High court’s ruling could give defendants new shot

By Andrew Maloney
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SPRINGFIELD — Several defendants could get new trials because of a Supreme Court decision that permits judges and juries to hear experts who cast doubt on eyewitness testimony.

The state appellate defender’s office this week pointed to five pending Illinois cases in which judges did not allow experts to testify on the pitfalls of eyewitness identifications. A sixth case concerns whether a lawyer was ineffective for not seeking out that type of testimony.

Defendants looking to challenge third-party accounts of a crime got a boost late last month from the Illinois Supreme Court decision in *People v. Eduardo Lerma*.

A unanimous opinion authored by Justice Robert R. Thomas described “a dramatic shift in the legal landscape” over the last 25 years in which “we not only have seen that eyewitness identifications are not always as reliable as they appear, but we also have learned, from a scientific standpoint, why this is often the case.”

That decision resulted in a new trial for the defendant, pegged as the gunman who killed a Chicago man on his porch in 2008, because two eyewitnesses identified him.

Similarly, multiple witnesses pegged Kerry Masterson as being involved in the 2009 slaying of Michael Norton, who owned Norton’s Sweet Shop in Chicago. She was given a 58-year prison sentence when she was implicated by two co-defendants — whom Norton had threatened to evict from an apartment above the shop — and eyewitnesses identified her as leaving the store immediately after the crime.

At trial, Masterson’s motion to admit the testimony of Elizabeth Loftus, a University of Washington psychology professor and memory expert who may have cast doubt on the witness identifications, was denied, and an appellate court affirmed her verdict in September 2014.

Karen L. Daniel, director of the Center on Wrongful Convictions at Northwestern Pritzker School of Law, represents Masterson.

She said the *Lerma* decision was a much-needed update to the law that will help prevent wrongful convictions.
“I think that Illinois was well-behind in terms of having a bias against this kind of testimony,” Daniel said. “Now I think the court made a very strong statement that this is an appropriate type of testimony.”

Another case possibly thrown into question involves Patrick Taylor, who was identified as one of the perpetrators of a 2006 home-invasion and murder of Marquis Lovings in Rolling Meadows.

There was no physical evidence to tie him to the crime. But at trial, a judge refused to admit expert testimony casting doubt on the reliability of eyewitness testimony because it was not “outside the common knowledge of the lay person.”

Taylor was sentenced to life in prison, and an appellate court upheld the verdict finding the judge’s decision not to allow the testimony was not an abuse of discretion.

Taylor’s appeal to the Illinois Supreme Court cites the 1990 case of People v. Enis, in which the court deemed such expert testimony admissible — though with many reservations — and which the high court referenced in the Lerma decision on Jan. 22.

At this point, the high court probably won’t take up the case, said Carolyn R. Klarquist, an assistant appellate defender who represents Taylor. But the justices could order the appellate court to take another look at it.

“Our hope is that they’ll enter a supervisory order remanding the case to the appellate court in light of Lerma,” Klarquist said. After that, the appellate court could order a new trial.

Cook County Assistant State’s Attorney Alan J. Spellberg, criminal appeals supervisor for the prosecutors’ office, declined to comment on the potential for new trials stemming from Lerma.

The Masterson and Taylor appeals are Nos. 118634 and 118952, respectively.

Another case at the Supreme Court that could get another go-around is People v. Santos Calaff, No. 119296. Other cases that could be affected by the Lerma issue are still pending at the appellate court level.