

Police Identification of the Perpetrator of the Criminal Act

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Abstract

Police identification has an extremely important role in solving any criminal offense, ie in discovering its perpetrator. Police identification is often shown on TV shows and in movies. A group of suspects are brought into the room and the witness recognizes the perpetrator. In real life, identifications with the suspects present are rarely carried out as they are portrayed in TV shows and in movies. Instead, photo recognition is used. Photographs of the suspect are shown along with photographs of some other persons and the witness is asked to identify the person suspected by the police.

Keywords: Showup, Interrogation, Evidence, Psychology

Introduction

A showup is a procedure in which police present an eyewitness with a single person, either live or in a photograph, for the purpose of identification [1]. Typically, these one-on-one confrontations occur in the field, and in close spatial and temporal proximity to the crime. Showup identifications are an alternative to lineup identifications (which involve multiple individuals being presented to the witness); however, the U.S. Supreme Court, state courts, and social science researchers have stated repeatedly that showup identifications are less reliable than lineup identifications. Nevertheless, showups remain one of the most widely employed identification procedures. The estimates of showup identifications as a percentage of all identifications range from 30 to 77 %. Therefore, showups are a significant percentage of all identifications and warrant further investigation.

Showups are an identification technique in which a single individual, the suspect, is presented in a one-on-one confrontation with the victim or other witness of a crime [2]. The witness is asked to indicate whether the suspect is or is not the perpetrator. Showup identifications are very common and even favored by the police as an investigative procedure. They are considered inherently suggestive because the witness views only one person and the identification requires only the assent of the witness. This entry describes the criteria used to justify the use of showups, compares the outcomes of showups and lineups, and reviews some of the dangers presented by the use of showups.

Although showup identifications may be viewed with disfavor

by the courts, they are not per se considered violations of due process if there was an overriding need in light of the totality of circumstances. Showups may be justified when an immediate identification would facilitate an ongoing police investigation, a quick exoneration of the innocent could be made, the identification is completed in close proximity in time and place to the scene of the crime, and the witness's memory is strongest or in its freshest state.

Whether a crime scene showup is unduly suggestive and results in a misidentification is a mixed question of law and fact. If the prosecution can prove by clear and convincing evidence that the showup identification was reliable enough to be probative despite some suggestiveness, the witness's identification is admissible. Any suggestiveness in the process would go to the weight of the identification, not its admissibility. In contrast, if the defense can prove that the showup procedure was unduly and unnecessarily suggestive, the identification evidence based on an unfairly conducted showup would be suppressed.

Interrogation

There are numerous legal and procedural incentives to understanding the interrogation process [3]. First, police hold tremendous influence over the fate of criminal and delinquency cases. Officers may arrest, detain, or release individuals based (among other things) on the information acquired during questioning. Police decide whom to question about a crime as well as where, when, and how to conduct questioning in order to obtain accurate and complete information. Second, research demonstrates

that confession evidence is extremely powerful. Laboratory studies reveal that confession evidence affects mock jurors' verdicts more than eyewitness and character testimony, regardless of whether the confession is perceived as voluntary or coerced.

Third, interrogation is a legal context that may be especially susceptible to due process violations or other procedural justice concerns, even inadvertently. Due to the "innate secrecy of such proceedings", the Supreme Court has historically acknowledged the impossibility of transparency in police interrogations and has accordingly imposed restrictions on police behavior and interrogation procedures. For example, police are not allowed to make explicit threats or promises, and physical force has long been prohibited. Though the incidence of such behaviors cannot be determined, the frequency of overt police misconduct is likely low relative to the potential due process violations that are more relevant to routine interrogation procedures that are ill defined in case law and policy.

Evidence

First and foremost, the forensic scientist must be skilled in applying the principles and techniques of the physical and natural sciences to analyze the many types of physical evidence that may be recovered during a criminal investigation [4]. Of the three major avenues available to police investigators for assistance in solving a crime—confessions, eyewitness accounts by victims or witnesses, and the evaluation of physical evidence retrieved from the crime scene—only physical evidence is free of inherent error or bias.

