

Police can be dead certain, and wrong

WILLIAM R. LEVESQUE

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Deputy Steven Wagner clearly recalled selling crack cocaine to Harry Lee Williams last April in an undercover drug sting.

Asked before trial if he had ever misidentified a suspect, the Pinellas sheriff's deputy answered: "I've not been wrong in 15 years of law enforcement."

He was dead certain Williams was the right guy.

"If there's ever any question in any of my investigations, I will not proceed with them," he said.

But Wagner was wrong, and Williams could prove it. It turns out he was in jail when Wagner said he was on the street dealing drugs. Charges were dropped.

The reliability of eyewitness testimony, long a trusted fixture in the courtroom, has come under increasing attack in the past several years after a wave of exonerations nationally based on DNA evidence. Those and other recent mistaken identity cases in Pinellas raise important questions about the reliability of arrests based primarily on eyewitnesses.

Since 1997, at least a dozen innocent people in Pinellas County have been arrested after a witness, most often a police officer, misidentified them, a review by the St. Petersburg Times shows.

Defense lawyers insist some people are undoubtedly serving time for crimes they didn't commit.

Not everyone is lucky enough to have an ironclad alibi like Harry Lee Williams, who was arrested more than eight months after the drug sale.

"If the guy hadn't been in jail, a jury probably would have ended up convicting him," said Pinellas-Pasco Public Defender Bob Dillinger, whose office represented Williams. "That's pretty scary."

The list of Pinellas cases, involving several police agencies, includes: three men who were in jail when police said they were on the streets dealing drugs; two men who faced life in prison after a witness to a shooting misidentified them; a woman who served 81 days in jail before deputies noticed she didn't have gold

teeth like the dealer they sought; and a man charged with selling cocaine after a drug dealer stole his identity.

"What scares me most is that someone can point across the courtroom and say, 'That person did it,' and it's enough all by itself to put someone in prison," said Clearwater lawyer Denis de Vlaming.

De Vlaming said he would trust eyewitnesses' accounts only if they were identifying a relative or close friend or if the identification is coupled with physical evidence.

But prosecutors and police contend that recent cases of misidentification actually prove the system works, that the wrongly accused can be freed. They say cases are still rare.

"Fortunately, these cases were discovered and corrected," said Pinellas Sheriff Everett Rice, whose deputies have arrested eight of the dozen misidentified defendants. "Cops need to understand that they have to be more careful. But they make thousands of arrests a year and mistakes happen."

When mistakes occur, Rice said, "It's the defendant's attorney's job to find these things out."

Witness IDs dead man

The mistakes are by no means exclusive to Pinellas. Mistaken identity cases are somewhat common around the nation.

Take the case of a Baltimore man charged with murder after a witness identified him in a photo lineup. Baltimore police learned last year that the suspect died a year before the murder.

In their 1995 book, *Mistaken Identification*, professors Brian Cutler and Steven Penrod estimated that out of every 1-million convictions nationally, 5,000 involve innocent people.

The Innocence Project, a group that uses DNA evidence to clear the wrongfully convicted, says 80 percent of the 126 defendants cleared by the group in recent years involve mistaken witness identifications.

Experts in witness identification say mistakes don't have to happen and police can do more.

Gary Wells, a professor of psychology at Iowa State University who has researched identification issues for 25 years, said law enforcement agencies are slow to acknowledge the need for change.

"I think most of the time, police do a great job and get the right guy," Wells said. "But it's easy to never really recognize that sometimes you identify the wrong person."

Wells promotes reforms to cut mistakes.

For starters, Wells said police should always videotape witnesses at lineups or when they look at groups of mug shots so jurors can see how certain they are of their first identification of a suspect.

He also promotes sequential and double-blind lineups, an identification procedure that is used by no police agencies in Pinellas. A few agencies nationally use them, including all in New Jersey.

In a sequential lineup, a witness views one suspect (or mug shot) at a time rather than five or six all at once. This prevents a witness from picking someone based on a mere resemblance to a suspect.

"What victims tend to do is pick the person who looks most like the perpetrator relative to the other members of the lineup," Wells said. "It's a process of elimination. That's the primary cause of mistaken identity."

He said it is difficult for a witness to recognize the absence of the bad guy.

In a double-blind test, a witness looking at a lineup or at mug shots is assisted by an officer who doesn't know the identity of the suspect.

"That's the only proper way to pursue the truth," Wells said. "It's not that we don't trust police. But they're human. They can unconsciously help a witness" pick one suspect or exclude others.

It might be something as simple as an officer saying, "Are you sure it's that one?"

Sometimes the hint is less subtle.

