

COURTSIDE

What They See and What They Don't

BY STEVE BOGIRA

Veritas—Latin for truth—is carved into the limestone face of the Cook County Criminal Courthouse at 26th and California. Inside the building, truth is so abundant that juries are usually provided two contrary versions of it.

Consider Damaro Sterling's jury trial last month in courtroom 402. He was

criminal defendants have never finished high school, this made his lawyers' ears perk up. They knew his academic resumé wasn't directly relevant to his criminal case, but they also knew it wouldn't hurt if they could make the jury aware of it.

The 34-year-old Sterling, who has a broad neck and a solid build, wore an olive three-piece pin-striped suit and shiny black shoes on the trial's first day. He told me he works as a tutor. The business card he gave me said he was a "social consultant" and president of "Educational Consulting, Inc."—a company for "Only Applicants That Are Serious About Learning." He was composed and studious at the defense table, jotting an occasional note for his lawyers while police officer Henry Foster testified against him.

Foster told the jury he was on routine patrol on the south side on a hot June afternoon in 2002 when he saw a woman and two men arguing near the corner of 76th and Peoria. Sterling was one of the men. Foster stopped his squad car and asked what the problem was. He noticed that Sterling was holding something in a plastic bag. After a brief conversation, he allowed Sterling to leave, and Sterling walked off briskly. But a few minutes later Foster drove after Sterling, catching up to him at the end of the block. When he asked Sterling to come over to the car, Sterling darted into an alley. Foster chased him on foot, as did two other officers who arrived in a second car. They ran through the alley while Sterling vaulted fences and raced across backyards. Foster saw Sterling ditch the bag in one of the yards. The officers caught him when he tried to scale another fence. After he was handcuffed and put in a squad car they retrieved the plastic bag. Inside was a fully loaded .38 revolver.

In a pretrial hearing Foster had explained to Judge James Egan that he'd pursued Sterling after initially dismissing him because the other two people on the corner, Niesha Clark and Alonzo Hines, had told him that Sterling had a gun in the plastic bag and because Clark had produced an order of protection that required Sterling to keep his distance; she complained that Sterling had been harassing her. Egan barred that testimony at trial as hearsay and prejudicial. (In

the pretrial hearing Clark had denied telling Foster that Sterling had a gun or that he'd been harassing her.)

The inability to explain to the jury why Foster had pursued Sterling posed one problem for prosecutors. A bigger problem was that the plastic bag Sterling allegedly carried the gun in was flimsy and translucent. It was hard to explain how Foster could have seen

Arrests and even criminal convictions are usually inadmissible. But this defendant's chances may have got a boost when he was allowed to tell the jury about his educational background.

Sterling holding the bag at 76th and Peoria without seeing the gun inside.

On cross-examination, defense lawyer Maria Owens asked Foster to show the jury how Sterling had been holding the plastic bag when he first saw him. She expected Foster to say that Sterling had mostly hidden the bag from him—that he'd held it on his back hip, for instance. But Foster took the bag with the gun in it from Owens, rolled the top closed, and held the bag up in front of him by the top. Owens was delighted—the gun was plainly visible through the bag.

"The bag was not see-through," a chagrined Foster said. Maybe the bag was inside another bag, he suggested, though he'd already said that no other bags were found in any of the yards.

Sterling took the stand on the trial's second day. This time he was in a black pin-striped suit and had a small pin on his lapel—a pin he later told me he was given when he got his PhD.

Sterling told the jury he was driving to his father's house on the day in question. At 76th and Peoria—two blocks from his father's house—Alonzo Hines waved him down. Sterling parked on Peoria and got out to talk to him. Niesha Clark was also there. Hines got

"irrational," Sterling said, and "when I seen that it was nothing positive I decided to go on." As he was heading toward his car, a police car came around the corner, and the officer summoned him over. After a brief conversation, the officer told him he could go.

Sterling again headed toward his car. But nature called, and he walked into an alley, looking for a spot where he wouldn't be "disrespectful" to the neighbors. He ended up in a yard behind an abandoned house. But when "I went to take myself out," he said, police officers suddenly appeared and arrested him. He said he hadn't had a gun on him anytime that day.

"Did you ever engage in a footrace with police on June 7, 2002?" Owens asked.

"Oh, no," Sterling said, his tone underscoring the absurdity of the idea.

