

EYEWITNESS IDENTIFICATION

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SPD Annual Conference – 2015

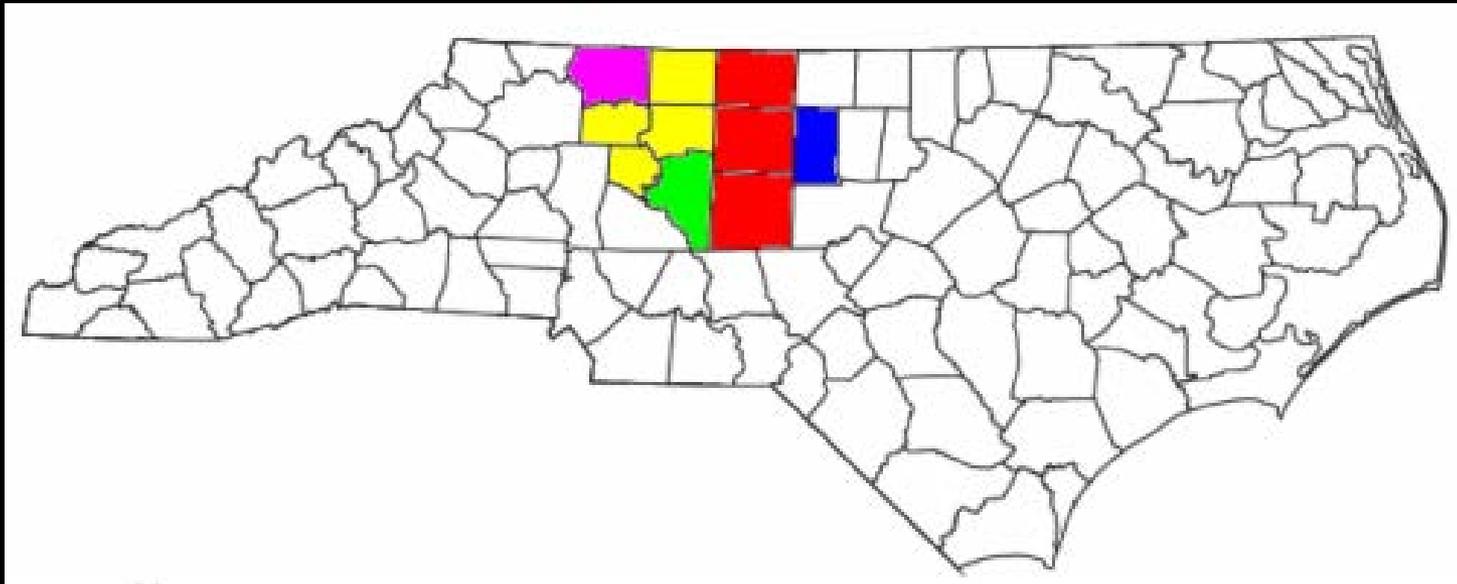
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The Case



In 1984, a college student named Jennifer Thompson was raped in her apartment in Burlington, North Carolina

BURLINGTON, N.C.



ELON COLLEGE



BROOKWOOD GARDEN APARTMENT COMPLEX



- “In blinks, I willed myself to note details”
 - “I studied his face for features to identify”
 - “I tried to look in his eyes”
 - “Standing next to him for a few minutes, I tried to record information about how tall he was”
-

Q: "Do you think you'd recognize him if you saw him again?"

In an instant, it was all there: *Shut up or I'll cut you!* His narrow eyes, the pencil thin mustache, the repulsive lips, the nose so close to my own.

A: "Yes, I would."



“But how would I ever be safe again? He knew my name, knew things about me. Somewhere out there in the darkness, he was waiting”

THE PHOTO LINE-UP

- "I assumed they must have had a suspect."
 - "Why would they want me to drive all this way if they didn't?"
 - "All I had to do was to pick him out. And if I failed to do that, would he go free? Would he find me?"
-

A: "Yeah. This is the one. I think this is the one."

Q: "You think that's the guy?"

A: "It's him."

Q: "You're sure?"

A: "Positive."

Q: "Did I do okay?"

A: "You did great."

