Objective Assessment of Eyewitness Identifications

A Case Example

Michael P. Griffin, Ph.D., ABPP
2019 Spring Public Defender Attorney and Investigator Conference

Eyewitness Identifications

• Three conclusions:
  - Eyewitnesses are imperfect.
  - Numerous factors can systematically influence eyewitness’ performance.
    - Personal
    - Situational
  - Judges, juries, and lawyers are not well informed about these factors.

NC Eyewitness Identification Reform Act

• Establishes standards to “help solve crime, convict the guilty, and exonerate the innocent in criminal proceedings by improving procedures for eyewitness identification of suspects.”
• Provides procedural standards based on some of the most well-established psychological research.
  - Independent administrator (or alternative)
  - Sequential vs. simultaneous lineups
  - Suspect not necessarily present
  - “Fillers” that resemble suspect
  - Video record of lineup, if able

My Forensic Training/Certifications

• Ph.D. in Clinical Psychology (Psych/Law)
• American Board of Forensic Psychology
• Private Practice: 2007-Present
  - Griffin Psychological Services, LLC
Case Example: The Case of Curtis Jackson

Facts of the Case
a) Curtis Mitchell Murdered
b) Fire (with accelerant) used to hide crime
c) Suspect is thought to have bought gas at 4:50A
d) Clerk identified suspect 9 days later via photographic lineup

How I Got Involved / My Role

- First contact
- Referral question (e.g. “What do you want from me?” “How do you envision me helping you?” “Why do you think XYZ is an issue in this case?”)
  - Case consultation?
  - Report?
  - Testimony?
- These are the MOST important questions to ask at first contact.

My Approach to the Referral

- Semi-blind, initial review of all available case information to note...
  - Core case information / key dates & times
  - Information directly relevant to referral question
  - Information beyond referral question of possible use to the client
- Detailed review of most relevant case information

My Approach to the Referral

- Formulate “First Impressions” / Observations
  - Identify supporting/conflicting information
  - Identify missing information
  - Identify questions that need to be answered
- Consult the Literature
  - Most up-to-date research on “first impressions“
  - Populate a relevant reference list for your report
- Consult with Client
My Approach: Relevant Information

- Memory Issues
  - Length of time between witness and identification
  - Limited observation of suspect
  - Limited motivation
  - No initial description of suspect
  - No reference to physical characteristics in identification

- Procedural Issues*
  - “Appearance-Change Instruction”
  - Number of photographs in the lineup revealed
  - Photographs presented twice
  - Distraction during identification
  - Suspect and fillers were too dissimilar

* These issues are based on research and/or statute (e.g. NC Eyewitness Identification Reform Act)

Photograph Lineup

Which of these pictures stand out to you as different from the others?

Instructions

Following are a series of 6 photographs that will be presented one right after the other. These are photographs that may or may not include a suspect in a murder case.

Despite not having seen the murder, I’m interested if any of these people stand out to you as a potential suspect based on appearance alone.

Select the number (1 – 6) of the person that stands out to you as the potential suspect via a Poll Everywhere response at the end. If you are not sure, just take your best guess.
READY?
Here we go... 5...4...3...2...1....

1

2

3
One more time.

Remember, I’m interested if any of these people stand out to you as a potential suspect based on appearance alone.

Select the number (1–6) of the person you choose.

If you are not sure, just take your best guess.
My Approach: Developing “The Study”

- One of my “first impressions” was that the photograph of the suspect differed from fillers on multiple points:
  a) Eye gaze
  b) Orientation/Cognitive Status
  c) Jewelry

- Goal of the study was to gauge whether people were more likely to pick the suspect than a filler based on appearance alone.
Presenting My Findings

1. The Report
   a) Maximize objectivity
      i. Present accepted facts
      ii. Highlight strengths of the lineup
   b) Clearly outline opinions and rationale
      i. Have a mantra, have a mantra, have a mantra, repeat
      ii. Research-based
      iii. Legally relevant
   c) Bury “The Study”

Presenting My Findings

1. Testimony
   a) Direct - expected
   b) Cross - expected
   c) Judge focused on two points:
      1) Why are the study results relevant to the present identification?
      2) Why does it matter that no physical characteristics were specifically referenced in the identification?
<table>
<thead>
<tr>
<th>Wrap Up / Conclusions</th>
<th></th>
</tr>
</thead>
</table>
