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KATZ, J., concurring. Although I agree with the majority's conclusion that the judgment of conviction of the defendant, Julian Marquez, must be affirmed because the admission of the witness identifications in question did not violate due process, I disagree with its decision to affirm the conviction on the basis of the state's alternative ground for affirmance rather than on the issue presented in the defendant's appeal. Like the majority, I recognize that the trial court's discussion of the simultaneous photographic array[1] suggests that, despite the accompanying warnings, the array was unnecessarily suggestive. If, indeed, the trial court had reached that conclusion without the support of other factual findings, it would have been inconsistent with our holding in *State* v. *Ledbetter*, 275 Conn. 534, 580, 881 A.2d 290 (2005), cert. denied, 547 U.S. 1082, 126 S. Ct. 1798, 164 L. Ed. 2d 537 (2006), in which we held that, standing alone, a nonsequential procedure accompanied by appropriate warnings is not unnecessarily suggestive. I also agree with the majority that the trial court had no authority to issue what could be perceived as a directive to local police departments. Because, however, the trial court also reasonably relied on the fact that the detective in charge of the investigation not only administered the procedure but also conveyed approval of the identification made by one of the witnesses as a basis for its determination that the identification procedure was unnecessarily suggestive, I would not conclude, as the majority does, that the trial court abused its discretion when it determined that the identification procedure as a whole was unnecessarily suggestive. More importantly, this court need not decide this case by rejecting the trial court's determination of unnecessary suggestiveness. Indeed, in my view, this approach is both unnecessary and unwise, as it signals our approval of the use of an interested administrator[2] and closes off debate on witness identification procedures at a time when a clearer consensus about those procedures is just beginning to emerge from scientific research. Therefore, I would limit consideration to the trial court's determination that the identification was reliable based upon the totality of the circumstances, as presented by the posture of the defendant's appeal, and would affirm the judgment on that basis.

I

More than three years ago, in *State* v. *Ledbetter*, supra, 275 Conn. 546–47, this court was asked to conclude that the failure to warn a witness that the perpetrator might not be present at an identification procedure renders that procedure per se unnecessarily suggestive, thereby overruling our decision in *State* v. *Reid*, 254 Conn. 540, 556, 757 A.2d 482 (2000) (witness identifica-

tion procedure utilizing photographic array not unnecessarily suggestive when witness had been informed that suspect was present in array). In support of this proposed conclusion, various amici curiae presented this court with academic research that underscored the dangers of misidentification inherent in the use of identification procedures, including lineups, show-ups and photographic arrays that contained no warning to the witness that the perpetrator may not be present. Id., 569–70. We declined to adopt such a per se rule, reasoning that "[t]he circumstances surrounding the various identification procedures present too many variables for us to conclude that a per se rule is appropriate." Id., 574. Instead, we held that "trial courts should continue to determine whether individual identification procedures are unnecessarily suggestive on the basis of the totality of the circumstances surrounding the procedure . . . ." Id. In *Ledbetter*, we further directed trial courts, however, to consider the results of research concerning whether the identification administrator informs the witness that the perpetrator may or may not be present. Id., 574–75. Because of the import of the studies, we also invoked our supervisory authority to mandate that, if the administrator has not provided such a warning, trial courts must issue a jury instruction explaining that there may be an increased likelihood of misidentification under such circumstances. Id., 579. A necessary implication of our holding in *Ledbetter*, however, is that if a witness identification procedure employs a warning instruction, then, standing alone, it would not be considered unnecessarily suggestive, and that trial courts must continue to examine the facts and circumstances of each case to determine if other factors are present that would render the procedure improper. See id., 574–75.

