Anatomy of a Wrongful Conviction: The Case of Charles Don Flores

John Wixted, Ph.D.
University of California, San Diego
Eyewitness Memory Appears to be Unreliable

- Since the 1990s, the Innocence Project has used DNA testing to overturn 375 wrongful convictions
- Many of these innocent people spent decades in prison before being exonerated
- What went wrong?

“‘I’m 100% sure he did it’

This testimony is based on contaminated memory

- Eyewitness Misidentification (235 cases)
- Unvalidated / Improper Forensics (154 cases)
- False Confessions / Admissions (88 cases)
- Informants / Snitches (48 cases)
Contaminated Forensic Evidence

• Examples of forensic evidence:
  • Forensic DNA
  • Fingerprints

• It is important to collect such evidence as early as possible in a criminal investigation because it minimizes the chances of contamination

• The same exact principle applies to eyewitness memory!
First and Last Eyewitness Memory Tests

Early in a police investigation

Recollection

Reproduction

Recognition

These first tests of uncontaminated memory provide *reliable* information

At the criminal trial, a year later

The last test of contaminated memory provides *unreliable* information
Memory Contamination
Test a Witness’s Memory of a Suspect Only Once

John T. Wixted¹, Gary L. Wells², Elizabeth F. Loftus³,⁴, and Brandon L. Garrett⁵
¹Department of Psychology, University of California, San Diego; ²Department of Psychology, Iowa State University; ³Department of Psychological Science, University of California, Irvine; ⁴Department of Criminology, Law and Society, University of California, Irvine; and ⁵Duke University School of Law

Abstract
Eyewitness misidentifications are almost always made with high confidence in the courtroom. The courtroom is where eyewitnesses make their last identification of defendants suspected of (and charged with) committing a crime. But what did those same eyewitnesses do on the first identification test, conducted early in a police investigation? Despite testifying with high confidence in court, many eyewitnesses also testified that they had initially identified the suspect with low confidence or failed to identify the suspect at all. Presenting a lineup leaves the eyewitness with a memory trace of the faces in the lineup, including that of the suspect. As a result, the memory signal generated by the face of that suspect will be stronger on a later test involving the same witness, even if the suspect is innocent. In that sense, testing memory contaminates memory. These considerations underscore the importance of a newly proposed recommendation for conducting eyewitness identifications: Avoid repeated identification procedures with the same witness and suspect. This recommendation applies not only to additional tests conducted by police investigators but also to the final test conducted in the courtroom, in front of the judge and jury.
Examined trial testimony for 161 of the DNA exoneration cases in which eyewitnesses confidently misidentified the defendant at trial.

In most of these cases, the witnesses did not do so on the first test (e.g., they rejected the lineup).

In most of these cases, the initial description provided by the witnesses did not match the appearance of the innocent defendant.

**Key point:** on these initial tests of memory, the eyewitnesses often correctly provided evidence of innocence, not guilt.
The Murder of Betty Black

- On Jan. 29, 1998, a witness looked through her miniblinds around 6:45 a.m. and saw two men go into her neighbor’s house through the garage.

- After learning later in the day that her neighbor had been murdered, she told the police that both men were white with shoulder-length hair.

- The police arrested a man named Richard Lynn Childs, who confessed to being the shooter and was eventually sentenced to 30 years in prison.
Who was the Accomplice?

• The witness described him as a white male with long hair (recollection)

• The witness also made a composite sketch (reproduction)

• Together, these two initial tests of uncontaminated memory provide clear evidence of *innocence*
Who was the Accomplice?

- Despite how the witness described the accomplice, the police suspected Charles Don Flores (a Hispanic man with short hair).

- They put his photo in a lineup and presented it to the witness.
The witness rejected this lineup

**This is even further evidence of innocence**

But this test also contaminated the witness’s memory with the face of Charles Don Flores
Subsequent Memory Contamination

Student, doctor thwart murder suspect’s escape

By Kendall Anderson
Staff Writer of the Dallas Morning News

Charles Don Flores might be a big, tough capital murder suspect who managed to elude the law for months, but he messed with the wrong mad student and anesthesiologist Friday.

Mr. Flores, arrested in May and charged with killing a Farmers Branch woman, tried to escape custody by complaining of a head injury. He then overpowered the deputy who took him to Parkland hospital.

To the rescue came fourth-year medical student Perzan Aghar and Dr. Andy Kosen. Mr. Aghar relieved the suspect of the deputy’s gun, and Dr. Kosen and two other hospital workers wrestled him into handcuffs.

Mr. Aghar, a 24-year-old University of Houston medical student, may have saved Deputy Bryan Shepman’s life, officials said.

“We believe the suspect had planned this and was intent on fleeing and was attempting to shoot the deputy,” said Bob Spencer, a Sheriff’s Department spokesman.

“So the indications are that Mr. Aghar was instrumental in helping to bring the situation to a conclusion. We are grateful and appreciative to him and all those who came to the officer’s assistance.”

Mr. Aghar and Dr. Kosen could Please see MURDER on Page 33A.
The Capital Conviction of Charles Don Flores

• About 1 year later, at trial in 1999, the witness surprised the defense by showing up and identifying Flores as the accomplice, claiming to be “more than 100 percent positive”

• The jury convicted Flores and sentenced him to death. He has been on death row for 24 years
Summary of the *Initial* Tests of Uncontaminated Memory

- **Recollection**: The main eyewitness described a white male with shoulder length hair *(evidence of innocence)*

- **Reproduction**: The same eyewitness made a composite sketch of a white male matching that description *(evidence of innocence)*

- **Recognition**: The same eyewitness rejected a photo lineup containing a good photo of Charles Don Flores *(evidence of innocence)*
Conclusion (1 of 2)

• It is important to focus on the initial eyewitness memory tests conducted early in the police investigation, *prior to memory contamination* (only these tests are reliable)

• In the case of Charles Don Flores, the initial tests provide *powerful evidence of innocence*

• Yet no jury ever heard any of that evidence:
  • **Recollect**ion: “white male with long hair”
  • **Reproduction**: The composite sketch (of a white male with long hair)
  • **Recognition**: The rejection of a lineup containing a good photo of Flores
Conclusion (2 of 2)

- In response to various appeals, the prosecutors have claimed that the jury would have convicted Flores even if the witness had not testified at trial.

- But the question is this: would a jury have convicted Flores with the eyewitness evidence, properly understood as providing compelling evidence of innocence?