

DISTRICT OF COLUMBIA COURT OF APPEALS

William C. Peay v. United States

924 A.2d 1023 (D.C. 2007) · No. No. 05-CF-898 · Decided May 17, 2007

SUMMARY

The District of Columbia Court of Appeals held that the defendant's four assault-with-a-deadly-weapon convictions merged and remanded for the trial court to vacate the merging convictions. The court also held that the indictment's failure to allege property value constructively amended the indictment when the defendant was tried for felony destruction of property, but the error did not constitute plain error warranting reversal because the defendant had notice of the felony charge and the evidence established the required property value. The judgment was affirmed in all other respects.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	King, Senior Judge; Glickman, Associate Judge; Pryor, Senior Judge
JURISDICTION	District of Columbia
DECIDED	May 17, 2007
DOCKET	No. 05-CF-898
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Peay appealed jury-trial convictions for four counts of assault with a deadly weapon and felony destruction of property, arguing that the ADW convictions should merge and that the trial court constructively amended the indictment. The appellate court also requested supplemental briefing on whether the indictment supported a felony destruction-of-property conviction.
STANDARD OF REVIEW	Constructive-amendment claims preserved for appeal are subject to per se reversal; unpreserved claims concerning constructive amendment are reviewed for plain error. A prejudicial-variance claim requires a showing of prejudice, including lack of notice or exposure to a subsequent prosecution.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	William C. Peay v. United States

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QUESTIONS PRESENTED

1. Whether Peay's four assault-with-a-deadly-weapon convictions merged.
2. Whether evidence concerning two collisions and a related unanimity instruction constructively amended the destruction-of-property indictment or created a prejudicial variance.
3. Whether an indictment that alleged destruction of an automobile but omitted the property's value supported a felony destruction-of-property conviction.
4. Whether the unpreserved indictment omission constituted plain error requiring reversal.

HOLDINGS

1. The four ADW convictions merge, and the trial court must vacate the convictions that merge.
2. The evidence of two collisions and the related unanimity instruction did not constructively amend the indictment because the indictment generally alleged damage to a particular automobile on a particular date and did not limit the charge to a specific collision or location.
3. The indictment was legally insufficient to charge felony destruction of property because it omitted the value of the damaged property, an element distinguishing the felony from the misdemeanor; permitting the jury to consider the felony therefore constructively amended the indictment.
4. The error in treating the indictment as charging felony destruction of property was plain and affected substantial rights, but it did not seriously affect the fairness, integrity, or public reputation of judicial proceedings; therefore, reversal was not warranted.
5. When one charge encompasses two separate incidents, the jury must be instructed to agree unanimously on the incident or incidents supporting a guilty verdict.

KEY QUOTATIONS

"A constructive amendment "occurs if, and only if, the prosecution relies at trial on a complex of facts distinctly different from that which the grand jury set forth in the indictment." (1028)

"where the grade of the offense, and consequently the punishment, depend on the value of the property, it is essential that the value of the property be alleged as well as proven in order to support the felony conviction." (1029)

"Thus, we conclude that plain error review is appropriate where an indictment omits an element of the offense for which a defendant is later convicted where there has been no objection." (1029)

FACTUAL BACKGROUND

Following a dispute concerning Peay's purchase of a vehicle from Stanley Wagoner, Wagoner drove away and Peay pursued him. Peay struck Wagoner's vehicle once on a street and again in the parking lot of Hadley Memorial Hospital, where Wagoner's two children and another adult were also occupants. The second collision damaged the vehicle and caused approximately \$750 in damage.

PROCEDURAL HISTORY

A jury convicted Peay of four ADW counts and one count of felony destruction of property. The trial court imposed concurrent seven-year prison terms for the ADW convictions and a consecutive three-year term for destruction of property, followed by supervised release. On appeal, the District of Columbia Court of Appeals held that the ADW convictions merged, rejected the preserved and unpreserved indictment challenges under the applicable standards, affirmed the felony destruction-of-property judgment, and remanded for the trial court to vacate the merging ADW convictions.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the trial court to vacate the ADW convictions that merge. The felony destruction-of-property judgment and all other aspects of the judgment are affirmed.

CASES CITED

- Williams v. United States, 756 A.2d 380, 388 (D.C. 2000)
- Ingram v. United States, 592 A.2d 992, 1005 (D.C. 1991)
- Baker v. United States, 867 A.2d 988, 997, 1000 n. 7 (D.C. 2005)
- Carter v. United States, 826 A.2d 300, 303, 304, 306 (D.C. 2003)
- Zacarias v. United States, 884 A.2d 83, 87 (D.C. 2005)
- United States v. Bradford, 482 A.2d 430, 432 (D.C. 1984)
- Wittenberg v. United States, 366 A.2d 128, 132 (D.C. 1976)
- Johnson v. United States, 812 A.2d 234, 241-242 (D.C. 2002)
- Smith v. United States, 801 A.2d 958, 962 (D.C. 2002)
- United States v. Cotton, 535 U.S. 625, 631 (2002)
- Ex parte Bain, 121 U.S. 1, 13 (1887)
- United States v. Olano, 507 U.S. 725, 732-736 (1993)
- Marquez v. United States, 903 A.2d 815, 817 (D.C. 2006)
- Resendiz-Ponce v. United States, 549 U.S. 102, 127 S. Ct. 782, 166 L. Ed. 2d 591 (2007)
- Scarborough v. United States, 522 A.2d 869, 871 (D.C. 1987)
- Gerstein v. Pugh, 420 U.S. 103, 95 S. Ct. 854, 43 L. Ed. 2d 54 (1975)
- Sampson v. United States, 126 S. Ct. 2882, 165 L. Ed. 2d 897 (2006)

- Franklin v. United States, 126 S. Ct. 2883, 165 L. Ed. 2d 897 (2006)

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