Four months after we decided *Ledbetter*, the trial court in the present case was presented with the following identification procedure in the defendant's trial for, inter alia, felony murder and robbery in the first degree. Two witnesses separately were shown a simultaneous photographic array that contained a printed warning in conformity with our holding in *Ledbetter* from which they each identified the defendant as the perpetrator who possessed a firearm. The identification procedures were conducted by Detective Patricia Beaudin of the Hartford police department, the detective in charge of the criminal investigation, who informed the second of the two witnesses, Mark Clement, at the conclusion of the procedure that he " 'did good' " because he had selected the same individual whom the other witness, Christopher Valle, had chosen.

In support of his motion to suppress the identifications on the ground, inter alia, that these procedures were unnecessarily suggestive, the defendant introduced into evidence four scientific research papers that called into question both the use of an interested admin-

istrator and the use of a simultaneous photographic array because of the risks of misidentification they present. The state did not object to the introduction of this evidence and did not dispute the results of the studies. After considering the identification procedure, and in light of the scientific evidence that had been introduced, the trial court denied the defendant's motion to suppress the identifications, finding that, although the procedure was unnecessarily suggestive, it nevertheless was reliable under the totality of the circumstances.

In its analysis of the procedure, the trial court relied primarily on two factors.[3] First, the court reviewed the scientific research presented and concluded that using an interested lineup administrator[4] creates an "unnecessary risk of injecting bias into the identification process, and thus of producing irreparable misidentifications."[5] The court then found that, in the present case, those risks specifically had been realized when the administrator, Beaudin, who also had served as the lead investigator in the case, contaminated the process by announcing to Clement during the identification procedure, in essence, that he correctly had identified the defendant, and that he had identified the same person that Valle had identified, thus reinforcing Clement's choice. The trial court was particularly troubled by this fact because Clement noticeably had hesitated before selecting the defendant's photograph. The court noted that, by commenting on Clement's choice, Beaudin unwittingly had bolstered Clement's confidence and rendered it impossible for the defense to test the accuracy of his memory and made it more difficult for the jury to assess the reliability of the identifications.

Second, the trial court found, on the basis of the unchallenged studies,[6] that the use of the simultaneous photographic array itself was unnecessarily suggestive, despite the inclusion of the printed warning, because it allowed Clement to engage in a "relative judgment" process, creating an unnecessary risk of a misidentification.[7] The court then set forth the following cautionary note to guide police in improving identification procedures: "Police personnel conducting photo[graphic] identifications should henceforth strive to eliminate the danger of misidentification arising from the simultaneous showing of multiple photo[graphs] by making all such showings sequentially." On the basis of these factors, the trial court concluded that the identification procedure as a whole was unnecessarily suggestive.

I recognize that, although the trial court properly considered the studies as evidence and found potential risks inherent in the use of the simultaneous (nonsequential) array, it failed to make specific findings that such risks were present in the present case. Therefore, to the extent that the trial court may have predicated its finding of unnecessary suggestiveness *solely* on the use of the simultaneous photographic array, such a

determination would be contrary to our holding in *State* v. *Ledbetter*, supra, 275 Conn. 575. Moreover, the trial court's admonition to police department personnel may be read as an attempt to establish a per se rule requiring sequential identification procedures as an exercise of supervisory authority. Although the research suggests that sequential identification procedures are superior to nonsequential ones, except in certain circumstances; see footnotes 11 and 12 of this concurring opinion; it is well established that trial courts are not empowered to bind police departments, much less their sister tribunals, by virtue of their rulings. See *J. M. Lynne Co.* v. *Geraghty*, 204 Conn. 361, 369, 528 A.2d 786 (1987); *McDonald* v. *Rowe*, 43 Conn. App. 39, 43, 682 A.2d 542 (1996); see also *State* v. *Anderson*, 255 Conn. 425, 438, 773 A.2d 287 (2001) ("[*a*]*ppellate* courts possess an inherent supervisory authority over the administration of justice" [emphasis added]). Accordingly, I would reject any attempt made by the trial court to establish a per se rule.

