

Running Header: EYEWITNESS ERROR

An Eyewitness Error and the Wrongful Conviction that Followed

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Crime, punishment, and a justice system so determined to lock someone away, it could be the wrong guy left behind bars. On July 28, 1984 Jennifer Thompson walked home from classes unaware of the terror that lay ahead of her. The hours that followed a seemingly uneventful day became one that she would never forget. It was the middle of the night when Jennifer awoke to a man at her bedside. The rest of the night were screen shots. The man jumping on the bed, performing sexual acts against a screaming Jennifer, and the moment Jennifer found her chance to get away. The screen shots displayed were left disjointed, but Jennifer was sure of one thing. She had a good look at the man behind the horrendous acts. She remembered every detail from the pencil line mustache to the harsh hiss of the man's voice. It would be these details that would convince not only Jennifer, but also a jury that an innocent man had been the perpetrator. Fast forward to January 1985, Ronald Cotton had been identified as the suspect, taken through trial, convicted, and sentenced to life in prison. An outside observer may have possibly considered this a happy ending case closed. What happens though, when the wrong man is locked up? How did a case that seemed so simple end up with a wrongful conviction? *Picking Cotton* by Jennifer Thompson- Camino and Ronald Cotton highlights the missteps of the case from the beginning. This case lacked order of protocol, showed the misfortunes of affirming an eyewitness, the dangerous phenomenon that leads to tunnel vision, and displayed the misconduct that happened in courts throughout the case.

The issues with the protocol followed in this lawsuit began early on in the case. In the days that followed the incident, rape kits were completed and composites sketches were drawn. Within a couple of days, the head detectives on the case, Mike Gauldin and Ballard Sullivan had compiled six photos of black men for Jennifer to identify. These men were chosen solely on their appearance. No evidence was tested; no blood was drawn. Therefore, there was no ensure that the men chosen were plausible suspects. This lack of research proved to be detrimental the moment Jennifer reviewed the six images. When Jennifer was shown the photos of the men, a light went off in her head. Although detective Gauldin iterated that the suspect may or may not be in this collection, Jennifer heard "suspect" and her mind was made up. Jennifer was naïve in the face of criminal justice. She reflects, "I assumed they must have had a suspect. Why would they have me drive all this way if they didn't?" (page 32). This thought shows that in Jennifer's eyes, they not only had a suspect, but if they had a suspect that it must have been the guy. Among those six images, Jennifer picked the photo of twenty-three-year-old Ronald Cotton.

As the investigation moved forward, so did the missteps in protocol. The next step of the investigation involved bringing in suspects and fillers to be identified in person. On August 8, 1984 the detectives had organized a lineup of men for Jennifer to evaluate. Seven men stood before Jennifer. Within the lineup stood one man that Jennifer had seen before. Ronald Cotton. She saw his face and traced her memory. Through reflection, Jennifer acknowledges: "Ron was the only person who had been in both the photo and the physical line-ups, making his face more familiar to me [...] Seeing Ronald Cotton's face in the lineup, and in court, meant that his face eventually just replaced the original image of my attacker" (pg. 272). The phenomenon mentioned here is known as unconscious transference. An article by PBS defines unconscious transference as "a general term that refers to the mistaken identification of a person, who was seen in one situation, with a person who was seen in a different situation." (PBS). In this case, the only man from the six images that stood in front of her was Mr. Cotton. This made him familiar amongst the row of doppelgängers. In the times of high stress, Jennifer didn't think to separate her memories of the rape from her memories of the photographs. That made Cotton's familiar appearance all the more dangerous.

Not only did the familiarity of Cotton sway Jennifer that she was picking the right man, but the head detectives on the case also displayed suggestive behavior throughout the identification procedures. The definition of suggestive identification procedure includes: pressure on the eye witness to make identification; cues witness to a specific suspect; or cueing a witness that their identification was correct or incorrect. The suggestive procedure in this case could easily be overlooked; it was implemented subtly. After identifying an image out of the collection of photographs, Jennifer sought a confirmation from the detectives. When asked if she had done OK, Sully and Gauldin assured her that she had done great. She was reassured of her identification again following the in person line up. Gauldin assured, "We thought that might be the guy... it's the same person you picked from the photos" (page 37). Jennifer explains that in that moment she was convinced that they had gotten him. Although one could be compelled to argue that these subtle inferences couldn't have sealed the deal, Jennifer proclaims: "The police told me I had identified the same person in the physical line up whose photo I had selected, so by the time I went to court, everything added up for me: I was definitely confident that Ronald Cotton was the one" (page 271). This type of reassurance continued throughout the case in sometimes non-verbal ways. At one point in the case, after giving her testimony, Jennifer sought the comfort of a confirmation again from one of her attorneys. "My words had saved me that night; I was sure of it. Now I needed them to get him... I don't really remember what I said, but Jim looked pleased when I finished" (page 71). Nothing was said, but Jim's behavior left Jennifer all the more confident in the case. Beyond Jennifer's ability to convince herself that she had chosen the right suspect in both the photo composites and during the in person identification, it is clear that suggestive eye witness identification procedure elevated Jennifer's confidence in her decisions.