Then Owens asked Sterling if he had any advanced degrees. Prosecutor James Lynch objected, saying it was irrelevant. Judge Egan hesitated, then said he'd let Sterling answer. Sterling told the jury about his bachelor's in business administration and his PhD in philosophy.

During her closing argument Owens paced before the jury box, holding up the plastic bag with the gun clearly visible through it. "Officer Foster lied to you," she said.

One of the tasks of prosecutors in a case involving a victimless crime is to emphasize the seriousness of the offense, lest the jury decide a felony conviction isn't warranted or that prolonged deliberations aren't worth the time. But prosecutor Erica Dillon undermined this impression in her closing argument. She first told the jury that after Sterling's 1986 conviction he could never legally possess a gun, and she quoted the statute that says a convicted felon can't have a gun "on or about his person or on his land." This suggested a Dr. Seuss verse to her, and she told the jury, "He cannot have it in his hand; he cannot have it on his land; he cannot have it here, or there; he cannot have it anywhere."

While the jury deliberated, Sterling and his two lawyers discussed the case with me in the cafeteria of the administration building adjacent to the courthouse. It was late afternoon, and we had the cafeteria to ourselves.

"Nobody wants to believe," said Owens, "that in America you can be a

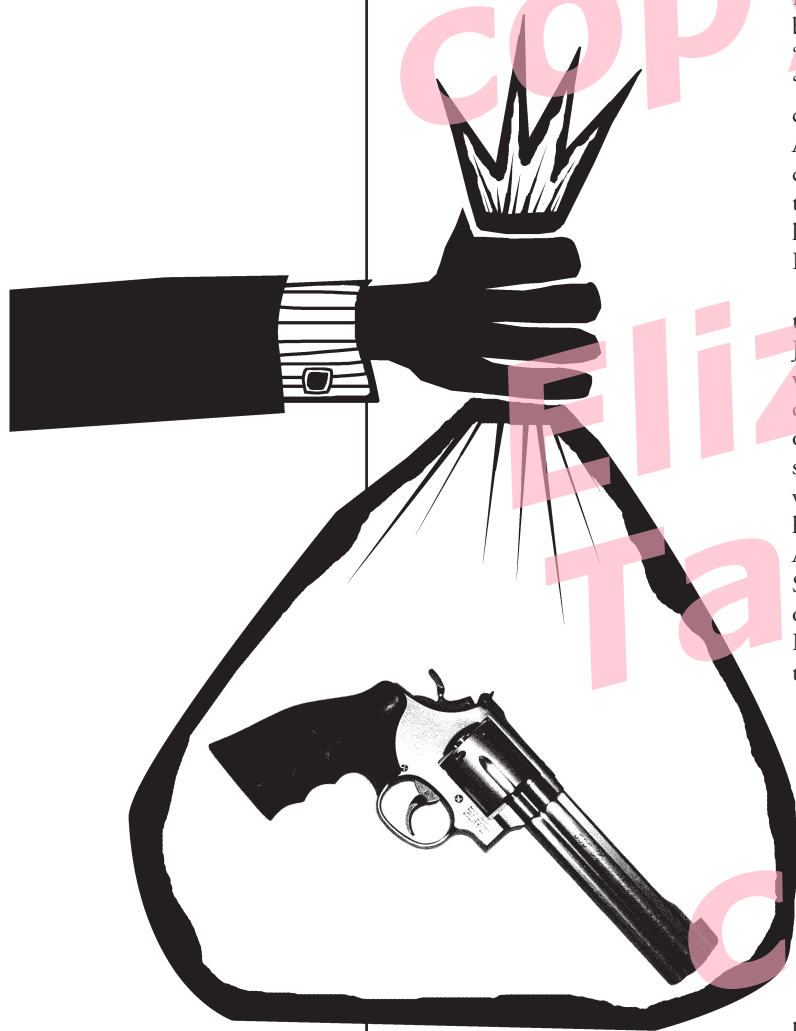


ILLUSTRATION | ELIZABETH M. TAMNY

charged with having a loaded gun in his possession in June 2002. Since he had a previous felony conviction—he'd pleaded guilty in a car-theft case in 1986, when he was 17—he faced three to seven years in prison if convicted, though probation was an option. The stories told to the jury by Sterling and the officer who arrested him were as different as night and day.

Sterling was an unusual defendant. He told his lawyers he had a bachelor's degree in business administration and a doctorate in philosophy. Since many