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Reliability of Eyewitness Testimonies

SHATAXI JAISWAL[1]

ABSTRACT

The emerging realisation that identification of an eyewitness evidence is just not as trustworthy as it once was formerly thought being is among the most significant outcomes of utilising postconviction DNA testing in the legal system for crimes. In 75 percent of US DNA exonerations, incorrect witness identifications served as the main justification for erroneous convictions.

Despite advancements in science concerning Courts have not shown how human memory and other factors can affect eyewitness identifications a strong inclination to employ this scientific understanding when making decisions on cases. Two scenarios have been chosen for consideration in this article. The New Jersey Supreme Court was the first in State and Federal jurisdictions in the US to rule in S v. Henderson 27 A 3d 872 (NJ 2011) that evaluated eyewitness testimony using a science-based methodology. Another case being discussed is S v. Mdlongwa 2010 2 SACR 419 (SCA), a ruling by the Appellate Court of South Africa, where the offender was found using the testimony of an expert on CCTV footage and an eyewitness narrative. The research findings on estimator variables recognised in S v. Henderson are covered in part one of this article. The purpose of part two is to examine S v. Mdlongwa in particular to ascertain the degree which the results of psychological study on eyewitness reliability are acknowledged in South Africa.

The Henderson court recognised that the laws controlling the use and admissibility of identifying the results of numerous social science studies were far behind the evidence. Additional State courts across the US have taken note of the new wave that S v. Henderson introduced. For instance, The members of the Supreme Court in Massachusetts organised an eyewitness evidence study group and the report that came out of it suggested, among other things, that judges be made aware of contemporary psychological concepts, that guidelines for identifying eyewitnesses to the jury be updated, and that judges and attorneys should continue their education. In South Africa, these aspects may and must to be acknowledged and taught about.

***Keywords**: Evidence, DNA, Postconviction, Exonerations, Identification, Eyewitness.*

I. INTRODUCTION

In a criminal trial, identifying the offender is frequently the only matter that needs to be

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decided. Generally speaking, the main source of evidence used to support belief systems is eyewitness testimony. The increasing realisation that identification of an eyewitness evidence is just not as trustworthy as it once was formerly thought to be has led to the implementation DNA testing within the context of criminal justice. Inaccurate eyewitness accounts in the US identifications accounted for the majority in over 75% of DNA exonerations of false convictions. The true scope of the issue is difficult to understand because, while Witness testimony is frequently required for other crimes like robbery, the evidence is typically not DNA testable. Due to the fact that an innocent gets penalised for a non-violent offence and the real offender is free to continue endangering society, The innocent people are the ones who damage the criminal justice system as a whole. To believe that these problems do not affect the South African legal system would be foolish. and that they only affect foreign jurisdictions.

II. UNDER THE INDIAN EVIDENCE ACT OF 1872, AN EYEWITNESS

The Indian Evidence Act of 1872 states in section 3 that there are two main categories of witnesses:

1. The witness's statement
2. Documentary proof

Indian Evidence Act, Section 3(1) applies to the eyewitness testimony. An eyewitness's declaration made while testifying provided in this part has significant evidentiary significance according to Indian law. A witness in Madhu Madhuranatha v. State of Karnataka[2] is someone who can testify in court or otherwise and provide information through oral or written depositions. A witness is typically seen as independent unless they are operating under duress, fraud, or other dishonest means.

As per to Section 118 of the Indian Evidence Act, each individual must be qualified to testify in court unless they are excused by a legal handicap. For example, a mad individual cannot be a witness. Indian Evidence Act, Section 134 is another clause that enhances the credibility of a witness. This clause establishes the rule that no specific number of witnesses mandated by law may be needed to substantiate a claim. A single witness may be sufficient in a court of law to establish a fact. According to the Supreme Court, conviction can occur even when there is only one witness.

