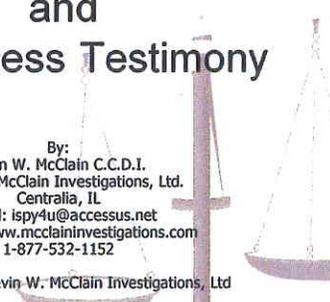


## Wrongful Convictions and Eyewitness Testimony

By:  
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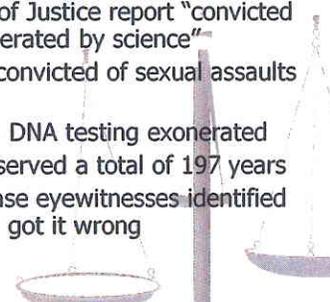
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### Could This Happen To You?

- 1996 US Dept of Justice report "convicted by Juries' exonerated by science"
- 28 individuals convicted of sexual assaults and murders
- Post conviction DNA testing exonerated
- 28 individuals served a total of 197 years
- 24 out of 28 case eyewitnesses identified individuals and got it wrong
- WHY?



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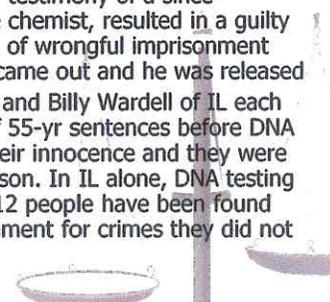
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- William O'Dell Harris was an 18 yr old college student when he was accused of rape. At his trial, faulty eyewitness testimony, combined with the perjured testimony of a since-discredited police chemist, resulted in a guilty verdict and years of wrongful imprisonment before the truth came out and he was released
- Donald Reynolds and Billy Wardell of IL each served 9 years of 55-yr sentences before DNA testing proved their innocence and they were released from prison. In IL alone, DNA testing has proven that 12 people have been found guilty of imprisonment for crimes they did not commit



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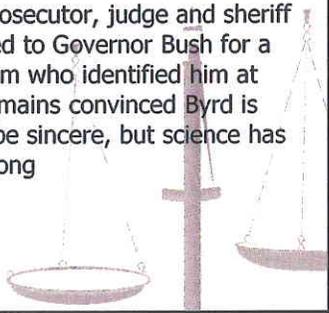
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- Kevin Byrd served 12 yrs of a life sentence in TX for a rape he did not commit. After DNA testing proved he could not have committed the crime, the prosecutor, judge and sheriff in his case applied to Governor Bush for a pardon. The victim who identified him at trial, sincerely remains convinced Byrd is guilty. She may be sincere, but science has proven she is wrong




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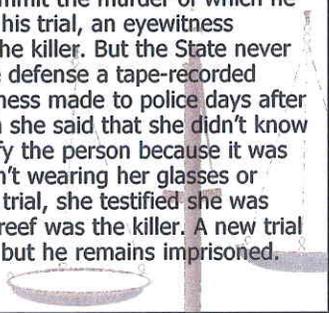
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- Teenager Shareef Cousin remains one of 63 juvenile offenders on Death Row in the US, notwithstanding increasingly mounting evidence that he did not commit the murder of which he was convicted. At his trial, an eyewitness identified him as the killer. But the State never turned over to the defense a tape-recorded statement the witness made to police days after the crime in which she said that she didn't know if she could identify the person because it was dark and she wasn't wearing her glasses or contact lenses. At trial, she testified she was 100% certain Shareef was the killer. A new trial has been ordered but he remains imprisoned.




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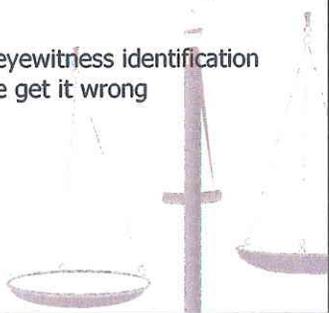
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### Wrongful Convictions and Eyewitness Testimony

- Studies shown eyewitness identification 50% of the time get it wrong




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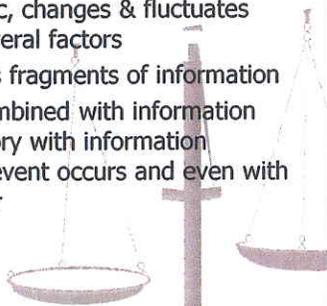
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### The Memory Process

- Memory is static, changes & fluctuates based upon several factors
- Person acquires fragments of information
- Information combined with information stored in memory with information acquired after event occurs and even with individuals prior



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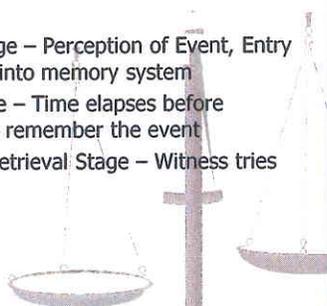
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### The Memory Process

- 3 stages
  - Acquisition Stage – Perception of Event, Entry of Information into memory system
  - Retention Stage – Time elapses before witness tries to remember the event
  - Final Stage – Retrieval Stage – Witness tries to recall



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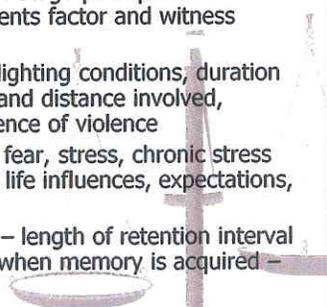
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### Factors Influencing Memory

- At the Acquisition Stage perception influenced by events factor and witness factor
- Event Factors – lighting conditions, duration of event, speed and distance involved, presence or absence of violence
- Witness Factor - fear, stress, chronic stress (recent negative life influences, expectations, age & gender)
- Retention Stage – length of retention interval – time between when memory is acquired – when retrieved



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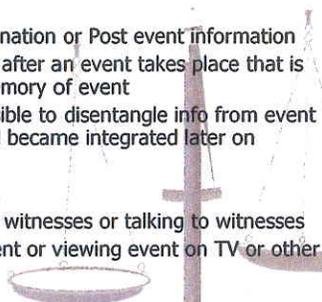
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### Post Event Information

