

QUESTION 6 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK II

Wendy Witness observed an assault and robbery committed against an elderly woman, Sarah Smith, who was walking in her neighborhood. Wendy was approximately 30 feet away from the scene of the crime, which was committed at noon on a sunny day. Wendy's view of the crime was unobstructed. Sarah could not describe her assailant, stating only that the assailant took her purse, which contained one credit card. Wendy described the assailant as a clean-shaven Caucasian male, approximately 20 to 22 years old, 5 feet 8 inches tall, and 150 pounds. Wendy indicated the assailant had short black hair and wore blue jeans, white running shoes and a white sweatshirt.

Later that day, Peter Perpetrator, a clean-shaven 24-year-old Caucasian male with short black hair, 5 feet 10 inches in height, and weighing 160 pounds, was arrested on an outstanding warrant unrelated to the crime against Sarah Smith. When police inventoried Peter's personal items, they discovered that Peter had a credit card issued to Sarah Smith. Police believed Peter committed the crime against Sarah. The next morning, police placed Peter in a lineup with five other Caucasian males. During the lineup and at the time of his arrest, Peter wore blue jeans, white running shoes and a white tee shirt. All participants in the lineup were clean shaven, had short hair and wore blue jeans and white running shoes. Additionally, the persons in the lineup other than Peter are described as follows:

<u>A g e</u>	<u>H e i g h t</u>	<u>W e i g h t</u>	<u>H a i r</u>	<u>S h i r t</u>
18	6'0"	170	brown	black tee shirt
25	6'2"	190	black	blue sweatshirt
19	5'11"	170	brown	beige tee shirt
22	5'11"	180	brown	black sweatshirt
23	6'0"	175	black	white button shirt

No lawyer assigned to protect Peter's interests was present during the lineup. Before Wendy viewed the lineup, she was told by police that a suspect was in custody and would be in the lineup. Within seconds of Wendy viewing the lineup and without any prompting from police, Wendy identified Peter Perpetrator as the assailant. Wendy stated, "I am certain he is the assailant." Peter was charged with assault and unarmed robbery.

Discuss the law and procedure Peter's defense counsel will use to support a motion to suppress Wendy Witness' identification of Peter Perpetrator. How will the trial court rule on such a motion? Explain your answer.

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