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I Can Explain!

Understanding Perceptions of Eyewitnesses as a Function of Type of Explanation and Inconsistent Confidence Statements

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Master of Arts

Forensic Psychology

Feinstein College of Arts and Sciences

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I Can Explain!

Understanding Perceptions of Eyewitnesses as a Function of Type of Explanation and Inconsistent Confidence Statements

Melissa Paiva

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Melissa Paiva, MA Date

Abstract

In the current study, 126 undergraduate students read a case summary describing an armed robbery of a convenience store, involving one eyewitness, and then viewed one of five brief videotapes of an eyewitness identification procedure. Confidence ratings were manipulated as 80% v. 100%: Type of explanation offered for changes in confidence consisted of social, memory-based or none. Results indicated increased perceptions of eyewitnesses were associated with confidence consistency, rather than type of explanation. Perhaps providing any explanation for changes in confidence drew attention to the inconsistency and magnified its effect on perceptions. Further, when the eyewitness provided one estimate of confidence, participants perceived them as more credible compared to confidence inflation condition. Implications for these results at trial are discussed.

I Can Explain!

Understanding Perceptions of Eyewitnesses as a Function of Type of Explanation and Inconsistent Confidence Statements

Eyewitness misidentifications have been recorded as the leading cause of wrongful convictions (www.innocenceproject.org.). In more than 75% of the wrongful convictions exonerated by DNA evidence, mistaken eyewitness identifications played a major role. This finding provides powerful support of the connection between mistaken identification and erroneous convictions. Researchers, however, estimate that the number of innocent defendants convicted through faulty eyewitness evidence is much higher than the number of exonerations, with as many as 4,500 wrongful convictions per year (Cutler & Penrod, 1995). Despite the results of research demonstrating problems with lineups and efforts to remedy the situation, currently utilized methods of eyewitness identification continue to be linked to wrongful convictions, through mistaken identification.

Law enforcement officials, who investigate crimes and collect eyewitness evidence, play a key role in cases involving mistaken eyewitness identifications, and as such, their perceptions are vital to our understanding of this important issue. Kebbel and Milne (1998) conducted a survey assessing police perceptions of eyewitnesses in the United Kingdom. Officers reported that eyewitnesses typically provide them with their primary leads in a case. Additionally, officers responded that eyewitnesses are rarely inaccurate in their identifications and believe that an eyewitness' identification confidence, typically gauged by the witness' response time, indicates their accuracy. Detectives also reported using eyewitness evidence to provide them with or to confirm

suspects when conducting criminal investigations. This research shows us that a positive identification of a suspect by an eyewitness is sometimes used as the only piece of evidence against a criminal defendant at trial. As a result, in an attempt to combat the powerful influences of eyewitness testimony at trial, the defense may call an eyewitness evidence expert to testify about the reliability of eyewitness identifications (Leippe, 1995). Thus, it is vital that eyewitness identification evidence is collected by law enforcement in a precise manner.

Researchers report that experts do not always agree on the utility of eyewitness confidence as a predictor of eyewitness accuracy (Kassin, Tubb, Hosch, & Memon, 2001). In this study, 47 of 64 eyewitness experts surveyed, indicated that they would be willing to testify on the poor predictive ability of confidence with respect to accuracy. Further, 51 indicated they would testify that confidence is influenced by variables other than accuracy (e.g., confirming feedback provided by police after a positive identification). The gap that exists between expert opinions and the intuitive beliefs of law enforcement regarding eyewitness confidence and accuracy, reinforces the importance of this area for researchers examining eyewitness identification (Schmechel, O'Toole, Easterly, & Loftus, 2006).

The relation between eyewitness confidence and eyewitness accuracy has been widely researched (Sporer, Penrod, Read, & Cutler, 1995). Results of numerous studies have led eyewitness researchers to agree that the confidence-accuracy relationship is weakly correlated (Deffenbacher, 1980; Leippe, 1980). Despite the empirical findings converging on this weak relation, law enforcement remain heavily reliant on eyewitness confidence to gauge the accuracy of any particular identification.

The importance of research in eyewitness identification extends to specific types of lineups and the procedures associated with them. In particular, researchers examining the relation between eyewitnesses who select from a line-up (*choosers)* vs. those who do not (*non-choosers*), report a weak correlation between eyewitness confidence and identification accuracy (Sporer et al., 1995). Although Sporer and colleagues advocate for separating choosers from non-choosers in empirical studies, non-choosers play a limited role in the legal system. In other words in a *real world* setting, it is rare for an individual to view a lineup and not provide a subsequent identification. However, in spite of the restricted empirical significance of this research, judicial decision-makers carefully consider its relevance in legal decisions pertaining to eyewitnesses (Clark, Howell, & Davey, 2008).

Critics of eyewitness research argue that many laboratory studies examining the role of memory in forming identifications have limited ecological validity (Egeth, 1993; Konecni & Ebbesen, 1986; Yuille, 1993). In response to this criticism, Behrman and Richards (2005) compared archival results with experimental results in a unique two-experiment study. In the first study, they examined 183 police cases with eyewitness identifications involving 424 photo arrays and 37 live line-up situations. Line-up records were analyzed for statements of confidence, non-hesitant choosers and witnesses who used a process of elimination. They found that the best predictor of a suspect identification (as opposed to a line-up filler) was quick responding. In addition, verbal confidence – statements of positivity and/or sureness - was found to be a strong predictor of suspect identification. In fact, only 2.5% of choosers selected a foil with a high degree of confidence. However, researchers have expressed caution when interpreting these data.

Specifically, the limited control of extraneous variables in archival data, biased line-ups, and the possibility that the suspect was not present in the line-up, are all factors that should be taken into account when considering ecological validity.

