

UNDISCLOSED: The State v. Jonathan Irons
Episode 2: Bearing False Witness
June 16, 2020

Colin Miller: Many people simplify the 9th Commandment as, “Thou shalt not lie.” But the Commandment actually says, “Thou shalt not bear false witness against thy neighbor.” It’s a fine line, but a line drawn by many religions and legal systems that reflects the greater gravity of lying under oath than lying in everyday life.

Legal scholars have traced the origins of the prohibition on perjury, and suborning it, to the 9th Commandment, which can be found in both Exodus and Deuteronomy. The legal definition of perjury relies upon the Hebrew word for “false” used in Exodus, which translates as intentional fabrication. But Deuteronomy uses a different Hebrew word for “false.” It’s in the part dealing with a lone witness not being enough to establish a person’s guilt. And *that* Hebrew word for “false” translates as something like “empty” or “shallow,” implying that a false witness can be a misguided witness who wrongfully implicates someone out of *ignorance* rather than *malice*.

For the past 23 years, Jonathan Irons has been trying to establish that Stanley Stotler, the only witness against him, was also a false witness against him. And what happens with his case over the next month might depend on which definition of false witness applies.

[01:54] Rabia Chaudry: Hi, and welcome to Undisclosed: The State v. Jonathan Irons. This is the second episode in a four episode series about Jonathan Irons, who was 16 years old when he was accused of a burglary and shooting at the home of Stanley Stotler. I’m Rabia Chaudry. I’m an attorney and author of the New York Times Bestselling book, Adnan’s Story, and as always, I’m joined by my co-hosts and colleagues, Susan Simpson and Colin Miller.

Susan Simpson: Hi, this is Susan Simpson. I’m an attorney in Washington, D.C., and I blog at TheViewFromLL2.

Colin Miller: Hi, this is Colin Miller. I’m an Associate Dean and Professor at the University of South Carolina School of Law, and I blog at EvidenceProfBlog.

[02:56] Rabia Chaudry: During closing arguments at the Jonathan Irons trial, prosecutor James Gregory made a stunning admission to the all-white jury deciding the black teenager's fate. He said:

Colin narrating:

Folks, don't be fooled by his age. There is no requirement on the streets or any place else or in this country or in these instructions that you have got to be a certain age before you pull the trigger and shoot a person. He comes in here dressed up and cleaned up. But think about how Mr. Stotler saw him. And Mr. Stotler, he had a preliminary hearing. Christine Sullivan was his attorney at that preliminary hearing. He wouldn't have been bound over if he hadn't identified him at that preliminary hearing.

A review of the entire case file reveals the veracity of Gregory's admission. Without Stotler, the State didn't have a case. Gregory's confession is also corroborated by the plea deals offered to Jonathan Irons, which he rejected, effectively because he refused to bear false witness against himself:

Jonathan Irons:

I can remember, I think they offered me 30 and then 25, and then maybe 15. But I said, "No. I'm not taking a plea deal. I didn't do this." I just always assumed that someone was going to say, "Hey, man. We made a mistake," and they'd let me go home. But that never happened.

Colin Miller:

And so is there any moment of weakness you ever have to say, "I'm innocent, I know I didn't do this, but maybe I should take this plea deal," or is it as you said, "There's no way I'm going to plead guilty to a crime I didn't commit."

Jonathan Irons:

Yeah, it's exactly what I said. There's no way. As a matter of fact, somebody who came and did an assessment on me actually made a comment about that. They said I wasn't taking accountability for it, but. You know. Like it was a bad thing. Oh, he did this crime and didn't take accountability for it. And then he chose to exercise his rights to a trial. He should get a still sentence, and then they recommended the stiffest sentence possible.

I was like, okay whatever. It hurt. When I got sentenced, I didn't even know what they said. All I heard was, "Jonathan Irons, blah blah blah, I hereby sentence you

to wahwahwahwah years.” Sounds like Charlie Brown. You ever seen Charlie Brown?

Colin Miller:

Yeah.

[05:10] Rabia Chaudry: Jonathan is referencing Peanuts, and the only adult voice ever heard by Charlie Brown and his childhood cohorts, the trombone, “Wah Wah Wah” of their teacher:

[Trombone sound from Peanuts]

Charlie Brown: Oh, good grief.

But what Jonathan missed wasn’t simply a teacher’s admonition; it was a judge sentencing him to 50 years in prison.

