

## Arrest, Search & Investigation Identification

*Perry v. New Hampshire*, 565 U.S. \_\_\_ (Jan. 11, 2012) (<http://www.supremecourt.gov/opinions/11pdf/10-8974.pdf>). The Due Process Clause does not require a preliminary judicial inquiry into the reliability of an eyewitness identification when the identification was not procured under unnecessarily suggestive circumstances arranged by law enforcement. New Hampshire police received a call reporting that an African-American male was trying to break into cars parked in the lot of the caller's apartment building. When an officer responding to the call asked eyewitness Nubia Blandon to describe the man, Blandon, who was standing in her apartment building just outside the open door to her apartment, pointed to her kitchen window and said the man she saw breaking into the car was standing in the parking lot, next to a police officer. Petitioner Perry, who was that person, was arrested. About a month later, when the police showed Blandon a photographic array that included a picture of Perry and asked her to point out the man who had broken into the car, she was unable to identify Perry. At trial Perry unsuccessfully moved to suppress Blandon's identification on the ground that admitting it would violate due process. The Court began by noting that an identification infected by improper police influence is not automatically excluded. Instead, the Court explained, the trial judge must screen the evidence for reliability pretrial. If there is a very substantial likelihood of irreparable misidentification, the judge must disallow presentation of the evidence at trial. But, it continued, if the indicia of reliability are strong enough to outweigh the corrupting effect of the police-arranged suggestive circumstances, the identification evidence ordinarily will be admitted, and the jury will ultimately determine its worth. In this case, Perry asked the Court to extend pretrial screening for reliability to cases in which the suggestive circumstances were not arranged by law enforcement officers because of the grave risk that mistaken identification will yield a miscarriage of justice. The Court declined to do so, holding: "When no improper law enforcement activity is involved . . . it suffices to test reliability through the rights and opportunities generally designed for that purpose, notably, the presence of counsel at postindictment lineups, vigorous cross-examination, protective rules of evidence, and jury instructions on both the fallibility of eyewitness identification and the requirement that guilt be proved beyond a reasonable doubt." Justice Thomas filed a concurring opinion. Justice Sotomayor dissented.