NO. 131337

IN THE
SUPREME COURT OF ILLINOIS

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| PEOPLE OF THE STATE OF ILLINOIS, | ) ) | On Appeal from the Appellate Court of Illinois, First Judicial District, Case No. 1-22-0494 |
| Respondent-Appellant, | ) ) | |
| v. | ) ) | There Heard on Appeal from the Circuit Court of Cook County, Illinois, Criminal Division, Case No. 17 CR 08698-01 |
| ANTRELL JOHNSON, | ) ) ) | |
| Petitioner-Appellee. | ) ) ) | The Honorable Thaddeus L. Wilson, Judge Presiding. |

**AMICI CURIAE BRIEF OF THE EXONERATION PROJECT, THE INNOCENCE PROJECT, AND THE ILLINOIS INNOCENCE PROJECT IN SUPPORT OF PETITIONER-APPELLEE**

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**INTEREST OF AMICI**

The Exoneration Project is a not-for-profit organization established eighteen years ago to provide *pro bono* legal representation to individuals who are innocent of the crime for which they were convicted. To date, the Exoneration Project has exonerated over 250 wrongfully convicted people, the vast majority obtaining relief from erroneous Illinois convictions. As leading advocates for the wrongfully convicted in Illinois and around the country, the Exoneration Project is deeply invested in ensuring that the courts have clear, consistent directions and a modern understanding for analyzing the inherent limits of eyewitness identifications given that eyewitness misidentification continues to be the most prevalent factor in wrongful convictions.

The Innocence Project is a nonprofit organization that works to free the innocent, prevent wrongful convictions, and create fair, compassionate, and equitable systems of justice for everyone. In addition to litigating individual cases, it pursues administrative, legislative, and court reform by advocating for the innocent and participating as amicus curiae in cases of broader significance. Since its founding in 1992, the Innocence Project's post-conviction work has led to the exoneration or release of more than 250 innocent people.[1] Mistaken eyewitness identifications contributed to the majority of these wrongful convictions.[2] As a leading advocate for the wrongfully convicted, the Innocence Project has a compelling interest in this case because it highlights the risk factors that contribute to misidentifications and presents an opportunity to provide guidance to courts statewide about how to assess the reliability of eyewitness identification evidence.

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[1] Innocence Project, *Explore the Numbers: Innocence Project's Impact*, https://innocenceproject.org/exonerations-data/ (last visited Nov. 4, 2025).
[2] *Id. (63%).*

The Illinois Innocence Project was established at the University of Illinois-Springfield in 2001 as part of a larger mission to bring justice to the wrongfully convicted. To accomplish this goal, the Illinois Innocence Project has established a three-pronged approach: (1) advocate to free innocent people from prisons; (2) educate students, the public and law enforcement about wrongful convictions; and (3) reform the system by enacting legislation that will protect innocent people and prevent wrongful convictions. Thus far, the Illinois Innocence Project has helped free 33 individuals who were convicted of crimes they did not commit. The Illinois Innocence Project continues to find that eyewitness misidentification is a leading factor in their active casework. As a result, the Illinois Innocence Project seeks to bring attention to new scientific literature regarding eyewitness misidentification and respectfully request that the Court consider findings from this research during its review of the case at bar.

Amici seek to present the Court with recent scientific teachings and information regarding eyewitness identifications and offers recommendations should the Court choose to address application of the adjudication factors it has derived from the United States Supreme Court case *Neil v. Biggers*, 409 U.S. 188 (1972), and/or to expand upon the Court's teachings promulgated in the seminal case *People v. Lerma*, 2016 IL 118496.

**ARGUMENT**

**Introduction**

In its instructive case *People v. Lerma* almost a decade ago, this Court recognized, "Scientific advances have confirmed that eyewitness misidentification is now the single greatest source of wrongful convictions in the United States, and responsible for more wrongful convictions than all other causes combined."[1] Since then, that troubling trend has emphatically persisted: "Recent studies by the Department of Justice and others reveal that 80-90% of incarcerated felons freed by DNA evidence had been convicted largely through testimony from sincere, persuasive but hugely mistaken eyewitnesses."[2]

In 2024 alone, the National Registry of Exonerations determined that 38 exonerations were for convictions based at least in part due to mistaken eyewitness identification.[3] In total, the National Registry of Exonerations has documented over 1200 exonerations where an erroneous eyewitness misidentification contributed to a wrongful

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[1] *People v. Lerma*, 2016 IL 118496, ¶ 24 (cleaned up and citation omitted). *See also People v. Starks*, 2014 IL App (1st) 121169, ¶ 85 (Hyman, J., concurring) (quoting *Perry v. New Hampshire*, 565 U.S. 228, 263 (2012) (Sotomayor, J., dissenting)) ("Empirical evidence reveals eyewitness identification to be 'the single greatest cause of wrongful convictions in this country.'"); *Commonwealth v. Walker*, 625 Pa. 450, 476, 92 A.3d 766, 782 (2014) ("extensive and comprehensive scientific research, as reflected in hundreds of peer reviewed studies and meta-analyses, convincingly demonstrates the fallibility of eyewitness identification testimony and pinpoints an array of variables that are most likely to lead to a mistaken identification.") (footnotes and citations omitted).

[2] Martin Blinder, M.D., *Eyewitness testimony: Highly esteemed, highly unreliable, Psychiatry in the Everyday Practice of Law* § 10:1 (5th ed.) (June 2025).

[3] Univ. of Mich. L. Sch. *et. al.*, *2024 Annual Report*, NAT'L REGISTRY OF EXONERATIONS, available at https://exonerationregistry.org/sites/exonerationregistry.org/files/documents/2024_Annual_Report.pdf (last accessed Nov. 12, 2025).

conviction, with at least 124 cases taking place in Illinois (totaling approximately 1435 years lost to wrongful incarceration).[4]

Amici endeavor to inform the Court that the reason for this scourge is a dramatic disconnect between, on the one hand, the modern social science research uniformly demonstrating the severe limits of eyewitness testimony and, on the other hand, the overwhelming, undue weight that jurors place on identification evidence, "comparable to or more impactive than physical evidence."[5] To combat this disconnect, Amici offer concrete suggestions for modernizing the approach for Illinois courts in addressing identification testimony.

Before delving into the substance of adjudicating eyewitness testimony, it is important to address the State's attempt to hamstring the Court by arguing that higher courts may not rely on scholarly social science articles to inform their opinion. St. Br. at 37-39. Contrary to the State's suggestion, courts routinely rely on scholarly articles and social science research to inform their adjudication.[6] In fact, this Court has denied a motion to strike a portion of an appellate brief, holding that Supreme Court Rule 341, which governs the substance of appellate briefs, "expresses no restriction on the nature or

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[4] Univ. of Mich. L. Sch. *et. al.*, *Exonerations by Contributing Factor*, NAT'L REGISTRY OF EXONERATIONS, available at https://exonerationregistry.org/ (last accessed Nov. 11, 2025) (total exonerations including pre-1989 data).

[5] Melissa Boyce *et al.*, *Belief of Eyewitness Identification Evidence*, 2 The Handbook of Eyewitness Psychol: Memory for People 501, 505 (R.C. Lindsay *et al.* eds., 2007).

[6] *See, e.g., Graham v. Florida*, 560 U.S. 48, 62-66 (2010) (considering scholarly authority regarding juvenile sentencing); *People v. McKown*, 226 Ill.2d 245, 273-74 (2007) (considering a group of scientific papers cited as supporting authority); *In re Marriage of Schmitt*, 391 Ill. App. 3d 1010, 1017 (2d Dist. 2009) (noting that parties may cite secondary authorities in support of their arguments); *People v. Rodriguez-Aranda*, 2022 IL App (2d) 200715, ¶¶ 3-5 (denying motion to strike citation to secondary sources).

source of material which may be cited in support of an argument."[7] An opponent may of course attempt to refute the value of any authority on the merits, but appellate courts routinely rely scholarly social science teachings.