These small affirmations throughout the case also inhibited Jennifer's ability to see the case objectively. She became so convinced that Cotton was the man, that when Bobby Poole was brought in and questioned during the second case, Jennifer was unable to see the possible truth in the defenses evidence. Poole and Cotton not only shared an eerie resemblance, but Poole had admitted that he had committed the two crimes to a fellow inmate in prison. Now it is true that convicted felons will snitch in order to lessen their own sentence, but the argument was further strengthened by the fact that Poole was currently serving time for the rape of another woman who lived in the same building as Jennifer. Poole's blood type also matched the blood found at the scene of the crime, Cotton's didn't. Instead, she saw it as a pathetic ploy. From the beginning Jennifer recalls, "To me it was simple: I had been raped, the police caught the guy, and I picked the guy out of the lineup" (page 45). When the situation is seen as simply as Jennifer saw it, it is nearly impossible to see the gaping holes that can lead to life altering mistakes. Now this behavior is not unique to Jennifer. This tunnel vision that Jennifer was stuck in highlights a key cause of wrongful convictions, confirmation bias. This bias enables people to interpret the evidence displayed in a way that supports what they already believe to be true. The flip side of this is that it also creates an environment which tends to discredit any evidence provided that challenges what a person believes to be true.

Jennifer was not the only one in the case who fell victim to this tunnel vision. In March of 1995, Detective Mike Gauldin informed Jennifer about a new test that could be used to evaluate crime scenes, DNA. He went on to explain to her that Cotton's new attorney, Richard Rosen, had filed a motion to have the DNA from the crime scene tested. Approaching the emotional topic as best he could Mike said: "Look, we all know it's not going to change anything. We got the right guy [...] Ronald Cotton is going to stay put in prison" (page 195). Just

as Jennifer had, Mike had been present in the court room as the defense put Bobby Poole on the stand and provided the eerie evidence. It is moments in the case like this that show the importance of testable evidence. Evidence that can remain aligned with the facts presented as objectively as possible.

The injustice in this case continued throughout the trial in the court room. The idea that all accused are innocent until proven guilty had no place in this courtroom. Cotton reflects, “The jurors, the DA’s, the cops—all of them looked at me like I was something they wanted to spit at and stomp on the ground” (page 93). Everyone in the courtroom showed the power of assumptions. Like Jennifer, they heard the word “suspect,” and considered the process of the eyewitness and saw this man as guilty. Eyewitness testimonies are statistically the least trustworthy type of evidence used in discovering the truth, but it is the testimony most trusted by the jury. As Jennifer sat on the stand and recalled in vivid detail the horrors she faced on the night of her assault, the jurors’ hearts broke for her. When Jennifer finished and pointed across the room to identify Cotton as the perpetrator the jury had made up their mind as well. Cotton’s attorney did the best they could to stress the facts of the case. Attorney Philip Moseley tried to reason with the Judge that Jennifer had made a mistake. He supported his belief with the fact that the other victim, Mary Reynolds, who hadn’t been shown the photos prior to the lineup, hadn’t picked Cotton as a suspect. He also requested that a memory expert be allowed into the courtroom. The answer was “no.” The judge had come to his conclusion concerning Cotton’s guilty verdict before he had been seen in front of a jury. Cotton’s conviction had maybe been made official in January of 1985, but it’s clear that the detectives and judge overseeing this case had come to this conclusion as soon as he stepped into the police station.

After three and a half years in prison, Cotton was taken back to court as the second victim, Mary Reynolds, had finally come to the conclusion that she too was raped by Cotton. One of the rights available to the accused is a right to a fair and impartial jury. In the jury venire for the second case against Cotton, four black citizens were immediately excluded from the final jury formation. This left the jury compiled completely of white citizens. This left Cotton in a trial that would be decided by a jury that would see his race as a primary motive. It was in this moment that Ronald would have the bone chilling revelation: “It was just more proof to me that in the court, only certain voices matter” (page 124).

Another prominent issue in this case was the strong evidence that was not allowed into the courtroom. In light of the second case, Bobby Poole was brought in by Cotton’s attorney. All the details about Poole’s record listed earlier on was presented in a “voire dire” setting. This meant that the evidence was presented exclusively to the judge. It would then be under the sole jurisdiction of the judge whether or not the evidence would be presented to the jury. The new evidence was presented and the Judge concluded that it didn’t point directly to Poole. Therefore, the evidence would not even be allowed in front of the jury. If the judge determined whether the current evidence pointed directly to Cotton it would be one thing, but that thought was left off the table. It could be argued that the judge was experiencing cognitive dissonance. This is a discomfort that is felt as a result of behavior and evidence contradicting a pre-conceived belief. Cotton puts it simply, “The truth mattered less than getting me convicted” (page 134). The judge believed it was Cotton and therefore he would not connect the evidence displayed in front of him, or provide the jury with the same opportunity.