- The longer the retention interval – more vulnerable memory
- Post even contamination or Post event information
- PEI – info learned after an event takes place that is integrated into memory of event
- Generally not possible to disentangle info from event & info learned and became integrated later on
- Examples of PEI
- Leading Questions
- Overhearing other witnesses or talking to witnesses
- Reading about event or viewing event on TV or other



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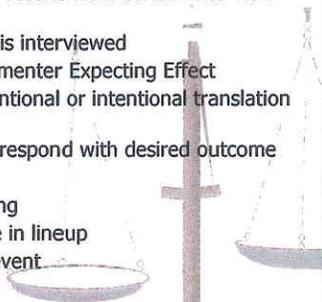
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### Interviewing Techniques

- False identification results from certain interview techniques
- The way a person is interviewed
- Referred to Experimenter Expecting Effect
- Interviewer unintentional or intentional translation of information
- Can make subject respond with desired outcome
- How to prevent
- Double Blind Testing
- May or may not be in lineup
- No knowledge of event



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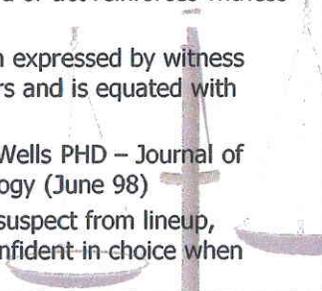
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### Confidence Malleability

- Interviewer word or act reinforces witness decision
- Confidence then expressed by witness conveys to jurors and is equated with accuracy
- Studies – Gary Wells PHD – Journal of Applied Psychology (June 98)
- People who ID suspect from lineup, photos more confident in-choice when given feedback



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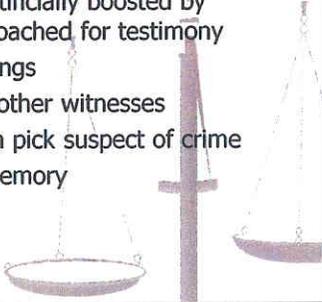
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### Confidence Malleability

- Confidence – artificially boosted by witness being coached for testimony
- Repeated meetings
- Feedback from other witnesses
- L.E. telling them pick suspect of crime
- Taint witness memory



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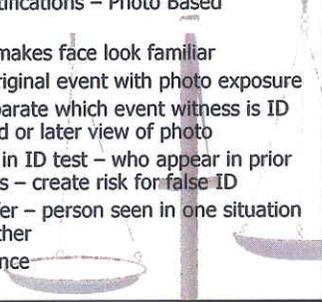
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### Photo Based Identification

- Research shows viewing photographs prior to making ID leads false identifications – Photo Based Identification
- Photo exposure – makes face look familiar
- Witnesses relate original event with photo exposure
- Not possible to separate which event witness is ID that which occurred or later view of photo
- Persons appearing in ID test – who appear in prior photos – mug shots – create risk for false ID
- Unconscious transfer – person seen in one situation confused with another
- Publicity can influence



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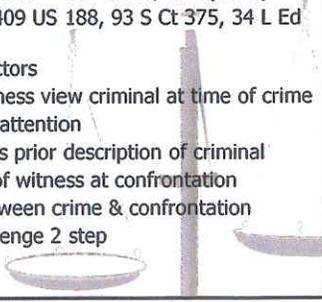
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### Legal Test Admissibility of Eyewitness Testimony

- Manson vs. Brathwaite – 432 US 98, 114 (1977)
- Nail vs. Biggers – 409 US 188, 93 S Ct 375, 34 L Ed 2d 401 (1972)
- Supreme Court Factors
- Opportunity of witness view criminal at time of crime
- Witness degree of attention
- Accuracy of witness prior description of criminal
- Level of certainty of witness at confrontation
- Length of time between crime & confrontation
- Photo array – challenge 2 step



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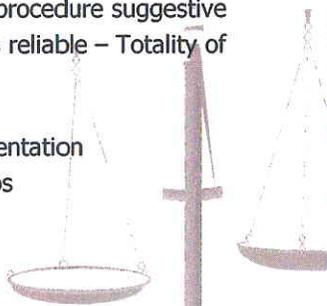
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### Legal Test Admissibility of Eyewitness Testimony

- Photo array or procedure suggestive
- ID nevertheless reliable – Totality of Circumstances
- Size
- Manner of presentation
- Details of photos



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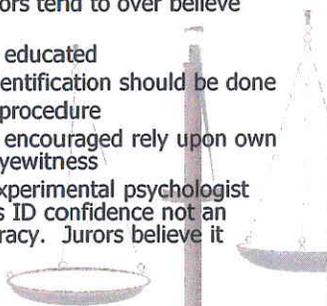
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### Impact of Eyewitness Testimony on Jurors

- Studies show jurors tend to over believe witnesses
- Jurors should be educated
- How a reliable identification should be done
- Compare to this procedure
- Jurors should be encouraged rely upon own judgment than eyewitness
- Research 87% experimental psychologist agree eyewitness ID confidence not an indicator of accuracy. Jurors believe it



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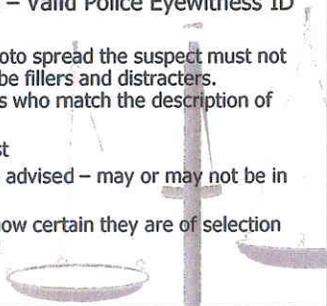
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### How to Educate Jurors on Evaluating Eyewitness Testimony

- 4 Essential Rules – Valid Police Eyewitness ID Procedure
  - Any lineup or photo spread the suspect must not stand out. Must be fillers and distracters. Innocent persons who match the description of suspect
  - Double Blind Test
  - Witness must be advised – may or may not be in lineup or array
  - Witness – ID – how certain they are of selection and reason for it



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Under the Open Records request KRS 61.0876 (2), I am requesting to review or copy  
 From the Georgetown Police Department any & all known records  
 of Tammy Nava dated 9-28-1988 to include any records  
 that list her as a witness, complainant, victim, person  
 of interest or informant.  
 Any and all known records of calls to 187 Cumberland  
 Drive, Georgetown, Ky to include recorded reports, notes,  
 statements, statements, dispatch logs and any other electronic  
 or digital information that have in your possession  
 from January 2006 - present

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Due to the large amount of records you have requested, your request will not be  
 available until Wednesday July 11, 2012 at 12:00 PM. I have been actively working on  
 these records at least 8 hours each day since the receipt of your request. There are  
 literally hundreds of documents to copy, as well as recordings of phone calls. Should you  
 have any questions please feel free to contact me at 502-863-7829 during normal business  
 hours.

