Appendix A: *United States v. Douglas* Case File

This is a prosecution for armed robbery of the Palmdale, California branch of Ameribank. The prosecution alleges that David Douglas and an accomplice, Martin Smith, entered the bank at 3 p.m. on April 16, 2019 carrying a shotgun, and escaped with $55,000 in cash. Douglas and Smith are being tried separately, Douglas first. Smith has asserted his fifth amendment right against self-incrimination to refuse to testify in Douglas' case, and the court has ruled that Smith cannot be compelled to testify. Douglas will testify in his own defense and claims that he was not one of the robbers, but was somewhere else when the robbery occurred.

18 U.S.C. § 2113

(a) Whoever, by force and violence, or by intimidation, takes, or attempts to take, from the person or presence of another, or obtains or attempts to obtain by extortion any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association; or

Whoever enters or attempts to enter any bank, credit union, or any savings and loan association, or any building used in whole or in part as a bank, credit union, or as a savings and loan association, with intent to commit in such bank, credit union, or in such savings and loan association, or building, or part thereof, so used, any felony affecting such bank, credit union, or such savings and loan association and in violation of any statute of the United States, or any larceny—

Shall be fined under this title or imprisoned not more than twenty years, or both.

….

(d) Whoever, in committing, or in attempting to commit, any offense defined in subsections (a) and (b) of this section, assaults any person, or puts in jeopardy the life of any person by the use of a dangerous weapon or device, shall be fined under this title or imprisoned not more than twenty-five years, or both.

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Manual of Model Criminal Jury Instructions
for the District Courts of the Ninth Circuit **(2010)**
Instr. 8.7

An assault is intentionally using a display of force that reasonably caused the victim to fear immediate bodily harm.

WITNESS STATEMENTS

Prosecution Witnesses

Witness #1. Cindy Curtin.

My name is Cindy Curtin. I am a bank teller at the Palmdale, California branch office of

Ameribank, Inc. I have worked at Ameribank in Palmdale for five years.

I work from 8:30 a.m. (0830 hours) to 4:30 p.m. (1630 hours) Monday through Friday. The bank is open to customers from 9 a.m. to 4 p.m. Before 9 a.m. and after 4 p.m. the doors are locked.

On April 16, 2019, I was working my normal shift at the teller window, when two suspicious-looking men entered. I thought they looked suspicious because they looked like they had not shaved in a few days and because one man wore a hoody pulled over the top of his head and over the top of his forehead and was carrying a jacket over his arm even though it was a warm day outside. Also both men were facing down and off to the side, which is strange. I later figured out they were probably doing this to avoid facing the security cameras. The man with the hoody was medium height, kind of stocky, with a reddish brown full beard and mustache.

The two men walked quickly up to the teller window and one man dropped his jacket on the floor, revealing a long gun like a rifle or shotgun. He pointed the gun in all directions and told everybody to get down on the floor.

The robber with the gun pointed it straight at me and told me to open the cash drawer and put all the money into the bag. A canvas gym bag was thrown onto the counter at my teller window. I didn't see which one of the robbers threw it on there. I was very scared, more scared than I've ever been in my life. I had never seen a gun up close like that before, and had never had a gun pointed at me before. I was afraid the robber might shoot me. After I filled the bag with money, the men fled the bank. The whole thing lasted maybe three or four minutes.

I got a good look at the robber holding the gun and I remember his face now. I am sure I could identify him in court if I were to see him again. However, I did not get a good look at the other robber.

A week after the robbery, I was taken down to the police station to see a lineup of robbery suspects. I picked out suspect number two. I told Detective Simmons that I thought that was the robber who pointed the gun at me, but was not absolutely sure.

Two weeks after the robbery, I went to the police station again. Detective Simmons told me that one of the perpetrators had confessed and had identified the other robber. They wanted me to look at some photos to see if I could identify the second perpetrator. I was shown eight photographs of suspects and asked "Do any of these pictures look like the man who pointed the gun at you?" One of them looked just like the robber who pointed the gun at me, and I told that to Detective Simmons. Detective Simmons thanked me, and told me that was the same person the other suspect had identified.