In my view, however, the trial court made its determination of unnecessary suggestiveness by examining the procedure as a whole, such that the use of the simultaneous array was evaluated in concert with the other factors present. With respect to the use of the interested administrator, the research presented clearly indicated substantial risks of misidentification, which the state chose not to address, and those risks specifically were realized when Beaudin praised Clement as essentially having made the correct choice in identifying the defendant. Moreover, Beaudin's comment occurred immediately after the identification had been made, thus having an indelible effect on Clement's memory. For the reasons set forth by Justice Palmer in his concurring opinion, it is clear that the trial court viewed Beaudin's comment as having contaminated the identification procedure by "unfairly bolstering the witness' confidence in the strength of his photo[graphic] identification and the solidity of his basis in memory for it . . . ." Because I cannot conclude that the trial court abused its discretion in finding that it rendered the procedure as a whole unnecessarily suggestive; *State* v. *Ledbetter*, supra, 275 Conn. 548 (noting abuse of discretion standard required to review decisions on admitting witness identifications); I would decide the case on the basis of the issue presented in the defendant's appeal, namely, whether the identifications nevertheless were reliable under the totality of the circumstances.

Additionally, I would confine the resolution of this case to the defendant's appeal for another reason—my concern that, by approving the procedures at issue in the present case, we may discourage, if not halt, development of jurisprudence surrounding witness identification procedures. I am mindful that our holding in *Ledbetter* was predicated on the state of the research as it then existed. Since that time, however, a great deal

of research has been done on the effects of various factors on the accuracy of witness identifications. From the research presented to this court and my own independent review of available scientific literature, it is clear that science has uncovered a number of flaws in current identification procedures.

For example, research studies clearly support the hypothesis that using an individual who is aware of the identity of the suspect to conduct the identification process contaminates the process, even when the individual makes no conscious effort to influence the witness' identification.[8] Researchers have documented a number of mechanisms by which a lineup administrator unintentionally may influence the outcome of the results.[9] Moreover, experimental evidence has demonstrated that, when a lineup administrator erroneously believes that a particular member of the lineup is the perpetrator, witnesses tend to select that member rather than the true perpetrator. G. Wells & D. Quinlivan, "Suggestive Eyewitness Identification Procedures and the Supreme Court's Reliability Test in Light of Eyewitness Science: 30 Years Later," 33 Law & Hum. Behav. 1, 8 (2009). Although further analysis of real-world data should be completed, and the use of blind administrators; see footnote 2 of this concurring opinion; may be impractical to implement in certain situations,[10] it is clear that, when reasonably possible, it is preferable to employ a blind administrator to avoid inadvertent contamination of the identification.

Additionally, research indicates that sequential identification procedures generally appear to be superior to simultaneous identification procedures, and some studies go so far as to recommend that they be adopted by law enforcement agencies.[11] Nevertheless, the research has identified specific situations in which sequential identification procedures may produce fewer accurate results than simultaneous identification procedures,[12] and therefore these situations should be studied to determine the extent to which they render sequential procedures inadvisable.

Although the state chose not to dispute the research in the proceedings in the trial court, it presented to this court a report that cast doubt on the value of sequential, blind identification procedures and concluded that field experiments did not replicate the favorable results obtained when utilizing such procedures in a controlled laboratory environment. S. Mecklenburg, "Report to the Legislature of the State of Illinois: The Illinois Pilot Program on Sequential Double-Blind Identification Procedures" (March 17, 2006) pp. i–ii (hereafter Illinois Report). Ultimately, however, the conclusions in that report have been discredited as the product of an unsound, unscientific methodology that does not support the conclusions reached therein.[13] The report's author later conceded that "the purpose of the Illinois

field study was not to isolate the effect of one factor upon lineup results," and reiterated the need for further field studies to evaluate those factors in greater detail. S. Mecklenberg, "Addendum to the [Illinois Report]" (June 19, 2006), pp. 3–4.

