

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT

People v. Giles

2020 NY Slip Op 06870 (N.Y. Ct. App. 2020) · No. Appeal No. 12424; Case No. 2015-955; Ind. No. 2520/09 ·
Decided November 19, 2020

SUMMARY

The Appellate Division, First Department unanimously affirmed Daikwan Giles's convictions for second-degree murder and second-degree criminal possession of a weapon, with an aggregate sentence of 25 years to life. The court rejected challenges concerning the prosecution's summation, the trial court's treatment of an uncooperative witness, impeachment with grand jury testimony, admission of prior testimony as past recollection recorded, and the sentence, finding any errors harmless in light of overwhelming evidence.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Gische, J.P.; Mazzarelli, J.; Moulton, J.; Mendez, J.
JURISDICTION	New York
DECIDED	November 19, 2020
DOCKET	Appeal No. 12424; Case No. 2015-955; Ind. No. 2520/09
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a judgment of the Supreme Court, Bronx County, entered after a jury trial convicting him of murder in the second degree and criminal possession of a weapon in the second degree and imposing an aggregate sentence of 25 years to life.
STANDARD OF REVIEW	The court reviewed the alleged prosecutorial misconduct for whether the summation was improper and sufficiently egregious to require reversal; reviewed admission of evidence and trial-court conduct for legal error and abuse of discretion; and applied harmless-error review in light of the overwhelming evidence of guilt.
PRECEDENTIAL VALUE	Published appellate decision
PARTIES	Daikwan Giles v. The People of the State of New York

TOPICS

prosecutorial misconduct

impeachment

evidence

harmless error

appellate procedure

PRACTICE AREAS

Criminal law

Criminal procedure

Evidence

Appellate practice

QUESTIONS PRESENTED

1. Whether challenged portions of the People's summation constituted reversible prosecutorial misconduct.
2. Whether the trial court compromised its neutrality by warning an uncooperative witness about possible perjury consequences.
3. Whether the People properly impeached the witness with his grand jury testimony under CPL 60.35.
4. Whether the witness's grand jury testimony was admissible as evidence in chief under the doctrine of past recollection recorded.
5. Whether any error required reversal in light of the overwhelming evidence of guilt.

HOLDINGS

1. The challenged portions of the People's summation were generally fair comment on the evidence, reasonable inferences from the evidence, and permissible responses to defense arguments; any improprieties were not so egregious as to require reversal.
2. The trial court did not commit reversible error or compromise its neutrality by identifying the conflict in the witness's sworn statements, directing the witness to tell the truth, and accurately stating the possible legal consequences.
3. The trial court correctly permitted the People to impeach the witness with his grand jury testimony because the requirements of CPL 60.35 were satisfied.
4. The trial court properly admitted the witness's grand jury testimony as evidence in chief under the doctrine of past recollection recorded.
5. Any error concerning the court's conduct or its evidentiary rulings regarding the reluctant witness was harmless and did not warrant reversal because the evidence of guilt was overwhelming.

FACTUAL BACKGROUND

The prosecution's case included testimony from multiple eyewitnesses and defendant's valid videotaped confession. At trial, an uncooperative witness gave testimony that contradicted his grand jury testimony. Outside the jury's presence, the trial court warned the witness that inconsistent sworn statements could expose him to perjury prosecution, permitted impeachment with the grand jury testimony, and admitted that testimony as evidence in chief under the doctrine of past recollection recorded.

PROCEDURAL HISTORY

The Supreme Court, Bronx County, rendered judgment on July 31, 2013, following a jury trial. On appeal, defendant challenged portions of the People's summation, the trial court's warning to an uncooperative witness about possible perjury prosecution, the impeachment of that witness with grand jury testimony, and admission of the grand jury testimony as past recollection recorded. The Appellate Division unanimously affirmed.

DISPOSITION

affirmed

CASES CITED

- People v. Overlee, 236 A.D.2d 133 (1st Dep't 1997), lv denied, 91 N.Y.2d 976 (1998)
- People v. D'Alessandro, 184 A.D.2d 114, 118-120 (1st Dep't 1992), lv denied, 81 N.Y.2d 884 (1993)
- People v. Crimmins, 36 N.Y.2d 230 (1975)
- People v. Jamison, 47 N.Y.2d 882, 883 (1979)
- People v. Moulton, 43 N.Y.2d 944, 945 (1978)
- People v. Tapia, 33 N.Y.3d 257, 264 (2019)

OPINION

PER CURIAM.

People v Giles (2020 NY Slip Op 06870) People v Giles 2020 NY Slip Op 06870 Decided on November 19, 2020 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided and Entered: November 19, 2020 Before: Gische, J.P., Mazzaelli, Moulton, Mendez, JJ. Ind No. 2520/09 2520/09 Appeal No. 12424 Case No. 2015-955 [*1]The People of the State of New York, Respondent, vDaikwan Giles, Defendant-Appellant.

Robert S. Dean, Center for Appellate Litigation, New York (Matthew Bova of counsel), for appellant. Darcel D. Clark, District Attorney, Bronx (Clara Salzberg of counsel), for respondent. Judgment, Supreme Court, Bronx County (Steven L. Barrett, J.), rendered July 31, 2013, convicting defendant, after a jury trial, of murder in the second degree and criminal possession of a weapon in the second degree, and sentencing him to an aggregate term of 25 years to life, unanimously affirmed.

The challenged portions of the People's summation generally constituted fair comment on the evidence, reasonable inferences to be drawn therefrom, and permissible responses to defense arguments. To the extent there were improprieties, there was nothing so egregious as to require reversal (see People v Overlee, 236 AD2d 133 [1st Dept 1997], lv denied 91 NY2d 976 [1998]; [*2]People v D'Alessandro, 184 AD2d 114, 118-120 [1st Dept 1992], lv denied 81 NY2d 884 [1993]).

In any event, any error was harmless in light of the overwhelming evidence of guilt (see *People v Crimmins*, 36 NY2d 230 [1975]), which included the testimony of multiple witnesses and defendant's valid, videotaped confession.

We do not find that there was any error warranting reversal when, without objection and outside the jury's presence, the court warned an uncooperative witness, whose trial testimony contradicted his grand jury testimony, that he could be prosecuted for perjury.

The court identified the conflict in the witness's sworn statements, directed him to tell the truth, and correctly stated the possible legal consequences involved (see Penal Law § 210.20 [inconsistent sworn statements as perjury]).

We do not find that this action compromised the court's neutrality (see generally *People v Jamison*, 47 NY2d 882, 883 [1979]; *People v Moulton*, 43 NY2d 944, 945 [1978]). The court correctly permitted the People to impeach this witness by means of his grand jury testimony, because the requirements of CPL 60.35 were met. Regardless of whether this witness's grand jury testimony was admissible for impeachment purposes, the court providently exercised its discretion in admitting it as evidence in chief, under the doctrine of past recollection recorded (see *People v Tapia*, 33 NY3d 257, 264 [2019]).

The reluctant witness's ultimate trial testimony unequivocally satisfied all of the requirements for admission on that basis. The record fails to support defendant's assertion that the witness was improperly induced or coached into giving testimony that satisfied the foundational requirements for receiving his grand jury testimony as past recollection recorded.

In any event, any error with respect to the court's conduct or rulings regarding the reluctant witness was harmless. This was only one of several eyewitnesses, and, as noted, the evidence of defendant's guilt was overwhelming.

We perceive no basis for reducing the sentence. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.
ENTERED: November 19, 2020