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Mistaken identity

Carlos Starks spent 11 months in jail. Witnesses who had picked him out of a photo lineup as a killer saw him in person: wrong man. How does this happen?

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After 11 months in jail, Carlos Starks finally got his day in court.

Thirty hours later, he was a free man.

One after another, witnesses who had fingered him for the shooting death of Douglas Craft told prosecutors, "That's not him."

"I kept looking around the courtroom for the guy who did the shooting," said witness Patricia Baker. "I said, 'That can't be him. That isn't him.' He didn't look anything like the person I identified."

Marion Superior Court Judge Patricia Gifford dismissed the case with prejudice, which means Starks cannot be tried on the same charge again. Starks, jailed since Oct. 5, 2010, was released Sept. 13.

Starks' ordeal helps explain why judges, legislatures and researchers across the country are casting an increasingly skeptical eye on the value of eyewitness testimony -- especially testimony based on photo lineups.

"This is just an egregious example of how damaging eyewitness accounts can be and the lack of fair play," said Fran Watson, a professor of law at Indiana University School of Law-Indianapolis and a former chief of the Marion County Public Defender Agency. "People get sentenced to death because of misidentifications like this."

Some states have ordered police to tighten photo lineup standards, and others are considering it. A recent study found that nearly one in five photo identifications is wrong.

The researchers said police can reduce mistakes with just a few tweaks. But it doesn't appear Indiana is close to changing its methods, despite the embarrassment, financial liability and discredit a mistaken-identity prosecution can bring.

"I don't see prosecutors or police departments making that change any time soon," said David Powell, executive director of the Indiana Prosecuting Attorneys Council. "We tend to follow the lead of the courts. We are reluctant to make wholesale changes based on academic studies."

Dreadlocks and a red shirt

At 9 p.m. July 20, 2010, Craft, 26, was carrying bags of groceries home in the Whitfield Apartments at 45th Street and Arlington Avenue when he was shot four times.

At least five people in the complex got a look at a man walking away from the scene and gave arriving police officers a description.

Twenty minutes later, police stopped Starks at a bus stop in the 6100 block of East 46th Street, two blocks away.

Black, in his 20s, with shoulder-length dreadlocks, Starks bore a vague resemblance to the man described by the witnesses, with at least one crucial difference: Starks was wearing a black shirt, not the red one witnesses described.

Starks said he was on his way to work. The officer let him go to answer another call but entered Starks' name into the Indianapolis Metropolitan Police Department database.

Early the next morning, Detective Leisa Moore put Starks' picture into a photo lineup alongside five other men with dreadlocks.

In the mugshot, which was from an old misdemeanor arrest, Starks was wearing a red shirt. Five witnesses viewed the photographs, and three picked Starks. The suspect chosen by the other two witnesses was the only other man in the lineup with a red shirt.

The trouble with lineups

Police lineups, like the kind seen on TV, are a thing of the past. Getting six people of similar height and weight to stand behind a one-way mirror and turn to the left and right is time-consuming and difficult to arrange.

It's easier to pull mug shots from prison and jail records, which is what IMPD does.

Now, police typically provide an array of six photos on a table or a computer screen, as IMPD does.

To avoid misidentification, officers are supposed to follow a strict protocol. The arrays are used only when police have a suspect, but the witnesses are told the suspect may not be in the collection. Officers are usually instructed to avoid making suggestive gestures or comments that would lead witnesses to pick a specific picture.

"If not done properly, identifications can be lost in court as tainted," an IMPD internal regulation states.

But a burgeoning number of academics and police professional organizations say those safeguards aren't good enough.

They recommend that witnesses view photos sequentially, or one at a time, to avoid "comparison shopping." They also suggest that the officer conducting the lineup not know who the suspect is, to avoid subtle suggestions.

"It might be a cough when the witness is looking at suspect number three," said Indianapolis defense attorney David Hennessy, who was not involved in Starks' case. "He might say, 'Take your time,' when the witness's eyes are on his guy. There are little cues. Some they don't even realize they're doing."