A helping hand

Consider the case of Tommy Pease Jr., 23, convicted by a Pinellas jury of misdemeanor battery in 2001.

A sheriff's deputy who happened to see a possible suspect flee from the scene was shown a group of mug shots by a detective at Pinellas Park police, the agency that investigated.

Deputy Charles Parker said he couldn't recognize anyone. Then, Parker said, the detective pointed to Pease's mug, said he was the suspect and asked Parker if he now recognized him. Parker didn't.

Other witnesses identified Pease, and a jury convicted him. He was sentenced to 120 days in jail.

Assistant Public Defender Ray Rodgers said his office found the person who really was guilty of the attack and convinced prosecutors and a judge that Pease's sentence should be thrown out. He was freed after serving several days in jail.

"I've been here six years, and I never had a client maintain his innocence as strongly as Tommy," Rodgers said.

Bruce Bartlett, a chief assistant in State Attorney Bernie McCabe's office, said the victim in the Pease case still believes he identified the right person.

"I think given the volume of cases we deal with, mistakes are very infrequent," said Bartlett. "The important thing is that these cases are resolved before the defendant goes on trial."

In addition, he estimated that only 10 to 15 percent of all criminal cases involve situations where the only evidence is eyewitness testimony.

If all else fails, then defendants can still prove to a jury they are not the right person, Bartlett said.

George Newton, 20, figured he was going to be convicted when, showing up for an appearance in Pinellas drug court, he learned there was a new warrant out for his arrest for the sale and possession of cocaine last November.

His bail was revoked and he was jailed.

Who would believe a defendant with a drug history showing up at court and telling the judge a Pinellas sheriff's deputy got the wrong guy?

"I figure, why bother saying anything? They're not going to believe me," Newton said.

The deputy was sure Newton was the right man, even identifying Newton by his distinctive tattoos. A confidential informant helping the deputy said he was "150 percent" sure Newton was the one.

Then Newton's attorney, Tom Wadley, discovered his client was in jail when one of the supposed drug deals took place. All charges were dropped.

"I think the typical person sits on a jury and is overwhelmingly willing to accept eyewitness testimony," Wadley said. "When the eyewitness is a cop, the jury sees it as all the more believable."

Wells, the Iowa State professor, said police often think they are immune from such mistakes.

Police, he said, should be asked to identify suspects in the same way as anyone else, using lineups with careful controls.

"What happens is that for some reason the courts cut them a lot of slack," Wells said. "You're a cop? Just tell us if this is the guy you bought the drugs from. We don't permit that from other eyewitnesses."

Sheriff Rice said deputies and officers receive no special training that makes them better witnesses than the general public. But he said they make so many arrests, they learn to be careful and make special note of identifying characteristics.

He said, "Most of the time, police are getting it right."

Then, referring to Newton and Williams and their criminal history, Rice said, "Fortunately, neither of these two guys was innocent of everything."

Rob Warden, executive director of the Center on Wrongful Convictions at the Northwestern School of Law in Chicago, said that kind of outlook is wrong.

"Even if you think these people are amoral members of society you don't care about," he said, "every time you arrest or convict the wrong person that means the person who really committed the crime is still out there."

"And they're going to do it again."

Wrongfully accused

These people were arrested and charged with crimes they did not commit. All were cleared. Naomi Whiting

Whiting spent 81 days in jail after Pinellas sheriff's deputies misidentified her as a woman who sold them crack cocaine in 1999. The real crack dealer had gold teeth; Whiting did not. Deputies apparently didn't check before arresting her. A prosecutor who saw a video of the drug buy noticed Whiting didn't look like the suspect in the video. Whiting's teeth were checked. Charges were dropped.

Ricardo J. Thomas

and Dangelo Q. Hutchinson

An eyewitness identified both men as suspects in a 2000 armed robbery and shooting. St. Petersburg police arrested them and both spent a year awaiting trial on charges that carried potential life terms. Charges were dropped when a Lakeland man confessed to the crime. A third man initially listed as a possible suspect by police was never arrested when police learned he was in state prison at the time of the incident.

Johnny C. Allen Jr.

Allen told his lawyer he had a good alibi to prove he didn't sell drugs to undercover St. Petersburg officers in 1999. But Allen was worried his alibi witnesses wouldn't be credible because they had all served time. It turned out not to be a problem. Allen was in state prison at the time of the supposed drug buy. Prosecutors quickly dropped the charges.

Carla Sue Benjamin

An undercover sheriff's deputy bought some marijuana from a bartender at a Pinellas night spot in 1997. The bartender's name was Jean. Benjamin eventually was arrested even though she didn't have the same name and didn't work at the club. Prosecutors dropped the charge.