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COVER SHEET  
 On 08-31-02 at 12:29 hrs. I responded to 187 Cumberland Drive in reference  
 to a DWI violation. The complainant Tammy Nava stated she has a DWI against  
 her husband for no visible contact. **Ms. Nava stated that her husband  
 grabbed her eyeglasses off of her face. She said that she is legally blind  
 without them. Ms. Nava grabbed his glasses in an attempt to get her back.**

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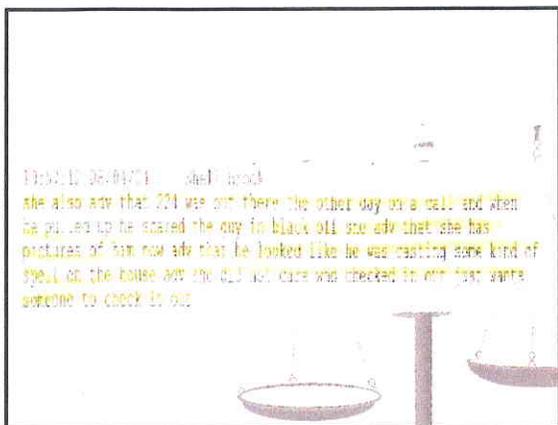
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## Wrongful Convictions and Eyewitness Testimony A Case Study

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<http://www.kmov.com/news/local/Man-charged-after-indecent-exposure-incident-at-Fairview-Heights-Goodwill-112284769.html>

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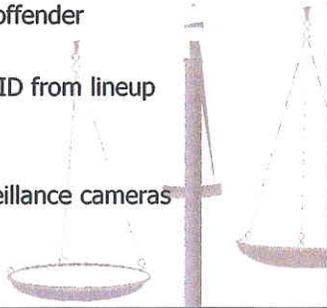
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### Summary Of Facts that Supported Arrest

- Registered sex offender
- Wears glasses
- 4 eyewitnesses ID from lineup
- Short hair
- Similar build
- Caught on surveillance cameras



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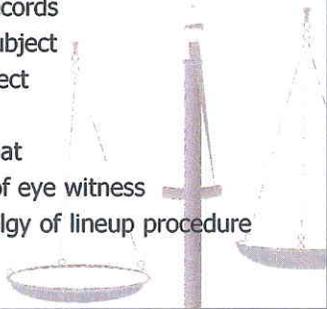
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### Defense

- Alibi – Phone records
- Not height of subject
- Not age of subject
- Not bald
- Does not own hat
- Attack validity of eye witness
- Attack methodology of lineup procedure



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### Photo Line Up #1



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### Photo Line Up #2

*Photo Lineup #2*

FURNISHED BY THE POLICE DEPARTMENT OF THE CITY OF


Name 1: *Demetrius D. Smith*  
 Name 2: *Demetrius D. Smith*  
 Name 3: *Demetrius D. Smith*  
 Name 4: *Demetrius D. Smith*  
 Name 5: *Demetrius D. Smith*  
 Name 6: *Demetrius D. Smith*

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### Witness 1 - Christina Nix

- Mother of Lexie Morgan (11) and Morgan Triefenbach (12)
- Children never more than 12 feet away
- Saw suspect exiting 20 feet away, back & side profile
- Saw suspect first walk in 4-5 feet away
- Picked out of lineup 85% sure
- Hair light brown with gray in it
- Had hat on most of the time
- Build

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- Q. Had you seen him earlier in the store before that?
- A. Yes
- Q. And where were you when that happened?
- A. When I first walked in, he was kind of standing to the front
- Q. And how far away were you from him at that point?
- A. Maybe four or five feet.

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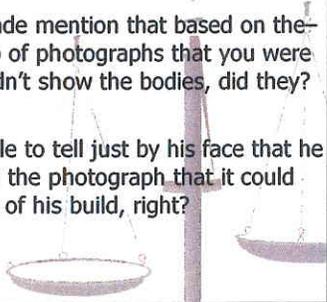
■ Q. Okay. But you know, it wasn't like you looked at him and said, well, what is it about number two? That's him. You said it was his build, right?

■ A. Yes.

■ Q. And you also made mention that based on the—based on the group of photographs that you were given—and they didn't show the bodies, did they?

■ A. No.

■ Q. But you were able to tell just by his face that he was the only guy in the photograph that it could have been because of his build, right?




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■ A. That was part of it, and his facial features.

■ Q. And you didn't – but you didn't mention his facial features, did you?

■ A. Not at the time.

■ Q. But you did specifically mention that none of the other guys had the right build, right?

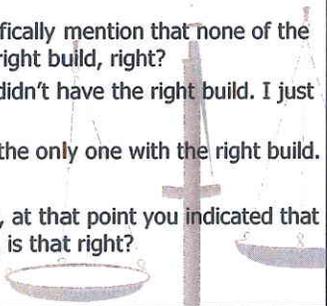
■ A. I didn't say they didn't have the right build. I just said his build was –

■ Q. You said he was the only one with the right build.

■ A. Yes.

■ Q. Okay. And, again, at that point you indicated that you were 85% sure, is that right?

■ A. Yes.




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■ Q. Now, we established he would have been walking out the of the store when you were able to see him without his hat on, is that right?