I know that my Aunt Gladys O'Leary says that I spoke with her on the telephone the day of the robbery, but I don't remember doing that.

Exhibit # 1 is the photograph spread. The photo of Douglas is in the bottom row, second from right.

I swear under penalty of perjury that the above statement is true and correct. [signed] Cindy Curtain

Witness #2. Detective Oliver Simmons.

My name is Oliver Simmons. I am a Detective with the Palmdale Police department. I have been a police officer since 2000, and a police detective since 2014. I was assigned to investigate the Ameribank robbery on April 17, 2019, the day after the robbery.

On April 22, we arrested Martin Smith. Smith had been identified as one of the robbers because his face was clearly photographed by the bank surveillance cameras. Officer Mayberry compared Smith's image from the surveillance tape with our book of "mug shots" and found Smith's picture. The comparison was very clear.

On April 23, 2019, I picked up Cindy Curtin, a 32-year-old African American woman, at her home and brought her to the police station to view a lineup of suspects. A lineup is a procedure in which we put six men who fit the general description of the suspect in a line and allow the eyewitness to look at them to see if the eyewitness can make a positive identification. The eyewitness and investigating officers stand in a separate room behind a one-way mirror, so we cannot be seen by the men in the lineup.

The defendant David Douglas was not in the lineup, but his accomplice, Martin Smith, was. At this time, Smith was a suspect, but we had not yet identified the second robber. Both Douglas and Smith are white males, six feet tall, with dark hair. Smith who weighs about 220 lbs, is heavier than Douglas, who weighs about 200 lbs. Cindy Curtain picked out a man who was neither Smith nor Douglas. (He was one of our undercover police officers). She said that that was "probably" the man who pointed the gun at her, but she was not absolutely certain.

On April 24, we had identified David Douglas as the second robber, because on that day, Martin Smith signed a confession naming Douglas as his accomplice.

On April 25, I again brought Cindy Curtin down to the police station. I showed Ms. Curtin an array of eight photographs of known criminals from our mug photo collection. One of the photos was of David Douglas, who has a criminal record. Ms. Curtin picked out Douglas's photograph after looking carefully at all eight, and said, "This is the man who pointed the gun at me. I clearly remember his face. I'm sure this is the man."

A couple of months later, I received information from a guy named Jack Gianelli that Martin's accomplice in the Ameribank robbery was not Douglas, but was someone named Stewart Hanlon. I checked out this lead by running a records check on Hanlon, but found that Hanlon had no criminal record. I didn't put much faith in Gianelli's word because Gianelli is a drug addict with a criminal record. He's a known liar and I believe he was trying to curry favor with me to get a good deal on a pending drug charge. I didn't check further into Hanlon.

Exhibit # 1 is the photograph spread. The photo of Douglas is in the bottom row, second from right.

I swear under penalty of perjury that the above statement is true and correct. [signed] Oliver Simmons.

Witness #3. Ricardo Herrera

My name is Ricardo Herrera. I am acquainted with both Martin Smith and David Douglas. Those two are close friends with each other. They are always hanging together. If you are looking for Smith, all you have to do is find Douglas, and he can always tell you where Smith is. They know each other's business like they are married or something.

Back in the early spring of last year, I was hanging out with Douglas in the park. We were both drinking a lot of booze. Douglas says that he and Martin Smith were planning to make a big score [get a lot of money] in the next couple of weeks.

Everybody knows that Douglas had a lot of debts and needed money real bad. I heard that he owed about $10,000 to a drug dealer in town for all the crack he was smoking and that the dealer was going to come after Douglas and mess him up real bad if Douglas didn't pay real soon.

I have been in some criminal trouble in the past, but have only spent a couple of months in jail a couple of times.

In August 2019, I was arrested and charged with possession of cocaine with intent to distribute, carrying a penalty of 5 years in prison. In exchange for my cooperation in the case against Douglas, the state prosecutor allowed me to plead guilty to a reduced charge of simple possession of cocaine, for which I received a sentence of 1 year probation with no prison time.

