

DISTRICT OF COLUMBIA COURT OF APPEALS

Cox v. United States

898 A.2d 376 (D.C. 2006) · No. 04-CF-258 · Decided May 4, 2006

SUMMARY

The District of Columbia Court of Appeals held that the trial court erred by excluding testimony about the defendant’s statements to an arresting officer as hearsay and by rejecting admission under the rule of completeness. The court deemed the errors harmless and affirmed the defendant’s convictions for firearm, ammunition, drug paraphernalia, and marijuana possession offenses.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                        |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | District of Columbia Court of Appeals                                                                                                                                                                                                                                                                                                                                  |
| WRITING FOR THE COURT | Ferren, Senior Judge; Schwelb, Associate Judge; Farrell, Associate Judge                                                                                                                                                                                                                                                                                               |
| JURISDICTION          | District of Columbia                                                                                                                                                                                                                                                                                                                                                   |
| DECIDED               | May 4, 2006                                                                                                                                                                                                                                                                                                                                                            |
| DOCKET                | 04-CF-258                                                                                                                                                                                                                                                                                                                                                              |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                               |
| PROCEDURAL POSTURE    | Cox appealed his convictions following a jury trial, arguing that the trial court improperly excluded an arresting officer's testimony as hearsay and as unnecessary under the rule of completeness.                                                                                                                                                                   |
| STANDARD OF REVIEW    | Evidentiary rulings, including admission of omitted portions of a statement under the rule of completeness, are reviewed for abuse of discretion; prejudice from the evidentiary errors was reviewed for harmlessness under Kotteakos v. United States. The court rejected plain-error review because the trial court understood the substance of the defense request. |
| PRECEDENTIAL VALUE    | Published opinion; precedential decision of the District of Columbia Court of Appeals.                                                                                                                                                                                                                                                                                 |
| PARTIES               | Milton Cox v. United States                                                                                                                                                                                                                                                                                                                                            |

TOPICS

- hearsay
- evidence
- harmless error
- appellate procedure
- criminal procedure

## PRACTICE AREAS

Evidence

Criminal procedure

Appellate practice

## QUESTIONS PRESENTED

1. Whether testimony that Cox told Officer David he had gone to a shooting range and accidentally left the gun in the car was inadmissible hearsay.
2. Whether the rule of completeness required admission of Officer David's testimony after Officer Franchak testified that Cox had not said he had a permit for the gun and thereby suggested that Cox had not offered an explanation for the gun.
3. Whether exclusion of the testimony was reversible error.

## HOLDINGS

1. The proposed testimony was not hearsay because it was offered to prove that Cox made the statement, not to prove the truth of his explanation for the gun's presence.
2. The rule of completeness required admission of the relevant testimony because Officer Franchak's testimony could have led the jury to infer that Cox had not offered an explanation for the gun at the time of arrest, while Officer David's testimony supplied the contemporaneous explanation.
3. The evidentiary errors were harmless and did not require reversal of Cox's convictions.

## KEY QUOTATIONS

*“Appellant sought admission of the statement not for the truth of what he said but for the fact that the statement was made.”* (898 A.2d at 380-381)

*“The rule was designed to prevent parties from distorting the admitted portions by taking them out of context and, to that extent, misrepresenting the whole of the statement by only introducing part of it.”* (898 A.2d at 381)

*“We agree with appellant that the trial court erred in rejecting applicability of the rule of completeness.”* (898 A.2d at 382)

*“Accordingly, despite the two evidentiary errors rejecting Officer David's testimony as hearsay and as unnecessary to satisfy the rule of completeness, we find the errors harmless and affirm appellant's convictions.”* (898 A.2d at 383)

## FACTUAL BACKGROUND

Police officers stopped Cox after observing him run a red light and learned that his driver's license was suspended. During a search of Cox's car, officers found a loaded semiautomatic handgun, ammunition, packaging materials, and approximately 110.3 grams of marijuana. Cox testified that he had taken the gun to a firing range the previous day, accidentally left it in the car, and told Officer David at the time of arrest why the gun was in the vehicle.

## PROCEDURAL HISTORY

After a jury trial, Cox was convicted of carrying a pistol without a license, possession of an unregistered firearm, unlawful possession of ammunition, unlawful possession of drug paraphernalia, and unlawful possession of marijuana. The trial court had previously denied Cox's motion to suppress tangible evidence and statements. During trial, the court excluded proposed testimony from Officer David concerning Cox's contemporaneous explanation for the gun. The District of Columbia Court of Appeals held that the exclusion was erroneous under both hearsay principles and the rule of completeness, but that the errors were harmless, and affirmed.

## DISPOSITION

affirmed

## CASES CITED

- Puma v. Sullivan, 746 A.2d 871, 876 (D.C. 2000)
- Samad v. United States, 812 A.2d 226, 233 (D.C. 2002)
- Henderson v. United States, 632 A.2d 419, 425-426, 432 (D.C. 1993)
- Warren v. United States, 515 A.2d 208, 210-211 (D.C. 1986)
- Johns v. United States, 434 A.2d 463, 475 (D.C. 1981)
- Reams v. United States, 895 A.2d 914 (D.C. App. 2006)
- Butler v. United States, 614 A.2d 875, 882 (D.C. 1992)
- Kotteakos v. United States, 328 U.S. 750, 765 (1946)
- Reed v. United States, 452 A.2d 1173, 1180-1181 (D.C. 1982)
- Rease v. United States, 403 A.2d 322, 327 (D.C. 1979)
- Middleton v. United States, 401 A.2d 109, 126 (D.C. 1979)