

A Case of Mistaken Identity? The Psychology of Eyewitness Memory

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In the past few months there have been a series of attacks on white and Asian women in a local neighborhood, and the police have been under pressure to solve the cases. You are the defense attorney representing Tyrone Briggs, who has been charged with aggravated assault in the crimes.

Tyrone is a 19-year-old high school basketball star who, at the time of the crimes, was living at 412 Jervay Place, the local housing project. Tyrone is 6'1" tall, has long hair processed in Jeri curls, a broad flat nose, a large mole on his lip, and a severe stutter. The general description given by the witnesses (most of whom were the victims of the assaults) at the time of the attacks was that the attacker was in his early 20's, light skinned, between 170 and 200 pounds with a short afro and possibly a receding hairline. None of the victims mentioned a mole or a stutter at the time of the attacks.

You have recently read a defense attorney newsletter that outlines some of the problems with eyewitness identification and have looked at the National Institute of Justice's guidelines for law enforcement commissioned by the U.S. Attorney General (see Sources below). Based on your reading, you believe that Tyrone may be a victim of mistaken identification. However, the five victims and an African American man who briefly held the assailant at gunpoint have all identified Tyrone as the man who committed the crimes. You need to decide whether to hire an expert in eyewitness memory to testify at the trial. Because it costs money to hire the expert, you want to be reasonably certain that the expert witness will indeed cast doubt on the veracity of the victims' testimony.

The first witness was a Seattle University pre-med student who was taking a run around the campus track during the afternoon when she was attacked. As she was running, she noticed a man standing near the public restrooms. As she neared him, he called out to her, saying he had a question. As she got closer to him, he suddenly lunged at her with a serrated knife and began dragging her toward the restroom. She wriggled out of her sweatshirt and ran across the field toward the campus buildings while he yelled after her, "I'm going to get you!"

The second witness, an attorney, was attacked at 8:00 a.m. as she was walking toward the courthouse. A man jumped out of "nowhere," knocked her to the ground, and said repeatedly, "Give me your money. I'm going to stab you." He held a serrated knife in his hand. She fought back and he ran off, taking her purse and gym bag with him.

The third witness, a social worker, was attacked when she parked near the housing project on her way to the hospital. A man came around the corner and walking quickly pulled out a small steak knife and said, “Your purse or your money.” She started screaming and the man ran away. The encounter lasted about half a minute and was the shortest attack.

The fourth witness, another social worker, was walking to work at the hospital when a man jumped out of the bushes and grabbed her. In a low conversational tone of voice he said, “I’m going to stab you in the head. Give me your money.” She offered him the five dollars that she had. He said it was not enough and began putting his hand up her skirt. She started screaming, kicking, and scratching, and managed to get away. He ran off in the opposite direction.

The fifth witness, an X-ray technician, was walking to work at the hospital when she saw a man standing in the darkened entrance to an alleyway. She kept walking. Seconds later she was lying on the ground dazed. The assailant had hit her in the back of the head with a fence post. He then proceeded to punch her several times in the face and then dragged her into a vacant apartment in Jervay Place, where he tore off her clothes and attempted to rape her. Another man, Karl Vance, opened the door to the vacant apartment shouting, “Hold it. I have a gun!” Mr. Vance then yelled to his girlfriend, who lived at 410 Jervay Place, to call the cops. The attacker bolted through the back door.

Within two months of the first attack and a month after the last attack the police had arrested Tyrone. The same day Tyrone was arrested, Karl Vance picked Tyrone’s picture out of a series of 21 photos and indicated that he was absolutely positive of his identification. The next day the police obtained a search warrant and searched Tyrone’s home. They were unable to find any stolen property, knives, or distinctive clothing. Later that day, the police brought four of the victims down to the precinct to view a lineup. The police informed the women that it was to be expected that they might have an emotional response to seeing their attacker again; however, the women were assured that the attacker could not see them.

After an hour, the police informed the women that they could not get enough people together to ensure that the person in custody would have a fair lineup so they would have to do a photo lineup instead. Because Tyrone had a prominent mole on his lip, the police followed standard procedure and made sure that all of the photos had a similar mole so that Tyrone would not stand out. All four of the victims looked at the photo lineup and selected Tyrone’s picture. However, they indicated that they were uncertain and chose the person who looked most like their attacker. The fifth victim selected Tyrone from the same photo lineup a week later.

One week later the victims were brought back in for a live lineup. Tyrone was in the lineup with six other African American men who looked similar to him. The officer who conducted the lineup did not conceal Tyrone’s mole or ensure everyone had a similar feature. The officer who conducted the lineup had members of the lineup repeat phrases that were said at the time of the crimes. One of the victims noted in her written statement that the man in the lineup stuttered and her attacker did not. Several others noted that he seemed “nervous” because of the stutter. However, all of the victims as well as Karl Vance selected Tyrone.

As the defense lawyer, you need to decide whether to hire the expert witness. Questions for you to ponder include:

1. Do you think that Tyrone Briggs might be a victim of false identification? Why or why not?
2. What factors are present that make the witnesses reliable?
3. What factors are present that make the witnesses unreliable?

Sources

State Appellate Defenders Office. 1996. Criminal Defense Newsletter, Volume 19, Number 12, at <http://www.sado.org/19cdn12.htm>. Last accessed: August 10, 2010.

National Institute of Justice. 1999. Eyewitness Evidence: A Guide for Law Enforcement, at <http://www.ojp.usdoj.gov/nij/pubs-sum/178240.htm>. Last accessed: August 10, 2010.



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