



## **Defendant Was Convicted of Bribing Three Witnesses to Recant their Statements Identifying Defendant's Brother as the Shooter in a Killing;**

Evidence of the Murder of Another Witness Who Identified Defendant's Brother as the Shooter, Evidence which Was Not Linked by Trial Evidence to the Defendant But which Was Likely to Raise Suspicion About the Defendant's Involvement, Was Allowed in Defendant's Bribery Trial to Explain the Subsequent Actions of the Three Witnesses Defendant Was Accused of Bribing

The Second Department, over a substantial dissent, determined defendant was not deprived of a fair trial by the introduction of evidence of a murder which was not tied to the defendant, but which may have raised serious questions about the defendant's involvement in the minds of the jurors. The defendant was accused of bribing three witnesses who had identified defendant's brother as the shooter in a killing which took place in a park. That shooting was witnessed by three teen-aged girls and a man named Gibson. The defendant met with all three girls and paid them money. They all recanted their statements about defendant's brother's involvement in the park shooting. On the day before defendant's brother's trial, Gibson was shot and killed. A man confessed to that shooting and the defendant was never linked to the Gibson killing. Evidence of the Gibson killing was allowed in evidence to demonstrate the state of mind of the three teen-aged girls who, after learning of Gibson's killing, recanted their recantations and stood by their original statements identifying the defendant's brother as the park shooter. The court determined the evidence of the Gibson killing was not Molineux evidence because the jury was never told of any link between the Gibson killing and the defendant. Therefore, the court reasoned, the Gibson killing was not a prior uncharged crime or bad act done by the defendant. The court, however, seemed to use the analysis required under Molineux and found that the evidence of the Gibson killing was admissible to explain the girls' actions and to explain why they and their families were relocated after the Gibson killing:

Evidence of uncharged crimes is generally excluded under the Molineux rule (*People v Molineux*, 168 NY 264) for policy reasons, because such evidence may induce the jury to base a finding of guilt on collateral matters, or to convict a defendant because of his or her past criminal history ... . Nevertheless, evidence of prior uncharged crimes may be received if it is relevant to some issue other than the defendant's criminal disposition ... . The purposes for which uncharged crime evidence may properly be admitted include completing the narrative of the events charged in the indictment and providing necessary background information ... . "Where there is a proper nonpropensity purpose, the decision whether to admit evidence of the defendant's prior bad acts rests upon the trial court's discretionary balancing of probative value and unfair prejudice" ... .

However, "[t]he Molineux rule was created to address a particular prejudice inherent to a particular type of proof: evidence of a defendant's prior crimes and bad acts" ... . That type of prejudice is not present in this case, because evidence that Gibson was murdered two days before he was scheduled to testify against Sykes did not constitute proof that the defendant committed an uncharged crime or bad act. \* \* \*

Even if the evidence of Gibson's death could arguably be viewed as suggesting that the defendant committed an uncharged crime, it was properly admitted to explain why the girls, having recanted their original statements identifying [defendant's brother] as [the park] killer, admitted to the police that they had made false recantations, and adhered to their original statements. Indeed, two of the girls testified that Gibson's murder, two days before the presentation of evidence in the [defendant's brother's] trial was to begin, frightened them. The impact of Gibson's murder on the state of mind of these witnesses was interwoven with the narrative of the charged crimes, and necessary to help the jury understand the case in context, because it explained the girls' conduct in coming forward to disavow the recorded statements ... . [People v Harris, 2014 NY Slip Op 03532, 2nd Dept 5-14-14](#)