

Failures In Photographic And Personal Identification As Evidence In Criminal Proceedings: An Analysis Of Selected Cases Reported By The Media In Brazil

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Abstract:

The institute of personal and photographic identification is provided for in Articles 226 to 228 of the Brazilian Code of Criminal Procedure as a means of evidence aimed at identifying individuals or objects involved in or originating from criminal activities. However, the judiciary has been issuing numerous convictions based exclusively and solely on identification, which has been the subject of decisions by the Federal Supreme Court and the Superior Court of Justice, questioning the constitutionality of such convictions. With this in mind, the primary objective of this article is to conduct a documentary and bibliographic analysis of the failures in photographic and personal identification in Brazil's criminal justice system. For this purpose, it is a documentary and bibliographic study with a qualitative, descriptive, exploratory, and deductive approach, taking into account literature already published in articles, journals, and websites addressing the subject matter. The results revealed that errors in personal and photographic identification during the inquisitorial phase of a crime can have consequences that go beyond incarceration, resulting in a profound loss of dignity and humanity for these defendants who, in reality, are the victims. In addition to the shocking consequences presented in the cited cases, it is evident that there is a failure to observe the legally prescribed procedures for gathering evidence. Thus, it can be concluded that personal and photographic identification, as the sole and isolated indication of authorship, is insufficient to justify a preventive detention order.

Keywords: Agribusinesses; Contract; Producers; Integration; Verticalization.

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I. Introduction

The production of evidence during the investigation phase in the criminal justice system has been a constant subject of doctrinal studies in Brazil and, in this context, a target of sharp criticism regarding its procedures (França, 2018). At times, it is described as an excessive and slow process that exceeds what is necessary for the formation of evidentiary elements; at others, it is seen as overly swift, skipping steps and lacking clear parameters to adequately demonstrate the fulfillment of the requirements for adopting specific investigative measures (Badaró, 2019; Cordazzo; Mendes, 2020).

The volume of works, articles, and books published on the subject highlights the importance of preliminary investigations and inquiries for the appropriate functioning of the criminal justice process in Brazil. Thus, the more extensive the debate and knowledge about this procedure, the better it is for the precision of the criminal justice system.

The institute of identification is provided for in Articles 226 to 228 of the Brazilian Code of Criminal Procedure as a means of evidence aimed at identifying individuals or objects involved in or originating from criminal activities (Badaró, 2015; Curitiba, 2020). According to the legal provisions, when necessary, personal or object recognition may be conducted. However, both judicial and doctrinal practices have allowed and adopted the recognition of individuals through photographs, often at the expense of fundamental rights and guarantees (FRAGA, 2020).

When it comes to determining facts in the context of criminal justice, personal identification is granted a central role as evidence. Even when the evidentiary set contains other elements, investigators, judges, and prosecutors often attribute considerable weight to the identification of an individual by a victim or witness as the perpetrator of a crime (Matida; Ceconello, 2021). This becomes even more significant when the identification is accompanied by a high degree of certainty (e.g., someone says: "I am 100% sure this is the person who robbed me") or when the account is detailed. The overestimation of this combination of high confidence and detail is based on the erroneous belief that memory functions like a recording device, capable of storing all the events experienced by an individual (Badaró, 2015; Curitiba, 2020).

Common sense holds that memory can effortlessly recall the entirety of lived experiences at any given time. However, as widely noted by authors (Vieira, 2019; Ceconello, Ávila; Stein, 2019; Machado; Moretzsohn; Burin, 2020), this is definitively not an accurate description of how human memory actually functions. The processes of recording, storing, and retrieving memories face significant challenges, as human memory is often prone to errors.

As time passes from the occurrence of an event, the likelihood of discrepancies between what happened and what is reported increases (LOPES, 2019). The quality of information stored in memory is flexible, degradable, and malleable. Given this, it is crucial to consider the risk of false memories, which may include recollections of events that never occurred or, worse, the misidentification of an innocent individual as the perpetrator of a crime (França, 2018).

It is worth noting that the criminal justice process heavily relies on memory for reconstructing events, as crimes are historical occurrences—already in the past—and often exist only in the memories of victims and witnesses. In many cases, these memories constitute the sole means of evidence that enables the identification of a criminal. However, this type of evidence is susceptible to serious errors, as the human mind is not an independent entity detached from social context and free of biases (Matida; Ceconello, 2021). On the contrary, intelligence is directly linked to the information we receive daily and can modify, create, diminish, or amplify factual accounts according to stimuli received (Loschi, 2021).

