

THE IDENTIFICATION OF A PERSON OR AN OBJECT BY AN EYEWITNESS

Review Article

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Abstract: Giving testimony is a general duty of all individuals and entails a range of obligations, among which is the obligation of a witness to give a statement. Giving a statement means providing information about the criminal act, the perpetrator, and other important circumstances surround the specific case. However, in situations where, for instance, it is necessary to determine whether an eyewitness can identify a person or objects, an eyewitness identification procedure must be conducted. This means that in addition to giving a statement, in cases where it is necessary, an eyewitness is also asked to identify a person or an object. Person and object identification is a complex process. It is commonly stated that identification involves two phases: the description phase and the presentation phase for the purpose of identification. This construction is likely a result of legal formulation stating that if it is necessary to determine whether an eyewitness can identify a person or an object, the eyewitness must first describe the object to be identified, and then the object must be presented to them for identification. However, each of these phases involves a series of activities that must be undertaken, which are highly sensitive and largely determine the outcome of identification. Additionally, the procedural rules regarding identification are tentative and insufficient. Successful identification requires knowledge of and adherence to the rules prescribed by forensic science and psychology. All of these actions make the process of eyewitness identification very complex and demanding. Considering that the identification of persons and objects is realized within witness hearings as an evidentiary action in criminal proceedings, identification is officially recorded, and the record can serve as evidence in criminal proceedings. Of course, its evidentiary strength is assessed by the court in accordance with the rules that apply to the evaluation of other evidence.

Keywords: eyewitness, person identification, objects identification.

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THE CONCEPT OF IDENTIFICATION

“Often it is not enough for an eyewitness to merely state everything they know about the object in question; it is also necessary for them to identify or agnosize persons and objects presented to them. Agnosia usually occurs after testimony, with the aim of determining whether the person or object indeed corresponds to what the eyewitness’s statement referred to” (Марковић, 1930: 393). “Identification is a complex psychological process and, essentially, represents an emotional phenomenon based on a familiar impression” (Алексић 1996: 223). The essence of identification lies in observing persons and objects to establish their identity based on previously seen persons or objects, or to verify the statement given. The objects of identification can be persons and objects.²

The identification of persons mainly involves identifying perpetrators of criminal acts, which represents the most complex form of identification. It is best performed under conditions similar to those encountered in reality. Additionally, the use of a two-way mirror is recommended during a line-up identification procedure, when “the eyewitness views the individuals who stand in a row from behind the two-way mirror without being seen” (Aleksić & Škuljić, 2010: 214). Furthermore, forensic science recommends certain rules regarding lineups. Essentially, these individuals should closely resemble the suspect in terms of age, height, weight, facial features, hair color and length, ensuring “5 cm height difference, 10 kg weight difference and 5-8 years age difference between them” (Aleksić & Škuljić, 2010: 214). The eyewitness should be presented between five and eight individuals. During the identification process, the suspect should not stand out in any way. If identification occurs, the record of identification must include the basis on which identification was performed.

The identification of objects includes stolen, found, discarded, lost, or temporarily seized items related to the criminal offense committed. “the identification of objects that can serve as evidence (*corpus delicti*) or to establish certain facts in criminal proceedings is usually more reliable than person recognition because it often occurs during the investigation of property offenses, and the person who performs identification is the victim, who knows their own property and its individual, sometimes hidden, characteristics very well” (Јокић, 2016: 97). To identify an object means to conclusively determine the characteristics by which that object differs from other objects of the same type. Object identification involves giving a detailed description followed by the presentation of similar objects to be identified. Although current literature and studies do not confirm this, it was previously believed that women were “particularly good eyewitnesses regarding object identification. The number of erroneous identifications of objects is lower compared to the percentage of erroneous identifications of individuals, but for various reasons (especially self-interest), false identifications of objects are often made” (Vodinić, 1970: 142).

² According to forensic science, in addition to persons and objects, the identification procedure can also be used to identify corpses and the place where the crime was committed.

