

# Jailing the Wrong Man: Mug Shot Searches Persist in New York, Despite Serious Risks

Many big police departments will not use open-ended mug shot searches because of the chance of a mistaken identification. But New York City detectives turn to them routinely.

By Joseph Goldstein

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Inside a police station house in Queens about a year ago, St. Clair Steward insisted he had not been involved in a recent shooting. Mr. Steward told the police he had been resting at home.

Investigators did not believe him. The motive behind the shooting was a mystery, but the victim had combed through pictures of people with past arrests and identified Mr. Steward, a father of eight, as the assailant.

To the detectives involved, the shooting in January 2018 was just the latest in a long line of crimes solved by asking a victim to search through mug shots, an investigative technique used in New York City for more than 150 years. Detectives enter a description of the perpetrator into a database, which then spits out dozens or even hundreds of matching photos. The witness scrolls through, in hopes of recognizing the culprit.

But these open-ended photo searches also increase the likelihood of ensnaring an innocent person, according to studies and experts in eyewitness identification. The method has few safeguards to protect against a false identification and can lead police to focus on the wrong person from the outset of an investigation.

Many of the nation's other large police departments — including Chicago, Los Angeles, Houston, Washington, Dallas and Miami-Dade — said they do not rely on the technique, a New York Times survey shows.

Detective bureaus in many other jurisdictions do not show booking photos to witnesses until they have a suspect in mind. Investigators then conduct a photo lineup, placing the suspect's among photos of at least five "fillers" — people who fit the description but are known to be innocent.

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That approach offers some shield against a false identification: If the witness chooses a filler, police understand the witness is wrong and know not to arrest that person.

In a mug shot search, everyone is a potential suspect, and the actual culprit might not be among the group. But whoever the witness selects becomes the focus of the investigation.

"I think it taints the investigation," said Deputy Chief Thomas Castro, who oversees detectives for the Dallas Police Department.

Dermot F. Shea, New York City's chief of detectives, defended his department's use of the searches, saying they were just one of many investigative tools. The police can also, he said, get leads from surveillance cameras, DNA evidence and tracking technology, such as in cellphones.

"Mug shots are still a piece of the puzzle," Chief Shea said. "But to me they are a much smaller piece."

Still, interviews with current and former detectives, as well as court testimony, show that investigators in precincts throughout the city routinely ask witnesses to search through the photos.

One Bronx detective testified in February 2018 that he had directed witnesses to look through the database more than 50 times. "We usually put the description of what the victim tells us, or a location, in the system, and random pictures will come up," said Paolo Ruiz, who at the time had been a detective at the 40th Precinct for three years.

In Mr. Steward's case in Queens, detectives entered broad search parameters into the database: black men, aged 35 to 45 and between 5'8" and 6'1," with past arrests in three nearby precincts. The victim chose Mr. Steward, whose photo was the 31st to appear, said a law enforcement official who asked to remain anonymous because the official was not authorized to discuss the case.

"They told me, 'The person looked at your mug shot and said it was you,'" Mr. Steward, 43, said in a recent interview.

The police then put Mr. Steward in a lineup alongside several other men. Again, the victim chose Mr. Steward. He was charged with attempted murder and jailed.

He stayed in jail for more than two months until a DNA sample from the crime scene was finally tested. The sample, believed to have come from the culprit, did not match Mr. Steward, throwing the case into doubt. Prosecutors quietly dismissed the charges in September.

'I have nothing'



Dermot F. Shea, New York City's chief of detectives, said his department's use of mug shot searches was just one of many investigative tools. Uli Seit for The New York Times

The reliability of eyewitness identifications began to face serious scrutiny within the criminal justice system in the 1990s, as DNA testing began to exonerate people who had been convicted of rape and other crimes on the basis of mistaken eyewitnesses.

To some extent, false identifications are unavoidable. Memory is spotty, malleable and erodes quickly. Cross-racial identifications are especially prone to error. One study of robbery investigations in Houston found that eyewitnesses who claimed to recognize their assailant in a police lineup had actually selected a person known to be innocent about 47 percent of the time. An aggregate of similar studies found an error rate of closer to 37 percent.

But the frailty of memory is not the only problem.

Poorly-designed or suggestive police procedures can heighten the risk of a mistaken identification, and critics say open-ended mug shot searches are especially vulnerable.

Victims can become worn down when viewing a large number of photos and choose someone who reminds them of the culprit, said Deputy Chief Castro of the Dallas Police Department.

As the number of photos shown increases, “the more likely you are to encounter someone who looks like the person who committed the crime, but didn’t,” said John Wixted, a professor of psychology at the University of California, San Diego, who researches eyewitness memory.

Across the country, some police commanders have concluded that leaving a crime unsolved is sometimes a better alternative to relying on a procedure that elevates the risk of jailing an innocent person.

“You just have to be willing to say — it’s not pleasant — ‘I have nothing,’” said Major Mike Smathers of the Charlotte-Mecklenburg Police Department, North Carolina’s largest municipal police force. “And I’m not going to let someone look through all these pictures when I have nothing.”

There is little data available on how many police departments across the country conduct open-ended mug shot searches and how frequently they are used.

A 2011-2012 survey of police and sheriff’s departments showed that 56 percent of responding departments with more than 500 officers did not let witnesses pore over photos, while the other 44 percent did. But it was unclear whether the departments that use the technique turn to it often.

Philadelphia’s municipal police force, the nation’s fourth-largest, told The Times it permitted the searches.

In Los Angeles, which has the third-largest police department, detectives do not generally ask witnesses to hunt through photos on the basis of a physical description, a police department spokeswoman said. However, in cases where there is a suspected gang connection, detectives will sometimes direct victims to look through mug shots of people believed to belong to a gang. Those searches have also faced criticism because the alleged gang connections can be tenuous.

