



Repeated Eyewitness Identification Procedures With the Same Suspect[☆]



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An eyewitness to a crime may make a series of identification decisions about the same suspect as evidence is gathered and presented at trial. These repeated decisions may involve show-ups, mugshots, photo arrays, lineups, and in-court identifications. Repeated identification procedures increase suspect identifications but do not increase the likelihood that the identified person is guilty. Eyewitness memory can be irreparably compromised, with significant risk incurred for an innocent suspect. The first identification procedure influences a witness' subsequent decisions and confidence, in violation of the legal expectation that an identification reflects witness memory for the crime only. The research supports two recommendations. (1) Repeated identification procedures using the same suspect should be avoided. (2) Identifications made from repeated procedures—beyond the first identification procedure—should not be considered reliable eyewitness evidence. The first eyewitness identification attempt is the one that counts and must have been conducted with a fair and unbiased procedure.

Keywords: Eyewitness memory, Repeated identifications, Lineup, Show-up, Mugshot, In-court identification

An eyewitness to a crime may make a series of identification decisions about the same suspect as an investigation proceeds and as evidence against the suspect is gathered and presented at trial. Repeated identification procedures may involve show-ups, mugshots, photo arrays and lineups, often culminating with one or more in-court identifications of the defendant.

Repeated identification procedures are allowed and sometimes required for eyewitness evidence in many jurisdictions in the United States and elsewhere (see [Behrman & Davey, 2001](#); [Steblay, 2011](#)). For example, in England and Wales, if a showup identification is disputed, a subsequent lineup must be carried out ([Valentine, Davis, Memon, & Roberts, 2012](#)). Law enforcement sometimes uses a second identification procedure (e.g., a lineup that follows a showup) as a means to double-check the witness's memory reliability, an opportunity for the witness to confirm or retract an earlier identification decision. And, once a suspect is in custody, additional photo or live identification evidence may be necessary for the prosecution to present at trial.

There may be strong intuitive appeal for the notion that a witness who is tentative at the first identification attempt can render a more accurate decision at a later time; that a physical lineup which follows a static photo array is highly informative; that an updated suspect photo may offer a better memory test than an older photo previously presented to the witness.

However, DNA exoneration cases demonstrate that wrongful conviction may be a consequence of a jury's overreliance on confident eyewitness identification testimony incurred from repeated procedures. [Garrett \(2011\)](#) reports that most eyewitnesses of 161 reviewed DNA exoneration cases viewed more than one type of identification procedure. In 40% of these cases, the witness initially identified a filler, another suspect, or no one at all. The often-cited wrongful conviction of Ronald Cotton involved a photo array (from which Jennifer Thompson made a low-confidence identification) and a lineup in which Cotton was the only repeated member. Exoneree Larry Fuller was identified from a second photo array after the victim was unable to pick

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his (same) photo from the first array. John Jerome White was selected from a photo array by a victim who was “almost positive.” A week later, White was placed in a lineup and the witness was then positive of her selection of White. This false identification was remarkable in that the police had unknowingly placed her real attacker in that same physical lineup (Wells, 2010). This sample of DNA exoneration cases provides evidence that repeated identification procedures might exacerbate problems associated with eyewitness memory.

In 1998, the American Psychology Law Society issued a white paper on recommended eyewitness identification procedures (Wells et al., 1998). The following year, the National Institute of Justice issued a guide for law enforcement outlining best practices for the collection of eyewitness evidence (1999). Notably absent from both of these important documents was any discussion of repeated identification procedures with the same suspect. Over the last two decades, however, recommendations against this practice have surfaced in policy, legal, and research literatures. The model policy for the International Association of Chiefs of Police includes a guideline to “avoid multiple identification procedures in which the same witness views the same suspect more than once.” (2010, p. 2) and this statement is echoed in some state policies¹ (e.g., Attorney General of the State of Wisconsin, 2010). State court decisions also note the problems in repeated identifications (*State v. Henderson*, 2011a, 2011b; *State v. Lawson*, 2012). More recently, the National Research Council also advised consideration of prior identification photo arrays and lineups during pretrial hearings and as necessary information for jurors (2014).

