

DISTRICT OF COLUMBIA COURT OF APPEALS

Gause v. United States

959 A.2d 671 (D.C. 2008) · No. Nos. 06-CF-20, 06-CF-47 · Decided October 30, 2008

SUMMARY

The District of Columbia Court of Appeals considered whether defendants challenging the composition of jury venires were required to establish a prima facie constitutional or statutory violation before obtaining jury-selection records and related discovery. The court held that the trial judge erred in denying the discovery request on that basis and remanded for reconsideration under the principles discussed in the opinion. The court also rejected the separate claims raised by appellant Wilkey.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Schwelb, Senior Judge; Blackburne-Rigsby, Associate Judge; Thompson, Associate Judge
JURISDICTION	District of Columbia
DECIDED	October 30, 2008
DOCKET	Nos. 06-CF-20, 06-CF-47
DISPOSITION	remanded
PROCEDURAL POSTURE	Consolidated appeals from convictions following a jury trial in the District of Columbia Superior Court. Appellants challenged the denial of a motion seeking discovery of jury-selection records and related jury information.
STANDARD OF REVIEW	De novo review applies to the dispositive legal question concerning the standard governing entitlement to discovery of jury-selection materials; other discovery issues generally are reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published opinion; binding District of Columbia Court of Appeals precedent, subject to the dissent.
PARTIES	Larry A. Gause, Karlepa Wilkey v. United States

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QUESTIONS PRESENTED

1. Whether the Superior Court erred by denying appellants' request for discovery of nonpublic jury-selection records on the ground that they had not made a prima facie showing of unconstitutional or statutory underrepresentation.
2. What showing a criminal defendant must make under the District of Columbia Jury System Act to obtain discovery of nonpublic records relevant to a jury-selection challenge.
3. Whether Wilkey's additional claims concerning a sleeping juror, the aiding-and-abetting instruction, and sufficiency of the evidence warranted reversal.

HOLDINGS

1. The trial court erred in denying appellants' jury motion and discovery request because they had failed to establish a prima facie case. A prima facie merits showing is not the proper threshold for obtaining relevant jury-selection discovery.
2. A criminal defendant seeking access to nonpublic jury-selection records must demonstrate a reason to believe that a constitutional or statutory violation occurred. The reasonable-belief standard is modest and is roughly comparable to reasonable articulable suspicion; doubtful cases should be resolved in favor of access.
3. The Monday-Tuesday issue should be considered as part of the inquiry into whether appellants had reason to believe that a constitutional or statutory violation occurred; the evidence concerning Monday venires could potentially illuminate the broader jury-selection system.
4. Wilkey was not entitled to reversal based on the alleged sleeping juror, the aiding-and-abetting instruction, or insufficiency of the evidence.

KEY QUOTATIONS

"This provision makes [it] clear that a litigant has essentially an unqualified right to inspect jury lists." (at 680)

"Accordingly, we conclude that the question whether a criminal defendant in the District has the same unqualified right as his federal counterpart to inspect jury records, without being required to make any prior showing at all, is a question of first impression in this jurisdiction with no binding authority constraining our resolution of it." (at 684)

"In our view, however, the "reasonable belief" standard adopted by the Supreme Court of California in Jackson, with doubtful cases to be resolved in the defendant's favor with respect to access to discovery, is

appropriate for the District of Columbia and well-suited to the circumstances of this jurisdiction.” (at 685)

FACTUAL BACKGROUND

On July 1, 2005, two men robbed sixty-three-year-old John Jeffers at an ATM in southeast Washington, D.C., taking his wallet and twenty dollars. Police soon found Gause and Wilkey hiding under bushes near a creek bed, along with clothing matching the robbery description, Jeffers's wallet, a sawed-off shotgun, and a two-dollar bill taken from Jeffers. Jeffers identified Wilkey and gave a less certain identification of Gause. At trial, Gause sought jury-selection records based on preliminary statistical evidence suggesting that Monday venires underrepresented African Americans and on information about juror rescheduling practices.

PROCEDURAL HISTORY

Gause and Wilkey were convicted of armed robbery of a senior citizen and related weapons offenses. Gause filed, and Wilkey joined, a motion challenging the jury-selection system and requesting discovery of jury records. The Superior Court denied the motion because Gause had not established a prima facie case of unconstitutional or statutory underrepresentation. The Court of Appeals held that the prima facie standard was erroneous, adopted a reasonable-belief standard for access to nonpublic jury-selection records under the District of Columbia Jury System Act, and remanded for reconsideration.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The trial court must determine whether appellants have demonstrated a reason to believe that the selection of their jury violated the Fifth or Sixth Amendments or the DCJSA. If so, it must grant discovery consistent with the opinion, set a hearing on the jury motion, and rule on its merits. If not, it must deny the discovery request. The court may take judicial notice of Judge Boasberg's decision and proceedings in *United States v. Odell Powell*.

