



Administrative Office of the Courts

FOR IMMEDIATE RELEASE

Nov. 19, 2020

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Supreme Court affirms convictions in double murder and adopts new standard for eyewitness identification evidence

SANTA FE – The state Supreme Court, in a unanimous opinion by Chief Justice Michael E. Vigil, today affirmed a man’s convictions for killing two Santa Fe teenagers and adopted a new standard for determining whether eyewitness identification of a criminal suspect will be admitted as evidence at trial.

New Mexico’s highest court adopted a “per se exclusionary rule” that will preclude the admission of eyewitness identifications produced by “unnecessarily suggestive” police procedures. No other state has a comprehensive evidentiary standard for eyewitness identifications that is identical to New Mexico’s rule.

Several states, including Massachusetts and New York, have changed their evidentiary frameworks for assessing the risks of misidentification by eyewitnesses. Researchers have found that eyewitness error is a leading cause of wrongful convictions nationally and that suggestive settings or law enforcement practices can influence a person’s perceptions or memory in identifying a suspect.

The Court upheld Ricardo Martinez’s convictions of two counts of first-degree murder. He was sentenced to two consecutive terms of life in prison for the 2014 fatal shooting of 18-year-old Venancio Cisneros and his 13-year-old girlfriend.

On appeal, Martinez sought a new trial and argued that the district court should have excluded testimony from a witness who said he had seen Martinez walking away from Cisneros’ car at the crime scene. During the sheriff’s office investigation of the crime, the eyewitness identified Martinez from an array of six photographs shown to him. The witness had told investigators during an initial interview that he did not have good eyesight but would be able to recognize the man he had seen at the crime scene if shown a photograph.

The Court concluded that the eyewitness testimony was properly admitted at trial both under the newly adopted state standard and a federal rule it replaced. The U.S. Supreme Court established the federal rule in 1977 in the case *Manson v. Brathwaite*.

The state Supreme Court held that the federal standard for evaluating the admissibility of eyewitness evidence – known as the *Manson* reliability test, “does not satisfy due process” under the New Mexico Constitution’s Bill of Rights.

“We hold that Article II, Section 18 of the New Mexico Constitution affords broader due process protection than the United States Constitution in the context of admission of eyewitness identification evidence,” the Court wrote.

The Court noted that the federal standard, which has long been used by courts in New Mexico and other states, “has come to face ever-increasing criticisms from legal scholars as a result of major advances in scientific knowledge of eyewitness memory, perception, and recall, knowledge that contradicts many of the analytical assumptions underlying” the *Manson* test.

The federal test uses several factors to assess the reliability of eyewitness identification in determining whether the evidence should be admitted at trial even if suggestive police procedures influenced the eyewitness.

“Under the new standard, if a witness makes an identification of a defendant as a result of a police identification procedure that is unnecessarily suggestive and conducive to misidentification, the identification and any subsequent identification by the same witness must be suppressed,” the Court wrote. “The question of whether the identification is ‘unnecessarily suggestive’ focuses not only on the identification procedure itself but also on whether the police have a ‘good reason’ to use a suggestive identification procedure in the first place.”

The Court also ruled that New Mexico would no longer follow a legal doctrine – “the independent source doctrine” – that allowed a witness to identify a criminal suspect in court if the witness had an independent source for their identification other than an inadmissible identification that had occurred outside of court. The justices described the doctrine as “legally and practically unsound.”

The Court recognized a distinction for identifications by a witness familiar with the person identified, such as in a domestic violence case. “While we abandon the independent source doctrine for disputed eyewitness identifications, the doctrine has no applicability in cases where the eyewitness, such as a domestic violence victim, is personally familiar with the perpetrator of the crime. In such instances, therefore, the identification is admissible,” the Court wrote.

Under the new standard established by the Court, when a defendant files a pretrial motion to exclude the use of eyewitness identification evidence, the burden is initially on the defense to show “some indication of suggestiveness in law enforcement’s administration of the eyewitness procedure.”

“Upon making this showing,” the Court held, “the burden shifts to the state to prove by clear and convincing evidence that *either* (1) the procedure employed was not so suggestive as to materially taint the identification made by the eyewitness, which is to say that any departure from proper procedure could not have increased the risk of misidentification, *or* (2) good reason existed for the police to employ the suggestive procedure in the first place. If the state fails to carry its responsive burden, the identification and any subsequent identification by the same witness must be suppressed.”

The Court noted that a newly enacted state law established minimum standards of “objectivity and reliability” for the procedures used by law enforcement to obtain an eyewitness identification although the statute does not specify a consequence for failing to meet the standards. The law, the Accurate Eyewitness Identification Act, was enacted by the Legislature in 2019, and required law enforcement agencies to adopt policies by Jan. 1, 2020 that incorporate the standards to minimize the potential for mistaken eyewitness identifications.

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To read the decision in *State v. Martinez*, No. S-1-SC-36502, please visit the New Mexico Compilation Commission's website using the following link:

<https://nmonesource.com/nmos/nmsc/en/item/488675/index.do>