Jonathan Irons:

When I got back to the jail and I repeated what was said to me, they all balked and were like, “Whoa!” I was like, “What? What?” They were like, “Do you know how much time you got?” I was like, “No.” And then they explained it to me. I dropped down and cried, and I questioned, what would have happened if I took a plea?

Given that the average life expectancy of juvenile lifers is just over 50 years, this was, in effect, a death sentence. And, as the prosecutor acknowledged, it was based solely on Stotler’s identification of Irons:

Colin Miller:

Yeah, is there anything that stands out that you remember while you were there at trial that really has sort of stuck in your memory?

Jonathan Irons:

Just the guy- Stanley Stotler getting on the stand and saying it was me. It’s just like, dude. Man. You are way off. I don’t even know you. What?

I was just in a daze as I listened to him talk, I was just so baffled by this. I was like, I have never seen this guy before, I did not do this, how is he able to do this?

[06:50] Rabia Chaudry: So, today, let's answer the question Jonathan Irons had in the courtroom 22 years ago: How did Stanley Stotler come to take the stand and accuse Jonathan Irons of a crime he did not commit?

Susan Simpson: To begin, we need to go back...not to the night of the burglary in question on January 14, 1997, but instead, about a month earlier: December 16, 1996. On that night, Stanley Stotler returned home to find his house had been burglarized, with \$80 in cash stolen and the dresser drawers of his bedroom being ransacked, just as they would be again a month later.

When Stotler arrived home, the door to the front of the house was deadbolted, making it an unlikely point of entry or exit for the burglar. But the door from the garage to the house was open, and Stotler said it had been closed when he left. Stotler also said a bookcase that he had left closed was open when he returned home. The police lifted latent fingerprints from both the bookcase and garage doors, and none of the fingerprints were a match for Stanley Stotler, who lived alone, with his wife and three kids living elsewhere. Later, those same prints were run against Jonathan Irons...and he would be ruled out as their source as well.

Now, fast forward to January 14, 1997. On that snowy winter night, Stanley Stotler finished work at his job at Brooks Fiber Properties, a telecommunications company in Chesterfield, Missouri. He then drove to his home in Osage Meadows in O'Fallon, and stopped at the post office on his way back. By his own estimate, Stotler arrived home between 6:30 and 6:40 pm, and he had a haircut scheduled that night for 7:00.

As noted in Episode 1, however, 18 minutes before that haircut, Stotler made a 911 call at 6:42 pm, stating that he'd been shot *once* by a black male. On the call, Stotler did not describe any physical features of the shooter, and, when asked about clothing, he responded that he didn't know what clothes the shooter was wearing. He also indicated that he didn't know whether the shooter said anything.

Detective Richard Morrell was dispatched to the scene of the shooting and arrived minutes later, at 6:45 pm, according to his police report. Stotler would tell Morrell that he came home, heard an unauthorized person in his bedroom, and was shot, not once, but twice: once in his right upper arm and once in the right side temple. The only other information that Stotler could provide was that the shooter was about 5'10", with a heavy build. Stotler was then taken to the St. Joseph's Health Center and was still

undergoing rehab at that center when he next spoke to police two weeks later on January 30th.

[11:42] Susan Simpson: On that date, Stotler spoke to Detective John Neske and elaborated on his earlier story. Stotler again said that he arrived home from work and immediately heard someone in his bedroom. He then walked to his bedroom, went to his nightstand, and grabbed the 9mm handgun he'd gotten after the first burglary.

Stotler believed the intruder was in his bedroom closet and ordered him out. The burglar initially didn't respond but then opened the door a crack, allowing Stotler to see that he was holding a chrome handgun.

Stotler said he was going to call the police and turned to the home phone on the nightstand when he was shot in the head. Stotler then begged for his life, pleading that he had three kids and that he was now only going to call an ambulance and not the police. But the shooter shot him again, this time in the shoulder. Stotler described the shooter as a black male, between 16 and 17, with a heavy medium-build and a hooded jacket. And, even though it's not in his police report, Detective Neske would later testify at trial that Stotler had said that the shooter had the hood of his jacket "pulled tight around his face."

[12:54] Colin Miller: I spoke with Professor Steven Penrod, an expert in eyewitness identifications at the John Jay College of Criminal Justice, about the impact of a ball cap or pulled hood on the ability to make an eyewitness identification:

Colin Miller:

You mentioned earlier the hairline being especially important, can you flesh that out a bit in terms of a hairline being important to an identification?

