



24-CF-0758

Clerk of the Court

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IN THE
DISTRICT OF COLUMBIA
COURT OF APPEALS

BRYANT PHILLIPS
Appellant

v.

UNITED STATES
Appellee

ON APPEAL FROM
THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Case No. 2022-CF1-004306

BRIEF OF APPELLANT

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NATURE OF APPEAL

This is an appeal from a final judgment and sentence.

**LIST OF ALL PARTIES, INTERVENORS, AMICI CURIAE,
AND THEIR COUNSEL IN THE TRIAL COURT
AND IN THE APPELLATE PROCEEDING**

| Party | Attorneys and Judges - Superior Court | Counsel - Appeal |
|-----------------|--|-------------------------|
| Bryant Phillips | Brandon Burrell Antonio Camacho | Sean R. Day |
| United States | Dana M. Joseph Niki Holmes | |
| Judge | The Honorable Anthony C. Epstein, Associate Judge | |

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STATEMENT OF THE ISSUE(S)

- I. Did the trial court abuse its discretion in allowing evidence that the defendant previously committed murder?
- II. Did the trial court abuse its discretion in refusing to grant a mistrial after the complainant testified that when she and Mr. Phillips met a year prior, he was on home detention?
- III. Did the trial court commit plain error by failing to include in the final instructions to the jury a limiting instruction regarding the complaining witness's testimony that Mr. Phillips was convicted of murder?

STATEMENT OF THE CASE

The case arose from an alleged kidnapping and underlying events from June 5 to 8, 2022, between Bryant Phillips and A.H., who had been dating. Phillips was tried before a jury on March 25 to 28, 2024, with the jury returning guilty verdicts on all counts. Phillips was sentenced on August 9, 2024, and filed a notice of appeal on August 19, 2024. Phillips's charges and sentences were as follows:

| | | |
|--|--|----------------------|
| 1 | First Degree Sexual Abuse (anus) D.C. Code § 22-3002(a)(1), (2), and (4) | Life Without Release |
| 2 | First Degree Sexual Abuse (mouth) D.C. Code § 22-3002(a)(1), (2), and (4) | 30 Years |
| 3 | Kidnapping D.C. Code § 22-2001 | 15 Years |
| 4 | Assault With a Dangerous Weapon (iron) D.C. Code § 22-402 | 15 Years |
| 5 | Assault With a Dangerous Weapon (belt) D.C. Code § 22-402 | 15 Years |
| 6 | Assault With Significant Bodily Injury While Armed (iron) <i>[“While Armed” portion dismissed 03/28/24]</i> D.C. Code § 22-404(a)(2) | 15 Years |
| 7 | Threats D.C. Code § 22-1810 | 22 Months |
| | <i>Information as to Previous Convictions pursuant to D.C. Code § 22-1804 filed 09/21/23</i> | |
| Total sentence: Life without the possibility of release. | | |

STATEMENT OF FACTS

Prior Murder Conviction

Bryant Phillips was previously convicted of murder, the jury was told. The trial court allowed the jury to hear this evidence because, the trial court reasoned, it related to the complainant's fear and reasons for not using any number of opportunities she had to simply leave.¹

The government's pretrial motion in limine to admit the statements focused solely on A.H. *telling others* that Mr. Phillips told her he had murdered someone. (*Government's Motion in Limine to Introduce Out-of-Court Statements* at R. 158) The trial court ruled that the evidence would be allowed under the state-of-mind exception to the rule against hearsay. The trial court concluded, however, that multiple references to the information would be unduly prejudicial; the government agreed. (03/15/24 at 6) Therefore, the court would allow just one witness to testify about A.H.'s statement that she was afraid due to Phillips's murder conviction. (6) The court clarified that in addition to such witness testimony, A.H. could also testify that Phillips told her about the murder conviction, which the trial court treated as conceded in Phillips's

¹ “[H]e told me he had murdered someone before.” (03/26/24 a.m. at 84)

opposition. (5, 7-8; Opposition at R. 240) Phillips, however, had not conceded that evidence of the murder conviction was admissible; Phillips only conceded that A.H. could testify she was afraid. (R. 249) Phillips hotly contested that knowledge of the murder conviction motivated the fear when such knowledge had not deterred A.H. from having a year-long romantic relationship with Phillips; it was “an evanescent fear invoked only when it served the complainant’s purposes.” (R. 249)

Regarding another witness testifying that A.H. told them about the murder conviction, the issue became moot as no such testimony was offered. The government did, however, elicit testimony from A.H. that Phillips told her he had murdered someone.

