

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)