## I. Understanding *Neil v. Biggers* in Context

More than 50 years ago, the United States Supreme Court delineated factors to be included in assessing the reliability of eyewitness identifications in *Neil v. Biggers*, 409 U.S. 188 (1972). Five years later, in *Manson v. Brathwaite*, 432 U.S. 98 (1977), the Supreme Court codified that the *Biggers* factors set forth an appropriate standard for judging eyewitness reliability. However, these reliability factors were not derived from the social science research of the era; instead, they were merely a compilation of the factors used in earlier Court decisions.[8] This Court began applying the *Biggers* factors fifty-one years ago in *People v. Camel*, 59 Ill.2d 422, 432 (1974).

Under the *Biggers* factors, "reliability is the linchpin in determining the admissibility of identification testimony," and reliability should be evaluated by considering factors such as: "[1] the opportunity of the witness to view the criminal at the time of the crime, [2] the witness' degree of attention, [3] the accuracy of his prior description of the criminal, [4] the level of certainty demonstrated at the confrontation, and [5] the time between the crime and the confrontation."[9] This Court has applied the *Biggers* factors to evaluate the reliability of eyewitness identifications, reversing for a

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[7] *In re M.M.*, 156 Ill.2d 53, 56 (1993). *See also id.* at 72 (applying the teachings in scholarly articles to the issues before the Court).

[8] Thomas D. Albright & Brandon L. Garrett, *The Law and Science of Eyewitness Evidence*, 102 B.U.L. Rev. 511, 518-19 (2022). *See Biggers*, 409 U.S. 188, 199-200.

[9] *Manson v. Brathwaite*, 432 U.S. at 114.

new trial based on application of the factors.[10] The *Biggers* factors were by no means presented as an exhaustive list. Nevertheless, they now comprise the Illinois pattern jury instructions for evaluating eyewitness identifications.[11] Amici argue for expanding the factors to include a more comprehensive, scientifically based list.

This Court's 2016 seminal case on eyewitness identification, *People v. Lerma*, seemingly moved away from application of the *Biggers* factors and acknowledged the many scientific factors omitted by *Biggers'* non-exhaustive list. The *Lerma* Court took a deep dive into the reliability of eyewitness identifications without any explicit discussion of *Biggers*, and this Court has not expressly applied the *Biggers* factors since *Lerma*. In *Lerma*, the Court held that the trial court abused its discretion in denying the defendant's request to allow expert testimony on the reliability of eyewitness identifications. The Court found that although social science research about the limits of eyewitness testimony is now "widely accepted by scientists," the research is "largely unfamiliar to the average person, and, in fact, many of the findings are counterintuitive."[12]

The *Lerma* Court recognized the validity of research discussing numerous factors potentially contributing to the unreliability of eyewitness testimony, including "the stress of the event itself, the use and presence of a weapon, the wearing of a partial disguise,

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[10] *People v. Piatkowski*, 225 Ill.2d 551, 568 (2007). *See also People v. Lewis*, 165 Ill.2d 305, 356 (1995) (assessing the sufficiency of identification testimony using the *Biggers* factors).

[11] *See Lewis*, 165 Ill.2d at 356 (citing IPI Criminal 3d No. 3.15).

[12] *Lerma*, 2016 IL 118496, at ¶ 24 (citing *State v. Guilbert*, 306 Conn. 218, 49 A.3d 705, 723-24 (2012) (collecting cases and studies proving this point).

exposure to post-event information, nighttime viewing, and cross-racial identification."[13] As detailed below, subsequent research and studies have only reinforced the prescience and validity of the *Lerma* Court's analysis.

The Court in *Lerma* also addressed several common misconceptions about eyewitness identifications. Of particular relevance here, "common knowledge" may suggest that eyewitnesses never mistakenly identify an acquaintance, as the lower court in *Lerma* erroneously believed.[14] Common sense suggests that a witness who claims to recognize a perpetrator as someone whom they have met before would be reliable—if the witness knows the perpetrator, how could they be mistaken? But social science research makes clear that there is a vast difference between slight acquaintances and close relations and that eyewitnesses often mistakenly identify acquaintances.[15] Because our justice system relies on lay jurors' common sense in making factual determinations, this new area of science is particularly important for jurors to understand before making life and liberty decisions based on eyewitness identification evidence alone.

Indeed, the Innocence Network—a national umbrella organization of not-for-profit legal institutions fighting on behalf of the wrongfully convicted—compiled a list

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[13] *Lerma*, 2016 IL 118496, at ¶ 24.

[14] *People v. Lerma*, 2014 IL App (1st) 121880, at ¶ 38.

[15] *Lerma*, 2016 IL 118496, at ¶¶ 14, 28; *see also* James E. Coleman *et al.*, *Don't I Know You?: The Effect of Prior Acquaintance/Familiarity on Witness Identification*, The Champion, Apr. 2012, at 54 ("[F]amiliarity does not eliminate misidentification problems. Even with familiar faces, people are significantly worse at recognizing faces than they expect."); Jonathan P. Vallano *et al.*, *Familiar Eyewitness Identifications: The Current State of Affairs*, Psych. Pub. Pol'y & L. 128, 129 (2019) (identifying a perpetrator with whom the witness may have some prior familiarity is more complex than a stranger identification).

for an *amicus brief* in support of *Lerma* of at least 32 then-known exonerations where an innocent defendant was convicted based on the eyewitness testimony of someone who claimed to have known the defendant before the crime. has Amici have expanded that list using the National Registry of Exonerations database, adding 81 exonerations since *Lerma* involving an erroneous identification by an acquaintance or someone familiar with the suspect. *See* Appendix A. Consider the cases of Brian Beals, John Galvan, Charles Johnson, Nakiya Moran, Reynaldo Munoz, Fabian Santiago, Thomas Sierra, Larod Styles and Keith Walker. According to the National Registry, these are all individuals who were exonerated after this Court's 2016 decision in *Lerma* and who were wrongfully convicted in Illinois after being misidentified by an acquaintance and/or witness who claimed to have known them before the crime. *Id.*

The challenges of identifying someone who is slightly familiar is explained by the concept of "unconscious transference," which refers to misidentifying someone as the culprit of a crime after having seen them in another context. One common way this occurs is "mugshot exposure." Quite simply, testing a witness's memory by showing them a mugshot, lineup, or photo array can contaminate it. "[T]here is only one *uncontaminated* opportunity for a given eyewitness to make an identification of a particular suspect. Any subsequent identification test with that same eyewitness and that same suspect is contaminated by the eyewitness's experience on the initial test."[16]

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[16] Gary L. Wells *et al., Policy and Procedure Recommendations for the Collection and Preservation of Eyewitness Identification Evidence*, 44 Law & Hum. Behav. 3, 25 (2020) (emphasis in original). This scientific review paper was authored by six of the leading researchers in the field and represents the "official position" of the American Psychology-Law Society, a division of the American Psychological Association that includes the leading psychologists studying eyewitness identifications and memory.