Home Detention

Adding corroboration and recency of prison release to A.H.’s belief that Phillips committed a murder, A.H., to the apparent surprise of the government, testified that Phillips was on home detention when they met.² The defense moved for a mistrial, which was denied.

² “Q: Can you describe how your relationship started in the beginning to the jury? A: He was not able to leave because he was on house arrest, so I would go over to see him.” (03/26/24 a.m. at 38)

Phillips argued that while the jury might have dismissed the claim of a prior murder as untrue (either A.H. was untruthful or inaccurate about what Phillips said, or Phillips told a tale), adding the fact of home detention cemented it as fact for the jury. (03/26/24 a.m. at 48)

Remaining Evidence

Phillips and A.H. met on a flight in June 2021 and began dating. (03/26/24 a.m. at 36, 56) A.H. was retired from 20 years of service with the United States Marine Corps, where she had received hand-to-hand combat training and served in combat zones (though she had not been directly involved in combat). (03/26/24 p.m. at 37) A.H. was working in a government civilian position during the time of events herein.

Until the alleged events herein, Phillips and A.H. got along well, with no threats, violence, or nonconsensual sexual acts. (03/26/24 a.m. at 59; 03/26/24 p.m. at 17) On June, 2, 2022, Phillips drove A.H. to the airport for a trip to a bowling tournament A.H. was participating in. (03/26/24 a.m. at 58-59) According to A.H., the trip sprung jealousy in Phillips. During the drive to the airport, Phillips pulled onto a side road, stopped, and threatened A.H., saying he would “do things” to her and “people

weren't going to find me." (59-60) Phillips snapped out of it and explained he had Post Traumatic Stress Disorder. (*Id.*)

That weekend when A.H. was away, Phillips contacted her incessantly which A.H. eventually ignored. (03/26/24 a.m. at 61-62) When A.H. was at the hotel the two were Facetiming (a video calling app) and A.H. fell asleep; Phillips accused A.H. of being with someone because he believed the television channel was changing while A.H. was asleep. (62)

Upon returning home Sunday evening, A.H. went to see Phillips, who seemed normal and pleasant. (03/26/24 a.m. at 66) A.H. brought a change of clothes and a toothbrush and was planning to leave from Phillips's residence to New York to take her mother (who had dementia) for a doctor's visit. (03/26/24 a.m. at 59; 03/26/24 p.m. at 20) A.H. went into the bedroom (not necessarily for sex since the television and other things were in the bedroom). (03/26/24 a.m. at 71) According to A.H. that is when events turned. A.H. alleged that from Sunday evening until Wednesday morning Phillips held her hostage; threatened her;³ beat her;

³ According to A.H., Phillips made various threats: displayed garden sheers and threatened to cut off her fingers; threatened to kill her and chop her up into pieces so no one would find her body; and threatened to burn out her eyes with an iron. (03/26/24 a.m. at 74,77-78, 83)

whipped her with a belt; strangled her; burned her hand with an iron (blocking the iron as Phillips went for her eye); sexually assaulted her (anal, oral, and attempted vaginal); and (after an initial round of violence) forced her to smoke crack cocaine throughout (she had never smoked crack before). A.H. testified that at one point she tried to escape in Phillips's presence; he immediately caught her and threatened that if she tried to escape again, he would bash her head with the iron. (03/26/24 a.m. at 76)

A.H. admitted that the crack made her "horny," and that during the course of events she asked Phillips to do things to her sexually, though she could not remember all the things she asked Phillips to do. (03/26/24 p.m. at 45-46)

A.H. had several opportunities to leave or seek help. Twice Phillips left to purchase more crack cocaine a "couple" "long blocks" away (and there were two exits from the apartment). (03/26/24 a.m. at 26-30, 33) A.H. also went on the Tuesday afternoon into a Safeway store alone, allegedly to buy a bandage for her hand. (28-29) The parties also went out in public together, once to go to an ATM for cash and four times to purchase crack (in addition to Phillips's two solo trips). (27-29)

According to A.H., Phillips told her to go to work Wednesday morning so she could continue to be employed and make money for partying. (03/26/24 a.m. at 90) Once at work A.H. called her supervisor, April Little, and according to A.H. and Little, Phillips called A.H.'s cellphone while A.H. was on the phone with Little. A.H. put her call with Phillips on speakerphone. (92-93) According to Little, "The other individual was yelling. He was using a loud voice because I could clearly hear the other individual. He said who the hell are you on [the] phone with and what are you doing on the phone? Didn't I tell you not to call anyone." (03/26/24 p.m. at 13). Little told A.H. to go to the building security office. (93) A.H. met with a security officer who testified that during his time with A.H., Phillips initiated seven calls to A.H., which A.H. did not accept. (03/26/24 a.m. at 24)

Phillips's DNA was not found on A.H.'s vagina, anus, or neck. (03/24/24 at 81-86) A piece of duct tape in A.H.'s possession that was in Phillips's apartment contained Phillips's DNA.

