S T A T E O F N E W Y O R K

1334

2009-2010 Regular Sessions

I N S E N A T E

January 28, 2009

Introduced by Sen. SKELOS -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law and the family court act, in relation to evidence of identification

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 60.25 of the criminal procedure law, subparagraph (ii) of paragraph (a) of subdivision 1 as amended by chapter 479 of the laws of 1977, is amended to read as follows:

S 60.25 Rules of evidence; identification by means of previous recognition, in absence of present identification.

1. In any criminal proceeding in which the defendant's commission of an offense is in issue, testimony as provided in subdivision two may be given by a witness when:

(a) Such witness testifies that:

(i) He OR SHE observed the person claimed by the people to be the defendant either at the time and place of the commission of the offense or upon some other occasion relevant to the case; and

(ii) On a subsequent occasion he OR SHE observed, under circumstances consistent with such rights as an accused person may derive under the constitution of this state or of the United States, a person OR A PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEOTAPED REPRODUCTION OF A PERSON whom he OR SHE recognized as the same person whom he OR SHE had observed on the first or incriminating occasion; and

(iii) He OR SHE is unable at the proceeding to state, on the basis of present recollection, whether or not the defendant is the person in question; and

(b) It is established that the defendant is in fact the person whom the witness observed and recognized OR WHOSE PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEOTAPED REPRODUCTION THE WITNESS OBSERVED AND RECOGNIZED on the second occasion. Such fact may be established by

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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testimony of another person or persons to whom the witness promptly declared his OR HER recognition on such occasion AND BY SUCH PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEOTAPED REPRODUCTION.

2. Under circumstances prescribed in subdivision one, such witness may testify at the criminal proceeding that the person whom he OR SHE observed and recognized OR WHOSE PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEOTAPED REPRODUCTION HE OR SHE OBSERVED AND RECOGNIZED on the second occasion is the same person whom he OR SHE observed on the first or incriminating occasion. Such testimony, together with the evidence that the defendant is in fact the person whom the witness observed and recognized OR WHOSE PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEOTAPED REPRODUCTION HE OR SHE OBSERVED AND RECOGNIZED on the second occasion, constitutes evidence in chief.

S 2. Section 60.30 of the criminal procedure law, as amended by chapter 479 of the laws of 1977, is amended to read as follows:

S 60.30 Rules of evidence; identification by means of previous recognition, in addition to present identification.

In any criminal proceeding in which the defendant's commission of an offense is in issue, a witness who testifies that (a) he OR SHE observed the person claimed by the people to be the defendant either at the time and place of the commission of the offense or upon some other occasion relevant to the case, and (b) on the basis of present recollection, the defendant is the person in question and (c) on a subsequent occasion he OR SHE observed the defendant, OR A PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEOTAPED REPRODUCTION OF THE DEFENDANT, under circumstances consistent with such rights as an accused person may derive under the constitution of this state or of the United States, and then also recognized him OR HER OR THE PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEOTAPED REPRODUCTION OF HIM OR HER as the same person whom he OR SHE had observed on the first or incriminating occasion, may, in addition to making an identification of the defendant at the criminal proceeding on the basis of present recollection as the person whom he OR SHE observed on the first or incriminating occasion, also describe his OR HER previous recognition of the defendant and testify that the person whom he OR SHE observed OR WHOSE PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEOTAPED REPRODUCTION HE OR SHE OBSERVED on such second occasion is the same person whom he OR SHE had observed on the first or incriminating occasion. Such testimony AND SUCH PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEOTAPED REPRODUCTION constitutes evidence in chief.

S 3. Subdivision 6 of section 710.20 of the criminal procedure law, as amended by chapter 8 of the laws of 1976 and renumbered by chapter 481 of the laws of 1983, is amended to read as follows:

6. Consists of potential testimony regarding an observation of the defendant either at the time or place of the commission of the offense or upon some other occasion relevant to the case, which potential testimony would not be admissible upon the prospective trial of such charge owing to an improperly made previous identification of the defendant OR A PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEOTAPED REPRODUCTION OF THE DEFENDANT by the prospective witness.