“SHUT UP OR I’LL CUT YOU”



"It was him. There was no doubt in my mind. I knew it. If I didn't get him, he was going to come after me. The terror simply took my breath away. He was standing right in front of me, and if the police didn't lock him up, surely he would walk out of there, find me, and finish the job. The next time, I was certain, I would not get away. He would kill me."

“We thought that might be the guy. It’s the same person you picked out from the photos.”

ALAMANCE COUNTY COURTHOUSE



Q: "Jennifer, are you absolutely sure that Ronald Junior Cotton is the man?"

How could I ever forget? Didn't they know his terrible face would stay in my mind forever?

A: "Yes."

Ronald Cotton convicted of rape and
sentenced to life in prison plus 50
years



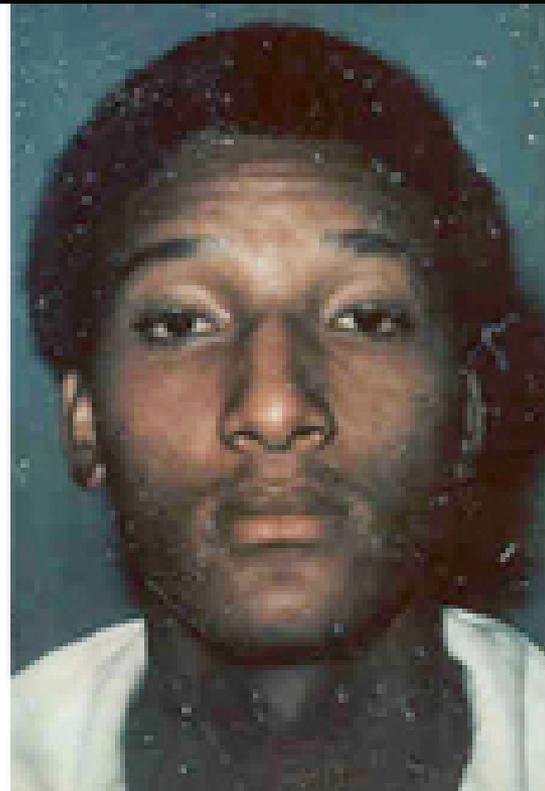
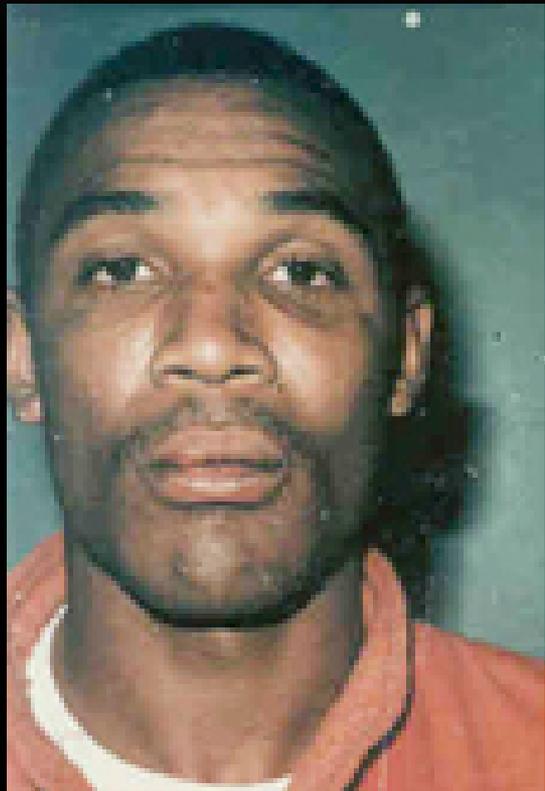
NOVEMBER 1987

- New trial
 - Judge excludes testimony of Bobby Poole & witness to Poole's confession
 - Both rape victims in the courtroom during testimony
 - Neither recognizes Poole as the rapist
-

Ronald Cotton is convicted and receives two life sentences plus 54 years, concurrent

Ronald Cotton served ten and a half
years in prison before DNA tests
exonerated him and implicated Bobby
Poole

"I don't know. The DNA tests, the science tells me that we had the wrong guy. It was Bobby Poole. Ronald Cotton says it's not him, it was Bobby Poole. They do look very similar, it is almost frightening how similar they look to each other... I don't know. I really don't know. I have to accept the answer that has been given to me and put faith in our system."



