

New Jersey Supreme Court rules hypnotically refreshed testimony not admissible

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The hypnotically refreshed testimony of a witness in a criminal trial is generally inadmissible, the New Jersey Supreme Court has ruled.

A woman who was sexually assaulted in her home provided a written statement describing her assailant to police, but was unable to provide enough information for a composite sketch. Anticipating that hypnosis might help her to remember her assailant's face, she visited a licensed clinical psychologist. While hypnotized, she stated for the first time that her assailant wore a tan suede jacket with a zipper and that he was a medium-skinned black male.

Several days later the victim chose the defendant from a photo array. The trial court admitted her hypnotically refreshed testimony at trial. The jury convicted the defendant on all counts.

He appealed, arguing that hypnotically refreshed testimony is unreliable and inadmissible.

The court agreed.

"Although the scientific community has not reached a consensus on the issue, more recent studies reaffirm and strengthen earlier understandings about how hypnosis affects both memory and attitude. We now conclude on the basis of this data that hypnotically refreshed testimony cannot meet the standard of admissibility.

"[T]here has been a shift in expert opinion suggesting that the problems associated with the use of hypnotically refreshed testimony are less amenable to correction through controls on the hypnotic process. We are unable to determine whether hypnotically refreshed testimony is as reliable as ordinary recall or even to implement a process to ensure that such testimony can meet that criterion."

The court noted expert testimony that "hypnosis does not produce more accurate recall, but rather, instills a false confidence in the hypnotized individual thereby producing an aura of truthfulness that subverts effective cross-examination, a cornerstone of the adversarial system."

State v. Moore (Lawyers USA No. 9933920) New Jersey Supreme Court No.A-38-2003. Aug. 10, 2006.
