

1 Q Dr. Quinlivan, are you there?

2 A Yes.

3 Q Hello.

4 So right before we logged off for the fire alarm,  
5 which I'm glad, it sounds like, was not an actual fire, we  
6 were discussing the differences between a sequential versus  
7 a simultaneous array, and you were basically talking about  
8 the difference between absolute and relative judgment. If  
9 you could just kind of sum that back up.

10 A Okay.

11 So with a simultaneous lineup, it allows people to see  
12 everyone at the same time. And why this is dangerous is  
13 because recognition memory is quite rapid; usually people  
14 are going to make their decision within 10 to 15 seconds if  
15 they're accurate. And if they're not, they're usually  
16 doing something other than pure-recognition judgment, which  
17 might be a relative judgment. And so that's where you just  
18 rule out people until you come to the best match, rather  
19 than an absolute match.

20 So because of this problem, researchers came up with  
21 the sequential lineup procedure. So the sequential lineup  
22 means that you are shown one person and then you will say  
23 Yes or No. And if you say Yes, the lineup ends. If you  
24 say No, the lineup continues.

25 In the original sequential guidelines you're not

1 actually even supposed to go back to another person because  
2 then it defeats the whole purpose of not making these  
3 relative judgments.

4 So you move through the lineup. And if you get  
5 through the lineup and you have not chosen anyone, but then  
6 the system also likes that because you get to keep that  
7 witness and try with another lineup, if they didn't make a  
8 mistake.

9 And then what we do know from the research is using  
10 your sequential lineup decreases inaccurate  
11 identifications.

12 Q Do we have any numbers on that?

13 A I don't have the exact numbers. But it's something  
14 that's been done, I don't even know, like 30, 40, 50 times.  
15 And it's being replicated every time. I don't remember the  
16 exact drop in accuracy.

17 Q But there is a drop in accuracy?

18 A Yeah. I don't remember the drop in accuracy that  
19 occurs with the sequential. But with the sequential,  
20 people are less likely to make a mistake.

21 Q Okay.

22 You had also talked about double-blind administration  
23 as a system variable. Can you explain how that's related  
24 to accuracy?

25 A Yeah.

1           So the double-blind lineup simply means that the  
2 person who does the lineup should be the only person --  
3 should not be involved in the administration of the lineup  
4 whatsoever. And, in fact, --

5 Q     You're saying who does the lineup. You mean the  
6 person who composes it?

7 A     Right.

8           So if you make the lineup, you should not be present.  
9           And there's a couple of rules of the double-lineup  
10 procedure. So when you do the double-lineup procedure, it  
11 should only be that lineup administrator that does not know  
12 the identity of the suspect. And then the person, the  
13 witness, right?

14          And let's say a witness chooses someone. Then you  
15 would need a whole new person to do the next lineup because  
16 that may give the administrator a clue to maybe who the  
17 suspect it.

18          ~~A~~You know, it's basically you're removing bias so that  
19 you can't inadvertently give cues to accuracy or give cues  
20 to who might be the person in the lineup, which we do  
21 naturally; people do this naturally. ~~A~~

22 Q     And when you're saying they do this, they do this at a  
23 subconscious level?

24 A     Yes.

25          So I think that I started talking about this study

1 earlier, but there was a study conducted by Garrioch and  
2 Brimacombe where she had participants act as investigators.  
3 And then what she would do or her group did, half the  
4 people, they lied to them and told them that the suspect  
5 was in the lineup and they told them the location. And the  
6 other half they didn't tell them anything.

7 And then they recorded them doing the lineup  
8 administration. And the results indicated that when  
9 someone knew the identity of the suspect, their eye  
10 witnesses were more likely to pick that person compared to  
11 the groups that did not have any knowledge. And they were  
12 more confident in their picks.

13 (Indiscernible), and the investigators all said, "No,  
14 I didn't tell them who it was, I don't think I made any  
15 indication, I followed the instructions." And so they went  
16 back on verbal and non-verbal behaviors, like the person  
17 didn't even realize they were doing, such as the person  
18 starts to pick the wrong person and they're like  
19 (indicating.) Riht?

