA evidence proved he did not commit the rape.<sup>7</sup> In another case, the prosecutor's use of voiceprint analysis to match David Pope's voice with threatening messages left on the rape victim's answering machine following her attack sealed his conviction. Post-conviction DNA tests freed Pope, but only after he spent fifteen years in prison.<sup>8</sup>

At the same time, studies of DNA exonerations and other erroneous convictions have validated the research of social scientists, particularly in the areas of mistaken eyewitness identification, false confessions and suggestibility of children. Courts traditionally tended to exclude scientific evidence from expert witnesses in these disciplines, primarily on the basis that the testimony addressed matters within the common understanding of jurors,<sup>9</sup> was confusing,<sup>10</sup> or that it invaded the province of the jury to make credibility determinations.<sup>11</sup> However, with the increased awareness of the role that mistaken identification, false confessions and suggestive interviewing of children play in convicting the innocent, a new trend is developing regarding the admissibility of expert testimony. Courts have more recently

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7. At trial, the victim said she was 60% to 65% sure that her attacker was Bromgard. To bolster its case, the prosecutor presented testimony from an expert who testified that pubic and head hairs found at the scene could not be distinguished from Bromgard's hair samples. The expert testified that the chances that either set of hairs found at the scene were not those of Bromgard were 1 in 100 for normal hair and rose to 1 in 10,000 for pubic hair. In 2002, DNA tests proved that Bromgard did not commit the rape and he was released after serving fifteen years in prison. See Lise Olsen, *Reopened Rape Case Dogs Crime Lab Worker*, SEATTLE POST-INTELLIGENCER, Oct. 11, 2002, at A1 (quoting the expert as claiming "that the odds of making a mistake in matching both head and pubic hair would be one chance in 10,000."); see also Adam Liptak, *2 States to Review Lab Work Of Expert Who Erred on ID*, NEW YORK TIMES, Dec. 19, 2002, at A24 (where Walter Rowe, a professor of forensic science at George Washington University, who reviewed the case at the request of Bromgard's lawyer, Peter J. Neufeld of the Innocence Project, said of the expert's testimony: "The 1-in-100 estimate was without any scientific basis . . . [t]he multiplying of probabilities was totally fallacious.").

8. See Cecilia M. Vega, *Life in the Free World: After 15 years in a Texas Prison for a Crime He Didn't Commit, David Pope Tries to Rebuild his Life in the North Bay*, THE PRESS DEMOCRAT, Jan. 25, 2004. See also The Innocence Project, [http://www.innocenceproject.org/case/display\\_profile.php?id=82](http://www.innocenceproject.org/case/display_profile.php?id=82) (last visited Sept. 21, 2005) (providing a short profile of the Pope case and explaining that Pope was exonerated because the DNA profile matched that of another man, who was serving time in a Texas prison).

9. See, e.g., *People v. Son*, 93 Cal. Rptr. 2d 871, 883 (2000) (declaring that the lower court acted within its discretion by excluding expert testimony on false confessions on "a matter easily understood by a layperson without expertise"); *State v. Swan*, 790 P.2d 610, 632 (Wash. 1990) (upholding the exclusion of an expert psychologist's testimony on the suggestibility of children because child suggestibility is within the understanding of the jury and was addressed in cross-examination); *Commonwealth v. Francis*, 453 N.E.2d 1204, 1210 (Mass. 1983) (holding that juries can understand, without expert assistance, the general factors associated with inaccurate identifications).

10. See, e.g., *People v. Green*, 683 N.Y.S.2d 597, 600 (N.Y. App. Div. 1998) (finding that proffered expert testimony concerning defendant's susceptibility to providing a false confession "was not sufficiently relevant to outweigh the confusion it would inject into the trial").

11. See, e.g., *Callis v. State*, 684 N.E.2d 233, 239-40 (Ind. Ct. App. 1997) (holding that the trial court properly excluded an expert opinion about the defendant's interrogation, because the aim of the excluded testimony was "to express an opinion as to which witness was telling the truth" about the interrogation; however "the trial court properly admitted Ofshe's [expert] testimony regarding the phenomenon of coerced confessions"); *State v. Stucke*, 419 So. 2d 939, 945 (La. 1982) (stating that eyewitness expert testimony "invades the province of the jury and usurps its function").



acknowledged that the research of social scientists in these areas contains findings that are counter-intuitive and therefore expert testimony can assist the trier of fact.<sup>12</sup>

Section II of this essay will provide an introduction (the literature is far too extensive to attempt a comprehensive treatment in this article) to the findings of social scientists in the areas of: a) eyewitness identification; b) false confessions; and c) suggestibility of children. In each section, it will also discuss efforts to implement reforms based upon the research of social scientists. Any meaningful reform must take place on two fronts. First, it is essential that "obdurate" lawyers and judges address their preconceptions about the social sciences and educate themselves about the findings of applied psychology. Second, and most importantly, systemic change must occur in the way evidence is collected and preserved during the investigation of a case that involves an eyewitness, a child witness, or an interrogation.<sup>13</sup> By incorporating lessons learned from the research of social science, we can improve the administration of justice and guard against conviction of the innocent.

## II. THE INTEGRATION OF SOCIAL SCIENCE RESEARCH INTO CRIMINAL JUSTICE REFORM

The legal profession's relationship with the discipline of social sciences is complex and has vacillated between integration and isolation. James Ogloff traces the development of the law and psychology movement over the past century in *Two Steps Forward and One Step Backward: The Law and Psychology Movement(s) in the 20th Century*.<sup>14</sup> He discusses the genesis of the movement in the late

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12. See e.g. *United States v. Hall*, 974 F. Supp. 1198, 1205-06 (C.D. Ill. 1997) (ruling that testimony of expert may assist the trier of fact in overcoming common misperception that "once a person confesses to his guilt, he must be guilty"); *State v. Cheatam*, 81 P.3d 830, 840 (Wash. 2003) (acknowledging a "shift in thinking" regarding the admissibility of eyewitness expert testimony because research establishes that "certain subjects thought to be commonly understood are actually not as straightforward as thought"); *State v. Gersin*, 668 N.E.2d 486, 488 (Ohio 1996) (finding that most jurors lack the knowledge of accepted practices in interviewing child victims, and expert testimony on this issue is therefore admissible).

13. Gary L. Wells and Elizabeth F. Loftus, leading researchers and scholars in the field of eyewitness memory, advocate that the criminal justice system treat memory evidence in the same manner it treats other types of trace evidence admitted at trial to identify the perpetrator of the crime. They state that memory evidence, like fingerprints, fiber or blood, can be contaminated, lost, destroyed or otherwise made to produce results that lead to an incorrect reconstruction of the event in question. And, the method used to gather memory evidence can affect the accuracy of the results, just as it can with fingerprints or blood evidence. Gary L. Wells & Elizabeth F. Loftus, *Eyewitness Memory for People and Events*, in 11 HANDBOOK OF PSYCHOLOGY, FORENSIC PSYCHOLOGY 149-60 (Alan M. Goldstein ed., 2002).

14. James R. P. Ogloff, *Two Steps Forward and One Step Backward: The Law and Psychology Movement(s) in the 20th Century*, in *TAKING PSYCHOLOGY AND LAW INTO THE TWENTY-FIRST CENTURY* 4-11 (James R. P. Ogloff ed., Kluwer Academic / Plenum Publishers 2002). See generally *LAW AND SOCIETY: READINGS ON THE SOCIAL STUDY OF LAW* (Stewart Macaulay et al. eds., W.W. Norton & Company 1995) (containing various articles analyzing law written from a social science perspective); *LAW AND THE SOCIAL SCIENCES* 3 (Leon Lipson & Stanton Wheeler eds., Russell Sage Foundation 1986) (describing "the enterprise of law and social science"); *THE*

19th century and the promising “first step” of integrating social sciences, including psychology, into the law school curriculum. According to Ogloff, the movement took “one step back” in the late 1940s and 1950s, when virtually no articles or books are written on the general topic of law and psychology. The “second step forward” in the movement occurred in the 1960s, with the development of numerous scholarly journals devoted to the field of law and psychology and with the increase in the number of graduate programs in psychology and law.<sup>15</sup> Much of the social science research in the areas of eyewitness identification, interrogations, and interviewing of children that provides the foundation for reform in the criminal justice system was developed during the “second step forward” period of the law and psychology movement.

#### *A. Eyewitness Identification*

Mistaken eyewitness identification has long been recognized as a leading cause of wrongful convictions. The Supreme Court acknowledged the grave role that misidentifications play in the criminal justice system, indicating that mistaken identification “probably accounts for more miscarriages of justice than any other single factor.”<sup>16</sup> Statistics bear out this observation, showing that mistaken eyewitness identification is the leading cause of conviction of the innocent—misidentification played a major role in two-thirds of the first 138 DNA exonerations in the United States.<sup>17</sup> Even before the development of forensic DNA testing mistaken eyewitness identification was responsible for the convictions of more innocent persons than any other combination of factors.<sup>18</sup>

Although DNA testing is a powerful tool in exonerating individuals convicted on the basis of mistaken identifications, it is not a panacea for eyewitness error in criminal cases. In most crimes involving eyewitnesses, such as murders, robberies, burglaries, and thefts, the perpetrator does not leave biological material at the scene of the crime.<sup>19</sup> However, procedures for maximizing accurate identifications

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USE/NONUSE/MISUSE OF APPLIED SOCIAL RESEARCH IN THE COURTS (Michael J. Saks & Charles H. Barton, eds., Abt Books 1978) (analyzing the implementation of social science by the judicial system).

15. Ogloff, *supra* note 14, at 8-11.

16. *United States v. Wade*, 388 U.S. 218, 229 (1967).