Even if the witness does not initially identify the suspect, seeing a suspect in a photo array, showup, or lineup can cause witnesses to falsely identify the suspect during a later identification procedure—often referred to as "source confusion" or "memory-source error." *Id.* "The essential problem is that on a second test, an individual can look familiar because of the exposure during the first test, even when it is not the right person."[17] And if a witness does identify a suspect during an identification procedure, they are likely to identify the same person again in later identification procedures, even if that initial identification was mistaken—known as the "commitment effect."[18]

Decades of research in cognitive science have found that identification procedures leave the eyewitness with a "memory trace" of the suspect's face, and an association of that suspect with the context of the crime.[19] This memory may be activated in a later viewing of the same suspect, regardless of whether they are the actual culprit. *Id.* Further, when a witness repeatedly views a suspect, the memory "is likely to feel stronger to the eyewitness each time he or she encounters the person."[20] Repeated viewings can thus "lead[] to artificially elevated levels of eyewitness confidence."[21]

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[17] John T. Wixted et al., *Test a Witness's Memory of a Suspect Only Once*, 22 Psychological Science in the Public Interest 1S (2021), available at https://www.psychologicalscience.org/observer/witnesss-memory.

[18] Wells *et al.*, *supra* n.16 at 25.

[19] Wixted *et al.*, *supra* n.17 at 1S, 4S–5S.

[20] John T. Wixted & Gary L. Wells, *The Relationship Between Eyewitness Confidence and Identification Accuracy: A New Synthesis*, 18 Psychological Science in the Public Interest 10, 47 (2017).

[21] Wells *et al.*, *supra* n.16 at 26.

A military study is illustrative.[22] In the study, military personnel were placed in a

mock prisoner-of-war camp as part of survival-school, and each trainee underwent 30

minutes of interrogation while alone in a well-lit room with an instructor. After the

interrogation, the trainee was placed alone in an isolation cell. A researcher entered the

cell about an hour after the interrogation and asked questions about the interrogator while

showing the participant a photograph of another man (the "foil"), thereby falsely

implying that he was the interrogator. About 36 hours later, the trainee's memory was

tested using a photo lineup, which contained a picture of the foil but not the actual

interrogator. Study participants who had not been exposed to the foil's face following the

interrogation mistakenly identified the foil as the interrogator 15 percent of the time. By

contrast, trainees who had been shown a photograph of the foil's face while being asked

about the interrogation mistakenly identified the foil as the interrogator 84 percent of the

time. In other words, the research team was successfully able to implant a "memory" of

something the participants had not actually seen in a majority of those trainees. *Id.*

Thus, studies have shown that multiple viewings of the same suspect prior to the

identification procedure increases the risk of mistaken selection, as a witness may not

remember the source of their previous exposure to the suspect's image.[23] They confuse

viewing the suspect in a previous encounter with viewing the suspect during the crime.

*Id.* When viewing a lineup, an eyewitness who is semi-familiar with a suspect or who has

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[22] Charles A. Morgan III *et al.*, *Misinformation Can Influence Memory for Recently Experienced, Highly Stressful Events*, 36 Int'l J. of Law & Psychiatry 11-16 (2013).

[23] *See e.g.*, Nancy K. Steblay *et al.*, *Double Exposure: The Effects of Repeated Identification Lineups on Eyewitness Accuracy*, 27 Applied Cognitive Psych. 644, 654 (2013).

seen the suspect in prior lineups might accurately recall that they have seen that suspect before, but mistakenly identify that familiar, but innocent, person as the perpetrator.[24]

In sum, modern social science has vastly expanded the considerations necessary for adjudicating the reliability of eyewitness identifications, well beyond the factors delineated in *Biggers* and even beyond those discussed by this Court in *Lerma*. Amici offer suggestions that align with findings supported by present-day social science should the Court choose to adopt new standards to replace or expand upon *Biggers*' application.

## II. Eyewitness Misidentification Remains the Leading Cause of Wrongful Convictions and an Area in Which Jurors, and Sometimes the Lower Courts, Are Profoundly Misinformed

In the era of post-conviction DNA exonerations, conclusive proof of innocence has allowed social scientists to significantly advance our understanding of why people are wrongfully convicted of crimes they did not commit.[25] Empirical research shows that eyewitness misidentifications play a central role in causing wrongful convictions.[26]

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[24] Jonathan P. Vallano *et al.*, *Familiar Eyewitness Identifications: The Current State of Affairs*, 25 Psych. Pub. Pol'y & L. 128, 128 (2019); Kathy Pezdek & Stacia Stolzenberg, *Are individuals' familiarity judgments diagnostic of prior contact?*, 20 Psych., Crime & L. 302, 311 (2014); *see also* Nancy K. Steblay *et al.*, *Double Exposure: The Effects of Repeated Identification Lineups on Eyewitness Accuracy*, 27 Applied Cognitive Psych. 644, 654 (2013) ("An eyewitness viewing a second procedure with the same suspect may believe that the suspect's presence in both procedures suggests that authorities believe the suspect is the perpetrator.").

[25] Gary L. Wells *et al.*, *Pol'y & Proc. Recommendations for the Collection and Preservation of Eyewitness Identification Evidence*, 44 Law & Hum. Behav. 3, 4 (2020)

[26] *See generally* Univ. of Mich. L. Sch. *et. al.*, *Exonerations by Contributing Factor*, NAT'L REGISTRY OF EXONERATIONS, available at https://exonerationregistry.org/ (last accessed Nov. 11, 2025); *see also How Eyewitness Misidentification Can Send Innocent People to Prison*, INNOCENCE PROJECT (April 15, 2020), https://innocenceproject.org/news/how-eyewitness-misidentification-can-send-innocent-people-to-prison/.

Studies reveal that eyewitnesses offer "the sort of testimony most valued by juries," but that, "by any objective standard, [it] is perhaps the least reliable."[27] "Despite the large margin of error, eyewitness identification evidence has the power to become outcome determinative because jurors find the evidence extremely compelling and afford it more weight than any other piece of evidence."[28]

The reason that identifications, right or wrong, are credited so heavily by juries is no mystery: there is little that could be more compelling than a witness or victim saying, "I saw the perpetrator. It was the defendant."[29] Scientific research confirms Justice Brennan's view: "[P]eople believe that witnesses are considerably more likely to be accurate than they actually are."[30] Research also tells us that jurors routinely overestimate their own memory.[31] Juries therefore afford eyewitness identifications undue weight.

In fact, studies have found that juries are dramatically overpersuaded by such testimony even when they later learn, for instance, that the eyewitness was legally

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[27] Blinder, *supra* n.2.

[28] Katie Philyaw, "*the More I See the Less I Know": Why Reforming the Federal Rules of Evidence Is Necessary to Ensure the Reliability of Eyewitness Identification Testimony*, 60 Gonz. L. Rev. 213 (2025); *see also id.* at 218-19 (citing studies in support).

[29] *See, e.g., Watkins v. Sowders*, 449 U.S. 341, 352 (1981) (Brennan, J., dissenting) ("all the evidence points rather strikingly to the conclusion that there is almost *nothing more convincing* than a live human being who takes the stand, points a finger at the defendant, and says 'That's the one!'") (emphasis in original, footnote omitted).

[30] Boyce *et al.*, *Belief of Eyewitness Identification Evidence*, HANDBOOK OF EYEWITNESS PSYCHOLOGY: MEMORY FOR PEOPLE at 508-09 (2007).

[31] Sarah L. & J. Don Read, *After 30 Years, What Do We Know about What Jurors Know? A Meta-Analytic Review of Lay Knowledge Regarding Eyewitness Factors*, 35 Law & Hum. Behav., 200 (2011).

blind.[32] One such real-world case involved Darien Harris, who was wrongfully convicted for twelve years. [33] Mr. Harris's conviction was secured almost solely through the testimony of a blind eyewitness, who the court repeatedly referred to as credible when it wrongfully convicted Mr. Harris. *Id*. It was later discovered that the purported eyewitness was suffering from advanced glaucoma at the time of the crime and had severely limited vision. *Id*. Later discovered surveillance video footage also showed that the witness was much farther from the scene than he thought himself to be when he testified. *Id*.