Criminal cases are replete with examples of individuals who were incorrectly charged with and convicted of committing a crime because of faulty memories or lapses in judgment. For example, investigators may be led astray during their preliminary evaluation of the events and circumstances surrounding the commission of a crime. These errors may be compounded by misleading eyewitness statements and inappropriate confessions. These same concerns don't apply to physical evidence.

What about physical evidence allows investigators to sort out facts as they are and not what one wishes they were? The hallmark of physical evidence is that it must undergo scientific inquiry. Science derives its integrity from adherence to strict guidelines that ensure the careful and systematic collection, organization, and analysis of information—a process known as the scientific method. The underlying principles of the scientific method provide a safety net to ensure that the outcome of an investigation is not tainted by human emotion or compromised by distorting, belittling, or ignoring contrary evidence.

Perpetrator

Perpetrator present lineups (or showups) contain the actual perpetrator; perpetrator absent lineups (or showups) replace the perpetrator with an innocent suspect designated by the researcher [1]. This is only true in the lab (in the field, the suspect is not known to be innocent). There are two correct choices that can be made: correct identifications (i.e., identifications of the perpetrator) in a perpetrator present identification procedure or correctly indicating that the perpetrator is not there from a perpetrator absent procedure. There are three possible errors that can occur: false identifications,

incorrect rejections, and filler identifications (lineups only). False identifications refer to identifications of innocent suspects; incorrect rejections arise when a rejection is made from a perpetrator present lineup (or showup); filler identifications refer to identifications of people in the lineup who are known to be innocent. Because fillers are known to be innocent, filler identifications are not considered harmful errors. If a filler is chosen, the lineup administrator knows that the witness is unsure of the perpetrator's identity and should not be trusted as an accurate eyewitness. We focus on three identification responses for purposes of evaluating identification performance: correct identifications from perpetrator present identification procedures, false identifications from perpetrator absent identification procedures, and the confidence with which those decisions are made.

Showup identifications may confer performance advantages over traditional lineups. First, showups have the potential to be conducted faster than lineups, and therefore implicate criminals or absolve innocent people of suspicion quickly. Second, as has been well documented, memory performance decreases with time, so it is better to test memory (e.g., administer an eyewitness identification test) at a short rather than long delay. Consistent with basic memory research, research on eyewitness identifications has shown that witnesses tend to perform more poorly at identifying guilty suspects as time progresses. Consistent with the psychological research, the U.S. Supreme Court and state courts have held that one of the circumstances under which it is acceptable to conduct a showup is when it occurs close in time to the incident in question. Thus, a potential advantage of showups is that they may result in better memory performance than lineups due to a shorter delay—retention interval—between the incident and the administration of the identification procedure. Given the shorter delay, the perpetrator may not have time to alter distinctive features noticed by the witness (e.g., clothing, facial hair). Thus, the speed at which a showup can be conducted should afford extra cues like clothing match that are likely not available in a lineup conducted after a delay. These extra cues could aid recognition memory.

Few things short of a smoking pistol carry as much weight with a jury as an eyewitness who points to the defendant and says, "That's the one" [5]. Eyewitness identifications, however, are notoriously unreliable and probably account "for more miscarriages of justice than any other single factor." A witness cannot always easily observe the height, weight, age, and other features of a suspect at the time of the crime because the encounter between the witness and the criminal is often brief, frequently in poorly lit conditions, and under stressful circumstances. Police identification processes can further aggravate the inherent unreliability of human perception and memory. For example, lineups often resemble a multiple-choice recognition test in which the eyewitness feels compelled to pick the "most correct answer" rather than choose "none of the above." Further problems are created if the police inadvertently or deliberately suggest the "right" choice to the witness.