17. The Innocence Project, *Mistaken I.D.*, <http://www.innocenceproject.org/causes/mistakenid.php> (last visited Sept. 21, 2005). Other studies place the percentage at a higher figure. U.S. DEP'T OF JUSTICE, CONVICTED BY Juries, EXONERATED BY SCIENCE: CASE STUDIES IN THE USE OF DNA EVIDENCE TO ESTABLISH INNOCENCE AFTER TRIAL 15-17 (1996) (finding that mistaken eyewitness identification was a factor in 85% of the twenty-eight cases studied); BARRY SCHECK, PETER NEUFELD & JIM DWYER, ACTUAL INNOCENCE (2000) (reporting that mistaken eyewitness identification was present in 86% of the first sixty DNA exonerations in the United States).

18. See BORCHARD, *supra* note 2, at xiii (noting that eyewitness error occurred in 45% of sixty-five cases of wrongful conviction); Huff, *supra* note 2, at 99, 101-03 (finding that mistaken eyewitness identification occurred in 60% of the 500 wrongful convictions studied); Ratner, *supra* note 2, at 283, 291 (finding that eyewitness error occurred in 52% percent of the 205 wrongful convictions studied).

19. See Gary L. Wells et al., *Eyewitness Identification Procedures: Recommendations for Lineups and Photospreads*, 22 LAW & HUM. BEHAV. 603, 609 (1998) (stating that the number of suspects in the United States

and minimizing erroneous identifications have been extensively and empirically tested by cognitive and social psychologists, peer reviewed, and thoroughly and scientifically studied.

Research over the past thirty years has shown that expert testimony on memory and eyewitness identification is the only legal safeguard that is effective in sensitizing jurors to eyewitness errors.<sup>20</sup> A 1984 Massachusetts case provides an interesting example of how expert testimony on eyewitness identification could change the outcome of a trial. In *Commonwealth v. Francis*, the defendant was convicted in the Superior Court of Massachusetts for armed robbery.<sup>21</sup> An eyewitness testified before the grand jury, at the probable cause hearing, and at the first trial that the robber was wearing short sleeves, and had no distinctive features. The trial ended in a mistrial when the jury was unable to reach a verdict after the defendant showed that he had tattoos up and down his arms.

At the second trial, after the eyewitness (who had been sequestered during the first trial) learned about the defendant's tattoos, she changed her testimony, suddenly remembering that the robber wore a long-sleeved jacket which concealed his weapon.<sup>22</sup> At this point, the defendant moved to allow expert testimony regarding eyewitness identification. The expert for the defense testified that high levels of stress and the presence of a weapon reduce the ability of an eyewitness to correctly identify a suspect. The expert also testified that when an eyewitness learns of inconsistent post event information, she will often unconsciously alter her memory to resolve the conflict incorporating this post-event information into her memory.<sup>23</sup>

The trial judge refused to admit the expert testimony, stating that the proposed testimony is not beyond the ordinary experience and knowledge of the average juror, and would not aid jurors in their deliberations.<sup>24</sup> The defendant despite an alibi and the presence of the tattoos was convicted. However, the undecided jury at the first trial, and the cross examination of the witness at the second trial, revealing her prior inconsistent statements, suggests that had the expert testimony

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who become defendants on the basis of eyewitness identification has been conservatively estimated at 77,000 suspects per year).

20. See Steven D. Penrod & Brian L. Cutler, *Preventing Mistaken Identification in Eyewitness Identification Trials*, *PSYCHOLOGY AND LAW: THE STATE OF THE DISCIPLINE* 89, 114 (Ronald Roesch et al. eds., Kluwer Academic / Plenum Publishers 1999) ("Considered as a whole, the studies of juror knowledge and decision making indicate that expert psychological testimony can serve as a safeguard against mistaken identification."). But see Gary L. Wells, *Eyewitness Identification Evidence: Science and Reform*, *CHAMPION*, April 2005, at 18-19 (arguing that loosening rules for expert eyewitness identification testimony is a flawed reform proposal, since there are a very limited number of well qualified eyewitness identification scientists fewer than fifty—and the costs and the arbitrariness with which cases will receive the benefit of expert testimony make the solution ineffective given the magnitude of the problem of eyewitness identification).

21. *Commonwealth v. Francis*, 453 N.E.2d 1204, 1204 (Mass. 1983).

22. *Id.* at 1204-05.

23. *Id.* at 1206.

24. *Id.* at 1207.

been admitted, the defendant may well have been acquitted.

In light of the research exposing the weaknesses of eyewitness identification, the *Francis* and other courts' traditional reliance on cross-examination and closing argument<sup>25</sup> and on the common sense of jurors to understand the flaws of eyewitness identification is misguided. Although cross-examination is a powerful tool for exposing lies, it is not particularly effective when used against eyewitnesses who believe they are telling the truth.<sup>26</sup> Further, reliance upon a fact-finder's common sense is misplaced when social science research concludes that many of the findings in the area of eyewitness identification are counter-intuitive.

For example, extensive scientific research establishes that high confidence on the part of an eyewitness does not directly correlate with high accuracy.<sup>27</sup> Yet, the confidence that an eyewitness expresses in his or her identification is the most powerful determinant of whether or not a fact-finder believes that the witness has made an accurate identification.<sup>28</sup> The presence of other factors known to genuinely influence accuracy such as disguises worn by the perpetrator, stress experienced by the victim, instructions that encourage a witness to make a selection, bias in the composition of the photo array or lineup, and the victim's focus upon a weapon during an incident are not relied upon by jurors as much as eyewitness confidence.<sup>9</sup>

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25. See, e.g., *State v. Kemp*, 507 A.2d 1387, 1390 (Conn. 1986) ("The weaknesses of identifications can be explored on cross-examination and during counsel's final arguments to the jury.").

26. See generally Gary L. Wells et al., *Accuracy, Confidence, and Juror Perceptions in Eyewitness Identification*, 64 J. APPLIED PSYCHOL. 440 (1978) (discussing the relationship between witness confidence and accuracy when tested by cross-examination). See also Gabriella Ramirez et al., *Judge's Cautionary Instructions on Eyewitness Testimony*, 14 AM. J. FORENSIC PSYCHOL. 31 (1996) (concluding that jury instructions do not provide much assistance in educating jurors about the accuracy of eyewitness identification).

27. See Gary L. Wells et al., *Eyewitness Identification Procedures: Recommendations For Lineups and Photospreads*, 22 LAW & HUM. BEHAV. 603, 619-27 (1998) (concluding the effect a confident eyewitness has upon a jury, and the relationship between confidence and accuracy is one of the most researched questions in all of scientific eyewitness literature).

28. *Id.*

29. See Brian L. Cutler et al., *Juror Sensitivity to Eyewitness Identification Evidence*, 14 LAW & HUM. BEHAV. 185, 190 (1990) (concluding that jurors were insensitive to many factors that influence eyewitness memory and give disproportionate weight to the confidence of the witness); Timothy P. O'Toole et al., *District of Columbia Public Defender Eyewitness Reliability Survey*, CHAMPION, April 2005, 28, 28-32 (finding, in a survey of approximately 1,000 potential jurors, that a significant numbers of jurors do not understand the concepts of weapon focus, the effects of violence and stress and the lack of meaningful correlation between witness confidence at trial and the accuracy of eyewitness identification, and that they overestimate the reliability of cross-racial identification and have no understanding of how police procedures can affect the accuracy of an eyewitness identification). See also Wells et al., *supra* note 27, at 619-20 (recounting surveys showing that public defenders, prosecutors, and private defense attorneys indicate that the substantial majority of lawyers also believe that confident eyewitnesses are more likely to be accurate in their identification); Richard A. Wise & Martin A. Safer, *A Survey of Judges' Knowledge and Beliefs About Eyewitness Testimony*, 40 COURT REVIEW 6, 8-14 (2003) (finding that, while judges generally were familiar with blind lineups, post-event information, weapon focus, mug shot bias, and confidence malleability, they had limited understanding regarding eyewitness accuracy and confidence, were unfamiliar with simultaneous lineups, with the forgetting curve and with studies indicating that half or more of all wrongful felony conviction are due to eyewitness misidentification).

The great weight that a fact-finder places upon eyewitness confidence is particularly troubling because research establishes that eyewitness confidence is highly malleable. The confidence of an eyewitness can be influenced and strengthened by repeat questioning<sup>30</sup> or by information that the witness receives during, or after, the identification process.<sup>31</sup> Eyewitnesses who are given confirming feedback about their identifications express more confidence in their identification and the details of their identification. In a recent study, researchers obtained 352 *false* identifications in an experiment and randomly assigned these eyewitnesses to receive feedback about their identification decisions. Some received confirming feedback ("good, you identified the suspect"), some received disconfirming feedback ("actually the suspect is number 4") and some received no feedback. Later, the eyewitnesses were asked how certain they were at the time of the identification that they had identified the actual culprit. The eyewitnesses who received confirming feedback were much more confident than the witnesses with no feedback and the witnesses with disconfirming feedback. In addition, the confirming feedback witnesses distorted their reports of their witnessing conditions by exaggerating how good their view was of the culprit and how much attention they paid to the culprit's face while observing the event.<sup>32</sup>

To protect against the contamination of eyewitness testimony by subtle or express confirming feedback, Gary L. Wells and other scholars in scientific psychology recommend the use of a double-blind identification procedure.<sup>33</sup> In a double-blind procedure, neither the eyewitness nor the officer conducting the identification procedure are aware of who the suspect is within the photo array or lineup. This straightforward procedure protects against witnesses looking towards the administrator of the photo array or lineup for cues as to which person to choose, or for confirmation of their selection. It also prevents against the administrator giving unintended or express reinforcement of the witnesses' selection.

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30. See John S. Shaw, III & Kimberley A. McClure, *Repeated Postevent Questioning Can Lead to Elevated Levels of Eyewitness Confidence*, 20 LAW & HUM. BEHAV. 629, 644 (1996) (chronicling two experiments showing that witness confidence was increased by repeated post event questioning).

31. See Amy L. Bradfield et al., *The Damaging Effect of Confirming Feedback on the Relation Between Eyewitness Certainty and Identification Accuracy*, 87 J. APPLIED PSYCHOL. 112, 117 (2002) (showing that confirming feedback increases certainty of witnesses in inaccurate recollections).