James Payne, the lead detective, testified that A.H. was vague on details which restricted his ability to investigate. A.H. gave Detective Payne the address but could not remember which unit number, did not

know which ATMs they used, and did not know what store they went to.
(03/28/24 at 53-56)

Final Instructions to the Jury

Immediately after A.H. testified that Phillips told her he had committed a murder, the court gave a limiting instruction. (03/26/24 a.m. at 84) However, the court failed to give such an instruction in the final instructions to the jury.

SUMMARY OF ARGUMENT

The trial court abused its discretion in allowing A.H. to testify that Mr. Phillips told her he had murdered someone. This information was marginally relevant to A.H.'s fear and to explain why she did not use any of the opportunities she had to leave, when her version of events made it apparent how extreme fear would have caused her not to flee. The same murder did not cause A.H. to fear Mr. Phillips enough to stop her from having a relationship with him. The evidence was highly prejudicial.

The trial court also abused its discretion in denying a mistrial after A.H. spontaneously testified that when she and Mr. Phillips met, Mr. Phillips was on home detention. This was highly prejudicial because it established that in all likelihood Mr. Phillips was a convicted murderer, and the jury would likely be unable to adhere to the court's limiting instruction (that the jury was not to consider the statement for its truth, but only as an explanation for why A.H. did not try to flee).

Finally, the court was required to give a final limiting instruction regarding Mr. Phillips's prior conviction. It was plain error not to do so.

ARGUMENT

I. The trial court abused its discretion in allowing evidence of Mr. Phillips's prior murder conviction.

The trial court abused its discretion in allowing evidence of Mr. Phillips's prior murder conviction.

Relevant evidence should be excluded if its "probative value is substantially outweighed by the danger of unfair prejudice," which is applied in the context of other crimes evidence. *Johnson v. United States*, 683 A.2d 1087, 1099 (D.C. 1996) (*en banc*) (quoting and applying FRE 403). Evidentiary decisions are reviewed for abuse of discretion. *Young v. United States*, 305 A.3d 402, 434 (D.C. 2023).

A.H.'s knowledge of the murder conviction had nominal probative value. Assuming the truth of A.H.'s allegations, A.H. had understandable reasons for not leaving: she had been held hostage; threatened with dismemberment and death; brutally assaulted and raped; and was continuously high on crack cocaine with no prior experience with crack. A.H. had also screamed for help initially and no one in the other units came or called for assistance. The one time she made a run for it, Mr. Phillips caught her immediately and threatened to bash her head with the

iron if she tried to escape again. If true, A.H. would have been naturally traumatized by these events and any reluctance to act in any given way was fully explained. It is thus a dubious claim that to explain A.H.'s reluctance to flee or seek help, the jury needed to hear that Mr. Phillips had murdered someone previously, where A.H.'s knowledge of it had not deterred her from having a year-long relationship with Mr. Phillips.

Meanwhile, as to prejudice, "evidence of a prior conviction is presumptively prejudicial and contrary to the presumption of innocence." *Lucas v. United States*, 102 A.3d 270, 276 (D.C. 2014). Limiting instructions to a jury are a shot in the dark. "Even when the prior criminal record is brought into the evidence in an appropriate manner, there is the well-nigh inescapable prejudice on the issue of guilt notwithstanding the trial court carefully instructs the jury as to the limited consideration it may accord the evidence." *United States v. Carter*, 482 F.2d 738, 740 (D.C. Cir. 1973).

The evidence here was to establish propensity of Mr. Phillips and create bias against him, in a case that involved an alleged, unexplained burst of jealousy, cruelty, and violence in a relationship that for a year had been tranquil. Any doubts about A.H.'s narrative would surely be cast aside against a murderer.

II. The trial court abused its discretion in not granting a mistrial after the complainant spontaneously testified that Mr. Phillips was on home detention when they met.