It is therefore clear that witness identification research, although evolving, is converging toward a consensus. It is equally clear that, in light of the evolving research, this court should avoid closing off debate on witness identification procedures by signaling its approval of procedures on which research currently casts doubt, especially when there is no need to do so. Ultimately, as science progresses and is able to offer more concrete recommendations, witness identification procedures may need to be revised to ensure that they produce accurate results in accordance with due process guarantees.

In light of these concerns, I would reaffirm the case-by-case approach that we endorsed in *State* v. *Ledbetter*, supra, 275 Conn. 575, allowing trial courts to examine the studies presented to them and to consider those studies under the particular facts as they arise in any given case. I would limit the court's consideration in this appeal to the trial court's determination that the identification was reliable based upon the totality of the circumstances, as presented by the posture of the defendant's appeal. Accordingly, I turn to that claim.

II

The defendant contends that the trial court improperly determined that the identifications made by the two witnesses, Valle and Clement, were reliable under the totality of circumstances. Specifically, the defendant notes that, with respect to their ability to see the perpetrator at the time of the crime, the lighting was "quite poor" because the light in the dining room of the victim's apartment was off. The defendant also points out that, although the descriptions provided by the witnesses generally matched his appearance, they lacked specific descriptions of facial features, including hair and eye color, and he contends that his photograph was highlighted with respect to others in the photographic array. In light of this court's acknowledgment in *State* v. *Ledbetter*, supra, 275 Conn. 576, that "the correlation between witness confidence and accuracy tends to be weak, and witness confidence can be manipulated," the defendant suggests that the confidence level of Valle and Clement should be given little weight. The defendant also asserts that the studies he submitted to the trial court indicated that the identification procedures themselves rendered the identification unreliable. Finally, he maintains that Clement's identification was biased directly by the postidentification statement by Beaudin confirming that Clement had identified the same individual that Valle had identified. We conclude that the trial court properly determined that the identifi-

cations were reliable.

The standard of review and legal principles for decisions to admit witness identifications is well settled: "[W]e will reverse the trial court's [evidentiary] ruling . . . only where there is an abuse of discretion or where an injustice has occurred . . . and we will indulge in every reasonable presumption in favor of the trial court's ruling. . . . Because the inquiry into whether evidence of pretrial identification should be suppressed contemplates a series of factbound determinations, which a trial court is far better equipped than this court to make, we will not disturb the findings of the trial court as to subordinate facts unless the record reveals clear and manifest error." (Internal quotation marks omitted.) Id., 548. The admission of a witness' identification into evidence, however, implicates a defendant's constitutional rights, and thus "we are obliged to examine the record scrupulously to determine whether the facts found are adequately supported by the evidence and whether the court's ultimate inference of reliability was reasonable." (Internal quotation marks omitted.) Id., 547.

If the trial court has determined that the identification procedure was unnecessarily suggestive, as in the present case, it must then determine "whether the identification was nevertheless reliable based on an examination of the totality of the circumstances. . . . The defendant bears the burden of proving both that the identification procedures were unnecessarily suggestive and that the resulting identification was unreliable." (Internal quotation marks omitted.) *State* v. *Ortiz*, 252 Conn. 533, 553, 747 A.2d 487 (2000).

"[R]eliability is the linchpin in determining the admissibility of identification testimony . . . . *Manson* v. *Brathwaite*, 432 U.S. 98, 114, 97 S. Ct. 2243, 53 L. Ed. 2d 140 (1977). To determine whether an identification that resulted from an unnecessarily suggestive procedure is reliable, the corruptive effect of the suggestive procedure is weighed against certain factors, such as the opportunity of the [witness] to view the criminal at the time of the crime, the [witness'] degree of attention, the accuracy of [the witness'] prior description of the criminal, the level of certainty demonstrated at the [identification] and the time between the crime and the [identification]." (Internal quotation marks omitted.) *State* v. *Cook*, 262 Conn. 825, 836–37, 817 A.2d 670 (2003).

