

- She describes the man driving the Lincoln Navigator
 - “as being in his 50’s or 60’s
 - had large framed glasses
 - kind of an oval face
 - chin kind of came out from his face a little bit.”

- She testified the man in the vehicle
 - was not wearing a hat
 - he had grey hair
 - and it was parted on the side.



- There was no sketch artist to formalize her memory.



Hair is parted on their left/our right



Hair is parted on their right/our left

•The overly suggestive photo lineup violates Mr. Smith's constitutional rights.

It should have been created by:

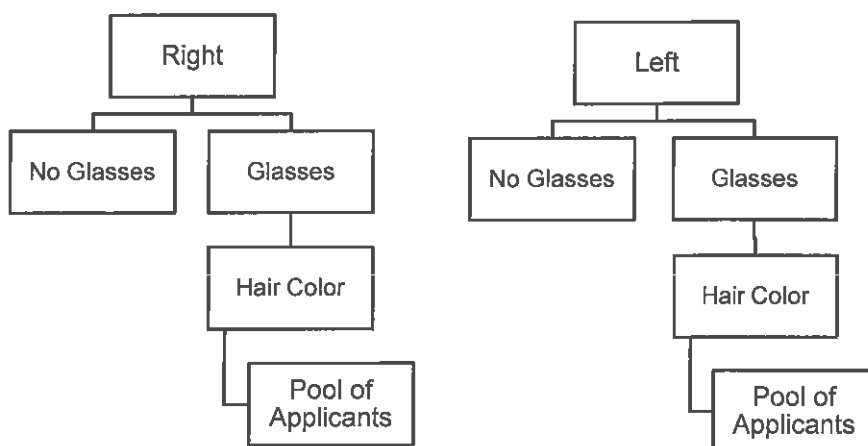
- all six men having parted hair on one side,
- or all on the other side,
- then you add the glasses,
- then you add the hair color.



This was too random. Mr. Smith has no part in his hair. If proper procedures were followed Mr. Smith would have never been included in either one of these photo lineups.



Hair Part





The photo lineup was highly suggestive and was not prepared correctly.

Lack of –

•Neutrality

•Training

•Experience

•Protocol

Voluntary And Reliability

“a seemingly insurmountable confession may be unreliable because of contamination during interrogation”. – Brandon L. Garrett, professor at the University of Virginia School of Law



There is a need to videotape.

- DNA evidence has been utilized to exonerate individuals convicted almost exclusively on the basis of eyewitness identifications.

- Ninety percent of the cases analyzed involved one or more mistaken eyewitness identifications.

- Of the 40 cases analyzed, 36 of the subsequent exonerations involved convictions that were based on one or more erroneous eyewitness identifications.

- Wells, G.L., M.Small, S.D. Penrod, R.S. Malpass, S.M. Fulero, and C.A.E. Brimacombe. “Eyewitness Identification Procedure: Recommendations for Lineups and Photo spreads.” *Law and Human Behavior*, Vol. 22, No. 6. 1998.

- Gestures do occur when the identity of the actual suspect is known to the individual conducting the identification procedure.

- When a photo lineup is conducted there should be a **independent investigation** and **NOT** the **primary investigator**.

- If the primary investigator must conduct the photo lineup then they must use extreme caution to avoid any inadvertent signaling to a witness of a “correct” response which may provide a witness with a false sense of confidence if they have made an erroneous identification.

“Sequential lineups” should be utilized for both photo and live lineup identification.

“Sequential lineups” are conducted by displaying one photo or one person at a time to a witness.

- Showing a witness one photo or one person at a time, rather than simultaneously, permits the witness to make an identification based on each person's appearance before viewing another photo or lineup member.

- Scientific data has illustrated that this method produces a lower rate of mistaken identifications.

Wells, G.L., M. Small, S.D. Penrod, R.S. Malpass, S.M. Fulero, and C.A.E. Brimacombe. "Eyewitness Identification Procedures: Recommendations for Lineups and Photo spreads." *Law and Human Behavior*, Vol. 22, No. 6. 1998.

Photos should not be shown at the same time.

Only **ONE** photo at a time for the witness to compare to memory.