This engrained sense of pride remained in the judge’s actions even after DNA evidence had cleared Cotton’s name. In 1995, Cotton opted for DNA to be tested, and his attorney at the time, Richard Rosen, had the tests conducted. It was in June of 1995 that the DNA tested from

Mary Reynolds rape kit revealed that Cotton was not the one. The DNA pointed to Bobby Poole. Even though a lack of DNA existed in Jennifer's case, because the two cases had been tried together, if it was Bobby Poole at one scene, it was Bobby Poole at both. The last step in the process of Cotton's release was for the judge who over saw Cotton's probable cause hearing in 1984 had to order the officers to remove the cuffs from Cotton, and set him free. In these moments, the judge refused to address Cotton directly. He simply ordered the officer to remove the cuffs and left. The man that was one of the first to label Cotton as guilty was wrong and in the moment he had to face his errors he still held his pride too high. So high that acknowledgment of a mistake would not be uttered and an apology would never be given.

In hindsight, life is made clear. It can be said that anyone inside a frame lacks the ability to see the full picture. As an outside observer though, everything is in clear view. It brings into discussion what things could have been changed within the case to lead to a vastly different outcome. An outcome where the potential for wrongful conviction wasn't so plausible, and where an innocent man would never have ended up behind metal bars. Taking the position of an outsider, I see that if a more thorough investigation had been not only conducted but considered imperative from the beginning, then a different story would have been told. Beyond the faults in the specifics of this case, it is important to consider what greater errors took place and what procedures should be amended so that a wrongful conviction will not be a result of the same missteps again.

One big issue that needs to be addressed is in regards to the jury. The challenge of assembling an impartial jury is not only in how it is picked, but also how the jurors are informed. American citizens have the right, privilege and obligation to partake in jury duty. The responsibility bestowed upon those who make up a jury should not be taken lightly. The decisions made by a jury have the power to alter another person's life. Taking this into consideration, equipping the jurors with the best tools available should be seen as a necessity. It could be beneficial to provide all jurors with a class taught in an objective setting prior to the trial they are assigned. An objective setting would remove the rhetoric that exists in the courtroom. Jurors could feel good about learning the facts, instead of being coerced by the rhetorical appeals that exist in all courtrooms. This class could cover information on the shortcomings of eyewitnesses, as well as the tricks memory can play on humans as a result of how evidence is collected, presented and shared. In the book, Jennifer talks about a presentation on memory that she attended at Iowa State University. She mentions that it was at this presentation that she finally understood why her memory did not align properly with the events that occurred. As mentioned above, Cotton's attorney sought out a memory expert to put on the stand. The judge vetoed this. The question becomes: would this knowledge have changed the jury's decision? Jennifer's realization, years after Cotton's exoneration, proves that knowledge truly is power. Had the jury on this case been equipped with this knowledge, that 68% of victims would pick a suspect out of a line up even when the offender is absent, a wrongful conviction could possibly have been avoided. To connect back to the greater picture, this knowledge would be just as useful in all types of trials.

The issues regarding suggestive evidence is not unique to this case. The use of suggestive evidence that compromises justice was highlighted in the Manson vs. Braithwaite case as well. In this case Glover, an undercover cop, bought heroin from a seller that he did not know. After purchasing the heroin, Glover spoke to another fellow cop named D'Onofio. Following the description, D'Onofio produced a photo of Braithwaite. After seeing the image, Manson confirmed this was the seller. Braithwaite's attorney later argued that without fillers, the

procedure is suggestive. In the end, the supreme court decided that suggestive evidence was indeed unreliable and should never have been allowed in the courtroom. Although the details of this case vary from the errors in Thompson vs. Cotton, it proves that this behavior has large scale effects. A possible solution to this is to enforce a double-blind procedure. A double-blind procedure requires that the person administering the line-up, as well as the witness, are both unaware of who the suspect is. This practice would better ensure that suggestive behavior is removed from an already stressful decision. In relation to the case featured in this paper, it is important to understand the alternative outcomes that would have been possible, if suggestive behaviors were left out of the equation. Jennifer may have viewed all the evidence put forward by the defense in a more objective manner had she not been given the extra boosts of confidence from her attorneys and the detectives.

Every day in the United States trials take place and life altering verdicts become a reality. It is clear that the justice system today in the United States is not failure proof. In the face of horrendous acts of crime, a wrongful conviction occurred. The wrongful conviction of Ronald Cotton left catastrophic effects on both Cotton and Jennifer. This case highlights the importance of protocol, the imperfections that encompass all eyewitnesses, the burden of tunnel vision, and errors in court proceedings. Since Cotton's exoneration, Ronald Cotton and Jennifer Thompson have done their best to understand each other's shortcomings, in order to present a solid piece of literature so that others can learn from the missteps in their case. All of this was done in hopes that future trials do not leave behind the burden of putting an innocent person behind bars.

Works Cited

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