

Rape victim studying science of memory after man dies serving wrongful sentence

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Michele Mallin said she was "100 percent sure" when she identified Timothy Brian Cole as the man who raped her.



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MICHAEL STRAVATO/Special Contributor

Michele Mallin of Baytown, who wrongly identified a man in her 1985 rape, is learning what some social psychologists have preached for more than a century: A crime victim's memory is fleeting and often faulty.

Her resolve never wavered, Ms. Mallin said, until she learned last May that DNA testing had invalidated her 1985 identification. The revelation came nearly nine years after Mr. Cole died at 39 in a Texas prison from an asthma attack.

"I was more shocked than I think I had ever been in my entire life," Ms. Mallin said during a recent lawyers workshop in Fort Worth.



RICHARD W. RODRIGUEZ/Special Contributor

Ruby Session, with sons Rodney Kennard (left), Cory Session and Reginald Kennard, all of Fort Worth, hopes to clear the record of Timothy Cole, who died in prison for a rape he didn't commit.

The Dallas Morning News is identifying Ms. Mallin because she has chosen to speak publicly about her rape to help Mr. Cole's family win a posthumous pardon.

More than two decades after she quit Texas Tech University because of the rape in Lubbock, Ms. Mallin, 43, is trying to educate herself on the science of human memory and what it can tell her about the tenuousness of eyewitness identifications.

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The problem starts with how the mind commits faces to memory. Researchers compare the process to piecing together the visual images a camera would capture.

"It's really a process of construction and reconstruction," said Dr. Elizabeth Loftus, a leading memory researcher at the University of California at Irvine.

The human eye collects information in what Dr. Loftus, a psychology professor, called "fixations" that last a fraction of a second. "Even though it feels to us like a movie camera, actually we are taking in the world in a series of eye fixations," she said.

Memory of those original images is subject "not only to decay, but to contamination and distortion" from outside influences, Dr. Loftus said. She gave the example of a witness being fed false information about the person who was identified.

"Then you're going to think that's the guy, rehearse the face in your story, and pretty soon you can develop a strong memory that that's the person even though it isn't," she said.

The memory process works well when someone is shown a face repeatedly. But when the exposure is episodic, "we end up with the gist" of a person's looks, said Dr. Gary Wells, a nationally known expert on eyewitness testimony and a professor of psychology at Iowa State University.

Stress that accompanies being a crime victim interferes even more with the ability to form memories, Dr. Wells said. All of the mind's energy, he said, is channeled into the survival instinct.

Studies show that victims of armed robberies, for example, tend to develop a "weapon focus" rather than focusing on the gunman's face.

Cross-race IDs

One of the most common problems cited by memory researchers occurs when one person tries to identify another person of a different race or ethnicity.

"You might, for example, look at an Asian face if you're Caucasian and notice the eyes, which are somewhat unusual," said Dr. Loftus. "But later on, when I put that Asian face in a lineup with a whole bunch of Asian faces, it doesn't help you very much to discriminate.

"So the pattern of where we look may be different when we are looking at different race faces," Dr. Loftus said.

Dr. Wells concurred: "It's a very reliable phenomenon that people have much more difficulty recognizing a face of a person they've seen on only one occasion who's of a different race than of their own race."

Ms. Mallin is white. Mr. Cole was black.

"I didn't spend a lot of time around black people when I was growing up," she said in an interview with *The News*. "I grew up in a mostly all-white neighborhood in Baytown, Texas."

Ms. Mallin said she doesn't know whether racial differences caused her to misidentify Mr. Cole. Nor does she know whether it was because his was the only Polaroid snapshot in a lineup otherwise composed of mug shots.

She said she never saw a photograph of Jerry Wayne Johnson, another suspect who began confessing 13 years ago to being her rapist. He is serving life in prison for two other rapes in Lubbock. He cannot be prosecuted for assaulting Ms. Mallin because the statute of limitations has expired.

She said she believes that Lubbock police and prosecutors manipulated her by repeatedly describing Mr. Cole as "a low-life hood." The Army veteran had a misdemeanor arrest record in Lubbock for gun and marijuana possession.

Neither George White, the lead detective in the case, nor Jim Bob Darnell, the Lubbock County district attorney who prosecuted the case, returned phone calls from *The News* seeking comment.

From everything she now knows, Ms. Mallin said, the law should not allow prosecutions based on eyewitness identifications without corroboration.

"Obviously, we're human," she said. "We make mistakes."