Steven Penrod:

Well, it's one of the most visible cues, and there's a good bit of variability across faces in the way people (a) their hairline, and (b) the way they brush their hair, so it is useful information.

And there's research showing that if you block various features of the face you impair subsequent identification performance, is what undergirds my question about was he wearing a hat or hoodie.

Any disguise of any portion of the face undermines later performance. But hairline, as I recall, probably has the biggest damage.

[14:01] Colin Miller: But while the hood being pulled tight around the shooter's face was not written in Neske's police report, something else was. Neske notes that he "asked Stotler if he fired a gun at the subject and he stated 'no.'" It turns out that this wasn't true.

Stotler was shot with 2 bullets from a .25 caliber gun, but there was also a spent 9mm casing recovered from the corner of the bedroom that would have come from Stotler's gun.

Now, this isn't to say that Stotler was lying or that him firing at the burglar would have changed the case. It's to say that Stotler's memory of being shot twice was understandably hazy, and, as we'll argue, malleable.

And, in terms of malleability, let's jump forward one week, to February 6th, 23 days after the shooting. Stotler was still rehabbing at the medical center when Detective Neske paid him another visit. Stotler would later acknowledge that before this visit, his brother had told him that the police had a suspect. That suspect, of course, was Jonthan Irons, and his face was one of six faces that Detective Neske showed to him.

Now, let's start with one foundational fact. Stanley Stotler is white and Jonathan Irons is black. Decades of scientific research has shown that, while eyewitness identifications are often unreliable, cross-racial identifications are even worse. This is known as own-race bias, and it is likely attributable to increased familiarity with members and facial features of one's own race. As of 2015, a stunning forty percent of people exonerated through DNA evidence were convicted based in part on faulty cross-racial identifications.

One of those people was Ronald Cotton, a black man, who Jennifer Thompson, a white woman, misidentified as her rapist. Cotton's story was featured on Sixty Minutes, with Professor Gary Wells telling Leslie Stahl that the problem is two-fold: First, eyewitness identifications are inherently unreliable. And, second, even when eyewitnesses are told that the suspect may not be in the lineup or photo array, the eyewitness typically feels like they have to pick someone. This led to a stunning TV moment when Wells showed Stahl a video of a man:

"Sixty Minutes" Audio:

Professor Gary Wells: This person that you saw right there, put a bomb down that air shaft right there.

Leslie Stahl: *[Then, subjects are shown a lineup and asked to identify the Bomber.]* That would be so hard. And I just saw it.

Professor Gary Wells: Of course, you're particularly cautious right now. You know now, after we've talked, probably not to pick anyone.

Leslie Stahl: No, actually. I actually know who it is because, if I had come upon that-

Professor Gary Wells: Who is it?

Leslie Stahl: I think it's this guy. Am I wrong?

Professor Gary Wells: Yeah.

Leslie Stahl: I'm wrong?

Professor Gary Wells: Yeah.

Leslie Stahl: Okay, so. There you go. And I'm already saying how hard it is.

Professor Gary Wells: It's none of them.

Leslie Stahl: *[Gasps]* Isn't that bizarre.

Professor Gary Wells: And you know about this. We've talked about this. So this is the difficult--

Leslie Stahl: Look what you just did to me. I'm mortified. I feel like Jennifer.

[17:24] Rabia Chaudry: At this point, you might suspect where we're leading you, right? Stanley Stotler knew from his brother that the police had a suspect, and even though he was told that that the suspect might not be in the photo array, he felt he had to pick someone...and, of course, that someone was of a different race.

But no, that's not what happened. When Detective Neske showed Stotler the photo array, he said he couldn't pick anyone out as the man who shot him. So, what's the takeaway from this non-identification?

Colin spoke with Dr. Mitchell Eisen an expert on eyewitness identifications from the Cal State Los Angeles:

[18:03] Dr. Mitchell Eisen:

The rejection of the six-pack is the data. It's the data that you've garnered, right or wrong. Whether they experienced the match to memory or not when they looked at the picture- when they were trying to garner the eyewitness evidence, right? And you got none. And you have to base this on the notion that a rejection is just as probative as an identification. It is a piece of data. I don't recognize the person. People can mistakenly reject, people can mistakenly identify. But that's the data that we gathered with the eyewitness test, right? Is not experiencing any match to memory.