20 So there's these little -- and that was a pretty  
21 dramatic, non-verbal behavior. But these non-verbal  
22 behaviors don't even have to be that dramatic to have an  
23 effect.

24 So what those researchers were saying is that a lot of  
25 times eye witnesses are in this difficult situation. And

1 they want to be right; eye witnesses don't want to be  
2 wrong, right? They want to be right. And so they pick up  
3 on these cues. Even if these cues are subconscious, they  
4 pick up on it. So that's why it's important not to have  
5 anyone in the room that might know who the suspect is.

6 Q So that's what I was going to ask. So when you talk  
7 about a double-blind administration, if you have multiple,  
8 say, police officers, present for an identification  
9 procedure by a single witness, if the person who's handing  
10 the photos to the witness doesn't know the identification  
11 of the suspect but the other officers who are present do,  
12 would that be considered a double-blind administration?

13 A No, because those other officers can accidentally -- I  
14 believe it's always an accident that they just accidentally  
15 give cues to accuracy or cues to who the suspect is.

16 Q And you had mentioned the idea of videotaping. Is the  
17 primary reason that best practices is to videotape these  
18 procedures so that those subtle cues can be sort of looked  
19 for later, after the fact?

20 A It's one of the many reasons.

21 So we can also know if -- because sometimes officers  
22 give suggestions and they don't mean to. They're just  
23 trying to encourage the eye witness by saying things like  
24 "Take your time," which actually isn't good. Or saying  
25 things like "I know you're going to be able to do it."

1 Research has shown that's not good. Or they may give them  
2 cues to accuracy after the fact. So, yeah, we want to see  
3 the whole entire thing to make sure that none of that  
4 happened.

5 Q So with regard to the construction of a photo array,  
6 when an officer sits down to compose an array to show to a  
7 witness, what are the best practices on that content and  
8 why are they in place?

9 A Okay. So no suspect should stand out, right? So what  
10 we really prefer, researchers and myself really prefer, is  
11 that you match all of the fillers, which are the known  
12 innocent people in the lineup, that you match all of the  
13 other people in a lineup to the witness's description.

14 So that's the first line, right, is all of the lineup  
15 members -- so you should have one suspect and then at least  
16 five viable fillers that all match the witness description.

17 And you have to make sure that they don't look too  
18 different, either. Because when you enter in the witness  
19 description, sometimes it will send up people who don't  
20 look anything like the person. But police officers have  
21 the ability to change those photos out, and so that's what  
22 they do.

23 And if it happens that the suspect has something on  
24 their face or something that the witness did not say, like  
25 let's say a mole, then you should make sure that everyone

1 in that lineup has a mole digitally placed on their face in  
2 a way that looks real.

3 Q So is the purpose of that to avoid sort of singling  
4 someone out with a distinctive characteristic?

5 A Yeah. So nobody should be able to pick out the person  
6 out of the lineup just because they stand out, right?

7 And it protects the suspect. It allows, also by  
8 having those five viable fillers, it allows us to test  
9 whether or not our eye witnesses are actually reliable. It  
10 allows us to do that, because if they pick a known innocent  
11 knowing that they're not.

12 But if you have one person who stands out in the  
13 lineup, they're not -- you know, it's suggestive in nature,  
14 so.

15 Q Now you referenced the idea of building an array  
16 around a witness description of the suspect, what about the  
17 idea that police may sometimes compose an array to either  
18 seek to confirm or eliminate an already-known suspect? How  
19 about if they build the array in that context?

20 A In the case that that happens -- it's not ideal, but  
21 it does happen -- it's still really important that every  
22 feature matches. So, color of skin should match. The eye  
23 color should match. Facial hair should match, right?  
24 Everybody needs to look uniform (sounds like.)

25 Q All right. Thank you.

1 A Yeah.

2 So as you add estimator-variable problems, you  
3 actually decrease the chance that the eye-witness accuracy  
4 is going to be correct.

