# Discussing the use of expert evidence in trial

Expert evidence is becoming more established in the field of eyewitness testimony because jurors are frequently placing unjustified reliance on eyewitnesses. Jurors are being informed on the limitations of eyewitness identification as this can play a huge significance within a court case (Cunningham & Tyrrell, 1976).

## section on reliability and validity of expert evidence

Expert psychological witnesses are called before the jury to provide their knowledge of research and theories within the field of eyewitness testimony. They are not there to present ‘ facts’ about the specific case but rather provide scientific information of eyewitness accounts that help the jury make decisions (Vidmar & Schuller, 1989, as cited in Leippe, 1995). This process can deliver better eyewitness accuracy as the jurors can evaluate the reliability and validity of testimonies and base their decisions from this (Monahan & Walker, 1988, as cited in Leippe, 1995). However, Leippe (1995) stated that there is inadequacy in scientific research and theory as he argued that this field of research is not reliable because it cannot be generalised to the “ real world” and lacks ecological validity. Some courts and several experimental psychologists have argued against research on eyewitness testimony as being scientific, as they have established that eyewitness research is not widely accepted as a science as findings have not been generally approved (Egeth, 1993).

Previous research on a survey of 488 responses to expert witness questions and believability was carried out. This produced implications of reliability and validity of expert evidence. It was found that the majority of respondents stated that they would believe experts from their own community as they

were sensitive to the issue of expert witnesses being a “ hired gun” which refers to expert opinions that are not impartial due to being bias towards the party that called them (Boccaccini & Brodsky, 2002). A majority of respondents specified that they would believe experts who were not getting paid for their testimony; this allows respondents to believe that the experts are providing an honest judgement and are not stating information on the basis of expecting return (Cooper & Neuhaus, 2000, as cited in Boccaccini & Brodsky, 2002). In addition to this factor, respondents conveyed a preference for testimony from experts that have previously testified for the prosecution and defence rather than one or the other (Boccaccini & Brodsky, 2002).

A number of cases have debated that expert testimony is simply “ common sense” and this knowledge can be made by the un-educated jurors, and the deficiencies in the accuracy of identification can be conveyed to the jury over cross-examinations, and closing arguments (Woller, 2003).

A study by Levett & Kovera, 2008 indicate that there is a sensitisation amongst jurors on the validity of initial expert research when opposing expert research is introduced to address the validity of the initial expert research. Evidence was found that this process allows non-extreme judgements to be made by jurors but will not directly affect substantial decisions on the outcomes of a case. This shows inconsistencies when using initial expert research because the study illustrates that opposing experts give the opinion that initial expert research is inapplicable to the case. This suggests the question on whether the appropriateness on having an initial

expert witness is needed at all as they frequently do not influence juror's decisions.

Overall, eyewitness testimony reliability depends on many factors, in some cases it is reliable and in others it is not. Individual factors can contribute to whether the information given is correct or not.

## Personal opinion whether it would be appropriate to use experts in this case

Expert evidence helps provide research and theory about well-known variables which can influence memory and recalling of memory. Therefore by using expert evidence in the case of evaluating eyewitness testimonies is crucial, as much research has supported the flaws which can contribute to misleading information. As a result of such a high dependency and impact of the judge's decision of the eyewitness testimony in determining one's life outcome, it is important that all measures are put forward in order to prevent a person who is not guilty from going to prison.

On the other hand, I believe that there were a number of variables within this case that is deemed to be too complex to measure individually. I think that it is much harder to get an accurate account of the event itself when viewing the variables in isolation. The theories are not established enough to concentrate on the variables combined which could potentially give a more accurate account of the event.

If an expert witness was used for this case, I believe that they would significantly affect the decision of the jury. They somewhat take the role of the juror and directly affect the credibility of the eyewitnesses testimony.

This should not be acceptable as an expert witness should only be there to provide facts about certain pieces of evidence and not about specific variables within the case.

## Overview of psychological evidence that may be brought before the court by the expert for the prosecution (Guilty)

## Around 20

## Research states 3 highest accuracy levels : sex height and racei

## Freya remembered more detail-eyes-more accurate - watching and had more light more oppotunity

## Detailed descriptions

## Nature of event

The nature of the event can have a profounding effect on the witness's future recall. Witnesses who experience a traumatic event tend to have higher stress levels. This enables them to have a much detailed memory as they often think about the event after it has happened. Because of the disturbing nature of the event, it makes it harder for a witness to forget. All 3 witnesses within the case experienced a form of violence and therefore their levels of arousal would have increased. According to research findings, this could enhance the accuracy of the description of the event and suspect (Christianson, 1992). Yuille and Cutshall (1986) also found that higher stress levels lead to better memories of events than do witnesses with lower stress levels.