And then you're arguing that that's just as probative that he wasn't the guy. If you're gonna argue that the witness remembered well enough to make an identification, right? Because that is the people's argument. That's the underlying basis, right? Three levels down. And then you have to argue that seeing the suspect's picture and not recognizing it is as probative as anything.

Rabia Chaudry: This is not, however, what Detective Neske did. Rather than accepting Stotler's non-identification and pursuing alternate suspects, Neske asked Stotler to make his best guess. Colin asked Professor Penrod about whether he'd heard of something similar being done in other cases:

Colin Miller:

And is that something you've seen in other cases? Where they've asked the individual to make a guess?

Professor Penrod:

I honestly have not.

On the other hand, Dr. Eisen has seen it in Scotland, a country set to amend its outdated eyewitness identification procedures:

Dr. Mitchell Eisen:

In fact, it's standard practice in Scotland to push people like that, after they've rejected the six pack.

[20:04] Rabia Chaudry: Now, again, you may suspect where we're leading you. After being asked to make a guess, Stotler picked Jonathan Irons, and it was full steam ahead, right? Well, wrong. The best that Stotler could muster was that the shooter could have been #3 in the photo array, which was Jonathan Irons, or that it could have been #6. And, while your mileage may vary, #3 and #6 in the photo array do not look at all alike to us.

So, what should we take away from this guess? Here's Professor Penrod:

Colin Miller:

What's your response to that asking of a guess by the police?

Professor Penrod:

That it's a guess. And that it's a low confidence judgement and it's something no jury should convict on.

And then, there's the fact that Stotler guessed that two different people could have been the shooter:

Colin Miller:

What does that tell you when after being asked to make a guess they're saying, well, it could be this person, it could be that person?

Professor Penrod:

As I said, it's a guess. It's probably- those two guys probably look more like the perpetrator than the other people in the array, but that doesn't mean that they are the perpetrator, it's just an indication that there is some similarity, but not enough similarity that the witness would say with confidence that that's the person.

And that's the sort of thing that we really ought to be looking for is a quick, confident identification of somebody from the array.

Meanwhile, what was done in this case could be explained by truly terrifying research being done by Dr. Eisen:

[21:35] Dr. Mitchell Eisen:

It's funny, we do this series of studies which we call "shift-and-stick" paradigm, where we actually have people make an identification from a six pack, and then say afterwards- whether they pick or not- we'll say, "Are you sure? Does anybody else look familiar?" And very consistently we can get 60% of people to shift.

Rabia Chaudry: Yes, that's right. Show 10 research subjects a photo array and ask them to pick the person they saw. Then, just ask them if they're sure and if they recognize anyone else, and...on average you can get 6 of them to shift to someone else. Finally, give the subject positive feedback, and that shift will stick and become the subject's new memory. Or, take this case, where Stanley Stotler started by saying he couldn't identify anyone as his shooter:

Colin Miller:

And then when police say, well, make your best guess, that's the shift--

Dr. Mitchell Eisen:

They're pushing them. What they're doing there is they're wiping out the admonition. They're going directly against the admonition. First, I told you, don't assume the bad guy's there. It's just as important to exonerate innocent people as to find the guilty party. So the wit[ness] listens. And says okay. I won't guess. I don't recognize anybody. And then the cop basically says, forget the admonition I gave you- now, just guess.

You basically say, move your standard down- the whole point of the instruction was to elevate their criterion for choosing. Don't guess. Only choose if you have a recognition experience. Then, the secondary instruction he gave when he failed to get any ID was, now guess. Now move your criterion down because- and that's a strong indication to the wit- I really think I got the bad guy here, could you please choose somebody for me. And even though the cop says, he's pointed to a couple and I didn't give him any feedback, somehow he narrows in on your guy.

So, in the absence of positive feedback, or at least *recorded* positive feedback, how did Stanley Stotler hone in on Jonathan? Or, put another way, how did his shift stick? Well, Stotler made a request. Here's a portion of his testimony at trial:

Q. Okay. And you asked for copies of those photos, I think; is that right?

A. I asked for copies of the police reports.

Q. Okay. But you asked for copies of those photos as well?

A. Yes, I did.

[24:25] Rabia Chaudry: And the police gave them to him. And so, over the next 7 weeks, as he prepared to give testimony that would make or break the case against Jonathan Irons, Stotler studied the photo array and the police reports naming Jonathan Irons as the sole suspect. Colin asked Professor Penrod whether he'd ever heard of this in any of the cases he's handled:

Colin Miller:

Have you ever heard of a case where the victim is allowed to keep these police reports and the photo array and then study them for a period of time?

