



## PEOPLE STATE NEW YORK v. RONALD SMITH A/K/A RONALD OWENS

570 N.Y.S.2d 273 (1991) | Cited 0 times | New York Supreme Court | May 30, 1991

The Court's denial of the defense counsel's application for a further adjournment to secure the testimony of a witness who had failed to arrive as scheduled, and with respect to whom an hour's adjournment had already been granted that day, after the defense rested, did not constitute an abuse of discretion. Nor was the trial court's refusal to reopen the case after summations to hear testimony by the witness an abuse of discretion.

The determination of whether or not to grant an adjournment or reopen the trial is a matter within the sound discretion of the trial court. (*People v. Foy*, 32 N.Y.2d 473, 476; *People v. Olsen*, 34 N.Y.2d 349, 353). The court allowed the defense ample time to obtain the witness' presence in court, and there was justification for the Court to conclude that the witness' testimony would be merely cumulative.

There is no basis upon which to conclude that the prosecutor's statement during his opening that he would produce witnesses who saw defendant possess and fire a gun was made in bad faith. The fact that the witnesses, who were defendant's friends, did not give the testimony that the prosecutor expected them to give is not surprising under the circumstances. There was no showing of prejudice to the defendant (*People v. Detore*, 34 N.Y.2d 199, cert. den., 418 U.S. 1025).

Defense counsel's objections to the various leading questions asked by the prosecutor on direct examination were sustained, and defense counsel did not request curative instructions or move for a mistrial on the basis of the questions. Thus, the issues raised with respect thereto were not preserved for appellate review (CPL § 450.05, *People v. Medina*, 53 N.Y.2d 951, 953). Were we to review in the interest of justice, we would find that in view of the obvious bias of the witnesses toward the defendant, the asking of such questions and the allowance of some of them would not warrant reversal (see, *People v. Marshall*, 144 A.D.2d 1005, app. den., 73 N.Y.2d 893).

The defendant's objections to the prosecutor's summation on appeal also were largely unpreserved. In any event, the prosecutor's comments regarding the witnesses' demeanor, interest and attitude in testifying were not improper given the witnesses' testimony.

Since there was no objection by defense counsel during the initial charge or supplemental instructions the claims made with respect thereto have not been preserved for appellate review. CPL § 470.05(2); *People v. Creech*, 60 N.Y.2d 895 (1983). In any event, review of the supplemental instructions in view of the jury's question shows that the response was meaningful and did not prejudice the defendant. (*People v. Malloy*, 55 N.Y.2d 296, 301, cert. den., 459 U.S. 847).

