

SUPREME COURT OF COLORADO

Campbell v. People

2020 CO 49 · No. 18SC144 · Decided June 8, 2020

SUMMARY

The Colorado Supreme Court reviewed whether admitting expert testimony about a DNA profile developed by a non-testifying analyst violated the Confrontation Clause and constituted plain error. It held that any error was not plain because the governing law was unsettled, including after the U.S. Supreme Court's fractured decision in *Williams v. Illinois*. The court also held that mislabeling a prior felony conviction in a habitual offender charge created a simple variance rather than a constructive amendment requiring reversal, and affirmed the court of appeals' judgment while remanding for resentencing and correction of the mittimus.

CASE DETAILS

COURT	Supreme Court of Colorado
WRITING FOR THE COURT	Justice Márquez; Justice Gabriel; Justice Hood; Justice Hart
JURISDICTION	Colorado
DECIDED	June 8, 2020
DOCKET	18SC144
DISPOSITION	affirmed
PROCEDURAL POSTURE	Certiorari review of the Colorado Court of Appeals' judgment affirming Campbell's convictions and habitual-offender adjudication, subject to the court of appeals' vacatur of the theft conviction and remand for resentencing and correction of the mittimus.
STANDARD OF REVIEW	Plain-error review applied to the unpreserved Confrontation Clause claim. Plain error requires an obvious and substantial error undermining the fundamental fairness and reliability of the trial. The constructive-amendment issue was reviewed as a legal question concerning the sufficiency of the habitual-offender charging allegation and the effect of the variance.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Brandon D. Campbell v. The People of the State of Colorado

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QUESTIONS PRESENTED

1. Whether the trial court plainly erred by allowing a Denver Crime Lab expert to provide testimony concerning a DNA profile developed by a non-testifying Virginia laboratory analyst.
2. Whether the prosecution constructively amended a habitual-offender count by alleging a specifically mislabeled prior felony but proving the different felony conviction associated with the case number, jurisdiction, and date identified in the charging document.

HOLDINGS

1. Any error in allowing the Denver Crime Lab expert to testify about the DNA profile developed from the plum by a non-testifying analyst was not plain because the governing law was unsettled at the time of trial and remained insufficiently clear at the time of appellate review.
2. The prosecution did not constructively amend the habitual-offender count. Because the charging document identified the prior conviction by case number, jurisdiction, and date and the prosecution proved the felony conviction associated with those identifiers, the discrepancy in the offense label was a simple variance that did not prejudice Campbell's substantial rights.

KEY QUOTATIONS

“We now hold that (1) any error in allowing the Denver Crime Lab expert to testify about the plum DNA profile was not plain, and (2) the mislabeled offense in the habitual offender count did not result in a constructive amendment requiring reversal.” (¶ 4)

“Therefore, we conclude that the habitual criminal statute requires the prosecution to allege and prove a specific prior felony conviction.” (¶ 49)

“Because the prosecution proved the prior felony conviction associated with the case number, jurisdiction, and date alleged in the information, the discrepancy between the felony offense listed in the information (possession of controlled substance) and the actual conviction in that case (felony trespass) was a simple variance, not a constructive amendment.” (¶ 53)

FACTUAL BACKGROUND

During a residential burglary investigation, police recovered an opened soda can and obtained a DNA profile that matched Campbell. DNA from a partially eaten plum found at another burglary scene was tested at an out-of-state Virginia laboratory, and a Denver Crime Lab expert later testified that Campbell's DNA profile matched both the soda-can and plum profiles, although she had not participated in the Virginia testing. Campbell was also charged as a habitual offender; one count identified a prior conviction by case number, jurisdiction, and date but

mislabeled the offense as possession of a Schedule IV controlled substance when the conviction was actually for felony trespass.

PROCEDURAL HISTORY

Campbell was convicted of second-degree burglary, theft, and first-degree criminal trespass and was adjudicated a habitual criminal based on three prior felony convictions. The Colorado Court of Appeals rejected his Confrontation Clause and constructive-amendment arguments, vacated the theft conviction based on a statutory amendment, and remanded for entry of a class-five felony theft conviction, resentencing, and correction of the mittimus. The Colorado Supreme Court granted certiorari on the Confrontation Clause and habitual-offender issues, affirmed the court of appeals, and remanded with directions.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

Remand to the trial court for resentencing and correction of the mittimus in accordance with the Colorado Court of Appeals' decision, including the previously ordered treatment of the theft conviction.

CASES CITED

- Crawford v. Washington, 541 U.S. 36 (2004)
- Davis v. Washington, 547 U.S. 813 (2006)
- Melendez-Diaz v. Massachusetts, 557 U.S. 305 (2009)
- Bullcoming v. New Mexico, 564 U.S. 647 (2011)
- Williams v. Illinois, 567 U.S. 50 (2012)
- Marshall v. People, 2013 CO 51, 309 P.3d 943
- People v. Vigil, 127 P.3d 916 (Colo. 2006)
- Scott v. People, 2017 CO 16, 390 P.3d 832
- United States v. Pablo, 696 F.3d 1280 (10th Cir. 2012)
- People v. Merritt, 2014 COA 124, 411 P.3d 102
- People v. Smoots, 2013 COA 152, 396 P.3d 53
- Henderson v. United States, 568 U.S. 266 (2013)
- Howard-Walker v. People, 2019 CO 69, 443 P.3d 1007
- Garcia v. People, 2019 CO 64, 445 P.3d 1065
- Cervantes v. People, 715 P.2d 783 (Colo. 1986)
- People v. Albo, 575 P.2d 427 (Colo. 1978)
- People v. Rodriguez, 914 P.2d 230 (Colo. 1996)
- People v. Smith, 2018 CO 33, 416 P.3d 886
- People v. Rediger, 2018 CO 32, 416 P.3d 893

- People v. Williams, 984 P.2d 56 (Colo. 1999)
- People v. Moody, 674 P.2d 366 (Colo. 1984)
- People v. Porter, 2015 CO 34, 348 P.3d 922
- Brown v. People, 238 P.2d 847 (Colo. 1951)
- Lacy v. People, 775 P.2d 1 (Colo. 1989)
- People v. Pahl, 169 P.3d 169 (Colo. App. 2006)
- Casadas v. People, 304 P.2d 626 (Colo. 1956)
- People in Interest of H.W., 226 P.3d 1134 (Colo. App. 2009)

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