In a second study, Behrman and Richards evaluated these factors through observation (response time) and a post-identification questionnaire. The results closely mirrored their archival study, finding a stronger relationship between confidence and potential accuracy in field settings. Namely, if eyewitness confidence and identification accuracy are related for choosers, then collecting eyewitness post-identification confidence in an accurate and consistent manner is critical. These procedures have been recognized by many federal and state law enforcement agencies that now obtain a confidence rating immediately following an identification (Technical Working Group for Eyewitness Evidence, 1999). These results have promising implications considering the heavy reliance of law enforcement on eyewitness confidence (Kebbel & Milne, 1998).

Although the research on confidence and accuracy is mixed, it is important to understand the implications of a positive identification for law enforcement. In a recent meta-analysis, Clark, Howell and Davey (2008), uncovered five patterns of identification responses and their implications. They reviewed 94 experiments to determine the diagnostic value of different eyewitness' responses after viewing a line-up. The categories of these responses included: suspect identification in both target-absent and target-present line-ups, foil identification, "I don't know" statements, or statements of rejection of the line-up. Howell and Davey concluded that suspect identifications in non-biased line-ups were diagnostic of a suspect's guilt. A non-biased lineup is defined as one that is properly instructed and fillers are chosen based on witness description. These

results indicate that under appropriate conditions, an eyewitness identification is potentially indicative of a suspect's guilt in a court of law. However, the utility of this evidence disappears with improper selection of fillers or biased line-up instructions. Thus, biased line-up procedures may not only affect the diagnosticity of the identification but the eyewitness' post-identification confidence as well.

When a lineup is presented to an eyewitness, the resulting influence on identification accuracy has been found to be problematic (Bradfield, Wells, & Olson, 2002; Luus & Wells, 1994). Although base rates and initial encoding are important, it is important to test whether certain techniques can improve an eyewitness' memory. Perfect, et al. (2008) conducted five experiments on the effect of an eyewitness closing their eyes while recalling the details of a witnessed event. The researchers believed that closing one's eyes aids individuals in remembering details. They developed this belief from previous research on the cognitive interview, an interviewing technique designed to aid investigators when questioning a witness (Geiselman, Fisher, MacKinnon, & Holland, 1985). During live or videotaped witnessing conditions, participants were asked to recall various details of the viewed crime (i.e., how many people were in the room), through either cued or free recall. The effect of eye-closing was dramatic, with significant increases in the amount and accuracy of details recalled. This effect was shown for free-recall and cued recall and both visual and auditory information. Further, the results were replicated with several sets of stimulus materials, i.e., videotaped events, live events, pertinent information and incidental information. These results show promise of the development of techniques used to increase eyewitness recall. Increasing the accuracy or

number of details that an eyewitness recalls is likely to lead to an increase in the confidence in their identification.

Eyewitness identification can also be influenced by social factors; namely conformity – a well-established concept in social psychology literature (Luus & Wells, 1994). Studies of conformity reveal that the social pressures evident with a desire to "fit in", result in conforming to group norms. This result is often revealed despite the presence of alternative and obvious information (Asch, 1951; Beloff, 1958; Walker & Andrade, 1996). In his seminal work, Solomon Asch revealed that in a group setting, when faced with a choice between *the need to be right* and *the need to be liked*, individuals chose the latter even when obvious information contradicted the group. Stanley Milgram (1963) established a similar result when examining individuals' obedience to authority, another factor that may play a role in eyewitness identifications. In Milgram's classic obedience study, the experimenter insisted that individuals provide shocks up to 450 volts to individuals posing as confederates who responded incorrectly on a word pair task. A similar dynamic exists in the social situation of eyewitness identification. Namely, the eyewitness is put in a social situation with potential pressures to conform and obey an authority figure, i.e., police officer. Researchers have found that in an attempt to obey the authority figure, pressure to choose a suspect increases, in turn, increasing the number of false identifications (Malpass & Devine, 1981; Steblay, Hosch, Culhane, & McWethy, 2006). An officer, or co-witness has the potential to reinforce confidence in erroneous identifications by providing the eyewitness with confirming feedback; e.g., *That's who we thought it was*. The resulting effects are drastic and provide evidence of the role of social influence on changes in confidence statements, as

well as the identification itself (Semmler, Brewer, & Wells, 2004; Wells & Bradfield, 1999).

Confirming feedback is a type of social influence present during lineup procedures capable of affecting eyewitness identification (Semmler, Brewer, & Wells, 2004). Confirming feedback is typically offered to an eyewitness following an identification. Semmler, Brewer, and Wells (2004) had participants watch a videotaped robbery, and then identify a suspect through a computerized photo array. After making an identification, some participants were told by the experimenter that another witness had identified the same suspect as them. After the feedback or a filler task, participants were asked to provide a retrospective estimate of confidence at the time of the ID as well as a current estimate of confidence. Results showed that confirming feedback caused confidence to become inflated for all participants in the feedback condition, regardless of accuracy or presence of actual suspect. In another study, designed to investigate the effects of police feedback on eyewitness memory, Bradfield, Wells and Olson (2002) had participants view a video of a simulated crime and make a subsequent identification in a six-person videotaped lineup. They found that participants given post-identification feedback by the lineup administrator in the form of: "Good you identified the actual suspect", reported increased confidence, better viewing conditions, and increased attention to the crimes. Further, their results indicated that confidence inflation was moderated by the accuracy of the witness, showing greater confidence inflation for inaccurate witnesses. Similar, research has shown that confirming feedback after an identification distorted other aspects of eyewitness recollections as well, such as reporting a better view, paying more attention, remembering more details, and identifying the

suspect with ease (Wells & Bradfield, 1999; Wells, Olson, & Charman, 2003). Thus, confirming feedback following an identification is particularly troublesome because it not only has a robust effect on confidence estimates but may influence eyewitness' perceptions of other forensically relevant variables as well.

