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This grandfather was mistakenly identified as a Sunglass Hut robber by facial recognition software. He's suing after he was sexually assaulted in jail.

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A 61-year-old grandfather is suing Sunglass Hut's parent company after the store's facial recognition technology mistakenly identified him as a robber. Harvey Eugene Murphy Jr. was subsequently held in jail, where he says he was sexually assaulted, according to the lawsuit.

The January 2022 robbery took place at a Sunglass Hut store in Houston, Texas, when two gun-wielding robbers stole thousands of dollars in cash and merchandise.

Houston police identified Murphy as a suspect – even though he was living in California at the time.

When Murphy returned to Texas to renew his driver's license, he was arrested. He was held in jail, where he says he was sexually assaulted by three men in a bathroom. He says he suffered lifelong injuries.

The Harris County District Attorney's office in Texas determined Murphy was not involved in the robbery – but the damage was already done while he was in jail, his lawyers said in a news release.

Facial recognition is often used to match faces in surveillance footage – such as video of a store robbery – with images in a database. The system often uses booking photos, but the software can also search driver's license photos, meaning if you have a license, your picture might have been searched even if you've never committed a crime.

Murphy has a criminal record from the 1980s and 1990s, meaning he likely has a booking photo. His lawyers said those offenses were not violent and he has built a new life in the last 30 years, according to the press release.

He is now suing Sunglass Hut's parent company EssilorLuxottica and Macy's, a partner of the company. The head of EssilorLuxottica's loss prevention team said they worked alongside Macy's and had identified Murphy as the suspect using facial recognition software.

Murphy's attorneys are arguing that facial recognition is error-prone and low-quality cameras were used, increasing the probability of a mistake in identifying a suspect.

A Sunglass Hut employee identified Murphy as the suspect in a police photo lineup – but Murphy's lawyers allege the loss prevention team met with her before that, possibly tainting the investigation.

"Mr. Murphy's story is troubling for every citizen in this country," said Daniel Dutko, one of the lawyers representing Murphy. "Any person could be improperly charged with a crime based on error-prone facial recognition software just as he was."

In facial recognition used by law enforcement offices like the FBI, complex mathematical algorithms are used to compare a picture of a suspect's face to potentially millions of others in a database. But it has its flaws.

In 2023, the Federal Trade Commission banned Rite Aid from using the technology after the company's faulty system had employees wrongfully accusing shoppers of stealing. In one incident, an 11-year-old girl was stopped and searched by a Rite Aid employee based on a false match.

The FTC said this faulty technology often incorrectly misidentifies Black, Asian, Latino and women consumers.

In 2023, a woman sued the Detroit Police Department after authorities misidentified her as a carjacking suspect using facial recognition technology. Porcha Woodruff, who was eight months pregnant at the time of her wrongful arrest, went to jail after being incorrectly identified in a police lineup. Detroit Police Chief James White says Woodruff's photo should not been used in the lineup to begin with.

CBS News reached out to EssilorLuxottica for comment is awaiting response. Macy's declined to comment. Murphy's lawyers had no additional comment.