

DISTRICT OF COLUMBIA COURT OF APPEALS

Allen v. United States

837 A.2d 917 (D.C. 2003) · No. 99-CF-1666 · Decided December 11, 2003

SUMMARY

The District of Columbia Court of Appeals held that the prosecutor improperly asked the defendant whether he knew why police witnesses would lie against him, because a witness may not be asked to comment on another witness's credibility. The court concluded that the error was prejudicial because credibility was central to the case, the questioning was repeated and emphasized in closing argument, and the jury struggled during deliberations. The convictions were reversed and the case was remanded for a new trial.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Farrell, Associate Judge; Washington, Associate Judge; Ferren, Senior Judge
JURISDICTION	District of Columbia
DECIDED	December 11, 2003
DOCKET	99-CF-1666
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Allen appealed his convictions for possession with intent to distribute cocaine and related weapons offenses, arguing that the prosecutor improperly asked him to explain why police witnesses would lie. The District of Columbia Court of Appeals reviewed the preserved evidentiary error for harmlessness.
STANDARD OF REVIEW	Harmless-error review under whether the court could say, with fair assurance after considering the entire trial, that the judgment was not substantially swayed by the error.
PRECEDENTIAL VALUE	Published opinion; binding precedent of the District of Columbia Court of Appeals.
PARTIES	Jayvan Allen v. United States

TOPICS

prosecutorial misconduct

witness credibility instructions

harmless error

criminal procedure

appellate procedure

PRACTICE AREAS

criminal law

criminal procedure

evidence

appellate practice

QUESTIONS PRESENTED

1. Whether the prosecutor improperly asked Allen to explain why the police witnesses would lie against him.
2. Whether the preserved error in allowing that questioning was harmless or required reversal of Allen's convictions.
3. Whether Allen's additional challenge to the trial court's response to a jury question should be decided.

HOLDINGS

1. A prosecutor may not ask a criminal defendant to explain why another witness would lie, testify falsely, or otherwise comment on that witness's credibility. The prohibition applies without fine distinctions among different phrasings of the inquiry.
2. The preserved error was not harmless because the questioning was repeated, directly affected the central credibility dispute, was emphasized in closing argument, and occurred in a case the jury struggled to resolve.

KEY QUOTATIONS

“This was error, as our past decisions have made clear, and because the error was prejudicial in the circumstances of this case, we must reverse appellant's convictions for possession with intent to distribute cocaine and related weapons offenses, and remand for a new trial.” (918)

“What is prohibited is seeking to have one witness comment or opine on the credibility of a prior witness, however phrased.” (920)

“prosecutors and trial judges will have more guidance in assuring proper examination of witnesses with a bright-line rule that bars such inquiries” (921)

“The communications from the jury, and its struggle with the case, confirm our own assessment from the record that the issue of whom to believe was not so one-sided as to neutralize the impact of the prosecutor's questions.” (923)

FACTUAL BACKGROUND

Police officers pursuing another person encountered Allen and Ali Sparrow near an apartment complex. An officer testified that Allen discarded a handgun while fleeing up stairs and later tossed a bag containing cocaine; another officer testified that he found \$1,635 in Allen's pocket. Allen denied possessing the gun, drugs, or cash and, supported by witness Gregory Wright, claimed that Sparrow possessed the gun and drugs.

PROCEDURAL HISTORY

At trial, over defense objection, the prosecutor repeatedly asked Allen whether he knew of a reason why two police officers would lie against him. The trial court overruled the objections, and the jury convicted Allen. The Court of Appeals held the questioning improper and prejudicial, reversed the convictions, and remanded for a new trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for a new trial.

CASES CITED

- Carter v. United States, 475 A.2d 1118, 1126 (D.C. 1984)
- Green v. United States, 481 A.2d 1310, 1310 (D.C. 1984)
- Freeman v. United States, 495 A.2d 1183, 1186-88 (D.C. 1985)
- Wright v. United States, 513 A.2d 804, 811 (D.C. 1986)
- Poteat v. United States, 559 A.2d 334, 336 (D.C. 1989)
- McLeod v. United States, 568 A.2d 1094, 1097 (D.C. 1990)
- Mitchell v. United States, 569 A.2d 177, 183 (D.C. 1990)
- Scott v. United States, 619 A.2d 917, 924-25 (D.C. 1993)
- State v. Pilot, 595 N.W.2d 511, 518 (Minn. 1999)
- State v. Graves, 668 N.W.2d 860, 872-73 (Iowa 2003)
- State v. Singh, 259 Conn. 693, 793 A.2d 226, 237 (2002)
- State v. Emmett, 839 P.2d 781, 787 (Utah 1992)
- State v. Casteneda-Perez, 61 Wash. App. 354, 810 P.2d 74, 77 (1991)
- Kotteakos v. United States, 328 U.S. 750, 765 (1946)
- Barron v. United States, 818 A.2d 987, 993 (D.C. 2003)
- Brooks v. United States, 367 A.2d 1297, 1309 (D.C. 1976)
- United States v. DeLoach, 164 U.S. App. D.C. 116, 122, 504 F.2d 185, 192 (1974)