III. SIGNIFICANCE OF EYEWITNESSES IN INDIAN LAW

According to Indian law, an eyewitness's testimony is crucial to the trial process and the

[2] Madhu Madhuranatha & Anr vs the State Of Karnataka, Criminal Appeal No.1357-1358 of 2011

preservation of the court system's impartiality. In essence, eyewitnesses are important throughout the preliminary trial process, which is when the foundation of the case is established in front of the court. As per section 164 of the Cr.P.C., all witness assertions are documented as evidence. The three-tier process of the principal examination, interrogating and re-examining witnesses in cross-examination comes after the statements are recorded under oath. Utilising the criminal justice system, witnesses has been considered by the Supreme Court, as was decided in the matter of State of Uttarakhand & Ors. v. Vikas Kumar Roorkewal[3]. The court established its the fact that The criminal justice system is significantly reliant on the witnesses. In a related decision, the Supreme Court determined that enacting laws to safeguard witnesses can aid in ensuring a fair trial.

IV. ACKNOWLEDGMENT OF EYEWITNESS IDENTIFICATION SCIENCE

Long before DNA testing became commonplace, psychologists cast doubt on the veracity of eyewitness reports. Hugo Münsterberg contended in the early 1900s that psychological knowledge may inform legal judgements in situations requiring the evaluation of eyewitness testimony. Psychologists did not, however, begin doing systematic experimental research on the factors and error margins of crime witness evidence until the middle of the 1970s. In a substantial body of studies on the identification of eyewitnesses during the past thirty years has emerged. Studies in the social sciences reveal a multitude of reasons why eyewitness misidentification occurs.

The research on scientific eyewitness identification typically makes the difference between system variables and estimator variables factors. Estimator variables are those that influence The criminal court system does not have jurisdiction over eyewitness identification accuracy. System factors, which are within the criminal justice system's jurisdiction, also have an impact on the precision of eyewitness identifications. Estimator variables typically relate to acquisition-related situational aspects that are outside the purview of systemic reform, such as the presence of firearms, arousal, distance, and lighting, etc.[4]

Nevertheless, courts have not demonstrated a willingness to use scientific information about human memory or additional elements that may affect eyewitness identities in making decisions about cases. In certain cases, courts are aware of how certain elements affect the way decisions are made and occasionally decision-makers have failed to consider study results that

[3] Vikas Kumar Roorkewal vs State Of Uttarakhand & Ors, Transfer Petition (Criminal) No. 29 of 2008

[4] Know the Cases: Raymond Towler, INNOCENCE PROJECT, http://www.innocenceproject.org/Content/Raymond_Towler.php

can help the fact-finder assess eyewitness testimony.

(A) Elements affecting eyewitness credibility

The following factors are addressed in relation to the dependability or trustworthiness of eyewitnesses:

1. **Environment**: An eyewitness's capacity to precisely perceive and remember details can be greatly impacted by the circumstances surrounding an incident. Distractions, dim illumination, obstacles, and distance can all interfere with correct perception and recollection. Whether or not they are a victim, everyone experiences stress and mental trauma, which impairs observation accuracy.
2. **Anxiety of Harassment**: People may experience this anxiety as a result of stress, being socially stigmatised, being intimidated, or receiving threats that could influence their testimony during an inquiry or trial.
3. **Human memory**: The idea that eyewitness testimony is a trustworthy source of information stems from the knowledge that the human brain is adept at gathering and obtaining event-related data. However, human memory is not always reliable, and things like stress, trauma, terror, and the passage of time can all have an impact on how well an eyewitness perceives and remembers what happened. This also contributes to incorrectly identifying and interpreting the accused.
4. **Leading Questions**: The way that questions are asked of eyewitnesses might influence their memory and cause them to form erroneous associations. During the course of the investigation, suggestive tactics and probing questioning may unintentionally cloud eyewitness recollections, producing testimony that is not trustworthy or truthful.