Notably, of the modern era's DNA exonerations, "38 percent of misidentifications involved multiple witnesses identifying the same wrong person[.]"[34] Quite simply, "human facial recognition poses real challenges for individuals," and "[s]cientific research has documented how, even under optimal viewing conditions, eyewitnesses can have great difficulty identifying strangers (and even nonstrangers)."[35]

The extreme disconnect between juror reliance on eyewitness identifications and the patent limits of the evidence's accuracy is attributable to two distinct types of variables or risk factors for misidentification. First, estimator variables "refer to

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[32] Natalie Beers, *Guess Who?:First-Time In-Court Identifications and Due Process*, 81 Wash. & Lee L. Rev. 1201, 1210-11 (2024) (citing Nat'l Rsch. Council of the Nat'l Acad. of Scis., *Identifying the Culprit: Assessing Eyewitness Identification* at 23 (2014)); *see also* Henry F. Fradella, *A Synthesis of the Science and Law Relating to Eyewitness Misidentifications and Recommendations for How Police and Courts Can Reduce Wrongful Convictions Based on Them*, 47 Seattle U.L. Rev. 1, 15 (2023).

[33] Univ. of Mich. L. Sch. *et. al*., *Darien Harris*, NAT'L REGISTRY OF EXONERATIONS, available at https://exonerationregistry.org/cases/13660 (last accessed Nov. 11, 2025).

[34] Amy D. Trenary, *State v. Henderson: A Model for Admitting Eyewitness Identification Testimony*, 84 U. Colo. L. Rev. 1257, 1295 (2013).

[35] Albright & Garrett, *supra* n.8, at 517.

characteristics of the witness, the alleged perpetrator, and the environmental conditions of the event" outside the control of the criminal legal system that might impact the identification's reliability.[36] Some of the many examples of estimator variables include: lighting conditions; duration of the event; the presence or absence of violence or a weapon; high levels of stress or fear; a witness's degree of attention; the distance/angle of the viewer; whether the viewer has ingested drugs or alcohol; the quality of the viewer's perception ability (*i.e.,* poor vision or impaired hearing); other sensory input present, like loud music or sun glare; the number of offenders; the time that has passed from the event itself and the identification, and race/ethnicity of the perpetrator and the witness.[37] Essentially, these factors relate to the witness' ability to accurately perceive and encode a memory of the crime and the perpetrator.

Second, system variables "refer to the circumstances surrounding the identification procedure itself that are generally within the control of those administering the procedure" that impact how memories are retrieved.[38] These factors include, for example, blind versus non-blind administration of the identification procedure, pre-identification instructions, witness sequestration, filler selection,[39] and post-identification

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[36] *State v. Lawson*, 352 Or. 724, 740 (2012); *see also* Gary L. Wells, *Eyewitness-Testimony Research: System Variables and Estimator Variables*, 36 J. PERSONALITY & SOC. PSYCHOL. 1546, 1546 (1978).

[37] Fradella, *supra* n.32, at 23-24, 31 (2023).

[38] *Lawson*, 352 Or. at 740; *see also* Gary L. Wells, *Eyewitness-Testimony Research: System Variables and Estimator Variables*, 36 J. Personality & Soc. Psychol. 1546, 1546 (1978).

[39] Fradella (2023), *supra* n.32 at 81-87; Susan Dixon & Amina Memon, *The Effect of Post-Identification Feedback on the Recall of Crime and Perpetrator Details*, 19 Applied Cognitive Psychol. 935 (2005).

feedback.[40] As the National Research Council's landmark 2014 report summarizes, eyewitnesses' memories "can be affected by various factors including the very law enforcement procedures designed to test their memories."[41]

The Court in *Biggers* talks about intentional tampering with system variables—improper police conduct influencing a lineup—and that is unquestionably a highly valid concern. But our understanding has greatly advanced in the half-century since *Biggers*, and social scientists can now point to numerous ways that unintentional conduct by police, prosecutors, and even courts can influence identifications as well.

### III. Suggestions for Updating the Factors that Should Be Considered When Evaluating the Reliability of Eyewitness Testimony, to Incorporate the Current Scientific Consensus About the Fallibility of Memory

Modern scientific research supports updating and revising the standards this Court derived from *Biggers*, to combat erroneous eyewitness identifications as the leading cause of wrongful convictions. Amici urge the Court incorporate modern science and expand on *Lerma* to establish updated guidance about how to evaluate eyewitness testimony, in keeping with other courts around the country.

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[40] Nancy K. Steblay *et al.*, *The Eyewitness Identifcation Feedback Effect 15 Years Later: Theoretical and Policy Implications*, 20 Psychol Pub. Pol. & L. 1, 11 (2014) ("Confirming feedback significantly inflates eyewitness reports on an array of testimony-relevant measures, including attention to and view of the crime event, ease and speed of identification, and certainty of the identification decision.").

[41] Albright & Garrett, *supra* n.8 at 517. *See also* Third Circuit Task Force, *2019 Report of the United States Court of Appeals for the Third Circuit Task Force on Eyewitness Identifications*, 92 Temp. L. Rev. 1, 12 (2019) ("[P]erception is imperfect, and memories are malleable and may be impermanent. While memories can sometimes be very precise and accurate, they can also be distorted or contaminated, without an individual intending or even knowing that his/her memory is inaccurate.").

The Washington Supreme Court exemplified this type of analysis in *State v. Derri*, 199 Wash. 2d 658, 511 P.3d 1267, 1277 (2022), holding that when Washington courts apply the *Biggers* test, they "must apply relevant, widely accepted modern science on eyewitness identification at each step of the test." And nearly a dozen other states have departed from the *Manson*/*Biggers* framework under state constitutional or evidentiary law,[42] or explicitly incorporated modern psychological research on estimator and system variables into this framework.[43] Amici urge the Court to follow the Washington Supreme Court's example and incorporate modern research about estimator and system variables into the *Biggers* test.

### A. The Witness' Attention Level and Opportunity to View the Criminal

This Court should expressly clarify that witnesses' opportunity to view offenders encompasses not only their attention level, but also the plethora of estimator variables that can impact the ability to accurately perceive and encode a memory of the offender. At bare minimum, should the *Biggers* factors remain part of the equation for adjudicating the reliability of eyewitness identifications, courts should explicitly recognize that a witness' attention/opportunity to view an offender is adversely impacted by: (1) weapon

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[42] *See* Utah Rule of Evidence 617; *State v. Martinez*, 478 P.3d 880 (N.M. 2020); *State v. Harris*, 191 A.D.3d 119 (Conn. 2018); *Young v. State*, 374 P.3d 395 (Alaska 2016); *People v. Lawson*, 291 P.3d 673 (Or. 2012); *State v. Henderson*, 27 A.3d 872 (N.J. 2011); *Commonwealth v. Johnson*, 650 N.E.2d 1257 (Mass. 1995); *People v. Adams*, 423 N.E.2d 379 (N.Y. 1981); *Commonwealth v. Gomes*, 470 Mass. 352, 367 (2015).

[43] *State v. Derri*, 511 P.3d 1267 (Wash. 2022); *State v. Kaneaiakala*, 450 P.3d 761 (Haw. 2019); *State v. Almaraz*, 301 P.3d 242 (Idaho 2013).

focus[44]; (2) the threat or stress posed by the situation[45]; and (3) whatever other estimator variables, such as cross-racial identifications (or "own-race bias")[46] affect a witness's ability to accurately perceive and encode a memory of particular events.

