



## *Prosecution of Domestic Violence Cases After Giles v. California*

*Sandra L. Murphy  
Managing Attorney*

### **Summary of the Case**

#### *The Murder*

On the evening of Brenda Avie's death, Dwayne Giles was in his grandmother's garage socializing with his niece Veronica Smith, his friend Marie Banks, and his new girlfriend Tameta Munks. Shortly after Munks left, Avie arrived. While Smith was in the house, she heard Avie speaking with Giles outside. Smith then heard Avie call for "Granny" several times, followed by the sound of gunshots. Smith and Giles' grandmother ran outside, where they found Giles holding a handgun and standing approximately 11 feet from Avie, who was lying on the ground bleeding. Giles fled the scene, and he was arrested approximately two weeks later.

#### *The Trial*

At trial, the evidence showed that Giles shot Avie six times in the torso. Among Avie's wounds, one was consistent with her holding up her hand while being shot, one with her having turned to her side, and one with being shot while lying on the ground.

Giles admitted that he shot Avie, but argued that he acted in self-defense. In relating his version of the fatal events, Giles repeated statements allegedly made by Avie. Thus, partially through the Avie's own alleged statements, he portrayed her as an aggressive, foul-mouthed, jealous, and volatile person. Giles testified that Avie had a history of violent behavior and that, after arriving at his grandmother's house, she threatened to kill him and Munks, of whom she was jealous. Afraid, he retrieved a loaded gun from the garage and disengaged the safety. Giles testified further that Avie "charged" him, and he closed his eyes and shot her because he thought she had something in her hand. Avie, however, was not carrying a weapon.

Over Giles' objection, Police Officer Stephen Kotsinadelis testified. He explained that approximately three weeks before the murder he had responded to a domestic violence call involving Giles and Avie. Avie was crying, and she told the officer that Giles had accused her of infidelity and assaulted her, choking her, punching her in the face and head, and threatening her with a knife, stating, "If I catch you fucking around I'll kill you." Officer Kotsinadelis saw no marks on Avie but felt a bump on her head.

A jury found petitioner Dwayne Giles guilty of murdering his former girlfriend, Brenda Avie.

### *The Appeal*

The California Supreme Court affirmed the admission of Avie's prior statements to the officer. The court rejected Giles' attempt to limit forfeiture to circumstances where the prosecution establishes that the defendant was motivated by a specific desire to prevent testimony, because the doctrine is grounded in "the equitable principle that no person should benefit from his wrongful acts," which is equally applicable "whether or not the defendant specifically intended to prevent the witness from testifying."

### **Issue of "Forfeiture by Wrongdoing"**

In *Crawford v. Washington*, 541 U.S. 36, 62 (2004), the Supreme Court stated that it accepts the rule of "forfeiture by wrongdoing," under which "one who obtains the absence of a witness by wrongdoing forfeits the constitutional right of confrontation," *Davis v. Washington*, 547 U.S. 813, 833 (2006), and that this rule "extinguishes confrontation claims on essentially equitable grounds." *Crawford*, 541 U.S. at 62. The Court cited *Reynolds v. United States*, 98 U.S. 145, 158 (1879), which held that the Constitution "does not guarantee an accused person against the legitimate consequences of his own wrongful acts," and, thus, a criminal defendant can forfeit his confrontation right where the witness's unavailability results from the accused's own wrongful conduct.

The issue presented to the Court in this case was whether the defendant had to specifically intend to keep the victim from appearing in court to testify when he committed his wrongful act, in order for the forfeiture by wrongdoing rule to apply. Stated differently: Does a defendant forfeit his 6<sup>th</sup> Amendment Confrontation right upon a showing that he has caused the unavailability of a witness, or must there also be a showing that the defendant's actions were done for the purpose of preventing the witness from testifying?

## **U.S. Supreme Court Opinions**

### *Holding*

In a very fractured set of opinions, the majority of the Court (6 justices) reversed Giles' conviction and remanded the case to the trial court for a determination of Giles' intent regarding Avie's murder. The majority held that the state must establish that the defendant acted with the intent of keeping the witness from testifying, in order to prove that the defendant has forfeited his right to confrontation. Only at that point can the state then introduce the missing witness' testimonial statements.

### *Establishing Intent to Keep Victim From Court*

The justices did attempt to address the issue of how to establish this intent, at least in the context of domestic violence prosecutions. At least five justices (Souter, Ginsburg, Breyer, Kennedy, and Stevens) agree that evidence of a history of domestic violence, "the classic abusive relationship, which is meant to isolate the victim from outside help, including the aid of law enforcement and the judicial process," meets this intent requirement. Even in his opinion, Scalia (joined by his majority) indicates the significant relevance of acts of domestic violence in proving a defendant's intent to keep a witness from testifying. As he wrote:

Acts of domestic violence often are intended to dissuade a victim from resorting to outside help, and include conduct designed to prevent testimony to police officers or cooperation in criminal prosecutions. Where such an abusive relationship culminates in murder, the evidence may support a finding that the crime expressed the intent to isolate the victim and to stop her from reporting abuse to the authorities or cooperating with a criminal prosecution – rendering her prior statements admissible under the forfeiture doctrine. Earlier abuse, or threats of abuse, intended to dissuade a victim from resorting to outside help would be highly relevant to this inquiry, as would evidence of ongoing criminal proceedings at which the victim would have been expected to testify.

Thus, a clear majority of the justices agree that a history of domestic violence will satisfy the intent requirement of the forfeiture by wrongdoing doctrine, thus permitting the state to introduce a victim's prior testimonial hearsay statements. Additionally, this ruling would appear to include those cases that do not involve the murder of a victim to keep her from testifying. Thus, in misdemeanor and felony level domestic assault prosecutions, this intent can be met with this history evidence even if the wrongful acts of the defendant did not include murder.