I swear under penalty of perjury that the above statement is true and correct. [signed] Ricardo Herrera

[Additional evidence regarding Herrera: In the grand jury proceeding in this case, in September 2019, Herrera testified under oath:

Q. How did you learn that David Douglas was connected with the robbery?

A. Martin told me.

Q. Martin Smith?

A. Yes.

Q. What did he say?

A. He said he and Douglas were expecting to make a big score.

Q. Did you ever speak with Douglas about this plan to "make a big score"?

A. No, I don't know Douglas real well.]

Witness # 4. James Grundy

My name is James Grundy. I am the owner of Grundy's Pawn Shop. My shop is located

about six blocks from Ameribank in Palmdale, California. I buy used appliances, furniture, guns, jewelry and other valuables and resell them. A person can buy back their possessions from me if they have not yet been sold.

On January 30, 2019, my shop was burglarized and a number of items were stolen. Included among the stolen items was a shotgun. No other weapons were stolen.

Exhibit 2 is the shotgun stolen from my store. I recognize the shotgun by the specific make and model. It is a Remington single-barrel 12-gauge shotgun, model 20-20A. It was manufactured in 1983 and I was offering it for sale for about $350. I believe that about 30,000 guns of this type were manufactured by Remington between 1980 and 1990, when the model was discontinued.

I know this because I am a serious gun collector and have developed expertise about guns due to 20 years of attending gun shows, shooting ranges and reading books and magazines about guns. I collect antique rifles. Gun collectors define "antique rifles" as rifles that are valued at $2,000 or more and are at least 80 years old. Rifles are different from shotguns because they use completely different ammunition.

I do not know who stole the gun from my store, and to my knowledge, no arrests were ever made in connection with the burglary.

I swear under penalty of perjury that the above statement is true and correct. [signed] James Grundy

[Additional evidence regarding Grundy: Exhibit 3 is a police report of the burglary of Grundy's Pawn Shop.]

Witness #5: Officer Andy Mayberry

My name is Andy Mayberry. I am a police officer with the Palmdale Police Department in Palmdale, California. I have been a police officer in Palmdale since 2011.

On April 18, 2019, I reviewed the surveillance photography of the April 16 Ameribank robbery. One of the robbers could be clearly identified on the surveillance videotape, and I was able to identify that robber as Martin Smith by matching his image with an image of Smith I found in our photographic records of past criminals.

On the surveillance tape, Smith is carrying the canvas gym bag and Douglas is carrying the gun. You can't really see Douglas's face on the surveillance tape because he is turning away from the camera the whole time.

After further investigation I was able to locate Smith in a trailer park at the outskirts of town. I entered his trailer with an arrest and search warrant with three other officers and arrested Smith. After a search of Smith's trailer, I found the shotgun, identified as Exhibit #2.

I swear under penalty of perjury that the above statement is true and correct. [signed] Andy Mayberry.

<u>***Defense witnesses***</u>

Witness #6: Gladys O'Leary

My name is Gladys O'Leary. I am Cindy Curtin's aunt. Cindy's mother and I are sisters. I have known Cindy since she was born. We are very close and speak on the telephone every few weeks.

On April 16, 2019, in the evening after supper, Cindy called me on the phone. She said that the bank where she worked had been robbed that day. The bank robbers had pointed guns at her. She said that she was so upset that she can't even remember what the robbers looked like, even though she was looking straight at them. I distinctly remember this conversation.

I love my niece very much, but I think Cindy may have misled the police when she told them that she recognized one of the mug shots as the robber.

I swear under penalty of perjury that the above statement is true and correct. [signed] Gladys O'Leary

Witness #7:   Jack Gianelli

My name is Jack Gianelli. I am acquainted with Martin Smith and David Douglas. The two men are not particularly good friends. I believe they are acquainted, but I've never known them to hang out together.

On April 16, 2019, I bumped into David Douglas outside a convenience store and chatted for about 10 minutes. The convenience store is on the opposite end of town from the bank. I don't specifically remember the time of the conversation, but I assume it must have been right around 3 p.m. (the time of the bank robbery) because I go to that convenience store to buy a lottery ticket every day just after I watch *General Hospital* on television. *General Hospital* ends at 3 p.m.