Confidence malleability, or the probability of an eyewitness to change his/her confidence, occurs not only with confirming feedback but with disconfirming feedback as well. Luus and Wells (1994) conducted a staged theft study in which pairs of participants witnessed a live event. The witnesses were then separated before making an identification. In the initial identification, witnesses chose the member of the lineup they believed was the perpetrator. After the identification, participants were given feedback regarding the other witness' identification. The feedback consisted of whether or not additional witnesses chose the same suspect. The campus police then videotaped these witnesses while making a second identification that included an estimate of confidence. Results showed that witnesses in the confirming feedback condition had higher identification confidence ratings than controls. In contrast, witnesses in the disconfirming feedback condition had lower identification confidence ratings compared to participants in the no feedback condition. In a second study (Luus & Wells, 1994), the videotaped identifications were then shown to another group of participants who rated each witness with respect to accuracy, believability, etc. Participants rated the more confident witnesses as more accurate and believed these eyewitnesses had a better view, were more persuasive, and gave better descriptions, despite not having access to this additional information. This finding implies that confidence, despite extraneous influences, has a notable influence on an observer. In a legal sense, *observer* can be

defined as presiding judge and/or jury. In a separate study, Wells and colleagues (2003) were unable replicate the disconfirming feedback effect showing that although disconfirming feedback has the potential to decrease confidence, it is not clear which variables control this effect. One could argue that increasing or decreasing a witness' confidence does not change the results of an identification, and is therefore of minimal importance, but if a lineup is conducted fairly, namely without biasing feedback, confidence will not be improperly inflated. These studies have important implications for police practices and can be implemented relatively easily due to law enforcement's control of both lineup administration and control (Wells, 1978). The fact the eyewitness confidence is malleable may be minimally concerning if an eyewitness is able to correct for external influences.

Brewer, Keast, and Rishworth (2002) examined the effects of eyewitness reflection and post-identification disconfirmation reflection on the confidence-accuracy relation. Eyewitness reflection is defined as reflecting on or thinking about the identification/witnessing conditions; post-identification disconfirmation reflection involves thinking about why, as an eyewitness, you may be incorrect in your evaluation of identification/witnessing conditions. In the eyewitness reflection condition, participants completed a survey that instructed them to think about various witnessing conditions, i.e. "How much attention did you pay to the persons face?" The disconfirmation reflection survey included questions designed to have participants question their choice, i.e., "List as many reasons as you can as to why the person you picked may not actually be the thief." Participants completed the survey with questions aimed at disconfirming or reflecting on their identification, after the identification and

then provided a confidence estimate between 0-100%. The confidence-accuracy relationship for both experimental groups (those who either reflected or were provided with disconfirming reflection) had stronger confidence-accuracy correlations than participants in the control group (no feedback). Participants in the reflection and disconfirmation conditions had more accurate identifications for higher levels of confidence. Thus, witnesses who are instructed to actively reflect upon their identification may provide more precise confidence estimates. Kassin (1985) reported a similar finding with eyewitnesses who watched a videotape of themselves identifying the suspect before giving a confidence estimate. One explanation for the self-reflection phenomenon may be that it stimulates a memory-based process that influences an eyewitness' confidence-accuracy relationship. These findings indicated that eyewitness confidence is easily influenced and may be improved through self-reflection (Perfect, et. al., 2008). Further, if the confidence-accuracy relationship for any given witness is increased, then his/her testimony may be more likely to reflect the actual guilt of a suspect. Comparing varying estimates of confidence inflation has become an important area of eyewitness research (Charman & Wells, 2008).

One question researchers have tested is whether informing the eyewitness of potential confidence inflators would enable them to self-correct their confidence prior to trial? Charman and Wells (2008) examined an eyewitness' ability to estimate the impact of confirming feedback or cautionary instructions on their confidence, following an identification. Interestingly, they found that those who received confirming feedback were able to accurately estimate the influence of that feedback. However, participants who did not receive confirming feedback overestimated the influence that any confirming

feedback would have had on their confidence. The implications of this finding could be quite considerable if eyewitness identifications are videotaped to document evidence. Jurors, who are shown the eyewitness identification video at trial, may overestimate the influences they perceive to have changed a witness' confidence level; e.g., the suspect *stood out* in the lineup and that is why he/she chose him so confidently. Charman and Wells concluded that witnesses are able to correctly identify influencing variables, but do not always accurately estimate the amount of influence. If factors influencing the eyewitness' identification confidence are submitted as evidence in a trial, it has important implications for forming a jury's perception of eyewitness credibility.

In response to the numerous erroneous convictions due to mistaken identifications, a Technical Working Group for Eyewitness Evidence released a report in 1999 that established guidelines for law enforcement officials regarding the ideal way to gather eyewitness evidence. One of the recommendations was to obtain a confidence statement immediately following the witnesses' identification. Although the courts and law enforcement often rely on confidence estimates, research reviewed above has shown that eyewitness confidence is fraught with complications, many in the form of malleability, sensitivity to instructions, etc.. Despite the numerous pitfalls, eyewitness confidence remains a significant factor that prosecutors, judges and jurors use as an index of witness credibility (Schmechel et al., 2006).

In *Neil v. Biggers* (1972), the United States Supreme Court ruled that there should be five criteria governing the credibility of eyewitness testimony. These factors were developed by the court to assist the trier of fact in weighing eyewitness evidence. The five factors included were viewing conditions of the suspect during the crime, including

time viewed, lighting etc., attentiveness of the witness during the crime, the accuracy of the witness' initial description of the suspect, the confidence of the witness at identification and the elapsed time between identification and the crime. If the witness is deemed credible by these criteria, then his/her testimony would be admissible.

In order to test how potential jurors integrate the five *Biggers* criteria to estimate witness accuracy, Bradfield and Wells (2000) examined Kaplan's (1982) summative hypothesis. The summative hypothesis assumes that each of the five criteria would be weighed individually by jurors and then added separately in the jurors' conclusions about the eyewitness. Thus, an eyewitness with a good view who was confident would be perceived as more accurate than a confident witness without a good view. Participants read a trial transcript in which an eyewitness provided testimony regarding their confidence in their identification, their viewing conditions and their attentiveness during the crime. In response to the prosecutor's query about the identification, eyewitness confidence was manipulated in the transcript from "I'm positive" to "I'm not really sure." The results demonstrated support for the summative hypothesis showing main effects for each manipulated criteria. Confidence, attention, viewing conditions, accuracy of the witness' initial description, and the elapsed time between identification and the crime each had a significant effect on the participants' ratings of witness accuracy and witness believability (Bradfield & Wells, 2000). If jurors do in fact, sum the information presented to them, then changes in confidence would have an independent effect from explanations and no interaction would be detected. If jurors are summing these criteria without an understanding of the potential pitfalls of eyewitness evidence, then erroneous

convictions are more likely to occur. The average person and potential juror's knowledge regarding eyewitness evidence is vital in translating this body of research.

