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Supreme Court, Appellate Term, People v. Morin

Cover Page Footnote

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**SUPREME COURT OF NEW YORK, APPELLATE
TERM**

People v. Morin¹
(decided May 15, 2003)

Andre Morin was sentenced to six months in prison for endangering the welfare of a child.² Morin appealed his conviction, claiming that his constitutional right to be present at the material stages of trial, set forth in both the United States Constitution³ and the New York State Constitution,⁴ were violated.⁵ He argued that his sentence required reversal because his constitutional right not to be excluded from sidebar conferences with prospective jurors and his constitutional right to be present when the trial court takes evidentiary testimony from the complaining witness in chambers had been violated.⁶ The appellate division concluded that the trial court's failure to allow the defendant and his attorney to make statements on the defendant's behalf during the sentencing phase violated his constitutional right to be represented by counsel at sentencing.⁷ As

¹ 763 N.Y.S.2d 705 (2d Dep't. 2003).

² *Id.* at 706.

³ U.S. CONST. amend. XIV provides in pertinent part: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law."

⁴ N.Y. CONST. art. 1, § 6 provides in pertinent part: "No person shall be deprived of life, liberty or property without due process of law. . . ."

⁵ *Morin*, 763 N.Y.S.2d at 706.

⁶ *Id.*

⁷ *Id.* at 707.

a result, the court remanded the case to a different trial court judge for re-sentencing.⁸

Morin was arrested for touching the genitals of an eleven-year-old boy, having his genitals touched by the boy, and attempting to engage in sexual conversation with him.⁹ Subsequently, Morin was charged with endangering the welfare of a child and sexual abuse in the second degree pursuant to Sections 260.10(1)¹⁰ and § 130.60(2)¹¹ of the New York State Penal Law.¹² The jury acquitted Morin on the sexual abuse charge but convicted him of endangering the welfare of a child.¹³

On appeal, Morin argued that his constitutional right to be present at the material stages of trial was violated when the trial court excluded him from sidebar conferences with prospective jurors and when the trial court took evidentiary testimony from the complaining witness in chambers.¹⁴ The appellate division concluded that the record did not indicate that defendant was not

⁸ *Id.*

⁹ *Id.* at 706.

¹⁰ N.Y. PENAL LAW § 260.10(1) (McKinney 1999) states in pertinent part:

A person is guilty of endangering the welfare of a child when: He knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of a child less than seventeen years old or directs or authorizes such child to engage in an occupation involving a substantial risk of danger to his life or health.

¹¹ N.Y. PENAL LAW § 130.60(2) (McKinney 1998) states in pertinent part: "A person is guilty of sexual abuse in the second degree when he subjects another person to sexual contact and when such other person is . . . less than fourteen years old."

¹² *Morin*, 763 N.Y.S.2d at 706.

¹³ *Id.*

¹⁴ *Id.*

present at all of the sidebar conferences during jury selection, nor was there an indication that he was not present during the complaining witness' testimony in chambers.¹⁵ The record did show, however, that Morin was absent from two voir dire conferences.¹⁶ The appellate court did not address the issue on a constitutional basis; rather, the issue was addressed pursuant to a statutory right.¹⁷ The court held that pursuant to Section 260.20 of the Criminal Procedure Law,¹⁸ Morin's statutory right to be present at voir dire side bars was not violated because issues of bias were not discussed at those conferences.¹⁹ The appellate division, however, did remand the case on the basis that Morin had a constitutional right to be represented by counsel during the sentencing phase.²⁰

The New York Court of Appeals has held that a defendant has a constitutional and statutory right to be present at the material stages of a criminal trial.²¹ In *People v. Morales*,²² Edwin Morales was indicted for rape and sodomy against two of his stepchildren.²³

¹⁵ *Id.* at 706-07.

¹⁶ *Id.* at 707.

¹⁷ *Morin*, 763 N.Y.S.2d at 707.

¹⁸ N.Y. CRIM. PROC. LAW § 260.20 (McKinney 2002) states in pertinent part: "A defendant must be personally present during the trial of an indictment. . . ."

¹⁹ *Morin*, 763 N.Y.S.2d at 706-07.

²⁰ *Id.* at 707.

²¹ *See People v. Velasco*, 570 N.E.2d 1070, 1071 (1991) (stating that a defendant has a due process right to be present at trial "to the extent that a fair and just hearing would be thwarted by his absence . . . [and h]is presence is required only where his absence would have a substantial effect on his ability to defend."); *see also People v. Morales*, 606 N.E.2d 953, 957 (1992) ("defendant must be personally present during the trial of an indictment").

²² 606 N.E.2d at 953.

²³ *Id.* at 954.