CASES CITED

- *Beaner v. United States*, 845 A.2d 525 (D.C. 2004)
- *Gibson v. United States*, 566 A.2d 473 (D.C. 1989)
- *Diggs v. United States*, 906 A.2d 290 (D.C. 2006)
- *Taylor v. Louisiana*, 419 U.S. 522 (1975)
- *Obregon v. United States*, 423 A.2d 200 (D.C. 1980)
- *Castaneda v. Partida*, 430 U.S. 482 (1977)
- *Duren v. Missouri*, 439 U.S. 357 (1979)
- *Carle v. United States*, 705 A.2d 682 (D.C. 1998)
- *Test v. United States*, 420 U.S. 28 (1975)
- *United States v. Stanko*, 528 F.3d 581 (8th Cir. 2008)

- United States v. Alden, 776 F.2d 771 (8th Cir. 1985)
- United States v. Beaty, 465 F.2d 1376 (9th Cir. 1972)
- United States v. Royal, 100 F.3d 1019 (1st Cir. 1996)
- Government of Canal Zone v. Davis, 592 F.2d 887 (5th Cir. 1979)
- United States v. Miller, 116 F.3d 641 (2d Cir. 1997)
- United States v. Curry, 993 F.2d 43 (4th Cir. 1993)
- United States v. Rice, 489 F. Supp. 2d 1312 (S.D. Ala. 2007)
- United States v. Davenport, 824 F.2d 1511 (7th Cir. 1987)
- United States v. Diaz, 236 F.R.D. 470 (N.D. Cal. 2006)
- United States v. Carlock, 606 F. Supp. 491 (E.D. La. 1985)
- United States v. Gotti, 2004 WL 2274712 (S.D.N.Y. Oct. 7, 2004)
- United States v. Gotti, 2004 WL 32858 (S.D.N.Y. Jan. 6, 2004)
- United States v. Causey, 2004 WL 1243912 (S.D. Tex. May 25, 2004)
- Kingsbury v. United States, 520 A.2d 686 (D.C. 1987)
- United States v. Brown, 422 A.2d 1281 (D.C. 1980)
- Covington v. United States, 698 A.2d 1033 (D.C. 1997)
- United States v. Wilson, 290 F.3d 347 (D.C. Cir. 2002)
- Muscogee (Creek) Nation v. Hodel, 851 F.2d 1439 (D.C. Cir. 1988)
- Klein v. Republic Steel Corp., 435 F.2d 762 (3d Cir. 1970)
- Chertkof v. United States, 676 F.2d 984 (4th Cir. 1982)
- Water Quality Ass'n Employees' Benefit Corp. v. United States, 795 F.2d 1303 (7th Cir. 1986)
- Kraft v. Kraft, 155 A.2d 910 (D.C. 1959)
- Khiem v. United States, 612 A.2d 160 (D.C. 1992)
- Armour & Co. v. Wantock, 323 U.S. 126 (1944)
- Lewis v. State, 332 Md. 639, 632 A.2d 1175 (1993)
- People v. Jackson, 13 Cal. 4th 1164, 920 P.2d 1254 (1996)
- Roddy v. Superior Court of San Diego County, 151 Cal. App. 4th 1115, 60 Cal. Rptr. 3d 307 (2007)
- Rojas v. State, 288 So. 2d 234 (Fla. 1973)
- Terry v. Ohio, 392 U.S. 1 (1968)
- Trafficante v. Metropolitan Life Insurance Co., 409 U.S. 205 (1972)
- Harris v. District of Columbia Commission on Human Rights, 562 A.2d 625 (D.C. 1989)
- Rose v. Mitchell, 443 U.S. 545 (1979)
- District of Columbia v. Wical Ltd. Partnership, 630 A.2d 174 (D.C. 1993)
- District of Columbia v. Tarlosky, 675 A.2d 77 (D.C. 1996)
- Lanier v. District of Columbia, 871 F. Supp. 20 (D.D.C. 1994)
- In re B.B.P., 753 A.2d 1019 (D.C. 2000)
- United States v. Stokes, 365 A.2d 615 (D.C. 1976)

- District of Columbia v. Craig, 930 A.2d 946 (D.C. 2007)
- Hively v. District of Columbia Department of Employment Services, 681 A.2d 1158 (D.C. 1996)
- United States v. Orlando-Figueroa, 229 F.3d 33 (1st Cir. 2000)
- United States v. Lawson, 670 F.2d 923 (10th Cir. 1982)
- United States v. McLernon, 746 F.2d 1098 (6th Cir. 1984)
- Pardue v. Center City Consortium Schools of Archdiocese of Washington, Inc., 875 A.2d 669 (D.C. 2005)
- Maxwell v. United States, 297 A.2d 771 (D.C. 1972)
- Golsun v. United States, 592 A.2d 1054 (D.C. 1991)
- Wilson-Bey v. United States, 903 A.2d 818 (D.C. 2006) (en banc)
- Lattimore v. United States, 684 A.2d 357 (D.C. 1996)

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