Most laypeople believe that high stress, weapons, and/or traumatic experiences lead to more accurate memories—the trope of the memory of a face "seared" into the brain by how traumatic and scary the event was. But research on this issue shows that the opposite is true: Trauma makes encoding a face especially challenging and unreliable. Indeed, "[c]omplex, dynamic, real-world crimes do not permit the disentangling of acute stress from effects relating to attention, perception, cognitive load, and other factors."[47]

Although it is difficult to replicate the stress of real crimes in a laboratory setting, a 2004 study of active-duty military personnel who were subjected to interrogations as part of "survival-school" training demonstrates how high stress impairs memory. In that

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[44] *See, e.g.,* the majority decision below at ¶ 33 ("Over 40 years of extensive research on eyewitness identification shows that the presence of a weapon commands an eyewitness's attention and diminishes the ability of the eyewitness to describe or recognize the offender, a phenomenon known as the weapon-focus effect."); *People v. Allen*, 376 Ill. App. 3d 511, 524-25 (1st Dist. 2007) (noting the academic consensus that witnesses tend to focus on weapons, not the offenders' faces); Nat'l Rsch. Council of the Nat'l Acad. of Scis., *Identifying the Culprit: Assessing Eyewitness Identification* at 93-94 (2014).

[45] *See e.g., Lawson*, 352 Or. at 741, 744 ("High levels of stress or fear can have a negative effect on a witness's ability to make accurate identifications."); *Lerma*, 2016 IL 118496, ¶ 26 (discussing expert testimony establishing that stress contributes to the unreliability of eyewitness testimony); *see also* Kenneth A. Deffenbacher *et al.*, A *Meta-Analytic Review of the Effects of High Stress on Eyewitness Memory*, 28 Law & Hum. Behav. 687, 687, 699 (2004) (high degrees of stress impair the ability to remember).

[46] Nat'l Rsch. Council of the Nat'l Acad. of Scis., *Identifying the Culprit: Assessing Eyewitness Identification* at 96-97 (2014).

[47] Marr, *et al.*, *The Effects of Acute Stress on Eyewitness Memory: An Integrative Review for Eyewitness Researchers*, MEMORY (July 2021).

study, each subject underwent both a high-stress and a low-stress interrogation. In the

high-stress interrogation, the military personnel were questioned for more than 30

minutes by an interrogator pretending to be a member of a foreign military while a

"guard" was physically confrontational if the subject did not appear to comply with the

interrogator's requests.[48] The interrogators and guards were well lit and did not have their

faces concealed. The subjects were asked to identify their interrogators 24 hours later in

physical lineups and photo arrays.

While the participants were able to identify their low-stress interrogators 62% of

the time in a lineup and 76% of the time in a photo array, they were only able to correctly

identify their high-stress interrogators in the lineups and photo arrays 30% and 34% of

the time, respectively. [49] *Id.* Stunningly, after experiencing the high-stress interrogation,

even well-trained military personnel were far more likely to make a false identification

than a correct one: 56% of witnesses falsely identified someone else as the high-stress

interrogator in a lineup and 68% in a photo array.[50]

The appellate courts, trial courts, and jurors could all benefit from this Court's

discussion of the negative impact that weapon focus, own-race bias, and stress have on

the reliability of eyewitness identifications. And this Court's discussion in *Lerma* of the

other sorts of estimator variables that can impair accurate identification merits reiteration

and expansion. Too many wrongful convictions occur because the factfinder, and the

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[48] Charles A. Morgan III *et al.*, *Accuracy of Eyewitness Memory for Persons Encountered During Exposure to Highly Intense Stress*, 27 Int'l J. of Law & Psych. 265, 268 (2004).

[49] *Id.* at 272.

[50] *Id.* (because the real interrogators were not present in every single lineup and photo array, the numbers of false and correct identifications don't add up to 100%).

appellate courts reviewing their verdicts, fail to recognize how hard it is to see far and discern faces, particularly when the suspect is of another race or the scene is chaotic.

For example, consider the case of Joseph Janke.[51] Mr. Janke was exonerated in 2023 after being wrongfully convicted of attempted murder. His conviction stemmed from a Harvey, Illinois shooting. During the crime, two men riding bikes and wearing hooded sweaters shot at a group of men working on cars outside a home. The prosecution relied on testimony from a sole eyewitness, one of the shooting targets, who knew Janke personally. That witness identified Janke in a photographic array and again during a live lineup. Even though there were numerous other eyewitnesses, no one else identified Janke as one of the gunmen. During post-conviction litigation, Janke's attorneys introduced an eyewitness who testified that he told police at the time that the two shooters were Black (Janke and his co-defendant are both white). Janke also introduced an eyewitness identification expert report identifying numerous factors that negatively impacted the trial witness's ability to identify the gunman, including distance, exposure duration, level of stress, weapon focus, multiple perpetrators, and disguise. Janke was granted a new trial and acquitted on retrial. *Id*.

**B.        Accuracy of the Witness' Prior Description of the Perpetrator**

There are two important maxims that this Court could expressly recognize to aid the lower courts' understanding of the limited value of a witness' prior description. First, quite simply, memories are malleable. "Unknown to the individual, memories are forgotten, reconstructed, updated, and distorted. Therefore, caution must be exercised

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[51] Univ. of Mich. L. Sch. *et. al*., *Joseph Janke*, NAT'L REGISTRY OF EXONERATIONS, available at https://exonerationregistry.org/cases/13660 (last accessed Nov. 13, 2025).

when utilizing eyewitness procedures and when relying on eyewitness identifications in a judicial context."[52]

And once distorted, an accurate memory can be irrevocably altered: "decades of social scientific findings demonstrate that eyewitness memory is malleable, and an eyewitness cannot access a memory of the perpetrator that is independent of a suggestive out-of-court procedure."[53] Traditionally, memories might be influenced or molded by viewing the suspect's image in mugshots, but now it has become even more challenging because it is "increasingly common for eyewitnesses to identify the suspect for the first time by finding their image on social media with the result that it is then "unclear if the suspect is familiar from the crime or from the social media viewing."[54]

Second, it merits reiteration that eyewitnesses' memory does not improve over time, so a witness' immediate description of the offender—before a lineup, photo array,

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[52] Nat'l Rsch. Council of the Nat'l Acad. of Scis., *Identifying the Culprit: Assessing Eyewitness Identification* at 1-2 (2014). *See also Perry*, 565 U.S. at 263-64 (Sotomayor, J., dissenting) ("Study after study demonstrates that eyewitness recollections are highly susceptible to distortion by postevent information or social cues"); Ronald P. Fisher, *Interviewing Victims and Witnesses of Crime*, 1 Psychol. Pub. Pol'y & L. 732, 740 (1995) ("There is little argument, however, that the phenomenon of postevent suggestibility exists, that it is robust, and perhaps most important, that witnesses truly believe that they observed an event that was only suggested"); Elizabeth Loftus, *Planting misinformation in the human mind: A 30-year investigation of the malleability of memory*, 12 Learn. Mem. 361 (2005) https://learnmem.cshlp.org/content/12/4/361.full.pdf+html (last checked 6/26/25) (surveying the expansive empirical literature and showing how external information substantially influences the memories of eyewitnesses).
[53] Jacqueline Katzman, Elaina Welch & Margaret Bull Kovera, *In-Court Identifications Affect Juror Decisions Despite Being Unreliable*, 49 Law & Hum. Behav. 376, 384 (2025) (citations omitted).