Turning to the first two factors of reliability in the present case, the trial court made several factual findings that support its determination that, at the time of the crime, the witnesses had ample opportunity to view the perpetrator with a sufficient degree of attention. Valle first observed the perpetrator with the gun just before the robbery as the perpetrator stood in a lighted common hallway of the apartment building talking to

the victim. He next observed the perpetrator during the course of the robbery over a period of several minutes in the living room from a distance of one to two feet as they sat facing each other. Clement first saw the perpetrator as he entered the victim's game room, which was well lit, and next saw him as Clement sat with Valle on the living room couch for several minutes. The living room was lit adequately by light coming from adjacent rooms, once the witnesses' eyes had adjusted to the admittedly low light level,[14] and the trial court found that "the light from the kitchen must have illuminated the faces of the robbers, helping to fix them in [the witnesses'] memory." Both witnesses had stated to the police that based on their observations, they would be able to identify the perpetrator if they saw him again. Thus, the record supports the trial court's finding that they had adequate opportunities to view the defendant with a sufficient degree of attention. This conclusion is consistent with this court's previous holdings that a witness may make a reliable identification based on a brief interval when the witness was able to view the criminal clearly; *State* v. *Morgan*, 274 Conn. 790, 804–805, 877 A.2d 739 (2005) (identification reliable when witness "got a good look" at perpetrator as he ran past her and pulled down his mask); and when the witness had observed the criminal over a period of several minutes from a sufficiently close distance. *State* v. *Crosswell*, 223 Conn. 243, 268, 612 A.2d 1174 (1992) (identification reliable when witnesses observed masked perpetrator for several minutes with their attention directed at perpetrator).

Turning to the third factor of reliability, both witnesses gave consistent, detailed descriptions of the perpetrator, which matched that of the defendant. Valle described the perpetrator with the gun as a Hispanic male in his early twenties, taller and slimmer than his companion, with braids in his hair and dressed entirely in black. Clement described the gunman as tall, Hispanic, in his early twenties, wearing all black clothing, with "corn rows" and a medium build. Although neither witness included certain facial features, such as eye or hair color, in their descriptions, the descriptions were consistent, both with each other and with the appearance of the defendant.

With respect to the fourth factor of reliability, the trial court found that both witnesses' level of certainty was high. Valle had informed the police investigators immediately after the robbery that he would be able to identify the perpetrator again, and he later recognized the defendant at a chance encounter at the office of Valle's parole officer. At the subsequent photographic identification procedure, he made the identification "immediately and with great confidence." Clement testified that, when he was shown the photographic array at the identification procedure, his eyes immediately were drawn to the defendant's photograph. Although

he did not identify the defendant as the perpetrator at that moment, Clement testified that he had hesitated only because he wanted to be sure that he identified the correct individual. The trial court found that Clement's hesitation reasonably stemmed from his "genuine concern . . . that he not identify an innocent man," and that he was nevertheless confident in his identification.

Finally, Valle's identification occurred only four days after the crime, while Clement's occurred eight days after the crime. In light of both witness' opportunity to view the perpetrator and their confidence levels, it was unlikely that the witnesses' memories would have faded in that short period of time. Compare *State* v. *Ortiz*, supra, 252 Conn. 555 (three month period reliable in light of witness' opportunity to view defendant and witness' level of certainty); *State* v. *Howard*, 221 Conn. 447, 454, 604 A.2d 1294 (1992) (two and one-half month period reliable when witnesses had ample opportunity to view assailants and their prior physical descriptions matched).

To the extent that the defendant in the present case points to some facts that could have cast some doubt on the reliability of the identifications, the trial court gave adequate consideration to them in making its determination. With respect to the effect of the statements by Beaudin to Clement confirming that he had identified the same individual that Valle had selected, the trial court reasonably found that "Clement is a particularly credible, forthcoming witness . . . [and the] court has every confidence that his ability to recall and relate such details honestly will remain unaffected by . . . Beaudin's unfortunate mistake . . . ." In light of its findings, the trial court reasonably concluded that the identifications were reliable.