32. See Gary L. Wells & A. L. Bradfield, "Good, You Identified the Suspect": *Feedback to Eyewitnesses Distorts their Reports of the Witnessing Experience*, 83 J. APPLIED PSYCHOL. 360, 366 (1998) (summarizing the results of a study where 352 subjects made a misidentification from a photo array without the suspect and then were given feedback on that misidentification, then questioned on their decision).

33. See John Turtle, Roderick C. L. Lindsay & Gary L. Wells, *Best Practices Recommendations for Eyewitness Evidence Procedures*, 1 CAN. J. POLICE & SECURITY SERVICES 5, 12-13 (2003) (stating the "double-blind" procedure models what occurs in scientific experiments or clinical drug trials where "placebos" or "control groups" are used. In such cases, the patient taking the pills and the doctor assessing the patient's health do not know whether the patient is taking the actual drug or a placebo. This is done out of recognition that such knowledge can have an unintentional influence on the results); Wells et al., *supra* note 27, at 627-29 (1998) (following the line-up as an experiment analogy to its logical conclusion that the person conducting the lineup should not be aware of who the suspect is).

Another leading recommendation of scholars in the field of eyewitness identification is to conduct a sequential, rather than simultaneous, identification procedure to guard against what social scientists identify as the "relative judgment process."<sup>34</sup> Witnesses who view a simultaneous photo array or lineup tend to select the individual who most resembles their memory of the perpetrator, relative to the other members of the photo array or lineup. If the perpetrator is actually in the photo array or lineup, there is less danger that the eyewitness will select the wrong individual during the identification procedure. However, if the perpetrator is not present there is a substantial risk that the eyewitness will select the individual who most resembles the perpetrator through the process of elimination. In a sequential identification procedure, the eyewitness views one photo or lineup member at a time and makes a decision on each subject before viewing the next subject. Thus, the opportunity for exercising relative judgment during the selection is eliminated. A meta-study analysis on the simultaneous versus sequential experiments found that mistaken witness identifications were greatly diminished by the sequential lineup compared to the simultaneous lineup.<sup>35</sup>

The simple procedures of using double-blind methods and sequential, rather than simultaneous, lineups can greatly reduce the number of erroneous eyewitness identifications without significantly affecting the number of accurate identifications.<sup>36</sup> In New Jersey, the Attorney General, who has jurisdiction over all law enforcement agencies in the state, issued a directive recommending the use of the double-blind sequential procedure.<sup>37</sup> Other law enforcement agencies in Suffolk County and Boston, Massachusetts have adopted the double-blind, sequential identification procedure on a voluntary basis.<sup>38</sup> Many state legislatures are considering eyewitness identification reform bills in a commitment towards increasing the accuracy of eyewitness identification.<sup>39</sup>

34. See Roderick C. L. Lindsay & Gary L. Wells, *Improving Eyewitness Identification from Lineups: Simultaneous Versus Sequential Lineup Presentations*, 70 J. APPLIED PSYCHOL. 556 (1985).

35. See Nancy M. Steblay et al., *Eyewitness Accuracy Rates in Sequential and Simultaneous Lineup Presentations: A Meta-analytic Comparison*, 25 LAW & HUM. BEHAV. 459, 459 (2001) (showing through a meta study analysis of 23 papers comparing sequential and simultaneous identification procedures that a sequential procedure diminishes mistaken identifications in comparison to simultaneous identifications).

36. See *id.* at 459. For other recommendations for reform in the area of eyewitness identification, see generally Turtle, *supra* note 33; Wells et al., *supra* note 27; TECHNICAL WORKING GROUP OF EYEWITNESS EVIDENCE, U.S. DEP'T OF JUSTICE, EYEWITNESS EVIDENCE: A GUIDE FOR LAW ENFORCEMENT (1999) available at <http://www.ncjrs.org/pdffiles1/nij/178240.pdf> (last visited Sept. 9, 2005).

37. See State of New Jersey, Department of Law and Public Safety, Office of the Attorney General, Attorney General Guidelines for Preparing and Conducting Photo and Live Lineup Identification Procedures, 1, 1-2, (April 18, 2004), available at <http://www.psychology.iastate.edu/faculty/gwells/njguidelines.pdf> (last visited Sept. 9, 2005) (following Department of Justice recommendations and also acknowledging numerous studies by adopting double-blind and sequential identification procedures).

38. See Scott Ehlers, *Eyewitness Identification: State Law Reform*, CHAMPION, April 2005, at 34.

39. See *id.* at 34-36 (following efforts at state law eyewitness reform in fourteen states in various stages of development).



### B. False Confessions

The idea that an individual would confess to a crime, particularly a horrific crime such as murder or rape, without being subject to physical torture, runs counter to the intuition of most people. Accordingly, a confession is given tremendous weight by a jury, resulting in defendants being convicted on the basis of a confession even in the absence of evidence corroborating the confession.<sup>40</sup> The commonly held belief that innocent people will not confess to a crime is countered by evidence establishing that police-induced false confessions are a substantial cause of erroneous convictions.<sup>41</sup> In case studies of erroneous convictions, a false confession is identified as the cause of miscarriages of justice in numbers ranging from 14% to 25% of the cases studied.<sup>42</sup>

Dr. Gisli H. Gudjonsson, a Professor of Forensic Psychology at the Institute of Psychiatry in London was the first to compile case studies, survey the international theories on coerced confessions and develop a theory of false confessions.<sup>43</sup> Between the publication of his first book in 1992 and a 2003 addition to the series, *THE PSYCHOLOGY OF INTERROGATIONS AND CONFESSIONS: A HANDBOOK*, several other prominent researchers have joined in the field and contributed to a body of literature discussing case studies and theories of false confessions.<sup>44</sup> The literature

40. Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891, 960 (2004) (stating false confessors, i.e., individuals whose confessions would eventually be proven false, who chose to take their cases to trial stood a more than 80% chance of being convicted).

41. For an in-depth analysis of police induced false confessions and wrongful convictions see generally Richard J. Ofshe & Richard A. Leo, *The Decision to Confess Falsely: Rational Choice and Irrational Action*, 74 DENV. U. L. REV. 979 (1997); Richard J. Ofshe & Richard A. Leo, *The Social Psychology of Police Interrogation: The Theory and Classification of True and False Confessions*, 16 STUD. IN L., POL., & SOC'Y 189 (1997); Richard A. Leo and Richard J. Ofshe, *The Consequences of False Confessions: Deprivations of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation*, 88 J. CRIM. L. & CRIMINOLOGY 429 (1998); Steven A. Drizin and Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891 (2004). For a debate regarding the quantification of false confessions and its impact on policy reform, see Paul G. Cassell, *Balanced Approaches to the False Confession Problem: A Brief Comment on Ofshe, Leo, and Alschuler*, 74 DENV. U. L. REV. 1123 (1997); Paul G. Cassell, *Protecting the Innocent from False Confessions and Lost Confessions and from Miranda*, 88 J. CRIM. L. & CRIMINOLOGY 497 (1998); Paul G. Cassell, *The Guilty and the "Innocent": An Examination of Alleged Cases of Wrongful Conviction from False Confessions*, 22 HARV. J.L. & PUB. POL'Y 523 (1999); Richard A. Leo & Richard J. Ofshe, *Missing the Forest for the Trees: A Response to Paul Cassell's "Balanced Approach" to the False Confession Problem*, 74 DENV. U. L. REV. 1135 (1997); Richard A. Leo & Richard J. Ofshe, *Using the Innocent to Scapegoat Miranda: Another Reply to Paul Cassell*, 88 J. CRIM. L. & CRIMINOLOGY 557 (1998); and Steven A. Drizin and Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891, 920 n.156 (2004).

42. See Drizin & Leo, *supra* note 40, at 901-907 (summarizing studies of wrongful convictions and percentage of false confessions in the studies); Gross et al., *supra* note 2, at 544 (revealing that defendants confessed in 15% of the 340 exonerations identified between 1989 and 2004).

43. GISLI H. GUDJONSSON, *THE PSYCHOLOGY OF INTERROGATIONS, CONFESSIONS AND TESTIMONY* (John Wiley & Sons 1992).

44. See generally Drizin & Leo, *supra* note 40, (analyzing 125 cases of confirmed false confessions produced by interrogation); GISLI H. GUDJONSSON, *THE PSYCHOLOGY OF INTERROGATIONS AND CONFESSIONS: A HANDBOOK* (John Wiley & Sons 2003) (utilizing case studies from the U.S. and Britain to study false confessions by comparing their occurrence in two different legal systems); Saul M. Kassin, *The Psychology of Confession*

regarding modern interrogation methods establishes that although the police no longer rely upon physical torture to obtain confessions, they are instead trained to employ a number of methods of psychological persuasion that are intended to compel a suspect to confess.<sup>45</sup> It is important to note that the officer conducting the interrogation is not embarking upon an objective fact-gathering mission. Rather, the officer's sole purpose is to obtain a confession, or at minimum incriminating statements and admissions, from a suspect in order to bolster the prosecution's case.<sup>46</sup>

Social scientists have endeavored to explain how and why the strategies of psychological interrogation sometimes lead innocent persons to confess. Richard Ofshe and Richard Leo are social psychologists who have extensively researched and studied the decision-making process of false confessors.<sup>47</sup> They break the interrogation process into two-steps.<sup>48</sup> The first step of an interrogation is meant to remove the suspect's confidence that he or she will survive the interrogation without being arrested. The interrogator will forcefully insist that the suspect has been caught "red-handed" and that incontrovertible evidence establishes that the suspect is guilty.<sup>49</sup> In the second step of interrogation, the interrogator seeks to obtain a confession by persuading the suspect that it is in his or her self-interest to admit to some version of involvement in the offense. The inducements to confess range from low-end (appeals to morality, self-respect, or cathartic relief) to systemic (better treatment by the system if the suspect confesses) to high-end

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*Evidence*, 52 AM. PSYCHOL. 221, 230 (1997) (finding police tactics such as deception and psychological coercion are responsible for many false confessions and that juries do not take these tactics sufficiently into account); Saul M. Kassir & Katherine L. Kiechel, *The Social Psychology of False Confessions: Compliance, Internalization, and Confabulation*, 7 PSYCHOL. SCI. 125, 125 (1996) (employing a scientific experiment to demonstrate the relationship between false incriminating evidence and erroneous confessions); Richard A. Leo & Richard J. Ofshe, *The Consequences of False Confessions: Deprivations of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation*, 88 J. CRIM. L. & CRIMINOLOGY 429 (1998) (pointing out the unjust consequences of false confessions); Richard J. Ofshe & Richard A. Leo, *The Decision to Confess Falsely: Rational Choice and Irrational Action*, 74 DENV. U. L. REV. 979 (1997) (using field data to explain why interrogation methods lead to false confessions); Richard J. Ofshe & Richard A. Leo, *The Social Psychology of Police Interrogation: The Theory and Classification of False Confessions*, 16 STUD. L. POL. & SOC'Y 189 (1997) (developing a model of interrogation influence using case studies).

