

DEFENDING EYEWITNESS IDENTIFICATION CASE LIST

DUE PROCESS

Neil v. Biggers, 409 U.S. 188 (1972) – Test for Due Process Violations (Out of Court ID)

United States v. Wade, 388 U.S. 218 (1967) – Test for Due Process Violations (In-Court ID)

State v. Headen, 295 N.C. 437 (1978) – 2 Step Test for Due Process Violations applied in NC

State v. Flowers, 318 N.C. 208 (1986) – In-Court ID

State v. Fowler, 353 N.C. 599 (2001) – Analysis of Due Process

State v. McCree, 160 N.C. App 19 (2013) – Must have Step 1 to get to Step 2

State v. Gamble, 243 N.C. App 414 (2015) – Applying 2 Step Test to EIRA

State v. Malone, 373 N.C. 134 (2019) – suggestiveness/state action

State v. Nieves (2023) No. COA22-993 – Using 5 Biggers Factors for In-Court ID

Smith v. Arizona, 602 U.S. 779 (2024) – Confrontation Clause

LINEUPS

State v. Robinson (2025) – No. COA24-735 - Fillers

State v. Grimes, 309 N.C. 606 (1983) – To avoid improper suggestion, investigators must FAIRLY administer lineup in a manner that does nothing to induce the witness to select one participant rather than another.

State v. Tutt, 171 N.C. App. 518 (2005) – Fillers don't have to be identical to suspect's appearance to pass muster.

PHOTO SHOW-UPS

State v. Simpson (2024) No. COA23-618 – EIRA doesn't apply to photo show-up because not for same purpose as covered by EIRA.

State v. Crumitie, 266 N.C. App 373 (2019) – Photo Show-Up was not a show-up

State v. Morris, 288 N.C. App 65 (2023) – Photo Show-Ups not allowed under EIRA, but EIRA doesn't apply.