"How do eleven years pass when you are locked up for a crime you didn't commit? I couldn't begin to imagine. For me, they were eleven years measured in birthdays, first days of school, Christmas mornings. Ronald Cotton and I were exactly the same age, and he had had none of those things because I'd picked him. He'd lost eleven years of time with his family, eleven years of falling in love, getting married, having kids...The guilt suffocated me."

"Few stories of wrongful convictions have happy endings, but the one told by Ronald Cotton and Jennifer Thompson-Cannino is far different. It is the powerful message of violence, rage, redemption, and, ultimately, forgiveness."

—JOHN GRISHAM



PICKING

OUR MEMOIR OF INJUSTICE AND REDEMPTION

COTTON

JENNIFER THOMPSON-CANNINO

AND RONALD COTTON

WITH ERIN TORNEO

The Research



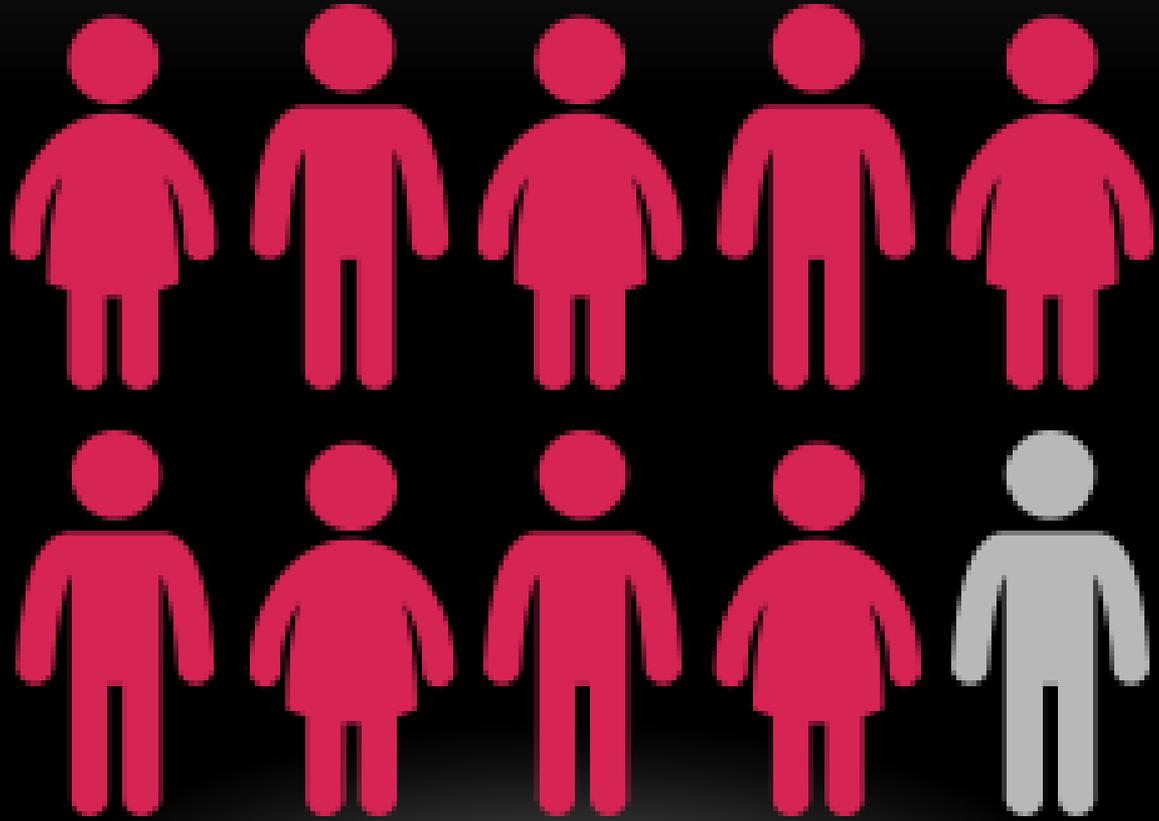
As of November 12, 2015, ? people wrongfully
convicted of crimes have been exonerated through
the use of DNA

www.innocenceproject.org



Biological evidence on which to perform DNA examinations is only available in 5 to 10 percent of all cases

