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New Jersey Court Issues Guidance for Juries About Reliability of Eyewitnesses

By BENJAMIN WEISER

Almost a year after the New Jersey Supreme Court made a [sweeping ruling](#) aimed at resolving the “troubling lack of reliability in eyewitness identifications,” it issued instructions on Thursday for judges to give jurors to help them better evaluate such evidence in criminal trials.

A judge now must tell jurors before deliberations begin that, for example, stress levels, distance or poor lighting can undercut an eyewitness’s ability to make an accurate identification.

Factors like the time that has elapsed between the commission of a crime and a witness’s identification of a suspect or the behavior of a police officer during a lineup can also influence a witness, the new instructions warn.

And in cases involving cross-racial identifications, judges were directed to tell jurors that “research has shown that people may have greater difficulty in accurately identifying members of a different race.”

“You should consider whether the fact that the witness and the defendant are not of the same race may have influenced the accuracy of the witness’s identification,” the instructions say.

The new instructions caution jurors that eyewitness testimony must be scrutinized carefully.

“Human memory is not foolproof,” the instructions say. “Research has revealed that human memory is not like a video recording that a witness need only replay to remember what happened. Memory is far more complex.”

The new instructions, which take effect on Sept. 4, address the problems the State Supreme Court identified last August in a unanimous ruling that concluded that the traditional test for reliability of eyewitness testimony, which the United States Supreme Court set out in 1977, was outdated and should be revised.

Although it applies only in New Jersey, the ruling was widely heralded for containing the most exhaustive review of decades of scientific research on eyewitness identification.

The new instructions are expected to be influential as other state courts look to revise their approach to eyewitness identification, several legal experts said.

“These instructions are far more detailed and careful than anything that exists anywhere in the country,” said Brandon L. Garrett, a law professor at the University of Virginia and the author of “Convicting the Innocent,” a book that includes a study of eyewitness misidentifications, which was cited by the New Jersey court in its decision.

“These instructions are far from perfect,” he added, “but they are a remarkable road map for how you explain eyewitness memory to jurors.”

Barry C. Scheck, co-director of the Innocence Project at the Benjamin N. Cardozo School of Law, which had filed a friend-of-the-court brief in the New Jersey case, called the changes “critically important” and predicted the new instructions would not only affect how juries are instructed, but would also influence trials themselves and the evidence-gathering that precedes them, since both sides will know that such instructions will be given.

“It changes the way evidence is presented by prosecutors and the way lawyers defend,” he said, adding, “The whole system will improve.”

[Stuart J. Rabner](#), the court’s chief justice, who wrote last year’s decision, said by phone that the ultimate issue of whether to trust eyewitness testimony was for a jury to decide.

“We expect juries are going to hear this evidence, so we want to give them the tools with which to evaluate the eyewitness testimony,” he said.

The State Supreme Court also issued a rule that requires law enforcement officers to record details of how an identification was made. Officers must identify anyone, not just law enforcement personnel, with whom a witness has spoken about the identification — before, during or after it occurred — and include a detailed summary of what was said.

“If the record that is prepared is lacking in important details as to what occurred,” the rule says, a judge may declare the identification inadmissible or allow the jury to hear only portions of it.

Jennifer E. Laurin, an assistant professor of law at the University of Texas, who has written about the politics of criminal justice, said the new instructions are important because jurors will now be “more fully educated about our most contemporary understanding about what makes eyewitness identification more or less reliable.”