Martin Smith is great buddies with a guy named Stewart Hanlon. Those two used to hang around together all the time. My guess is that Hanlon may have been the second robber in the Ameribank robbery. I have no way of knowing for sure, but two days after the robbery I saw Hanlon pull a huge wad of cash out of his pocket to buy a dime bag of pot (marijuana). I'd never seen him with so much cash on him before. After that day, he disappeared and I haven't seen him around town since, which is also suspicious.

Some time in the summer of 2019, I went to the police department and talked to a detective named Simmons. I had heard Douglas was arrested for the bank robbery, which I thought was wrong. I told him what I knew about Hanlon and about running into Douglas the day of the robbery. I'm not particularly good friends with Douglas and have no reason to lie to protect him.

I don't like Stewart Hanlon, because three years ago, Hanlon started a fight with me in a bar, and he broke my nose.

I have spent two periods of time in a rehabilitation center for alcohol addiction. I have been

convicted once for burglary, once for petty theft and in June 2019 was arrested again for forgery. The forgery charge is pending against me, and carries a maximum sentence of two years in prison.

I swear under penalty of perjury that the above statement is true and correct. [signed] Jack Gianelli

Witness #8: David Douglas

My name is David Douglas. I am 40 years old. In 1993, I was convicted of possession of cocaine and served one year in prison plus five years probation. I was crime free until 2012, when I was convicted of burglary, and served 18 months in prison. I have committed no further crimes since my release from prison in 2014.

I am innocent of this charge of bank robbery.

I barely know Martin Smith. I have spoken with him perhaps half a dozen times in my life.

I have met Ricardo Herrera a couple of times in the past, but have never had a conversation with him. Perhaps I've said hello to him once or twice, but always in a group of people, never alone.

On April 16, 2019, I was at the apartment of my girlfriend on the opposite side of town from the bank. I was drinking heavily that day and spent most of the day inside her apartment. I only left the apartment once, at around 3 p.m., to go to a convenience store to buy beer. I remember talking with Jack Gianelli outside the convenience store. I went back to my girlfriend's apartment and drank or slept the rest of the day.

My girlfriend was in and out of her apartment all day – I don't remember where she was in the afternoon.

I have never touched a gun in my life. I hate guns. Neither of my convictions involved guns, or violence, and I have never been charged with a gun crime.

While I have tried cocaine a small number of times, I am not a drug addict or regular user of any drug. I am an alcoholic and have been going regularly to meetings of Alcoholics Anonymous for the last six months.

I have never borrowed money from loan sharks or drug dealers, and don't owe any money to anyone. No one has threatened me to demand money.

I do not have regular employment, but since my release from prison have supported myself with odd jobs.

I swear under penalty of perjury that the above statement is true and correct. [signed] David Douglas

Witness #9: Dr. Saul Cotton

REPORT OF SAUL COTTON, Ph.D.

David Douglas's attorney contacted me and asked me to review the eyewitness identification in the case of *United States v. Douglas* and to report on the content of expert testimony were I invited to offer it in this case. Toward this end I have reviewed statements of the eyewitnesses and reporting police officers in this case, as well as the photo array that was presented to witness Cindy Curtin.

When I have testified as an expert witness, my testimony normally covers five topics: (1) credentials, (2) general information about the science of eyewitness identification, (3) general impairment factors relevant to the case, (4) identification tests, and (5) confidence malleability and the association between eyewitness confidence and identification accuracy. I summarize each of these topics below. Generally, my objective is to educate the judge or jury regarding the science of eyewitness identification.

Credentials

I am a Professor of Criminology, Justice & Policy Studies at the University of North Carolina in Chapel Hill. I received my BA in psychology in 1982 at the University of Rochester; my MA in psychology in 1984 at SUNY Geneseo; and my Ph.D. in psychology at the University of Wisconsin-Madison in 1987. I have conducted research on the psychology of eyewitness memory for about 25 years. I am the lead author of *Mistaken Identification: The Eyewitness, Psychology, and the Law* (1995, Cambridge University Press) and have authored or co-authored more than 50 other books, book chapters and research articles on the psychology of eyewitness memory. I have testified as an expert witness on the psychology of eyewitness memory in state courts in Florida, Georgia, Indiana, Maryland, Massachusetts, North Carolina, and South Carolina, and in federal court in Virginia and Washington DC. I have appended my CV.

