



News Release

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Supreme Court Releases Eyewitness Identification Criteria for Criminal Cases

The New Jersey Supreme Court today released **expanded jury instructions**, a **new court rule**, and a **revised court rule** relating to eyewitness identifications in criminal cases.

On Aug. 24, 2011, the Supreme Court issued a unanimous decision in *State v. Larry R. Henderson*. The opinion, authored by Chief Justice Stuart Rabner, revised the legal framework for evaluating and admitting eyewitness identification evidence and directed that revised jury charges be prepared to help jurors evaluate such evidence. Henderson drew on an extensive review of reliable scientific evidence on human memory and the various factors that can affect the reliability of eyewitness identifications.

“Today’s new jury charges and court rule mark a critical step in the court system’s treatment of eyewitness identification evidence,” said Chief Justice Rabner.

“In all future criminal trials involving identification evidence in New Jersey, judges will rely on new model jury instructions that can be tailored to the facts of each case. Jurors will then hear about relevant factors that may have affected the reliability of the identification evidence presented at trial.

“The instructions are designed to minimize the risk of wrongful convictions and help jurors reach informed, just decisions,” Rabner said.

In *Henderson*, the Supreme Court revised the existing legal standard for assessing eyewitness identification evidence because it did not offer an adequate measure for reliability, did not sufficiently deter inappropriate police conduct, and overstated the jury’s ability to evaluate identification evidence.

The opinion said that the **current instructions to jurors** on eyewitness identifications must be expanded and address variables related to how law enforcement officers conduct identification events as well as important factors outside the control of law enforcement.

To develop the necessary modern standards, the Supreme Court asked the **Criminal Practice Committee and the Committee on Model Jury Charges**, composed of judges, prosecutors, defense counsel, and other legal practitioners, to draft proposed revisions to the jury charge and submit them for the Court’s review.

“Today, we are publishing the revised jury charges, a new Court Rule on the “Record of an Out-of-Court Identification Procedure” and a revised Court Rule on “Discovery and Inspection” to become effective on Sept. 4, 2012,” said Rabner.

“We are grateful to the members of both committees and the committee chairs, Assignment Judge Lawrence Lawson and Judge Samuel D. Natal, for their invaluable assistance,” said the chief justice.

Before the New Jersey Supreme Court issued its opinion in *Henderson*, the New Jersey standard for determining the admissibility of eyewitness identification evidence derived from the principles the U. S. Supreme Court set forth in *Manson v. Brathwaite* in 1977. Virtually all of the scientific research considered in the *Henderson* appeal emerged after *Manson*.

When published nearly a year ago, the *Henderson* decision attracted national attention for its review of current scientific evidence that addressed human memory and how an array of variables can affect and dilute memory and lead to misidentifications.

The new jury instructions caution that certain factors about an eyewitness’s circumstances at time of the offense could render the testimony less reliable. Those factors include the stress the eyewitness was under, the duration of the event, lighting, distance, the eyewitness’s focus on a weapon, and cross-racial identification.

Other factors that jurors will consider include the procedures used by law enforcement during the actual identification process. The instructions require jurors to consider the composition of a lineup or photo array and whether any spoken word or gesture by the police could have suggested a specific defendant.

Under the new rules and jury instructions, factors about the eyewitness’s circumstances at the time of the offense, along with law enforcement’s behavior when conducting identification procedures, must be weighed by jurors to determine the reliability of eyewitness testimony.

The jury instructions emphasize that any single factor or combination of factors does not mean the eyewitness is incorrect.

“The ultimate issue of the trustworthiness of any eyewitness identification is for the jury to decide,” said Chief Justice Rabner. “Only with a fully informed and properly instructed jury can justice be served.”

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