Police use one-man 'showups' to quickly nab suspects - and sometimes choose wrong

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Billy Wayne Miller was asleep in a back bedroom of his father's modest Oak Cliff home when three Dallas police officers burst through the front door around 3 a.m., guns in hand, yelling another man's name.

Still groggy and clad only in his underwear, Mr. Miller was taken to the front porch. There he spotted a woman in a squad car glance at him and nod to an officer seated beside her before the car drove away.

That split-second, one-man lineup cost Mr. Miller 22 years of his life on a rape conviction that DNA evidence later invalidated.

Almost a decade has elapsed since the U.S. Justice Department recommended stricter limits on the use of "showups," as the practice is known in police circles. More than 40 years ago, the U.S. Supreme Court deemed them dangerously suggestive and discouraged their use.
Yet showups have been cited as a critical flaw in at least 20 percent of the 220 DNA exonerations nationwide. Three of the 19 Dallas County wrongful convictions involved a showup, according to court records.

In each case, the suspect was brought before the victim under police escort. One man was displayed to the victim a day after the crime. He and the suspect in a second showup asked to be put in lineups but were refused.

"I may well have had a better chance if I'd had a lineup," said Billy James Smith, who was also wrongly convicted of rape based on a showup. "With other black men, of course."

Showups are also known as "drive-by" identifications because witnesses are driven in a squad car past the suspect.

In practice, they occur anywhere police choose: hospital rooms, police station hallways, courtrooms. They can also be done by showing a single photograph.

The idea is to identify a suspect while an eyewitness's memory is fresh and before the perpetrator can flee the area.

The danger, critics say, is that in the immediate aftermath of a crime police may stop someone on little more than a hunch, and witnesses may be too eager to please.

"I think it sends a clear message to the witness the police must have a reason to think this guy is a good suspect so he is probably the guy," said Jim McCloskey, executive director of Centurion Ministries Inc., a nonprofit prisoner advocacy group based in Princeton, N.J.

Mr. McCloskey's work has helped free more than 40 wrongly convicted people nationwide, several of them in Texas. He is investigating a robbery-murder conviction in Dallas that rested on a showup.

"This is a clear case of slam-bam-thank-you-ma'am misidentification," he said.

Scant oversight

Showups continue in Dallas County and elsewhere because police value them, judges seldom suppress them and juries are swayed by the results.

They are done with few rules and scant oversight. Street cops with little formal guidance on identification procedures typically conduct them, and detectives trying to preserve a key part of their case defend them.

No one keeps statistics on their use.
To better understand the prevalence of showups in Dallas County, *The Dallas Morning News* reviewed more than 20 years of state appellate court opinions. *The News* found more than 100 felony trial convictions involving showups. Trials represent just a fraction of how charges are disposed; most result in plea agreements.

How often showups result in misidentifications remains a matter of scholarly debate. But it is a given that one-person showups can pose a higher risk of error than the standard six-person photo array or live lineup.

Each of the Dallas County exoneration cases with a showup involved a rape that occurred between 1982 and 1986, when genetic testing was unavailable. Police based the charges almost entirely on the victim's one-on-one identification.

Mr. Miller, who was freed in 2006, denounced showups as contrary to the due process rights that identification procedures are supposed to honor.

"You just can't walk up and point and say he did so and so to me, and they go and arrest him without anything other than 'I said.' "

And yet in his case, Mr. Miller said, "that's exactly what happened."

Police officials maintained the showups are both legal and an invaluable crime-solving tool when used properly.

Dallas Police Chief David Kunkle said he thought showups were suggestive, but added, "I don't feel comfortable banning showups right now. I don't think that would be in the interest of public safety and the criminal justice system."

Larry Zacharias, Richardson's police chief, said that his department would soon issue guidelines limiting the use of showups, but that it would be a disservice to crime victims not to afford them the chance to identify a culprit quickly.

"You also have to remember that not all of them are wrong," he said.

Long controversial

Showups have been a source of controversy for decades in America.

In 1927, Harvard law professor Felix Frankfurter, later a U.S. Supreme Court justice, decried the showups used to identify anarchists Nicola Sacco and Bartolomeo Vanzetti in a prosecution many historians view as a mockery of American justice.

The two Italian immigrants were sentenced to death in 1921 and later executed for the robbery and murder of two clerks south of Boston. Several witnesses identified the pair at a local police station while the accused men were directed by police to mimic actions of the robbers.
In 1967, in a decision that still controls the legal admissibility of showups, U.S. Supreme Court Justice William Brennan noted that "the practice of showing suspects singly to persons for the purpose of identification and not as part of a lineup has been widely condemned."

Reform advocates contend the danger of coercion warrants more education and restrictions on the use of showups.

