

DISTRICT OF COLUMBIA COURT OF APPEALS

Bolanos v. United States

938 A.2d 672 (D.C. 2007) · No. Nos. 98-CF-1821, 98-CF-1871 and 98-CF-1872 · Decided December 28, 2007

SUMMARY

The District of Columbia Court of Appeals addresses convictions arising from a school altercation involving multiple stabbing victims. The court analyzes the sufficiency of evidence for aggravated assault while armed, aiding and abetting liability, the validity of assault-with-intent-to-kill indictments, out-of-court identifications, and merger of offenses, affirming in part, reversing in part, and remanding in part.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Washington, Chief Judge; Farrell, Associate Judge; Schwelb, Senior Judge
JURISDICTION	District of Columbia
DECIDED	December 28, 2007
DOCKET	Nos. 98-CF-1821, 98-CF-1871 and 98-CF-1872
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Direct appeals from convictions for aggravated assault while armed, assault with a dangerous weapon, and carrying a dangerous weapon, following a jury trial in the Superior Court of the District of Columbia.
STANDARD OF REVIEW	Sufficiency of the evidence is reviewed in the light most favorable to the government, giving full play to the jury's role in determining credibility, weighing evidence, and drawing reasonable inferences. Identification-suppression rulings are reviewed under the clearly erroneous standard for factual findings, while legal conclusions are reviewed according to law. Unpreserved instructional error is reviewed for plain error.
PRECEDENTIAL VALUE	Published, precedential opinion of the District of Columbia Court of Appeals
PARTIES	Walter A. Bolanos, Luis M. Palacio, Edgar A. Cruz v. United States

TOPICS

criminal procedure

appellate procedure

standard of review

jury instructions

suppression of evidence

PRACTICE AREAS

criminal law

criminal procedure

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evidence

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to establish the serious-bodily-injury element of each appellant's aggravated-assault-while-armed convictions.
2. Whether the trial court's failure to instruct the jury on extreme physical pain and unconsciousness constituted reversible instructional error.
3. Whether sufficient evidence supported Palacio's assault-with-a-dangerous-weapon conviction for assaulting Gonzalez under an aiding-and-abetting theory.
4. Whether the indictments charging assault with intent to murder while armed were defective because they did not allege that the grand jury found probable cause that no mitigating circumstances existed.
5. Whether the trial court properly denied Cruz's motion to suppress the victims' out-of-court identifications.
6. Whether instructing the jury on an alternative aggravated-assault theory improperly amended Cruz's indictment and violated the Fifth Amendment.
7. Whether multiple assault-with-a-dangerous-weapon convictions merged with aggravated assault while armed or with one another when they concerned the same victim.

HOLDINGS

1. A knife or gunshot wound does not establish serious bodily injury per se; the evidence must satisfy the statutory high threshold, considering the injury's consequences, including substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of a bodily function.
2. The trial court's failure to instruct on two Nixon factors—extreme physical pain and unconsciousness—was instructional error, but it did not require automatic reversal. Where the evidence supports conviction under the omitted correct theory, the case must be remanded to permit the government to elect whether to retry the defendant; where the evidence is insufficient under both instructions, the aggravated-assault conviction must be reversed and an appropriate lesser-included conviction entered or retained.
3. The evidence was sufficient to sustain Palacio's ADW conviction as an aider and abettor even though Cruz was identified as the person who stabbed Gonzalez.
4. The AWIMWA indictments were not defective merely because they did not allege that the grand jury found probable cause that no mitigating circumstances existed.
5. The trial court properly denied Cruz's motion to suppress the victims' out-of-court identifications because the identification procedure was not impermissibly suggestive and the identifications were independently reliable.

6. The jury instruction on the alternative aggravated-assault theory did not improperly amend Cruz's indictment or violate the Fifth Amendment because the indictment cited the statutory provisions encompassing both theories and provided adequate notice.
7. ADW merges into AAWA as a lesser-included offense, and two ADW convictions involving the same victim merge into one.