## Confidence (Meta-memory)

A witness that is confident when providing their testimony to court officials are usually more believed to be accurate (Wise & Safer, 2004 as cited in Krug, 2007). A study performed by Bradfield and Wells (2000, as cited in Bradfield & McQuiston, 2004) found that a participant juror who reads a testimony from a confident witness is said to of had a better view of the event compared to a witness whose confidence was low. Even when the jury has stated that ‘ confidence’ is not an accurate determinant, there is evidence to believe that high confidence does allow the jury to express a better evaluation of the witness (Fox & Walters, 1986). Pratima Hussain conveyed a high level of confidence when declaring her testimony as she stated that she ‘ categorically’ knew that the defendant was the person that pushed her to the ground. She also gave a very detailed description of the weapon. This may influence the prosecution of the suspect by the jury because her confidence can be a huge predictor of accuracy. Bell & Loftus, 1989 also established that when confidence is expressed, jurors are impressed with that confidence which makes them more easily persuaded.

## Number of Witnesses

Witnesses, who are at the same crime and identify the same suspect under different conditions, are more likely to be accurate. A study by Haber and Haber (2000) shown that if a witness provides a description of a suspect and then later identifies them within a video identity parade, they are said to be 75% accurate. If another witness, who was present at the same crime, provides a similar description of the suspect and also identifies the same person from the identity parade, both of their identifications are said to be

90% accurate. This factor relates back to the case since Pratima Hussain and Emanuel Hargreaves both gave a similar description of Kevin Clough and both identified him from the mugshots and identity parade.

## Overview of psychological evidence that may be brought before the court by the expert for the defence:

## Women's eyesight was discredited (glasses came off)

## Pushed ground

## Glasses

## Less likely if realy old-age recogitionn

## The nature of event

The effect of arousal on eyewitness memory is now commonly explored using the Yerkes-Dodson law (1908) which states that the connection between arousal and performance is based on a U-shaped curve whereby very high or very low levels of stress decreases the performance of the witness and that intermediate levels of stress is when performance is at its best (Deffenbacher, 1983 as cited in McCloskey & Egeth, 1983). Therefore in relation to the event being violent, stress levels must have been very high which can cause discrepancies in the eyewitness testimonies given.

Stress interferes with the ability of eyewitnesses to identify a central person in a stressful situation (Morgan et al, 2004, as cited in Wells, Memon & Penrod, 2006).

The high stress itself could be expected to lead to a narrowing of the range of perceptual focus, as Easterbrook (1959 – some facts about weapons) has noted.

## Mugshot induced bias

In this case, 2 of the witnesses were required to carry out mugshot identification and a video identity parade. Research by Cutler et al (1987, as cited in Ebbesen & Konecni, 1997) has shown that exposure to mugshots after viewing the suspect at the scene of the crime may create a risk that the witness may become bias within the subsequent video identity parade. This is because the witness increases their ability to recognise a previously seen face. The witness may inflict a failure of memory due to previous exposure of other mugshots and therefore fail to identify the actual suspect from the event (Brown, Deffenbacher & Sturgill, 1977, as cited in Deenbacher, Bornsteiny & Penrod, 2006).

as Garven, Wood and Malpass (2000, as cited in Hafstad & Memon, 2004) found Retention of memory

The ability to take in information and hold it is a very important factor to reflect on. Many studies have shown that memory may deteriorate after an event occurs. There is more than one reason that retention of an event may be lost, which can include post events that take over the memory of the original event or similarly, a witness being exposed to information from other witnesses (Woocher, (….) as cited in Baggett, 1975 – Memory for Explicit and Implicit Information in Picture Stories). Another reason may include bad experiences of a particular event that might eliminate memory from a witness because they choose not to remember it. Shapiro and Penrod (1986, as cited in Smith, Stinson & Prosser, 2004) performed a study on long vs. short delays and found that longer delays led to less correct and more false identifications. From this study, it is clear to see that retention plays an

important element when making correct identifications. This is also true of the Kevin Clough case, as all of the witnesses were required to identify the suspect from mugshots 2 days after the event occurred. They also had to identify the suspect from a video identity parade, 8 days after the event occurred.

