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## Albuquerque Journal interviews Joshua Kastenberg on new benchmarks for evidence rules

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# **New benchmark set for evidence rules**

**By Isabella Alves**

**Albuquerque Journal  
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SANTA FE - Eyewitness testimony will now face additional scrutiny before being allowed into evidence to prevent “unnecessarily suggestive” police influence, according to a New Mexico Supreme Court opinion issued Thursday.

The new evidentiary rules are “per se exclusionary,” meaning if law enforcement unjustly coerced or influenced an eyewitness to choose a certain person in a police lineup, then that evidence must be suppressed. The burden is on the accused to prove police used suggestive tactics on eyewitnesses.

The rules arose in an appeal filed by Ricardo Martinez, a Santa Fe man who was convicted of killing two teenagers for allegedly owing him drug money.

Martinez was sentenced to two consecutive life sentences, and appealed his case on the grounds that Judge Glenn Ellington allowed eyewitness testimony from a man with poor eyesight due to diabetes. The man claimed he saw Martinez at the scene of the shooting.

The witness was shown a “six pack” of photos by a Santa Fe County Sheriff’s Office detective. The witness told investigators he would be able to recognize the man at the scene if he was shown a photograph.

The Supreme Court ultimately upheld Martinez’s conviction, but not before making it clear what was and wasn’t permissible eyewitness testimony.

Assistant Appellate Attorney Allison Jaramillo, of the public defender’s office, said the court’s opinion brings New Mexico in line with modern science behind eyewitness memory and addresses common injustices that come from mistaken eyewitness identification.

“We are pleased that the Supreme Court adopted this new standard for the admission of eyewitness identification evidence going forward, though we certainly believe the identification in this case was so suggestive that it should have been suppressed in Mr. Martinez’s case,” Jaramillo said via email.

Joshua Kastenbergh, University of New Mexico School of Law professor, said the opinion means eyewitness testimony will have to undergo more corroboration before

being allowed into evidence. For example, he said there will also have to be surveillance camera footage or more than one person accurately describing the suspect before eyewitness testimony can be admitted.

Studies over the past three decades show that people are terrible at giving eyewitness testimony on people who are outside their own demographic, Kastenberg said. Police, generally unconsciously, played into that.

Before, federal law put eyewitness credibility in the “lap of the jury,” Kastenberg said. Now, these new evidentiary standards make it the judge’s responsibility to block this type of evidence from even being presented at trial.

“It is not a rule that’s designed to be friendly to defendants. This rule is a rule that’s designed to keep implicit biases and unintentional police suggestibility from corrupting a defendant’s right to a fair trial,” he said.

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