This means that in 90 to 95 percent of convictions, many of which relied upon forensic evidence, it is not possible to do DNA testing to reveal whether the accused was actually innocent



EYEWITNESS IDENTIFICATION

- Visual perception – what the witness saw
 - Memory – what the witness remembers
-

THE BRAIN IS NOT A VIDEO CAMERA

The witness **perceives** the face and other aspects of the perpetrator's physical appearance, **stores** that information in memory, and later **retrieves** the information for comparison with an individual in an identification procedure

WHAT WE PERCEIVE CAN BE INFLUENCED BY

- Bias
 - Expectations from cultural factors
 - Behavior goals
 - Emotions
 - Previous experiences with the world
-

RESPONSE BIAS



RESPONSE BIAS

- Influences that lead the observer away from an accurate or truthful response
 - Humans do not respond passively to stimuli
 - Humans actively integrate multiple sources of information in response to a specific situation
-

STAGES OF VISUAL PROCESSING

- Sensation – extract basic image features
 - Attention – how information sensed is selected for further processing
 - Perception – information is integrated, linked to environmental cause, made coherent, and categorized
-

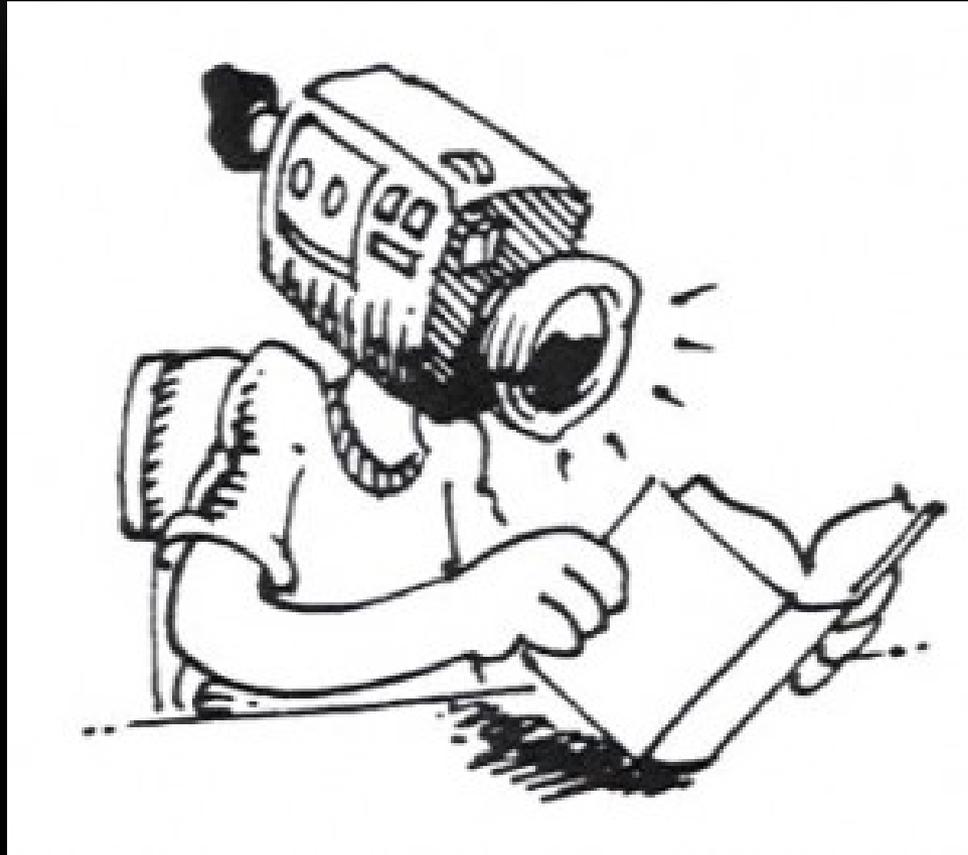
PERCEPTION



FUNCTIONAL PROCESSES OF MEMORY

- Encoding – perceived objects and events placed into storage
 - Storage – long term retention of information after encoding
 - Retrieval – stored information is assessed and brought into consciousness
-

ENCODING



STORAGE



RETRIEVAL



- Accuracy of vision & memory is limited by noise
 - Noise – factors that lead to uncertainty about whether a signal is present
 - Recognition of one person by another
-



