

DISTRICT OF COLUMBIA COURT OF APPEALS

Walter O. Johnson v. United States

33 A.3d 361 (D.C. 2011) · No. Nos. 04-CF-1125, 09-CO-597 · Decided December 22, 2011

SUMMARY

The District of Columbia Court of Appeals affirmed Walter O. Johnson’s convictions for the murder of a law enforcement officer and related offenses. The court held that Philadelphia police had an articulable suspicion that Johnson might be armed and dangerous before frisking him during a traffic stop involving a vehicle in “try and locate” status, and therefore properly seized the firearm. The court also upheld denial of a new trial based on an alleged witness recantation, concluding that the recantation was not credible.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Newman, Senior Judge; Oberly, Associate Judge; Reid, Senior Judge
JURISDICTION	District of Columbia
DECIDED	December 22, 2011
DOCKET	Nos. 04-CF-1125, 09-CO-597
DISPOSITION	affirmed
PROCEDURAL POSTURE	Consolidated appeals from criminal convictions and the denial of a posttrial motion for a new trial based on alleged newly discovered recantation evidence.
STANDARD OF REVIEW	The denial of a motion to suppress is reviewed under the applicable de novo standard for the legal conclusion that reasonable grounds for a frisk existed, while facts and reasonable inferences are viewed in favor of sustaining the trial court’s ruling. A denial of a new trial based on newly discovered evidence is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Walter O. Johnson v. United States

TOPICS

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PRACTICE AREAS

criminal procedure

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QUESTIONS PRESENTED

1. Whether the Philadelphia police had reasonable, articulable suspicion that Johnson might be armed and dangerous before frisking him during the traffic stop.
2. Whether the trial court abused its discretion by denying Johnson's motion for a new trial based on alleged newly discovered recantation evidence from government witness Ethan Means.

HOLDINGS

1. The frisk was constitutionally justified because, under the totality of the circumstances, the officers had articulable reason to suspect that Johnson might be armed and pose a danger to their safety before the frisk occurred.
2. The trial court did not abuse its discretion in denying Johnson's motion for a new trial because it reasonably determined that Means had not credibly recanted his trial testimony.

KEY QUOTATIONS

"only reason to suspect that the person may be armed—not reason to believe he is armed—is necessary to justify the frisk." (367-368)

"the issue is not whether Officer Harvey himself subjectively harbored a suspicion that Johnson was armed, but whether a reasonable officer in the circumstances would have harbored such a suspicion." (368)

"Viewing the concatenation of circumstances in their totality, as we must, and "through the eyes of a reasonable and cautious police officer on the scene, guided by his experience and training," we agree with Judge Keary that the police had "more than a mere 'hunch' or 'gut feeling'" that Johnson might be armed" (370)

"If the trial court determines that the recantation is not credible, that determination ends the inquiry." (371)

FACTUAL BACKGROUND

Four days after Officer Marlon Morales was shot and killed in a District of Columbia Metro station, Philadelphia police stopped Johnson for driving an Oldsmobile with an expired inspection sticker. Johnson appeared nervous, lacked a driver's license or identification, attempted to exit the vehicle despite orders to remain inside, gave an explanation about obtaining diapers that officers could not corroborate from the vehicle, and was driving a vehicle listed in a Philadelphia "try and locate" status. When officers moved him into position for a frisk, Johnson moved his hand toward his waist or thigh and was found holding the handle of a gun identified as Morales's service weapon. At trial, a government witness, Ethan Means, identified Johnson as the person who had shot him in Philadelphia, but later gave testimony that Johnson claimed constituted a recantation.

PROCEDURAL HISTORY

A jury convicted Johnson of murder of a law enforcement officer while armed, aggravated first-degree murder while armed, and related offenses arising from the shooting death of Metro Transit Police Officer Marlon Morales. The trial court denied Johnson's motion to suppress the service weapon seized during a Philadelphia traffic stop and frisk and later denied his motion for a new trial based on alleged recantation testimony by government witness Ethan Means. The District of Columbia Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- *Pennsylvania v. Mimms*, 434 U.S. 106 (1977)
- *People v. Batista*, 88 N.Y.2d 650, 672 N.E.2d 581 (1996)
- *Graham v. Connor*, 490 U.S. 386 (1989)
- *United States v. Sokolow*, 490 U.S. 1 (1989)
- *United States v. Santos*, 403 F.3d 1120 (10th Cir. 2005)
- *Jackson v. United States*, 805 A.2d 979 (D.C. 2002)
- *James v. United States*, 829 A.2d 963 (D.C. 2003)
- *Powell v. United States*, 649 A.2d 1082 (D.C. 1994)
- *Singleton v. United States*, 998 A.2d 295 (D.C. 2010)
- *Adams v. Williams*, 407 U.S. 143 (1972)
- *Knowles v. Iowa*, 525 U.S. 113 (1998)
- *Arizona v. Johnson*, 555 U.S. 323 (2009)
- *Whren v. United States*, 517 U.S. 806 (1996)
- *Scott v. United States*, 436 U.S. 128 (1978)
- *United States v. Murphy*, 261 F.3d 741 (8th Cir. 2001)
- *State v. Cowart*, 862 So. 2d 225 (La. Ct. App. 2003)
- *People v. Rivera*, 14 N.Y.2d 441, 201 N.E.2d 32 (1964)
- *Herbin v. United States*, 683 A.2d 437 (D.C. 1996)
- *Johnson v. United States*, 398 A.2d 354 (D.C. 1979)
- *United States v. Kearney*, 682 F.2d 214 (D.C. Cir. 1982)
- *Godfrey v. United States*, 454 A.2d 293 (D.C. 1982)
- *Bell v. United States*, 871 A.2d 1199 (D.C. 2005)
- *Terry v. Ohio*, 392 U.S. 1 (1968)
- *United States v. Arvizu*, 534 U.S. 266 (2002)