

Facial recognition used after Sunglass Hut robbery led to man's wrongful jailing, says suit

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A 61-year-old man is suing Macy's and the parent company of Sunglass Hut over the stores' alleged use of a facial recognition system that misidentified him as the culprit behind an armed robbery and led to his wrongful arrest. While in jail, he was beaten and raped, according to his suit. Harvey Eugene Murphy Jr was accused and arrested on charges of robbing a Houston-area Sunglass Hut of thousands of dollars of merchandise in January 2022, though his attorneys say he was living in California at the time of the robbery. He was arrested on 20 October 2023, according to his lawyers. According to Murphy's lawsuit, an employee of EssilorLuxottica, Sunglass Hut's parent company, worked with its retail partner Macy's and used facial recognition software to identify Murphy as the robber. The image that was put through the facial recognition system came from low-quality cameras, according to the lawsuit. While Houston police department was investigating the armed robbery, the EssilorLuxottica employee called police to say they could stop the investigation because the employee had identified one of two robbers with the technology. The employee also said the system had pointed to Murphy as committing two other robberies, according to the lawsuit. When Murphy returned to Texas from California, he went to the department of motor vehicles (DMV) to renew his license. Within minutes of identifying himself to a DMV clerk, Murphy told the Guardian he was approached by a police officer who notified him there was a warrant out for his arrest for an aggravated robbery. Murphy said he was not told any details about his supposed crime except for the date the robbery occurred. He realized he was in Sacramento, California, at the time of the robbery – more than a thousand miles away. "I almost thought it was a joke," Murphy said. Still, he was arrested and taken to the local county jail, where he was held for 10 days before being transferred to and processed in Harris county jail. After a few days at Harris county, his alibi was confirmed by both his court-appointed defense attorney and the prosecutor, and the charges against him were ultimately dropped, according to the lawsuit. Murphy was never convicted of a crime. Nonetheless, he says his detainment left him with deep scars. He was brutally beaten and gang-raped by three other men in the jail hours before he was released, he alleges. They threatened to kill him if he tried to report them to the jail staff, according to Murphy. After the alleged attack, Murphy remained in the same cell as them until he was released. "That was kind of terrifying," Murphy said. "Your anxiety is up so high, you're still shaking the entire time. And I just got up on my bunk and just faced the wall and was just praying that something would come through and get me out of that tank." "The attack left him with permanent injuries that he has to live with every day of his life," the lawsuit reads. "All of this happened to Murphy because the Defendants relied on facial recognition technology that is known to be error prone and faulty." Murphy did not realize facial recognition technology may have been used as evidence against him until two weeks ago, when he began working with his attorney, Daniel Dutko. Dutko said he discovered from police documents that the

Sunglass Hut worker shared camera footage with Macy's, which employees from the department store chain used to identify Murphy. After that, Macy's and Sunglass Hut contacted the police together, according to Dutko. Though Macy's has retail partnerships with the eyewear brand in several locations, Macy's had no connection to this robbery as the Sunglass Hut in question is a standalone location, he said. "We feel very comfortable saying facial recognition software is the only possible explanation, and it's the only reason why [Sunglass Hut] would go to Macy's to try to identify him," Dutko said. Murphy's case would be the seventh known case of a wrongful arrest due to facial recognition in the US, further highlighting the flaws of a technology already widely adopted by police departments and retailers. However, in all of the publicly known cases of wrongful arrests due to facial recognition up until now, the victims have been Black. Murphy's would be the first known case of the failure of the technology leading to the wrongful arrest of a white man. Just last month, Rite Aid settled with the Federal Trade Commission over its use of a facial recognition system that misidentified Black, Latino and Asian customers as people previously identified as "likely to engage" in shoplifting. The pharmacy chain is forbidden from using facial recognition in its stores for five years as part of the settlement. And in the summer of 2023, a woman named Porcha Woodruff was arrested on charges of car jacking due to false identification by a facial recognition system. Macy's has previously been sued over its use of facial recognition technology. In a 2020 lawsuit, a Chicago woman accused the company of working with facial recognition provider Clearview AI without her or other customers' consent in violation of Illinois' biometric privacy law. Nathan Freed Wessler, deputy director of the American Civil Liberties Union's Speech, Privacy, and Technology Project said this was another example of the "extreme dangers of face recognition technology". "In case after case, we've seen police reflexively trusting unreliable face recognition results, and then allowing false matches from the technology to taint witness identification procedures," Wessler said in a statement. "As the facts alleged in this case show, the consequences of being wrongfully arrested are horrible. Lawmakers must put a stop to police and corporations' hazardous reliance on face recognition results to put people in jail." Murphy is seeking \$10m in damages. Macy's said it had no comment on pending litigation and EssilorLuxottica did not immediately respond to a Guardian request for comment.