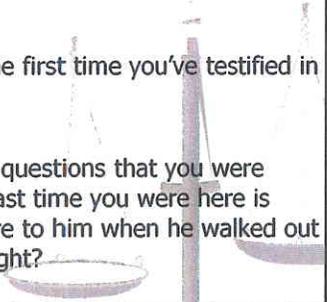
■ A. Yes.

■ Q. And this isn't the first time you've testified in this case, is it?

■ A. No.

■ Q. And one of the questions that you were asked by me the last time you were here is how close you were to him when he walked out the door, is that right?

■ A. Yes.




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■ Q. And you were under oath at that time, were you not?  
■ A. Yes.  
■ Q. Sworn to tell the truth, the whole truth?  
■ A. Yes.  
■ Q. Now, what you told us then about your distance from the individual in the store when he walked out is vastly different from what you told us today, is it not?  
■ A. I don't recall.  
■ Q. Okay. Let me ask you if you remember being asked these questions and giving these answers. And this is on the bottom of page 63. Begins at line 15. I'm going to read a series of questions and answer and you can tell me whether or not you remember giving those answers. Okay?

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■ A. Okay.  
■ Q. Okay. What- - when you say you saw his profile was he turned more- - where were - - where were you in the store at this point? The answer, I was kind of back by the cash registers.  
    Okay. And where are those in relationship to the doors?  
    Maybe - this is the answer. Maybe- - I haven't been there in a while. Maybe six feet. I mean they're right there at the doors.  
    Question, I see. So they were pretty close to the door?  
    Yeah.  
    And that's where you were standing when your daughter pointed him out? And the answer is, yes. Do you remember giving those answers to those questions?  
■ A. Yes.

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■ Q. You can't tell exactly where you were?  
■ A. I was by the registers.  
■ Q. You were right by the registers?  
■ A. Right by the registers.  
■ Q. Okay. Not back at the back of the store?  
■ A. No.  
■ Q. Okay. Now, after the array took place, do you recall asking Detective Mason about what the next step was, what was going to happen next?  
■ A. Yes.  
■ Q. Do you remember him telling you that your identification, while helpful, would not establish probable cause to make an arrest?

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■ Q. You do remember talking about seeing him in profile as he was about to walk out the door, correct?

■ A. Yes.

■ Q. And is that the point at which he put his hat on?

■ A. I think- - yeah. As he was walking out the door, he was putting his cap back on at the same time.

■ Q. And how certain are you about the defendant being the man in that store?

■ A. I am a hundred percent certain. Seeing him in person is a lot more easier to see him, the way he sits, his mannerisms, than just a still photograph

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■ Q. Did he put on his hat like right as he was leaving the door or when he was out the door and a distance away? Do you recall?

■ A. He was going out the door. And I believe he was lifting it towards his head as he was leaving. And then I decided to glance back at the girls to see where they were, make sure they were still with me. And then I didn't see him actually place it on his head, but he was going towards like he was going to put it on his head

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**Witness 2 – Morgan Triefenbach**

■ 10 years old at time of incident

■ Was told by sister someone flashed them

■ Observed suspect few clothes racks away

■ Can't remember what face looked like

■ Was not wearing hat inside store

■ Put on hat as exiting door

■ Was sure picked from lineup

■ Thought he had white hair

■ 50-65 years old

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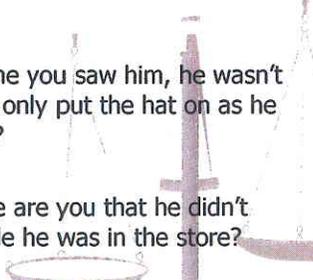
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**Cross Examination by Mr. Young**

- Q. And when you saw that individual in the store, did he have a baseball hat on in the store?
- A. No.
- Q. Okay. Every time you saw him, he wasn't wearing a hat. He only put the hat on as he was leaving, right?
- A. Yes, correct.
- Q. Okay. How sure are you that he didn't have a hat on while he was in the store?
- A. I'm certain



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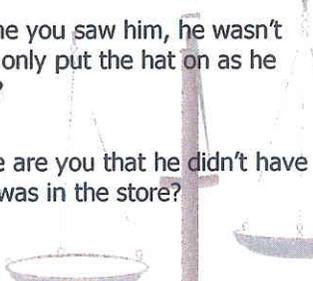
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- Q. And when you saw that individual in the store, did he have a baseball hat on in the store?
- A. No.
- Q. Okay. Every time you saw him, he wasn't wearing a hat. He only put the hat on as he was leaving, right?
- A. Yes, correct.
- Q. Okay. How sure are you that he didn't have a hat on while he was in the store?
- A. I'm certain.



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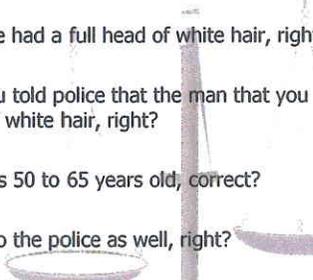
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- Q. Okay. You thought he had white hair, correct?
- A. Yes.
- Q. And when you came to court about three months ago you still believed he had white hair, right?
- A. Yes.
- Q. And you thought he had a full head of white hair, right?
- A. Yes.
- Q. And that's what you told police that the man that you saw had a full head of white hair, right?
- A. Yes.
- Q. You thought he was 50 to 65 years old, correct?
- A. Yes.
- Q. And you told that to the police as well, right?
- A. Yes.



