

The Bill of Rights in Action: Landmark Supreme Court Cases
Document Set F
Giles v. California



Facts of the Case

When Dwayne Giles was tried in state court for the murder of his ex-girlfriend, he claimed self-defense. Giles stated that he had heard her vow to hurt him and a friend, and that she had previously shot a man and threatened people with knives. The prosecution then introduced evidence of a conversation between Giles' ex-girlfriend and police in which she claimed that he had assaulted her and threatened to kill her. The district court eventually convicted Giles of murder.

On appeal, Giles argued that use of the police conversation violated his Sixth Amendment right to confront witnesses against him, namely, his deceased ex-girlfriend. The California Supreme Court held that Giles had waived this right because he was the cause of his ex-girlfriend's absence. Although this exclusion was justified under common law rules of "forfeiture by wrongdoing", the Supreme Court had greatly constrained the admissibility of such evidence in its 2004 holding in *Crawford v. Washington*. *Crawford* essentially wiped out the admissibility of such out-of-court statements unless the testimony could be subject to cross-examination at trial, an option that would be impossible under these circumstances. This case gives the Court an opportunity to expand on its decision in *Crawford* and to apply it to a situation where the wrongdoing that kept the witness from appearing in court was not motivated by a desire to prevent the witness' testimony.

Question

Are a criminal defendant's rights under the Confrontation Clause of the Sixth Amendment violated when the common law "forfeiture by wrongdoing" doctrine is applied to allow out-of-court statements made by a witness, absent due to the defendant's own conduct, into evidence without giving defendant an opportunity to cross-examine the absent witness?

Conclusion

Yes. In a 6-3 decision, the Court held that the forfeiture by wrongdoing exception only applies to situations where the defendant causes the witness' absence with the intention of preventing that witness from testifying at trial. Without this intention, any act by the defendant making the witness unavailable does not waive that defendant's Sixth Amendment right to confront and cross-examine the witness, and therefore any out-of-court statements made by the witness are inadmissible as evidence. Justice Antonin Scalia delivered the opinion of the Court. Justice Clarence Thomas wrote a concurring opinion stressing his belief that statements such as those made by the witness in this case should not implicate the Confrontation Clause at all because the police questioning was not a "formalized dialogue." Justice Samuel Alito also wrote a concurring opinion suggesting that the witness' statements, in his view, did not fall within the Confrontation Clause but noting that neither party had made this argument before the Court. Justice David Souter, joined by Justice Ruth Bader Ginsburg, concurred in all parts of the majority opinion except one section denouncing the dissenting argument. Justice Souter stated that he did not find the dissent as wrongheaded as the majority suggested.

The dissent, written by Justice Stephen Breyer and joined by Justices John Paul Stevens and Anthony Kennedy, argued that a defendant loses his right to confrontation when he makes a witness unavailable due to his own wrongdoing, even if he did not act with the specific intention of preventing her from testifying at trial.

Source: The Oyez Project, *Giles v. California*, 554 U.S. ____ (2008), available at: http://www.oyez.org/cases/2000-2009/2007/2007_07_6053/

Syllabus

SUPREME COURT OF THE UNITED STATES

GILES v. CALIFORNIA

CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

Argued April 22, 2008—Decided June 25, No. 07–6053. 2008

At petitioner Giles' murder trial, the court allowed prosecutors to introduce statements that the murder victim had made to a police officer responding to a domestic violence call. Giles was convicted. While his appeal was pending, this Court held that the Sixth Amendment's Confrontation Clause gives defendants the right to cross-examine witnesses who give testimony against them, except in cases where an exception to the confrontation right was recognized at the founding. *Crawford v. Washington*, 541 U. S. 36. The State Court of Appeal concluded that the Confrontation Clause permitted the trial court to admit into evidence the unfronted testimony of the murder victim under a doctrine of forfeiture by wrongdoing. It concluded that Giles had forfeited his right to confront the victim's testimony because it found Giles had committed the murder for which he was on trial—an intentional criminal act that made the victim unavailable to testify. The State Supreme Court affirmed on the same ground.

Held: The California Supreme Court's theory of forfeiture by wrongdoing is not an exception to the Sixth Amendment's confrontation requirement because it was not an exception established at the founding. Pp. 3-20; 22-24.

(a) Common-law courts allowed the introduction of statements by an absent witness who was "detained" or "kept away" by "means or procurement" of the defendant. Cases and treatises indicate that this rule applied only when the defendant engaged in conduct *designed* to prevent the witness from testifying. Pp. 4-7.

(b) The manner in which this forfeiture rule was applied makes plain that unfronted testimony would not be admitted without a showing that the defendant intended to prevent a witness from testifying. In cases where the evidence suggested that the defendant wrongfully caused the absence of a witness, but had not done so to prevent the witness from testifying, unfronted testimony was excluded unless it fell within the separate common-law exception to the confrontation requirement for statements made by speakers who were both on the brink of death and aware that they were dying. Pp. 7-11.

(c) Not only was California's proposed exception to the confrontation right plainly not an "exceptio[n] established at the time of the founding," *Crawford, supra*, at 54; it is not established in American jurisprudence since the founding. . . Pp. 11-14.

(d) The dissent's contention that no testimony would come in at common law under a forfeiture theory unless it was confronted is not supported by the cases. . . Pp. 15-20.

(e) Acts of domestic violence are often intended to dissuade a victim from resorting to outside help. A defendant's prior abuse, or threats of abuse, intended to dissuade a victim from resorting to outside help would be highly relevant to determining the intent of a defendant's subsequent act causing the witness's absence, as would evidence of ongoing criminal proceedings at which the victim would have been expected to testify. Here, the state courts did not consider Giles' intent, which they found irrelevant under their interpretation of the forfeiture doctrine. They are free to consider intent on remand. Pp. 23-24.

Source: 40 Cal. 4th 833, 152 P. 3d 433, vacated and remanded.