[54] Emma D. Kruisselbrink, Ryan J. Fitzgerald & Daniel M. Bernstein, *The Impact of Viewing Social Media Images on Eyewitness Identification*, 29 Psychol. Pub. Pol'y & L. 457, 458 (2023).

co-witness conversation, media influence, or systemic variable contamination—is a more accurate reflection of what the witness truly saw.[55] After that, as explained above, memory-source errors set in and the description can reflect co-witness contamination and information learned after the event, rather than what the witness saw at the crime.

### C.     The Level of Certainty Demonstrated at the Confrontation

This *Biggers* factor has become distorted in application in Illinois: jurors and courts typically take this factor to mean the witness' confidence *at the time of trial*, rather than confidence at the initial out-of-court identification procedure.[56] In fact, Illinois Pattern Jury Instructions advise jurors when weighing the identification testimony of a witness to consider: "The level of certainty shown by the witness when confronting the defendant," which implies the certainty shown by the witness in front of the jury at trial.[57]

But, by the time of trial, such confidence is far more indicative of post-identification feedback and other post-event information the witness has received, with

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[55] Gary L. Wells, Margaret Bull Kovera, Amy Bradfield Douglass, Neil Brewer, Christian A. Meissner & John T. Wixted, *Policy and Procedure Recommendations for the Collection and Preservation of Eyewitness Identification Evidence*, 44 Law & Hum. Behav. 3 (2020); Albright & Garrett, *supra* n.8 (citing studies, including National Research Council).

[56] *See, e.g., In re J.J.*, 2016 IL App (1st) 160379, ¶ 34. In *J.J.*, the witness admitted that she was only 60% sure of her identification during the photo array shortly after the robbery occurred and that her identification was only tentative. But the trial court found her courtroom identification to be "positive" and "absolute." Thus, the appellate court found that "the victim's level of certainty makes her identification reliable."

[57] IPI Criminal 4th No. 3.15(4).

suggestive procedures generating more false confidence.[58] Over the course of a criminal

proceeding, witnesses learn more about evidence, participate in trial preparation, may

receive positive feedback and coaching—even inadvertently—and are placed in the

spotlight to testify.[59] Such inputs tend to inflate the witness's confidence that the

defendant is the true perpetrator.[60] Moreover, because jurors tend to rely heavily on

witness confidence in evaluating the reliability of eyewitness testimony,[61] post-

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[58] *See*, *e.g.*, Nancy K. Steblay *et al.*, *The Eyewitness Identification Feedback Effect 15 Years Later: Theoretical and Policy Implications*, 20 Psychol. Pub. Pol. & L. 1, 11 (2014) ("Confirming feedback significantly inflates eyewitness reports on an array of testimony-relevant measures, including attention to and view of the crime event, ease and speed of identification, and certainty of the identification decision"); Mark W. Bennett, *Unspringing the Witness Memory and Demeanor Trap: What Every Judge and Juror Needs to Know About Cognitive Psychology and Witness Credibility*, 64 Am. U.L. Rev. 1331, 1369 (2015) ("Witness confidence actually produces a 'double-whammy' credibility determination by jurors. Jurors not only misread witness confidence as a false proxy for accuracy, but they overestimate their ability to determine whether witnesses are telling the truth. [footnote omitted]").

[59] *See* Wells, Ferguson & Lindsay, *The tractability of eyewitness confidence and its implications for triers of fact*, JOURNAL OF APPLIED PSYCHOLOGY, 66, 688-96 (1981) ("Inflating eyewitness confidence requires nothing on the order of high-powered persuasion techniques. A simple instruction to rehearse the witnesses' account, sample questions that might be asked by a crossexaminer, and warnings that the cross-examiner will look for inconsistencies in the testimony are sufficient to inflate the witnesses' confidence in his or her memory"); *see also People v Blevins*, 314 Mich. App. 339, 368; 886 N.W.2d 456 (2016) (Shapiro, J., dissenting) ("Memories rapidly and continuously decay and may be covertly contaminated by suggestive influence . . . during interviewing and identification procedures.").

[60] *See* Margaret Bull Kovera et al., *Science-Based Recommendations for the Collection of Eyewitness Identification Evidence*, 58 Ct. Rev.: J. Am. Judges Ass'n 130, 137 (2022) ("Simply asking a witness to testify in court can function as a form of confirming feedback, as it confirms that the witness correctly identified the police's suspect.").

[61] "[S]tudies have shown that eyewitness confidence can distort jurors' perceptions of other aspects of the testimony" and "may overwhelm the effect of other factors on jury assessments of eyewitness reliability." Brandon L. Garrett *et al., Factoring the Role of Eyewitness Evidence in the Courtroom*, 17 J. Empirical Legal Stud. 556, 558 (2020).

identification feedback makes it difficult for factfinders to distinguish between accurate and mistaken eyewitnesses.[62]

Ironically, keeping the witness confidence factor measured by trial confrontation confidence incentivizes using suggestive procedures. Positive feedback from an interviewer gives eyewitnesses an inflated level of certainty.[63] But this certainty reflects the feedback provided, not the identification's accuracy, providing an incentive to law enforcement to use suggestive procedures and produce more confident witnesses.[64] To the jury, such a powerful identification will outweigh any uncertainty the witness may have expressed before trial.[65] Accordingly, the lower courts and juries should be instructed that any confidence in identifications that witnesses appear to display at trial does not correlate to the reliability of the identifications.

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[62] While mock jurors can "significantly discriminate between accurate and mistaken eyewitnesses when the witnesses had not received confirming postidentification feedback," once witnesses are given post-identification feedback, "the ability of evaluators to discriminate between accurate and mistaken testimony was totally eliminated." Laura Smalarz & Gary L. Wells, *Post-identification Feedback to Eyewitnesses Impairs Evaluators' Abilities to Discriminate Between Accurate and Mistaken Testimony*, 38 Law & Hum. Behav. 192 (2014).

[63] *See, e.g.,* Rachel Leigh Greenspan & Elizabeth F. Loftus, *Eyewitness Confidence Malleability: Misinformation As Post-Identification Feedback*, 44 Law & Hum. Behav. 194, 195 (2020); *State v. Ramirez*, 817 P.2d 774, 781 (Utah 1991) (rejecting witness certainty as a factor indicative of reliability).

[64] Gary L. Wells, Deah S. Quinlivan, *Suggestive Eyewitness Identification Procedures and the Supreme Court's Reliability Test in Light of Eyewitness Science: 30 Years Later*, 33 Law & Hum. Behav. 1, 17 (2009) ("[T]he inflated certainty, statement of view, and statement of attention resulting from suggestive procedures effectively guards against exclusion, thereby undermining incentives to avoid suggestive procedures[.]").

[65] *See* Wells *et al.*, *Eyewitness Evidence: Improving Its Probative Value*, 7 PSYCHOL SCI IN PUB INT 45, 49-50 (2006) ("An eyewitness who has no motive to lie is a powerful form of evidence for jurors, especially if the eyewitness appears to be highly confident about his or her recollection.").

**D.     The Time Between the Crime and the Confrontation**

Research indicates that the accuracy of eyewitness identifications tends to decline as the time between the crime and the identification procedure increases.[66] When studies that manipulated this time period were grouped into long versus short time delays, longer delays led to fewer correct identifications and more false identifications. *Id*. Research shows that loss of eyewitness memory is most rapid early on, in the first minutes after an event, and then levels off over time.[67] Memory loses 15% of its strength in the first ten minutes and more than 40% of its strength in the first week.[68] Meanwhile, only 53% of jurors understand the concept of the forgetting curve.[69] As a result, jurors once again place undue weight on an eyewitness identification that may, in fact, be unreliable.

