

DISTRICT OF COLUMBIA COURT OF APPEALS

Bell v. United States

801 A.2d 117 (D.C. 2002) · No. Nos. 94-CF-937, 94-CF-794, 94-CF-1480, 95-CO-618, 97-CO-939, 99-CO-1341, 99-CO-1507, 99-CO-1551 · Decided June 27, 2002

SUMMARY

The District of Columbia Court of Appeals reviewed convictions arising from a drive-by shooting and subsequent police pursuit. The court held that the trial court improperly admitted the victim's statements as dying declarations because the evidence did not establish that he spoke without hope of recovery and in the shadow of impending death. It reversed specified convictions for all three appellants and remanded for a new trial on those charges, while affirming Bell's convictions relating to the assault of a police officer and related firearm offenses.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Ferren, Senior Judge; Reid, Associate Judge; Glickman, Associate Judge
JURISDICTION	District of Columbia
DECIDED	June 27, 2002
DOCKET	Nos. 94-CF-937, 94-CF-794, 94-CF-1480, 95-CO-618, 97-CO-939, 99-CO-1341, 99-CO-1507, 99-CO-1551
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Consolidated appeals from criminal convictions and from orders denying postconviction motions to vacate sentence under D.C. Code § 23-110.
STANDARD OF REVIEW	Admission of hearsay is reviewed for abuse of discretion, but the exercise of that discretion must rest on correct legal principles. The court gives great deference to factual findings concerning a declarant's consciousness of impending death when reasonably supported by the evidence. Harmlessness is assessed under Kotteakos; Brady materiality requires a reasonable probability of a different result, and Jencks Act materiality requires a reasonable likelihood of a significant effect on the outcome.
PRECEDENTIAL VALUE	Published precedential opinion

PARTIES

Antonio E. Bell, William D. McClain, Charlie Webb v. United States

TOPICS

hearsay

evidence

harmless error

appellate procedure

criminal procedure

PRACTICE AREAS

criminal procedure

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether statements and photographic identifications attributed to Richard Tillman were admissible under the dying-declaration exception to the hearsay rule.
2. Whether the erroneous admission of Tillman's statements was harmless with respect to the defendants' convictions arising from the Q Street shooting.
3. Whether the undisclosed internal police disciplinary investigation concerning Officer Gibson required reversal of Bell's crash-site convictions under the Jencks Act or *Brady v. Maryland*.

HOLDINGS

1. The trial court abused its discretion by admitting Tillman's statements and photographic identifications as dying declarations because the evidence did not establish that Tillman spoke without hope of recovery and in the shadow of impending death.
2. The error in admitting Tillman's identifications was not harmless as to the Q Street convictions of Bell, McClain, or Webb.
3. The nondisclosure of Officer Gibson's disciplinary investigation did not require reversal of Bell's convictions for assaulting Officer Douglas or the related PFCV, PPW, and CPWL offenses.

KEY QUOTATIONS

"To make out a dying declaration, the declarant must have spoken without hope of recovery and in the shadow of impending death." (126)

"Only a declarant's state of mind, not physical condition per se, is relevant in satisfying the requirements of the dying declaration exception." (127)

"Mere sufficiency of the evidence, however, does not dictate a finding of harmless error." (128-129)

FACTUAL BACKGROUND

The defendants were prosecuted for a drive-by shooting on Q Street that fatally wounded Richard Tillman and injured others, followed shortly by a high-speed police pursuit of a brown station wagon. Tillman made statements to a police sergeant identifying alleged participants while hospitalized, but the medical and family evidence did not show that Tillman understood he was without hope of recovery or in the shadow of impending death. During the pursuit's aftermath, Antonio Bell was identified as a fleeing occupant who fired at Officer

Clarence Douglas, and a 9mm pistol was recovered along Bell's flight path. The defendants later alleged that the government withheld evidence concerning an internal police investigation into the processing of the crash scene.

PROCEDURAL HISTORY

After a 1994 jury trial, Bell, McClain, and Webb were convicted of murder, assaults, and firearms offenses arising from a drive-by shooting and a subsequent police pursuit. The trial court admitted statements attributed to the shooting victim, Richard Tillman, as dying declarations and admitted prior identification testimony through a police detective. After trial, the defendants sought postconviction relief based on alleged Jencks Act and Brady violations involving an internal police investigation of crime-scene processing. The District of Columbia Court of Appeals held that the Tillman statements were improperly admitted, reversed the specified convictions, remanded for a new trial on those charges, and affirmed Bell's convictions arising from the assault on Officer Douglas and related weapons offenses.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Conduct a new trial for all defendants on all charges reversed by the court. Bell's convictions for assaulting Officer Douglas with a dangerous weapon and the related PFCV, PPW, and CPWL counts remain affirmed.

CASES CITED

- Idaho v. Wright, 497 U.S. 805, 820 (1990)
- Mattox v. United States, 156 U.S. 237, 244 (1895)
- Lyons v. United States, 683 A.2d 1080, 1083-1084 (D.C. 1996)
- Shepard v. United States, 290 U.S. 96, 99-100 (1933)
- McFadden v. United States, 395 A.2d 14, 15-16 (D.C. 1978)
- Jenkins v. United States, 617 A.2d 529, 530 (D.C. 1992)
- In re J.D.C., 594 A.2d 70, 75, 77 (D.C. 1991)
- Conrad v. Medina, 47 A.2d 562, 565 (D.C. 1946)
- Jett v. Sunderman, 840 F.2d 1487, 1496 (9th Cir. 1988)
- In re L.D.O., 400 A.2d 1055, 1057 (D.C. 1979)
- Fletcher v. United States, 524 A.2d 40, 43 (D.C. 1987)
- Scales v. United States, 687 A.2d 927, 931 (D.C. 1996)
- United States v. Owens, 484 U.S. 554 (1988)
- Kotteakos v. United States, 328 U.S. 750, 765 (1946)
- Jones v. United States, 719 A.2d 92 (D.C. 1998)
- Brady v. Maryland, 373 U.S. 83 (1963)
- Strickler v. Greene, 527 U.S. 263, 281 (1999)

- Johnson v. United States, 537 A.2d 555, 559-560 (D.C. 1988)
- Moore v. United States, 657 A.2d 1148, 1152 (D.C. 1995)
- Hilliard v. United States, 638 A.2d 698, 704-705 (D.C. 1994)
- Queen v. Osman, 15 Cox Crim. Cas. 1, 3 (Eng. N. Wales Cir.)

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