

DISTRICT OF COLUMBIA COURT OF APPEALS

Doreus v. United States

964 A.2d 154 (D.C. 2009) · No. 06-CF-247 · Decided January 29, 2009

SUMMARY

The District of Columbia Court of Appeals vacated Gad Doreus's conviction for possession of cocaine with intent to distribute while armed. The court held that admitting the DEA chemist's report without providing an opportunity for cross-examination violated the Sixth Amendment Confrontation Clause and was not harmless beyond a reasonable doubt. The court rejected entry of judgment on a lesser-included attempt offense and remanded for a new trial, while upholding the denial of suppression and the sufficiency of the evidence supporting the while-armed enhancement.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Reid, Associate Judge; Washington, Chief Judge; Glickman, Associate Judge
JURISDICTION	District of Columbia
DECIDED	January 29, 2009
DOCKET	06-CF-247
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a criminal conviction for possession of a controlled substance with intent to distribute while armed. The appellant challenged admission of a DEA chemist's report without producing the chemist for cross-examination, denial of suppression motions, and the sufficiency of the evidence supporting the armed enhancement.
STANDARD OF REVIEW	The court reviewed the suppression ruling for legal correctness, assessed the Confrontation Clause error under the harmless-beyond-a-reasonable-doubt standard, and reviewed the sufficiency of the evidence supporting the while-armed enhancement to determine whether reasonable jurors could find the required facts.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Gad Doreus v. United States

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QUESTIONS PRESENTED

1. Whether admitting the DEA chemist's report without making the chemist available for cross-examination violated Doreus's Sixth Amendment confrontation right and required vacatur of the conviction.
2. Whether the government was entitled to entry of judgment on the lesser-included offense of attempted possession with intent to distribute a controlled substance.
3. Whether the trial court properly denied Doreus's motion to suppress the physical and identification evidence under the Fourth and Fifth Amendments.
4. Whether the evidence was sufficient to support the while-armed penalty enhancement.

HOLDINGS

1. The admission of the DEA chemist's report over objection, without producing the chemist for cross-examination, violated Doreus's Sixth Amendment confrontation right, and the conviction for possession of cocaine with intent to distribute had to be vacated.
2. The government was not entitled to entry of judgment on the lesser-included offense because the evidentiary error was not harmless beyond a reasonable doubt as to attempted possession with intent to distribute a controlled substance.
3. The trial court properly denied the motion to suppress physical and identification evidence because the officers had reasonable, articulable suspicion to conduct a brief investigatory stop.
4. The evidence was sufficient to support the while-armed enhancement because Doreus possessed a dangerous or deadly weapon under circumstances permitting reasonable jurors to find that the knife was under his control and ready for use.

KEY QUOTATIONS

“the erroneous admission of the DEA-7 report without an opportunity to cross-examine the chemist who prepared it was not harmless beyond a reasonable doubt as to the offense of attempted possession of marijuana because we cannot say that the error did not contribute to the verdict, and the government did not otherwise present overwhelming evidence that appellant intended to possess marijuana.” (157-158)

“we cannot say under the harmless error standard articulated in Chapman v. California, 386 U.S. 18, 24, 87 S. Ct. 824, 17 L. Ed. 2d 705 (1967), that the government would have been able to satisfy its high burden of proof beyond a reasonable doubt with respect to establishing the requisite intent for an attempted possession with intent to distribute a controlled substance offense.” (160)

FACTUAL BACKGROUND

Police officers conducting a buy/bust operation observed Doreus retrieve something from a basement-area drain or stairwell and exchange an object with a woman for something he believed to be money. Officers later found thirty-two small bags containing a white rock-like substance and five bags containing tablets in a concealed downspout near the observed activity; the tablets were not controlled substances, while the DEA chemist's report identified the white rock-like substance as cocaine. Doreus was stopped, identified in a show-up, arrested, and found with \$31 and a folding knife approximately eight and three-quarters inches long with a four-inch blade.

PROCEDURAL HISTORY

A jury convicted Doreus of possession of cocaine with intent to distribute while armed. The trial court denied his motion to suppress physical and identification evidence and admitted the DEA chemist's report despite the chemist's absence from trial. The Court of Appeals vacated the judgment and remanded for a new trial, rejecting the government's request for entry of judgment on a lesser-included attempt offense.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court's judgment was vacated, and the case was remanded for a new trial on possession of a controlled substance (cocaine) with intent to distribute while armed. The government was not permitted to obtain entry of judgment on the lesser-included attempted-possession offense.

CASES CITED

- Howard v. United States, 929 A.2d 839 (D.C. 2007)
- Thomas v. United States, 914 A.2d 1 (D.C. 2006)
- Fields v. United States, 952 A.2d 859 (D.C. 2008)
- Thompson v. United States, 678 A.2d 24 (D.C. 1996)
- Seeney v. United States, 563 A.2d 1081 (D.C. 1989)
- Blackledge v. United States, 447 A.2d 46 (D.C. 1982)
- Shelton v. United States, 929 A.2d 420 (D.C. 2007)
- Peterkin v. United States, 281 A.2d 567 (D.C. 1971)
- Tobias v. United States, 375 A.2d 491 (D.C. 1977)
- Coles v. United States, 682 A.2d 167 (D.C. 1996)
- Thompson v. United States, 745 A.2d 308 (D.C. 2000)
- Samson v. United States, 692 A.2d 437 (D.C. 1997)
- Willis v. United States, 692 A.2d 1380 (D.C. 1997)
- Chapman v. California, 386 U.S. 18 (1967)
- McPherson-Corder v. Chinkhota, 835 A.2d 1081 (D.C. 2003)
- Terry v. Ohio, 392 U.S. 1 (1968)

- Hicks v. United States, 730 A.2d 657 (D.C. 1999)
- In re M.E.B., 638 A.2d 1123 (D.C. 1993)
- Broadie v. United States, 925 A.2d 605 (D.C. 2007)
- Lewis v. United States, 767 A.2d 219 (D.C. 2001)
- Nelson v. United States, 280 A.2d 531 (D.C. 1971) (per curiam)

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