## Perception

A factor that can affect eyewitness perception is a term called an ‘ event factor’. This is when natural conditions within an event can affect the witness’s perception when an event occurs. It might seem natural to think that witnessing an event in good lighting conditions, may improve perception compared to poor lighting conditions. However, this is not the case as research has found that different lighting conditions can be relatively complex (Woller, 2003). Adaptation to light and dark has a significant effect on perception. It has been found that when witnessing an event in a dark condition and then there is sudden changes to a light condition, or the opposite, the eyes are unable to fully recover right away and perception is distorted. This is the cause of a chemical reaction happening within the eye between the rods and cones which generates a short experience of ‘ blindness’. In the case of Kevin Clough, this can have a profound effect on Freya Ogden’s perception. On the evening of January 12th, it would have been dark outside and Freya reported that a security light shone on the offender as he ran past her. Consequently, her identification of the offender may be unjustified as a result of light adaptation.

## Cross-Race Identification

A major factor concerning eyewitness identification is Cross-Race Identification. A jury may be alerted when considering the condition of a witness's race that is different to the race of the suspect and the accuracy of the identification. Research has found people from one race have great difficulty identifying people from a different race. This is because people that generally socialise with other people from their own racial group tend to absorb certain facial features more easily compared to people from another racial group (Malpass & Kravitz, 1969). Members of one race tend to state that members of a different racial group have less homogeneity in the facial features in relation to their own racial group (Goldstein, 1979 as cited in Smith, Stinson & Prosser, 2004). Ng and Lindsay (1994) stated that the more contact a person has with people from a differing racial or ethnic group, the ability to identify suspects correctly will be greater. This issue might be a contributing factor regarding the Kevin Clough case because 2 of the witnesses, Pratima Hussain and Emanuel Hargreaves, are of a different racial group to the suspect. This could mean that their identification of Mr Clough may be invaluable to the case regarding the factor of cross-race identification.

## Individual factors – Age

Another factor which should be considered in accordance to eyewitness testimonies is age. Age is found to play a significant role in eyewitness testimonies. All witnesses are seen to be vulnerable, however children have been found to be the most vulnerable (Bruck & Ceci, 1999, as cited in Wells, Memon & Penrod, 2006). Children have been found to be susceptible to

interviewer bias, as Garven, Wood and Malpass (2000, as cited in Hafstad & Memon, 2004) found 50% of children who received positive reinforcement for reporting incorrect responses continued to answer “ yes” to the misleading information, whereas 5% answered yes when no reinforcement was applied. This research suggests children are easily misled with what they experienced from the event. Research has also found a decline in memory for elderly witnesses. Cohen and Faulkner (1989) found elderly subjects were easily misled by false information. This states that expert eyewitnesses are crucial in cases where children and elderly witnesses are testifying. Research has also found confidence and memory reports can easily be distorted in particular with vulnerable children, as children are believed to be overly optimistic with their memory proficiencies (Hafstad, Memon & Logie, 2004).

## Weapon Focus

The presence of a weapon can substantially indicate to an eyewitness that a crime is happening. The concentration on the weapon itself can reduce the ability to absorb other information from the crime (Loftus & Messo, 1987, as cited in Mitchell, Livosky, & Mather, 1998). Weapon focus is linked to arousal and Easterbrook (1959, as cited in Mitchell et al., 1998) found that perception decreases as arousal levels increase which is based on his/her cue utilisation theory. The theory also points out that the more intense the arousal is of an eyewitness, the bigger the reduction in perceptual cues. When a weapon is visible within a crime, the weapon focus effect states that all focus is pointed at the weapon and perceptual cues such as the criminal’s characteristics are decreased. The case of Kevin Clough is interesting

because the victim Pratima Hussain was able to provide a detailed description of the weapon, and identify characteristics of the suspect correctly. Mrs Hussain was able to identify the suspect's age, race and eye colour correctly. Research by Dehon and Bredart (2001) as cited in... has found that white people are able to make a more accurate age estimate for in-groups than out-groups. However, the accuracy of age estimates from people of other races that live or have lived predominantly in a white country did not differ based on the race of the face.

Research was carried out by Anastasi & Rhodes, 2006 as cited in Age Estimation of Faces on whether the age of the witness corresponds with the age of the suspect. Results found that age estimates are often bias towards their own age range. Research also found that witnesses that are much older than the suspect exhibit poorer performance regarding face recognition Adams-Price, 1992 as cited in Evidence for an Own-Age Bias in Face. Therefore, there is a possibility that Pratima Hussain's age estimate of the suspect could have been wrong and that she may have guessed the age of the suspect.

## Indicate what you consider to be the strongest evidence for both the prosecution and for the defence.

## Prosecution

## Defence

## Retention of memory

It is clear that memory declines over a period of time. I think this is an important factor because the longer the length of time between the learning

experience and test of identification, the likelihood that memory will decrease will be greater.

## Conclusion

## selective attention, reconstructive memory, short exposure durations, vantage point, suggestion