Identification is conducted not only for the purpose of identifying a person or an object that have previously been seen but also to verify the statement given. In order to verify the truthfulness and reliability of a previously given statement, the reconstructions of events, confrontations, and interrogations are often conducted alongside identification. All of these actions are undertaken when “there is suspicion that the witness did not tell the whole truth during the interview, and it is highly likely that they know it” (Алексић 1996: 241).³

Procedural laws in Bosnia and Herzegovina recognize identification made by eyewitnesses in criminal proceedings. For example, the section regulating the interviewing of witnesses contained in the Criminal Procedure Code of Republika Srpska provides for the possibility of identification “if it is necessary to determine whether the witness recognizes a person or an object.”⁴ This law does not prescribe detailed rules for conducting this action. The only rule prescribed by the law is that the witness shall first be asked to describe or indicate how the persons or objects differ, and only afterwards will they be shown to them for identification, along with other unfamiliar individuals, or, if possible, with objects of the same type. The law also provides for the possibility of identifying persons based on photographs if identification cannot be made directly.

This means that identification essentially consists of the preliminary and main phases. In the preliminary phase (the description phase), the person making an identification describes the object, specifying more concrete identification characteristics based on which the person or object can be identified. The preliminary phase is followed by the main phase (the presentation phase for the purpose of identification), in which the witness is asked to identify the persons or objects. “The person supervising the identification process should be competent and trained, possess certain knowledge of psychology and forensic science, behave impartially and objectively throughout the identification process, and must be aware that the eyewitness making an identification is constantly susceptible to suggestive influence, both verbal and non-verbal” (Jokić, 2016: 151). The identification procedure is conducted by showing the witness several persons or objects of the same type, and they should point out the person or object they have recognized (Симовић, 2005: 239-240). If it is impossible to make identification in this manner, the photo array may be also used.⁵ This

3 The most effective method for verifying the accuracy of identification is event reconstruction, conducted at the scene of the criminal act and under conditions as similar as possible to those existing at the time of the act. Through reconstruction, “the psychological properties of the witness are best determined: the ability to accurately perceive, correctly identify measurements, colors, and time, the strength of memory, reaction to events, type and degree of suggestibility. Reconstruction reveals the hidden conclusion in the statement.” (Vodinelić, 1970:140).

4 Закон о кривичном поступку Републике Српске [Criminal Procedure Code of Republika Srpska], Службени гласник Републике Српске, бр. 53/2012, 91/2017, 66/2018 и 15/2021), чл. 150, став 3.

5 When it comes to identifying objects based on photographs, the Criminal Procedure Code of Republika Srpska does not provide for this type of identification. However, there is no reason why indirect identification of objects should not be conducted, especially in situations where it is necessary to identify an object that no longer exists or has been significantly altered, or when it is

method is used exceptionally because “the photo is only a necessary auxiliary means for finding and recognizing the perpetrator. A person changes over time. Not all personality characteristics, especially facial expressions, are captured in the photo” (Vodinelić, 1970:63). Additionally, the eyewitness who saw a suspect in a real-life situation, in motion, will have a harder time recognizing them if they only have a photograph in front of them. Moreover, the quality of the photograph may vary depending on the conditions under which the photograph was taken. Of course, although identification based on photographs has its drawbacks, it is clear that a positive identification of the person can be made based on photographs, and it should be applied in situations where live lineup is impossible.

During description, the eyewitness mentions individual characteristics as they retained them in memory, while during presentation for recognition, they express their current impression and compare it with the past. For example, Vodinelić states that identification consists of three segments: “1) the eyewitness saw the perpetrator and created a memory of his face; 2) some time after this experience, faces among which is the perpetrator or a person resembling the perpetrator are displayed to the eyewitness, which is a certain experience; 3) during this experience, the eyewitness compares live faces with the face from their memory and draws conclusions about their identity or difference” (Vodinelić, 1970: 137).