Suspects who are placed in a lineup or showup are not witnesses against themselves. Violation of the Fifth Amendment privilege against compulsory self-incrimination occurs only when a suspect is "compelled to testify against himself, or otherwise provide the

State with evidence of a testimonial or communicative nature.” Compulsory display of a suspect’s physical characteristics in a lineup or showup is not testimonial or communicative in nature because it does not require the suspect to disclose any personal knowledge. Thus a defendant has no Fifth Amendment privilege against participating in a lineup or showup. The defendant’s refusal to participate in a lineup or showup may be introduced as evidence of a consciousness of guilt. Courts also have used criminal or civil contempt to coerce or punish a suspect who refuses to comply with a court order to participate in some identification procedure. On other occasions, the police have forcibly conducted the identification proceeding over the accused’s objection. Forcing the accused to furnish some form of identification evidence requires the police to control or “seize” the accused, which places the action within the Fourth Amendment requirement that such seizures be reasonable.

Courts

As mentioned, the showup is a frequently used method of identification of a suspect [6]. In a showup, the police usually take the victim to the suspect to determine whether the victim can make an identification, and at least one state supreme court has held that police may transport a person stopped for an investigatory stop a short distance for purposes of a showup.

Although critics complain of the use of showups, such a confrontation may be justified by the necessity to preserve a witness’s memory of a suspect before the suspect has had an opportunity to alter his or her clothing and appearance. Appellate courts consistently admonish caution in the use of showups; however, they generally approve of their use when the identification occurs shortly after the crime has been committed and the showup is conducted near the scene of the crime under circumstances that are not unduly suggestive. In approving showups, some courts have pointed out that a victim’s or eyewitness’s on-the-scene identification is likely to be more reliable than a later identification because the memory is fresher. Courts base their judgments on the reliability of showups based on many factors and circumstances.

The influence and structural position of the pre-trial investigation and its influence on the character of the trial differ significantly between the systems [7]. Under the civil law, state authorities have many intrusive powers of investigation. These powers are based on written, democratically decided laws. In some jurisdictions, the judge takes part in the pre-trial investigation and can determine that, for instance, illegally obtained or unreliable evidence is not admissible, and the state authorities responsible for the investigation also have to protect the rights of the accused. This double duty imposed on the state is probably why Packer’s dichotomy due process/crime control never seems to work very well in inquisitorial systems; the decision to prosecute (and for what) is left to a public law official, usually the public prosecutor, sometimes a judge. The accusation is presented as a case that is to be tested by the judge, with the results of the pre-trial investigation in a dossier. The role of the trial procedure is not, therefore, as in the adversarial system, to produce all the evidence at the trial; the trial is a test, by the judge, of the accuracy of the prosecutor’s case. The role of the defence is limited to casting doubt on the prosecutor’s case, for example, persuading the judge of the necessity to call

a witness to the trial, instead of relying *de auditu* on his or her statement during the pre-trial investigation. ‘*De auditu*’ (hearsay) evidence is not forbidden in the civil law system. It is allowed as long as the judge sees no reason to hear the witness as part as his or her task to find the truth.

If the accused is extra vulnerable, for instance, in cases of mental disturbance, it is for the judge – and for the other authorities during the pre-trial investigation – to ‘compensate’ for this in the way the trial or the investigation is organised. There are very few cases in the inquisitorial system in which the prosecution is stopped because of ‘unfitness to stand trial’. This is because it is the task of the judge to protect the accused from his or her weaknesses. For example, the judge may represent the accused against the prosecutor. Also, she/he has to be extra careful in evaluating evidence when the accused is not able to give his or her view on the facts.

Testimonies

The public trial in the context of the common law is a case in point. The sheer performativity of the multi-party body interactions, such as witness testimonies and closing speeches, make a public trial appear to be both an event of drama and the source of truth in the last instance [8]. Among the classical ethnomethodological studies of the court as a social order we find several distinct foci: (a) general studies of the social organization of trials in traffic courts, civil courts, or – mainly – criminal courts; (b) court-related communication events, such as informal mediation, pre-trial communications, examination of eyewitnesses, especially cross-examination, or expert testimony; (c) principal players in the courtroom, for example, professional judges, lay judges, defense lawyers, and jurors; and (d) legal language and discourse, for example, verbal deception and formulations. Obviously, this list is merely suggestive: the study of courtroom interaction involves many diverse phenomena and components. At the same time the list is fairly representative of courtroom studies insofar as it demonstrates a priority for phenomena that are available for the researcher in terms of recorded speech or talk.