KEY QUOTATIONS

"The difference is a matter of degree. Serious bodily injury usually involves a life-threatening or disabling injury, but the court must also consider all the consequences of the injury to determine whether the appropriate "high threshold of injury" has been met." (677)

"The extreme physical pain necessary to satisfy Nixon is a level of pain that "must be exceptionally severe if not unbearable."" (682)

"It is well established that the government must present evidence from which a juror could reasonably conclude that the accused was not only present at the crime, but also that his conduct encouraged or facilitated the commission of the offense." (683)

"The function of the grand jury is "not to determine guilt or innocence, but to assess whether there is adequate basis for bringing a criminal charge,"" (685)

FACTUAL BACKGROUND

After leaving Bell Multicultural School, three members of the Graffiti Kings encountered a group that included Bolanos, Palacio, and Cruz. A fight followed, during which the three victims—Jose Mejia, Omar Gonzalez, and David Rodriguez—were stabbed multiple times. The victims testified about their injuries, and their medical records were admitted by stipulation, but no expert or other testimony explained the medical records or the lasting effects of the injuries.

PROCEDURAL HISTORY

The appellants were convicted after a jury trial arising from a school altercation in which three victims were stabbed. They challenged the sufficiency of the evidence, jury instructions, indictments, an out-of-court identification, an alleged amendment of the indictment, and merger of offenses. The Court of Appeals vacated sua sponte its earlier opinion reported at 933 A.2d 1251, then affirmed in part, reversed in part, and remanded for further proceedings, including possible retrial on certain aggravated-assault counts.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court shall vacate Cruz's AAWA conviction for assaulting Gonzalez and Palacio's AAWA conviction for assaulting Rodriguez. It shall also vacate the AAWA convictions of Cruz and Bolanos for assaulting Mejia and

permit the government to elect whether to retry either or both on the original AAWA charge. If the government declines retrial, the ADW convictions for the assaults on Mejia shall stand. The trial court shall also vacate one of Palacio's two ADW convictions involving Rodriguez and one of Bolanos's two ADW convictions involving Mejia. The judgment is affirmed in all other respects.

CASES CITED

- Riddick v. United States, 806 A.2d 631, 639 (D.C. 2002)
- Gibson v. United States, 792 A.2d 1059, 1065 (D.C. 2002)
- (Troy) Nixon v. United States, 730 A.2d 145, 149-50 (D.C. 1999)
- Swinton v. United States, 902 A.2d 772, 775-77 (D.C. 2006)
- Jenkins v. United States, 877 A.2d 1062, 1069, 1071 (D.C. 2005)
- Zeledon v. United States, 770 A.2d 972, 974, 977 (D.C. 2001)
- Baker v. United States, 867 A.2d 988, 995, 1009 (D.C. 2005)
- Hart v. United States, 863 A.2d 866, 875 (D.C. 2004)
- Johnson v. United States, 520 U.S. 461, 467 (1997)
- Gathy v. United States, 754 A.2d 912, 918-20 (D.C. 2000)
- Wilson v. United States, 785 A.2d 321, 329 (D.C. 2001)
- Perkins v. United States, 446 A.2d 19, 26 (D.C. 1982)
- Alfaro v. United States, 859 A.2d 149, 162 (D.C. 2004)
- Anderson v. United States, 857 A.2d 451, 464 (D.C. 2004)
- Hawthorne v. United States, 829 A.2d 948, 952 (D.C. 2003)
- Price v. United States, 813 A.2d 169, 177-78 (D.C. 2002)
- Jones v. United States, 625 A.2d 281 (D.C. 1993)
- Settles v. United States, 522 A.2d 348, 358 (D.C. 1987)
- Cain v. United States, 532 A.2d 1001, 1004 (D.C. 1987)
- Howard v. United States, 656 A.2d 1106, 1114 (D.C. 1995)
- Bostick v. United States, 605 A.2d 916, 918 (D.C. 1992)
- Comber v. United States, 584 A.2d 26, 41 n.17 (D.C. 1990)
- Miles v. United States, 483 A.2d 649, 654-55 (D.C. 1984)
- United States v. Williams, 504 U.S. 36, 45-47, 51-52 (1992)
- Bruce v. United States, 617 A.2d 986, 993 (D.C. 1992)
- Feaster v. United States, 631 A.2d 400, 414 (D.C. 1993)
- Lyons v. United States, 833 A.2d 481, 485-86 (D.C. 2003)
- Turner v. United States, 622 A.2d 667, 672 n.3 (D.C. 1993)
- Hill v. United States, 664 A.2d 347, 351 (D.C. 1995)
- Beatty v. United States, 544 A.2d 699, 701 (D.C. 1988)
- Smith v. United States, 801 A.2d 958, 962 (D.C. 2002)
- Wilson-Bey v. United States, 903 A.2d 818, 828 (D.C. 2006) (en banc)

- Gordon v. United States, 783 A.2d 575, 581 (D.C. 2001)
- Beaner v. United States, 845 A.2d 525, 539 (D.C. 2004)

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