Theoretical Foundation for Repeated Identification Effects

Drawing in part from broader memory research, the eyewitness literature describes multiple ways in which a witness’s memory for a criminal can be redirected onto a new face during repeated identification procedures. That is, exposure to new faces (e.g., an innocent suspect) at the first identification task may prompt carry-over effects that damage the fidelity of eyewitness evidence at the next identification task. There are multiple possible explanations for these effects.

When a witness fails to identify a suspect at a first attempt (mugshot, showup, photo array or lineup) but later makes a positive suspect identification, the recognition may stem from exposure at the first identification task rather than from the crime scene. A memory failure for the circumstances of the previous encounter makes the face seem familiar although the correct context for that memory has been lost. The research literatures on *source confusion* (Brown, Deffenbacher, & Sturgill, 1977) and (*unconscious*) *transference* effects provide a foundation for understanding the problems of repeated identification procedures (Loftus, 1976; Read, Tollestrup, Hammersley, McFadzen, & Christensen, 1990; Ross, Ceci, Dunning, & Toglia, 1994).

¹ A recent survey of law enforcement eyewitness identification practices conducted by the Police Executive Research Forum (2013) made no mention of repeated identification procedures with the exception of describing Wisconsin’s model policy described herein.

Second, consistent selections of the same suspect across repeated identification procedures may indicate reliable witness memory for the guilty culprit, but it may also result from *commitment* to a false recollection of an identified innocent suspect (Deffenbacher, Bornstein, & Penrod, 2006). Witness motivation to be consistent or to help the investigation may also play a role in successive positive identifications (Goodsell, Neuschatz, & Gronlund, 2009).

Finally, repeated identification procedures are inherently *suggestive*, in that a witness may discern which person is common to both procedures—the police suspect (Wells & Quinlivan, 2009).

Empirical Research on Repeated Identification Effects

Identification procedures studied by eyewitness scientists typically assess a witness’s *first* identification attempt. Assuming an unbiased and fair procedure, this is the test that will best determine whether eyewitness recognition memory supports police suspicions about the identity of the perpetrator. Laboratory research has addressed several assumptions that appear to underlie (legal) evidentiary rules and practices regarding repeated identifications, specifically that: (1) a second identification attempt will help but not hurt the fidelity of eyewitness memory and the reliability of eyewitness identification evidence; and (2) that repeated procedures are mutually exclusive, i.e., the first identification procedure does not influence a witness’s subsequent decision or confidence in that decision. In fact, eyewitness (and memory) science strongly contradicts these assumptions. Repeated procedures are not mutually exclusive, hence violating the legal expectation that the identification reflects memory for the crime only, and the fidelity of the witness’s memory can be significantly compromised by repeated identification procedures, thereby reducing probative value of the memory evidence.

In support of these findings are the survey results of Kassin, Tubb, Hosch, and Memon (2001) who asked eyewitness experts to report the reliability of 30 eyewitness memory principles. Among the items rated was the following: “Eyewitnesses sometimes identify as a culprit someone they have seen in another situation or context” (p. 408). Of the 64 respondents, 81% stated that this proposition was reliable enough to present in court. The proposition that “eyewitness testimony about an event often reflects not only what they actually saw but information they obtained later on” (p. 408) was rated as reliable enough to present in court by 94% of experts. A strong foundation for recommendations regarding repeated identifications now exists in the eyewitness literature, which we summarize below.

Mugshots Prior to Photo Array or Lineup

Twenty-five years of published research on the effects of viewing mugshots is documented in a meta-analysis of 32 tests in which participant-eyewitnesses were exposed to mugshots between the crime and a subsequent photo array or lineup and compared to eyewitnesses who were not exposed to the mugshots (Deffenbacher et al., 2006; see also a more recent test by Goodsell et al., 2009). The number of mugshots presented

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