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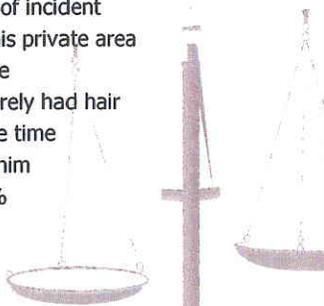
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### Witness 3 – Alexis Nix

- 12 years old time of incident
- Suspect showed his private area
- Glanced at his face
- Wearing a hat, barely had hair
- Wearing hat whole time
- Looked most like him
- Sure – 40% - 70%



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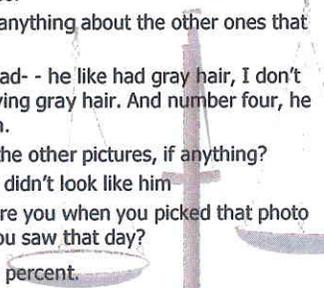
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- Q. Now, looking at that, can you tell the Court, why did you pick number five?
- A. He just looked the most like him. I didn't- - I totally marked out number one and number three because they have like a skinnier face.
- Q. Okay. And is there anything about the other ones that didn't match?
- A. Number three, he had- - he like had gray hair, I don't remember the guy having gray hair. And number four, he looked kind of Mexican.
- Q. Okay. What about the other pictures, if anything?
- A. Number six, he just didn't look like him
- Q. Okay. How sure were you when you picked that photo that was the person you saw that day?
- A. Maybe like 40 to 70 percent.



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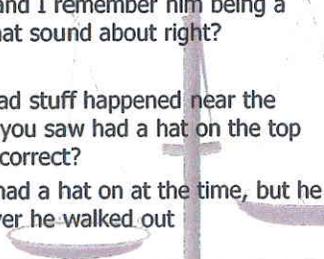
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### Cross Examination by Mr. Kuehn

- Q. One of the questions that I had asked you was what it was about number five that stood out. And I believe you answered, quote, he was a- - he was kind of a bigger- - and I remember him being a bigger guy. Does that sound about right?
- A. Yeah.
- Q. And when this bad stuff happened near the aisle, the man that you saw had a hat on the top of his head, is that correct?
- A. I don't think he had a hat on at the time, but he had one on whenever he walked out



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■ Q. And one of the things we covered was whether or not the individual that you saw - whether you thought he had a mustache or not. Do you remember what your answer was?

■ A. I don't remember.

■ Q. Okay. Do you remember saying, quote, I can't really remember, but I'm pretty sure he did?

■ A. Yeah, I remember saying that.

■ Q. Pretty sure he did have a mustache? I think the day that - the day that you - that this all happened, you met with the police a little bit?

■ A. Yeah.

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### Witness 4 – Savannah Hyde

- 11 years old time of incident – jacket (checked)
- Saw suspect with private parts out
- Saw left side of his face
- Little overweight, had glasses on
- Things blurry time of lineup viewing
- Suspect did not have hair, specific area
- Compared with other witnesses observations

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### Cross Examination by Mr. Kuehn

■ Q. Okay. Now, before you went to see Detective Mason, you and Lexie had had some - a little bit of discussion about what the guy looked like, did you not?

■ A. Before we went -

■ Q. Before you went to see Detective Mason?

■ A. Do you mean like in the car or like -

■ Q. Well, at any time before then.

■ A. At any time? We were like talking kind of like about how he was overweight.

■ Q. Right. Did he – I think you may have said earlier that you guys had talked about how he was a little chubby, right?

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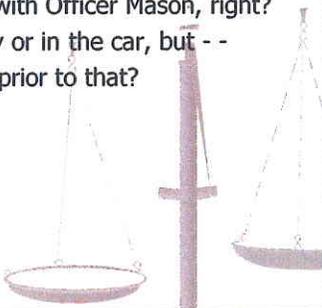
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- A. Yeah.
- Q. And these were conversations that took place before you went to pick somebody out of a photo lineup with Officer Mason, right?
- A. Not in the lobby or in the car, but - -
- Q. But some time prior to that?
- A. Yeah.



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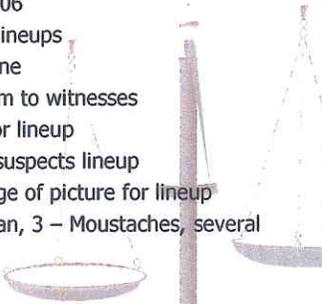
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**State Witness 5 – Detective Mason**

- Detective since 2006
- Conducted police lineups
- Never went to scene
- Gives advisory form to witnesses
- Selects subjects for lineup
- Did minimum (6) suspects lineup
- Can't determine age of picture for lineup
- Lineups 1 – Mexican, 3 – Moustaches, several smaller builds



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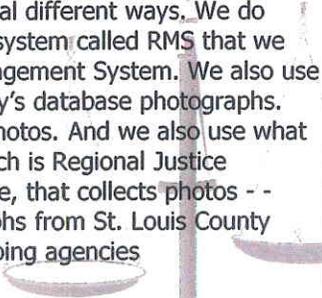
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Direct Examination by Ms. Dalan

- Q. And then how do you find photographs to put in a photographic array?
- A. There are several different ways. We do have an in-house system called RMS that we use, Records Management System. We also use the St. Clair County's database photographs. They're booking photos. And we also use what we call REJIS, which is Regional Justice Information Service, that collects photos - - booking photographs from St. Louis County police and subscribing agencies



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■ Q. And is the goal, Detective, to find photographs of other people besides the suspect who look similar in appearance so that it is not suggestive?

■ A. Yes.

■ Q. Same race obviously?

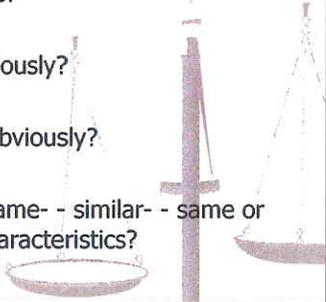
■ A. Yes.

■ Q. Same gender obviously?

■ A. Yes.

■ Q. And basically same- - similar- - same or similar kinds of characteristics?

■ A. Yes.



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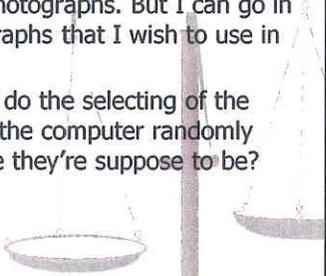
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■ Q. And do you actually- - is it a computer system where you attach all the photographs on one sheet?

■ A. The computer system actually randomly sets the order of the photographs. But I can go in and select photographs that I wish to use in the photo lineup.

