

Convicting the Innocent

Where Criminal Prosecutions Go Wrong

(Harvard University Press 2011)

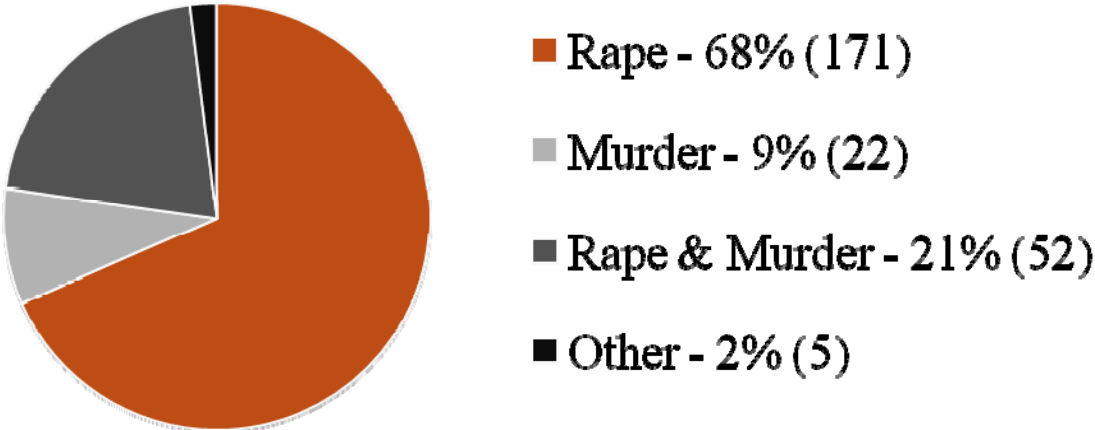
Chapter 3: Eyewitness Misidentifications

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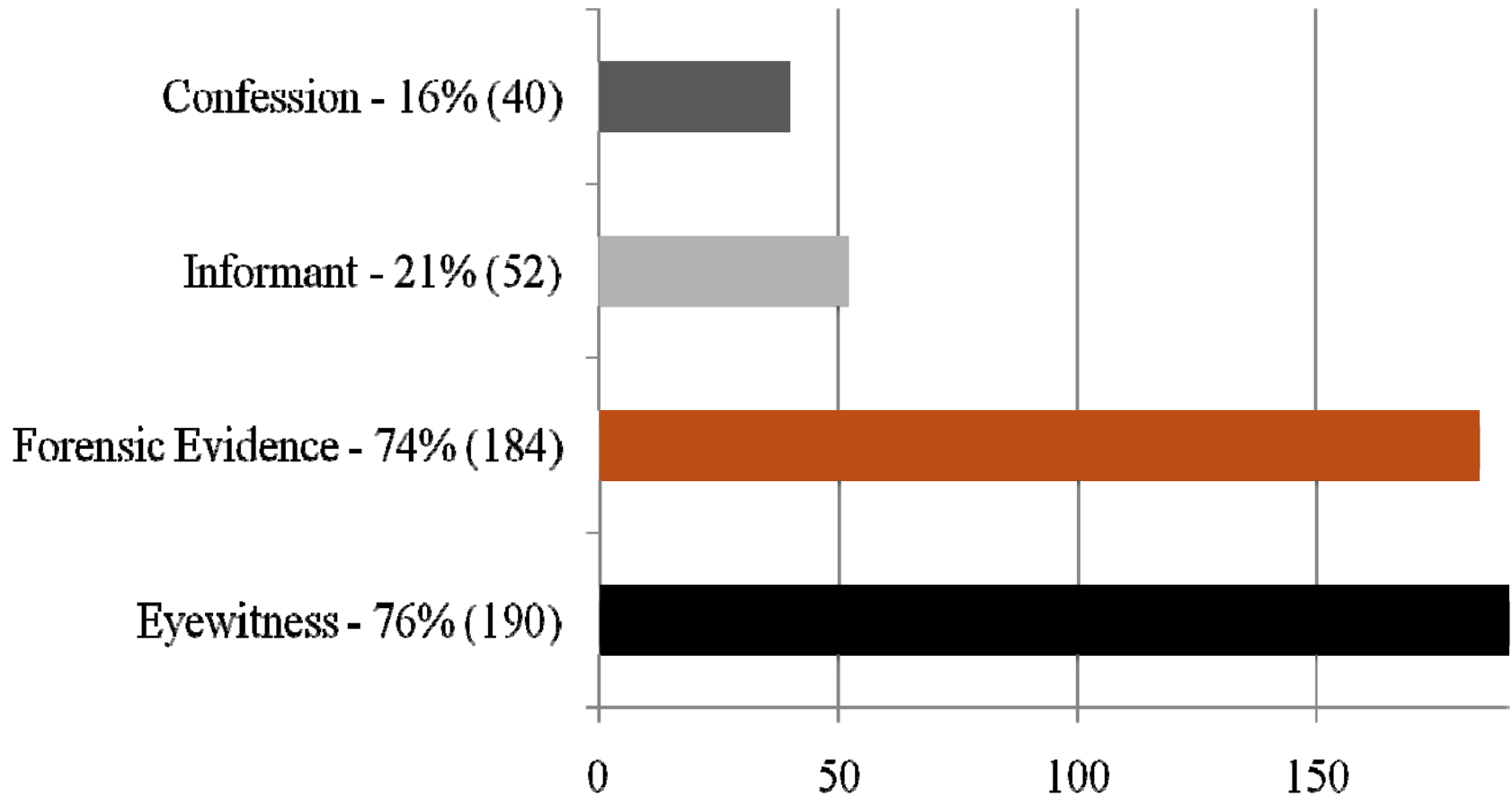
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Crime of Exoneree Conviction



