

SUPREME COURT OF COLORADO

Bernal v. People

44 P.3d 184 (Colo. 2002) · No. No. 00SC12 · Decided March 18, 2002

SUMMARY

The Supreme Court of Colorado reviewed Jesse Bernal's convictions for second degree kidnapping, aggravated robbery, conspiracy to commit aggravated robbery, and second degree assault. The court held that the photo array used for an out-of-court identification was impermissibly suggestive and that the trial court had failed to make adequate reliability findings. It also held that a co-defendant's hearsay statement was inferentially inculpatory and did not satisfy the Confrontation Clause's trustworthiness requirement, remanding for further proceedings on both issues.

CASE DETAILS

COURT	Supreme Court of Colorado
WRITING FOR THE COURT	Justice Martinez; Justice Coats; Justice Kourlis; Justice Rice
JURISDICTION	Colorado
DECIDED	March 18, 2002
DOCKET	No. 00SC12
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Bernal sought review of the Colorado Court of Appeals' affirmance of his convictions for second degree kidnapping, aggravated robbery, conspiracy to commit aggravated robbery, and second degree assault. The Supreme Court of Colorado granted certiorari on the admissibility of eyewitness identification evidence and a codefendant's hearsay statement.
STANDARD OF REVIEW	The constitutionality of pretrial identification procedures is a mixed question of law and fact: historical factual findings receive deference, while the appellate court may independently apply the legal standard. Review of an alleged Confrontation Clause violation is de novo. Constitutional harmless error requires confidence beyond a reasonable doubt that the error did not contribute to the verdict.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Jesse Bernal v. The People of the State of Colorado

TOPICS

suppression of evidence hearsay sixth amendment due process appellate procedure

PRACTICE AREAS

criminal procedure evidence constitutional law appellate procedure

QUESTIONS PRESENTED

1. Whether admission of testimony concerning Bernal's identification from an impermissibly suggestive photographic array violated due process.
2. Whether Rodarte's statement, admitted under CRE 804(b)(3), was inferentially inculpatory as to Bernal and lacked the trustworthiness required by the Confrontation Clause.
3. Whether admission of Rodarte's statement was constitutional harmless error.

HOLDINGS

1. The photographic array was impermissibly suggestive because Bernal's photograph stood out based on ethnicity and background, and the small six-photo array did not dilute those suggestive features. The trial court did not make adequate factual findings to determine whether the identification was nevertheless reliable under the totality of the circumstances, so the matter had to be remanded for a reliability determination.
2. Rodarte's statement that he stole the getaway car but denied participating in the robbery was inferentially inculpatory as to Bernal. Because the statement was offered against Bernal, CRE 804(b)(3) required corroborating circumstances demonstrating trustworthiness, which incorporated the Confrontation Clause inquiry. The statement was not sufficiently trustworthy and was improperly admitted.
3. Although the admission of Rodarte's statement violated the Confrontation Clause, the error was constitutional harmless error because, assuming the eyewitness identifications were admissible, the remaining evidence and the limiting instruction established beyond a reasonable doubt that the verdict was surely unattributable to the statement.

KEY QUOTATIONS

"For these reasons, we conclude that the photo lineup is impermissibly suggestive." (194)

"Given that the trial court failed to hear testimony and failed to make adequate factual findings, we cannot complete the review necessary to determine whether the out-of-court identification is, despite its suggestiveness, reliable." (194-195)

"The motivation to mix falsehood with truth thus permeated Rodarte's statement and as a result we cannot conclude that his confession regarding the car theft, while denying participation in the robbery, contained the constitutionally required guarantees of trustworthiness." (199-200)

"The evidence presented, not considering Rodarte's statement, leads us to conclude beyond a reasonable doubt that the guilty verdict in this case was surely unattributable to the error." (201)

FACTUAL BACKGROUND

Two men robbed a Brighton, Colorado credit union while wearing baseball caps and sunglasses. The victims had limited opportunities to observe the first robber, who threatened and struck them, and initially described him generally as Hispanic with a medium or rough complexion. Six weeks later, both victims selected Bernal from a six-person photographic array in which his photograph appeared to be the only clearly Hispanic image and the only one with a clear white background. Bernal's codefendant, Rodarte, later told police while in custody that he had stolen the getaway car but denied involvement in the robbery; the prosecution introduced that statement at Bernal's trial.

PROCEDURAL HISTORY

The trial court admitted evidence concerning an out-of-court photographic identification and admitted codefendant Rodarte's statement under CRE 804(b)(3). Bernal was convicted and sentenced to forty-six years. The court of appeals affirmed the convictions, concluding that the photo array was not unduly suggestive and that admission of Rodarte's statement was constitutional harmless error, while vacating the sentence and remanding for resentencing. The Colorado Supreme Court reversed in part, affirmed in part, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must make factual findings and determine the reliability and admissibility of the out-of-court identification under the Biggers factors, considering existing and any pertinent new testimony. If the identification is inadmissible, the trial court must vacate the convictions and order a new trial, excluding Rodarte's statement from that trial. If the identification is admissible, the original admission of Rodarte's statement remains constitutional harmless error and the judgment of conviction stands.

CASES CITED

- *Simmons v. United States*, 390 U.S. 377 (1968)
- *Neil v. Biggers*, 409 U.S. 188 (1972)
- *Manson v. Brathwaite*, 432 U.S. 98 (1977)
- *Sumner v. Mata*, 455 U.S. 591 (1982)
- *People v. Newton*, 966 P.2d 563 (Colo. 1998)
- *Lilly v. Virginia*, 527 U.S. 116 (1999)
- *Idaho v. Wright*, 497 U.S. 805 (1990)
- *Blecha v. People*, 962 P.2d 931 (Colo. 1998)
- *Williamson v. United States*, 512 U.S. 594 (1994)
- *United States v. Wade*, 388 U.S. 218 (1967)
- *United States v. Sanchez*, 24 F.3d 1259 (10th Cir. 1994)

- Stevens v. People, 29 P.3d 305 (Colo. 2001)
- Ohio v. Roberts, 448 U.S. 56 (1980)

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