■ Q. So you actually do the selecting of the photographs, and the computer randomly places them where they're suppose to be?

■ A. Yes.



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■ Q. When you say a totally different lineup, were the faces the same but in a different position?

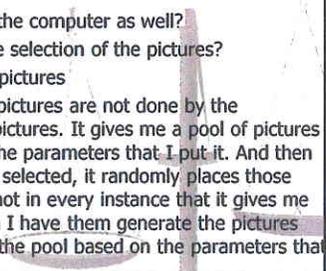
■ A. Not all of the faces were the same. If I recall correctly, on the- - between the first and second lineup five of the persons were the same. And I believe on the second lineup one was different.

■ Q. And is that done by the computer as well?

■ A. The placement or the selection of the pictures?

■ Q. The selection of the pictures

■ A. The selection of the pictures are not done by the computer. I select the pictures. It gives me a pool of pictures to pick from based on the parameters that I put it. And then once those pictures are selected, it randomly places those pictures. It's not- - it's not in every instance that it gives me the same pictures when I have them generate the pictures based on- - or give me the pool based on the parameters that I set



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Cross Examination by Mr. Kuehn

- Q. There is a policy, is that what you call it, a manual or just sort of some guidelines that govern this kind of thing?
- A. Yes.
- Q. Okay. What- - how would you- - what would you coin it? How would you describe it?
- A. It's considered a General Order.
- Q. General Order?
- A. Yes.
- Q. Okay. I want to discuss that General Order a little bit. And it deals with procedures that you are to follow when it comes to administering these photo arrays and other types of lineups, is that right?
- A. Yes

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- Q. You're familiar with this document?
- A. I am.
- Q. You've read it many times?
- A. Yes.
- Q. Now, one aspect- - one of the first paragraphs in the top left-hand part is termed Policy, right?
- A. Yes.
- Q. And that paragraph talks about how very, very important it is that these procedures that are set forth in the General Order are, quote, strictly adhered to, is that right?
- A. Correct
- Q. And one of the reasons is to maximize reliability. Am I right?
- A. Yes.
- Q. And it uses those words, maximize reliability?

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- A. Yes, it does.
- Q. It also talks about minimizing- - minimizing accusations against innocent people.
- A. Correct.
- Q. Right? And it doesn't- - doesn't say eliminate. It says minimize false accusations, right?
- A. Correct.
- Q. The police drafters of that General Order seemed to recognize that misidentifications are going to happen, but strict adherence with that document is important to minimize the amount of innocent people that are wrongfully accused as part of a photo array. Fair assessment?
- A. I would say so.

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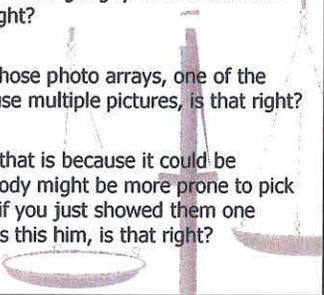
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- Q. Now, one of the other directives- - and I believe this is subparagraph B. This may be on the right side. The right side of the General Order begins to talk about photo arrays whereas initially on the left side it's talking about actual lineups where you bring a guy to the scene and you say, is this him, right?
  - A. Correct.
  - Q. So in dealing with those photo arrays, one of the directives is that you use multiple pictures, is that right?
  - A. This is correct.
  - Q. And the reason for that is because it could be suggestive and somebody might be more prone to pick out the wrong person if you just showed them one photograph and said, is this him, is that right?
  - A. That's correct.
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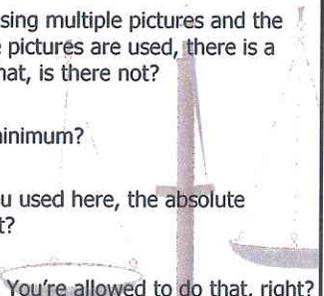
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- Q. And that's a word that's commonly used when it comes to identification, suggestiveness, something we want to avoid right?
  - A. Yes.
  - Q. Now, in terms of using multiple pictures and the directive that multiple pictures are used, there is a minimum placed on that, is there not?
  - A. In this policy, yes.
  - Q. And what is that minimum?
  - A. Six
  - Q. And that's what you used here, the absolute minimum, is that right?
  - A. That's correct
  - Q. You can use more. You're allowed to do that, right?
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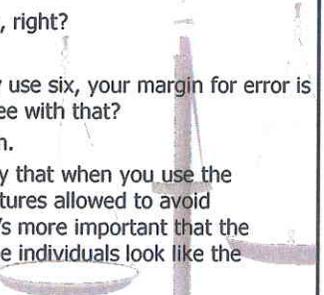
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- A. Yes.
  - Q. You can use as many as you want, I would assume?
  - A. Yes.
  - Q. But minimum is six, right?
  - A. Correct.
  - Q. And when you only use six, your margin for error is lower. Would you agree with that?
  - A. I'm sorry. Say again.
  - Q. Well, would you say that when you use the absolute minimum pictures allowed to avoid suggestiveness that it's more important that the individual- - that all the individuals look like the suspect?
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■ A. I'm sorry. Can you rephrase the question again? It- -

■ Q. Um- -

■ A. I'm sorry. It just seems like you're- -

■ Q. No. It's okay. I- - you know, I- -perhaps I'm being unartful in the way I'm asking it. I think I asked it before, and I'll try to repeat it because I think you seemed to understand it.

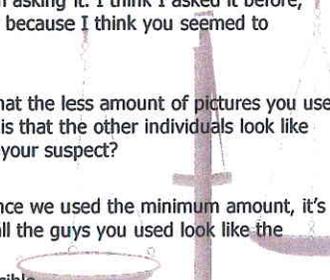
■ A. Okay.

■ Q. Would you agree that the less amount of pictures you use the more important it is that the other individuals look like the individuals who is your suspect?

■ A. Yes.

■ Q. Okay. And here, since we used the minimum amount, it's really important that all the guys you used look like the suspect right?

■ A. Yes, as best as possible.



