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HYPNOSIS: A CONTROVERSIAL OPTION TECHNIQUE IS USED IN CRIMINAL CASES

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For centuries, people have used hypnosis to try to solve mysteries or unlock hidden memories, but it can be a controversial tool in criminal investigations.

The use of hypnosis to help a witness recall additional details raised questions in the shootings at Kelly's Barber Shop. While under hypnosis, Kendrick Davis, a 49-year-old barber who survived the shootings, helped an artist create a composite sketch of the gunman. He testified Wednesday and Thursday in the death-penalty trial of Felix Cheeseboro, the man charged in those shootings.

Cheeseboro's attorneys had asked a judge to prevent Davis from telling jurors that Cheeseboro was the gunman. They contended the use of hypnosis tainted his identification of Cheeseboro.

Circuit Judge Thomas Cooper ruled Davis could tell jurors that Cheeseboro shot him and killed two other men execution-style. He found there was no evidence that hypnosis influenced Davis' identification of Cheeseboro.

On Wednesday and Thursday, Davis testified Cheeseboro was the killer. Davis identified Cheeseboro in a photo lineup about five months after being placed under hypnosis.

Hypnosis was rarely used in criminal cases until the 1980s, when investigators started relying on it routinely to help witnesses recall details about a crime.

Criminal defendants usually contest the reliability of hypnotic testimony. They often ask judges to exclude it because it can violate their right to confront witnesses.

"The courts have struggled with this issue over the years," said **Jack Swerling**, a Columbia criminal defense lawyer.

In 1994, the S.C. Supreme Court ruled hypnotic testimony can be admitted as evidence if certain criteria are met. But it cautioned "dangers exist" in using hypnosis in criminal cases.

Statements made by a witness before and after being placed under hypnosis must be generally consistent, the court found. There should be circumstantial evidence to corroborate hypnotic testimony.

Witnesses placed under hypnosis must thoughtfully answer questions without giving automatic responses when they testify, the court ruled.

"As long as the criteria are met, I think hypnosis is something that is relevant for a jury to consider," **Swerling** said. "Sometimes, it helps defendants. Other times, it helps the state."

Swerling said several former clients were placed under hypnosis. They recalled details that aided their defense. **Swerling** also has had clients placed under hypnosis by Robert Sauer, who hypnotized Davis.

"A jury needs to understand that this is an investigative tool that should not be totally relied on," **Swerling** said.

The state Supreme Court's 1994 ruling on hypnotic testimony involved a Richland County case.

In July 1991, Larrae Bernardo, 10, and her cousin, Lauren Bernardo, 11, were killed while walking along Hard Scrabble Road in Northeast Richland.

While under hypnosis, Remigio Bernardo, the girls' grandfather, provided a description of the truck that hit and killed the girls. He testified in the 1992 trial of Jerry Evans, who was convicted of involuntary manslaughter.

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