S 4. Subdivision 1 of section 710.30 of the criminal procedure law, as separately amended by chapters 8 and 194 of the laws of 1976, is amended to read as follows:

1. Whenever the people intend to offer at a trial (a) evidence of a statement made by a defendant to a public servant, which statement if involuntarily made would render the evidence thereof suppressible upon motion pursuant to subdivision three of section 710.20, or (b) testimony

regarding an observation of the defendant either at the time or place of the commission of the offense or upon some other occasion relevant to the case, to be given by a witness who has previously identified him OR HER OR A PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEOTAPED REPRODUCTION OF HIM OR HER as such, they must serve upon the defendant a notice of such intention, specifying the evidence intended to be offered.

S 5. Sections 343.3 and 343.4 of the family court act, as added by chapter 920 of the laws of 1982, are amended to read as follows:

S 343.3. Rules of evidence; identification by means of previous recognition in absence of present identification. 1. In any juvenile delinquency proceeding in which the respondent's commission of a crime is in issue, testimony as provided in subdivision two may be given by a witness when:

(a) such witness testifies that:

(i) he OR SHE observed the person claimed by the presentment agency to be the respondent either at the time and place of the commission of the crime or upon some other occasion relevant to the case; and

(ii) on a subsequent occasion he OR SHE observed, under circumstances consistent with such rights as an accused person may derive under the constitution of this state or of the United States, a person OR A PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEOTAPED REPRODUCTION OF A PERSON whom he OR SHE recognized as the same person whom he OR SHE had observed on the first incriminating occasion; and

(iii) he OR SHE is unable at the proceeding to state, on the basis of present recollection, whether or not the respondent is the person in question; and

(b) it is established that the respondent is in fact the person whom the witness observed and recognized OR WHOSE PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEOTAPED REPRODUCTION THE WITNESS OBSERVED AND RECOGNIZED on the second occasion. Such fact may be established by testimony of another person or persons to whom the witness promptly declared his OR HER recognition on such occasion AND BY SUCH PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEOTAPED REPRODUCTION.

2. Under circumstances prescribed in subdivision one, such witness may testify at the proceeding that the person whom he OR SHE observed and recognized OR WHOSE PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEOTAPED REPRODUCTION HE OR SHE OBSERVED AND RECOGNIZED on the second occasion is the same person whom he OR SHE observed on the first or incriminating occasion. Such testimony, together with the evidence that the respondent is in fact the person whom the witness observed and recognized OR WHOSE PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEOTAPED REPRODUCTION HE OR SHE OBSERVED AND RECOGNIZED on the second occasion, constitutes evidence in chief.

S 343.4. Rules of evidence; identification by means of previous recognition, in addition to present identification. In any juvenile delinquency proceeding in which the respondent's commission of a crime is in issue, a witness who testifies that: (a) he OR SHE observed the person claimed by the presentment agency to be the respondent either at the time and place of the commission of the crime or upon some other occasion relevant to the case, and (b) on the basis of present recollection, the respondent is the person in question, and (c) on a subsequent occasion he OR SHE observed the respondent, OR A PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEOTAPED REPRODUCTION OF THE RESPONDENT under circumstances consistent with such rights as an accused person may derive under the constitution of this state or of the United States, and

then also recognized him OR HER OR THE PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEOTAPED REPRODUCTION OF HIM OR HER as the same person whom he OR SHE had observed on the first or incriminating occasion, may, in addition to making an identification of the respondent at the delinquency proceeding on the basis of present recollection as the person whom he OR SHE observed on the first or incriminating occasion, also describe his OR HER previous recognition of the respondent and testify that the person whom he OR SHE observed OR WHOSE PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEOTAPED REPRODUCTION HE OR SHE OBSERVED on such second occasion is the same person whom he OR SHE had observed on the first or incriminating occasion. Such testimony AND SUCH PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEOTAPED REPRODUCTION constitutes evidence in chief.

S 6. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.