

SUPREME COURT OF ILLINOIS

The People of the State of Illinois v. Richard D. Kitch

People v. Kitch, Docket No. 108769 (Ill. Jan. 21, 2011) · No. 108769 · Decided January 21, 2011

SUMMARY

The Illinois Supreme Court affirmed the appellate court’s judgment in a criminal sexual assault and abuse case involving the admission of child victims’ hearsay statements under section 115-10 of the Illinois Code of Criminal Procedure. The court held that the defendant forfeited his confrontation challenge to the victims’ direct testimony and that section 115-10 was not facially unconstitutional under Crawford v. Washington. The court also addressed the statutory \$50 assessment for the State’s Attorney’s prosecution of the appeal.

CASE DETAILS

COURT	Supreme Court of Illinois
WRITING FOR THE COURT	Justice Freeman; Chief Justice Kilbride; Justice Thomas; Justice Garman; Justice Karmeier; Justice Burke; Justice Theis
JURISDICTION	Illinois
DECIDED	January 21, 2011
DOCKET	108769
DISPOSITION	affirmed
PROCEDURAL POSTURE	Following a jury trial and convictions for nine counts of predatory criminal sexual assault of a child and one count of aggravated criminal sexual abuse, defendant appealed. The Illinois Appellate Court modified the sentences from consecutive to concurrent terms and affirmed in all other respects. The Illinois Supreme Court allowed defendant's petition for leave to appeal and affirmed.
STANDARD OF REVIEW	Constitutional challenges and statutory-construction issues are reviewed de novo. Plain-error review first requires a determination whether an error occurred, and the defendant bears the burden of establishing plain error.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Richard D. Kitch v. The People of the State of Illinois

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QUESTIONS PRESENTED

1. Whether the children's direct testimony was insufficient to establish the elements of the charged offenses or to permit effective cross-examination, thereby making admission of their hearsay statements unconstitutional under the confrontation clause.
2. Whether defendant's unpreserved confrontation-clause challenge was reviewable under the plain-error doctrine.
3. Whether section 115-10 of the Illinois Code of Criminal Procedure was facially unconstitutional after *Crawford v. Washington* because it incorporates a judicial reliability determination and does not expressly include *Crawford*'s limitations on testimonial hearsay.
4. Whether the appellate court properly assessed a \$50 appeal fee under section 4-2002 of the Counties Code when the State's Attorneys Appellate Prosecutor prosecuted the appeal.

HOLDINGS

1. The children's direct testimony supplied sufficient detail to establish the elements of the relevant predatory criminal sexual assault and aggravated criminal sexual abuse counts and allowed effective cross-examination.
2. Defendant forfeited his confrontation-clause challenge by failing to object at trial and failing to raise the issue in his posttrial motion, and he did not establish plain error because the record showed no underlying error.
3. Section 115-10 is not facially unconstitutional under *Crawford*. When the child declarant testifies at trial and is available for cross-examination, admission of the child's hearsay statements under the statute does not violate the confrontation clause; the statute's additional reliability requirement does not invalidate it.
4. The appellate court properly assessed the \$50 statutory fee because an appeal handled by the State's Attorneys Appellate Prosecutor is nevertheless prosecuted by a State's Attorney within the applicable statutory scheme.

KEY QUOTATIONS

“Under Crawford, the confrontation clause poses no restrictions on the admission of hearsay testimony if the declarant testifies at trial and is present “to defend or explain” that testimony.” (-9-)

“This additional reliability requirement does not affect the constitutionality of section 115–10 because hearsay testimony still must satisfy Crawford’s constitutional requirements, in addition to the statutory requirement of reliability.” (-12-)

“Because testimony is admissible only if it meets both evidentiary and constitutional requirements, the two standards need not be identical.” (-13-)

FACTUAL BACKGROUND

Richard Kitch was charged with sexually abusing his stepdaughter and stepson between 2000 and 2003. Before trial, the State sought to admit written hearsay statements that the children had given to law-enforcement personnel; the circuit court admitted the statements under section 115-10 on the condition that the children testify. The children testified at trial and were cross-examined, and additional evidence included medical testimony, testimony concerning Kitch's conduct, and DNA evidence linking semen on a comforter to Kitch. The jury convicted Kitch on ten counts.

PROCEDURAL HISTORY

The circuit court of Schuyler County admitted the children's out-of-court statements under section 115-10, and defendant was tried and sentenced in absentia. The circuit court denied defendant's motion for a new trial and imposed nine consecutive natural-life sentences and a concurrent 14-year extended-term sentence. The appellate court made the natural-life sentences concurrent, affirmed otherwise, and assessed \$50 in appeal costs. The Illinois Supreme Court affirmed the appellate court's judgment.

DISPOSITION

affirmed

CASES CITED

- People v. Cosby, 231 Ill. 2d 262, 271 (2008)
- People v. Allen, 222 Ill. 2d 340, 350, 353 (2006)
- People v. Herron, 215 Ill. 2d 167, 177, 187 (2005)
- In re M.W., 232 Ill. 2d 408, 431 (2009)
- People v. Learn, 396 Ill. App. 3d 891 (2009)
- People v. Keene, 169 Ill. 2d 1, 17-18 (1995)
- Crawford v. Washington, 541 U.S. 36, 59 n.9, 61-62, 68 (2004)
- California v. Green, 399 U.S. 149, 155, 162 (1970)
- People v. Cookson, 215 Ill. 2d 194, 204 (2005)
- People v. Reed, 361 Ill. App. 3d 995, 1002 (2005)
- People v. Cannon, 358 Ill. App. 3d 313, 320 (2005)
- In re E.H., 224 Ill. 2d 172, 179-80 (2006)
- People v. Thurow, 203 Ill. 2d 352, 367 (2003)
- Napleton v. Village of Hinsdale, 229 Ill. 2d 296, 306 (2008)
- Hill v. Cowan, 202 Ill. 2d 151, 157 (2002)
- People v. McCarty, 223 Ill. 2d 109, 135 (2006)

- People v. Cardamone, 232 Ill. 2d 504, 511-12 (2009)

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