The potential juror's knowledge of eyewitness evidence is similar to that of law enforcement's knowledge previously reviewed. Noon and Hollin (1987) conducted a survey evaluating law students' knowledge of eyewitness evidence. Half of the participants agreed that an eyewitness was able to accurately identify a face after one year and one exposure. The remaining participants (51%) correctly recognized that after 2 weeks, memory for the once seen face drops off to a negligible level. Additionally, 79% of participants reported that confidence was a moderate to strong predictor of accuracy despite difficult viewing conditions. The idea that confident witnesses are accurate appears to be well documented and is found among lawyers, judges, law enforcement and potential jurors (Schmechel, et al., 2006). Arguably, potential jurors should possess similar beliefs to the participants surveyed above. This has important implications if the eyewitness has been provided with additional information from police or a co-witness. When or if this is the case, eyewitness confidence is likely to change by the time they testify at trial. The impending result is the jury's unawareness of the artificial inflation of confidence by feedback or other variables. The eyewitness, having been coached by the prosecutor, would appear confident at trial, and the jury would likely perceive this confidence as an indication of accuracy, potentially leading to an increase in erroneous convictions.

Berman, Narby, and Cutler (1995) studied inconsistent testimony – a potentially influential variable on perceptions of an eyewitness. They found that participant-jurors were more likely to believe and render a guilty verdict for witnesses who provide

consistent testimony. Brewer and Burke (2002) manipulated eyewitness testimony and the appearance of confidence in an audiotaped trial experiment. These researchers found that inconsistent confident eyewitnesses were rated as more believable than a consistent witness who did not appear confident. One limitation to this research however, is the operational definition of confidence used in this study. Specifically, the researchers manipulated confidence by having less confident witnesses appear hesitant. This may not be consistent with actual eyewitnesses due to opportunities to rehearsed testimony prior to trial and therefore provide an inflated confidence estimate at trial.

Wells, Lindsay, and Ferguson (1979) examined the influence of an eyewitness' self-rated confidence at trial on jurors' perceptions of the eyewitness. The eyewitnesses viewed a staged crime, made an identification, rated their confidence on a 9-point scale and then testified live in front of participant jurors. Jurors rated confident eyewitnesses as being highly accurate regardless of actual accuracy. In this study, both inaccurate and accurate witnesses testified. Cutler, Penrod, and Stuve (1988), manipulated ten legally relevant witnessing conditions and found eyewitness confidence to be the only significant predictor of verdict. Fifty-four percent of the participant-jurors convicted the defendant after viewing an eyewitness who stated he was 100% confident. In contrast, conviction rate dropped to 39% when the eyewitness stated he was 80% confident. Although identification accuracy has no noticeable effect on jurors' perceptions of witness credibility, witness' identification confidence has been found to increase perceived credibility by researchers examining the effect of identification accuracy (Lindsay, Wells, & O'Connor, 1989). With similar results, a drastic increase in confidence – from unsure at lineup to positive at trial – was studied simultaneously with the effect of cross-

examination on juror perceptions (Bradfield & McQuiston, 2004). This research indicated that the evidence of extreme confidence inflation increased defense-favorable attitudes; i.e., more not guilty verdicts. An important caveat however, is the unlikelihood that a witness will testify if they are unsure at the time of identification.

Jones, Williams and Brewer (2008) conducted a study to determine if obtaining a post-identification confidence estimate would mediate the deleterious effects of confidence inflation of eyewitnesses. In the first study, they provided trial transcripts to participant-jurors depicting an eyewitness whose confidence inflated from 60% to 99% confident. After providing an in-court estimate of 99% confidence during direct examination, it was revealed during cross-examination that the witness was only 60% confident post-identification. This inflation was either challenged questioning, "Why are you more confident now?" or merely stating by the defense attorney during cross-examination. They found that participant-jurors rated inflated witnesses as less credible, less accurate and more inconsistent. However, despite statistical significance, participants' scaled scores narrowly fluctuated. After analyzing responses to two open-ended items regarding how participant-jurors interpreted the eyewitness inconsistency, the researchers concluded three distinct eyewitness attributions: (a) prosecutorial strategy, (b) memory contamination and (c) confidence epiphany. The confidence epiphany group rated the eyewitness as more credible and accurate than jurors in the other two groups. In fact, their estimates mirrored the control group's credibility estimates.

In the second study, the researchers varied the eyewitness' response to an inquiry about her confidence inflation to determine if causal explanations for the confidence change effected jurors' perceptions. Responses were varied as strategy based – "I want

people to believe me, I want someone to be held accountable for what happened to me"; memory contamination – "Well, I have been rehearsing my testimony and have become more confident with each rehearsal"; or confidence epiphany – "I was nervous at the identification but now I am confident and have recalled more details". Consistent with the findings from the first study, participant-jurors rated the eyewitness as less credible and accurate if they attributed the inflation to a strategy or memory contamination. If an eyewitness were to have a confidence epiphany prior to trial, then jurors believed the witness and were more likely to convict the defendant. Although it is still unclear exactly how jurors weigh eyewitness evidence, this body of research lends itself to some tentative conclusions. First, a confidence epiphany by an eyewitness, or remembering more details and becoming more confident on his/her own, is likely to be perceived as more credible than a confidence inflation due to rehearsing or strategy. Second, jurors perceive consistent testimony as more believable and accurate.