V. A COMPARATIVE PERSPECTIVE

How to apply scientific discoveries to legal decision-making to avoid some of the significant issues associated with firsthand accounts has endured. Expert testimony has been permitted to inform juries in certain places within the United places of America (USA), however, courts have opposed this strategy since it is a costly as well as time-consuming way to handle the issue. Expert testimony about the shortcomings it is unlikely that eyewitness testimony will be accepted in South Africa since the procedures for gathering eyewitness testimony are thought to be common sense and should be known by the presiding officer. Furthermore, it's a common

misconception that cross-examination of eyewitness evidence can reveal any inaccuracy.[5]

This viewpoint ignores the possibility that a few elements influencing the accuracy of identifying eyewitnesses could run counter to popular opinion of individuals, and that cross-examination is an insufficient instrument to reveal identity mistakes committed by a truthful but inaccurate witness. Two situations have been selected for the following examination and debate. The United States' first State and Federal court was the Supreme Court of New Jersey to establish a science-based method for assessing eyewitness testimony in S v. Henderson. Another case being discussed is S v. Mdlongwa[6], a ruling from the offender was recognised by the Appeal Court of the Supreme Court in South Africa using the testimony of a CCTV image expert and an eyewitness account.

VI. THE ESTIMATION VARIABLES THAT IMPACT THE DEPENDABILITY OF EYEWITNESS TESTIMONY

1. Stress

Elevated levels of stress significantly diminish the precision of eyewitness recollections. The court discovered that people often remember details are better under circumstances of mild tension or arousal. The court verified the inverse relationship between stress and eyewitness recall accuracy based on the Special Master's report. In other words, a witness's memory for specifics, such as the name of the culprit, decreases the more stress she experienced at the scene.

Charles Morgan's 2004 study served as the basis for the example used to show this association. The researchers tested the relationship between stress and recall accuracy using a military "survival training" scenario. The average age of the military troops who served as the test subjects on active duty, was 25, and their average service history was four years. After every participant had both non-stressful and stressful questioning, different techniques were employed to assess the subjects' capacity to recognise the interrogator. The tense situation comprised a forty-minute questioning in a brightly illuminated space, with the subject facing the interrogator. Just 34% of the subjects were able to determine who is the interrogator. accurately. In a comparable under low-stress circumstances, 76% of the participants correctly identified the questioner based on a picture array.

In a separate sample, just 12% of the participants in the low-stress experiment made the

[5] A fourth eyewitness who claimed to have seen Towler in the park at the time of the incident without the children also testified at trial.
[6] S v Mdlongwa 2010 2 SACR 419 (SCA)

incorrect choice, compared to 68% of the stressed-out subjects who selected someone else than the genuine interrogator from the supplied images. The experiment mentioned above, which the court cited, amply demonstrates the impact of stress on eyewitness recollection. The results of this experiment clearly show that courts that view murderous threats and gunshots as "events that tend to focus a witnesses' [sic] attention" may be misguided because there is scientific evidence to suggest that these kind of stressful occurrences may impair memory. Misidentifications could arise from the above-mentioned circumstances. Every case of misidentification carries the risk that the person making the decision will find someone innocent guilty.[7]

The Henderson court concluded that although there is no set definition of "high stress," each case must be evaluated individually, significant levels of stress are likely to impact a witness's identification reliability. The accuser acknowledged that the likelihood of impaired identification is higher in high stress than in mild stress. Studies conducted by scientists support such conclusion. A review of 63 research articles found "considerable support for the hypothesis that high levels of stress negatively impact both accuracy of eyewitness identification as well as accuracy of recall of crime-related details".

2. Weapon-focused

The term "weapon focus" describes a component that compromises the validity of eyewitness accounts. When something is utilised as a weapon in a criminal act, it is most often to distract the witness from focusing on the specifics of the crime by drawing their attention away from the weapon the criminal is holding. If the crime is brief, The capacity of the witness to identify the offender and provide a description of their appearance may be compromised by their visual focus on a weapon. An eyewitness's concentrated gaze on the weapon that this idea is based on the information that the accused person possesses at the time of the alleged act. Advocates of this perspective think that The eyewitness's ability to see other details is hampered since all of their visual focus is diverted to the weapon. Chief Justice Rabner affirmed the findings of Nancy Steblay's meta-analysis on this subject. Data from several research on the topic were gathered and examined in this meta-analysis to see if the existence of a weapon may genuinely have an impact on an eyewitness's recollection or impression of an actual incident. In 19 weapon-focused experiments including over 2,000 identifications, Steblay discovered that having a firearm around decreased accuracy on average by roughly 10%. Half of the witnesses in a different research saw someone carrying a syringe in a way that immediately threatened