Accordingly, I concur in the judgment concluding that the admission of the identifications did not violate due process.

[1] A simultaneous photographic array displays multiple photographs together on a single page to be shown to a witness, in contrast to a sequential identification procedure in which individual photographs are displayed to a witness one at a time.

[2] I use the term interested administrator to indicate an individual who knows the identity of the suspect in a lineup or photographic array and the term blind or disinterested administrator to indicate an individual who does not possess that knowledge. See footnote 4 of this concurring opinion.

[3] The court also discussed, but ultimately rejected, the defendant's claim that his photograph had been highlighted unfairly in the photographic array. It examined the features of the photographs, with particular focus on the details of the background of the photographs, finding that all of the photographs therein were consistent with each other and with the descriptions previously provided by the witnesses.

[4] The research generally refers to the individual responsible for conducting an identification procedure as a "lineup administrator" or an "administrator," irrespective of whether the procedure involves a photographic array, a live group of persons presented together, or individuals presented one at a time.

[5] As I explain further in footnote 8 of this concurring opinion, the research submitted by the defendant universally indicates that the use of an interested administrator; see footnote 2 of this concurring opinion; contaminates the process, even when the individual makes no conscious effort to influence the identification, substantially increasing the likelihood of misidentification.

[6] As I explain in more detail in footnote 11 of this concurring opinion, the scientific studies indicate that, as a general matter, sequential identification procedures are significantly more accurate than simultaneous identification procedures.

[7] As we noted in *State* v. *Ledbetter*, supra, 275 Conn. 572, to which the trial court in the present case referred in its analysis, the relative judgment process allows a witness to compare each lineup participant to his memory of the perpetrator and determine which lineup participant most closely resembles the perpetrator. We stated then that "the relative judgment process exerts a significant influence in eyewitness identifications. . . . The problem with the relative judgment process . . . is that it includes no mechanism for deciding that the culprit is none of the people in the lineup." (Citation omitted; internal quotation marks omitted.) Id. Consequently, in lineups that do not contain the actual perpetrator, witnesses invariably make a mistaken identification, choosing some participant in the lineup rather than realizing that the perpetrator is not present. See id., 572–73 (noting that in experiments, when witnesses were shown lineup containing actual perpetrator, 92 percent of witnesses correctly identified perpetrator, but when lineup did not contain actual perpetrator, *100 percent of witnesses identified someone other than actual perpetrator*).

[8] See, e.g., G. Wells & E. Olson, "Eyewitness Testimony," 54 Ann. Rev. Psychol. 277, 289 (2003) (summarizing research studies that concluded interested lineup administrators communicated their knowledge about suspects to witnesses, influencing outcome of identification); G. Wells, M. Small & S. Penrod et al., "Eyewitness Identification Procedures: Recommendations for Lineup and Photospsreads," 22 Law & Hum. Behav. 603, 628 (1998) ("we know from experiments that a photospread administrator's behaviors . . . can lead eyewitnesses to falsely identify that person as the culprit"); Technical Working Group for Eyewitness Evidence, United States Dept. of Justice, "Eyewitness Evidence: A Guide for Law Enforcement" (October, 1999) p. 9 ("investigator's unintentional cues [e.g., body language, tone of voice] may negatively impact the reliability of eyewitness evidence").

