

DNA exonerations prove eyewitnesses make mistakes - November 14, 2010, Rene Stutzman, Orlando Sentinel

In a Tampa courtroom in 1981, Alan Crotzer watched as five people took the stand and swore that he was one of the men who kidnapped a 12-year-old girl and 38-year-old woman during a botched home invasion. The child and woman testified that he later raped them. But all five were wrong, and after spending 24 years in prison, Crotzer was set free in 2006 when DNA testing proved he couldn't have been the rapist.

"Five people were 100 percent convinced they were correct, and each was 100 percent wrong," said Sam Roberts, an assistant public defender in New York City who would later help free Crotzer.

Crotzer's case is typical of 75 percent of the DNA exonerations in Florida and nationwide: Innocent people were sent to prison, in part, because eyewitnesses got it wrong.

That's true in nine of Florida's 12 cases, according to the Innocence Project of Florida, a nonprofit that works to free the wrongfully convicted. It's also true of 198 of the 261 cases nationally, according to Gary Wells, an Iowa State University professor of psychology who has studied witness misidentification for more than 30 years.

How can so many people be so wrong, especially when so much is at stake? The Florida Innocence Commission, a panel appointed by the Florida Supreme Court, will hear evidence about that Nov. 22 in Tampa. Its job is to study those 12 wrongful convictions and come up with ways to prevent more.

One thing already clear about those Florida mistaken eyewitness cases: The problem usually began when police showed witnesses a photo or photo lineup, which is what happened in the Crotzer case.

"Memory is very fragile," said Wells. "It's delicate. It can deteriorate. It can be contaminated."

Best practices can help avoid mistakes

Psychologists, researchers and the Department of Justice have each come up with recommendations on how best to conduct photo and live police lineups to minimize witness mistakes.

One of the keys, according to psychologists and researchers: Have someone who does not know which photo is the suspect show the lineup.

Another, psychologists say: Don't show all the photos at once. Display one, then remove it and show the next.

Florida law-enforcement agencies do not, as a rule, follow those recommendations, although the sheriff's offices in Broward and Hillsborough counties do. So do the Fort Lauderdale police.

"There is no standardized protocol that's been adopted by the law-enforcement agencies statewide," said Lester Garringer Jr., executive director of Florida's Innocence Commission.

New Jersey and North Carolina have adopted those best practices. So have law-enforcement agencies in Boston, Dallas, Denver, Minneapolis and Santa Clara County Calif., said Wells, the Iowa State expert.

He has conducted hundreds of experiments, staging a crime, then asking witnesses to identify the perpetrators. His findings jibe with those of several other studies on live police lineups: Witnesses get suspect IDs wrong about 20 percent of the time, he said.

There are logistical reasons witnesses make errors: It may have been dark. They may have only seen the suspect for a few seconds. He may have been a good distance away.

And there are cognitive reasons: There may have been a weapon on which they were focused.

Also, people have trouble recognizing faces they have only seen once, especially if it was during a time of great stress or fear and especially if that person is of another race, according to psychological research.

Charlotte County Sheriff Bill Cameron is a member of Florida's Innocence Commission. He worked as a detective for more than a decade and estimates he has shown witnesses photo lineups more than 100 times. Cops are not to blame when witnesses pick the wrong suspect, he said.

Witnesses are.

Although Florida has no formal protocol for lineups, he said his agency and others in Florida no longer allow sloppy photo-ID practices that some used in the 1970s and '80s.

Now the photos should show individuals who have the same general physical characteristics and ones that match the description given by witnesses — for example, skin color, hair color, hair length and eye color. And the photos should have the same general background and include nothing that makes one stand out from the others, Cameron said. But many agencies have guidelines with loopholes: For example, they might urge an investigator to have someone who doesn't know the suspect show the witness the lineup "when practical."

In the late 1990s, then-U.S. Attorney General **Janet Reno** became concerned about DNA exonerations and the obvious eyewitness mistakes they pointed out.

"... Eyewitness evidence is not infallible," she wrote in the introduction to a 1999 report called "Eyewitness Evidence: A Guide for Law Enforcement." "Even the most honest and objective people can make mistakes in recalling and interpreting a witnessed event; it is the nature of human memory."

She put together a task force of police officers, attorneys and academics from the United States and Canada that studied the problem. One of its members was Maj. J.R. Burton of the Hillsborough County Sheriff's Office, whose agency has adopted photo-lineup best practices, as recommended by psychologists.

"This is a situation where we're going to be taking somebody's liberty away from them," Burton said. "It's just a better way of doing business."

Eyewitness ID 'isn't a fact'

If an officer is showing a witness a photo array — typically six photos — it's obvious that police think the criminal is one of them, said Wells, the Iowa State expert. Witnesses tend to react as if they're taking a multiple-choice test: Even if the perpetrator is not among the photos, he said, they often pick someone who most resembles that person.

During a photo lineup, cops do not intentionally try to influence a witness, he said, but they sometimes "leak" information. For example, if a witness picks the wrong person, the detective might say, "Mrs. Jones, take your time. Make sure you look at it carefully."

That's an obvious signal, said Wells, that the witness should pick someone else.

The **Orange County Sheriff's Office** and the Orlando Police Department do not follow the most important safeguards recommended by Wells. Neither requires an officer to show the photos one at a time, rather than in a "six-pack." They also do not have the photos shown by someone who does not know the suspect's ID. In fact, Orlando officers are allowed to send witnesses photo lineups via e-mail — though they are encouraged to be on the phone with the witness when he or she views it, according to a training bulletin issued in 2008.

One recent example of how a photo ID can go bad is the conviction of Malenne Joseph, a Haitian mother who spent three months in the Orange County Jail after an Orlando police officer gave the victim just one suspect photo to view — that of Joseph — and she was positively identified and convicted of criminal mischief.

"An eyewitness identification isn't a fact," said Roberts, the New York attorney who helped free Crotzer. "It's an opinion."

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