SYSTEM VARIABLES

- The characteristics of specific procedures and practices
 - System can exert control by following standardized procedures based on scientific knowledge
-



SYSTEM VARIABLE EXAMPLES

- Witness warnings
 - Double blind
 - Certainty statements
 - Confirming feedback
 - Show-ups
 - Composites
 - Lineup format
 - Post-event information
-

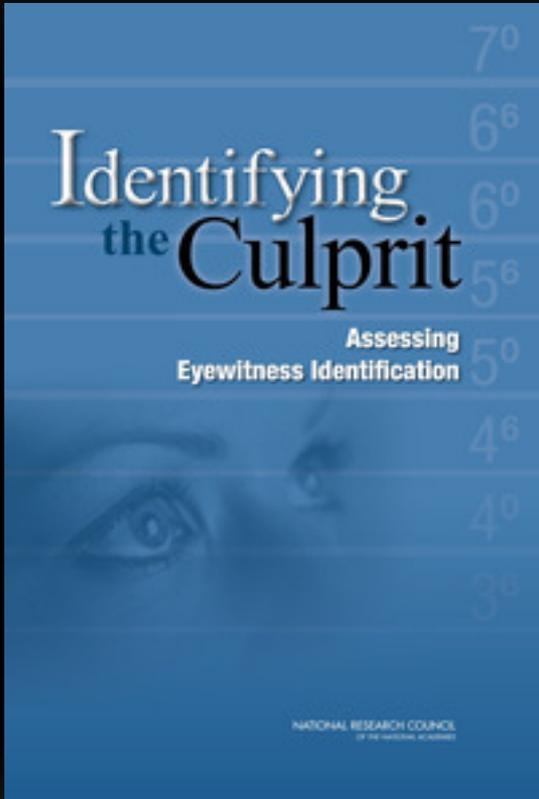
ESTIMATOR VARIABLES

- Characteristics of the witness or factors at the time of the event or the interval between the event and the identification process
 - Beyond control of system
-



ESTIMATOR VARIABLE EXAMPLES

- Duration
 - Distance
 - Disguise
 - Lighting
 - Weapon focus
 - Stress
 - Cross-race
 - Memory source error
 - Forgetting curve
-



Identifying the Culprit

Assessing
Eyewitness Identification

NATIONAL RESEARCH COUNCIL
OF THE NATIONAL ACADEMIES

NATIONAL ACADEMY OF SCIENCES

- Advises Congress on scientific matters
 - Nation's premier source of independent, expert advise on scientific, engineering, and medical issues
 - National Research Council – research arm
-

BEST PRACTICES - LAW ENFORCEMENT

- Training for law enforcement
 - Double-Blind lineup and photo arrays
 - Standardized witness instructions
 - Document witness confidence judgments
 - Videotape identification process
-

I USED TO BE
INDECISIVE...
NOW I'M NOT SURE.



COTTON ID PROCEDURES

With some difficulty she chose two pictures, one of which was of Cotton

Finally, she said, "I think this is the guy."

Lead detective – "You're sure?"

"Positive"

"Did I do OK?" "You did great"

Jennifer Thompson later described how those encouraging remarks made her more confident in her identification

THE LIVE LINEUP

- Cotton was the only person repeated from the photo array
 - She was hesitant and having trouble deciding between two men
 - She said that Cotton, "Looked most like him"
 - "Are you certain?" "Yes"
 - She was told that she had picked out the same person from the photo array
-

Thompson later described feeling “a huge amount of relief” when the detective told her that she had again picked out the right person

At trial, Jennifer Thompson testified that she was "absolutely sure" that Ronald Cotton was the rapist



RECOMMENDATIONS REGARDING EVIDENCE

- Conduct pretrial judicial inquiry
 - Make jurors aware of prior identifications (manner and time, confidence level)
 - Use expert testimony on scientific framework
 - Clear and concise jury instructions
-



MANSON V. BRATHWAITE

- Supreme Court test under Due Process Clause of U.S. Constitution in 1977
 - Evaluates reliability using factors from previous rulings, not empirically validated sources
 - Treats confidence of witness as an independent marker of reliability when there is no correlation
-

