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Police lineup methods often flawed, experts say

Nationally, experts want corrections to what they believe are flaws in police lineups that led to the conviction of Luis Diaz -- but major reforms haven't come to South Florida.

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A growing national movement to change police lineups to prevent mistaken witness identifications -- like those that put Luis Diaz in prison for 26 years until his release Wednesday -- hasn't made its way to South Florida.

Procedures in the region have changed since 1979, when the Diaz case was being investigated. But Miami-Dade County and Miami police and the Broward Sheriff's Office -- as well as the rest of state -- use methods that experts say are risky because they can trick the mind, tainting witness identifications.

Both police departments mostly use photo lineups. They show a witness a suspect's mug shot along with mugs of five other people who look similar. The lineups are supervised by detectives involved in the cases who know who the suspect is.

That runs contrary to the "reform model" used in New Jersey and several major cities. Investigators present mug shots one at a time to witnesses. Lineups are conducted blindly by an investigator who doesn't know which person is the suspect.

Researchers say that when witnesses are shown all six photos at once -- rather than one at a time -- a natural tendency kicks in to compare faces and judge which looks most like the one they remember. They make a relative judgment as opposed to a true recognition, experts said.

Here's how James Doyle, a Boston attorney and author of *True Witness: Cops, Courts, Science and the Battle Against Misidentification*, compares the two methods:

"Showing the photographs all at once is like giving the victims one multiple-choice test, where ``none of the above" is not really an option. Showing the photographs one at a time is like giving the victims six true-or-false tests."

The batch method leads to misidentifications that put innocent people in prison, said Gary Wells, an Iowa State University professor who has pioneered research during the past two decades.

SHOULD BE CATALYST

Attorney Barry Scheck, cofounder of the New York-based Innocence Project that helped Diaz win his release from prison, said the case should push police around the country to adopt the reform method for lineups. Of the 160 post-conviction DNA exonerations championed by the Innocence Project, 120 involved mistaken witness identifications.

"This reform movement has reached a tipping point, and I strongly feel the Diaz case is going to push it over the top," Scheck said.

Diaz, a Cuban American who served 26 years in prison for seven rape and attempted rape convictions, was released from prison Wednesday -- thanks to recantations by two victims and new DNA evidence that has cast doubt on all of the charges against the 67-year-old former fry cook.

At the time of the Bird Road Rapist case, Diaz was a short, skinny man who spoke practically no English. Yet eight victims picked him out of a variety of lineups as their attacker, even though original descriptions of the rapist said he was a tall, stout Latin man who spoke English with an accent.

Miami-Dade police Cmdr. Linda O'Brien declined to comment about the Diaz case, which involved photo lineups, live lineups with the prime suspect and others, and a video of the live lineups.

Police now mainly use photo lineups in 99 percent of criminal cases.

O'Brien and Lt. Veronica Ferguson defended the department's long-standing policy of presenting photos of a suspect and five others with similar profiles all at the same time to a witness or victim. They said a case supervisor or detective oversees the presentation.

"When these detectives do a lineup, it's done the proper way," she said. "Lineups are an investigative tool. . . . With DNA technology, we can now eliminate someone as a suspect as much as charge them."

FEEL PRESSURE

Experts say that because witnesses know police place great value on identifications, they pressure themselves to come up with an answer in lineup situations.

Wells said research shows that when people look at a lineup, the tendency is to quickly home in on the one person who looks most like their attacker -- even if the real perpetrator isn't in the lineup.

"It's almost like a process of elimination," he said. "They pick the person who looks most like the attacker relative to the others in the lineup. It's not true recognition, it's something else."

But when witnesses view photos one by one, he said, "they can't compare one

to the other because they don't know what's coming next, so they have to dig deeper to compare each photo independently to their memory."

Experts who embrace the reform policies say the person showing the victim or witness the photos should not know who the suspect is.

"The concern isn't that a detective who does know will intentionally try to influence a witness or rig the lineup," said Doyle, who wrote the book on misidentification. ``What we're trying to prevent is the detective unintentionally giving clues through body language of the feedback given to the witness."

Lori Linskey, a deputy attorney in the New Jersey attorney general's office, said that her office implemented the reform model of lineups statewide in 2001, following a controversial rape case that went to that state's Supreme Court. New Jersey was the first state in the country to do so.

"We got our marching orders that we had to come up with a way to make eyewitness identifications better, or the court was going to make the use of that evidence more difficult to use at trial," Linskey said.

Linskey, who teaches classes on lineups to police agencies and prosecutors, echoed what Wells and other researchers argue.

"It's a different way of thinking of how you work with witnesses," Linskey said. ``If you go to a crime scene, you collect that evidence in a special way to avoid that it doesn't get tainted. When you're dealing with a witness memory of a crime scene, you have to follow very specific protocol so you extract that memory in the best way possible."