The trial court abused its discretion in not declaring a mistrial after A.H. testified spontaneously that Mr. Phillips was on home detention when they met.

Where the trial court denies a mistrial following a spontaneous, prejudicial statement by a witness, this court reviews for an abuse of discretion. *Downing v. United States*, 434 A.2d 409, 410 (D.C. 1981). This court looks to whether the trial court's decision "appears unreasonable, irrational, or unfair," or "the situation is so extreme that failure to reverse would result in a miscarriage of justice." *Lee v. United States*, 562 A.2d 1202, 1204 (D.C. 1989). In assessing the prejudice to the defendant, this court looks to (1) the gravity of any misconduct, (2) the relative strength of the government's case, (3) the centrality of the issue affected, and (4) any mitigating actions by the trial court. *Bennett v. United States*, 597 A.2d 24, 27 (D.C. 1991).

The issue here multiplied the prejudice to Mr. Phillips in allowing A.H. to testify that Mr. Phillips told her he had murdered someone. "[M]ultiple errors must be evaluated in light of their cumulative impact on

the fairness of the trial.” *Hagans v. United States*, 96 A.3d 1, 43 (D.C. 2014). Regarding A.H.’s testimony about Mr. Phillips being a murderer, the court would instruct the jury that “this evidence is not being admitted to prove that [A.H.’s] belief about Mr. Phillips’s criminal history is accurate, and you cannot consider it for that purpose.” (03/26/24 a.m. at 84). As Mr. Phillips’s trial counsel pointed out, the testimony about the home detention undermined the court’s limiting instruction because it cemented the issue for the jury: Mr. Phillips was in fact a convicted murderer. (44-45, 48) The damage could not be undone with a limiting instruction, and the trial judge agreed that a limiting instruction would simply repeat something the jury was supposed to try to forget. (40-41)

While there was no prosecutorial misconduct to consider, this was not a particularly strong case, with serious questions about A.H.’s conduct and credibility. Over the course of two-and-a-half days she had three clear opportunities to just leave or seek help (two times when Mr. Phillips went to buy crack and left A.H. alone, and another occasion where A.H. went into the Safeway store alone); she had six potential opportunities to seek help (four times to purchase crack, one trip to the ATM, and one occasion when Mr. Phillips and A.H. returned to the residence and Mr. Phillips’s

mother was parked in a vehicle waiting to see her son). A.H. also admitted to requesting that Mr. Phillips do sexual things to her, and the lead detective found A.H.'s narrative to be lacking in details that would have allowed the detective to investigate.

As trial counsel urged, there was no way to unring the bell; a mistrial was necessary.

III. The trial court committed plain error in failing to give a final limiting instruction regarding the complaining witness's testimony that Mr. Phillips was convicted of murder.

Under plain error review, an appellant must show "(1) error, (2) that is plain, (3) that affected the appellant's substantial rights," and that "(4) seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Miller v. United States*, 209 A.3d 75, 78 (D.C. 2019) (internal brackets and quotation marks omitted) (quoting *Fortune v. United States*, 59 A.3d 949, 954 (D.C. 2013)).

Where a prior conviction is allowed into evidence, the trial court must give a limiting instruction after the evidence comes in and in the final instructions:

The court gave an abbreviated version of the same instruction after introduction of the other convictions. It did not,

however, give an instruction to this effect during its final charge to the jury. Appellant observes, correctly, that where appropriate, a trial court is ordinarily required to give a strong, unambiguous instruction on the use of prior convictions in its final charge to the jury.

Fields v. United States, 396 A.2d 522, 526 (D.C. 1978).

This court has held that failing to give a limiting instruction as to prior convictions, in the final instructions to the jury, meets the requirements of plain error. *Maura v. United States*, 555 A.2d 1015, 1017 (D.C. 1989) (quoting *Dixon v. United States*, 287 A.2d 89, 100 (D.C. 1972)).

The only question is whether the government can establish harmless error.

Id. It cannot do so on the facts of this case. A.H.'s narrative was vague and mysterious such that the detective could not properly investigate, and for many would be difficult to accept. But against a convicted murder, where the jury was not reminded in the final instructions that it could only consider the murder conviction for the limited purpose of explaining A.H.'s fear, it was easy for the jury to think a convicted murderer must have done it. The error was not harmless.

CONCLUSION

For these reasons and other reasons that may appear to the Court, the convictions should be reversed.

Respectfully submitted,

/s/ Sean R Day

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this **14th** day of **May 2025**.

/s/ Sean R Day

Sean R. Day