Research in the field of eyewitness evidence provides ideas about ways in which jurors may interpret eyewitness evidence. Specifically, the summative hypothesis assumes that jurors will sum the information provided to them at trial regarding eyewitness credibility (Kaplan, 1982). In addition, confirming feedback has been shown to inflate an eyewitness' confidence estimate following an identification (Bradfield et al., 2002; Luus & Wells, 1994; Semmler et al., 2004). This inflated confidence estimate when presented during trial may influence perceptions of the eyewitness and subsequent identification as well. Potential jurors may perceive confidence inflation due to a memory-based process as an inconsistency in an eyewitness' statement. Jurors perceive eyewitnesses who provided inconsistent statements as less accurate (Berman & Cutler,

1996; Berman et al., 1995). It would follow then that people may perceive eyewitnesses whose confidence inflates due to social factors as more accurate. This is in direct opposition to research findings that demonstrate confidence inflation due to confirming feedback does not reflect accuracy (Bradfield, et al., 2002; Wells & Bradfield, 1999).

Research on eyewitness confidence has presented it as an unstable characteristic (Luus & Wells, 1994; Semmler, et al., 2004; Wells, et al., 2003). Namely, the relation between confirming feedback and confidence estimates have the potential to affect eyewitness' beliefs regarding other legally relevant variables (Bradfield, et al., 2002; Luus & Wells, 1994; Wells, et al., 1979). Although disconfirming feedback has the potential to decrease confidence, it is not clear which variables control this effect. Drastic eyewitness confidence changes have been shown to be perceived negatively by participant-jurors (Bradfield & McQuiston, 2004; Bradfield & Wells, 2000). It is not clear, however, how minor changes in eyewitness confidence would interact with an explanation for this change and subsequently influence jurors' perceptions. In order for an eyewitness to testify at trial, his or her confidence estimate would have to be quite high; i.e., 80% or above. When an eyewitness presents a confidence rating that has been artificially inflated, it remains unknown to the jury. This is problematic because if jurors are relying on confidence to assess the eyewitness' accuracy, then the confidence rating provided by the eyewitness at trial is misleading.

One safeguard designed to protect defendants from presenting inflated confidence estimates to jurors is written into the best practices lineup recommendations currently used in New Jersey and North Carolina. These recommendations require the eyewitness to provide in their own words, their confidence immediately following the identification.

If inconsistencies regarding a witness' confidence are highlighted during cross-examination, it benefits researchers to assess the impact of this inconsistency and how varying explanations by the eyewitness concerning the discrepancies in confidence estimates. Confidence estimates may be influenced by numerous variables, which may increase or decrease witness' confidence. For example, confirming or disconfirming feedback has the potential to influence an eyewitness' confidence rating (Luus & Wells, 1994; Wells & Bradfield, 1999). The confidence change could also be the result of a memory-based process of self-reflection, which has been shown to increase the confidence-accuracy relationship (Brewer, et al., 2002). Although at trial a witness may explain his/her changes in confidence, the impact of the explanation needs further examination. This study will attempt to isolate two factors that may potentially increase or decrease confidence estimates: memory and social influences (Bradfield, et al., 2002; Brewer, et al., 2002; Semmler, et al., 2004). Utilizing videotaped confidence identifications, participants viewed an eyewitness provide an explanation for their slight confidence increase. To our knowledge, this is the first study assessing the impact of social versus memory-based explanations for eyewitness confidence changes on their perceived credibility. In addition, this research will advance an understanding of how a confidence increase by an eyewitness is perceived.

The present study is a one-way between subjects design examining perceptions of three explanations (Memory-based vs. Socially-Influenced vs. None) following an increase in a witness' confidence. Participants were exposed to 1 of 5 conditions: Social Explanation, Memory-Based Explanation, No Explanation, High-No Rating, and No Rating-Low Confidence. Increasing confidence in our explanation conditions was defined

as 80% post-identification to 100% follow-up confidence. In addition, two other control conditions were examined, an 80% post-identification confidence only condition, defined as No Rating-Low; and a 100% follow-up confidence only condition, defined as High-No Rating. Perceptions of the eyewitness will change as a function of explanation, with a memory-based explanation predicted to be perceived as the most credible, accurate, consistent, etc., followed by No Explanation and a socially-influenced explanation respectively. Mere confidence inflation (No Explanation condition) will be perceived as less credible, accurate, consistent, etc than control conditions with no inflation (High-No Rating and No Rating-Low). In addition, perceptions of the eyewitness, perceived fairness of the identification and relation to law enforcement will predict the perceived overall accuracy of the identification.

Method

Participants

Participants were recruited from undergraduate psychology, political science and history courses from a Northeast Liberal Arts University. They received extra credit for their participation. Participants were 126 (63 males, 63 females) students ranging in age from 18-44 years old. The participants were 88% European American participants, 2.4% Hispanic participants, 2.4% Asian participants and 7.1% other ethnicity participants. Participants were randomly assigned to one of five experimental conditions.

Materials

Videotape. A summary was created describing an armed robbery of a convenience store, involving one eyewitness (the store clerk). A five-minute videotaped presentation was developed using an actor and a police detective. A 25-year-old female graduate

student portrayed the eyewitness. A detective from a Northeast law enforcement agency portrayed the detective in the video. The detective took the eyewitness through a typical eyewitness identification procedure involving a photo array lineup displayed sequentially, in which the eyewitness identifies a suspect. After the identification, the eyewitness provided a confidence rating of 80% or no confidence rating. In the next scene, which was identified in subtitles as two weeks later, the eyewitness returns to the police station for a second interview. The detective welcomes the eyewitness back and reviews her earlier identification interview. The detective asks typical questions about the crime, which remains constant over each manipulation. In the Low Initial confidence condition, the detective does not query about the eyewitness' confidence in interview two. In the other four conditions, the detective asks how confident the eyewitness is today about her identification during questioning. In the High Latter Confidence condition, the eyewitness provides a confidence rating of 100% in interview two in contrast to no confidence rating in interview one. In the Social-Influence, Memorial-Based and No explanation conditions, the eyewitness provides a confidence rating of 100% that represents an increase from interview one. A follow-up question was then presented by the detective (Why did your confidence change?), for which the eyewitness gave a Socially Influenced explanation, a Memory-Based explanation, or none at all (in this condition the follow up question was not be asked). In the Socially-Influenced Explanation condition participants see the eyewitness respond to the detectives query "Why did your confidence change?" in the second interview, by stating "Well after I picked the guy out, you guys (the police) gave me the feeling that I picked out the right person." In the Memory-Based Explanation condition participants view the eyewitness

justify the confidence change by stating "I thought about it when I got home. I remembered exactly what her nose looked like, and I knew that was the girl I picked out." In the No Explanation Condition participants saw the eyewitness change his/her confidence but were not exposed to any follow-up questions.

