NYTimes Prep 7 Dec 72

High Court Upholds Identification of Suspect Without Line-Up

NYTimes DEC 7 1972

High Court Upholds Identification of Suspect Without Line-U

By WARREN WEAVER Jr.
Special to the New York Times

WASHINGTON, Dec. 6—An accused criminal may be convicted on the basis of a yes-or-no identification by the victim without the necessity of picking him out of a line-up, the Supreme Court ruled today.

The 5-to-3 decision overruled the findings of both a Federal District Court and the United States Court of Appeals for the Sixth Circuit. Each had found it unfair to the accused for a rape victim to be shown one suspect and be required to accuse or free him.

Today's findings prompted the three-Justice minority to protest that this was "an unjustified departure from our long-established practice not to reverse findings of fact concurred in by two lower courts unless shown to be clearly erroneous."

The majority opinion, written by Associate Justice Lewis F. Powell Jr., held that the "two-court rule" was a good one but that it was "inapplicable here where the dispute between the parties is not so much over the elemental facts as over the constitutional significance to be attached to them."

The case concerned the rape conviction in Nashville of Archie N. Biggers, who had been identified by his alleged victim, Mrs. Margaret Beamer, at a station-house "show-up." A show-up is an appearance by a single suspect, as opposed to a line-up, in which several people of roughly the same description appear.

District Court Judge William E. Million concluded that producing Biggers at a show-up instead of a line-up had been a matter of "police convenience" and had violated the suspect's right to fair procedures. The Court of Appeals, dividing 2 to 1, agreed.

But the Supreme Court majority, conceding that a "suggestive" confrontation between suspect and victim could result in an inadmissable identification, maintained that the show-up procedure, taken by itself, was not a violation of constitutional guarantees of due process.

Reviewing the victim's testimony at the trial, Justice Powell concluded that there was "no substantial likelihood of misidentification," despite the absence of a line-up.

Brennan Writes Dissent

Joining in the majority were Chief Justice of the United States Warren E. Burger and Associate Justices Byron R. White, Harry A. Blackmun and William H. Rehnquist. The dissenters were Associate Justices William J. Brennan Jr., William O. Douglas and Potter Stewart. Associate Justice Thurgood Marshall did not participate.

Writing the minority opinion, Justice Brennan argued that the Court had not limited itself to legal principles, but had conducted a fresh inquiry into such "facts" as the victim's opportunity to observe her assailant and the description she gave the police.

"Although we might reasonably disagree with the lower courts' findings as to such matter," Justice Brennan observed, "the 'two-court rule' wisely inhibits us from cavalierly substituting our own view o the facts simply because we might adopt a different construction of the evidence or resolve the ambiguities differently."