THE IDENTIFICATION PHASES

The description phase and the presentation phase for the purpose of identification are closely interlinked, more precisely, one builds upon the other. The presentation for the purpose of identification follows after the description phase, but “the ability to describe does not necessarily have to be linked to the ability to recognize... Inability to describe characteristics does not exclude the possibility of make an accurate identification of others, just as an accurate description does not guarantee an accurate identification” (Vodinelić, 1985: 582). “There are various types of eyewitnesses. Some describe others excellently and accurately but recognize poorly and incorrectly. Conversely, the inability to describe others is not necessarily linked to the inability to recognize. These are two separate abilities – the ability to recognize the presented is stronger than the ability to describe it” (Vodinelić, 1970: 137). There are numerous factors that influence both the ability to describe and the ability to recognize the presented.

difficult to conduct a direct identification procedure for some reason. For instance, the Criminal Procedure Code of the Republic of Serbia stipulates that the identification of both persons and objects based on photographs may be used if the person or object to be identified is not available (Закон о кривичном поступку Републике Србије [Criminal Procedure Code of the Republic of Serbia], Службени гласник Републике Србије, бр. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 – одлука УС, чл. 90, став 3).

Prior to conducting the identification procedure, it is necessary to determine these abilities, taking into account individual differences among eyewitnesses.

Regarding the eyewitness's ability to describe, it is essential to consider significant individual differences among eyewitnesses. From the perspective of an observer, psychology distinguishes between synthetic and analytical types of eyewitnesses. The synthetic type of eyewitnesses "primarily receives a general impression of the object observed, losing numerous details to which they do not attach importance (attention). In their statement, such an eyewitness does not primarily expose that general impression and is not capable of detailing and accurately stating many details that precisely constitute the essence of personal description... In contrast, the analytical type primarily notices details while neglecting the general appearance of the object observed... A favorable circumstance for establishing objective truth is when the eyewitness making identifications belongs to the analytical-synthetic type" (Vodinelić, 1985: 581–582). Identification is successful only if the eyewitness has noticed and remembered "not only the group but precisely the necessary set (complex) of individual characteristics... Group membership means similarity and nothing else, while individual characteristics enable differentiation between the similar objects presented" (Vodinelić, 1985: 577).

Considering that criminal situations are often characterized by a multitude of stimuli and the presence of strong emotions, numerous factors influence what the eyewitness will perceive and remember. Forensic psychology distinguishes between two types of factors affecting event perception: those related to the event itself and those related to the person observing it. Event-related factors include distance, the duration of observation, violence level, the presence of weapons, lighting conditions, and the visibility of perpetrators. On the other hand, factors related to the witness include the presence of alcohol/drugs, stress, selective attention, prejudices, and bias (Баић, 2018: 88–89). Additionally, factors such as prior knowledge, experience, motivation, needs, desires, and expectations should not be overlooked, as they all impact eyewitness perception. Furthermore, "there are differences in the amount of content individuals are able to retain" (Пот, 1990: 80–90). Eyewitnesses also do not remember the same facts; "what they remember or forget depends on their individual characteristics. When multiple eyewitnesses observe an event, they may each remember different aspects of it. A comprehensive picture of the event can be gained if each eyewitness provides testimony about the moment they observed and remembered" (Vodinelić, 1970: 129).

After the eyewitness has described the object in question, the presentation phase (the main phase) follows. The eyewitness will be presented with the "contested" object together with other similar objects unknown to them. The eyewitness is instructed to carefully observe and say if they recognize the object they had observed at the critical time from an array of objects. "...the witness should identify the person among several unknown individuals or objects of the same type" (Simović & Simović, 2019: 353). The objects should look similar and

should be presented simultaneously. Objects can be presented to the witness in person,⁶ which is much more reliable, or they can be presented to them as photographs of the object.⁷

Regarding the witness's ability to identify objects or persons, individual differences of witnesses should be considered. Gender, age, abilities, personality traits, description quality, consistency in testimony upon re-examination, the witness's confidence in the credibility of their testimony, the appearance of the object to be identified, changes in personal description or clothes in cases of person identification, are some of the factors that can influence identification. Additionally, the time elapsed since the commission of the criminal act to the moment of identification, the context in which the identification procedure is conducted, and information about the event after the event (Байћ, 2018: 95–101) must be taken into account.