In the Starks case, the detectives assigned to the case conducted the lineup, knew who the suspect was and used the photo array rather than the sequential lineup. But there was no allegation by the defense or the witnesses that the detectives suggested the witnesses choose Starks' photo.

Still, three states now require the sequential and "double-blind" methods. And the New Jersey Supreme Court recently ordered police there to strengthen their procedures.

A recent study, conducted by the American Judicature Society and co-sponsored by the Innocence Project and the Police Foundation, found that false identifications were reduced to 12 percent from 18 percent when a double-blind, sequential lineup was used.

Witness: "I'm not sure"

Detectives called Patricia Baker and her sister, Charlene Walton, into the Downtown homicide office at the City-County Building about 1:30 a.m. July 21 2010, about four hours after Craft was shot.

The sisters had been sitting in a car in the parking lot near the crime scene. They said the suspect walked in front of them, about 20 feet away. Walton, a doctor at Wishard Memorial Hospital, said she saw the man's face only from the side. Baker said she saw it from the side and got a momentary glimpse of the front.

Both women said the man they saw was no taller than they are -- about 5-foot-5, and stocky. According to Marion County Jail records, Starks was 6 feet 2 inches and 191 pounds the night he was booked.

The women were questioned separately by the two detectives assigned to the case, Moore and Detective Jose Torres, and asked to look at the photo lineup.

At 2:08 a.m., Moore showed Walton six photos on a computer screen.

Walton pointed to Starks.

"It could have been that guy," Walton said, according to a transcript of the interview. "I just saw a side. I didn't . . . I didn't see a full face, just on his side."

At 2:55 a.m., Torres asked Baker to look at the lineup.

"I'm not sure, but he sorta looked like number four," Baker said, according to the transcript. After she signed a piece of paper confirming she'd picked Starks, she repeated her doubts.

"I'm not sure, but he's the closest," she said.

Gary Wells, an Iowa State University professor who conducted the recent study, said several warning signs should have jumped out at the detectives.

"These witnesses were duped," said Wells, who has been studying lineups for 35 years. "They should have never shown this photo because of the height difference. And if they had to show it, they should have told them this guy is a lot taller and asked if it was possible the suspect was that tall."

He said showing a suspect in a red shirt was also a mistake.

"Any eighth-grader would know to Photoshop that out," Wells said.

The other witness who picked Starks' photo out of the lineup was a 10-year-old boy.

Stalled investigation

Complicating the Starks case is the fact that police had nothing but the photo lineup to go on.

In a deposition this summer, Moore told defense lawyers she had made no other investigative breakthroughs.

There was no murder weapon, no fingerprints, no self-incriminating statements. Starks had two misdemeanor theft convictions in his criminal background and didn't know Craft.

"Has there been any, um, thing other than the eyewitnesses . . . indicating that Carlos did it . . . any forensic or anything?" public defender Deana Martin asked Moore, according to a transcript of the interview.

"No, unfortunately not," Moore replied.

Gifford said heavy caseloads for police and prosecutors can lead to truncated investigations.

"Sometimes, maybe it's easier for police to pick out witnesses and not pursue other possibilities in an investigation," she said. That makes it all the more crucial that they get the identification right.

Though only the 10-year-old child's ID was considered "positive" -- the strongest identification on which to build the case -- Marion County Deputy Prosecutor Denise Robinson said there were enough common elements in the other two statements that she thought they bolstered the boy's.

"We always look for corroboration, and I thought they strongly corroborated the positive ID," she said. "We thought at the time we had a solid case."

She said evidence often is scarce in outdoor shootings. Police recovered shell casings but nothing else.

Starks sees it differently: If he wasn't racially profiled, he was at least typecast.

"I really feel like they picked me up because I had dreadlocks," Starks said. "This is the only thing they had to go on. That photo they used was two years old. It makes you wonder how many other people this happens to."

Chief public defender Robert J. Hill said the state proceeded with what it should have known was a shaky case.

"This is what happens," he said, "when police procedures get messed up and there is a lack of verification and follow-up."

Resistance to change

The broader question is whether police procedures are adequate. Lineup reformers said IMPD did several things that new guidelines would have prevented.