Science of Eyewitness Identification

The psychological science on eyewitness identification stems from basic psychological research on human memory and social influence, topics that psychologists have studied for decades. Research on eyewitness identification dates back more than 100 years, but the majority of eyewitness research has been conducted in the past 35 years. There are hundreds of scientific studies of eyewitness identification described in hundreds of books, book chapters, and highly reputable peer-reviewed articles. The National Science Foundation, National Institute of Justice, and the Social Science and Humanities Research Council of Canada have provided grant funds for the scientific investigation of eyewitness identification. The science has led to a large body of research documenting the stages of eyewitness memory, factors that influence the accuracy of eyewitness identification, methods of improving the accuracy of eyewitness identification, myths about eyewitness identification, and the effectiveness of safeguards designed to protect defendants from wrongful conviction resulting from mistaken identification.

Generally speaking, the scientific research on eyewitness identification demonstrates that factors associated with the crime, such as those discussed below, can significantly impair an eyewitness's memory for a crime perpetrator. When an eyewitness has a weak memory trace for a perpetrator, the eyewitness is particularly susceptible to suggestive identification procedures. Suggestive identification procedures can lead an eyewitness to make a positive identification, even when the suspect is not the perpetrator. Such false positive identifications can be made with high levels of confidence, suggesting that the eyewitness strongly believes in the accuracy of the identification, even though the identification is incorrect and the suspect is innocent. I turn next to a summary of factors relevant to the case that impair witness memory for crime perpetrators, make identification tests more suggestive, and inflate eyewitness confidence.

General Impairment Factors

General impairment factors are factors associated with the crime that are known from the research to influence the accuracy of eyewitness identification. Based on the materials I have read, I have identified the following factors.

Exposure Time. The amount of time for which the perpetrator is available to the eyewitness for viewing is directly associated with the likelihood of correct identifications. Consequently, false identifications are more likely in situations in which the perpetrator was viewed for a brief period of time. This effect was clearly demonstrated in a review of 128 eyewitness memory and face recognition studies with nearly 17,000 participants conducted by Shapiro and Penrod (1985). Further, people tend to overestimate when giving time estimates, particularly with respect to stressful events (Loftus, Schooler, Boone & Klein, 1987). Therefore, it is frequently the case that an eyewitness had less time in reality to make an observation than they claim in later testimony.

In this case, according to the witness statements, Curtin claims that the altercation took place within three to four minutes, and during that time her attention was divided between the weapon, the surroundings, the task of putting the money in the bag, and the perpetrator's characteristics that were visible under the circumstances.

Stress Experienced by the Eyewitness. While some eyewitnesses have claimed that extreme stress experienced as the result of an excessively violent or threatening crime had heightened their awareness and facilitated accurate memory, research shows, in contrast, that extreme stress has a debilitative effect on subsequent identification accuracy. This conclusion is supported by a meta-analysis (a secondary analysis of several primary empirical studies) authored by Deffenbacher, Bornstein, Penrod, and McGorty (2004) that examined the effect of stress in 27 separate tests involving over 1700 participant-witnesses. The witness statements reveal that Ms. Curtin was under duress during the altercation.

Weapon Focus. When a weapon is visually present, it has the potential to draw the eyewitness's attention. An eyewitness's capacity for attention is limited. To the extent that an eyewitness focuses his attention on the weapon, he has less attention to focus on the perpetrator's

characteristics. The "weapon focus" effect therefore refers to the drawing of the eyewitness's attention to the weapon (and therefore from the perpetrator). Consequently, when a weapon is visually present during a crime, there is a greater potential for mistakes in subsequent identification tests than if there is no weapon visually present. Steblay (1992) conducted a meta-analysis of 19 separate tests of the weapon focus effect with over 2,000 eyewitnesses to crime simulations. Weapon focus had a small but statistically significant effect on identification accuracy. The witness statements reveal that during most of the altercation the perpetrator pointed his gun at Curtin's head and that Curtin focused attention on the gun.

