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Eyewitness' blind spot

A 1994 rape conviction not only altered N.J. court rules on eyewitness testimony, it raised questions of identifying people of another race.

**By Tom Avril
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The young woman was on edge for months, keeping a lookout for the stranger who had robbed her, raped her, and threatened to cut her throat.

She had gotten a good look at him before and after the attack in her basement apartment, not far from Rutgers University campus. At one point, their faces were just two feet apart. She'd never forget that face.

Then one April day on a New Brunswick street corner, more than seven months after the rape, she froze.

There he was. Strolling along with a boom box, walking with the same side-to-side swagger she remembered when the rapist left her apartment.

She ran to call the police. A few minutes later, they arrested the suspect, a black man named McKinley Cromedy.

The ensuing trial helped trigger an overhaul of the way New Jersey treats the oldest and most dramatic sort of courtroom evidence: an eyewitness pointing out the person who did it.

Cromedy's defense attorney took an unusual tack. He questioned her ability to tell black men apart, noting that she was white, that she grew up in an overwhelmingly white northern New Jersey suburb, that there were no black students in her high school class.

The victim was undeterred.

"It's just something you don't forget after what happens and everything," she told a jury of 11 whites and one black person. "It was him."

More than 61/2 years later, science would prove her wrong.

Remembering faces

As any parent knows, babies like looking at faces. Many adults are fond of saying they "never forget a face."

Yet scientists remain divided as to how exactly individuals recognize these collections of features that are central to one's very identity.

Some theorize that the brain has a special technique for face recognition - distinct from how it recognizes other objects.

Clues have emerged with the advent of functional magnetic resonance imaging, a special kind of MRI that measures blood flow in the brain.

When people recognize faces, blood flow increases to a blueberry-sized cluster of neurons behind the ear - a location researchers have dubbed the "fusiform face area."

However the recognition process works, there is no question people are good at it, says Georgetown University neuroscientist Maximilian Riesenhuber.

But you cannot remember something as complex as a face if you don't know it to begin with. Studies suggest the task becomes even more difficult during the fleeting, stressful moments of a crime.

A person will not gain true knowledge of a face without repeated exposure, under different situations, says Gary Wells, an Iowa State University psychology professor.

"You've learned to ignore the little variations in the way they do their hair, the little variations in their facial expressions," Wells says.

Accuracy suffers when people try to recognize someone from a different race - a commonly held perception that turns out to be true.

Is it prejudice? Are people so distracted by skin color that they don't perceive the considerable diversity of eyes, ears and other features within a race?

New research suggests the most plausible explanation is a simple lack of familiarity, said Christian A. Meissner, a psychologist at the University of Texas at El Paso.

"You've had lots of experience from the time you were born with faces of your own race," said Meissner, lead author of a study last year on this effect. "If I were to drop you in Afghanistan and say, 'Go find Osama bin Laden,' you'd probably find him every 15 feet."

Cleared by DNA

McKinley Cromedy, a quiet man who had drifted from job to menial job, had had brushes with the law. But never a serious crime like rape.

He told police he was innocent, but to no avail. DNA testing was fairly new, and prosecutors did not present forensic evidence during a 1994 trial that lasted just two days.

Defense attorney Anderson Harkov asked the judge to tell the jury about studies on cross-racial identification. He declined, and the jury convicted Cromedy on the strength of the victim's memory.

He was sentenced to 50 years in prison.

Family members recalled how their mother, Jannette Cromedy, looked her son in the eye and asked: "Did you do it?"

He said no. She prayed every day while he was away.

Then in 1999, science answered her prayers. The state Supreme Court, after renewed arguments from the public defender's office about cross-racial identification, ordered a new trial.

By then, DNA testing was routine, and prosecutors agreed to test samples from the rape kit.

Cromedy wasn't their man.

New procedures

New Jersey is now among a handful of places where the legal system is paying attention to the face-recognition scientists.

As a direct result of the Cromedy case, judges are required to tell juries that cross-racial identification may be suspect when there's no corroborating evidence.

The New Jersey Supreme Court's directive was written by Justice James H. Coleman, its first African American jurist. He noted that the cross-race phenomenon is known even outside the psychology lab, as shown by the familiar remark: "They all look alike."

Then in 2001, after a Justice Department report on dozens of similar DNA-based exonerations, New Jersey became the first state to change how it conducts "lineups" - the time-honored practice of asking a witness to pick out the offender from among a half-dozen people of similar appearance.

Of the 175 people who have been exonerated nationwide by DNA testing, three-quarters were convicted on the strength of mistaken identification by a witness, according to the Innocence Project, a New York-based advocacy group.

Law-enforcement officials are quick to say that it is rare for a case to hinge solely on witness identification, and that compared with the overall number of prisoners, the fraction that is wrongfully incarcerated is almost certainly small.

Still, the system ought to be as good as possible, said John Farmer, the former attorney general who implemented the new lineup policies in New Jersey.

"One innocent person convicted is too many," says Farmer.

Not to mention that the real criminal is still out on the street.

The wrong man

Cromedy was released in 1999. Now 43, he lives in a small apartment upstairs from one of his sisters, Shavonna Walker, working as a day laborer.

He says he isn't angry with the prosecutors or the woman who accused him. While behind bars, he never lost hope.

"I knew I was going to get out because deep down inside me, I knew I didn't do it," he says.

Always quiet, he has retreated further since his imprisonment, his sister said.

"He's in another world sometimes," Walker said. "He keeps to himself."

She is convinced his imprisonment sped the advent of dementia for their mother, who now lives in a nursing home.

"It was horrible," Walker says. "It was hard on the whole family."

Meanwhile the rape victim, who has since moved to Colorado and started a family, can't understand how she made a mistake.

"It was a really hard thing for me to even digest," she said recently in a telephone interview. "I couldn't believe that I was wrong."

During the trial, she said, she thought it was unfair for the defense attorney to question her upbringing in the mostly white suburb

of Wayne.

"I didn't live an insulated life," she said.

But upon being told that her case had changed New Jersey law, she looked up cross-racial identification on the Internet.

Now, she's not sure.

"Do I think I had a hard time identifying somebody because of it? I don't know," she said.

She is racked with guilt over putting the wrong man in prison - and the fact that the man who raped her is still at large.

Every Monday, samples from her case and other unsolved crimes are automatically checked against a national FBI database of convicts. On this case, no luck so far.

"He got away with what he did to me. And he was going to try and do it again."

She paused for a moment, then said:

"We never got the guy."

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