

DISTRICT OF COLUMBIA COURT OF APPEALS

Momolu B. Stewart v. United States

881 A.2d 1100 (D.C. 2005) · No. Nos. 98-CF-904, 02-CO-1177 · Decided September 1, 2005

SUMMARY

The District of Columbia Court of Appeals affirmed Stewart’s convictions for assault with a dangerous weapon and related firearms offenses, holding that the trial court properly admitted a bullet and pistol because the evidence showed a reasonable possibility of connection to the crime. The court also affirmed the denial of Stewart’s D.C. Code § 23-110 motion, concluding that trial counsel’s challenged decisions were reasonable strategic choices and did not establish ineffective assistance.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Terry, Associate Judge; Wagner, Associate Judge; Reid, Associate Judge
JURISDICTION	District of Columbia
DECIDED	September 1, 2005
DOCKET	Nos. 98-CF-904, 02-CO-1177
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a criminal conviction for assault with a dangerous weapon and two firearms offenses, together with an appeal from the denial of a motion to vacate sentence under D.C. Code § 23-110.
STANDARD OF REVIEW	Relevance and the balancing of probative value against prejudicial effect are reviewed for abuse of discretion. The denial of a § 23-110 motion alleging ineffective assistance is reviewed under the Strickland standard; the court did not decide whether Brady rulings receive independent or de novo review because the claim failed under either standard.
PRECEDENTIAL VALUE	published opinion
PARTIES	Momolu B. Stewart v. United States

TOPICS

- evidence
- relevance
- authentication
- ineffective assistance
- post-conviction relief

PRACTICE AREAS

criminal law

evidence

post-conviction relief

appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by admitting the bullet and pistol as relevant evidence despite the absence of a conclusive link between those items and the shooting.
2. Whether the trial court abused its discretion by determining that the probative value of the firearm evidence was not substantially outweighed by unfair prejudice.
3. Whether trial counsel rendered ineffective assistance by failing to interview or call potential witnesses, challenge the delayed recovery and chain of custody of the bullet, seek a cautionary instruction concerning the stipulation, and cross-examine the victim regarding alleged bias.
4. Whether the government's delayed disclosure of police reports concerning additional damage to the victim's van violated *Brady v. Maryland*.

HOLDINGS

1. Evidence is relevant and admissible when there is a reasonable possibility of a link between the evidence and the crime; absolute certainty or a definitive connection is not required. The bullet and pistol were sufficiently linked to the shooting to be admitted.
2. The District of Columbia Court of Appeals did not adopt Federal Rule of Evidence 901 as a separate authentication requirement for the evidence at issue; a reasonable possibility of a connection, rather than absolute authenticity, was sufficient.
3. The trial court did not abuse its discretion in finding that the probative value of the pistol and bullet was not substantially outweighed by unfair prejudice.
4. Stewart failed to establish ineffective assistance because he did not show both deficient performance and resulting prejudice under *Strickland*. Counsel's decisions not to present potentially perjured or non-helpful witnesses, not to emphasize the delayed bullet recovery, and to use the stipulation and avoid bias-related cross-examination were reasonable trial strategy choices.
5. The prosecutor's mistaken reference to the date on which the bullet was recovered did not warrant relief because the record did not show deliberate deception or intentional solicitation or concealment of false testimony.
6. The delayed disclosure of police reports concerning additional holes in the rear of the van did not violate *Brady* because the reports were not material evidence favorable to Stewart and he failed to show a reasonable probability that earlier disclosure would have changed the outcome.

KEY QUOTATIONS

"The reasonable possibility standard does not require absolute certainty." (881 A.2d at 1111)

"To establish ineffective assistance of counsel, a convicted defendant must make a two-part showing." (881 A.2d at 1113)

“Under a proper chain-of-custody analysis, the government was required to prove only that the bullet recovered from the van was the same bullet analyzed by Officer Curtis.” (881 A.2d at 1115)

FACTUAL BACKGROUND

A victim identified Stewart as the person who displayed a silver automatic pistol and fired at the victim's van. Police later recovered a silver 9-millimeter pistol from the trunk of a vehicle associated with Stewart and recovered a spent nickel-plated 9-millimeter bullet from the van; firearms testing showed that the pistol was capable of firing the bullet, although it did not establish an exclusive match. Stewart's trial counsel made strategic decisions concerning the admission of the firearm and bullet, potential witnesses, cross-examination, and a stipulation describing Stewart as a suspect in another incident. Police reports concerning additional damage to the van were disclosed during the § 23-110 hearing rather than before trial.

