

# **Justices: Witness IDs must be written down**

## **Unrecorded results to be inadmissible at trial**

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Five years ago, then-Attorney General John Farmer Jr. promulgated guidelines urging police departments to write down what is said and done during line-ups and other identification procedures.

Yesterday, the New Jersey Supreme Court gave those guidelines teeth. The justices unanimously ruled that unless a written record is kept, the fact that an eyewitness picked the defendant out of a line-up or a series of photographs will not be admissible at trial.

The justices said the new requirement is needed "to ensure the integrity of criminal trials." Farmer's guidelines contained no penalty for failing to record identification procedures.

"Eyewitness identification can be the most powerful evidence presented at trial, but it can be the most dangerous too," Justice Barry Albin wrote. "Misidentification is widely recognized as the single greatest cause of wrongful convictions in this country."

Defense lawyers said the new rule would mean fairer trials. Prosecutors said it should not impose new burdens, given the existing guidelines.

"Our perception is most law enforcement officers follow these guidelines," said Peter Aseltine, a spokesman for Attorney General Zulima Farber.

Assistant Essex County Prosecutor Kenneth Ply added, "I don't think it will be a major change in police procedure."

It was the latest example of the high court turning to technology to improve the administration of criminal justice. Last year, the court adopted a rule requiring interrogations of suspects to be recorded on tape. That requirement took effect in homicide cases at the start of this year and will become mandatory for other serious crimes in 2007.

The justices stopped short of requiring that audio or videotape be used to record eyewitness identifications, but made clear that it is preferred.

"Tape recording will serve as much to protect the police from claims of improper conduct as it will to preserve evidence," Albin wrote.

At a minimum, Albin said, police must keep "a detailed summary" of whether the eyewitness is able to make an identification and any dialogue that takes place.

"The dialogue between a law enforcement officer and a witness may be critical to understanding the level of confidence or uncertainty expressed in the making of an identification and whether any suggestiveness, even unconsciously, seeped into the identification process," Albin wrote.

Public Defender Yvonne Smith Segars said, "Certainly in the future, our clients will be better protected."

Newark lawyer Michael Baldassare, who argued the case on behalf of the Association of Criminal Defense Lawyers of New Jersey, said the ruling "will provide additional protection to individuals accused of crime and improve the accuracy of the truth-seeking process."

Despite yesterday's ruling, the justices upheld a Newark man's murder conviction on the basis of trial testimony by three eyewitnesses. Two of them initially failed to identify the defendant, Daniel Delgado, when shown his picture shortly after Daniel Cortez was fatally shot in November 1998.

Because Delgado's lawyer knew about those failed attempts to identify his client and used them at trial, the justices rejected arguments that Delgado's rights had been violated. Assistant Deputy Public Defender James K. Smith, who argued Delgado's appeal, was disappointed.

"I didn't feel he got a fair trial," Smith said.

Delgado, now 27, must serve 30 years of his 40-year sentence before he can be considered for parole.