MINNESOTA CRIMJIG 3.12

- You are the sole judges of whether a witness is to be believed and of the weight to be given a witness's testimony. There are no hard and fast rules to guide you in this respect. In determining believability and weight of testimony, you may take into consideration the witness's:
 - [1] Interest or lack of interest in the outcome of the case,
 - [2] Relationship to the parties,
 - [3] Ability and opportunity to know, remember, and relate the facts,
 - [4] Manner,
 - [5] Age and experience,
 - [6] Frankness and sincerity, or lack thereof,
 - [7] Reasonableness or unreasonableness of their testimony in the light of all the other evidence in the case,
 - [8] *[Any impeachment of the witness's testimony]*,¹
 - [9] And any other factors that bear on believability and weight.
- You should rely in the last analysis upon your own experience, good judgment, and common sense

ISSUES

- Does not explain scientific research
 - How do jurors evaluate the evidence presented to them in this case?
 - Estimator and system variables
 - Urges use of own experience, good judgment, and common sense
-

HENDERSON

- 2011 New Jersey Supreme Court opinion
 - Revised legal framework for evaluating and admitting eyewitness evidence
 - Extensive review of scientific evidence
 - In 2012, the court released expanded jury instructions and revised court rules relating to eyewitness identifications in criminal cases
-

GOMES

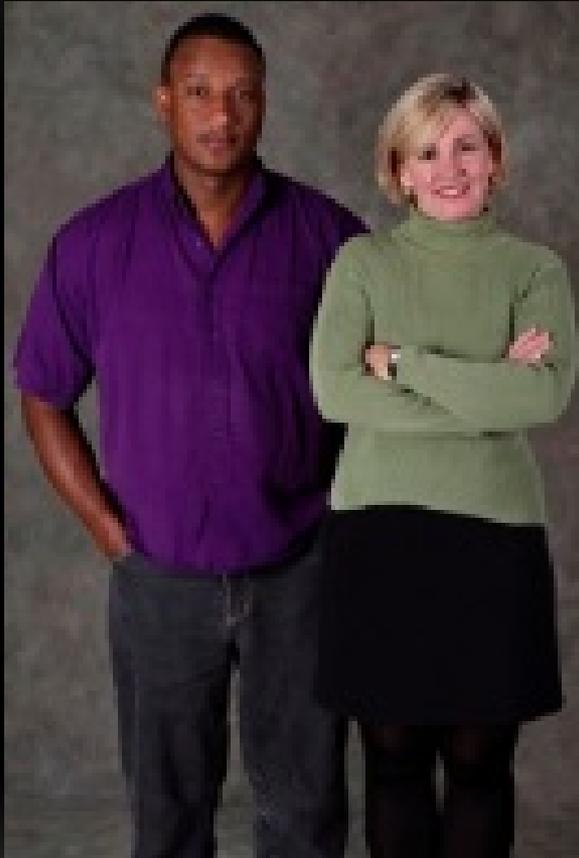
- Supreme Judicial Court Study Group on Eyewitness Evidence: Report and Recommendation to the Justices (2013)
- Telfaire instruction
- Does not instruct the jury how the listed factors may affect the accuracy of the identification

3.19 CAUTIONARY INSTRUCTION EYEWITNESS

- Testimony has been introduced tending to identify the defendant as the person observed at the time of the alleged offense. You should carefully **evaluate** this testimony. In doing so, you should consider such factors as the opportunity of the **witness** to see the person at the time of the alleged offense, the length of time the person was in the **witness's** view, the circumstances of that view, including light conditions and the distance involved, the stress the **witness** was under at the time, and the lapse of time between the alleged offense and the identification. *(If the **witness** has seen and identified the person before trial and after the alleged offense, you should also consider the circumstances of that earlier identification, and you should consider whether in this trial the **witness's** memory is affected by that earlier identification.)*

GOMES DECISION

We conclude that there are various principles of eyewitness identification for which there is near consensus in the relevant scientific community and that it is appropriate to revise the...instruction to include them



WHYSTORMING

- Why would the victim pick the wrong guy?
 - Why would the victim be so certain if she is wrong?
 - Can the victim's memory improve over time?
 - Why does the defendant match the description if he is innocent?
 - Why do the police have to follow the proper procedures?
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