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■ Q. Okay. Now we talked before, I believe, at a prior hearing. Do you remember that?

■ A. I do.

■ Q. Okay. One of the things that I wanted to know about- and it's something I think we've seen on tape. We talked about the weight of the individuals involved, right?

■ A. Yes.

■ Q. And you will agree with me that some of the individuals are a lot skinnier than Mr. Hudacek, right?

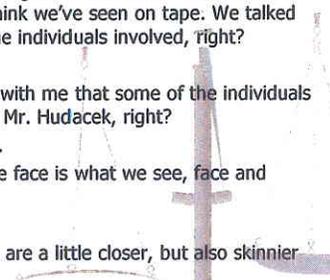
■ A. In the face, correct.

■ Q. In the face. And the face is what we see, face and shoulders.

■ A. Correct.

■ Q. And the other ones are a little closer, but also skinnier than Mr. Hudacek?

■ A. In the face, correct.



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■ Q. All right. And, again, we've got the minimum pictures. So to the extent that some of them are a lot skinner than Mr. Hudacek, we are missing strict adherence when it comes to having reasonably similar weight with these individuals, is that right?

■ A. If you focus- - if you want to focus on just weight.

■ Q. That's one of the directives in the General Order, isn't it?

■ A. There's also other parameters in that General Order.

■ Q. I understand.

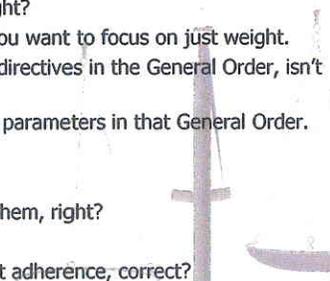
■ A. Okay.

■ Q. But that's one of them, right?

■ A. Yes.

■ Q. And we need strict adherence, correct?

■ A. Yes.



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■ Q. Also one of the directives is that the pictures should all be the same size, the same backgrounds. Nothing that makes them distinctive or stands out, right?

■ A. Correct.

■ Q. And we've got a problem with strict adherence in that regard with Exhibit 12 also, the photo lineup number one, do we not?

■ A. I wouldn't one hundred percent agree with you.

■ Q. Would you at least agree that Mr. Hudacek's picture is bigger and appears closer up than any of the others pictures in that photo array?

■ A. I would say photo number five and photo number two are pretty similar. But if I had to say he was closer, yes.

■ Q. Okay.

■ A. Oh, and, again, photo number six is also a pretty close shot.

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■ Q. Now, do you remember being asked this question the last time we were here with regard to photo number one and giving this answer? Would you also agree that Mr. Hudacek's picture looks bigger than the other pictures in the spread? And your answer was, yes.

■ A. If it says it there, yes.

■ Q. Okay. And you didn't have any problem agreeing with that without explanation at the prior hearing?

■ A. Well, it's- - it's a different circumstance. I apologize, but I don't remember all the answers that I made the last time we met.

■ Q. Okay. Now, in terms of age, all of the individuals are born the same year, is that right?

■ A. That is correct.

■ Q. So those individuals are all within a year's time the same age, correct?

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■ A. Yes.

■ Q. But that doesn't mean that they were the same age when those pictures were taken, is that right?

■ A. This is correct.

■ Q. Because there's no way of telling exactly when the pictures were taken, right?

■ A. Well, there are, but I don't know- -

■ Q. But you don't know what- -

■ A. I don't know what it is.

■ Q. In fact, you're not aware that that picture of Mr. Hudacek was from July of 2010?

■ A. I don't.

■ Q. You're not aware when any of the other pictures were taken in either one of the photo arrays?

■ A. No, I don't.

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■ Q. Some of them could be 10 years old and the individuals could be 32, is that right?

■ A. It's possible

■ Q. As opposed to 42 at the time of this incident?

■ A. Sure.

■ Q. And would you agree that nobody in any of the pictures looked to be 65?

■ A. I would agree, yes.

■ Q. Do any of them look to be age 50 to you?

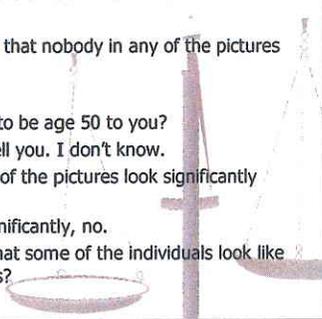
■ A. In that- - I couldn't tell you. I don't know.

■ Q. Would you say some of the pictures look significantly younger than 50?

■ A. I would not say- - significantly, no.

■ Q. Okay. Do you think that some of the individuals look like they may be in their 30's?

■ It's possible, yes.



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■ Q. Now, having watched the video from the Goodwill store, the man doesn't have any facial hair, doesn't appear to have any facial hair, does he?

■ A. I've only watched bits and pieces of that video. But from what I understand, no.

■ Q. And there were no reports from any of the witnesses that that individual had facial hair?

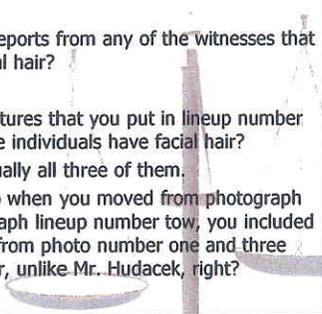
■ A. Right.

■ Q. Of the three new pictures that you put in lineup number two, how many of those individuals have facial hair?

■ A. I believe- - well, actually all three of them.

■ Q. All three of them. So when you moved from photograph number one to photograph lineup number two, you included the two skinniest guys from photo number one and three guys that had facial hair, unlike Mr. Hudacek, right?

■ A. Yes.



