

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 04-7029

September Term, 2006

FILED ON: SEPTEMBER 14, 2006 [991641]

CURTIS TALLEY, JR.,

APPELLANT

v.

DISTRICT OF COLUMBIA, ET AL.,

APPELLEES

Appeal from the United States District Court
for the District of Columbia
(No. 01cv01930)

Before: GINSBURG, *Chief Judge*, and GRIFFITH and KAVANAUGH, *Circuit Judges*.

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs of the parties. The Court has determined that the issues presented occasion no need for oral argument. *See* D.C. Cir. Rule 34(j). It is

ORDERED AND ADJUDGED that the Order of the District Court in *Talley v. District of Columbia, et al.*, Civ. No. 01-1930, (D.D.C. February 12, 2004) be affirmed. As the District Court held, our decision in *Carter v. District of Columbia*, 795 F.2d 116 (D.C. Cir. 1986), governs the resolution of the issues raised in this matter. Based on *Carter*, we conclude that it was permissible for the District Court to allow the District of Columbia to present evidence of the actions of its agent, a defaulting co-defendant, in its own defense and with regard to the determination of damages. *See Carter* at 138. The jury, considering such evidence, could permissibly award merely nominal damages against the defendants. *Id.* We also determine that the District Court was well within the “broad discretion” we customarily afford a trial court to decide who may and who may not testify at trial, *In re*

U.S. Dept. of Defense, 848 F.2d 232, 238 (D.C. Cir. 1988) (recognizing the "broad discretion over trial-management tactics with which a district judge is vested"), when it permitted the defaulting defendant to testify.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or rehearing en banc. *See* Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

FOR THE COURT:

Mark J. Langer, Clerk

BY:

Deputy Clerk