Post-Videotape Instrument. After viewing the videotape, participants were asked about their perceptions of the eyewitness. A seven-point Likert-type scale was used to assess the participants' perceptions, from 0 (not at all accurate/consistent/trustworthy, etc.) to 6 (very accurate/consistent/trustworthy, etc.). Several questions addressed the confidence changes of the eyewitness and served as manipulation checks. Participants then completed several demographic questions. See Appendix A for the informed consent, Appendix B for the questionnaire, and Appendix C for HSRB approval.

Procedure

After obtaining informed consent, participants read a summary describing the crime. After reading the summary, participants watched one of five video presentations depicting two interviews between the police detective and the eyewitness. The first interview consisted of a detective presenting the eyewitness with a photo array lineup. Immediately following the first interview, participants were shown the second interview, identified as occurring two weeks later by subtitles, depicting the eyewitness giving an increase in their confidence, a 100% confidence rating or no confidence rating to the detective. A social explanation, a memory-based explanation, or no explanation followed this confidence rating. After viewing one of the five video presentations participants completed the questionnaire. The questionnaire contained questions regarding their perceptions of the eyewitness, the identification and finally demographic information.

Perceptions of the eyewitness addressed were confidence levels, credibility, trustworthiness and reliability. Participants were thanked for their participation and debriefed as to their nature of our study.

Results

Manipulation Check

In order to assess participants' awareness of our manipulations, a 3 *X* 3 crosstabulation was conducted on our experimental conditions. Of the 77 participants in the Confidence Inflation conditions, 73 (95%) correctly identified the first eyewitness confidence rating as 80%, 74 correctly identified the second eyewitness confidence rating of 100%. In addition, 22 of 26 (85%) correctly identified the 80% confidence rating in the Low-No Rating condition, and 16 of 23 (70%) correctly identified the 100% confidence rating in the No Rating-High condition. Of 125 participants, 104 (83%) correctly identified that two weeks had passed between the consecutive interviews.

Hypothesis Tests

Hypothesis I. A one-way analysis of variance was performed to investigate the type of eyewitness explanation offered on perceptions of the eyewitness. The seven dependent variables analyzed included: credibility, honesty, consistency, accuracy, confusion, likeability and trustworthiness. Items were scored on a 7-point Likert-type scale from *0 = Not at all credible/honest,* etc. to *6 = Very credible/honest* etc. The three levels of explanation included: Social, Memory-Based, or None. There were no significant effects of type of explanation offered on any of the dependent variables.

Collapsed Conditions. Due to the lack of significant effects of our explanation manipulation, data were collapsed across the three explanation conditions. Remaining

analyses were conducted on three levels of the independent variable, Confidence Inflation (Inflation, Low No-Rating, and No Rating-High conditions).

Hypothesis II. Hypotheses II was examined with respect to perceptions of the eyewitness as a function of confidence ratings. A one-way analysis of variance was conducted on the seven items addressing perceptions of the eyewitness. A significant effect was found for four of the seven items. For credibility: F (2, 123) = 3.84, p = .024; η_p^2 = .06, for consistency: F (2, 123) = 26.74, p < .001; η_p^2 = .30, for accuracy: F (2, 123) = 6.88, p = .001; η_p^2 = .10, for confusion: F (2, 123) = 6.42, p = .002; η_p^2 = .09. See Table 1 for Mean Differences.

Hypothesis III. Hypothesis III was examined to determine the predictive ability of perceptions of the eyewitness on the accuracy of the identification. Other predictor variables included: perceptions of fairness of the identifications, and self-reported association with law enforcement. Perceptions of the eyewitness scale, consisting of 7 items, possessed good internal consistency, with a Cronbach alpha coefficient of .87. Direct logistic regression was performed to assess the impact of these factors on the likelihood that participants would rate the eyewitness identification as accurate. The model contained three independent variables (Perceptions of the eyewitness scaled score dichotomized into High and Low, perceptions of the fairness of the identification, and relation to law enforcement). The full model containing all predictors was statistically significant, χ^2 (3, N = 126) = 30.7, p < .001, indicating that the model was able to distinguish between participants who perceived the identification as accurate and inaccurate. The model as a whole explained between 21.8% (Cox and Snell R square) and 30.3% (Nagelkerke R-squared) of the variance in perceived accuracy, and correctly

classified 68.8% of cases. As shown in Table 2, only one of the independent variables made a unique statistically significant contribution to the model. The strongest predictor of rating the eyewitness identification as accurate was the Perceptions of the Eyewitness scaled score, recording an odds ratio of 8.61. This indicated that participants who rated the eyewitness positively were over 8 times more likely to rate the eyewitness identification as accurate than participants who rated the eyewitness negatively, controlling for all other factors in the model.

Discussion

Eyewitness evidence has been an increasingly popular topic in legal psychology over the last 30 years. Law enforcement often relies heavily on eyewitness identifications, the strength of which is typically judged by the eyewitness' self-rated confidence. Despite questionable validity, the criminal justice system uses this evidence at trial as long as it meets criteria outlined by the U.S. Supreme court in *Neil v. Biggers* (1972). Confidence estimates can be gathered prior to the identification, at the time of identification, at a follow-up interview and at trial. Evidence has shown that confidence is quite malleable, and can be affected by several factors. Feedback, whether confirming, disconfirming, delayed or immediate can increase or decrease confidence. In addition, research has shown that confidence has an effect on jurors' perceptions of eyewitness credibility and witnessing conditions (Bradfield & McQuiston, 2004; Bradfield & Wells, 2000; Berman, et al., 1995). This research sought to begin to understand the effect that a change in confidence followed by an explanation would have on jurors' perceptions of eyewitness credibility.