**E.     Application in this Case**

The appellate court analyzed the eyewitness identifications in this case using the *Biggers* factors in its opinion when reversing Johnson's conviction. In doing so, the lower court identified numerous estimator and system factors that impacted the witnesses' opportunity to view the perpetrator and degree of attention. These included the brevity of the encounter, the presence of a weapon, the diminished eyesight of at least one witness, the impact of trauma, and the paltry contemporaneous descriptions of the perpetrator. And

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[66] Shapiro, P. N., & Penrod, S., *Meta-analysis of facial identification studies*. 100 PSYCH BULLETIN, 139 (1986).

[67] Deffenbacher, *et al.*, *Forgetting the once-seen face: Estimating the strength of an eyewitness's memory representation*, 14 J. EXPERIMENTAL PSYCH: APPLIED 139 (2008)

[68] *Id.* at 146; *State v. Guilbert*, 306 Conn. 218, 238, 49 A.3d 705, 722 (2012) (for identification purposes, "a person's memory diminishes rapidly over a period of hours rather than days or weeks") (footnote omitted)

[69] Desmarais, S. L., & Read, J. D., *After 30 years, what do we know about what jurors know? A meta-analytic review of lay knowledge regarding eyewitness factors*, 35 LAW AND HUMAN BEHAVIOR, 200 (2011).

the lower court noted that some of the State's most certain eyewitnesses at trial were the very same witnesses who failed to identify Johnson during eyewitness identification procedures.

The appellate court rightfully reversed Johnson's conviction here by relying on scientific research that identifies relevant factors that impact the reliability of eyewitness identifications. Amici ask this Court to hold that Illinois courts should consider all relevant scientifically supported estimator and/or system variables, and not just the factors set out in prior caselaw, in analyzing the reliability of eyewitness identifications.

**CONCLUSION**

Without the proper guardrails, unreliable eyewitness identifications will continue to threaten the integrity of the criminal legal system and result in wrongful convictions. This Court can and should take steps to prevent such miscarriages of justice.

In this case, so many variables were at play, including the influence of a composite description, a negative identification, weapon focus, disguise, inability to contemporaneously describe the offender, intoxication, limited vision, trauma, and fear, to name a few. As argued above, these factors are unquestionably detrimental to the witnesses' ability to make an accurate identification.

Amici respectfully urge this Court to affirm the appellate court ruling that the flawed eyewitness testimony in this case was insufficient to support the conviction. Further, to protect against unreliable misidentifications that lead to wrongful convictions, Amici ask this Court to rework the *Biggers* factors and/or expand upon the Court's teachings promulgated in *Lerma* to accurately reflect the current scientific consensus regarding factors that influence the reliability of eyewitness testimony. Specifically,

Amici urge this Court to clarify that all scientifically validated estimator and system variables should be considered as part of a larger totality of the circumstances analysis that trial courts must undertake to properly determine the reliability of eyewitness identifications.

Respectfully Submitted,

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# APPENDIX

| Name | State | Relationship/Notes |
|---|---|---|
| **Victim ID cases in which the victim claimed to know the defendant/alleged perp** | | |
| Abbitt, Joseph Lamont | NC | seen before in/knew from building/neighborhood |
| Bain, James | FL | seen before in/knew from building/neighborhood |
| Bostic, Larry | FL | seen before in/knew from building/neighborhood |
| Bravo, Mark Diaz | CA | seen before in/knew from building/neighborhood |
| | | dating Brown). EW ID'd Brown from a photo array; he was brought into a room with Brown and two men whom Brown had said he was with the night of the |
| Brown, Danny | OH | murder; EW said he didn't recognize the other two men |
| Brown, Patrick | PA | aquaintance/friend |
| Chatman, Charles | TX | seen before in/knew from building/neighborhood |
| Courtney, Sedrick | OK | aquaintance/friend |
| Dabbs, Charles | NY | relative |
| Davidson, Willie | VA | aquaintance/friend |
| Davis, Dewey | WV | aquaintance/friend |
| Davis, Gerald | WV | aquaintance/friend |
| Elkins, Clarence | OH | relative |
| Fears, Joseph Jr. | OH | aquaintance/friend |
| Green, Kevin | CA | intimate partner (former or current) |
| James, Henry | LA | aquaintance/friend |
| Johnson, Arthur | MS | other - V said attacker may have been "Boo Rabbit" |
| | | at 3am to ask for change; Friend made photo array and in-court ID's of Jones. She said she had known him |
| Jones, Ronald | IL | previously as "Bumpy". |
| | | Victim's son ID'd Kagonyera by name (Kenny) and |
| Kagonyera, Kenneth & Robert Wilcoxson | NC | Wilcoxson by his street name (Detroit). |
| McClendon, Robert | OH | relative |
| McKinney, Lawrence | TN | seen before in/knew from building/neighborhood |
| Mercer, Michael | NY | seen before in/knew from building/neighborhood |
| Peacock, Freddie | NY | seen before in/knew from building/neighborhood |
| Piszczek, Brian | OH | seen before in/knew from building/neighborhood |
| Rachell, Ricardo | TX | seen before in/knew from building/neighborhood |
| Rose, Peter | CA | aquaintance/friend |
| | | near victim's house at around 8pm night of the murder (which occurred btw 8-12). She knew him by name and said she had once seen him watching the victim while |
| Vasquez, David | VA | she sunbathed in her yard. |
| | | as Whitley, also said he recognized his voice and made |
| Whitley, Drew | PA | in-court ID, but no official ID procedure. |
| Williams, Johnny | CA | aquaintance/friend |
| Williams, Michael Anthony | LA | other - victim had tutored Williams |
| | | heard someone scream for help and then when she looked out she saw the victim in Woodard's car and |
| Woodard, James Lee | TX | that Woodard was driving. She knew him so no ID |
| York, Kenneth | MO | seen before in/knew from building/neighborhood |

| Name (Last, First) | County | State | Relationship |
|---|---|---|---|
| Anderson, Eric | Wayne | Michigan | Seen before in neighborhood |
| Barnes, Lamar | Portsmouth | Virgina | Acquaintance from jail/neighborhood |
| Barrientos-Quintana, Edgar | Hennepin | Minnesota | Rival gang member, thought Barrientos-Quintana didn't like rival gang hanging out with his GF |
| Beals, Brian | Cook | Illinois | ID'd by acquaintance |
| Bell, George | Queens | New York | ID'd by acquaintance |
| Brown, Nathan | Jefferson Parish | Louisiana | Victim spoke with him earlier in the day |
| Brooks, Elvis | Orleans | Louisiana | ID'd by neighbor |
| Burrell, Frank | Cook | Illinois | ID'd by neighbor |
| Coleman, Jofama | Los Angeles | California | ID'd by acquaintance |
| Collins, Raheem | Philadelphia | Pennslyvania | ID'd by acquaintance |
| Cooper, Emannuelle | Kings | New York | ID'd by neighbor |
| Corley, Diallo | Wayne | Michigan | ID'd by neighbor |
| Daniels, Elmer | New Castle | Delaware | ID'd by acquaintance |
| Dixon, Rafiq | Philadelphia | Pennslyvania | ID'd by acquaintance |
| Gable, Kunta | Orleans | Louisiana | ID'd by acquaintance |
| Galvan, John | Cook | Illinois | ID'd by neighbor |
| Garcia, Arkel | Philadelphia | Pennslyvania | ID'd by neighbor |
| Gatlin, Ahmad | Knox | Tennessee | ID'd by acquaintance |
| Glass, Dupree | Los Angeles | California | ID'd by acquaintance |
| Gordon, Kendale | Orleans | Louisiana | ID'd by neighbor |
| Harrell, Dion | Monmouth | New Jersey | Seen before in neighborhood |
| Harris, Jahmir | Philadelphia | Pennslyvania | ID'd by acquaintance |
| Hill, Taron | Camden | New Jersey | ID'd by acquaintance |
| Irons, Jonathan | St. Charles | Missouri | ID'd by acquaintance |
| Jacobsen, Ronald | Newton | Georgia | ID'd by acquaintance |
| James, Thomas | Miami-Dade | Florida | ID'd by acquaintance |
| Johnson, Charles | Cook | Illinois | ID'd by acquaintance |
| Johnson, William | Philadelphia | Pennslyvania | ID'd by acquaintance |
| Juluke Jr., Bernell | Orleans | Louisiana | ID'd by acquaintance |
| Kamara, Barry | Suffolk | Massachusetts | ID'd by neighbor |
| Kelly, James | Philadelphia | Pennslyvania | ID'd by acquaintance |
| Kendall, Brian | Kings | New York | ID'd by acquaintance |
| Livingston, Detroy | Kings | New York | ID'd by acquaintance |
| Madison, Paul | Baltimore City | Maryland | ID'd by acquaintance |
| Martinez, Antonio | Philadelphia | Pennslyvania | ID'd by acquaintance |

