

DISTRICT OF COLUMBIA COURT OF APPEALS

James E. Brisbon v. United States

894 A.2d 1121 (D.C. 2006) · No. No. 03-CF-318 · Decided March 23, 2006

SUMMARY

The District of Columbia Court of Appeals held that the trial court abused its discretion by excluding a defense witness's testimony about the defendant's alleged excited utterance concerning an attempted robbery. The error was not harmless because the testimony was central to the defendant's self-defense claim, so the court reversed the convictions and remanded for a new trial. The court declined to review the defendant's separate claim regarding prior police contacts because the issue was not preserved and the trial court had not made a final ruling.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Terry, Senior Judge; Reid, Associate Judge; Belson, Senior Judge
JURISDICTION	District of Columbia
DECIDED	March 23, 2006
DOCKET	No. 03-CF-318
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Brisbon appealed his convictions for voluntary manslaughter while armed, possession of a firearm during a crime of violence, carrying a pistol without a license, and possession of an unregistered firearm. He challenged the exclusion of alleged spontaneous-utterance testimony and a ruling concerning testimony about his failure to report the incident to police.
STANDARD OF REVIEW	Evidentiary rulings concerning spontaneous utterances are reviewed for abuse of discretion and will be reversed if clearly erroneous. Harmlessness was evaluated under the Kotteakos standard. The unpreserved claim concerning the proposed police-contact evidence was not reviewed on the merits.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	James E. Brisbon v. United States

TOPICS

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QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by excluding Brisbon's own testimony that he made an excited or spontaneous statement after the shooting.
2. Whether the trial court abused its discretion by excluding Calvin Brown's testimony concerning Brisbon's alleged spontaneous statement that two men had tried to rob him.
3. Whether the trial court's preliminary ruling that Brisbon's testimony about his failure to contact police could open the door to evidence of prior police contacts violated his constitutional rights.

HOLDINGS

1. The trial court did not abuse its discretion by excluding Brisbon's own testimony about his alleged excited utterance because, under the circumstances, the court could require corroborative evidence and was not required to accept the defendant's self-authentication of the statement.
2. The trial court abused its discretion by excluding Brown's testimony because it treated the absence of an exact time lapse and Brown's status as Brisbon's longtime friend as barriers to admissibility.
3. The exclusion of Brown's testimony was not harmless and required reversal because it prevented Brisbon from presenting evidence central to his self-defense claim and left the jury without an explanation for his failure to mention the alleged attack to friends he saw shortly afterward.
4. The court could not review the claim because Brisbon failed to preserve it and the trial court had not made a final ruling on the admissibility or scope of the proposed evidence.

KEY QUOTATIONS

"This court has consistently held . . . that a lapse of time, while a relevant factor, is not dispositive on the question of admissibility [of an excited utterance]." (894 A.2d at 1129)

"Whether Brown should be disbelieved because he was appellant's friend, and thus not an "independent" witness, would affect only the weight of Brown's testimony; it would not, by itself, render Brown's testimony inadmissible." (894 A.2d at 1130)

"In these circumstances we cannot conclude "that the judgment was not substantially swayed" by the trial court's error, id. at 765, 66 S. Ct. 1239, and accordingly we hold that the error was not harmless." (894 A.2d at 1130)

FACTUAL BACKGROUND

Police found Michael Butler dead in an alley from a gunshot wound to the back of his head. The government's witnesses placed Brisbon near the alley and testified that he returned after several gunshots, while Brisbon

testified that Butler and another man attempted to rob him at gunpoint and that he shot Butler in self-defense. Shortly after the incident, Brisbon allegedly told friends that two men had tried to rob him, but the trial court excluded testimony about those statements.

PROCEDURAL HISTORY

Brisbon was indicted for first-degree murder while armed and several weapons offenses. The jury acquitted him of first- and second-degree murder while armed and unlawful possession of ammunition, but convicted him of the lesser included offense of voluntary manslaughter while armed and three weapons offenses. The District of Columbia Court of Appeals held that the trial court properly excluded Brisbon's own testimony about his alleged excited utterance but improperly excluded testimony from Calvin Brown concerning the same statement; because the error was not harmless, the court reversed and remanded for a new trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The judgment of conviction is reversed and the case is remanded for a new trial.

CASES CITED

- United States v. Marin, 669 F.2d 73, 84 (2d Cir. 1982)
- Smith v. United States, 666 A.2d 1216, 1221-1222, 1225 (D.C. 1995)
- Reyes-Contreras v. United States, 719 A.2d 503, 505-506 (D.C. 1998)
- Lyons v. United States, 683 A.2d 1080, 1083 (D.C. 1996)
- Bryant v. United States, 859 A.2d 1093, 1107 (D.C. 2004)
- Price v. United States, 545 A.2d 1219, 1226 (D.C. 1988)
- Bandoni v. United States, 171 A.2d 748, 750 (D.C. 1961)
- Newman v. United States, 705 A.2d 246, 259 (D.C. 1997)
- Kotteakos v. United States, 328 U.S. 750, 765 (1946)
- Luce v. United States, 469 U.S. 38, 41-42 (1984)
- Butler v. United States, 688 A.2d 381, 386, 388 (D.C. 1996)
- Bailey v. United States, 699 A.2d 392, 399, 402 (D.C. 1997)

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