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## **Eyewitness Misidentification in Florida and Nationwide**

### **Prevalence of the Problem**

Mistaken or incorrect eyewitness identifications contributed to over 75% of the 177 wrongful convictions in the United States that have been overturned by post-conviction DNA evidence to date. In many cases, multiple witnesses incorrectly identified a person who was later proven innocent. Despite solid and growing proof of the inaccuracy of traditional eyewitness identification procedures, incorrect identifications remain among the most commonly used and compelling evidence used to convict defendants in criminal cases.

In Florida, six people (including the most recent, Orlando Bosquete) have been exonerated with DNA evidence since 2001. In five of those six cases, incorrect eyewitness identification played a central role in convicting innocent people.

### **Reforms to Remedy Erroneous Identification**

Over the past 25 years, a large body of peer-reviewed, scientific research and practice shows that simple changes in procedure can greatly improve the accuracy of identifications. These changes in procedure have been proven to increase the accuracy of eyewitness identifications and have been implemented successfully around the country. They have been recognized by police, prosecutorial and judicial experience, as well as national justice organizations, including the National Institute of Justice and the American Bar Association.

One procedure is “blind” administration of lineups (where the administrator of the lineup does not know who the suspect is or other details of the crime and investigation). Research and experience shows that this procedure prevents the administrator from giving subtle or unintentional cues that could influence the witness’s identification. Another procedure, providing specific instructions to witnesses (such as information about the procedure and the potential that the culprit may or may not be in the lineup) also greatly reduces the potential for misidentification. A third procedure that increases the accuracy of identifications is choosing lineup “fillers” (or subjects that are not the suspect) which match the witness’s own description of the suspect, rather than choosing fillers that match the actual suspect. Another procedure that can help improve accuracy is “sequential” presentation, where the eyewitness is shown lineup members one at a time and asked to make a decision about each before viewing the next. This can be contrasted to a traditional lineup in which subjects are presented to the witness at the same time. Allowing the witness to examine the image of each suspect separately reduces the possibility of an identification of a person who may not be, but *most resembles* the witness’s memory of the perpetrator, and instead requires the witness to evaluate each subject against his or her own mental image or recollection of the perpetrator.



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These changes have proven to be successful. The state of New Jersey, large cities such as Minneapolis, MN and Seattle, WA and small towns such as Northampton, MA and others have implemented these practices and have found that they have improved their quality of their eyewitness identifications, thus strengthening prosecutions and reducing the likelihood of convicting the innocent. Numerous other jurisdictions, such as the states of North Carolina and Illinois, as well as Boston, Massachusetts, and other cities, are now beginning to implement these procedures.

### **Previous Florida Cases Where Eyewitness Misidentification Led To Wrongful Convictions of People Who Were Later Exonerated with DNA Evidence**

#### **Frank Lee Smith, exonerated in 2001**

In April 1985, an eight-year-old girl was murdered and raped in her home by a burglar. Through shaky eyewitness descriptions from two neighbors and the victim's mother, the investigation came to be centered on a black male, about 6' tall and 30 years old with a dark complexion. Based on these witness descriptions, the police developed a composite sketch. From this sketch, Smith was arrested. He was later identified by the victim's mother as the man she saw exiting her home from a window that night. He was convicted and sentenced to death in 1986. In 1990, Smith won a stay of execution, and in 1998 the Florida Supreme Court ordered a trial judge to hold an evidentiary hearing. Three eyewitnesses testified against Smith. But one of the original neighbor eyewitnesses changed her story after she was shown a picture of another suspect by a defense investigator. At this time, the defense began requesting DNA testing. While waiting for testing, Smith died of cancer in January 2000. After his death, DNA testing by the FBI laboratory fully excluded Smith as the perpetrator. On December 15, 2000, 11 months after his death and 14 years after his conviction, Frank Lee Smith was exonerated. These results not only cleared Smith of the crime, but identified the true perpetrator, Eddie Lee Mosley, a convicted rapist and murderer.

#### **Wilton Dedge, exonerated in 2004**

In late 1981, a young woman from Brevard County, Florida, was raped in her home. Four days later, she saw a man in a convenience store and told her sister that he resembled her rapist. After some initial confusion about whether the man the two women saw was Wilton Dedge or his brother Walter Dedge, Wilton Dedge's picture was placed in a photographic array and the victim identified him. The victim described the perpetrator as being 6' tall and approximately 160 pounds. At the time of the crime, Dedge weighed 125 pounds and he is 5'5" tall. Dedge maintained his innocence, and six of his co-workers testified that he had been at work, several miles away from the crime scene, on the day of the rape. At trial, the prosecution relied on the victim's eyewitness identification, microscopic hair comparison, testimony from a jailhouse snitch, and dog-sniffing evidence. He was convicted in 1982 and sentenced to two concurrent life sentences. Dedge started seeking post-conviction DNA testing in 1996. In June 2001, mitochondrial DNA testing excluded him as the perpetrator. At that time, the Innocence Project



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asked the court to overturn his conviction because he was innocent. For three years, the State opposed Dedge's motions on procedural grounds. Further testing was ordered in August 2004 and results once again excluded Dedge, conclusively proving his innocence after 22 years.

### **Luis Diaz, exonerated in 2005**

On August 3, 2005, Luis Diaz was exonerated after serving 26 years in prison for crimes he did not commit. In 1980, Diaz, a Cuban-American with three children, was convicted as the notorious "Bird Road Rapist" and sentenced to multiple life sentences. Between 1977 and 1979, more than 25 women were attacked in the Bird Road area of Coral Gables, Florida. Most of the victims described their attacker as a Latino male who was 6' tall and weighed 200 pounds. Diaz was 5'3" tall and weighed 134 pounds. During the course of the highly publicized investigation, nine victims identified him in several live and videotape lineups. Though no physical evidence tied Diaz to these crimes, he was convicted and sentenced to multiple life sentences. In 1993, through the work of a private investigator, two victims came forward to recant their testimony. Eventually, those two convictions were vacated, but five others remained. In 2003, Diaz filed a motion for DNA testing. In 2005, results on evidence from two cases (evidence from all the other cases had been destroyed) conclusively excluded him and proved that the same unknown man committed both of these attacks. Based on this evidence, Florida prosecutors agreed to vacate all of his convictions.

### **Alan Crotzer, exonerated in 2005**

In 1981, Alan Crotzer was arrested for participating in a robbery, rape, and kidnapping in Tampa, Florida. After the robbery, the three assailants kidnapped two of the victims, a 38-year-old woman and a 12-year-old girl. One of the assailants raped the adult victim. A second assailant raped both the 12-year-old victim and the adult victim. The third assailant did not participate in the rapes. Police were able to track the car they used to a St. Petersburg resident. The victims were shown several photo arrays which included the car's owner and some of his known associates, brothers Douglas and Corlenzo James and Alan Crotzer. The James brothers were identified by multiple victims. Alan Crotzer was identified as the assailant that raped both victims. At trial, Crotzer insisted he was innocent. All five victims made in-court identifications of Crotzer as the perpetrator who raped both victims. On April 22, 1982, Crotzer was convicted of all charges. He was sentenced to 130 years in prison. Crotzer continued to proclaim his innocence, and he secured DNA testing in 2003. The final round of tests in 2005 confirmed that he was innocent. The results also found a male profile that could not have come from Crotzer or either of the James brothers. Following the tests, Douglas James confirmed that he and his brother Corlenzo committed the crime with a childhood friend, not with Crotzer. In January 2006, Crotzer was exonerated and released after 24 years in prison.