5 Q Is there a way to think about that in quantifiable  
6 term?

7 A No. It's just that as you increase each one, it has  
8 an additive effect.

9 Q I see. So it means a high-stress situation without a  
10 weapon,

11 --

12 A That's what the research says on the white papers  
13 (sic.)

14 Q All right. So just a combination --

15 A Oh, yeah. So if you have a high-stress situation with  
16 a weapon, there has been research on that. That really  
17 increases the likelihood that someone's going to not be  
18 able to pay attention, not going to be able to recall. And  
19 it really increases the chance that they're going to be  
20 inaccurate when they make an identification.

21 Q Thank you.

22 Moving on to the system variables here, when you think  
23 about the way this array was administered to Mr. King, and  
24 I would specifically direct you and the Court to Trooper  
25 Gibbons' suppression-hearing testimony on October 2nd of



1 2012, should this be described as a double-blind procedure.

2 A No. So this wouldn't be considered a double-blind  
3 procedure because there were two people in the room that  
4 were on the other side of the bed, if I'm remembering  
5 correctly.

6 So you had the lineup administrator here. And then on  
7 the other side, or maybe vice versa, you had the two  
8 officers that did know the identity of the suspect. And  
9 they may have accidentally given cues in a complete benign  
10 way in which they didn't know that they were doing it.

11 So that wouldn't be considered a double-blind lineup  
12 because it doesn't offer the same protection of not being  
13 able to bias or influence the decision.

14 Q And again, videotaping a procedure is the generally  
15 accepted way of attempting to detect whether that happened  
16 or not?

17 A Yes.

18 Q Okay. Thanks.

19 So with regard to the administration of the lineup,  
20 and I'm directing you here both to Mr. King's statement and  
21 to Trooper Jones' statement that's Exhibit 3, would you  
22 describe this as a simultaneous or a sequential array?

23 A I think their intent was for it to be sequential  
24 because they put people on eight pieces of paper. But  
25 unfortunately, the way it was delivered, it was not

1 sequential.

2 So sequential lineups, remember you're only supposed  
3 to see one person and then they take it away. And then you  
4 see the second. And this prevents people from doing a  
5 process of elimination. It prevents people from doing  
6 relative judgments.

7 And so with this, they gave him all sheets. And as I  
8 was reading through it, I noticed that, you know, he  
9 actually -- and I might be wrong about the numbers, but I  
10 think it was 2, 4, 6 and 7, he kept those and then he gave  
11 the others back. And then he continued to, like, do this  
12 long process of ruling people out until he got to the 7th  
13 person.

14 So that would be considered a simultaneous lineup.  
15 It's no different. He's still able to compare faces. So  
16 it's still a simultaneous lineup, even though they were on  
17 different sheets of paper

18 Q And is it fair to describe the process as taking eight  
19 to four, four to two, and then two eventually to one, as a  
20 process that demonstrates the working of relative judgment?

21 A So, yeah, it is. It's just like when we take a  
22 multiple-choice question and we're not really sure, so we  
23 mark off answers and try to get the best answer. That's a  
24 process of elimination, and that's a relative judgment.

25 Q Is the functioning of the relative-judgment process

1 credibility to people who take their time. And often  
2 police officers will say "Take your time." [But when people  
3 are taking longer than 10 to 15 seconds to pick someone  
4 out, they're doing something other than pure recognition  
5 judgment. So they're doing something else, which could be  
6 a relative judgment, process of elimination.]

7 [But taking the longer amount of time, even though lay  
8 people, including myself before, you know, I did this,  
9 believe that that is a good indicator of the person being  
10 careful. It's actually not good. It's actually more of an  
11 indicator that that person isn't sure and that they're  
12 doing a process of elimination to pick the best match to  
13 their memory rather than an absolute match.]

14 Q Understood. Thank you.

15 With regard to the array that you reviewed this case,  
16 and I would point you to Officer Kerbick's (sounds like)  
17 testimony about -- this is on October 2nd, 2012, as well --  
18 about his construction of the array. I mean, does anything  
19 jump out at you as being distinctive about Mr. Kirkland's  
20 photograph?

21 A Yeah. So Mr. Kirkland was the only person in the  
22 photographs that had cornrows. And it was also an older  
23 picture of him, which they say try to get a newer picture  
24 especially, you know, because it's closer to the event.  
25 And no one else in the lineup had cornrows.