The identification of persons or objects can be successful only if the witness has noticed and remembered specific individual characteristics. Establishing identity or differences is possible only based on a set of individual characteristics. "Matching only group characteristics allows only the determination of group membership, which is by no means the same as identity. Group membership means only similarity" (Водинелић, 1985: 577). Identity or differences between similar objects can only be determined based on individual characteristics.

It is important to note that in some situations, re-presentation for the purpose of identification is performed. Although scholars agree that re-presentation is not desirable,⁸ it is inevitable in some situations, (e.g., in cases where a mistake was made during the initial presentation, if significant changes in the appearance of the suspect have occurred, if the initial recognition was based solely on a photograph, if new circumstances and evidence arise that can only be verified by re-recognition, etc.) (Водинелић, 1985: 579–581).

6 Regarding live lineups, simultaneous and sequential procedures are used for live line ups. In the simultaneous lineup procedure, all persons are shown to the witness at the same time. The persons should be selected for their similarities to the suspect (approximately the same height, hair color and length, similar clothing and shoes, etc.), and they should not be known to the suspect. In the sequential live lineup procedure, the suspect and fillers are shown to the witness one by one. The same rules apply for the sequential lineup procedure as for the simultaneous one, with the additional instruction to the witness that they will be shown one person at a time and that the perpetrator described may be among them.

7 Forensic experts hold differing opinions on the reliability of identification based on photographs. Some argue that such identification can only be used as a supplementary tool (e.g., Vodinelić regards photographs primarily as a useful supplementary tool for locating and identifying individuals, Vodinelić 1970:63). Conversely, others contend that identification based on photographs can be successfully and reliably performed (e.g., Jokić asserts that identification can be successfully conducted based on photographs, particularly in cases where personal identification is not feasible). (Jokić, 2016: 89).

8 Some authors argue that repeated lineup procedures for identification purposes are highly risky, as "there is a possibility that the witness may genuinely recognize the person that was previously shown to them, but mistake him or her for the perpetrator" (Vodinelić, 1970: 141).

Both phases of identification must be entered into the record. besides the basic data relating to the place and time of identification, the person and object identified, it is necessary to enter a faithful description of the object identified, the questions asked and the answers given by the person being identifies in the record. The record can be used as evidence in criminal proceedings, and its probative value, that is, the probative value of identification, is assessed by the court based on its free judicial conviction, which the court develops “not based on the witness’s judgment but rather on the facts the witness present and base their judgment of identity or difference” (Водинелић, 1985: 586).

CONCLUSION

The identification of persons and objects is possible but not always necessary during witness examination. It is used when there is a need to verify witness testimony or when the witness is asked to identify the person or object they have previously seen. Regardless of the reason for using the identification procedure, it always has two phases, the description phase, and the presentation phase for the purpose of identification. Both phases include a series of activities that need to be undertaken, such as obtaining a detailed description of the person or object; determining the witness’s perception abilities; determining the conditions under which the person or object was observed; selecting the appropriate person or object to be presented; providing conditions (ambience) for presentation; providing photographs in the case of mediated identification; if the identification of a person or an object was made, detailed determination of the characteristics based on which it was made is required, etc. Each of these activities is, in itself, very sensitive and significant. A “mistake” in any phase of identification can result in erroneous identification.

As it can be seen, the result of identification depends on several factors. Of course, the person, that is, the witness and their abilities to observe, remember, reproduce, and recognize, are foremost among them. Generally, when speaking of a witness as evidence in criminal proceedings, their uncertainty lies precisely in the subjective qualities of each individual witness. In addition to factors related to the witness’s personality, there are other factors related to the object being identified, the method of identification, and the event itself.

How the court will evaluate identification procedures does not depend on the witness’s “judgment.” A cautious witness will often not be categorical even in the case of accurate identification, while a careless witness will be categorical even when unsure of their testimony. Therefore, in some situations, forensic-psychological assessments of witnesses are desirable. Identification is much more than the witness’s assertion that they recognize an object they have previously seen among those presented. In order to be used as evidence, identification procedures must be properly planned, tactically implemented, and critically analyzed and verified in the end. The court evaluates the result of

identification like other evidence, first individually, then together with all other evidence, in accordance with the principle of free assessment of evidence based on the principles of truth and the judge's own free conviction.

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