4.35.1 Identification; Composite Sketch

(1) A composite sketch of a person alleged to have committed an offense is hearsay and is thus inadmissible to prove guilt.

(2) A composite sketch may be admitted for a purpose other than to prove the guilt of a defendant; for example, a composite sketch may be admitted:

(a) as a prior consistent statement where the testimony of an identifying witness is assailed as a recent fabrication;

(b) to show inconsistencies between an in-court identification and a witness's prior description as recorded in the sketch; or

(c) to show at a suppression hearing that there was, or was not, a basis for a finding of reasonable suspicion or probable cause.

Note

This rule is derived from three Court of Appeals cases: *People v Maldonado* (97 NY2d 522 [2002]); *People v Griffin* (29 NY2d 91 [1971]); and *People v Coffey* (11 NY2d 142 [1962]).

Subdivision (1) sets forth the general rule excluding evidence of a composite sketch as evidence of guilt. As summarized by *Maldonado* (at 528-529):

> "This Court has long considered composite sketches to be hearsay (*see People v Coffey*, 11 NY2d 142, 145 [1962] . . .), and thus generally inadmissible against defendants to prove guilt (*see e.g. Coffey* at 145 . . .). . . . A composite sketch 'may not be admitted simply to counteract evidence . . . which casts doubt on the reliability of [a] complainant's identification' . . . . When offered for that purpose, a composite sketch impermissibly bolsters the identifying witness's testimony and is therefore inadmissible."

Subdivision (2) sets forth examples of purposes, other than proof of guilt, for which a composite sketch may be admissible.

Subdivision (2) (a) is derived from *Maldonado* and *Coffey*. In the words of *Maldonado*:

> "[A] composite sketch may be admissible as a prior consistent statement where the testimony of an identifying witness is assailed as a recent fabrication (*see Coffey*, 11 NY2d at 145-146). In those circumstances, a sketch may be employed to confirm the identification with 'proof of declarations of the same tenor before the motive to falsify existed.' " (*Maldonado* at 528-529; *see People v Peterson*, 25 AD2d 437 [2d Dept 1966]; Guide to NY Evid rule 6.20, Impeachment by Recent Fabrication; rule 8.31, Prior Consistent Statement [rev June 2022].)

Subdivision (2) (b), pursuant to *Griffin*, allows for the introduction of "a composite sketch on cross-examination to show inconsistencies between a courtroom identification and the prior description as recorded in the sketch." (*Griffin* at 93; *accord Maldonado* at 529 n 7; *see* Guide to NY Evid rule 6.15, Impeachment by Prior Inconsistent Statement.)

Subdivision (2) (c) is derived from *Griffin*'s declaration that aside from proof of guilt, there are "other uses of a composite sketch" that "are not proscribed . . . . For example, such a sketch might prove invaluable in a suppression hearing where the issue is probable cause for arrest or reasonable suspicion for a 'stop.' In such instances the reasonable basis, including the sketch, for the police action is critical." (*People v Griffin* at 93; *accord Maldonado* at 529 n 7; *see People v Rodriguez*, 49 AD3d 433, 434 [1st Dept 2008] ["There is no indication that the sketch was created on the basis of anything other than information supplied by the victim, or any reason to believe the process of creating a sketch impaired the fairness of the subsequent lineup"].)