45. See GUDJONSSON, *supra* note 44, at 7-21 (discussing modern police methods of interrogation, most notably "The Reid Technique").

46. Drizin & Leo, *supra* note 40, at 911 (2004) (stating that "the singular purpose of American police interrogation is to elicit incriminating statements and admissions—ideally a full confession—in order to assist the State in its prosecution of the defendant").

47. See generally Richard J. Ofshe & Richard A. Leo, *The Decision to Confess Falsely: Rational Choice and Irrational Action*, 74 DENV. U. L. REV. 979 (1997) (containing a detailed study of why "normal" people make false confessions); Richard J. Ofshe & Richard A. Leo, *The Social Psychology of Police Interrogation: The Theory and Classification of True and False Confessions*, 16 STUD. IN L., POL., & SOC'Y 189 (1997) (using social psychology to analyze police interrogation in an attempt to explain the phenomenon of false confessions).

48. Richard J. Ofshe & Richard A. Leo, *The Decision to Confess Falsely: Rational Choice and Irrational Action*, 74 DENV. U. L. REV. 979, 989-90 (1997) (describing the two-step process).

49. *Id.* at 1004-50.



inducements (implicit or explicit promises of lesser punishment or other reward).<sup>50</sup> Modern interrogation techniques are effective when used with guilty suspects; however the psychological persuasiveness of the techniques is such that they convince some innocent suspects that their only rational choice is to confess.<sup>51</sup>

The public does not thoroughly understand how methods of psychological interrogation lead innocent people to falsely confess.<sup>52</sup> After completing a study of 125 recent cases of proven interrogation-induced false confessions, Steven A. Drizin and Richard A. Leo conclude that neither do the police.<sup>53</sup> They urge greater education and training of police about the causes, indicia and consequences of false confessions, with specialized training in how to interrogate persons with developmental disabilities and juveniles, who appear to be particularly susceptible to falsely confessing in response to the psychological methods of persuasion used in interrogations.<sup>54</sup>

The leading recommendation from scholars and practitioners is to videotape the entire custodial interrogation.<sup>55</sup> The taping requirement ensures that there is an objective, thorough and reviewable record of what took place in the interrogation room. It diminishes the potential for a future swearing contest between the police and the suspect regarding what took place in the interrogation room. And taping deters police from engaging in misconduct during the interrogation, and allows supervisors the opportunity to monitor and improve interrogation methods.<sup>56</sup> At present four states require the police to electronically record interrogations.<sup>57</sup> Other police departments, recognizing that recording custodial interrogations

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50. *Id.* at 1050-06.

51. *Id.* at 997-1000.

52. Richard A. Leo, *False Confessions: Causes, Consequences, and Solutions*, in *WRONGLY CONVICTED: PERSPECTIVES ON FAILED JUSTICE*, 36-37 (Saundra D. Westervelt & John A. Humphrey, eds., Rutgers University Press 2001) (discussing the "myth" that people do not falsely confess to crimes).

53. Drizin & Leo, *supra* note 40, at 1001 (2004) ("American police are poorly trained to understand the psychology of interrogation, suspect decision-making and, confession; to evaluate the likely unreliability of confession statements; and to recognize and prevent false confessions.").

54. *Id.* at 997-1002.

55. For a summary of studies recommending the videotaping of custodial interrogation see Drizin & Leo, *supra* note 40, at 993-97; Steven A. Drizin and Mariss J. Reich, *Heeding the Lessons of History: The Need for Mandatory Recording of Police Interrogations to Accurately Assess the Reliability and Voluntariness of Confessions*, 52 *DRAKE L. REV.* 619 (2004); Daniel Donovan and John Rhodes, *The Case for Recording Interrogations*, *CHAMPION*, Dec. 2004, at 12.

56. Drizin & Leo, *supra* note 40, at 997 (explaining that "taping leads to a higher level of scrutiny (by police officials as well as others) that will deter police misconduct during interrogation).

57. See *Stephan v. State*, 711 P.2d 1156, 1159 (Alaska 1985) (where the state supreme court held that the recording of custodial interrogations is required); *State v. Scales*, 518 N.W.2d 587, 592 (Minn. 1994) (holding that a recording requirement exists under the Minnesota Constitution); *In re Jerrell C.J.*, 699 N.W.2d 110, 113 (Wisc. 2005) (adopting an electronic recording requirement in all interrogations of juveniles). See also Steve Mills, *Law Mandates Taping of Police Interrogations*, *CHI. TRIB.*, July 18, 2003, at C1 (reporting on an Illinois statute passed in 2003 that mandates electronic recording of interrogations in homicide cases).

benefits law enforcement, have implemented videotaping on a voluntary basis.<sup>58</sup>

### C. Child Suggestibility

Erroneous convictions in the area of child sex abuse are often impossible to prove with the scientific certainty of DNA exonerations.<sup>59</sup> Recent events make it clear that improper interviewing techniques and other suggestive influences lead to false accusations and convictions of the innocent. High profile cases in Los Angeles, California,<sup>60</sup> New Jersey,<sup>61</sup> Wenatchee, Washington,<sup>62</sup> and Kern County, California<sup>63</sup> demonstrate the power of the state's claim that a child's statements about sexual activity "indicate precocious sexual knowledge that . . . could have

58. See Thomas P. Sullivan et al., *The Police Experience: Recording Custodial Interrogations*, CHAMPION, Dec. 2004, at 24 (interviewing over 260 police agencies in forty-one states that record custodial interrogations of suspects in felony cases. Virtually every officer enthusiastically favored the practice, citing benefits such as being able to focus on suspects rather than note-taking, observing inconsistencies in statements and evasive contact upon reviewing the recordings, obtaining more guilty pleas and greater prosecution bargaining power, and the ready acceptance of recordings by judges and juries).

59. See generally Gross et al., *supra* note 2, 539-40 (2005) (noting the authors did not include in their study of 340 exonerations more than seventy individuals whose convictions were overturned in childcare sex abuse cases. Although the study concludes there is no doubt that most of these individuals in the childcare cases were falsely convicted, the complexity of the cases made it difficult for the authors to officially state that the defendants were exonerated).

60. In the 1980s and 1990s, more than 350 children claimed to have been molested at a daycare operated by Peggy McMartin Buckey and her son Raymond Buckey. They were found not guilty after Raymond Buckey spent five years in jail and his mother spent two years in jail. The trial proceedings lasted three years and cost taxpayers between \$13 million and \$15 million. NANCY WALKER PERRY & LAWRENCE S. WRIGHTSMAN, *THE CHILD WITNESS: LEGAL ISSUES AND DILEMMAS* 4-10 (Sage Publications 1991).

61. In 1988, Margaret Kelly Michaels, a nursery school teacher, was convicted of 115 counts of bizarre acts of sexual abuse against many of the children who attended the daycare. She was sentenced to forty-seven years in prison. The New Jersey Supreme Court overturned the convictions in 1994, holding that: (1) the interviews of the alleged child sex abuse victims were improper; and (2) given the substantial likelihood that the evidence derived from the interviews was unreliable, the state would be required to prove by clear and convincing evidence that the statements and testimony retained a sufficient degree of reliability to warrant admission at a re-trial. *State v. Michaels*, 642 A.2d 1372 (N.J. 1994); See also John Chadwick *Day-Care Nightmare Haunts Her Still Key Figure In Abuse Case Fights Back*, NEW JERSEY RECORD, Feb. 8, 2001, at A1 (reporting that the prosecutor declined to retry the case against Michaels).

62. In Wenatchee, Washington, as a result of investigations during 1994 and 1995, forty-three adults were accused of 29,726 charges of child-sex abuse involving over sixty children. Volunteer lawyers and University of Washington law students and faculty members from the Innocence Project handled appeals for many of the accused, who were often poor or developmentally disabled. To date, the majority of those convicted have been freed by higher courts, had their convictions overturned or pleaded guilty to lesser, often unrelated, charges. Mike Barber, *Wenatchee Must Pay Up, Court Rules \$718,000 in Sanctions Over Abuse Case is Confirmed by State Appeals Panel*, SEATTLE POST-INTELLIGENCER, Aug. 4, 2004, at B1.

63. In the Kern County ritual sex abuse ring prosecutions, authorities charged over fifty people and sent twenty-six of them to prison. At least fifteen of the convicted defendants had their convictions reversed and charges dismissed; many on the basis of prosecutorial misconduct. John Stoll was last to be freed, after serving twenty years in prison, when members of the Northern California Innocence Project agreed to represent him and obtained his release. Jim Boren, *Botched Child Molestation Cases Meted Out Injustice*, FRESNO BEE, May 9, 2004, at B3; Tom Kerscher, *Molestation Hysteria Left Sad Legacy: Painful Lessons Learned in Overzealous Kern County Prosecutions*, FRESNO BEE, Sept. 10, 1995, at A1.

[been] learned only as the result of being abused.”<sup>64</sup> Wrongful convictions in child abuse cases differ from cases of misidentification and false confession, because exonerations are often based upon evidence that the crime did not occur. However, the cases of erroneous convictions in each area show that memory is fallible and that it can be shaped and influenced through suggestion.