= Memory of Witness

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What to do if a witness wants to see a particular photo again?

- Do not show only the requested photo!
- Tell the witness that you will show them all the photos/persons again.
- The investigator should show all photos again in random order.
- The witness is allowed as much or as little time on any one photo that they wish.

Santa Clara County, California Police Departments Protocols
http://www.innocenceproject.org/docs/Santa_Clara_Lineup_Protocols.pdf
<http://www.ojp.usdoj.gov/nij/journals/258/police-lineups.html>

Detective Mike Taylor and Captain Chris Guthrie were allowed to testify at trial that the eye witness said Mr. Smith was on the bike.

This is partially wrong as Ms. Talbert never testified that she saw anyone on a bike much less Mr. Smith. (Trial Trans. Vol. II, p. 128, In 25 and Vol. II, p. 162, In 24).

Egregious error causing untold prejudice to Mr. Smith.

Proof Beyond

A

Reasonable Doubt

Reasonable Doubt

- The degree of certainty required for a juror to legally find a criminal defendant guilty. The proof must be so conclusive and complete that all reasonable doubts of the fact are removed from the mind of the ordinary person. (Black's Law Dictionary)

Reasonable Doubt Standard of Proof

Defendant's Fingerprint → Matches Print on Gun

Gun's bullet fired in lab → Matches bullet at
crime scene

SAME = EXACT

**GROOVES OF BULLET IN LAB = SAME AS BULLET AT THE
CRIME SCENE**

**To Have Proof Beyond A
Reasonable Doubt
You Need:**

Same HAT	Same COAT	Same BIKE COLOR
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Testimony from the police officers further shows that the caps/hats and jacket found at Mr. Smith's home do not match the apparel being worn by the individual as seen in the surveillance video.

No DNA testing on hats to prove Mr. Smith was the one who wore them.



Hats from the Smith's home.



Person seen in Wal-
mart video is wearing a
hat.

Picture from NewsChannel 5



**Green
Bike
with
Solid
Black
Tires**



**Blue Bike with
White Wall Tires**

Smith's Bicycle

Make and Model: Huffy Cranbrook 24" Women's Cruiser
Bike

Color: Blue



Features and Specs:

Black, cruiser tread tires
(24" x 2.125")

Steel Fenders

Wide, padded seat with spring
suspension

Wide, cruiser style handlebars

Dual density grips and pedals

<http://www.huffy.com/Products/Product.aspx?pid=18|5|17>

•Specifically, Captain Chris Guthrie testified at trial

- The police department processed the found vehicle and obtained no useable evidence in it. (Trial Trans. Vol. II, p. 74, In 9).
- The video offered into evidence he could only describe the person as looking like an older person on a bike because of the posture of the rider. (Trial Trans. Vol. II, p. 88, in 12).
- Admits that it is not possible to see if the individual is pulling anything out of the vehicle much less a bike.
- Admits that he is **just assuming** a bike is pulled out (Trial Trans. Vol. II, p. 122, In 16 – p. 123, In 19).
- Admits he **cannot say** that the jacket and cap taken from Mr. Smith's home were the same as those being worn in the video. (Trail Trans. Vol. II, p. 126, In 10 – Vol. II, p. 128, In 14).

•Similarly, Detective Mike Taylor testified at trial

- Jacket and cap seized from the home are **“similar” not the same**. (Trial Trans. Vol. II, p. 162, In 14)
- Could not say they were the same** as those worn in the video. (Trial Trans. Vol. II, p. 176, In 16 – p.178, In 9)
- Admitted they found several discarded bikes in the vicinity of Wal-mart, one of which was **green**. (Trial Trans. Vol. II, p. 170, In 13)
- Admitted that the paint scrapings taken from the bike found at the home did not match the paint scrapings found in Mr. Smith's truck nor those found in the back of the Lincoln Navigator. (Trial Trans. Vol. II, p. 193, In 3 – p. 194, In. 21).
- Testified that the distance from the Wal-mart to Mr. Smith's home is 6.5 miles and **that nobody witnessed an elderly man on a bike**, in the middle of the day, around the holidays, traveling that 6.5 mile route. (Trial Trans. Vol. II, p. 190, In 3).