

NEW YORK COURT OF APPEALS

People v. Hernandez

28 N.Y.3d 1056 (2016) · Decided December 15, 2016

SUMMARY

The New York Court of Appeals affirmed the defendant’s convictions for first-degree sexual abuse and endangering the welfare of a child. The court held that the child’s initial statements to her parents were properly admitted as excited utterances and that any error in admitting later hospital statements was harmless because the evidence of guilt was overwhelming.

CASE DETAILS

COURT	New York Court of Appeals
WRITING FOR THE COURT	Chief Judge DiFiore; Judge Pigott; Judge Rivera; Judge Abdus-Salaam; Judge Stein; Judge Fahey; Judge Garcia
JURISDICTION	New York
DECIDED	December 15, 2016
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from an Appellate Division order affirming his jury convictions for first-degree sexual abuse and endangering the welfare of a child.
STANDARD OF REVIEW	The admission of hearsay as an excited utterance is reviewed for abuse of the trial court's sound discretion. Any nonconstitutional trial error is harmless if proof of guilt was overwhelming and there was no significant probability that the jury would have acquitted absent the error.
PRECEDENTIAL VALUE	Published New York Court of Appeals memorandum; binding precedent on the stated evidentiary and harmless-error principles.
PARTIES	Hernandez v. People of the State of New York

TOPICS

- hearsay
- evidence
- criminal procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the child's initial statements and gestures to her parents, made within approximately 30 minutes of the incident while she remained highly emotional, were admissible under the excited utterance exception to the hearsay rule.
2. Whether admission of the child's later statements and gestures at the hospital constituted harmless nonconstitutional error.

HOLDINGS

1. The trial court properly admitted the child's initial statements and gestures as excited utterances because they were made shortly after a startling event while she remained under the stress of excitement and lacked the reflective capacity necessary for fabrication.
2. Even assuming that the child's stress of excitement had abated when she made the later statements at the hospital, any error in admitting them was harmless nonconstitutional trial error.

KEY QUOTATIONS

"Above all, the decisive factor is whether the surrounding circumstances reasonably justify the conclusion that the remarks were not made under the impetus of studied reflection" (28 N.Y.3d at 1056)

"whether (1) proof of guilt was overwhelming; and (2) there was no significant probability that the jury would have acquitted had the proscribed evidence not been introduced" (28 N.Y.3d at 1058)

FACTUAL BACKGROUND

Defendant was convicted after a jury found that he sexually touched a three-year-old girl on a bus he drove. Shortly after the incident, the child was highly emotional, crying inconsolably, and made statements and gestures to her parents; she repeated them approximately three hours later at a hospital. The trial evidence also included defendant's DNA in the child's underwear, testimony that defendant altered his bus route so the child was alone with him for about 30 minutes, observations concerning the child's clothing and distress, and medical evidence of genital trauma.

PROCEDURAL HISTORY

After a jury trial, defendant was convicted of one count each of sexual abuse in the first degree and endangering the welfare of a child. The Appellate Division affirmed, and the New York Court of Appeals affirmed the Appellate Division's order in a memorandum.

DISPOSITION

affirmed

CASES CITED

- People v. Johnson, 1 N.Y.3d 302, 306 (2003)
- People v. Edwards, 47 N.Y.2d 493, 497 (1979)
- People v. Brown, 70 N.Y.2d 513, 518 (1987)
- People v. Crimmins, 36 N.Y.2d 230, 241-242 (1975)
- People v. Kello, 96 N.Y.2d 740, 743-744 (2001)

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