

NEW YORK COURT OF APPEALS

People v. Kelley

19 N.Y.3d 887 (2012) · Decided June 12, 2012

SUMMARY

The New York Court of Appeals held that introducing DNA evidence from a towel late in the prosecution's case violated the defendant's right to a fair trial because the defense had already relied on the absence of corroborating DNA evidence. The Court ordered a new trial on the convictions for first-degree course of sexual conduct against a child and endangering the welfare of a child, while finding the error harmless as to the criminal contempt convictions. The order of the Appellate Division was modified and, as modified, affirmed.

CASE DETAILS

COURT	New York Court of Appeals
JURISDICTION	New York
DECIDED	June 12, 2012
DISPOSITION	other
PROCEDURAL POSTURE	Defendant appealed from an Appellate Division order affirming convictions for course of sexual conduct against a child in the first degree, endangering the welfare of a child, and criminal contempt. The New York Court of Appeals granted leave to appeal.
PRECEDENTIAL VALUE	Published precedential opinion of the New York Court of Appeals
PARTIES	Defendant v. People of the State of New York

TOPICS

criminal procedure evidence due process

PRACTICE AREAS

criminal procedure evidence constitutional law

QUESTIONS PRESENTED

- Whether admitting DNA evidence from the towel, discovered and disclosed after defendant had testified and after the defense had relied on the absence of corroborating DNA evidence, deprived defendant of a fair trial.

2. Whether the error required relief on the criminal contempt convictions notwithstanding the trial court's error.

HOLDINGS

1. When the prosecution discovers and seeks to introduce materially significant scientific evidence so late in trial that the defense has already presented its theory and the defendant has testified, admission of the evidence may violate the defendant's right to a fair trial. On these facts, the towel DNA evidence should have been precluded or the court should have declared a mistrial.
2. The error was harmless as to the criminal contempt charges because defendant admitted his guilt regarding those crimes.

KEY QUOTATIONS

“On these facts, the introduction of the scientific evidence pertaining to the genetic testing of the semen on the towel violated defendant’s right to a fair trial.” (889-890)

“The trial court therefore should have precluded the submission of this evidence or declared a mistrial” (890)

“But the error was harmless as to the criminal contempt charges because defendant admitted his guilt regarding those crimes.” (890)

FACTUAL BACKGROUND

Police received underwear, a bed sheet, and a towel belonging to the victim, defendant's daughter, during the investigation of alleged sexual offenses. Testing of the underwear revealed male DNA that did not belong to defendant, but the towel was not tested until late in the trial, after defendant had testified and the defense had emphasized the absence of DNA evidence implicating him. The towel testing revealed defendant's semen and female DNA, but not the daughter's DNA. The trial court admitted the results, and the jury convicted defendant of course of sexual conduct against a child in the first degree, endangering the welfare of a child, and criminal contempt.

PROCEDURAL HISTORY

Defendant was convicted after a jury trial. During the trial, the prosecution disclosed previously untested towel DNA evidence after defendant had testified and after the defense had relied on the absence of DNA evidence as a central defense theory. The trial court admitted the evidence and permitted defendant to retake the stand if he wished. The Appellate Division affirmed, and a Judge of the Court of Appeals granted leave to appeal. The Court of Appeals modified the order, vacated the convictions for course of sexual conduct against a child in the first degree and endangering the welfare of a child, and ordered a new trial on those counts, while affirming the criminal contempt convictions.

DISPOSITION

other

REMAND INSTRUCTIONS

Vacate the convictions for course of sexual conduct against a child in the first degree and endangering the welfare of a child, and order a new trial on those counts. Leave the criminal contempt convictions affirmed.

CASES CITED

- People v. Goins, 73 N.Y.2d 989, 991 (1989)
- People v. Kelley, 82 A.D.3d 463 (1st Dep't 2011)
- People v. Kelley, 17 N.Y.3d 807 (2011)

OPINION

PER CURIAM.

OPINION OF THE COURT Memorandum. The order of the Appellate Division should be modified, by vacating the convictions for course of sexual conduct against a child in the first degree and endangering the welfare of a child, and a new trial ordered as to those counts, and, as so modified, affirmed. Defendant was indicted for one count of course of sexual conduct against a child in the first degree in connection with various acts that he allegedly committed against his daughter prior to her thirteenth birthday; multiple counts of rape and incest for actions that purportedly occurred after his daughter became 13 years of age; two counts of endangering the welfare of a child; and 20 counts of criminal contempt for violations of an order of protection issued to the child and her mother.

During the investigation, the victim's mother turned over to police the underwear that her daughter had worn on the day of the *889alleged final incident, along with a bed sheet and a towel that her daughter claimed defendant ejaculated on (which the child described as defendant's usual behavior after he performed sexual acts with her). Analysis of the underwear revealed the presence of male DNA that did not belong to defendant.

A copy of the report detailing the testing of the underwear was provided to defense counsel before trial. For some unexplained reason, the towel was not tested for genetic material. Defendant's trial strategy focused on the lack of DNA evidence implicating him. Near the end of the People's direct case, defense counsel inquired of the prosecution why the towel had not been tested.

This led to the People's discovery that the towel had not been examined for genetic material, so they arranged for testing. When the People advised the court of this development, defense counsel objected to the introduction of any evidence derived from the towel, arguing that defendant's right to a fair trial would be undermined since the centerpiece of his defense was the absence of any scientific evidence corroborating the child's accusations.

After defendant's direct testimony and cross-examination, the People disclosed that the towel had been analyzed and was found to contain defendant's semen and the DNA of a female, but not that

of defendant's daughter. Defense counsel reiterated that the evidence should be precluded or a mistrial ordered because the proffered scientific proof had not been available during the formulation of defendant's defense and it was too late for the defense to shift its emphasis.

The trial court ruled that the People could introduce the DNA results and defendant could retake the stand, if he wished. The jury ultimately convicted defendant of first-degree course of sexual conduct against a child, endangering the welfare of a child and criminal contempt.

The Appellate Division affirmed (82 AD3d 463 [1st Dept 2011]) and a Judge of this Court granted leave to appeal (17 NY3d 807 [2011]). On these facts, the introduction of the scientific evidence pertaining to the genetic testing of the semen on the towel violated defendant's right to a fair trial. By the time the People discovered the testing oversight, defendant's contention that there was no DNA evidence to corroborate the charges had been placed before the jury, defendant had already testified and the trial was too far along for defense counsel to present a new defense theory.

The evidence also corroborated a particular aspect of the daughter's testimony—that defendant commonly *890ejaculated on a towel after intercourse—and her awareness of that fact indicated that she either had been exposed to or subjected to her father's sexual proclivities.

The trial court therefore should have precluded the submission of this evidence or declared a mistrial (see generally *People v Goins*, 73 NY2d 989, 991 [1989]). But the error was harmless as to the criminal contempt charges because defendant admitted his guilt regarding those crimes. Consequently, defendant is entitled to a new trial on the charges of first-degree course of sexual conduct against a child and endangering the welfare of a child.