In this context, extrajudicial identifications and testimonies disproportionately affect Black and poorer individuals, who are the primary victims of such errors, with wrongful convictions reaching an average of 83%. This occurs because of a societal tendency to more readily convict Afro-descendants, exacerbating the vulnerabilities and instability faced by this population, compounding their historically cruel trajectory (Telles, 2021).

In addition to procedural deficiencies, the judiciary has issued numerous convictions based solely on identification, which has been challenged in decisions by the Federal Supreme Court and the Superior Court of Justice regarding the constitutionality of such convictions. Accused individuals are summoned to police stations and face legal proceedings based solely on an identification (Matida; Ceconello, 2021).

This article aims to conduct a documental and bibliographic analysis of failures in photographic and personal identification in Brazil's criminal justice system.

II. Materials And Methods

This is a documentary and bibliographic study with a qualitative, descriptive, exploratory, and deductive approach, taking into account existing literature in articles, journals, and websites addressing the topic under discussion.

Figueiredo (2008) states that bibliographic research is conducted based on the collection of theoretical frameworks already analyzed and published through written and electronic resources such as books, scientific articles, and website pages.

Regardless of the type of scientific work, it should begin with bibliographic research, as this allows the researcher to understand what has already been studied on the subject. However, there are scientific studies that rely solely on bibliographic research, seeking published theoretical references to gather information or prior knowledge about the problem under investigation.

In this context, it is understood that the researcher will collect available knowledge in the field, identifying produced theories, analyzing them, and evaluating their contribution to understanding or explaining the problem under investigation (Marconi; Lakatos, 2011).

Additionally, in this scenario, the qualitative approach is a study method that enables understanding of some complex phenomena by delving into the social and cultural aspects of the topic through descriptions, interpretations, and comparisons, without considering numerical measurements of related data. Furthermore, statistics are not the focus of this approach (Marconi; Lakatos, 2011).

According to Gil (2017), in descriptive research, facts are observed, recorded, analyzed, classified, and interpreted without interference from the researcher. Regarding exploratory research, this type of investigation provides maximum knowledge, with a highly adaptable framework that allows for consideration of various aspects related to the subject under study.

The methodological process involved a search through various databases to obtain full-text documents related to the studied topic, selected for their relevance to the national context. The databases chosen were SCIELO and the CAPES Portal. Subsequently, the searches in these databases were conducted using the following descriptors: "Failures," "Photographic Identification," "Personal Identification." Search strategies were supported by the Boolean operators AND and OR. The material collection occurred between December 2021 and January 2022.

Additionally, news reports from the internet and television broadcasts were collected. The inclusion criteria for the analysis material in this study were its availability for reading in Portuguese.

Moreover, data from the JusBrasil website were used, which provides information on criminal proceedings, jurisprudence, and other related content (JusBrasil, 2022).

III. Results And Discussions

Only a few cases of wrongful identification where the accused was innocent were addressed. It is important to highlight that the number of errors in photographic and personal identification in Brazil is quite high, with dozens of such cases reported daily.

The first case is that of a young man with no prior criminal record, Jeferson Pereira da Silva, aged 29, who was imprisoned for six days following a photographic identification. A report from Globo's G1 News Portal, also featured on Fantástico, shows that Jeferson is yet another example of someone preventively detained based solely on photographic identification. Aggravating the situation, in Jeferson's case, the photo used as evidence against him was a 10-year-old 3x4 portrait taken when he was still a teenager (G1, 2021).

In the Federal District, a 52-year-old man, José Domingos Leitão, was arrested by civil police after a facial recognition program mistakenly identified him as the perpetrator of a crime. On October 7, 2020, in the early hours of the morning, José Domingos was awakened at his home in Ilha Grande, Piauí, and transported by plane to the Specialized Police Department (DPE), where he was detained for three days (Portal R7, 2021).

The arrest warrant was based on a report from the Identification Institute, derived from security camera footage at a department store in the Federal District. During the investigation, the Civil Police admitted to an error in the facial recognition process and issued a corrected report (Portal R7, 2021).

Below is an excerpt from the case file obtained from JusBrasil:

The police authority reports that José Domingos Leitão is part of a large criminal organization composed of more than 100 individuals. During the same period in which the crimes committed by JOSÉ DOMINGOS LEITÃO took place, over 100 perpetrators were identified, all using forged documents originating from the same source. Given the nature of the falsifications, the investigating officer argues that temporary detention is necessary to prevent the destruction or remote deletion of files, false documents, or forgery equipment during the execution of search and arrest warrants against the entire organization (Federal District Justice Gazette, October 16, 2020, p. 122).