[7] Richard A. Wise et al., A Tripartite Solution to Eyewitness Error, 97 J. CRIM. L. & CRIMINOLOGY 807, 811 (2007)

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the other part, the witness observed the same individual carrying a pen.

In the first group, sixty-four percent of the witnesses misread a filler from a lineup without a target, as opposed to thirty-three witnesses in the second group. Another factor influencing a witness's capacity to characterise an offender is weapon focus. "Weapon-absent condition[s] generated significantly more accurate descriptions of the perpetrator than did the weapon-present condition," according to a meta-analysis of 10 studies. Therefore, the existence of a visible weapon might influence the precision of a witness's account of the offender and the validity of an identification, particularly in situations where the interaction is brief.

3. Time Frame

Reliability may be impacted by how long an eyewitness stays at a scene. As determined by the Special Master, the Henderson court acknowledged that "although a quick or transient touch is less likely to result in a correct identification than a longer exposure, but there is no minimum duration needed to establish an accurate identification."

4. Lighting and Distance

Reliability can be reduced by farther distances and dim lighting. It goes without saying that when someone is nearby, it is simpler to recognise them, and that distance reduces clarity. It is more difficult to see well in dimly lit areas. As a result, unfavourable lighting and a larger gap between a witness and the offender can make an identification less reliable. Scientists' subsequent study has confirmed these basic conclusions.

5. Observational Features

Judge Rabner acknowledged that factors such as age and degree of intoxication can influence how credible eyewitness evidence is. The tribunal mentioned the Special Master's conclusions, which were according to the research of Dysart et al. and showed that "low alcohol intake produces fewer misidentifications than high alcohol intake" and that "the effects of alcohol on identification accuracy show that high levels of alcohol promote false identifications." The court also relied on Pozzulo and Lindsay's research, which showed that the age and level of intoxication of a witness might have an impact on how reliable an identification is. Age-related reductions in witness accuracy are also demonstrated by other studies. Twelve studies demonstrated this. Young witnesses, who were between the ages of 19 and When examining target-absent lineups, younger witnesses—those between the ages of twenty-four and sixty-eight to seventy-four—were more accurate. However, there is conflicting evidence about the role that a particular age has in the accuracy of identifications.

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VII. TRIAL SAFETY MEASURES AS A BASIS FOR EXPERT EVIDENCE EXCLUSION

It should come as no surprise that the Court excluded expert testimony due to the protections the trial provides. The legal community seems to place a great deal of trust in the ability of interrogation in cross-examination to expose the weaknesses in the testimony given by observers in general. Juror cautions seem to be equally trusted in their ability to steer juries towards decisions based on logical analysis of the facts. However, there are solid reasons to believe that these feelings are misguided.[8]

The "privacy of psychological facts" is the issue that the tribunal of facts must deal with. What and when we want to know whether the evidence of eyewitness identification is the result of healthy cognitive functions, whose integrity hasn't been compromised. But it appears that there is no practical way to examine these "facts" closely enough through the trial. Its systemic positioning, which usually takes place numerous months or, as in this instance, years following the relevant events raises the possibility that the witness will learn something that seems to bolster the identification's accuracy made, which could boost their confidence in it. However, interactions between the observer and additional parties during the interim between the event's observation and the trial could result in more risks than just inflation of confidence.[9]