Inconsistent with our hypotheses perceptions of the eyewitness did not change according to type of explanation given. There were no significant differences found among the three experimental conditions. This is inconsistent with the research of Jones, et al. (2008), who reported significant differences on perceived accuracy and credibility for a confidence inflation from 60% to 99% accompanied by a Confidence Epiphany, a Memory Contamination, or a Strategy based explanation. It is possible that we did not find effects due to the smaller magnitude of our confidence inflation, however this was important for ecological validity. Witnesses presenting inconsistent confidence statements (the confidence inflation conditions) were perceived as less accurate, less consistent, less credible and more confused than participants in the No Rating-High condition, which only provided a single confidence statement. This is in line with previous research demonstrating that inconsistent testimony is perceived as less accurate, etc. (Berman, et al., 1995). If law enforcement is collecting post-identification confidence, this could prove useful to the defense when confidence inflates at trial. It appears that any explanation for this inconsistency does little to nullify the inconsistency's effect on perceptions of the eyewitness. However, these results will need to be replicated before any broad conclusions can be made. Interestingly, participants perceptions in the Low-No Rating condition did not significantly differ from those in the Inflation condition (the inconsistent conditions), except for perceptions of consistency. An eyewitness' confidence rating of 80% was seen just as accurate and credible as that of an inflated, inconsistent rating of 80% to 100%. If this result were replicated, this would mean that a witness whose confidence is inflated by coaching will not be discredited by a previous confidence statement that was presented provided that it was 80% or above.

Whether these results will replicate to verbal judgments of confidence, I'm pretty sure to I'm positive, remains to be seen and is an area of potential future investigation.

Consistent with the findings of Jones, et al. (2008), the logistic regression revealed that Perceptions of the eyewitness dichotomized scaled score significantly predicted the perceived overall accuracy of the witness' identification. Jones and colleagues found that participants in the Confidence Epiphany condition who rated the eyewitness as more accurate and credible were also more likely to convict. This implies that it is the perceptions of the eyewitness that is driving their credibility, perceived accuracy of their identification and ultimately their likelihood to convict based on this evidence. In fact, Perceptions of the eyewitness scale was the only significant contributor to our model. Although, perceived fairness of the identification did not contribute to the model this may be due to ceiling effects. If unfair identification procedures are utilized in future research, this may emerge as a significant predictor of perceived identification accuracy as well.

During manipulation checks, we discovered that participants in the control conditions did not accurately identify the eyewitness' confidence. When no confidence rating was given, the vast majority of participants reported a confidence rating despite the not applicable option. This finding may be because jurors are assigning confidence ratings to the witness even when none is given. If this hypothesis is correct, then obtaining post-identification confidence becomes an important piece of evidence. This finding warrants further study, as future research could evaluate if and/or when jurors are assigning confidence estimates to eyewitnesses. In addition, future research should examine the confidence inconsistency effect using trial simulation methods and examine

whether the effect of confidence changes are moderated by other possible explanations. Although this research provides some evidence, replicating these results with other eyewitnesses (i.e., a male) will provide validation. In our sample of participants, European Americans were overrepresented when compared to the population of potential jurors. Lastly, although confidence was isolated during consecutive interviews for the purposes of this study, this design has limited ecological validity. This limitation is easily rectified by utilizing trial simulation methods in future research.

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Table 1. Mean Ratings of the Eyewitness

	Condition		
	Inflation	*High-No Rating*	*No Rating-Low*
Eyewitness Perceptions			
Accuracy	3.35_a	4.30_b	3.81_{ab}
Confusion	3.16_a	2.00_b	2.5_{ab}
Consistency	2.74_a	4.83_b	4.00_c
Credibility	3.57_a	4.35_b	3.73_{ab}

Note. Means with different subscripts differ significantly at $p < .05$.

Table 2. Logistic Regression Predicting Perceived Accuracy of Witness Identification

	B	S.E.	Wald	*df*	Odds Ratio
Perceptions of the Eyewitness[1]	2.15	.47	21.38	1	8.61
Perceived Fairness of Identification	-.21	.17	1.58	1	.21
Relation to Law Enforcement	-.33	.44	.57	1	.72

Note. [1] Responses dichotomized as High/Low: significant predictor at $p < .001$.

Appendix A

Informed Consent

I freely and voluntarily consent to be a participant in this research project entitled "Mock Juror Perceptions of Eyewitness Confidence Malleability and Differential Explanations" I understand that I will be one of 240 individuals participating in this project. My participation is expected to last approximately 30 minutes.

I understand that the purpose of this research is to enhance the knowledge of eyewitness testimony. Participants will read and complete the survey anonymously after viewing a short video presentation.

I understand that there are no known risks involved in my participation. I understand by attending today I will receive extra credit in my core class. I have been told that my responses will be strictly anonymous; my records will be coded with a number and my name will not appear on any of the forms.

I understand that I may withdraw my consent and discontinue participation in this research project at any time with no negative consequences. I have been given the right to ask questions concerning the procedure, and any questions have been answered to my satisfaction.

If I desire further information about this research project I may contact Dr. Garret Berman at (401) 254-3341 or Dr. Don Whitworth at (401) 254-3509. I have been offered a copy of this informed consent. I have read and understand the above.

_____ Date_____

Participant's Name (Print Name)

_____ Date_____

Participant's signature

Appendix B

Please be sure to answer every question on this questionnaire by filling in the circle that corresponds to the appropriate response.

Please take a few minutes to fill out this survey, you will be asked to fill out demographic information and questions regarding the videotape that was just viewed. Thank you for your time.