Evidence Supporting Exonerees' Convictions



Eyewitness Certainty

- Victim in Marvin Anderson's case: "Q. Is there any doubt in your mind that this man right here is the individual who did these crimes to you? A. No, there is no doubt in my mind whatsoever."
- Victim in Honaker case: "Q: Now, this is very important.. Is there any doubt in your mind? A: No sir, no sir, no doubt at all."

Characteristics of the Data Set

- I studied 160 exoneree trial transcripts
- 84% involved a rape and testimony of the victim
- 68 were identified by multiple eyewitnesses
- 48% (92 of all 190 cases) involved a cross-racial identification.
- In 67 of those cases, white women misidentified black men.
- 12% of the cases (22 of all 190) involved child eyewitnesses

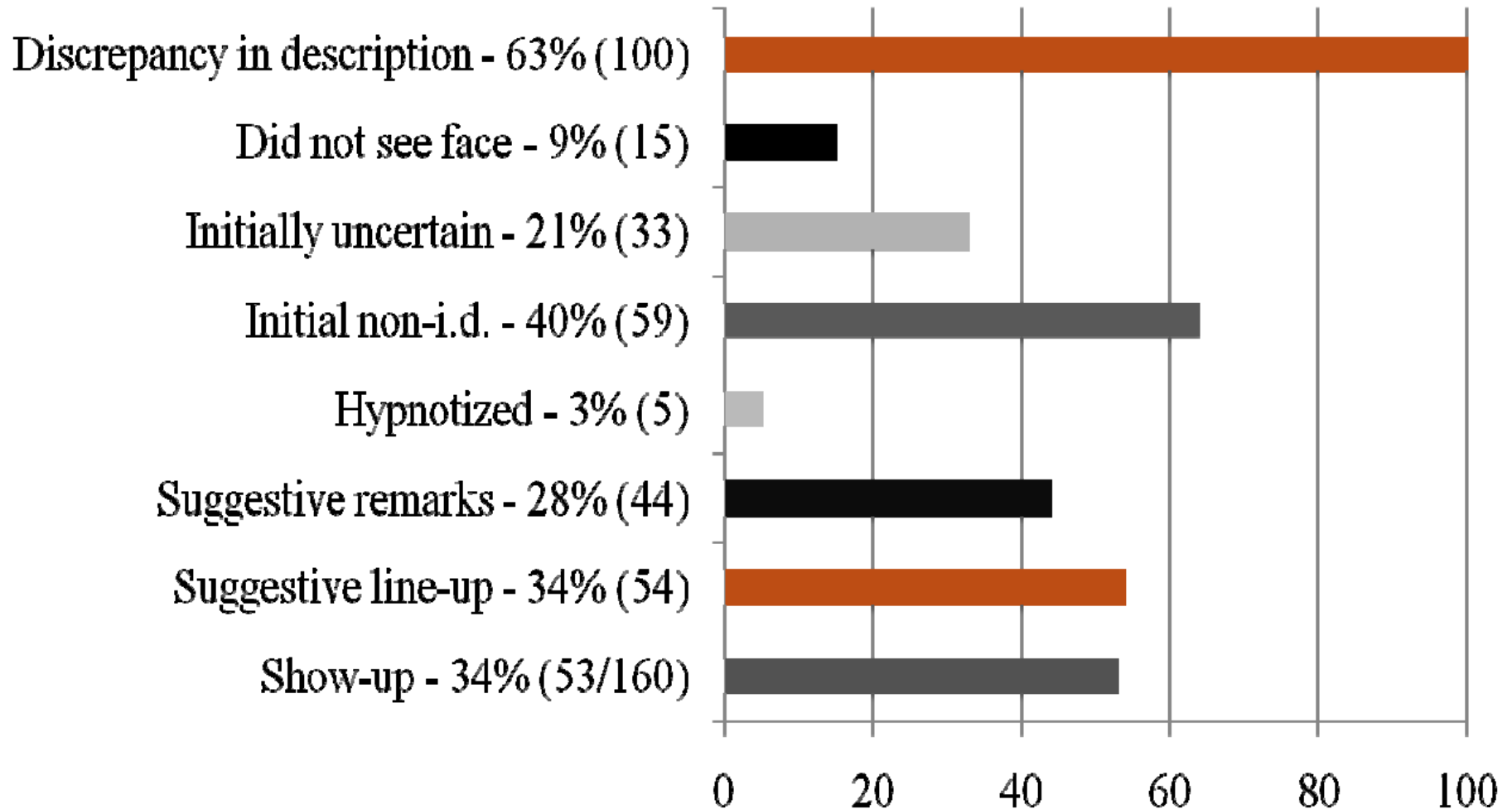
Suggestion and Unreliability

- 78% (124 of 160 cases with transcripts) involved suggestive techniques
- 57% (91 of 160 cases with transcripts) involved witnesses who were initially not certain of their identification.

Types of identifications

- 117 exonerees were identified in a photo array
- 60 were identified in a line-up
- 53 were identified in a show-up
- 45 cases involved composite drawings

Eyewitness Misidentifications



Virginia DNA Exonerations

- 11 of the first 250 DNA exonerations were Virginia cases
- 9 of the 11 involved eyewitness identifications
- All were rape cases
- I obtained trial materials for all but two cases – and for all of the 7 cases examined, problems with the identification procedures used were apparent at the time

Marvin Anderson

Served 15 years for Rape

Exonerated by DNA testing in 2001

Identified by the victim in a cross-race photo array and line-up

- Anderson's was the only color photo in the array, and the only employer i.d. photo
- Anderson's was the only photo repeated in the array and then the line-up
- The actual perpetrator was in one array
- The victim was not told that the attacker might not be present in the array

Marvin Anderson – Trial Testimony of officer who conducted photo arrays

Q. So did you tell her that the suspect had been arrested?

A. We asked her to go in and look at the people in the line-up to see if she could pick out the suspect.

...