Rebuilding and malleability characterise memory. We are able to obtain data from outside sources and remember it as knowledge gleaned from our personal seeing of an occurrence. The language used by those who might ask us about an event might distort our memories, and using our imagination can help us build vivid memories of it. People's memories "are not only the sum of what they have done [or seen]...[they] are also the sum of what they have thought, what they have been told, and what they believe," as Loftus puts it. Finding out how much memory has the potential to become distorted, let alone if that exposure has really caused distortion—presents a challenge.[10]

There is an established recognition of the forensic restrictions of cross-examination, despite the fact that some courts appear to believe that it is a sufficient method assessing the reliability of evidence derived from eyewitness identification. The Devlin Committee examined how eyewitness identification testimony was handled in England and Wales in the 1970s. The Committee came to the conclusion that cross-examination was a useless technique for

[8] John P. Rutledge, They All Look Alike: The Inaccuracy of Cross-Racial Identification, 28 AM. J. CRIM. L. 207, 211 (2001).
[9] Saul M. Kassin et al., On the “General Acceptance” of Eyewitness Testimony: A New Survey of the Experts, 56 AM. PSYCHOL. 405, 411 tbl.3 (2001)
[10] Daniel Goleman, Studies Point to Flaws in Lineups of Suspects, N.Y. Times, Jan. 17, 1995, at C1.

evaluating its dependability. It stated that in cases when witness testimony is given as an account of an outside occurrence, cross-examination has forensic significance because it might reveal contradictions in the witness's statement and any dubious presumptions they may have had.

However, identifying evidence is presented as a simple claim that results from a number of mysterious internal workings; there's no narrative to analyse. Circumstances that raise questions about the validity regarding the defendant's identification by a witness may come to light during cross-examination. The witness may have drunk alcohol, experienced stress from the events, or the lighting may have been inadequate, but these details may not provide insight into the cognitive processes that led to the identification. Cross-examination has been acknowledged by some courts to have minimal forensic value. For example, it was acknowledged in US v. Downing that "cross examination can hardly be seen as an effective way to reveal weaknesses in a witness's recollection of an event, to the extent that mistaken witness may retain great confidence in an inaccurate identification." Furthermore, empirical data indicate that factfinders face significant challenges in using cross-examination to discern between truthful and false witnesses.

VIII. USING SCEPTICISM TO SUPPORT THE EXCLUSION OF EXPERT WITNESS TESTIMONY

The justification for accepting expert testimony regarding the accuracy identifying information from eyewitnesses is that fact-finder's frequently place an excessive amount of emphasis on the evidence of eyewitness identification. It is thought that expert evidence can offset this inclination. Given that it more accurately captures the constraints of this type of expert witness, this looks to be a downplayed version of the first argument and is therefore more likely. Proponents of this viewpoint contend that, rather than usually making the jury doubtful of identification evidence, expert testimony should alert them to the variables that could compromise the evidence's correctness. I don't think this allegation can be supported, though.[11] Assume that testimony from an expert is accepted when there is a dispute over identification evidence when the defendant and witness have distinct racial appearances. He will tell the jury that when the offender had a different ethnic appearance, 51% of participants in experimental

[11] Richard A. Wise et al., A Tripartite Solution To Eyewitness Error, 97 J. Crim. L. and Criminology 807, 816 (2007). See also Gary L. Wells & Donna M. Murray, Eyewitness Confidence, in Eyewitness Testimony: Psychological Perspectives 155, 155-70

studies were able to identify someone else. The jury will become more aware of the issues surrounding the kind of evidence they must assess because of the testimony of the expert.

However, they should have adopted the stance that the identifying evidence of the witness—as well as any other evidence of an individual's recognition of an individual with a distinct ethnic appearance—is almost certainly false if they were to acknowledge the testimony of the expert and apply it logically. The fact-finding tribunal should be guided by reasonable inferential reasoning to dismiss the evidence.[12]

This possibility seems to provide support for the decision to exclude expert testimony from Gauge, which was based on the worry that it would foster "a climate of disbelief." This is an issue that has been raised in the past. Receiving such expert testimony could "foster apprehension in the timorous juror and give him or her an excuse for not discharging that juror's duty to the community that he or she has sworn to serve," according to McIntosh, the Ontario Court of Criminal Appeal.

