

DISTRICT OF COLUMBIA COURT OF APPEALS

Hairston v. United States

908 A.2d 1195 (D.C. 2006) · No. No. 00-CF-1661 · Decided October 12, 2006

SUMMARY

The District of Columbia Court of Appeals held that the trial court erred by giving an aiding-and-abetting instruction because no evidence admitted for its truth supported a finding that Hairston was an accomplice rather than the principal offender. The court declined to conduct a harmless-error analysis because the government had not timely argued harmlessness, reversed the assault-with-a-dangerous-weapon conviction, and remanded for a new trial on that charge. The court affirmed Hairston's conviction for carrying a dangerous weapon.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Per curiam; the opinion was written partly by Judge Farrell and partly by Judge Terry; Farrell, Associate Judge; Steadman, Senior Judge; Terry, Senior Judge
JURISDICTION	District of Columbia
DECIDED	October 12, 2006
DOCKET	No. 00-CF-1661
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendant appealed his convictions for assault with a dangerous weapon and carrying a dangerous weapon after a jury convicted him of those offenses but failed to reach a verdict on an armed robbery charge. He challenged only the aiding-and-abetting instruction given on the assault charge.
STANDARD OF REVIEW	The court reviewed the giving of the aiding-and-abetting instruction for legal error and considered whether the error was harmless. Because the government did not timely argue harmless error and harmlessness was not obvious, the court declined to undertake a harmless-error analysis.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Oliver J. Hairston v. United States

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QUESTIONS PRESENTED

1. Whether the trial court erred by instructing the jury on aiding and abetting when no evidence admitted for its truth supported a finding that Hairston was an accomplice rather than the principal offender.
2. Whether the instructional error could be deemed harmless when the government did not argue harmless error in its brief and did not meaningfully argue it at oral argument.

HOLDINGS

1. The trial court erred by giving an aiding-and-abetting instruction because no evidence admitted for its truth allowed the jury to find that Hairston aided another person who was the principal offender rather than personally committing the assault.
2. The court declined to conduct a harmless-error analysis because the government failed to argue harmlessness in a timely manner and harmlessness was not obvious.

KEY QUOTATIONS

"To be an aider and abettor, one must aid or abet or procure someone else to commit a substantive offense. . . One cannot aid or abet himself." (908 A.2d at 1198)

"In short, no evidence admissible for its truth (rather than for impeachment purposes) cast appellant in an incriminating role other than that of principal." (908 A.2d at 1199)

"In these circumstances, we exercise our discretion not to undertake a harmless error analysis which the government has not advanced." (908 A.2d at 1200)

FACTUAL BACKGROUND

Keith Byrd encountered Hairston near a convenience store and later saw Hairston and another man follow him toward his apartment building. Inside the building, Byrd testified that Hairston alone assaulted him with a sharp object and took \$71 from his pockets, while the unidentified man remained outside and could not enter. Other witnesses recounted prior statements by Byrd suggesting that a second man may have participated, but the trial court instructed the jury that those statements could be used only to assess Byrd's credibility and not for their truth.

PROCEDURAL HISTORY

Hairston was indicted for armed robbery, assault with a dangerous weapon, and carrying a dangerous weapon. The jury convicted him of assault with a dangerous weapon and carrying a dangerous weapon but could not unanimously decide the armed robbery count, which the government later dismissed. The District of Columbia

Court of Appeals reversed the assault conviction because the aiding-and-abetting instruction lacked an evidentiary basis and remanded for a new trial on that count, while affirming the dangerous-weapon-carrying conviction.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for a new trial on the assault-with-a-dangerous-weapon count. The conviction for carrying a dangerous weapon was affirmed.

CASES CITED

- Randolph v. United States, 882 A.2d 210, 223 (D.C. 2005)
- Jefferson v. United States, 463 A.2d 681, 683 (D.C. 1983)
- Payton v. United States, 305 A.2d 512, 513 (D.C. 1973)
- Brooks v. United States, 599 A.2d 1094, 1098-99 (D.C. 1991)
- United States v. Martin, 747 F.2d 1404, 1407 (11th Cir. 1984)
- Griffin v. United States, 502 U.S. 46, 59-60 (1991)
- United States v. Townsend, 924 F.2d 1385, 1414 (7th Cir. 1991)

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