Q. Now isn't it true that that photograph was an employee identification photograph from Kings Dominion?

A. Uh, it was a one-on-one photograph of the I.D. card, yes, sir.

A. Yes, sir. Now isn't it true that that photograph had either a social security number or some type of employee number on the face of it and that made it completely different from the other photographs, sir?

A. Yes, sir.

Victor Burnette

Served 8 years for Rape

Exonerated by DNA testing in 2009

Identified by the victim in a show-up

- Show-up was conducted immediately after crime
- There were discrepancies in the description of the attacker. The victim described attacker as “About five eight, 160 pounds, long blond hair” and “curly” hair.

Defendant wore glasses, without which he could not see well due to an eye injury. He did not have curly hair. Defendant weighed only 140 pounds.

Willie Davidson

Served 12 years for Rape

Exonerated by DNA testing in 2005

Identified by the victim in a show-up

- Victim did not see face of attacker, who was wearing a stocking mask
- As a result, victim was uncertain about the identification; she said “I just didn’t know.”
- Highly suggestive show-up conducted where police took a stocking on and off Davidson’s face, asking each time, “is this it?”

Edward Honaker

Served 9 years for Rape

Exonerated by DNA testing in 1994

Identified by the victim and her boyfriend in a photo array and line-up

- Suggestive photo array (some photos had very different facial hair than the defendant)
- Eyewitness were hypnotized (and this was not disclosed to the defense). Also not disclosed were statements that the victim did not get a good look at the attacker.
- Victim not told that attacker might not be present in line-up

Edward Honaker – Trial Testimony

Victim testified “I believe they called me at work and told me he had come up with a suspect.”

Honaker was missing “all except two” of his teeth, which eyewitnesses did not describe; nor did they describe a large scar he had.

Julius Ruffin (no transcript)

Served 20 years for Rape

Exonerated by DNA testing in 2003

Identified by the victim, who saw him in an elevator at her grad. School weeks after the attack

A cross-racial identification

Walter Snyder

Served 6 years for Rape

Exonerated by DNA testing in 1993

Identified by the victim in a show-up.

A cross-racial identification

- Show-up arranged by police at station
- Suggestive remarks
- Initial non-identification (the victim initially said three photos from an array could have been the attacker)

Walter Snyder – Trial Transcripts

- The officer told the victim that the defendant lived across the street from her: “Q. So, you were told that he lived across the street. A. Right.”
- When victim picked up, but did not identify, Snyder’s photo in array, victim recalled that the Officer asked her “Is there anything familiar about that picture?”
- Following non-identification in photo array, Officer asked victim to come to police station, where Snyder was kept waiting in lobby by another Officer.

Phillip Leon Thurman – (no transcript)

Served 19 years for Rape

Exonerated by DNA testing in 2005

Identified by the victim and another witness

Troy Webb

Served 7.5 years for Rape

Exonerated by DNA testing in 1996

Identified by the victim in photo arrays.

A cross-racial identification

- Suggestive line-up – only four of the photos resembled the victim's description
- Defendant's photo was the only one repeated in a second array (and it was a 5 yr. old photo)
- Victim was initially uncertain about identification

Arthur Lee Whitfield

Served 7.5 years for Rape

Exonerated by DNA testing in 1996

Identified by the victims in photo arrays, line-up, show-up.

Cross-racial identifications

- Show-up – showed victim single photo of Whitfield after the line-up
- Others in line-up did not have a light complexion like Whitfield
- One victim initially uncertain and chose several photos from a set of mug shots
- Not told attacker might not be in line-up

Arthur Lee Whitfield - Trial Testimony

- The first victim said she was told: “Just come down for a lineup, that they had a man that might possible be the person”
- The second victim testified: “Q. Were any others in the lineup the same complexion as this man?
A. No.”
- Both victims were present at police station at the same time for the line-up, so before the second victim viewed line-up, she saw the first who “came in and started crying. I knew then she saw the man that raped her and she just cried.”