PROCEDURAL HISTORY

Stewart was convicted after the trial court admitted a bullet recovered from the victim's van and a pistol recovered from a vehicle associated with Stewart. While his direct appeal was pending, he filed a D.C. Code § 23-110 motion alleging ineffective assistance of counsel and a Brady violation. The trial court denied the motion after an evidentiary hearing, and the District of Columbia Court of Appeals affirmed both the conviction and the denial of post-conviction relief.

DISPOSITION

affirmed

CASES CITED

- *Punch v. United States*, 377 A.2d 1353, 1358 (D.C. 1977), cert. denied, 435 U.S. 955 (1978)
- *Street v. United States*, 602 A.2d 141, 143 (D.C. 1992)
- *Winfield v. United States*, 676 A.2d 1, 4-5 (D.C. 1996) (en banc)
- *Bowman v. United States*, 652 A.2d 64, 68 (D.C. 1994)
- *Johnson v. United States*, 683 A.2d 1087, 1095 (D.C. 1996) (en banc)
- *Busey v. United States*, 747 A.2d 1153, 1165 (D.C. 2000)
- *Ali v. United States*, 581 A.2d 368, 374-375 (D.C. 1990)
- *Lee v. United States*, 471 A.2d 683, 684-686 (D.C. 1984)
- *Burleson v. United States*, 306 A.2d 659, 661 (D.C. 1973)
- *Hollingsworth v. United States*, 531 A.2d 973, 982 (D.C. 1987)
- *Adams v. United States*, 379 A.2d 961, 964 (D.C. 1977)
- *United States v. Jackson*, 166 U.S. App. D.C. 166, 175 n. 73, 509 F.2d 499, 508 n. 73 (1974)
- *McCoy v. United States*, 760 A.2d 164, 186 (D.C. 2000)
- *Strickland v. Washington*, 466 U.S. 668, 687-689 (1984)
- *Tibbs v. United States*, 628 A.2d 638, 640-641 (D.C. 1993)

- Sykes v. United States, 585 A.2d 1335, 1340 (D.C. 1991)
- Joseph v. United States, 597 A.2d 14, 23 (D.C. 1991)
- Lanton v. United States, 779 A.2d 895, 901 (D.C. 2001)
- Coleman v. United States, 379 A.2d 710, 712 (D.C. 1977)
- Foreman v. United States, 792 A.2d 1043, 1056 (D.C. 2002)
- Turney v. United States, 626 A.2d 872, 873 (D.C. 1993)
- Tompkins v. United States, 272 A.2d 100, 103 (D.C. 1970)
- Giglio v. United States, 405 U.S. 150, 153 (1972)
- Napue v. Illinois, 360 U.S. 264, 269 (1959)
- Brady v. Maryland, 373 U.S. 83, 87 (1963)
- Ginyard v. United States, 816 A.2d 21, 32 (D.C. 2003)
- Farley v. United States, 767 A.2d 225, 228-229 (D.C. 2001), cert. denied, 534 U.S. 982 (2001)
- Davies v. United States, 476 A.2d 658, 661 (D.C. 1984)
- Rowland v. United States, 840 A.2d 664, 687 (D.C. 2004)
- Benton v. United States, 815 A.2d 371, 373 n. 3 (D.C. 2003)
- Bennett v. United States, 797 A.2d 1251, 1255 n. 6 (D.C. 2002)
- United States v. Agurs, 427 U.S. 97, 114 (1976)
- In re D.M.C., 503 A.2d 1280, 1283 (D.C. 1986)