Professor Penrod:

I've not had cases- and I've looked at probably 350 cases, I don't recall any where that was true, now it may be true and it just wasn't brought to my attention.

And, if the photo array and police reports weren't enough to complete the shift and stick from a non-identification to an identification of Jonathan Irons, there was the preliminary hearing. At a pre-trial deposition, Stanley Stotler would testify that, as he was entering the courtroom for the preliminary hearing on March 26, 1997, he saw that, on the door, it said State of Missouri versus Jonathan Irons. This then led to the following Q&A:

Q. Now, you stated that you believed you identified the person correctly at the preliminary hearing. Tell me what it is about that that makes you believe that that was correct.

A. Well, first and foremost, the person I identified at the preliminary hearing was the person in my closet and was the person that shot me that night.

Q. Okay. And what is it that makes you think that that was correct?

A. Well, when I say correct, that's in reference to the fact that the case which, you know, I read on the outside of the door was the State of Missouri versus Jonathan Irons.

[26:01] **Rabia Chaudry:** And that's not the only shift and stick that transpired at the preliminary hearing and the deposition. Recall that Stanley Stotler initially said he could give no description of the shooter's clothing on the night of the shooting and later said the shooter was wearing a jacket with the hood pulled tight around his face. Well, now, Stotler gave a detailed description of the shooter's clothes that, you guessed it, exactly matched the description of the clothes worn by Jonathan Irons in the police reports, from the shoes to the pants to the hooded sweatshirt, not jacket, that Stotler now said was not pulled over the shooter's head.

And, no, we're not saying it matched the description of the clothes in the police reports regarding the night of the shooting. Instead, Stotler's description matched the police report description of the clothing worn by Jonathan Irons the day he was arrested.

[27:12] **Susan Simpson:** Those police reports also stated that Jonathan Irons had just over \$200 in cash on him when he was arrested. Remember how Stanley Stotler initially

said that \$80 in cash was stolen from him in the December burglary of his home? Well, at trial, he would now change that number to...\$200.

Colin asked Professor Penrod about the likeliest source of these changes in Stotler's story:

Professor Penrod:

Of course the one that's most likely occurring is that they're reading the police reports, whatever is there, now becomes your memory. Or if you read the newspaper, that becomes your memory. Or if you make an identification of somebody from the array, you're looking at those faces, and in particular that face, under good lighting, no stress, no weapon, plenty of opportunity to look at the face, know that identification is the issue, how in the f*** are you not going to identify it if you're tested on it again. So all of these things get into memory. And it can be very difficult to sort out where you acquired the information.

As Dr. Eisen notes, this is called source monitoring:

Dr. Mitchell Eisen:

The process by which this happens is something called "source monitoring." I'm familiar with the information, and then as I re-think it, I start misattributing it to my own experience.

There were also other changes to Stotler's story, which probably can't be ascribed to the police reports or photo array, and which again can probably be chalked up to a fuzzy memory after being shot twice.

First, as noted, Stotler initially said he heard someone in his bedroom immediately upon arriving home. But, in his deposition and at trial, he would testify that nothing seemed out of the ordinary when he got home and that it wasn't until he went to his bedroom to change that he heard the closet door click and knew something was up.

Second, as also noted, Stotler initially said he got his 9mm handgun from a bedside table, but he would later testify that he got it from under his own mattress.

Third, Stotler began by saying he was first shot in the head and then shot in the arm. Well, in his deposition and at trial, he would testify that the first shot was to his arm and the second shot was to his head. And fourth, while Stotler had previously said he didn't remember the shooter saying anything, he now recalled the shooter saying not to call

911 because the police were looking for him. And, in case you're wondering...no, there's no evidence that the police were looking for Jonathan Irons on the night of the shooting.