[9] "There are many ways that a lineup administrator can influence an eyewitness' identification decision. For instance, the eyewitness might call out the number of a filler photo[graph], and the lineup administrator, knowing that the photo[graph] is a mere filler, might urge the witness to make sure she has looked at all the photo[graphs] before making a decision. . . . In contrast, the mere utterance of the number of the suspect's photo[graph] could yield a very different reaction from the lineup administrator, such as 'Good, tell me what you remember about that guy.' . . . Even without speaking, a lineup administrator can influence an eyewitness through facial expressions and body movements such as head nodding or head shaking. . . . These discretionary behaviors by the lineup administrator are not necessarily intentional and the lineup administrator might not even be aware that she or he is doing it. Instead, these are natural behaviors that testers display when they think that they know the correct answer or have expectations about how the tested person will or should behave." G. Wells & D. Quinlivan, "Suggestive Eyewitness Identification Procedures and the Supreme Court's Reliability Test in Light of Eyewitness Science: 30 Years Later," 33 Law & Hum. Behav. 1, 8 (2009).

[10] For example, in a two person police department, although one officer might serve as a disinterested administrator in the first lineup, once that officer observes which individual a witness chooses, that officer is no longer blind for the purpose of subsequent lineups. See, e.g., Technical Working Group for Eyewitness Evidence, United States Dept. of Justice, "Eyewitness Evidence: A Guide for Law Enforcement" (October, 1999) p. 9 ("[b]lind procedures . . . may be impractical for some jurisdictions to implement "); S. Mecklenburg, "Report to the Legislature of the State of Illinois: The Illinois Pilot Program on Sequential Double-Blind Identification Procedures" (March 17, 2006) p. 63 ("[t]he advantages of blind administrators as a recommended practice should be further explored and compared to optimal instructions and technological procedures to prevent feedback"). In such circumstances, however, it may be possible to employ technology-based tools, such as computer software, to conduct the identification procedures, at least in the case of photographic arrays. See, e.g., O. MacLin, L. Zimmerman & R. Malpass, "PC_Eyewitness and the Sequential Superiority Effect: Computer-Based Lineup Administration," 29 Law & Hum. Behav. 303 (2005).

[11] See, e.g., G. Wells, M. Small & S. Penrod et al., "Eyewitness Identification Procedures: Recommendations for Lineups and Photospreads," 22 Law & Hum. Behav. 603, 639 (1998) ("[w]hen compared to the usual simultaneous

procedure, it is clear that the sequential procedure produces a lower rate of mistaken identifications [in perpetrator-absent lineups] with little loss in the rate of accurate identifications [in perpetrator-present lineups]"); J. Turtle, R. Lindsay & G. Wells, "Best Practice Recommendations for Eyewitness Evidence Procedures: New Ideas for the Oldest Way to Solve a Case," Can. J. of Police and Security Services (March, 2003), pp. 22–23 ("A rapidly growing body of research indicates that sequential line-up presentation makes it extremely difficult to use a relative judgment strategy. As a result, false identifications by eyewitnesses occur at a dramatically reduced rate while, fortunately, the rate of accurate identifications is not reduced significantly."); Technical Working Group for Eyewitness Evidence, United States Dept. of Justice, "Eyewitness Evidence: A Guide for Law Enforcement" (October, 1999) p. 9 ("[s]cientific research indicates that identification procedures such as lineups and photo[graphic] arrays produce more reliable evidence when the individual lineup members or photographs are shown to the witness sequentially—one at a time—rather than simultaneously").

[12] See, e.g., G. Wells & E. Olson, "Eyewitness Testimony," 54 Ann. Rev. Psychol. 277, 288–89 (February, 2003) ("A recent meta-analysis of [twenty-five] studies comparing simultaneous and sequential lineups showed that the sequential lineup reduced the chances of mistaken identifications in culprit-absent lineups by nearly one half. . . . Unfortunately, the sequential technique was also associated with a reduction in accurate identification rates in culprit-present lineups." [Citations omitted.]); S. Mecklenburg, "Report to the Legislature of the State of Illinois: The Illinois Pilot Program on Sequential Double-Blind Identification Procedures" (March 17, 2006) pp. i–ii (Evaluating a sequential and double-blind identification procedure against a simultaneous, nonblind identification procedure and concluding: "[T]he sequential, double-blind method results in a loss of accurate identifications when compared to the simultaneous method. . . . [T]here are five categories in which the sequential, double-blind method may not be superior to the simultaneous procedure."); Technical Working Group for Eyewitness Evidence, United States Dept. of Justice, "Eyewitness Evidence: A Guide for Law Enforcement" (October, 1999) p. 9 ("there is not a consensus on any particular method or methods of sequential presentation that can be recommended as a *preferred* procedure" [emphasis in original]).