Gary Wells, one of the nation's leading researchers on eyewitness identifications, was part of a U.S. Justice Department task force that urged stricter limits on showups.

In its 1999 report, the panel recommended that showups be conducted only when an officer lacked probable cause for an arrest and after admonishing the witness that the detainee might not be the actual perpetrator.

"They virtually never do that," said Dr. Wells, a psychology professor at Iowa State University. "They say, 'We got a guy, c'mon we're going to show him to you.' And for all the witness knows, they've already MO'd [identified] this guy. They know he did it."

The panel also suggested that police agencies adopt written policies memorializing the appropriate way to conduct a showup. Few police agencies – in Dallas County or elsewhere – noticed.

Of more than two dozen law enforcement agencies in Dallas County, only two (Duncanville and Irving) responded that they had written policies governing showups, The News found.

Ron Waldrop, an assistant Dallas police chief, said he did not know what, if any, training patrol officers receive on showups. The department's policies on identifications do not mention showups, but new guidelines are being written.

In mid-September, after an innocent man was misidentified in a single-photo showup, the Dallas Police Department banned the practice except when a witness knows the suspect by name or face.

"It was inappropriate," Chief Waldrop said, "and we put an end to that."

On-scene identification

Mr. Miller was on parole for armed robbery when Dallas police arrested him Sept. 27, 1983, on the sexual assault charge. The showup, he said, sealed his fate.

Police did not conduct a live lineup or present a photo spread. The victim testified that the first time she saw Mr. Miller after the rape was in court five months later.
The 24-year-old woman, a beauty school student, said Mr. Miller was the man who offered her a ride home as she left a friend's apartment in South Dallas. But instead of taking her home, the woman said, Mr. Miller raped her in a vacant field near Hutchins and again at a house in Oak Cliff.

She described her attacker as a black man with a short Afro. He had a gun and told her he had just been released after 11 years in prison. He said his name was John. She gave a detailed description of the attacker's car, his clothing and the inside of his home.

After she persuaded the man to drop her off at a friend's apartment, the victim summoned police. Police said she led them to the house where Mr. Miller was staying with his father's girlfriend and her grandson.

A car matching the victim's description was parked outside the house. The license plate was one digit off of what the victim had said. A patrol officer testified he felt the car's hood, and it was still warm.

Once inside, police said they found Mr. Miller in a back bedroom. Clothes on the floor matched the victim's description. So did a .357 Magnum revolver found in the top drawer of a nearby desk. Even the Coors beer in the refrigerator matched what the victim had told them.

Her story tracked so closely with what police found that it prompted the lead prosecutor in the case recently to tell The News that he could now "imagine a scenario" where police fed her the details.

The arresting officer denied at trial that Mr. Miller was shown to the victim. But in two separate reports and a sworn affidavit, the case detective, Robert Gage, affirmed Mr. Miller's account of a showup.

"She identified him at the scene," his signed report stated.

Detective Gage – who is now retired and could not be reached for comment – did not testify at trial. He stated in a report that he had interviewed the victim, who identified Mr. Miller at the scene. The case was solved the day of Mr. Miller's arrest, the detective's report said.

The state's case at trial consisted of the victim, the arresting officer and the doctor who did the rape exam.

There were no fingerprints and no biological evidence linking Mr. Miller to the crime.

"If you can't convict on this testimony, you might as well just shut the courthouse down," lead prosecutor Kevin Chapman told the jury.
Jurors needed only an hour to convict Mr. Miller and another to decide he deserved a life sentence.

Mr. Miller said he was stunned. He had rejected a probation deal, he said, and never expected the case to go to trial.

In prison, Mr. Miller said he worked to free himself, reading law books at night, scrawling legal motions with a pencil stub.

In October 2001, he filed a six-page, handwritten petition for a DNA test.

It took almost four years for a Dallas judge to agree and another year to win his freedom.

Today, Mr. Miller lives in a one-story home in Oak Cliff that bears the trappings of newfound wealth. A large flat-screen TV and leather chair and sofa sit in an otherwise sparsely furnished living room.

He purchased the house – and an orange Corvette he calls "my dream come true" – with some of the $500,000 he received from the state as compensation for his wrongful imprisonment.

Now 56, Mr. Miller is recovering from pancreatic cancer and claims to be so broke that he doesn't have enough money to buy gasoline for his lawnmower.

He described himself as a victim of circumstance, a "nobody on parole" whose claims of innocence were ignored.

He theorized that his accuser – who has since amassed multiple arrests for prostitution, arson, assault and drug use – identified him to please the police. She could not be located for comment.

"The whole thing was a complete wake-up for how easy it is for you to wind up with zero," Mr. Miller said, "your whole life gone."

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