[29:59] Colin Miller: Maybe more importantly, if you're listening to this at night, if there's someone else in your house or apartment, and if you have measuring tape, you might want to try an experiment. Go to a bedroom that ideally has an overhead light, secondary lights, and a closet. Measure 9-10 feet back from the center of the closet door, and stand there. Then, give the other person the measuring tape and have them enter the closet but do **not** have them turn on any closet light. Next, have the other person open the closet door exactly **three** inches. Take a good look for 5-10 seconds. Finally, have the person open the closet door a total of exactly **six** inches. Again, take a good look for 5-10 seconds.

What did you see? If your experiment went like mine, not much, and certainly not clothes or facial features. Basically, just the skin color of the person in the closet and their general height, which is exactly what Stanley Stotler gave on the night of the shooting. And this is pertinent because the conditions I just described are the conditions described by Stanley Stotler in his deposition.

Sunset in O'Fallon Missouri was 5:04 pm on the night of the shooting, which occurred shortly before 6:42 pm. Stotler said his bedroom had an illuminated overhead light as well as secondary lights and a closet light that were turned off. He said he was 9-10 feet away from the closet and that he saw the shooter for between 5 and 10 seconds after the shooter opened the door a crack. And we do mean a crack. Here's the pertinent portion of Stotler's deposition testimony:

Q. Right. How far was the closet open, at that time, or were you just looking at the gun under the bed when he fired the first shot?

A. The first shot that hit my shoulder?

Q. Yes.

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A. I looked over and I saw the door itself was just cracked open a couple of inches. You know, I don't -- three to six inches maybe.

[32:01] **Rabia Chaudry:** So, pulling all of these facts together, what should we think about the ability of Stotler to identify Jonathan Irons? First, here's Professor Penrod:

Professor Penrod:

The most rapid loss of memory is literally in the first minutes and hours after viewing essentially any information, and two to three days is a long time. Particularly I think you said it was a five to ten second view under poor lighting conditions? Did he see the weapon?

Colin Miller:

He did say he could see the weapon, yes.

Professor Penrod:

So he's got weapon focus, the stress of the situation, you've got poor lighting conditions, you've got a brief opportunity to view, is this cross-race?

Colin Miller:

Yes.

Professor Penrod:

You've got cross-race, was the perpetrator wearing a hat or anything?

Colin Miller:

He had a hooded sweatshirt, and the victim's statement changes. At one point he says the hood is up, at one point he says the hood is down.

Professor Penrod:

If it's up, you've got some disguise, because they'd be concealing hairline, shape of the ears, information that 's- particularly the hairline is very important. So you've got a whole bunch of factors undermining the reliability from the get go, and then you add in retention intervals, you've got a weak memory to begin with, and it's going to be fading away like any memory.

Next, here's Dr. Eisen:

Colin Miller:

And another aspect is the victim says this perpetrator was in the closet. The closet light wasn't on, the door was just opened a crack, I assume all of those would affect the ability to make an identification?

Dr. Mitchell Eisen:

I mean, that's tons of it. He's a young black kid, he barely gets a good view, he's traumatized, it happened quickly, we don't check his memory for 23 days. There's tons of what we call estimator variables that can affect eyewitnesses. But the big ticket items are not the estimator variables, the big ticket items are the system variables. The procedures used to collect and preserve the item as evidence.

And so what you have in your case is you have the substandard procedures being used that drove the identification. It was the cop saying, "Oh, you don't recognize, try anyway." And then leaving him with it. And then telling him that we think we have the guy, and then increasing his confidence. It's all that stuff that's the big ticket.

[34:51] Rabia Chaudry: And, speaking of the big ticket, there's one more system variable we haven't mentioned yet. As part of Jonathan's current appeal, the defense worked with Dr. James Lampinen, a now retired eyewitness expert at the University of Arkansas. At an evidentiary hearing last fall, Dr. Lampinen would testify to the following:

When I initially looked at this lineup back three years or so ago, the thing that popped out at me immediately was that Mr. Irons had looked big, looked big compared to the other photographs. And that was kind of an immediate perceptual thing. It just kind of jumped out at me that his head was a lot bigger than in the other photographs.

I then went through and did a simple kind of pixel count measuring from the bottom of each persons' chin to the top of their head and kind of quantified. So Mr. Irons' photograph from the bottom of the chin to the top of the head was about 25 percent larger than the average of all the other photographs.

Q. And so it was significantly larger?

A. Yeah, so in terms of just measuring it, yeah, significantly larger. But I think even more importantly, perceptually it seemed obvious to. And I think that's the bigger issue is perceptually it seems obvious.

