

DISTRICT OF COLUMBIA COURT OF APPEALS

McClary v. United States

3 A.3d 346 (D.C. 2010) · No. 07-CF-1154 · Decided September 2, 2010

SUMMARY

The District of Columbia Court of Appeals affirmed Jamelle McClary's convictions for armed assault, firearm, and ammunition offenses, except that it ordered merger of the aggravated assault and assault with a dangerous weapon convictions and the three firearm-possession convictions. The court held that the restrictions on cross-examination of the victim did not violate the Confrontation Clause and that the jury instruction concerning juror conduct and deliberations was not erroneous. The case was remanded to vacate sentences for the merged offenses.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Nebeker, Senior Judge; Wagner, Senior Judge; Kern, Senior Judge
JURISDICTION	District of Columbia
DECIDED	September 2, 2010
DOCKET	07-CF-1154
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from convictions following a jury trial. The appellant challenged limitations on bias cross-examination, a pre-deliberation jury instruction, and the failure to merge certain convictions for double-jeopardy purposes.
STANDARD OF REVIEW	Constitutional confrontation claims are reviewed for legal error, subject to harmless-error analysis; limits on cross-examination for bias are reviewed for abuse of discretion; unpreserved claims are reviewed for plain error; and merger and double-jeopardy issues are reviewed under applicable merger principles and the Blockburger test.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Jamelle McClary v. United States

TOPICS

- criminal procedure
- sixth amendment
- double jeopardy
- appellate procedure
- harmless error

PRACTICE AREAS

criminal law

criminal procedure

constitutional law

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether limiting cross-examination of the victim concerning his juvenile cases, probationary status, custody order, recent arrest, and other dealings with the government violated the Sixth Amendment Confrontation Clause.
2. Whether the trial court's pre-deliberation attitude-and-conduct-of-the-jury instruction improperly coerced jurors or prioritized unanimity and judicial efficiency over individual juror judgment.
3. Whether the convictions for aggravated assault while armed and assault with a dangerous weapon merged.
4. Whether the three convictions for possession of a firearm during the commission of a crime of violence merged into one conviction.
5. Whether the convictions for aggravated assault while armed and assault with intent to kill while armed merged.

HOLDINGS

1. The trial court did not violate McClary's Sixth Amendment right of confrontation or abuse its discretion by limiting cross-examination of Grady concerning his prior juvenile matters, probation, custody order, and recent arrest, because the defense was permitted to elicit meaningful evidence of Grady's potential motive to curry favor with the government.
2. The claim was not adequately preserved because defense counsel's supplemental memorandum, filed merely for the record and without oral argument after the court invited it, did not sufficiently present the issue for a ruling; the record therefore did not establish error.
3. The trial court did not err by giving the attitude-and-conduct-of-the-jury instruction because, viewed as a whole, it encouraged jurors to remain open-minded and reconsider their views when persuaded they were wrong rather than requiring them to abandon individual opinions to reach a verdict.
4. The convictions for aggravated assault while armed and assault with a dangerous weapon merge because assault with a dangerous weapon is a lesser-included offense of aggravated assault while armed.
5. The three convictions for possession of a firearm during the commission of a crime of violence merge into one conviction because possessory weapons offenses arising from a single violent act do not support multiple convictions.
6. The convictions for aggravated assault while armed and assault with intent to kill while armed do not merge.

KEY QUOTATIONS

"The Confrontation Clause guarantees an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent the defense might wish." (352)

“For the foregoing reasons, the judgment of the trial court is affirmed on the merits. The case is remanded to the trial court to vacate the sentences as to the merged offenses.” (356)

FACTUAL BACKGROUND

On August 7, 2006, Sean Grady was selling crack cocaine on Livingston Road in Southeast Washington, D.C., when McClary approached him and shortly thereafter fired at least seven shots, striking Grady multiple times. Two eyewitnesses observed McClary fire in Grady's direction, and Grady was later found injured behind a nearby school. Grady testified under an immunity agreement and acknowledged his drug activity, initial refusal to cooperate, and the absence of criminal charges for selling drugs on the night of the shooting.

PROCEDURAL HISTORY

After a jury trial presided over by Judge Dixon, McClary was convicted of assault, firearm, and weapons offenses arising from a shooting. On appeal, he challenged the restriction of cross-examination of the victim, the jury instruction concerning juror attitude and conduct, and the failure to merge several convictions. The District of Columbia Court of Appeals affirmed the convictions on the merits but remanded for the trial court to vacate sentences on offenses that merged.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

Remanded to the trial court to vacate the sentences as to the merged offenses: aggravated assault while armed and assault with a dangerous weapon, and the two additional possession-of-a-firearm-during-commission-of-a-crime-of-violence convictions.

CASES CITED

- Davis v. Alaska, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974)
- Delaware v. Van Arsdall, 475 U.S. 673, 106 S. Ct. 1431, 89 L. Ed. 2d 674 (1986)
- Delaware v. Fensterer, 474 U.S. 15, 20, 106 S. Ct. 292, 88 L. Ed. 2d 15 (1985)
- Slye v. United States, 602 A.2d 135, 139 (D.C. 1992)
- Sherer v. United States, 470 A.2d 732, 737 (D.C. 1983)
- Brown v. United States, 409 A.2d 1093, 1099 (D.C. 1979)
- Jenkins v. United States, 617 A.2d 529, 532-33 (D.C. 1992)
- Guzman v. United States, 769 A.2d 785, 790 (D.C. 2001)
- Brown v. United States, 683 A.2d 118, 124 (D.C. 1996)
- Chapman v. California, 386 U.S. 18, 87 S. Ct. 824, 17 L. Ed. 2d 705 (1967)
- Jones v. United States, 946 A.2d 970, 973-74 (D.C. 2008)
- Lampkins v. United States, 973 A.2d 171, 173 (D.C. 2009)

- *Beaner v. United States*, 845 A.2d 525, 540 (D.C. 2004)
- *Nixon v. United States*, 730 A.2d 145, 152-53 (D.C. 1999)
- *M.A.P. v. Ryan*, 285 A.2d 310, 312 (D.C. 1971)
- *Ingram v. United States*, 122 U.S.App.D.C. 334, 353 F.2d 872 (1965)
- *Tolbert v. United States*, 905 A.2d 186, 190 (D.C. 2006)
- *Blockburger v. United States*, 284 U.S. 299, 52 S. Ct. 180, 76 L. Ed. 306 (1932)
- *Ferrell v. United States*, 990 A.2d 1015, 1022 (D.C. 2010)
- *Arthur v. United States*, 986 A.2d 398, 404 (D.C. 2009)

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