## An early investigative method

The New York Police Department has been collecting photos of accused criminals for more than 150 years. via New York Public Library

Mug shots have been an investigative tool in New York City since 1857, when a Sergeant Lefferts started collecting daguerreotype portraits of pickpockets, burglars and other criminals. Soon he had the beginnings of a rogues’ gallery. By the next year his collection of a few hundred images had turned into a local attraction.

The gallery eventually gave way to books of booking photos, which were largely replaced by an ever-expanding computerized database. Along the way, mug shot searches became one of the Detective Bureau's main methods for trying to identify suspects.

They are often used in robberies and other difficult-to-solve crimes involving brief and frightening encounters when the victim and culprit are strangers, and other evidence is scarce.

Nationally, police departments in cities larger than a million people reported solving less than a third of robberies in 2017, the last year for which numbers were available. The New York Police Department says it solves robberies close to half the time.

Because robbers frequently are repeat offenders with previous arrests, many New York City detectives believe mug shots are a sensible place to turn. "Detectives encourage victims to view photos to breathe some life into the investigation," said Michael J. Palladino, the president of the Detectives' Endowment Association, which represents the city's detectives.

In New York, the procedure is endorsed by the official Detective Guide, which lays out the police department's basic investigative procedures.

Several current and former New York City detectives said that while they use mug shot searches, they are hardly a slam-dunk tool. Some estimated that searches led to an identification about 20 percent of the time, while others thought much lower. Other investigative techniques can help weed out misfires, they said.

Chief Shea said he did not know how often a search ended in an identification, although he believed it was less than half the time. He conceded there have been instances of a witness choosing the wrong person, but he said those occurrences were rare.

"It's in no one's best interest to get a false identification," Chief Shea said. "I can think of nothing we want to do less than put the wrong person in a situation where they're in jail and facing charges."

Derrick Penn was identified during a mug shot search in which more than 300 photographs were shown to a robbery victim. The case was dropped, but he said he never got an apology. Elizabeth D. Herman for The New York Times

Derrick Penn, 37, said being jailed in 2014 on charges of committing three armed robberies was “like being in hell.” He missed his daughter’s kindergarten graduation, was slashed on the face while on Rikers Island and was told he might go to prison for up to 50 years.

Mr. Penn, who works at a Brooklyn hospital manning an entrance gate, had been identified as the culprit during a mug shot search in which more than 300 photographs were shown to one of the victims. Later, three victims, including the one who chose him from among the photos, identified him in a live lineup, Mr. Penn’s lawyers said.

He insisted he was innocent, and location data indicated that his cellphone was miles away from the robbery locations, according to his lawyers, Scott Hechinger and Dara Hebert of Brooklyn Defender Services.

Prosecutors dropped the case against Mr. Penn and sealed it. “The judge never gave me an apology — they just said, ‘Stay out of trouble,’” Mr. Penn recalled. He had been arrested numerous times, mainly for marijuana and driving-related offenses, but his lawyers said he had no felony record. “How’d they get it so wrong?” Mr. Penn said.

Eyewitness identification experts said mug shot searches may be a reasonable approach in some situations.

”If someone was abducted and spent two days with the kidnapper, who was unmasked, show them pictures,” said Gary Wells, a psychologist at Iowa State University and a pioneer in the field of eyewitness identification. But for general use, he said, “I think it is a huge problem.”

## The plumber from Brooklyn

Far from being phased out, mug shot searches are being taught to a new generation of New York detectives. When Wendelyn Dua, a Bronx police officer, joined the 52nd Precinct’s detective squad in 2017, she quickly learned that the searches were an important method for conducting eyewitness identifications.

“We’ll put the complainant in front of a system called PhotoManager,” she testified in March 2018 when asked about some of the ways the police conducted identifications.

She was testifying in a case about an argument over a parking spot that had taken a terrifying turn.

A Bronx man, Fazal Ahmad, and his two sons had emerged from their Bronx mosque one night to find their car had been boxed in by another vehicle. A note on the windshield directed them to call “Benny” to move the car.

That phone call turned heated. Several people arrived in the parking lot and began screaming at Mr. Ahmad’s family. One of them pressed a gun into his neck before fleeing.

The note on the car seemed a promising avenue of investigation. But within 80 minutes of the crime, detectives began showing Mr. Ahmad mug shots.

Mr. Ahmad picked the 850th photo shown to him: a plumber from Brooklyn, who was then arrested.

The plumber told his lawyer he was not too worried. “My guy was convinced that he would come to court and they would realize it’s not him,” his lawyer, Sungso Lee of the Legal Aid Society, said. “I tell him, ‘That’s never what happens. Once they’ve picked you, they’ll keep picking you.’”

When Mr. Ahmad saw the plumber in court, he confirmed he was the man who threatened him, Ms. Lee said. The case file is sealed, but Ms. Lee provided The Times with a description of the court proceedings and partial transcripts. In a brief interview recently, Mr. Ahmad said he was “100 percent” certain he had chosen the right person.

In the middle of the plumber’s trial, the Bronx prosecutors dropped the case. Cellphone location data, while not definitive, supported the plumber’s claims of innocence, Ms. Lee said. A spokeswoman for the Bronx district attorney’s office said it “found evidence that suggested the defendant was innocent.”

The authorities have not said whether investigators further pursued the question of who held Mr. Ahmad at gunpoint. But Ms. Lee passed along a tip to the district attorney's office.

While working to clear the plumber, she found that a man with the last name of Benny lived within two blocks of the mosque. His family, she said, included a younger man who broadly fit the description of the culprit.

*Follow Joseph Goldstein on Twitter at @JoeKGoldstein.*

Tyler Pager contributed reporting.

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