

Eyewitness Identification

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The Supreme Court ruled yesterday that eyewitness identification may be used in a criminal case even when police have employed "unnecessarily suggestive" methods to obtain it.

By a 5-to-3 vote the court held that the admissibility of such evidence depends on many factors besides whether police could have conducted a fairer method of confronting the victim of the crime with a possible suspect.

Although not overruling prior decisions opening police "lineup" and "show-up" procedures to constitutional objection by the defense, the court cut back significantly on the effectiveness of defense challenges to allegedly prejudicial identification techniques.

Applying guidelines based on all the circumstances of the identification, the court held that the victim of a rape in Nashville had reliably identified teen-ager Archie N. Biggers as her assailant despite flaws in the process.

These factors, Justice Lewis F. Powell Jr. wrote for the court, include the victim's opportunity to view her attacker, the accuracy of her initial description to police, the "level of certainty" displayed at the moment of the police-staged confrontation, and the length of time that has elapsed since the crime.

Powell said lower federal courts, which granted Biggers' habeas corpus petition, had "focused unduly" on the fact that the single-suspect "show-up" used by the Nashville po-

lice was less reliable than a lineup with other men of similar size and build.

The identification was made seven months after the crime. Police said they took the witness to see Biggers alone because they lacked suitable prisoners to place in a lineup.

A U.S. District Court found that the technique "tended needlessly to decrease the fairness of the identification process." Powell commented that the police "did not exhaust all possibilities in seek-

ing persons physically comparable" to Biggers, but he found that the evidence was reliable.

Powell was joined by Chief Justice Warren E. Burger and Justices Byron R. White, Harry A. Blackmun and William H. Rehnquist—the now-familiar combination of four Nixon appointees plus White that has produced recent conservative rulings.

The dissenting justices, William J. Brennan Jr., William O. Douglas and Potter Stew-

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art, said the court was departing from its tradition of rarely disturbing identical factual findings of two lower courts.

Justice Thurgood Marshall—whose cousin, attorney Avon Williams of Nashville, represented Biggers—did not participate.

Marshall also disqualified himself when Biggers appealed five years ago from the state courts of Tennessee, producing a 4-to-4 tie vote that

affirmed the verdict and 20-year prison sentence.

After Biggers won his habeas corpus case in the federal courts, Tennessee prosecutors went to the high court arguing that affirmance meant that Biggers could not continue to press his case in the federal courts.

The justices unanimously rejected the state's argument on this point, thus settling for the first time that a tie vote in the Supreme Court does not necessarily terminate a criminal case.