Hair and Hairline Cues. The hair and hairline are important cues for identification. Consequently, eyewitnesses are less likely to make correct identifications and more likely to make false identifications when attempting to identify perpetrators who wore hats covering their hair and hairlines. This phenomenon has been demonstrated in at least six separate experiments (Cutler, 2006). In data from over 1300 eyewitnesses, the percentages of correct judgments on identification tests was lower among eyewitnesses who viewed perpetrators wearing hats that covered their hair (44%) and hairlines as compared to among eyewitnesses who viewed perpetrators who made no attempt to cover their hair and hairlines (57%). The witness statements indicate that the perpetrator in question wore a hoody over his head during the robbery.

Cross-Race Recognition. People are more accurate at recognizing others of their own race than others of a different race. In a summary of the research that led to this conclusion, Meissner and Brigham (2001) reviewed 91 separate tests of same- versus other-race recognitions involving over 5000 mock witnesses. The authors concluded that, across all studies, witnesses were 1.4 times more likely to correctly identify a previously viewed own-race face when compared with performance for other-race faces. Witnesses were 1.56 times more likely to falsely identify a novel other-race face when compared with own-race faces. These differences were statistically significant. Moreover, the own-race bias effect was larger with shorter exposure times, and the relation between confidence and accuracy is weaker for other-race identifications than for same-race identifications. According to the witness statements, in this case the victim is African American and the perpetrators are Caucasian.

Identification Tests

A major purpose of an eyewitness identification test is to test the hypothesis that the suspect is the perpetrator. If an eyewitness can identify the perpetrator based on her memory, the results support the hypothesis that the suspect is the perpetrator. A valid identification test, therefore, should directly implicate the eyewitness' memory for the perpetrator while ruling out alternative explanations for a positive identification. Besides identifying a perpetrator by memory, a witness might make a positive identification of a suspect by (1) guessing that the suspect is the perpetrator, (2) deducing that the suspect is the perpetrator, and (3) responding to social influence by another source, such as a co-witness or investigator, to conclude that the suspect is the perpetrator. A valid identification test attempts to rule out guessing, deduction, and social influence as explanations for a positive identification and implicates witness memory as the most

likely explanation. Model identification procedures have been developed that incorporate the social science research on eyewitness identifications. These model procedures recommend the use of properly selected "fillers" to minimize suggestiveness (making it difficult for the eyewitness to guess or deduce the suspect's identity), cautionary instructions (to reduce motivation to guess and sensitize the witness to the possibility that the suspect is not the perpetrator), blind identification and restriction of other witness' identifications (to minimize social influence by investigators and other witnesses). Following these procedures enhances the likelihood that a positive eyewitness identification is based on the witness' memory for the perpetrator, and not guessing, deduction, or social influence. As needed, I can articulate the science underlying the recommendations and the research in support of it.

Based on the materials I have reviewed for this case, it appears that Ms. Curtin knew that one of the robbers had already identified Mr. Douglas as his accomplice. Although Ms. Curtin was presented with a photo array as an eyewitness identification test, it had several critical shortcomings when compared to the best practices espoused in the aforementioned model procedures. Specifically, the fillers were not appropriately selected to match the description provided by Ms. Curtin. Of the eight photographs, only Mr. Douglas's photo matched the description in all respects (for example, he was the only one with a full reddish beard and moustache, and several fillers wore glasses). The eyewitness was not given a cautionary instruction informing her that the real perpetrator might not be present in the photo array; to the contrary, the eyewitness was given a very suggestive instruction, telling her essentially that the perpetrator had been identified and her task was to pick him out of the photos presented to her. Such instructions put pressure on witnesses to pick someone even if the real perpetrator is in fact absent from the test (i.e., if the suspect is in fact innocent). The detectives administering the identification test knew who the suspect was—that is, the detectives were not blind to the suspect's identity. Research has demonstrated that non-blind testing significantly increases the risks that test administrators will even inadvertently leak information or give subtle cues to the witness to pick the person they know is the suspect. Finally, the photos were presented to Ms. Curtin simultaneously, rather than sequentially. Research has shown that simultaneous presentation permits witnesses to engage in a relative judgment process, through which they compare each image to the others to determine which one looks most like the perpetrator. The problem with this is that if the real perpetrator is not present in the photo array, the individual who looks most like the perpetrator will be an innocent person. Sequential presentation of the photos reduces the witness's ability to engage in this comparison process and requires the witness to draw on absolute judgments and actual memories instead. Research shows that the sequential procedure significantly reduces eyewitness error.