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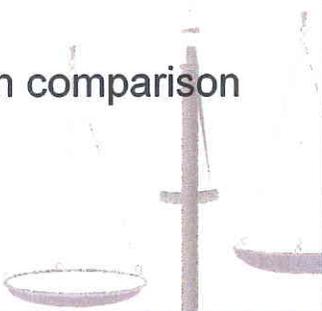
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Location comparison



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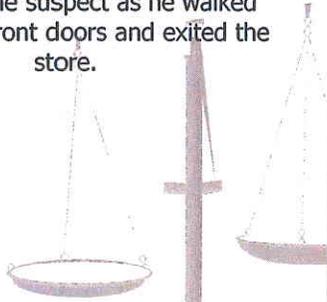
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### Suspect location

- Photos of the suspect as he walked toward the front doors and exited the store.



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Suspect towards front door.  
View from Cam 1 14:13:26



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Suspect towards front door.  
View from Cam 1 14:13:27



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Suspect towards front door.  
View from Cam 1 14:13:28



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Suspect towards front door.  
View from Cam 1 14:13:29



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Suspect opening front door.  
View from Cam 1 14:13:30



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Suspect through front door.  
View from Cam 1 14:13:31



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Suspect completely out.  
View from Cam 1 14:13:32



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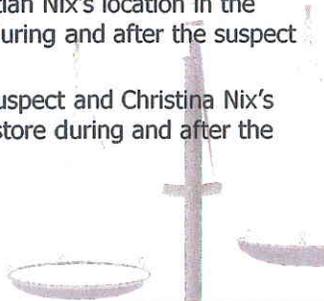
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### Christina Nix's location

- Photos of Christian Nix's location in the store prior to, during and after the suspect exits.
- Photos of the suspect and Christina Nix's location in the store during and after the suspect exits.



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Nix by front door.  
View from Cam 1 14:12:57



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Nix by front door.  
View from Cam 1 14:12:58



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Nix walking by registers.  
View from Cam 2 14:13:04



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Nix turning in aisle past registers.  
View from Cam 2 14:13:11



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Nix past register.  
View from Cam 2 14:13:16



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Suspect in aisle on left. Nix in aisle mid frame, head turned  
away from front door.  
View from Cam 5 14:13:20



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Suspect in aisle on left. Nix in aisle mid frame, head turned away from front door.  
View from Cam 5 14:13:21



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Suspect in aisle on left. Nix in aisle mid frame, head turned away from front door.  
View from Cam 5 14:13:22



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Suspect in aisle on left. Nix in aisle mid frame, head turned away from front door.  
View from Cam 5 14:13:23



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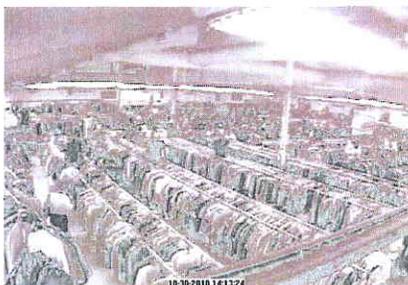
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Suspect walking around table. Nix turning down aisle,  
head turned away from front door.  
View from Cam 5 14:13:24



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Suspect walking around table. Nix walking down aisle,  
head turned away from front door.  
View from Cam 5 14:13:25



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Suspect walking towards front door. Nix in aisle, head  
turned away from front door.  
View from Cam 5 14:13:26



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Suspect walking towards front door. Nix in aisle, head turned away from front door.  
View from Cam 5 14:13:27



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Suspect approaching front door. Nix in aisle, head turned away from front door.  
View from Cam 5 14:13:28



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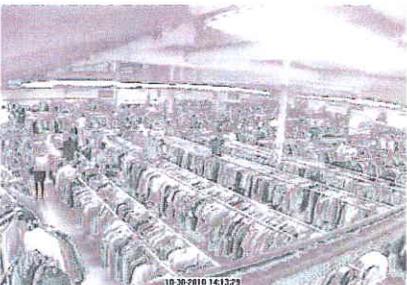
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Suspect approaching front door. Nix in aisle, starting to turn head towards front of store.  
View from Cam 5 14:13:29



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Suspect is approaching front door at the time Nix begins to turn her head.  
View from Cam 1 14:13:29



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Suspect out of frame. Nix in aisle, head turned towards front of store.  
View from Cam 5 14:13:30



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Suspect is opening the door at the time Nix has began looking towards the front of store.  
View from Cam 1 14:13:30



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Suspect out of frame. Nix in aisle, head turned towards front of store.  
View from Cam 5 14:13:31



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Suspect completely through door at the time Nix is continuing looking towards the front of store  
View from Cam 1 14:13:31



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Suspect out of frame. Nix in aisle, head turned towards front of store.  
View from Cam 5 14:13:32



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Suspect walking on sidewalk at the time Nix is looking towards the front of store.  
View from Cam 1 14:13:32



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Suspect on cell phone



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Suspect with cell phone in right hand  
View from Cam 10 14:00:26



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Suspect on cell phone  
View from Cam 10 14:00:28



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Suspect remaining on cell phone  
View from Cam 10 14:00:43



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Suspect remaining on cell phone  
View from Cam 10 14:00:47



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Suspect putting cell phone into  
right front pocket  
View from Cam 10 14:01:00



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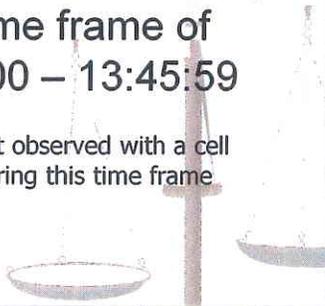
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Suspect location during  
the time frame of  
13:13:00 – 13:45:59

Suspect not observed with a cell  
phone during this time frame



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13:13:00 Cam 6



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13:16:00 Cam 2



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13:18:49 Cam 2



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13:21:02 Cam 2



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13:23:27 Cam 10



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13:24:24 Cam 6



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13:28:06 Cam 6



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13:31:02 Cam 6



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13:34:29 Cam 11



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13:40:55 Cam 6



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13:43:09 Cam 6



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13:45:59 Cam 6



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### FYI's

- Obtain standard operating procedures manual - FOIA
- Frame by frame witness statements
- Alibi – Phone records
- Capture video stills
- Motion to suppress (discovery tool)
- Motive
- Media vs Time of identification
- Compare fixed objects heights vs stills

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