Problems arise when a witness who has made prior identifications is unable to identify the defendant in court [9]. This often occurs when defendants have changed their appearance between the time of arrest and the trial or because the witness’ memory has faded. To address this problem, some states have enacted statutes that abrogate hearsay rules and allow testimony from third persons, usually a police officer who conducted a showup or a lineup, to establish that the witness identified the defendant at the showup or lineup. Consequently, to establish the defendant’s identification as the person who committed the crime, the witness will testify that at a prior showup or lineup he saw an individual and recognized him as the criminal, and a police officer will testify that at the showup or lineup the witness promptly declared his recognition of the defendant as the criminal. Such testimony will constitute evidence sufficient to establish identification.

Forensic Psychology

Forensic psychologists have an abundance of information to refer to, including mainstream psychological research from the fields of cognitive and social psychology [10]. Research from cognitive psychology has been particularly helpful in areas such

as understanding how our memory performs under stressful conditions (e.g. during a criminal event), and the best ways of maximising memory retrieval. In the case of social psychology, understanding how social biases and attitudes interact to affect our perceptions of people has led to research findings about how the physical appearance of a defendant can influence the jury's verdict. Forensic psychologists are in the fortuitous position of being able to keep the criminal justice system informed of new findings from psychology – one example being the social science brief delivered to the judge via an *amicus curiae* (or 'friend of the court' brief). Another means of divulging information is through collaborative research. Collaborative research with police, probation and prison services has often been effective, and has led in many cases to changes in practice and ethos. For instance, it is through collaborative research between the police and forensic psychologists that an effective way of interviewing witnesses called the cognitive interview has been successfully implemented. Further research of this nature has also improved the way police interrogate suspects. The working ethos of having to obtain a confession no matter how the interrogation is carried out has been replaced by an equitable interview approach. Furthermore, the reliability of evidence presented in court, especially eyewitness testimony, is of paramount importance. As a consequence of psychological research on memory, the credibility of eyewitness evidence is questioned and scrutinised to ensure the description of events and of the perpetrator provided by witnesses is plausible. In the U.S., having an expert psychologist provide evidence concerning the reliability of eyewitness testimony is not uncommon. To understand how forensic psychologists can help improve practice in the criminal justice system, from its initial stage of police evidence-gathering to presenting a case in the courtroom, the legal process needs some explanation.

Forensic psychologists may conduct research on topics related to the civil and criminal legal systems or may focus on specific questions that these institutions of justice consider; such findings may take the form of expert testimony, whose goal is to educate a jury or judge about a specific legally relevant topic (i.e., issues related to eyewitness identification; factors that may contribute to false confessions) [11]. Those in the practice of forensic psychology typically conduct individual assessments of defendants, plaintiffs, or parents involved in child custody cases; the product of these evaluations has a similar goal: to educate jurors and judges by providing them with information they may not otherwise have known when they consider making a legal determination (i.e., the impact of mental retardation or mental illness on the ability of a defendant to assist an attorney in defending the client in court; the possible role that duress or coercion may have played in a defendant's involvement in a criminal act to be considered by a federal judge at the time of sentencing; the effects of Alzheimer's disease on a patient's ability to make an informed decision about consenting to or refusing medical treatment).

Conclusion

There are several important issues to consider when implemented recognizing procedure in police. First of all, a person suspected by the police of having committed a crime does not have to be the actual perpetrator of the crime. So there is a certain danger that if a witness identifies a person suspected by the police, the real

criminal may remain at large. Secondly, the witness's ability to identify the suspect also depends on the witness's memory, ie the connection between the witness and his memory, as well as the comparison of the suspect with the person who serves to distract attention and their similarities. Over the years, standard police procedures based on psychological research have been adopted. One of the grounds on which the procedures were based was the specific characteristics of the suspects. For example, the witness remembers that the person he saw had a small tattoo near his left eye. Police arrest the suspect with the small tattoo. If the police organize the identification so that the suspect is the only one with the small tattoo, there is a high probability that the witness will identify him.

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