

NEW YORK COURT OF APPEALS

The People v. Jamell R. McCullough

2016 NY Slip Op 03526 (N.Y. Ct. App. 2016) · No. No. 105 · Decided June 28, 2016

SUMMARY

The New York Court of Appeals reversed the Appellate Division's order and remitted the case for consideration of issues not previously determined. The majority held that the trial court did not abuse its discretion by excluding expert testimony concerning eyewitness-identification reliability, while Judge Rivera dissented, concluding that the corroborating accomplice testimony was sufficiently unreliable to require admission of the expert testimony.

CASE DETAILS

COURT	New York Court of Appeals
WRITING FOR THE COURT	Chief Judge DiFiore; Judge Pigott; Judge Stein; Judge Garcia; Judge Rivera; Judge Abdus-Salaam; Judge Fahey
JURISDICTION	New York
DECIDED	June 28, 2016
DOCKET	No. 105
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The People appealed by leave from a divided Appellate Division order reversing defendant's convictions and ordering a new trial based on the exclusion of expert eyewitness-identification testimony.
STANDARD OF REVIEW	Whether to admit or exclude expert testimony concerning factors affecting eyewitness-identification reliability is reviewed for abuse of discretion. The reviewing court examines whether the trial court applied the standard balancing test weighing probative value against prejudice or other harmful effects.
PRECEDENTIAL VALUE	Published New York Court of Appeals memorandum decision; precedential to the extent of its holdings.
PARTIES	The People v. Jamell R. McCullough

TOPICS

expert testimony

evidence

standard of review

appellate procedure

criminal procedure

PRACTICE AREAS

criminal procedure

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether Supreme Court abused its discretion as a matter of law by excluding expert testimony concerning the reliability of J.J.'s eyewitness identification.
2. Whether the existence of corroborating testimony from accomplice Willie Harvey required or permitted exclusion of the proposed identification expert's testimony.
3. Whether the Appellate Division order should be reversed and the case remitted for consideration of issues not determined on appeal.

HOLDINGS

1. Supreme Court did not abuse its discretion as a matter of law by precluding the proposed expert testimony after balancing its probative value against prejudicial or otherwise harmful effects.
2. *People v. LeGrand* should not be understood to require a strict two-part test that first evaluates the strength of corroborating evidence; rather, it enumerates factors for trial courts to consider in deciding whether expert testimony would aid a lay jury in reaching a verdict.

KEY QUOTATIONS

“The decision to admit or exclude expert testimony concerning factors that affect the reliability of eyewitness identifications rests within the sound discretion of the trial court” (27 N.Y.3d 944)

“To the extent LeGrand has been understood to require courts to apply a strict two-part test that initially evaluates the strength of the corroborating evidence, it should instead be read as enumerating factors for trial courts to consider” (27 N.Y.3d 944)

FACTUAL BACKGROUND

A barbershop robbery in Rochester resulted in the fatal shooting of Vincent Dotson. The surviving eyewitness, J.J., identified McCullough as one of the perpetrators several months after the crime. The prosecution also presented testimony from Willie Harvey, an accomplice and getaway driver who received a plea agreement, but Harvey initially failed to identify McCullough from a photo array and had credibility issues. Defense counsel sought expert testimony concerning factors affecting eyewitness reliability, including stress, violence, incident duration, and the presence of a weapon.

PROCEDURAL HISTORY

Defendant was indicted for murder in the second degree, robbery in the first degree, and attempted robbery in the first degree, tried, and convicted on all counts. Supreme Court denied defendant's motion to present identification-expert testimony. The Appellate Division, Fourth Department, reversed and ordered a new trial, holding that Supreme Court abused its discretion. The Court of Appeals reversed the Appellate Division and remitted the matter for consideration of facts and issues raised but not determined on that appeal.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remitted to the Appellate Division, Fourth Department, for consideration of the facts and issues raised but not determined on appeal to that court.

CASES CITED

- People v. Lee, 96 N.Y.2d 157 (2001)
- People v. LeGrand, 8 N.Y.3d 449 (2007)
- People v. Taylor, People v. Taylor, 75 N.Y.2d 277 (1990)
- People v. Powell, 2016 NY Slip Op 02555
- People v. Santiago, 17 N.Y.3d 661 (2011)
- People v. Oddone, 22 N.Y.3d 369 (2013)
- People v. Young, 7 N.Y.3d 40 (2006)
- People v. Allen, 13 N.Y.2d 261 (1963)
- Frye v. United States, 293 F. 1013 (D.C. Cir. 1923)
- People v. Crimmins, 36 N.Y.2d 230, 242 (1975)