A body of research has developed in the areas of children’s memory and suggestibility demonstrating the complex dynamic that exists when a child is interviewed to gather forensic evidence in a sex abuse case.<sup>65</sup> There is a consensus among researchers that young children are more susceptible to suggestion.<sup>66</sup> Although jurors may generally accept the notion that children are suggestible, studies indicate that they are reluctant to accept that fact in cases of child sex abuse.<sup>67</sup> Several studies focusing on the credibility of different-aged victims/witnesses alleging sexual assault found that jurors in mock trials viewed younger victims as unable to fabricate sexual allegations.<sup>68</sup> This is likely because jurors

64. *State v. Swan*, 790 P.2d 610, 620 (Wash. 1990).

65. See Stephen J. Ceci & Richard D. Friedman, *The Suggestibility of Children: Scientific Research and Legal Implications*, 86 CORNELL L. REV. 33, 39-71 (2000) (reviewing the research on children’s suggestibility). See also Amye R. Warren & Dorothy F. Marsil, *Why Children’s Suggestibility Remains a Serious Concern*, 65 LAW & CONTEMP. PROBS. 127 (2002) (identifying six areas in the field of child memory and suggestibility that require further study: (1) suggestibility is not limited to preschool children (2) suggestiveness is not limited to leading questions, (3) suggestibility is not confined to formal interviews, (4) it is difficult to identify particular children most susceptible to suggestion (5) it is difficult to train children to resist potentially suggestive questions or to “gate out” previously suggested information and (6) it is difficult to train interviewers to avoid suggestive techniques and to use techniques designed to promote accuracy). But see Thomas D. Lyon, *The New Wave in Children’s Suggestibility Research: A Critique*, 84 CORNELL L. REV. 1004, 1004 (1999) (arguing that the “new wave presents a serious challenge to those who have claimed that children are unlikely to allege sexual abuse falsely . . . [by assuming] that highly suggestive interviewing techniques are the norm in abuse investigations”; neglecting to take into account that the characteristics of child sex abuse cases are different from other cases, and presenting an “apparent value-free scientific treatment of the suggestibility issue [that] obscures, rather than avoids, value judgments regarding the tradeoff between false allegations and false denials of sexual abuse.”).

66. Ceci & Friedman, *supra* note 65, at 34. See Warren & Marsil, *supra* note 65, at 127-130 (summarizing research on suggestibility of older children and concluding that suggestibility problems continue to exist in older children due to the ability to shape memories through questioning).

67. John E. B. Myers et al., *Jurors’ Perceptions Of Hearsay In Child Sexual Abuse Cases*, 5 PSYCHOL. PUB. POL’Y & L. 388, 393 (1999) (summarizing studies finding that in bystander and victim/witness cases, adults and older children are likely to be viewed as more credible than young children, but noting several studies focusing on child sexual abuse cases that reveal the opposite pattern). See L. Matthew Duggan, III, et. al., *The Credibility of Children as Witnesses in a Simulated Child Sexual Abuse Trial*, PERSPECTIVES ON CHILDREN’S TESTIMONY 71-99, 82, 88 (Stephen J. Ceci et al., eds., Springer-Verlag 1989) (stating that mock jurors rated a thirteen-year-old victim as less credible than five and nine-year-old victims); Bette L. Bottoms & Gail S. Goodman, *Perceptions Of Children’s Credibility In Sexual Assault Cases*, 24 J. APPLIED SOCIAL PSYCHOL. 702, 709-10 (1994) (comparing mock juror perceptions of a school age child (six years-old), an adolescent (fourteen years-old), and a young adult (twenty-two years old) in written trial scenarios of sexual abuse. The six-year-old victim was viewed as more credible than the fourteen and twenty-two-year-old victims. In addition, the defendant was found guilty more often when the six-year-old testified).

68. See DUGGAN ET AL., *supra* note 67 at 71-99 (mock jurors rated a thirteen-year-old victim as less credible than five and nine-year-old victims); Bette L. Bottoms & Gail S. Goodman, *Perceptions Of Children’s Credibility In Sexual Assault Cases*, 24 J. APPLIED SOCIAL PSYCHOL. 702 (1994) (comparing mock juror perceptions of a school age child (six years), an adolescent (fourteen years), and a young adult (twenty-two years) in written trial

believe that a young child will not invent details about sexual activity, even when an interviewer suggests that something sexual occurred. However, this commonly held belief needs re-examination. Researchers have found that the younger the child, the more susceptible the child is to suggestion from adults, including well-meaning interviewers, about bodily contact and bodily touching.<sup>69</sup>

Even accepting that jurors are aware that children are suggestible, average jurors are not aware of the effects of interview techniques or other suggestive influences on false memories. For example, most lay people would not know how to identify a leading question; the effect of leading questions on a suggestible child;<sup>70</sup> the effect of interviewer bias;<sup>71</sup> the pressure on a child to please the interviewer;<sup>72</sup> the effect of "stereotype-induction" (when an adult tells a child how others characterize the suspect);<sup>73</sup> the necessity of beginning an interview by asking open-ended questions;<sup>74</sup> and the necessity of an appropriate rapport building introduction.<sup>75</sup> Expert witnesses are able to educate the jury about these areas of concern, allowing the jury to better assess the credibility of the testimony of the complainants and the capability of interviewers who present hearsay renditions of the children's prior disclosures.

Scholars, empiricists and psychologists have consistently recommended that the initial interview of a child victim be conducted by a professional who is trained to avoid the types of questions and scenarios that lead to the risk of influencing

scenarios of sexual abuse. The six-year-old victim was viewed as more credible than the fourteen and twenty-two-year-old victims. In addition, the defendant was found guilty more often when the six year old testified.).

69. See STEPHEN J. CECI & MAGGIE BRUCK, *JEOPARDY IN THE COURTROOM* 68-74 (American Psychological Association 1995) (discussing experimental studies of child sexual abuse interviews and suggesting that their findings may underestimate the potency of suggestive techniques in actual cases, where aggressive interviewing methods are used, and children are repeatedly interviewed or questioned by anxious parents, therapists, or legal officials).

70. Ceci & Friedman, *supra* note 65, at 36 (2000) (discussing five studies that focus on repeated questioning which find high rates of error in response to questions about abuse). *But see* Thomas D. Lyon, *Applying Suggestibility Research to the Real World: The Case of Repeated Questions*, 65 *LAW & CONTEMP. PROBS.* 97 (2002) (arguing that the risks of question repetition have been exaggerated).

71. See CECI & BRUCK, *supra* note 69, at 87-93 (summarizing studies showing that interviewer bias impacts how interviewer's interpret answers and influences the accuracy of interviewee's answers); Nancy E. Walker, *Forensic Interviews of Children: The Components of Scientific Validity and Legal Admissibility*, 65 *LAW & CONTEMP. PROBS.* 149, 167 (2002) (attempting to explain interviewer bias).

72. See LUCY S. MCGOUGH, *CHILD WITNESSES: FRAGILE VOICES IN THE AMERICAN LEGAL SYSTEM* 72 (1994) (explaining how children's dependence on adults leads children to rely on adults as being truthful).

73. See CECI & BRUCK, *supra* note 69, at 127-137 (summarizing studies and cases showing that interviewer's negative characterization of suspects will lead children to erroneously describe the suspects).

74. Nancy E. Walker, *Forensic Interviews of Children: The Components of Scientific Validity and Legal Admissibility*, 65 *LAW & CONTEMP. PROBS.* 149, 167 (2002) (explaining that open-ended questions generally result in more accurate answers).

75. Walker, *supra* note 74, at 165-66 (2002) (explaining how rapport building initially leads to more information).

answers.<sup>76</sup> In order for training to be effective, it has to be extensive and include practice, individual feedback and follow-up.<sup>77</sup> Improved training is critical since research has consistently indicated that interviewers continue to ask leading and suggestive questions even after extensive training in how to conduct interviews with children.<sup>78</sup> Moreover, child interviewers doing self-assessments are more likely to rate their own interviewing skills more positively than does an objective observer.<sup>79</sup>

Many scholars and practitioners agree that the best way to determine whether interviewers are using proper interviewing techniques is to document the interview so that other professionals can independently evaluate the interview.<sup>80</sup> As in the area of interrogation and false confessions, videotaping a child interview ensures that there is an accurate and complete record of the exchange between the interviewer and child. It also provides for better monitoring, supervision and training of interviewers. And it has the added benefit of minimizing the number of times that a child is subject to interviewing. If a qualified professional conducts a videotaped interview, police, prosecutors, and defense attorneys are less likely to request additional interviews of the child. Although at least thirty-nine states authorize some use of videotaped interviews, no state mandates videotaping interviews of child victims.<sup>81</sup>

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76. Lucy S. McGough, *Good Enough for Government Work: The Constitutional Duty to Preserve Forensic Interview of Child Victims*, 65 LAW & CONTEMP. PROBS. 179, 181 (2002) (explaining a reform consistently recommended by scholars, empiricists, and psychologists is that the initial interview be conducted by a trained professional).

77. Warren & Marsil, *supra* note 65, 146-47 (describing encouraging findings when interviewers completed an extensive training program).

78. *Id.* at 144-47 (discussing national and international studies that document the difficulty and lack of success in training interviewers to avoid suggestive techniques and to use techniques designed to promote accuracy); *see also* Walker, *supra* note 74, at 176 (explaining that without continued monitoring "interviewers are likely to fall back on old habits"); LUCY BERLINER & ROXANNE LIEB, WASH. STATE INST. FOR PUB. POL'Y, CHILD SEX ABUSE INVESTIGATIONS: TESTING DOCUMENTATION METHODS 10-11 (2001), <http://www.wsipp.wa.gov/> (last visited Sept. 9, 2005) (follow "Title" hyperlink under "List Publications by."; then follow "C" hyperlink to find article) (finding that 20% of the questions asked by professional interviewers were suggestive of abuse and that only about half of the interviews began with open-ended invitations to provide information).

