

NC REN III: Cross-Racial Eyewitness Identifications

Strategy Sessions Materials

Overview of Strategy Sessions

During the afternoon portion of our NC REN training on cross-racial eyewitness identifications, NC REN members will divide into breakout groups to work on skills crucial to successful litigation of cross-racial eyewitness identification issues: voir dire on the subject of cross-racial identifications and cross examination of the eyewitness at a suppression hearing. A single fact pattern (see below) will serve as the basis for these strategy sessions. Following each strategy session, NC REN participants will gather as a large group to watch and discuss demonstrations of voir dire and cross examination of the eyewitness.

Strategy Session I: Voir Dire on Cross-Racial Impairment

During this session, participants develop a voir dire strategy for questioning potential jurors in the case of *State v. Jamie Watkins*. Participants will consider not only what lines of questioning to pursue, but also how to frame the questions to increase the likelihood that jurors will be forthcoming with their attitudes about race, memory, and eyewitness identification; how to build a rapport with jurors before diving into sensitive subjects; whether to seek questionnaires or individual voir dire; and related techniques. When the large group reconvenes, Kelley DeAngelus will demonstrate voir dire with a group of volunteer mock jurors.

Strategy Session II: Issue Spotting and Cross-Examining the Eyewitness

During this session, participants will identify the issues relevant to Erica Randall's identification of Jamie Watkins and develop a strategy for cross examining Erica Randall at the defendant's suppression hearing. When the large group reconvenes, Jonathan Broun will lead a demonstration cross examination of Erica Randall.

Fact Pattern:

Your client is Jamie Watkins, a 24-year-old Black man who takes classes at Fayetteville Technical Community College and works part-time at Jiffy Lube. He is 5'10" tall, weighs 230 lbs., and has a teardrop tattoo under his right eye memorializing the gang-related death of his older brother. He lives with his mother, 20-year-old sister, and 17-year-old brother in an apartment within Lewis Heights, a public housing development in Fayetteville.

Erica Randall is a 34-year-old White woman who works as a manager and cashier at Twisters Pizza & Subs, located a half mile down Bragg Boulevard from Lewis Heights. She lives in a predominantly White neighborhood in rural area approximately 10 miles outside of Fayetteville.

At 5:45pm on October 2, 2017, Erica Randall called 911 to report an armed robbery at work. She told the 911 dispatcher the following: A man entered Twisters alone and stood at the counter for approximately 2 minutes looking at a menu. She asked if she could help him and he responded that he didn't know what he wanted yet. After the only other customer in Twisters left with her takeout order, the man pulled out a gun, pointed it at Erica Randall, and demanded her wallet, the money from the cash register, her cell phone, and the pearl earrings she was wearing. She started shaking and froze. The man grew agitated and repeated his demands in a louder voice. Without speaking, she gave him her wallet containing \$32, approximately \$85 from the cash register, and her earrings, and told him that she'd left her cell phone in her car. The man told her someone would be back to "take care of her" if she called the police. She estimated that the whole exchange took less than 2 minutes.

During the 911 call, Erica Randall described the suspect as a 20-year-old Black man, approximately 6' tall, with dark brown eyes and no facial hair, wearing black Dickies-style work pants, a gray hooded sweatshirt, a blue backpack, and black sneakers. She gave no description of his hair, explaining that she couldn't see it because it was under the oversized hood of his sweatshirt. She had a hard time estimating his weight because his clothes were baggy, but eventually guessed that he weighed approximately 275 pounds.

When two police officers arrived on the scene about 20 minutes after her 911 call, Erica Randall told them that the robber might have had a facial tattoo on the right side of his face, but she described it as looking "faded" and she could not identify the shape or size of the tattoo. When asked if it might have been a teardrop, she responded, "It actually might have been a birthmark, I don't know." She stated that she did not see the man exit or enter a car, and assumed that he left the scene on foot. She also mentioned that he looked kind of familiar, and wondered if she had seen him before in Twisters or somewhere else nearby. She said that she'd gotten "a good look at him – I looked him right in the eyes," and that she felt fairly certain that she'd be able to identify his face. She described the gun he pointed at her as a small silver handgun with a black rubber grip.

Later that evening at approximately 9:30pm, Jamie Watkins was walking from a friend's house back to his Lewis Heights apartment along Bragg Boulevard wearing jeans, black sneakers, a white t-shirt, a large black rain coat, and a blue backpack. His hair was in dreadlocks that were approximately 6-inches long. Right before he got to the entrance of the Lewis Heights development, Fayetteville Police Department (FPD) officer Karen Jenkins approached him and began asking questions about how he'd spent his

evening. Officer Jenkins was investigating the Twisters robbery and Jamie caught her attention because of his blue backpack and his rough approximation of the suspect's description.

Jamie avoided talking to police whenever possible; he felt as though they always treated him as a suspect because of his older brother's involvement in gangs. He gave vague answers to Officer Jenkin's questions and tried to end the conversation by asking if he was free to go. The officer asked if he would mind if she searched Jamie's backpack; Jamie consented and the officer found that it contained a half-empty soda bottle, a ring of keys, a notebook containing handouts from one of his community college classes, and his wallet, which contained \$110 in cash. After returning Jamie's backpack, she told him that he was free to go.

Later that evening, Officer Jenkins and her partner Officer Christopher Rigsby decided to pursue Jamie Watkins as a suspect primarily because of his blue backpack, cash, rough approximation of the suspect description, and proximity to the scene of the crime at the time it occurred. Officer Rigsby, a 55-year old White officer, used to work out of police substation within Lewis Heights and was familiar with the Watkins family, including Jamie. On the day after the crime occurred, Officer Rigsby assembled a photo lineup including Jamie Watkins and called Erica Randall down to the police station to view it. Officer Theresa Brown, a rookie officer who had not been involved in the investigation and did not know the identity of the suspect, showed Erica Randall the photos in the lineup in a sequential fashion. (Officer Rigsby was not present.) The last photo in the photo lineup was a 3-year old photo of suspect Jamie Watkins that was taken shortly after his brother's death. In the photo, Jamie Watkins has a short haircut and a puffy new tattoo under his right eye. Five other photos were included in the photo lineup. All of the other five "filler" photos were of Black men in their early twenties, and all of the filler photos had been doctored to include a blurry tattoo the approximate size and shape of a teardrop under each person's right eye. Four of the five filler photos were of men with dreadlocks, and the subject in the remaining photo had cornrows.

At first, the witness said she couldn't make a positive identification and asked to see the photos again. After she was shown each of the photos a second time, she pointed to the photo of Jamie and said, "That's him, I remember his face. Plus, I think I would have noticed if he'd had dreadlocks or cornrows." Officer Brown, who had never before administered a photo lineup, remembered to give Erica Randall the instructions mandated by the Eyewitness Identification Reform Act and Erica signed a form acknowledging receipt of these instructions. However, Officer Brown did not know how to use the audio or video recording equipment, so instead she created a written record of the photo lineup.

Your client is now facing armed robbery charges based entirely on the eyewitness identification of Erica Randall: no physical evidence ties him to the offense. He has been arrested on three different occasions, but has never been convicted of a crime. He insists that he was walking from the Community College to his friend's house at 5:45pm on October 1, 2015 and had nothing to do with the robbery at Twisters. In your first interview with him, he tells you that he does not own or have access to a gun. He also tells you that he has grown out his hair and lost weight since the time the photo was taken of him immediately after his brother's death. He says that he's been to Twisters about 5 or 6 times over the last year to buy a soda or a sub, and states that the last time he was there was in July or August. He thinks that he may have seen Erica Randall working there before.