

DISTRICT OF COLUMBIA COURT OF APPEALS

Lloyd v. United States

64 A.3d 405 (D.C. 2013) · Decided January 24, 2013

SUMMARY

The District of Columbia Court of Appeals affirmed Timothy Lloyd’s conviction for first-degree cruelty to children. The court held that displaying an illustration of a fist striking a child’s liver without a cautionary instruction was harmless error and that the prosecutor’s improper questions about whether witnesses fabricated their testimony did not constitute plain error.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Terry, Senior Judge; Oberly; Terry; Thompson
JURISDICTION	District of Columbia
DECIDED	January 24, 2013
DISPOSITION	affirmed
PROCEDURAL POSTURE	After a jury trial, appellant was convicted of first-degree cruelty to children and appealed, challenging the use of a demonstrative illustration and the prosecutor’s questioning about whether other witnesses had fabricated testimony.
STANDARD OF REVIEW	Demonstrative-evidence rulings are reviewed for abuse of discretion. Grounds not preserved by objection are reviewed for plain error. The court also applied harmless-error analysis to the failure to give a cautionary instruction.
PRECEDENTIAL VALUE	Published opinion; precedential authority of the District of Columbia Court of Appeals.
PARTIES	Timothy Lloyd v. United States

TOPICS

- evidence
- impeachment
- harmless error
- preservation of error
- appellate procedure

PRACTICE AREAS

- criminal evidence
- criminal procedure
- appellate review

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion or otherwise committed reversible error by allowing the jury to see a demonstrative illustration depicting a fist punching a child's liver without a cautionary instruction.
2. Whether the trial court committed plain error by failing sua sponte to stop the prosecutor from asking appellant questions that required him to suggest that other witnesses had fabricated or misstated their testimony.

HOLDINGS

1. The trial court should have instructed the jury that the blunt force depicted in the illustration did not necessarily have to be a punch with a fist, but the failure to give that instruction was harmless and did not warrant reversal.
2. The prosecutor's questions asking appellant to imply that government witnesses had fabricated or misstated testimony were improper, but the trial court's failure to intervene sua sponte did not constitute plain error.
3. Appellant's objection based on the inflammatory nature of the exhibit was preserved and did not need to be renewed during the expert's testimony, but other challenges to the exhibit were subject to plain-error review because they were not raised below.

KEY QUOTATIONS

"The crucial requirement is that the jury adequately be made aware of any variances between a photograph and reality." (64 A.3d at 410)

"What is prohibited is seeking to have one witness comment or opine on the credibility of a prior witness, however phrased." (64 A.3d at 412)

"In light of the entire record, we are satisfied that any prejudice resulting from the prosecutor's improper questioning was relatively slight, and that the court did not commit plain error by failing to intervene." (64 A.3d at 413)

FACTUAL BACKGROUND

Two-year-old A.M., who was temporarily staying with appellant, was found unconscious and critically injured in appellant's home. Medical examinations revealed extensive bruising, a large subdural hematoma with brain shift, liver abnormalities and hemorrhaging, and a fractured clavicle; a government expert characterized the injuries as non-accidental, while the defense expert testified that they could have resulted from an accidental fall. During trial, the government displayed an illustration of a fist making blunt-force contact with a child's liver and questioned appellant about whether government witnesses had fabricated or inaccurately reported parts of their testimony.

PROCEDURAL HISTORY

The trial court permitted the government to show the jury an illustration depicting a fist striking a child's liver and allowed the prosecutor to question appellant about whether two government witnesses had fabricated or misstated their testimony. The jury convicted appellant of first-degree cruelty to children. The District of Columbia Court of Appeals held that the illustration should have been accompanied by a cautionary instruction, but that the error was harmless, and that the improper questioning did not constitute plain error; it affirmed the conviction.

DISPOSITION

affirmed

CASES CITED

- Anderson v. United States, 857 A.2d 451, 459 (D.C. 2004)
- Hammond v. United States, 501 A.2d 796, 798 (D.C. 1985)
- Bursleson v. United States, 306 A.2d 659 (D.C. 1973)
- Wilkins v. United States, 582 A.2d 939, 942 n.7 (D.C. 1990)
- Timms v. United States, 25 A.3d 29, 36 (D.C. 2011)
- Williams v. United States, 641 A.2d 479, 483 (D.C. 1994)
- Taylor v. United States, 601 A.2d 1060, 1066-1067 (D.C. 1991)
- Brown v. United States, 464 A.2d 120, 123 (D.C. 1983)
- Punch v. United States, 377 A.2d 1353, 1358 (D.C. 1977), cert. denied, 435 U.S. 955 (1978)
- United States v. Gaskell, 985 F.2d 1056, 1060-1061 (11th Cir. 1993)
- Spyrka v. County of Cook, 851 N.E.2d 800, 810 (Ill. App. Ct. 2006)
- French v. City of Springfield, 357 N.E.2d 438, 442 (Ill. 1976)
- Dunkle v. State, 139 P.3d 228, 250 (Okla. Crim. App. 2006)
- Hutchison v. American Family Mutual Insurance Co., 514 N.W.2d 882, 890 (Iowa 1994)
- McLeod v. United States, 568 A.2d 1094, 1097 (D.C. 1990)
- Allen v. United States, 837 A.2d 917, 920-921 (D.C. 2003)
- Scott v. United States, 619 A.2d 917, 925 (D.C. 1993)
- Freeman v. United States, 495 A.2d 1183, 1188 (D.C. 1985)
- Carter v. United States, 475 A.2d 1118, 1126 (D.C. 1984)
- Wright v. United States, 513 A.2d 804, 811 (D.C. 1986)

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