79. Berliner & Lieb, *supra* note 78, at 11.

80. *See* McGough, *supra* note 76, at 180-90; BERLINER & LIEB, *supra* note 78, at ii (endorsing "electronic recording [as] clearly the most efficient and reliable form of documentation [and noting how transcripts can be used] to evaluate whether interviewers are using proper interviewing techniques [and as] an invaluable tool for supervisors to use in assessing performance and giving corrective action" (emphasis in original)). *But see* Paul Stern, *Videotaping Child Interviews: A Detriment to an Accurate Determination of Guilt*, 7 J. INTERPERSONAL VIOLENCE 278, 278 (1992) (arguing that routine videotaping of child sexual abuse victims is "inappropriate and dangerous").

81. McGough, *supra* note 76, at 181-82 ("At least thirty-nine states now explicitly authorize at least some use of videotaped interviews of child victims, although no state as of yet mandates or provides significant incentives for videotaping forensic interviews.").

### III. CONCLUSION

It is evident . . . that a discussion of the relation of the several social sciences to law . . . is timely and significant.

Roscoe Pound, *foreword* to Huntington Cairns, *Law and the Social Sciences*, xi, xiv (1935).

The magnitude of error in our criminal justice system can no longer be ignored. Nor can the legal profession continue to turn its back towards the field of social sciences. This essay cannot pay tribute to the wealth of research of social sciences that can inform the criminal justice system how to implement reforms that will decrease the rate of error in our system. Instead it is meant to entice the reader to seek out further information in a search to improve the truth-seeking mission of our legal system. We owe it to those who have served years in prison, or have been sentenced to death for crimes they did not commit, to enact reforms that will help prevent further miscarriages of justice.

8/3/2018

## CASE HISTORY (ROA)

Case No 00CR00131 Judge SARA WELCH Division 19 Status O  
 Last Name JONES First Name RICHARD Mid Name A Suf  
 Race/Sex/DOB B/M Prob Ofcr Def Atty Pros RIEBLI, V

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Sort by Descending Order

Print Friendly

06/20/2017	FILE STAMP 06/20/17, ORDER OF DISMISSAL
06/20/2017	FILE STAMP 06/20/17, MOTION TO DISMISS
06/12/2017	DEFENSE ATTORNEY MERRILL, GERALD WILLIAM DELETED
04/15/2015	FILE STAMP 04/14/2015, MOTION TO WITHDRAW
04/15/2015	FILE STAMP 04/14/2015, ORDER APPOINTING COUNSEL FILED, DENNIS J STANCHIK
04/02/2015	FILE STAMP 04/02/2015, ORDER FOR W/D OF COUNSEL, APPELLATE DEFENDER
03/12/2015	FILE STAMP 03/11/2015, ORDER FILED: DEFENDANT'S MOTION TO CORRECT ILLEGAL SENTENCE IS DISMISSED AS AN ABUSE OF REMEDY
02/06/2015	FILE STAMP 02/05/2015, ORDER APPOINTING APPELLATE DEFENDER
02/03/2015	FILE STAMP 02/02/2015, SO RTN TRANSPORD EXEC
02/02/2015	FILE STAMP 01/30/2015, MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS
02/02/2015	FILE STAMP 01/30/2015, NOTICE OF APPEAL
01/27/2015	FILE STAMP 01/27/2015, MOTION TO CORRECT ILLEGAL SENTENCE
01/09/2015	COUNT 1 21-3427 PLAINTIFF APPEARS BY V RIEBLI/A SCOTT, DEFENDANT APPEARS WITH ATTORNEY G MERRILL, COMMENT DEF'S MOTION TO CORRECT ILLEGAL SENTENCE IS DENIED (SW)(BH)
01/08/2015	FILE STAMP 01/08/15, MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO CORRECT ILLEGAL SENTENCE
01/05/2015	FILE STAMP 01/05/2015, SO RTN TRANSPORD EXEC, AMENDED
01/05/2015	FILE STAMP 01/05/2015, SO RETURN AMENDED TRANSPORD ORDER EXECUTED
01/02/2015	FILE STAMP 01/02/15, ORDER TO TRANSPORT 3 CERTIFIED COPIES SENT TO SHERIFF
12/15/2014	COUNT 1 21-3427 PLAINTIFF APPEARS BY A SCOTT, DEFENDANT APPEARS IN CUSTODY WITH ATTORNEY J MERRILL, CONTINUED BY DEFENSE, DEFENDANT ORDERED TO PERSONALLY APPEAR AT NEXT COURT HEARING, COMMENT DEF REQUESTS TO RESPOND TO STATE'S BRIEF (SW)(BH)
12/15/2014	SCHED. MOTION on 01/09/15, 01:00pm, Div 19
12/10/2014	FILE STAMP 12/10/14, STATE'S RESPONSE TO, DEFENDANT'S MOTION TO CORRECT ILLEGAL SENTENCE
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11/13/2014	FILE STAMP 11/13/14, AMENDED TWO-WAY ORDER OF TRANSPORTATION, 3 CERTIFIED COPIES SENT TO SHERIFF
11/10/2014	SCHED. OTHER HEARING on 12/15/14, 09:30am, Div 19
11/10/2014	CANCELLED OTHER HEARING on 11/19/14, 01:30pm, Div 19
11/05/2014	PRESENTENCE INVESTIGATION UPDATE ORDERED
11/04/2014	FILE STAMP 11/04/14, ORDER TO TRANSPORT 3 CERTIFIED COPIES SENT TO SHERIFF
11/03/2014	RESCHED. OTHER HEARING on 11/19/14, 01:30pm, Div 19
10/22/2014	FILE STAMP 10/21/2014, ORDER FILED GERALD MERRILL APPOINTED
10/14/2014	DEFENSE ATTORNEY MERRILL, GERALD WILLIAM ASSIGNED
10/14/2014	SCHED. OTHER HEARING on 12/17/14, 01:15pm, Div 19
06/04/2014	FILE STAMP 06/03/2014, MOTION TO CORRECT SENTENCE



05/28/2013	CLERKS NOTES...RECEIVED 6 VOLUMES FROM THE COURT OF APPEALS
04/16/2013	FILE STAMP 4/15/2013, MANDATE FROM THE COURT OF APPEALS, IT WAS ORDERED AND ADJUDGED BY THE COURT OF APPEALS THAT THE JUDGMENT OF THE DISTRICT COURT BE AFFIRMED
03/18/2013	FILE STAMP 3/15/2013, ORDER FROM THE COURT OF APPEALS, DEFENDANT'S PETITION FOR REVIEW GRANTED AFTER THEY CONSIDERED BRIEFS AND ORAL ARGUMENTS COURT DETERMINED THE PETITION SHOULD BE DISMISSED AS IMPROVIDENTLY GRANTED
08/24/2012	FILE STAMP 8/24/2012, SUPREME COURT ORDER..PETITION IN MANDAMUS IS NOW MOOT AND IS HERBY DISMISSED...DATED MAY 4, 2009
03/15/2012	ADDL COST STATTRN 45.30
12/28/2010	FILE STAMP 12/28/2010, ORDER FOR RECORDS FROM THE COURT OF APPEALS, 6 VOLUMES
09/27/2010	ADDITIONS TO THE TABLE OF CONTENTS MADE.. LETTER AND TABLE SENT TO: STEVE OBERMEIER AND GERALD WELLS
09/23/2010	FILE STAMP 9/22/2010, APPELLANT'S REQUEST FOR ADDITIONS TO THE APPELLATE RECORD
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04/15/2010	FILE STAMP 4/14/2010, REQUEST FOR ADDITIONS TO THE RECORD ON APPEAL FAXED 11:54
04/14/2010	FILE STAMP 4/14/2010, REQUEST FOR ADDITIONS TO THE RECORD ON APPEAL(FAX FILED)
04/14/2010	FILE STAMP 4/14/2010, JOURNAL ENTRY OF JUDGMENT, JACKSON COUNTY, MO.
04/14/2010	FILE STAMP 4/14/2010, PETITION/ JACKSON COUNTY, MO
03/25/2010	ADDITIONS TO THE TABLE OF CONTENTS MADE... LETTER AND TABLE SENT TO: STEVE OBERMEIER AND GERALD WELLS
03/25/2010	FILE STAMP 3/25/2010, REQUEST FOR ADDITIONS TO THE RECORD ON APPEAL(FAX FILED)
12/10/2009	ADDITIONS TO THE TABLE OF CONTENTS MADE.. LETTER AND TABLE SENT TO: STEVE OBERMEIER AND THE APPELLATE DEFENDERS OFFICE
12/10/2009	FILE STAMP 12/10/2009, DOCKETING NOTICE FROM THE CLERK OF THE APPELLATE COURTS, 09-103400-A
10/21/2009	FILE STAMP 10/16/2009, ORDER APPOINTING APPELLATE DEFENDER, GERALD WELLS
10/19/2009	FILE STAMP 10/16/2009, ORDER FOR W/D OF COUNSEL, HEATHER CESSNA
10/19/2009	FILE STAMP 10/16/2009, MOTION TO WITHDRAW
10/16/2009	<***** Bench Notes *****> COURT ALLOWS APPELLATE DEFENDANT TO WITHDRAW AND APPOINTS GERALD WELLS, P.O. BOX 641, LAWRENCE, KANSAS.
08/26/2009	FILE STAMP 8/26/2009, ORDER APPOINTING APPELLATE DEFENDER
08/10/2009	FILE STAMP 8/10/2009, MOTION FOR ORDER OF INDIGENCY
06/17/2009	FILE STAMP 6/17/2009, ORDER ALLOWING DEFENDANT TO DOCKET HIS APPEAL OUT OF TIME IN FORMA PAUPERIS
06/17/2009	<***** Bench Notes *****> DEFENDANT'S MOTION TO DOCKET APPEAL OUT OF TIME IN FORMA PAUPERIS GRANTED PER ORDER FILED BY JUDGE BENNETT.
06/05/2009	FILE STAMP 6/5/2009, STATEMENT THAT NO TRANSCRIPT REQUIRED
06/05/2009	FILE STAMP 6/5/2009, MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS
06/05/2009	FILE STAMP 6/5/2009, DOCKETING STATEMENT
06/05/2009	FILE STAMP 6/5/2009, MOTION TO DOCKET APPEAL OUT OF TIME
06/05/2009	FILE STAMP 6/5/2009, STATEMENT THAT APPELLANT REMAINS INDIGENT
06/05/2009	FILE STAMP 6/5/2009, AFFIDAVIT OF INDIGENCY
04/24/2009	FILE STAMP 4/24/2009, NOTICE OF APPEAL
04/14/2009	FILE STAMP 4/14/2009, ORDER FILED, DEFENDANT'S MOTION TO CORRECT ILLEGAL