Now, another way of thinking about that is if you look at these photographs in photograph 1, 2, 4, 5 and 6, there's an awful lot of background that you can see behind the heads. But in Mr. Irons' photograph, his head takes up pretty much the entire frame of the photograph from the bottom all the way up to the top. So it's kind of

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perceptually obvious that that photograph is different from the rest, in my opinion.

[36:22] Rabia Chaudry: Professor Penrod sees similarities between the photo array in the Jonathan Irons case and a study involving photo arrays where one photo sticks out:

Professor Penrod:

Thirty, Forty years ago, they did studies where you just had an array, a photographic array and it compared selections in an array where everybody's head was upright as opposed to selections where one person's head was tilted

and everybody else's was upright, where people went to the tilted head. So anything that makes a person stand out is going to draw attention and increase risk of that person being misidentified.

[37:02] Rabia Chaudry: Meanwhile, Dr. Lampinen compared the Jonathan Irons photo array to photo arrays involving Marvin Anderson, a black man convicted of raping a white woman before later being exonerated based on DNA evidence. Here, Anderson describes the photo arrays in his case:

Marvin Anderson:

They had stopped by the victim's apartment. The photo spread that she was shown were all black and white pictures. Mugshots. Well, I had never been in trouble with the law before so there wasn't a mugshot of me anywhere. And the investigating officer retrieved a work ID, which is a color photo. Each time they showed her photographs, my picture was in each set. That one color picture. And by doing that, you know. You're looking at a photo spread of all black and white pictures and one color picture keeps showing up. Eventually, it's going to stick in your mind. And that is what stood out in her mind. A color picture of me.

[38:05] Rabia Chaudry: Now, after being exonerated, Anderson has been able to forgive the victim as well as become a father, the chief of a fire department, and a member of the Board of Directors of the Innocence Project. And, while it would be easy for Jonathan Irons to bear animosity towards Stanley Stotler, he instead has empathy for him.

Colin Miller:

And in terms of Stanley Stotler, the victim, which we just spoke about, I think from

what I've read maybe at one of your hearings or in the news, it would be very easy for someone in your position to be bitter or hateful toward the person who misidentified them, but I think I read that you forgive him and see him as a victim in this too, right?

Jonathan Irons:

Yeah. Absolutely, I mean, this guy was shot. They took advantage of his memory. He had memory loss and not knowing what happened- I'm totally convinced that they piecemealed him information. I find no fault with him and at some point in our lives I hope I can sit down with him and just face it, sit down and have dinner with the guy and just let him know that, hey man, I forgive you. I

wish there was something that I could do to help you. It's just unfortunate man, he's definitely not to be blamed. We are both victims in this.

[39:33] Rabia Chaudry: All of this takes us back to the concept of bearing false witness. Jonathan Irons does not believe that Stanley Stotler was a false witness in the sense of maliciously lying to get him convicted; instead, he sees Stotler as the type of false witness in Deuteronomy, ignorant to the shift and stick the State did with him after his initial non-identification.

Jonathan Irons claims that the State violated his Due Process rights because it couldn't and shouldn't have called Stanley Stotler as a witness...because the prosecution knew or should have known that his testimony was false. That he didn't and couldn't have seen what he claimed to see. That his initial non-identification meant that he didn't recognize Jonathan Irons as his shooter. That when Stotler's story evolved to match the police reports it's because those reports were the basis for his testimony, not anything he remembered. That, according to Jonathan Irons, is how Stanley Stotler was a false witness...not because he knew what he was saying was false...but because the State knew it wasn't and couldn't be true.

So, should the State have been able to present Stanley Stotler's eventual identification at trial, and should they be able to present it again if Jonathan Irons is given a new trial? We should have an answer soon. But there was also someone else you might want to label a false witness in the case except for the fact that he didn't actually testify against Jonathan Irons at trial. And yet he may have been the key to securing his conviction. Next time...on Undisclosed.

Thanks for listening to this episode of *Undisclosed*. I'd like to thank the following people: Rebecca Lavoie for audio production, Christie Williams for website management, Mital Telhan, our executive producer. As always I'd like to thank your sponsors. You can support us at patreon.com/undisclosedpod, and you can follow us on Facebook, Twitter, and Instagram using the handle @UndisclosedPod.

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