

NEW YORK COURT OF APPEALS

The People v. Kaity Marshall

26 N.Y.3d 495 (2015) · No. No. 195 · Decided December 17, 2015

SUMMARY

The New York Court of Appeals held that a prosecutor's pretrial display of a defendant's photograph to an eyewitness is subject to a Wade hearing when the defendant challenges its suggestiveness, even if the display was intended as trial preparation. The Court rejected the trial-preparation exception associated with People v. Herner, but affirmed the conviction because the record supported an independent source for the eyewitness's in-court identification and the error was harmless.

CASE DETAILS

COURT	New York Court of Appeals
WRITING FOR THE COURT	Rivera, J.; Pigott, J.; Abdus-Salaam, J.; Fahey, J.; Lippman, C.J.; Stein, J.
JURISDICTION	New York
DECIDED	December 17, 2015
DOCKET	No. 195
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed, by leave of the New York Court of Appeals, from an Appellate Term order affirming her criminal convictions and the denial of her request for a Wade hearing concerning a prosecutor's pretrial display of her arrest photograph to the complainant.
STANDARD OF REVIEW	The Court of Appeals treated the independent-source determination as an issue of fact beyond its review if supported by the record, absent an error of law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Kaity Marshall v. The People of the State of New York

TOPICS

- criminal procedure
- suppression of evidence
- fourteenth amendment
- due process
- evidence

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether a prosecutor's pretrial display of a single photograph of the defendant to an identifying witness may be treated as trial preparation and excluded from Wade-hearing scrutiny under *People v. Herner*.
2. Whether a defendant who alleges that an out-of-court viewing of the defendant's likeness was unduly suggestive is entitled to a formal Wade hearing regardless of the prosecutor's stated purpose.
3. Whether the trial court's failure to conduct a Wade hearing required reversal when the record supported an independent source for the complainant's in-court identification.

HOLDINGS

1. The trial-preparation exception derived from *People v. Herner* and the preliminary *Herner* hearing procedure are inconsistent with New York's approach to suggestive pretrial identifications and should not be used to shield a prosecutor's or police officer's out-of-court display of the defendant's likeness from Wade scrutiny.
2. Upon a defendant's motion alleging undue suggestiveness, the court must conduct a formal pretrial Wade hearing to determine whether the police or prosecutor conducted an out-of-court identification procedure that exposed the witness to the defendant's identity in an unduly suggestive manner.
3. Although the trial court improperly denied defendant a Wade hearing, the error was harmless because the record supported the trial court's alternative finding that the complainant's in-court identification had an independent source in her spontaneous hospital identification of defendant.

KEY QUOTATIONS

"We can find no basis to maintain a distinction between viewings of a defendant's image in preparation for trial and any other out-of-court identifications. Both expose a witness to defendant's likeness, with the potential risk for undue suggestiveness." (26 N.Y.3d at 505-506)

"Instead, upon defendant's motion, a court must hold a formal pre-trial hearing to determine whether the police or prosecutor conducted an out-of-court identification procedure that exposed the witness to defendant's identity in an unduly suggestive manner." (26 N.Y.3d at 506)

FACTUAL BACKGROUND

A passenger on a New York City bus was assaulted by an unknown woman who punched her and threatened her with a knife. Two months later, the complainant happened upon defendant at a hospital pharmacy, recognized her as the assailant, and immediately notified police. Eighteen months after the assault, the prosecutor showed the complainant a single photograph of defendant taken on the day of her arrest, purportedly as part of trial preparation. The complainant later made an in-court identification, and the trial court relied on the hospital identification as an independent source.

PROCEDURAL HISTORY

The trial court conducted a so-called Herner hearing and determined that the prosecutor's display of defendant's arrest photograph was trial preparation rather than an identification procedure requiring a Wade hearing. The court also concluded that the display did not taint the complainant's in-court identification because the complainant had independently identified defendant at a hospital. After defendant was convicted of several offenses, the Appellate Term affirmed. The Court of Appeals held that defendant was entitled to a Wade hearing but affirmed because the error was harmless in light of record support for an independent source.

DISPOSITION

affirmed

CASES CITED

- People v. Herner, 85 N.Y.2d 877 (1995)
- United States v. Wade, 388 U.S. 218, 228-229, 241 (1967)
- People v. Santiago, 17 N.Y.3d 661, 669-670 (2011)
- People v. Riley, 70 N.Y.2d 523, 531 (1987)
- People v. Caserta, 19 N.Y.2d 18, 21 (1966)
- Moore v. Illinois, 434 U.S. 220, 224-225 (1977)
- Simmons v. United States, 390 U.S. 377, 383-384 (1968)
- People v. Chipp, 75 N.Y.2d 327, 335 (1990)
- People v. Gissendanner, 48 N.Y.2d 543, 552 (1979)
- People v. Rodriguez, 79 N.Y.2d 445, 449, 453 (1992)
- People v. Boyer, 6 N.Y.3d 427, 431 (2006)
- People v. Newball, 76 N.Y.2d 587, 590-591 (1990)
- People v. Ballott, 20 N.Y.2d 600, 606-607 (1967)
- Gilbert v. California, 388 U.S. 263, 272 (1967)
- People v. Logan, 25 N.Y.2d 184, 191 (1969)
- People v. Rahming, 26 N.Y.2d 411, 416-417 (1970)
- Matter of James H., 34 N.Y.2d 814, 816 (1974)
- People v. Wilson, 5 N.Y.3d 778, 780 (2005)
- People v. Burts, 78 N.Y.2d 20, 24-25 (1991)
- People v. Young, 7 N.Y.3d 40, 44 (2006)
- People v. Malloy, 55 N.Y.2d 296, 300 (1982)
- People v. Dickerson, 50 N.Y.2d 937, 938 (1980)
- People v. Trammel, 84 N.Y.2d 584 (1994)
- Brady v. Maryland, 373 U.S. 83, 87 (1963)
- People v. Blake, 35 N.Y.2d 331 (1974)
- People v. Adams, 53 N.Y.2d 241, 248 (1981)