The case of Eugênio Fiuza Queiroz stands out for the duration of his wrongful imprisonment: over 18 years, falsely accused of rape in 1995 while talking with his girlfriend in a public square. Without a warrant, and based solely on recognition by one of the victims of a series of rapes at the time, Eugênio was taken to the police station, where other victims identified him as the perpetrator. This led to his indictment in five cases and subsequent convictions. Eugênio confessed to the crimes under physical and psychological torture (Estado de Minas Gerais, 2019).

Below is an excerpt from the appellate decision:

This concerns a mandatory review and an appeal against the sentence issued in Order No. 383 by the Honorable Judge of the 5th Public Treasury and Authorities Court of Belo Horizonte, which, in the lawsuit for damages filed by EUGÊNIO FIUZA QUEIROZ against the State of Minas Gerais, ruled in favor of the plaintiff. The court ordered the defendant to pay R\$ 2,000,000.00 (two million reais) for moral damages and R\$

1,000,000.00 (one million reais) for existential damages. The judgment also stipulated monetary adjustments from the date of the damages and interest from the time of the harmful event, as per Superior Court of Justice Precedent No. 54 (Superior Court of Justice Gazette, February 18, 2022, p. 5102).

The true rapist remained free until 2012 when Pedro Meyer was arrested and identified by victims as the real perpetrator of the crimes. Only after Meyer's arrest and recognition did Eugênio succeed in overturning his five convictions and proving his innocence (ESTADO DE MINAS, 2019).

These cases demonstrate the media's significant role in exposing errors in wrongful identifications. Reports highlight the reality in Brazil, where violations of liberty and errors in justice raise numerous questions about trust in the system and legal security, as innocent people are imprisoned while the guilty remain free.

The case of Wanderson da Conceição Silva is similar to others: accused of corruption of minors and robbery, the young man was arrested solely based on photographic identification. However, the Sixth Panel of the Superior Court of Justice (STJ) granted him freedom (R7, 2022). This case is detailed in Habeas Corpus No. 712.781 - RJ (2021/0397952-8):

The case files reveal that the defendant was sentenced to 7 years and 8 months of imprisonment in a semi-open regime, plus a fine, for crimes under Articles 157, § 2-A, I of the Penal Code and 244-B of the Statute of the Child and Adolescent (ECA), in formal concurrence.

The defense argues that the procedure under Article 226 of the Criminal Procedure Code was not followed, as "nine days after the events described in the complaint, the defendant was detained for another alleged crime, and police authorities immediately showed his photograph to the victim for identification. This violated procedural rules and compromised subsequent identifications, including the judicial one" (p. 6). The defense claims that, apart from the victim's statement, no other evidence supports the accusation of robbery against the defendant.

After the information was provided, the Federal Prosecutor's Office recommended granting the order "to declare the identification invalid and acquit the defendant due to the absence of valid evidence for conviction" (TJRJ, 2022, p. 2).

The Fifth Panel of the Superior Court of Justice (STJ) recently aligned with the Sixth Panel's position in RHC No. 598.886, ruling that photographic or in-person identifications conducted during a police inquiry without adherence to the procedures outlined in Article 226 of the Criminal Procedure Code (CPP) are not reliable evidence of authorship (STJ, 2020).

According to a study by Folha de São Paulo (2021), three main flaws in this process were identified after analyzing thousands of case files and conducting numerous interviews. These flaws, accounting for 84% of wrongful convictions, include: erroneous identification procedures, innocent people imprisoned due to identification errors, and arrests based solely on police statements without any investigation.

IV. Conclusion

The existence of a criminal process is justified by the attempt to ensure that accountability falls on the individual who actually committed the crime. However, the Brazilian Code of Criminal Procedure was written at a time when the knowledge about the potential errors in identification evidence was much more limited than it is today, and the mechanisms of control that could contribute to greater accuracy in this type of evidence were not as clear to legal practitioners.

As demonstrated in this article, errors in personal and photographic identification during the inquisitorial phase of a crime can have consequences far beyond the time of incarceration. They result in a profound loss of dignity and humanity for defendants who are, in reality, victims themselves. What is evident is the failure to observe the legally prescribed procedures for gathering evidence as significant as personal identification.

Thus, it can be concluded that personal and photographic identification, as the sole and isolated indication of authorship for issuing a preventive detention order, is insufficient. The problems described here indicate a level of reliability far below what is required for adequately justifying such a precautionary measure. This situation becomes even more concerning when considering that the minimal legal safeguards currently provided for by legislation and deemed mandatory by the Superior Court of Justice (STJ) are not actually observed.

That said, it is evident that improvements in the process of personal and photographic identification could be achieved not only through legislative reform but also by adopting simple precautions and measures within the existing framework. Such steps would reduce harm and, consequently, correct the injustices caused by wrongful identifications.

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