	SENRENCE IS DENIED
04/11/2008	FILE STAMP 4/10/2008, MOTION FOR RULING
03/10/2008	FILE STAMP 3/10/2008, ENTIRE FILE SCANNED THIS DATE; COURT FILE DESTROYED
02/27/2008	FILE STAMP 2/27/2008, MOTION TO CORRECT ILLEGAL SENTENCE
02/27/2008	FILE STAMP 2/27/2008, REQUEST FOR APPOINTMENT OF COUNSEL
07/10/2003	FILE STAMP 07/10/03, FILM DATE 07/10/03 MICR # , 5 VOLS RETURNED FROM COURT OF APPEALS
07/03/2003	FILE STAMP 07/02/03, FILM DATE 07/02/03 MICR # 4, MANDATE/AFFIRMED C/S TO JUDGE
10/30/2002	FILE STAMP 10/29/02, FILM DATE 10/29/02 MICR # 3, ORDER FOR RECORDS FROM COURT OF APPEALS 5 VOLS SENT 10-30-02
06/03/2002	FILE STAMP 06/03/02, FILM DATE 06/03/02 MICR # 0, APPELLANT DEFENDERS REQUEST FOR VOL VI\ SENT 6-03-02
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03/28/2002	FILE STAMP 03/25/02, FILM DATE 03/27/02 MICR # 0, APPELLATE NUMBER 02-88573-A
03/28/2002	FILE STAMP 03/25/02, FILM DATE 03/27/02 MICR # 541, DOCKETING NOTICE FROM THE COURT OF APPEALS
03/26/2002	FILE STAMP 03/25/02, FILM DATE 03/25/02 MICR # 6, APPELLANT'S REQUEST FOR ADDITIONS TO THE APPELLATE RECORDS
03/05/2002	FILE STAMP 03/04/02, FILM DATE 03/04/02 MICR # 455, JOURNAL ENTRY MOTION DENIED
10/03/2001	FILE STAMP 09/24/01, FILM DATE 09/24/01 MICR # 632, CERTIFICATE OF COMPLETION OF TRANSCRIPT 4-23-01(266PGS), 4-23-01(9PGS) & 6-15-01(25PGS) BY APRIL SHEPARD,CSR
09/26/2001	FILE STAMP 09/24/01, FILM DATE 09/24/01 MICR # 632, TRANSCRIPT OF PROCEEDINGS;6-15-01 TAKEN BY APRIL SHEPARD CSR
09/19/2001	FILE STAMP 09/18/01, FILM DATE 09/18/01 MICR # 878, TRANS OF PROC CHAMBER CONF-APRIL SHEPARD
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09/14/2001	(Changed) ADDL COST NEWTRN From: 68.25 To: 879.50
08/08/2001	FILE STAMP 08/07/01, FILM DATE 08/07/01 MICR # 739, SO RTN TRANSPORD EXEC RICHARD JONES 070501
07/11/2001	FILE STAMP 06/25/01, FILM DATE 06/25/01 MICR # 707, JOURNAL ENTRY OF SENTENCING CC \$146/RESTITUTION \$343.90
06/27/2001	FILE STAMP 06/26/01, FILM DATE 06/26/01 MICR # 179, PSI FILED
06/26/2001	FILE STAMP 06/25/01, FILM DATE 06/25/01 MICR # 774, ORDER APPOINTING COUNSEL FILED JESSICA KUNEN
06/25/2001	JE/JUDGMENT/COMMITMENT/TRANSPORD ORDER
06/21/2001	FILE STAMP 06/20/01, FILM DATE 06/20/01 MICR # 107, ORDER FOR TRANSCRIPT
06/21/2001	FILE STAMP 06/20/01, FILM DATE 06/20/01 MICR # 107, NOTICE OF APPEAL
06/15/2001	COUNT 1 21-3427 COMMENT DEFENSE MOTION FOR JUDGEMENT NOT WITHSTANDING THE VERDICT CONSIDERED AND DENIED (JA)(AS)
06/15/2001	COURT COST \$146.00
06/15/2001	COUNT 1 21-3427 DEFENDANT SENTENCED TO CUSTODY OF SECRETARY OF CORRECTIONS ,JAIL FOR A PERIOD OF 228M//,COURT COSTS TO DEFENDANT

	ADMINISTRATIVE FEE ORDERED OF \$ 35, ORDERED RESTITUTION AMOUNT OF 343.90, COMMENT DEFENSE MOTION FOR DURATIONAL DEPARTURE DENIED (JA)(AS)
06/15/2001	COUNT 1 21-3427 COMMENT DEFENSE MOTION FOR NEW TRIAL & JUDGEMENT OF ACQUITTAL DENIED (JA)(AS)
06/15/2001	COUNT 1 21-3427 PLAINTIFF APPEARS BY J COWLES, DEFENDANT APPEARS IN CUSTODY WITH ATTORNEY M BARTEE (JA)(AS)
06/06/2001	FILE STAMP 06/05/01, FILM DATE 06/05/01 MICR # 624, MOT FOR DURATIONAL DEPARTURE
05/08/2001	FILE STAMP 05/07/01, FILM DATE 05/07/01 MICR # 75, ST RESP TO POST TRIAL MOTIONS
05/07/2001	FILE STAMP 05/04/01, FILM DATE 05/04/01 MICR # 358, MOT FOR NEW TRIAL
05/02/2001	FILE STAMP 05/01/01, FILM DATE 05/01/01 MICR # 482, MOTION FOR JUDGEMENT OF ACQUITTAL/ JUDGEMENT NOTWITHSTANDING THE VERDICT
04/27/2001	FILE STAMP 04/26/01, FILM DATE 04/26/01 MICR # 670, OATH OF BAILIFF/JURY INSTRUCTIONS
04/26/2001	(Changed) ADDL COST NEWWIT From: 67.20 To: 123.21
04/25/2001	FILE STAMP 04/24/01, FILM DATE 04/24/01 MICR # 343, DEF PROPOSED JURY INSTRUCTIONS
04/25/2001	FILE STAMP 04/24/01, FILM DATE 04/24/01 MICR # 343, DEF SUPPLEMENTAL PROPOSED JURY INSTR
04/24/2001	COUNT 1 21-3427 PLAINTIFF APPEARS BY J COWLES, DEFENDANT APPEARS IN CUSTODY WITH ATTORNEY M BARTEE, TRIAL TO A JURY , FINDING GUILTY, PRESENTENCE INVESTIGATION ORDERED (JA)(AS)
04/24/2001	SCHED. SENTENCING on 06/15/01, 03:00pm, Div16
04/24/2001	SCHED. JURY TRIAL on 04/24/01, 09:00am, Div16
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04/24/2001	FILE STAMP 04/23/01, FILM DATE 04/23/01 MICR # 155, WIT AFF
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04/20/2001	SUBPOENA DUCES TECUM ISSUED TO SOUTHWESTERN BELL TELEPHONE CO ATTN ARLENE
04/20/2001	CHANGED STATUS FROM "O" TO "P"
04/20/2001	COUNT 1 21-3427, AME SEV LVL FROM 5 TO 3, AME ACS CD FROM ATTEMPTED TO
04/20/2001	COUNT 1 21-3427 PLAINTIFF APPEARS BY J COWLES, DEFENDANT APPEARS IN CUSTODY WITH ATTORNEY M BARTEE, COMMENT PARTIES ANNOUNCE READY FOR TRIAL (JA)(DG)
04/19/2001	SUBPOENA DUCES TECUM ISSUED TO VOICESTREAM WIRELESS ATTN: DOMINIC
04/17/2001	FILE STAMP 04/16/01, FILM DATE 04/16/01 MICR # 71, SUBPOENA RETURN EXEC 040901, DAVE COLVIN, JR
04/02/2001	SUBPOENA ISSUED TO DA FOR
04/02/2001	SUBPOENA ISSUED TO DA FOR
03/23/2001	SUBPOENA DUCES TECUM ISSUED TO P.D. (7) BLANK
03/02/2001	FILE STAMP 02/22/01, FILM DATE 02/22/01 MICR # 309, SO RETURN B/W EXECUTED 02/20/01
03/01/2001	COUNT 1 21-3427 PLAINTIFF APPEARS BY J COWLES, DEFENDANT APPEARS IN CUSTODY WITH ATTORNEY M BARTEE (JA)(AR)
03/01/2001	SCHED. JURY TRIAL on 04/23/01, 08:45am, Div16
03/01/2001	SCHED. PRE-TRIAL MOTION on 04/20/01, 11:30am, Div16
02/21/2001	COUNT 1 21-3427 PLAINTIFF APPEARS BY T BAIRD , DEFENDANT APPEARS IN CUSTODY PRO SE , (THB)(O)
02/21/2001	SCHED. OTHER HEARING on 03/01/01, 11:30am, Div16
02/21/2001	WARRANT W0006820 EXECUTED RETURN

