

Thomas McCarthy Discusses Supreme Court Decision in *Perry v. New Hampshire*

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Wiley Rein Appellate partner Thomas R. McCarthy was interviewed by the *Criminal Law Reporter* on the U.S. Supreme Court's ruling earlier this month in *Perry v. New Hampshire*, No. 10-8974. The Court held that the Due Process Clause does not require a special judicial inquiry into the reliability of eyewitness identifications procured under unnecessarily suggestive circumstances where such circumstances are not arranged by law enforcement.

As co-director of the Supreme Court Clinic at George Mason University School of Law, Mr. McCarthy filed an *amicus* brief in the Supreme Court on behalf of the National District Attorneys Association and in support of the State of New Hampshire. The Court voted 8-1 to affirm the judgment of the New Hampshire Supreme Court.

"Certainly, some of the more recent literature has suggested that eyewitness identification testimony is particularly unreliable, but it's still a question of reliability," said Mr. McCarthy. "The message from this case is that the court is unlikely to start pulling that question away from the jury, especially in cases in which there is no police misconduct. What the court is saying is that if action is going to be taken to alter the standards to make it harder to get eyewitness identification testimony in, the court is going to let that action be taken by the state legislatures, because they are the ones that traditionally handle evidence rules."

The Court's opinion in *Perry v. New Hampshire* can be found [here](#).

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