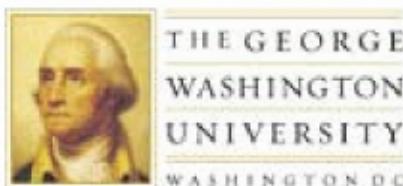


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Moore v. Illinois

434 U.S. 220 (1977)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 13, 1977

MEMORANDUM TO THE CONFERENCE

Re: No. 76-5344 — Moore v. Illinois (Relisted for
January 14, 1977 Conference)

I believe that CA 7 incorrectly applied our decisions in Kirby v. Illinois, 406 U.S. 682 (1972), and Gilbert v. California, 388 U.S. 263, 272-74 (1967), in affirming petitioner's conviction where the rape victim was allowed to testify at trial that she identified petitioner at a preliminary hearing at which petitioner was not represented by counsel.

The victim was raped by a young black male in the bedroom of her apartment about noon. There was some light in the room and the victim had an opportunity to view the rapist for 10-15 seconds before he covered his face with a bandana below the eyes. She gave the police only a general description immediately after the attack, but two days later told them that she had been accosted by the rapist in a bar the night before the rape and gave them a more detailed description. The police then showed her several hundred photographs from which she selected two or three as possible assailants. One of these was petitioner.

Petitioner was arrested six days after the rape and was brought to court for a preliminary hearing the next day. Shortly before the hearing the victim, in response to a request by the police, signed a complaint against petitioner. The judge called the names of petitioner and the victim, and the prosecutor, after asking for a continuance and stating incorrectly that articles taken at the time of the rape had been found in the petitioner's apartment, requested the victim to identify her assailant. She pointed to petitioner, who was not represented by counsel and was the only other person present before the court in addition to the prosecutor, court personnel, and petitioner's wife. The court set bail and granted the continuance. She repeated her identification when the preliminary hearing resumed two weeks later, when petitioner was still unrepresented, and, after petitioner was