[13] See, e.g., Office of the Attorney General, State of Wisconsin, "Response to Chicago Report on Eyewitness Identification Procedures" (July 21, 2006) p. 4 (noting that, because "the [study in the Illinois Report] did not separately compare double-blind simultaneous to double-blind sequential [it instead attempts to compare non-blind simultaneous to double-blind sequential], there is no way to ascertain whether the different rates of selection of suspects and fillers in the two tested conditions were the result of the difference between double-blind and non-blind procedures, or between sequential and simultaneous procedures"); D. Schacter, R. Dawes & L. Jacoby et al., "Policy Forum: Studying Eyewitness Investigations in the Field," 32 Law & Hum. Behav. 3, 5 (2008) ("[i]f the [study in the Illinois Report] was not designed to address the question of what happens in a blind/simultaneous line-up, given its centrality to the issue, then our assessment is that the Illinois study addressed a question . . . that is not worth addressing, because the results do not inform everyday practice in a useful manner").

In February, 2008, the academic journal Law and Human Behavior, recognizing the impact that the Illinois Report was having on eyewitness identification research, published commentaries on that study. An introduction article to those commentaries summarized the findings, noting that each of the commentaries concluded that additional field research on eyewitness identification procedures is necessary, and several of the papers made specific recommendations to improve the methodology used in future research. B. Cutler & M. Kovera, "Introduction to Commentaries on the Illinois Pilot Study of Lineup Reforms," 32 Law. & Hum. Behav. 1, 1–2 (2008). The most common criticism of the study was that the methodology of the study was inadequate to support the conclusions reached because it was impossible to determine which variable caused the results. See S. Ross & R. Malpass, "Moving Forward: Response to 'Studying Eyewitness Investigations in the Field,' " 32 Law & Hum. Behav. 16, 19 (2008) ("[t]reating the [study in the Illinois Report] as an attempt to answer the scientific questions in the [simultaneous] versus [sequential] controversy is erroneous, inappropriate and fruitless"); G. Wells, "Field Experiments on Eyewitness Identification: Towards a Better Understanding of Pitfalls and Prospects," 32 Law & Hum. Behav. 6, 7 (2008) ("we cannot be certain whether the results . . . are

attributable to the sequential versus simultaneous difference or to the double-blind versus non-blind difference"); D. Schacter, R. Dawes & L. Jacoby et al., supra, 32 Law & Hum. Behav. 4 ("[T]he [methodology] has devastating consequences for assessing the real-world implications of this particular study [in the Illinois Report]. . . . [I]t is critical to determine whether the seemingly better result from the simultaneous procedure is attributable to properties of the simultaneous procedure itself, or to the influence of the non-blind administrator."). One commentary further discussed the effects of interested administrators on identification procedures, noting that "testers influence the person they test in ways that are consistent with the testers' expectations, assumptions, hopes, and so on"; G. Wells, supra, 8; and provided additional evidence that feedback from an administrator at the time of the identification procedure alters the witness' perceived confidence levels *as well as his actual memory of events*. Id., 10.

[14] The defendant does not challenge explicitly the factual findings of the trial court in his brief, asserting only that "[u]pon plenary review, the overall poor lighting and not seeing the perpetrators' faces very well should cause these two [reliability] factors to be given light weight." To the extent that he contends that the findings are clearly erroneous, they are supported adequately by the record. Valle testified that the hallway lighting was "bright as hell," and that, although the living room light was not turned on, light from adjacent rooms illuminated the living room so that "you could see pretty good."