

EYEWITNESS IDENTIFICATION

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Three Processes of Memory

1. Acquire
2. Store
3. Retrieve and communicate

Eyewitness Expert Testimony

- Psychologist
- Testify to “The vagaries of eyewitness identification...”
- Not opine whether this witness is accurate.
- Point out factors generally and factors applicable in facts of this case.

Eyewitness Identification Factors

1. Factors That Pertain to Eyewitness
2. Factors That Pertain to Event Witnessed
3. Factors That Pertain to the Identification

Factors That Pertain to Eyewitness

- Uncorrected Visual Defects
- Fatigue
- Injury
- Intoxication
- Bias
- Exceptional Mental Condition (intellectual disability)
- Age (youth or elderly)
- Cross Race Identification (Own Race Bias)

Factors That Pertain to Event Witnessed

- Stress or Fright
- Limited Visibility
- Distance
- Distractions
- Weapon Focus
- Disguise
- Distinctiveness of Suspect's Appearance
- Attention Given to Event
- Witness Awareness of Crime Occurring

Factors That Pertain to the Identification

- Length of time between observation and identification
- Instances of prior failures to identify or inconsistent description
- Line-up vs. show-up
- Photo array vs. in-person identification
- Exposure to external influence (news, other witness)
- Potentially suggestive police conduct

EYEWITNESS IDENTIFICATION

CASE HISTORY

Eyewitness Experts Prior to *Clopten*

- *State v. Long*, 721 P.2d 483 (Utah 1986)
- *State v. Butterfield*, 27 P.3d 1133 (Utah 2001)
- *State v. Hubbard*, 48 P.3d 953 (Utah 2002)

State v. Long (1986)

- Research has consistently shown failures and inaccuracies in memory process.
 - Acquisition
 - Storage
 - Retrieval
 - Communication
- Despite the consistent research jurors are unaware
- Require: cautionary instruction identifying the problems in eyewitness identification

State v. Butterfield (2001)

- Expert testimony on inherent deficiencies of eyewitness I.D.: Within sound discretion of Trial Court to exclude expert
- Problems with such experts
 - Expert testimony would apply to any trial
 - Lecture to jury as to how they should judge the evidence
 - *Long* instruction sufficed
- *State v. Malmrose*, 649 P.2d 56 (Utah 1982).
- *State v. Griffin*, 626 P.2d 478 (Utah 1981).
- No mention of R. 702

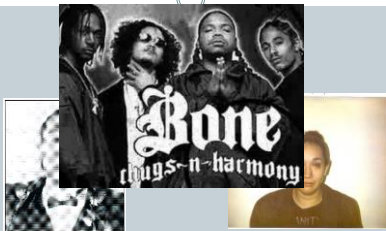
State v. Hubbard (2002)

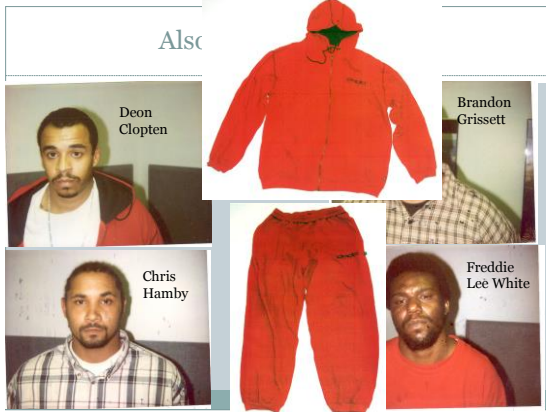
- No mention of R. 702
- Trial Court discretion
- *Long* instruction is sufficient
- Encourage trial courts to specifically tailor *Long* instruction to accommodate unique facts of the case.

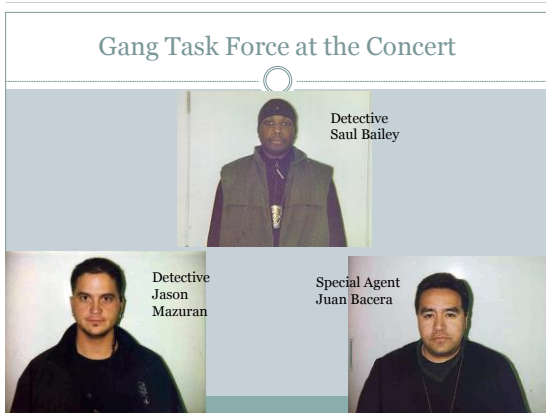
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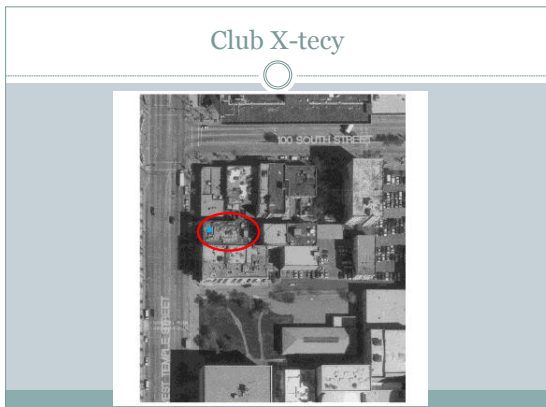
STATE V. DEON
CLOPTEN