02/21/2001	SCHED. OTHER HEARING on 02/21/01,01:30pm,Div 11
01/19/2001	SENT TO DEBT COLLECTION
12/22/2000	FILE STAMP 12/20/00, FILM DATE 12/21/00 MICR # 1098, RTN SRV CERT MAIL UNEXEC R JONES
12/15/2000	COUNT 1 21-3427 PLAINTIFF APPEARS BY P HEARN ,NO APPEARANCE BY DEFENDANT,COMMENT STATES MOTION FOR JUDGEMENT ON BOND GRANTED FOR \$15000.00 AGAINST DEFENDANT (JA)(ER)
12/11/2000	FILE STAMP 12/08/00, FILM DATE 12/08/00 MICR # 142, SO RET B/W UNEXEC 10/23/00
12/07/2000	FILE STAMP 12/06/00, FILM DATE 12/06/00 MICR # 469, MICRO # FOR AMENDED COMPLAINT
12/06/2000	AMENDED AFFIDAVIT/COMPLAINT FILED AMENDED WARRANT ISSUED TO SHERIFF
11/25/2000	FILE STAMP 11/21/00, FILM DATE 11/21/00 MICR # 425, MOT FOR JUDGMENT ON BOND/CERTIFICATE
11/15/2000	SCHED. MOTION FOR JUDGEMENT ON BOND on 12/15/00,09:00am,Div 16
11/15/2000	FILE STAMP 11/09/00, FILM DATE 11/09/00 MICR # 1229, SO RTN TRANSPORD UNEXEC 10/10/00
10/24/2000	FILE STAMP 10/23/00, FILM DATE 10/23/00 MICR # 474, MICRO # FOR ORDER AND B/W
10/23/2000	WARRANT W0006820 ISSUED, BOND 100,000 CA-SU
10/23/2000	ORDER FILED B/W ISSUED TO SHERIFF
10/23/2000	SET BOND \$100000, CA-SU
10/23/2000	SURETY BOND FORFEIT \$15000.00, SURETY RECEIPT# 0002563
10/23/2000	COUNT 1 21-3427 PLAINTIFF APPEARS BY J COWLES,DEFENDANT APPEARS BY ATTORNEY M BARTEE,DEFENDANT FAILS TO APPEAR ,BOND FORFEITURE ,BENCH WARRANT FAIL TO APPEAR/100000/CASH OR SURETY (JA)(HR)
10/12/2000	FILE STAMP 10/11/00, FILM DATE 10/11/00 MICR # 568, ORDER OF TRANSPORTATION--TWO WAY
10/11/2000	TRANSPORD ORDER-3 CERT COPIES TO SHERIFF
09/19/2000	FILE STAMP 09/18/00, FILM DATE 09/18/00 MICR # 516, SUBP RET SERV EDDIE MILLER
09/07/2000	SUBPOENA ISSUED TO DA FOR
09/01/2000	FILE STAMP 08/31/00, FILM DATE 08/31/00 MICR # 706, SUBPOENA RETURN EXEC DAVE COLVIN 082500
08/29/2000	SUBPOENA ISSUED TO DA FOR
08/28/2000	FILE STAMP 08/25/00, FILM DATE 08/25/00 MICR # 831, MICRO # FOR AMENDED COMPLAINT
08/25/2000	COUNT 1 21-3427,AME FROM 21-3426 TO 21-3427, AME DT FROM 06/19/00 TO 08/25/00,AME SEV LVL FROM 7 TO 5
08/25/2000	SECOND AMENDED COMPLAINT FILED
08/24/2000	SUBPOENA ISSUED TO DA FOR
08/24/2000	SUBPOENA ISSUED TO DA FOR
08/21/2000	CANCELLED PRE-TRIAL MOTION on 10/20/00, 11:30AM,Div16
08/18/2000	COUNT 1 21-3426 PLAINTIFF APPEARS BY J COWLES,DEFENDANT APPEARS WITH ATTORNEY M BARTEE,COMMENT DEFENSE GRANTED LEAVE TO WITHDRAW PLEA; STATE GRANTED LEAVE TO REFILE ORIGINAL COMPLAINT (JA)(AS)
08/18/2000	SCHED. PRE-TRIAL MOTION on 10/20/00,11:30AM, Div16
08/18/2000	SCHED. JURY TRIAL on 10/23/00,08:45AM,Div16
08/18/2000	FILE STAMP 08/17/00, FILM DATE 08/17/00 MICR # 86, MOT FOR DISP DEPARTURE
08/18/2000	FILE STAMP 08/17/00, FILM DATE 08/17/00 MICR # 86, OBJ TO CH
06/21/2000	FILE STAMP 06/20/00, FILM DATE 06/20/00 MICR # 893, BOND FILED
06/20/2000	FILE STAMP 06/19/00, FILM DATE 06/19/00 MICR # 519, WIT AFF
06/20/2000	FILE STAMP 06/19/00, FILM DATE 06/19/00 MICR # 519, WIT AFF
06/19/2000	CHANGED STATUS FROM "O" TO "P"

06/19/2000	ADDL COST NEWWIT 67.20
06/19/2000	COUNT 1 21-3426 PLEA NO CONTEST,FINDING GUILTY,PRESENTENCE INVESTIGATION ORDERED , BOND MODIFICATION 15000/PERSONAL RECOGNIZANCE BOND (JA)(AS) SET BOND \$15000, PR
06/19/2000	COUNT 1 21-3427,AME 21-3426,AME DT 06/19/00, AME P/NP PERSON,AME SEV LVL 7,AME CHRG TYPE FELONY,AME ACS CD ATTEMPTED
06/19/2000	COUNT 1 21-3427 PLAINTIFF APPEARS BY J COWLES,DEFENDANT APPEARS IN CUSTODY WITH ATTORNEY M BARTEE,COMMENT JURY TRIAL & VOIR DIRE COMMENCED; PARTIES PRESENT PLEA NEGOTIATIONS; COMPLAINT AMENDED BY INTERLINEATION (JA)(AS)
06/19/2000	SCHED. SENT on 08/18/00,10:00AM,Div16
06/19/2000	PR POSTED, \$15000.00- SURETY NAME: RICHARD A JONES
06/19/2000	FILE STAMP 06/16/00, FILM DATE 06/16/00 MICR # 452, ST REQ JURY INSTRUCTIONS
06/16/2000	SUBPOENA ISSUED TO PD 5 BLANKS
06/16/2000	COUNT 1 21-3427 PLAINTIFF APPEARS BY J COWLES,DEFENDANT APPEARS IN CUSTODY WITH ATTORNEY M BARTEE,COMMENT JURY INSTRUCTIONS PRESENTED TO COURT BY BOTH PARTIES & ANNOUNCE READY FOR TRIAL (JA)(KJ)
06/09/2000	FILE STAMP 06/08/00, FILM DATE 06/08/00 MICR # 862, NOTICE OF ALIBI
06/08/2000	SUBPOENA ISSUED TO PD 6 BLANK
06/08/2000	FILE STAMP 06/07/00, FILM DATE 06/07/00 MICR # 628, TRANS OF PROCEED 050300
06/01/2000	SUBPOENA ISSUED TO PD OFFICER JS LARSON-ROELAND PARK PD
06/01/2000	SUBPOENA ISSUED TO PD DET SCOTT ATWELL JO CO SHERIFF OFFICE
05/31/2000	SUBPOENA ISSUED TO DA FOR
05/23/2000	ADDL COST NEWTRN 68.25
05/12/2000	FILE STAMP 05/11/00, FILM DATE 05/11/00 MICR # 604, ORDER FOR TRANSCRIPT
05/03/2000	COUNT 1 21-3427 PLAINTIFF APPEARS BY C MCMULLIN,DEFENDANT APPEARS IN CUSTODY WITH ATTORNEY M BARTEE,COMMENT PRELIMINARY HEARING HELD,PROBABLE CAUSE FOUND ,DEFENDANT BOUND OVER ,DEFENDANT ARRAIGNED ,READING WAIVED ,PLEA NOT GUILTY,COMMENT DEFENSE REQUEST FOR TRANSCRIPT GRANTED (JA)(AS)
05/03/2000	SCHED. JT on 06/19/00,08:45AM,Div16
05/03/2000	SCHED. PT on 06/16/00,03:00PM,Div16
04/20/2000	SUBPOENA ISSUED TO DA FOR
04/13/2000	COUNT 1 21-3427 PLAINTIFF APPEARS BY B VENNEMAN,DEFENDANT APPEARS IN CUSTODY WITH ATTORNEY M BARTEE,BOND MODIFICATION DENIED (JA)(ER)
04/13/2000	SCHED. GPH on 05/03/00,03:00PM,Div16
04/13/2000	FILE STAMP 04/12/00, FILM DATE 04/12/00 MICR # 346, SO RETURN WARRANT EXECUTED 033100
04/11/2000	FILE STAMP 04/10/00, FILM DATE 04/10/00 MICR # 990, ORDER APPOINTING COUNSEL FILED PD
04/11/2000	FILE STAMP 04/10/00, FILM DATE 04/10/00 MICR # 990, FINANCIAL AFFIDAVIT FILED
04/06/2000	FILE STAMP 04/05/00, FILM DATE 04/05/00 MICR # 358, LETTER PURSUANT TO K.S.A 22-3212
04/05/2000	FILE STAMP 04/04/00, FILM DATE 04/04/00 MICR # 99, DEFENDANT'S ASSERTION OF HIS FIFTH , SIXTH AND FOURTEENTH AMENDMENT RIGHTS.
04/03/2000	COUNT 1 21-3427 PLAINTIFF APPEARS BY R NORDEEN,DEFENDANT APPEARS IN CUSTODY PRO SE ,APPOINT PUBLIC DEFENDER ,CHARGE READ AND UNDERSTOOD (JFD)(ER)
04/03/2000	SCHED. NPH on 04/13/00,11:30AM,Div16
04/03/2000	WARRANT W0000358 EXECUTED RETURN
04/03/2000	SCHED. FA on 04/03/00,01:30PM,Div 6
01/20/2000	FILE STAMP 01/19/00, FILM DATE 01/19/00 MICR # 1102, CASE MICRO

8/3/2018

CASE HISTORY (ROA)

01/19/2000	WARRANT W0000358 ISSUED, BOND 15,000 CA-SU
01/19/2000	SET BOND 15000.00, CA-SU
01/19/2000	CASE FILED, Agency RPPD, Agency Rpt# 990685 JUDGE JA ASSIGNED TO CASE