Besides having the lead investigators conduct the lineup, two people in the lineup were pictured in red shirts like the shooter; and only one of the witnesses' identifications was considered a positive identification.

Yet some Indiana law enforcement officials said the system doesn't need changing -- just better adherence to procedures already in place.

"We don't have a huge problem with people making false identifications," Robinson said. "The method being used is less important than how it is used."

Morgan County Prosecutor Steve Sonnega said there would be several difficulties in implementing reform, especially in smaller departments, where it would be hard to find an officer unaware of the case.

"Everybody pretty much knows everybody's cases," he said.

IMPD Chief of Investigations William Lorah said he prefers having the case detective conduct the lineup because he is the one who has to testify to its credibility in court.

"I think it's a good system the way we do it now," he said. "I don't see any reason whatsoever to change. We'd have to change the whole way of doing things."

Jerry Murphy, director of development at the Police Executive Research Forum in Washington, D.C., an organization that gives advice to police departments, said it wasn't surprising that police and prosecutors don't want to change; law enforcement officials might view it as tacit acknowledgment that there is something wrong with their systems.

"There is resistance because of the implication that the officers might be doing something to suggest the witnesses pick the person they want," Murphy said.

But Public Safety Director Frank Straub sees tighter standards as inevitable, if only to avoid legal nightmares such as the Starks case.

"As more courts get involved, I think you will see this become the state of the art," Straub said.

Defense attorney Hennessy, who has handled many murder cases, said it's in the police's self-interest to set the most rigid standards available.

"Their goal should be to put me out of business," he said.

Case closed

Starks, of course, will never get back the 11 months he spent in jail. He says he is considering filing a lawsuit.

Robinson noted that prosecutors moved swiftly to correct their error, once it was discovered.

"When the witnesses equivocated midway through the trial," she said, "we asked, in the interest of justice, that the case be dismissed."

Despite all that, however, police say they're confident they had the right person.

Lorah said Starks' appearance "changed significantly" since he was arrested, and that could be why the witnesses could no longer identify him at trial.

"He was about 40 pounds lighter," Lorah said.

Starks said he had lost some weight but not that much. He added that his dreadlocks were the same.

Still, Lorah said IMPD would not be looking for any other suspects.

"This is kind of like when you lose a case at trial," he said. "You don't go out looking for someone else just to get someone."

Additional Facts

What are the guidelines?

Here are Indianapolis Metropolitan Police Department procedures for photo arrays:

Choosing photos

>> All photographs must be similar in race, sex, age range, hair color/length, moustache, glasses, background, etc.

>> Use most recent photos available.

>> More than six photos is advisable; six is the minimum.

>> Cover gallery number/information plate in photo.

Displaying photos

>> Care must be taken to ensure that the viewer is not led into identification of a suspect. If the viewer is not positive, have the person indicate the possible suspect and what is different about the suspect.

>> Tell the viewer he or she will be looking at "X" number of photos of people similar in appearance. Do not tell the viewer the suspect is in the photo array. Tell the viewer skin tones change because of lighting and backgrounds. Ask if anyone looks familiar; if so, who and why? If identification is positive, have the viewer sign and date the form.

Things to change?

In a study released last month, the American Judicature Society suggested changing photo lineup procedures in two key ways:

>> Display photos sequentially instead of simultaneously: Witnesses would look at photos one at a time instead of being able to scan them all at once.

>> Present photos in a double-blind method: The photos would be shown by a police officer who does not know what the suspect looks like.

Real-world lineups

Police departments use photo line-ups instead of "stand-up" line-ups because they are easier and faster and give them more choices of suspects.

Police can access thousands of mug shots of people in jails and prisons to produce real pictures of people who closely fit the description of the suspects. That prevents allegations that the suspect bore little resemblance to the others in the line-up.

When using the old "stand-up" line-ups, police had to round up other officers and employees — and sometimes even jail inmates — who resembled the suspect and herd them into a room.

The photo line-ups generally use six pictures in two rows of three. The witnesses are told the suspect may not be in the line-up.