Tony and Chica

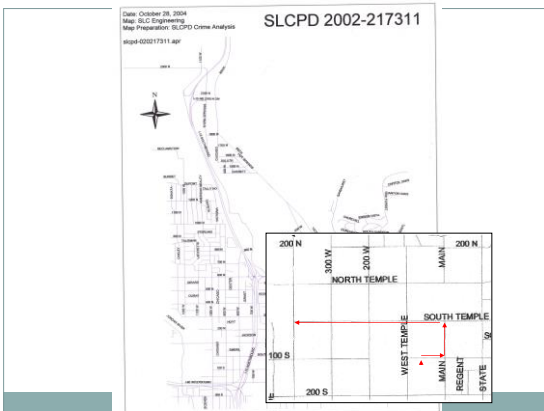


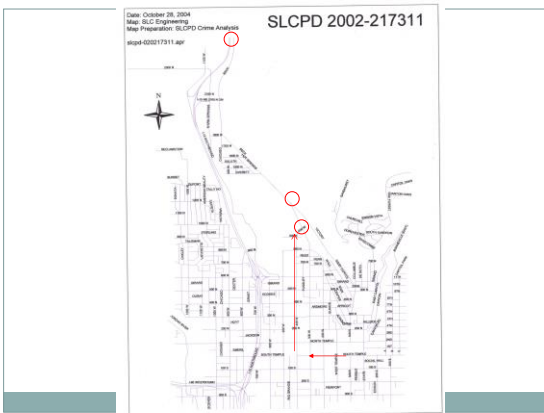














Theme At Trial

- Continuous
- Consistent
- Corroborated

Post *Clopton*, 223 P.3d 1103

- Prior law created presumption against admission of eyewitness expert
- Expert testimony is necessary in many cases
 - Best method for teaching the jury
 - Recognized by other courts
- Should be admitted if meets Utah R. 702

Rule 702 Testimony by experts

- (a) Subject to the limitations in paragraph (b), a witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will **help the trier of fact** to understand the evidence or to determine a fact in issue.
- (b) Scientific, technical, or other specialized knowledge may serve as the basis for expert testimony only if there is a **threshold showing** that the principles or methods that are underlying in the testimony
- (1) are reliable,
 - (2) are based upon sufficient facts or data, and
 - (3) have been reliably applied to the facts.
- (c) The threshold showing required by paragraph (b) is satisfied if the underlying principles or methods, including the sufficiency of facts or data and the manner of their application to the facts of the case, are generally accepted by the relevant expert community.

R. 702 paragraph (c)

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Clopten, 223 P.3d at 1113.

- Stranger identification and
- One or more factors affecting accuracy are present
- Expert testimony will meet rule requirement to “assist the trier of fact.”

Clopten, 223 P.3d at 1114

- Testimony of eyewitness experts satisfies threshold showing under both analyses
- Court can take judicial notice
- Is not an impermissible lecture
- Cannot give opinion on specific witness’ accuracy or lack of accuracy
- *Long* instruction is no longer necessary when expert testifies.

EYEWITNESS IDENTIFICATION

EXPERT TESTIMONY

Obvious Effect

- Obvious effect on witness' ability to acquire, store, retrieve, and communicate identification information.
 - Lighting, distance, etc.
 - Exposure duration
 - Disguise
 - Ability to perceive: vision, impaired, etc.
 - Passage of time

Areas of Disagreement

- Eyewitness Stress
- Weapon Focus
- Own Race Bias
- Eyewitness Confidence
- Line-up Procedures
- Testimony Factors

Eyewitness Stress

- Witnesses often claim heightened awareness
- Defense: Extreme stress has a debilitating effect on subsequent identification accuracy
- Meta data: 27 tests with 1700 participant witnesses
- Lab Test vs. Field Test

Lab Test vs. Field Study



Eyewitness Stress

- Extreme stress has a debilitating effect on subsequent identification accuracy
- 27 tests with 1700 participant witnesses
- Lab Test vs. Field Test
- Actual eyewitness studies: dramatically different result
- Not simple explanation

Weapon Focus

- Weapon draws witness attention away from perpetrator
- Lab tests (simulations)
- Field tests reveal nearly opposite results
 - No detrimental effect or
 - Enhances detail in eyewitness account

Own Race Bias

- Meta-analysis consistently better able to identify from own race than another.
- Most tests concern white and black
- Few studies include Hispanic and Asian.
- All have similar results
- Don't know for certain the cause
 - Genetically predisposed or
 - Only familiarity due to exposure
- Must admit exposure affects ability

Testimony Factors

- Quality of Description
- Consistency of Description
- Eyewitness Confidence

Identification Procedures

- **Defense Claims**
 - Live line-up over photo array
 - Sequential over simultaneous
 - Line-up over show up

Identification Procedures

- **Retention Interval:** Declines rapidly at first
- **Resources** are practical reality
- **Some recent tests** question sequential over simultaneous

Identification Procedures

- **Not simple case** of one procedure better than another
- **Balance preservation** of rapidly degrading memory against arguably less suggestive procedure
- **ESSENTIAL: POLICE INSTRUCTION PROCEDURE**

Clopten

1. Hired expert
2. Emphasize Shannon's lifelong intimate exposure to African American acquaintances
3. Corroborate
 1. Chris Hamby
 2. Shannon said the name before the line-up
 3. *Motive
4. Emphasize procedure for ID
 1. In person
 2. Sequential
 3. Line-up