The issue the fact that this argument presumes a trial procedures give the jury a way to assess the reliability of the suspect's identification by a witness and the constraints of its primary forensic procedure, cross-examination, with regard to eyewitness testimony. Evidence of identification has already been mentioned. The fact-finder will be dependent on their own understanding of how memory works in humans, how identification is processed cognitively, and how easily these processes can be distorted or warped in the absence of expert testimony. If this is insufficient, probabilistic reasoning may be used to conclude that the testimonies of the witnesses are trustworthy. This may not be any more justified or satisfying in many respects than the opposite conclusion, which may result from an expert witness's generalised testimony. An issue of risk allocation may ultimately arise when determining whether expert testimony is admissible. Do jurors that are left to their own devices run the greater danger of convicting innocent people, or is the cost of the guilty being found not guilty too great to justify the regular admission of this kind of testimony?

IX. MAIN SHORTCOMINGS OF EYEWITNESS TESTIMONY

Although eyewitness testimony is essential its numerous shortcomings to the administration of justice frequently render it an untrustworthy source of evidence. According to an English Law survey, almost 75% of erroneous convictions are the result of unreliable eyewitness testimony.

[12] ss will make a positive—though not necessarily correct—identification"). 60. U.S. DEP'T OF JUSTICE, EYEWITNESS EVIDENCE: A GUIDE FOR LAW ENFORCEMENT (1999), available at http://www.ncjrs.gov/pdffiles1/nij/178240.pdf.

The Indian legal system experiences the same situation, with false convictions occurring annually. A number of factors influence eyewitness accounts, lowering their accuracy. Eyewitness identification is significantly impacted by the following factors:

- Being in incredibly stressful situations when investigating a crime scene or while identifying someone.
- Fear or anxiety brought on by the weapons found at the crime scene.
- Using a mask the offender's wig or any other disguise.
- Any kind of difference in race between the suspect and the witness.
- Brief period spent watching while a crime is being committed or during the identification procedure.
- Absence of witness observance.
- Absence of any distinguishing features on the suspect, such as scars, tattoos, etc.

X. COMPARATIVE EVIDENTIARY VALUE OF FORENSIC REPORTS AND EYEWITNESSES

The Indian legal system places a high value on eyewitness testimony. In the majority of criminal cases, the court will prioritise the testimony provided by eyewitnesses.[13] The admittance of reports on science, technology, or forensic science was not previously specifically covered by the Code of Criminal Procedure, 1973, or the Indian Evidence Act, 1872. A higher evidentiary value was assigned to forensic science when studies on the limitations of eyewitness evidence and the significance of forensic and medical research were acknowledged. Two additional portions were included following the Criminal Procedure Code (Amendment) Act of 2005, allowing with the assistance and backing of a medical expert, the investigating officer can get a DNA sample from both the accused and the victim. However, the majority of these parts deal with a medical evaluation in sexual crime instances. DNA or forensic reports are still not considered to have much evidentiary significance. The majority of the time, judges reject it on the grounds that witness testimony is preferable and there are legal or constitutional restrictions. However, the likelihood of erroneous convictions will be decreased if the forensic reports are given greater evidentiary weight in addition to the eyewitness testimony.

[13] Desiree Evans, Texas Justice: Where Wrongful Convictions are the Norm, INST. FOR S. STUD. (Sept. 1, 2009, 10:23 AM), http://www.southernstudies.org/2009/09/texas-justice-where-wrongfulconvictions-are-the-norm.html

XI. Conclusion

It is impossible to overstate the importance of eyewitnesses because their first-hand recollections of events are vital for court cases. Human memory is dependent on a variety of conditions, even with a fresh memory. Nevertheless, in order to obtain the most reliable information from a genuine witness, the court must set up the witness examination procedure so that the witness's memory can be used to its maximum potential. States have an obligation to guarantee the witness's personal and family safety when he comes to contribute to the administration of justice.

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