Identification tests that do not use appropriately selected fillers, cautionary instructions, blind administration, and sequential presentation of suspect and fillers increase the likelihood of false identification and make it difficult to rule out the possibility that the positive identification resulting from the test is due to guessing, deduction, or social influence. These principles are confirmed in the writings of many peer-reviewed scientific reports (e.g., Wells et al., 1998). In sum, the witness in this case was subjected to a highly suggestive identification procedure with few of the safeguards recommended by the model procedures and social science research.

Eyewitness Confidence

Ms. Curtin apparently has indicated high levels of confidence in the accuracy of her identification. Psychological research on eyewitness confidence has shed considerable light on its relation with accuracy and malleability and has suggested caution in its interpretation and guidelines for its assessment. Confidence, when assessed in a timely and unbiased manner, is only modestly associated with identification accuracy (Sporer et al., 1995). This is because there are factors that influence identification accuracy independently of confidence and factors that influence confidence independently of accuracy. For example, some people are across-the-board more confident in their judgments than others but not necessarily across-the-board more accurate. By assessed in a timely and unbiased manner I mean that confidence is assessed immediately after the identification test and prior to providing the witness information that validates or invalidates her identification. In this case it is not entirely clear whether Ms. Curtin's confidence was assessed on a timely basis—that is, before she received any confirming feedback. What is clear, however, is that Ms. Curtin had already known that another witness, the co-actor in the crime, had identified someone in the photo array as the perpetrator. Co-witness identifications have been shown to inflate eyewitness confidence (Wells & Quinliven, 2009). Insidiously, validating information, such as co-witness identifications or confirming feedback provided by police, may not only increase witness confidence but have been shown to influence witnesses' re-appraisals of the conditions under which they witnessed the event. Witnesses provided validating information increase confidence and report having had a better opportunity to view the perpetrator than witnesses who had the same view but were not provided with validating information (Wells & Quinliven, 2009).

Conclusion

Given all of the suggestive features of the identification procedure in this case, as well as the stressful circumstances of the witnessed event, the short duration of the viewing opportunity, the obscuring of the hair line and forehead by the hoody, and the cross-racial nature of the identification, it is my opinion to a reasonable degree of professional certainty that there is a very high risk that the identification in this case was mistaken.

Saul Cotton, Ph.D.

Exhibit 1

Exhibit 2

Exhibit 3

PALMDALE POLICE DEPARTMENT
INCIDENT REPORT

Date of Report: January 31, 2019
Time of Report: 0040 hrs

Date and time of incident: July 30, 2019, approx. 2330 hrs

Offense(s)
1) Commercial Burglary

Victim(s)
James Grundy – owner, Grundy's Pawn Shop

Suspect/arrestee and description
Unknown white male, medium build, dark hair

Suspect armed?
Yes. Two antique rifles stolen in burglary. Not known if suspect carried other weapons or ammunition.

Witnesses:
None, but suspect photographed on security video. Suspect wearing ski mask, facial identification not possible.

Description of incident:
Victim reports that he received a phone call at approximately 2330 hours on January 30 from automated security system at his pawn shop. Victim telephoned Palmdale police station and met reporting officer (Mayberry) at shop at approximately 0040 hours on January 31. Victim reports that two antique rifles, six gold coins, one gold watch and one diamond ring were missing from his inventory.

Reporting Officer:
P.O. Andy Mayberry, Badge No. 242