Questions about the videotape:

1. **How credible did you find Mindy to be?**

○	○	○	○	○	○	○
0	1	2	3	4	5	6
Not at all Credible						Very Credible

2. **How honest did you find Mindy to be?**

○	○	○	○	○	○	○
0	1	2	3	4	5	6
Not at all Honest						Very Honest

3. **How consistent did you find Mindy to be?**

○	○	○	○	○	○	○
0	1	2	3	4	5	6
Not at all Consistent						Very Consistent

4. **How accurate did you find Mindy to be?**

○	○	○	○	○	○	○
0	1	2	3	4	5	6
Not at all Accurate						Very Accurate

5. How confused did you find Mindy to be?

○	○	○	○	○	○	○
0	1	2	3	4	5	6
Not at all Confused						Very Confused

6. How likeable did you find Mindy to be?

○	○	○	○	○	○	○
0	1	2	3	4	5	6
Not at all Likeable						Very Likeable

7. How trustworthy did you find Mindy to be?

○	○	○	○	○	○	○
0	1	2	3	4	5	6
Not at all Trustworthy						Very Trustworthy

8. The identification procedures employed by the detective were fair:

○	○	○	○	○	○	○
0	1	2	3	4	5	6
Strongly Disagree						Strongly agree

9. How would you evaluate the eyewitness identification in this case: (choose one)

○	○
Accurate	Inaccurate

10. How important was Mindy's confidence from the first interview in evaluating the accuracy of her identification?

○	○	○	○	○	○	○
0	1	2	3	4	5	6
Not Very Important						Very Important

11. How important was Mindy's confidence from the second interview in evaluating the accuracy of her identification?

○	○	○	○	○	○	○
0	1	2	3	4	5	6
Not Very Important						Very Important

12. How confident was Mindy during the identification procedure?

○	○	○	○	○	○
20%	40%	60%	80%	100%	Unknown

13. How confident was Mindy during the follow-up interview with the detective?

○	○	○	○	○	○
20%	40%	60%	80%	100%	Unknown

14. How much time had passed between the first and follow-up interviews?

○	○	○	○	○
1 day	1 week	2 weeks	1 month	1 year

15. Circle the percentage that you believe best reflects Mindy's identification accuracy:

○	○	○	○	○
20%	40%	60%	80%	100%

16. If this case goes to trial, rate the likelihood that you would convict the defendant based upon the eyewitnesses memory

○	○	○	○	○	○	○
0	1	2	3	4	5	6
Not Very Likely						Very Likely

Demographic Information

17. Your gender

○ Male ○ Female

18. Into which of these age categories do you fall:

○ 17-24 ○ 25-34 ○ 35-44 ○ 45-54 ○ 55-64 ○ 65 & Older

19. Which of the following best characterizes your background:

○ White, Non-Hispanic ○ Hispanic ○ Black, Non-Hispanic ○ Asian ○ Other

20. Your Marital Status:

○ Single ○ Married ○ Re-married ○ Separated ○ Divorced and Single ○ Widowed

21. Your current political preference: (not necessarily your registration)

○ Democrat ○ Republican ○ Independent ○ Other

22. Aside from your political affiliation, how would you evaluate your political views:

○ Liberal ○ Slightly Liberal ○ Slightly Conservative ○ Conservative

23. Do you have a valid Driver's License:

○ No ○ Yes

24. Have you ever served on a jury in a civil case:

○	○
No	Yes

25. What is your occupation:

○	○	○	○	○	○
Not working/ unemployed	Student	Employed part-time	Employed full-time	Retired	Other

26. Are you either a close friend of, or related to, any law enforcement officer: (including retired police officers)

○	○
No	Yes

27. What is the highest level of education you have attained:

○	○	○	○	○	○
Grade school	Some high school	High school diploma	Some college junior college	College degree	Post-graduate college degree

Appendix C

Mock Juror Perceptions of Eyewitness Confidence Malleability and Differential Explanations

Principal Investigator: Melissa Paiva, BA Graduate Student, Forensic Psychology

Supervisor: Garret Berman, PhD. CAS, Psychology Department

Co-investigator: Ryan Weipert Graduate Student, Forensic Psychology

1. **Project Description**: The goal of this research study is to examine how jurors might perceive an eyewitness to a crime that has identified a suspect. If the eyewitness confidence level changes prior to trial, it is not clear how jurors will interpret that information. This study will present participants with a video presentation of an eyewitness identifying a suspect and then changing their confidence about their identification in a subsequent interview. The eyewitness will give either a plausible reason for changing their confidence or a reason that was unfairly influenced by information obtained after the identification. Each participant will see an eyewitness either increasing or decreasing their confidence and either giving a plausible or tainted reason. The participants will then be asked to complete a questionnaire assessing the credibility of the eyewitness.

2. **Participants**: Participants will be recruited from undergraduate core classes at Roger Williams University.

3. **Research Procedures and Methodology**: Participants will be given informed consent to review before participating in the study. Participants will watch the video presentation

(See Appendix A for a transcript) and complete a questionnaire (See Appendix B) in a vacant classroom. Questionnaires will be collected by researchers for analysis. Analysis will be conducted utilizing ANOVA in SPSS. Participants will be debriefed regarding the purposes of the study. The researchers do not anticipate any negative affects of participation. Participants will be offered extra credit in their corresponding core class for their time.

4. **Consent Procedures**: Informed consent will include a standardized consent form (See Appendix C) in accordance with APA guidelines. Participants will be given informed consent prior to participation.

5. **Data Confidentiality**: Participants will be asked to complete demographic information on their questionnaires. Their questionnaires will be numbered in order to ensure anonymity.

6. Risks/Discomforts to the Participants: The researchers do not anticipate any risks or discomforts to the participants. Participants will be debriefed as to the purposes of the study.

7. Benefits of the Study: The benefit of this study will be to promote the understanding of how changes in confidence are perceived by potential jurors.

Signatures:

_____ _____

Principal Investigator Supervisor

_____

Co-Investigator