| | | | |
|---|---|---|---|
| Mazza, Anthony | Suffolk | Massachusetts | ID'd by acquaintance |
| McBride, Dorreon | Wayne | Michigan | ID'd by neighbor |
| McCall, Corey | Berrien | Michigan | ID'd by acquaintance |
| McDowell, Emel | Kings | New York | ID'd by acquaintance |
| McIntyre, Lamonte | Wyandotte | Kansas | ID'd by neighbor |
| Miller, Naeem | Essex | New Jersey | ID'd by acquaintance |
| Moore, Domonique | Wyandotte | Kansas | ID'd by acquaintance |
| Moran, Nakiya | Cook | Illinois | ID'd by acquaintance |
| Moses-EL, Clarence | Denver | Colorado | ID'd by acquaintance |
| Mulherin, Crystal | Genesee | Michigan | ID'd by acquaintance |
| Munoz, Reynaldo | Cook | Illinois | ID'd by rival gang member |
| Myers, Hubert | Duval | Florida | ID'd by acquaintance |
| Nelson, Leory | Orleans | Louisiana | ID'd by acquaintance |
| Nolan, Ralph | Southern | Fed-NY | ID'd by acquaintance |
| Padron, Joe David | Nueces | Texas | ID'd by acquaintance |
| Peets, Norberto | Bronx | New York | Seen before in neighborhood |
| Perry, Dennis | Camden | Georgia | ID'd by acquaintance |
| Rollins, Donte | Philadelphia | Pennslyvania | ID'd by acquaintance |
| Ruffin, Steven | Kings | New York | ID'd by acquaintance |
| Salley, MarQuise | Philadelphia | Pennslyvania | ID'd by acquaintance |
| Santiago, Fabian | Cook | Illinois | ID'd by acquaintance |
| Sierra, Thomas | Cook | Illinois | ID'd by acquaintance |
| Slaughter, Mumin | Philadelphia | Pennsylvania | ID'd by acquaintance |
| Smith, Kaliegh | Orleans | Louisiana | ID'd by neighbor |
| Snyder, Walter | Alexandria | Virginia | Seen before in neighborhood |
| Spellman, India | Philadelphia | Pennsylvania | ID'd by friend's mother |
| Spencer, Benjamine | Dallas | Texas | ID'd by acquaintance |
| Strickland, Kevin | Jackson | Missouri | ID'd by acquaintance |
| Styles, Larod | Cook | Illinois | ID'd by acquaintance |
| Tall Bear, Johnny | Oklahoma | Oklahoma | ID'd by acquaintance |
| Taylor, Edward | Duval | Florida | ID'd by son's friend |
| Torres Rivera, José Armando | Carolina | Puerto Rico | ID'd by neighbors |
| Travis, James | Wayne | Michigan | ID'd by former friend |
| Veasy, Willie | Philadelphia | Pennslyvania | ID'd by acquaintance |
| Velazquez, Jon-Adrian | New York | New York | Seen before in neighborhood |
| Walker, Jabar | New York | New York | ID'd by neighbor |

| | | | |
|---|---|---|---|
| Walker, Keith | Cook | Illinois | ID'd by acquaintance |
| Warren, Cedric | Wyandotte | Kansas | ID'd by acquaintance |
| Watson, James | Suffolk | Massachusetts | ID'd by neighbor |
| Webster, Joseph | Davidson | Tennessee | Seen before in neighborhood |
| Wilkerson, Mike | Jasper | Missouri | ID'd by neighbor |
| Williams, Archie | East Baton Rouge | Louisiana | Seen once before |
| Williams, Clifford Jr. | Duval | Florida | ID'd by acquaintance |
| Wilson, Andrew | Los Angeles | California | Seen before in neighborhood |
| Wilson, Deontae | Cuyahoga | Ohio | Seen before in neighborhood |

# CERTIFICATE OF COMPLIANCE

I, Megan Richardson, an attorney, hereby certify that this brief conforms to the requirements of Supreme Court Rule 341(a) and (b). The length of this brief is 24 pages, excluding the pages required for the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, the statement of interest of the Amici.

Respectfully submitted,

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*Counsel for Amici Curiae*

NO. 131337

IN THE
SUPREME COURT OF ILLINOIS

|  |  |  |
|---|---|---|
| PEOPLE OF THE STATE OF ILLINOIS, | ) ) ) | On Appeal from the Appellate Court of Illinois, First Judicial District, Case No. 1-22-0494 |
| Respondent-Appellant, | ) ) | |
| v. | ) ) | There Heard on Appeal from the Circuit Court of Cook County, Illinois, Criminal Division, Case No. 17 CR 08698-01 |
| ANTRELL JOHNSON, | ) ) ) | |
| Petitioner-Appellee. | ) ) ) ) | The Honorable Thaddeus L. Wilson, Judge Presiding. |

## <u>NOTICE OF FILING AND PROOF OF SERVICE</u>

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PLEASE TAKE NOTICE that on November 17, 2025, the foregoing <u>AMICI CURIAE BRIEF OF THE EXONERATION PROJECT, THE INNOCENCE PROJECT, AND THE ILLINOIS INNOCENCE PROJECT IN SUPPORT OF PETITIONER-APPELLEE</u> was filed with the Clerk of the Supreme Court of Illinois via the Court's Odyssey electronic filing system, a copy of which is hereby served upon you.

DATED: November 17, 2025             Respectfully submitted,

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*Counsel for Proposed Amici Curiae*

**CERTIFICATE OF SERVICE**

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, and that on November 17, 2025, I caused the foregoing Proof of Service and accompanying AMICI CURIAE BRIEF OF THE EXONERATION PROJECT, THE INNOCENCE PROJECT, AND THE ILLINOIS INNOCENCE PROJECT IN SUPPORT OF PETITIONER-APPELLEE to be served upon the following by electronic mail:

TO:    Cook County State's Attorney's Office
Criminal Appeals Division
50 West Washington Street, 3rd Floor
Chicago, IL 60602
eserve.criminalappeals@cookcountyil.gov

Attorney General
State of Illinois
100 West Randolph Street
Chicago, IL 60601
eserve.criminalappeals@atg.state.il.us

DATED: November 17, 2025              Respectfully submitted,

/s/ Megan Richardson
*Counsel for Amici Curiae*