During the trial, a competency hearing was conducted outside of the jury's presence.²⁴ The trial judge excluded the defendant from the hearing but allowed his defense counsel to be present.²⁵ Questions relating to the two children's understanding about the difference of telling the truth and a lie were asked.²⁶ At the end of the hearing, the trial court concluded that both children were competent to testify. Subsequently, the defendant was convicted of rape and sodomy. Defendant appealed, arguing that his constitutional and statutory rights to be present at trial were violated because he was barred from the competency hearing.²⁷ The appellate division rejected defendant's claims, and the New York Court of Appeals affirmed the judgment.²⁸

For its analysis of whether the defendant was deprived of the right to be present under New York State law, the court analyzed the Criminal Procedure Law ("CPL").²⁹ Pursuant to Section 260.20 of the CPL, a defendant must be personally present during the trial of an indictment. This statute serves two purposes: preventing secret trials and guaranteeing the defendant's right to be present at all important stages of the trial.³⁰ The court held defendant's absence from the competency hearing did not violate any of his rights.³¹ The court reasoned the hearing did not involve

²⁴ *Id.*

²⁵ *Id.* at 955.

²⁶ *Id.*

²⁷ *Morales*, 606 N.E.2d at 955.

²⁸ *Id.*

²⁹ *Id.* at 957.

³⁰ *Id.*

³¹ *Id.*

evidentiary testimony or issues about which defendant has shown he has special knowledge.³² Rather, the proceeding related to a witness' testimonial capacity, which is a legal determination unrelated to trial issues.³³ The court concluded that under these circumstances, there is "no greater right to be present under [the New York] State Constitution than already provided by statute."³⁴ Similarly, the New York Court of Appeals held in *People v. Hannigan*³⁵ that it would be a violation of the New York State Constitution to deprive a defendant of the right to counsel of his choice at the time of sentencing.³⁶

Similar to the New York courts, the United States Supreme Court has also held that a defendant has a due process right "to be present at the material stages of trial if his presence might bear a substantial relationship to his opportunity to better defend himself at trial."³⁷ The Federal Constitution does not embody explicit language conferring a right to be present "at any stage of a criminal proceeding that is critical to its outcome."³⁸ Rather, it is implicit. It is a qualified privilege, not an absolute right.³⁹ In *Kentucky v. Stincer*,⁴⁰ the Supreme Court held that although a defendant does

³² *Id.* at 958.

³³ *Morales*, 606 N.E.2d at 958.

³⁴ *Id.*

³⁵ 165 N.E.2d 172 (1960).

³⁶ *Id.* at 173 (stating that a defendant has a constitutional right to be represented by "counsel of his choice at the time of the sentenc[ing] phase.").

³⁷ *Kentucky v. Stincer*, 482 U.S. 730, 745 (1987) (quoting *Snyder v. Massachusetts*, 291 U.S. 97, 106-07 (1934)).

³⁸ *Id.* at 745.

³⁹ *Id.*

⁴⁰ 482 U.S. at 730.

have a constitutional right to be present at any material stage of a criminal proceeding, the defendant failed to demonstrate that his presence at the competency hearing would have been useful in ensuring a more reliable determination as to whether the witnesses were competent to testify.⁴¹ As such, the defendant's due process rights were not violated.⁴²

In *Stincer*, the defendant, Sergio Stincer, was charged with committing first-degree sodomy with three children.⁴³ The trial court conducted an in chambers competency hearing to determine whether the girls were competent to testify.⁴⁴ The trial court allowed defense counsel to be present at the hearing but excluded the defendant.⁴⁵ The judge, prosecutor, and defense counsel asked questions to determine whether the two girls were capable of remembering basic facts and whether they could distinguish being truthful from lying.⁴⁶ No questions regarding the substance of the testimony were asked.⁴⁷ Subsequently, the two girls were subjected to direct and cross-examination during trial.⁴⁸ Defense counsel, after the conclusion of the testimony, did not request the trial court to reconsider its ruling on the competency hearing.⁴⁹ As

⁴¹ *Id.* at 747.

⁴² *Id.* at 745.

⁴³ *Id.* at 732.

⁴⁴ *Id.*

⁴⁵ *Stincer*, 482 U.S. at 732-33.

⁴⁶ *Id.* at 733.

⁴⁷ *Id.*

⁴⁸ *Id.* at 733-34.

⁴⁹ *Id.* at 734.

such, the defendant was convicted of first degree sodomy and was sentenced to twenty years of imprisonment.⁵⁰

On appeal, defendant argued, among other grounds, that his constitutional rights under the Due Process Clause of the Fourteenth Amendment were violated when he was excluded from the competency hearing.⁵¹ The Supreme Court explained that a defendant has “a due process right ‘to be present in his own person whenever his presence has a relation, reasonably substantial, to the fullness of his opportunity to defend against the charge.’”⁵² The privilege to be present is a qualified right.⁵³ This privilege is inapplicable when defendant’s presence will not substantially affect the outcome of the case.⁵⁴ Therefore, if a defendant’s presence contributes to the fairness of the procedure, then the defendant is guaranteed the right to be present at any stage of the criminal proceeding that is critical to its outcome.⁵⁵

The Court did not find any evidence to support Stincer’s due process claim.⁵⁶ It reasoned that the particular nature of the competency hearing was not one in which the substance of the testimony was inquired.⁵⁷ Rather, the questions during the competency hearing were directed solely to each child’s ability to recollect and narrate facts, distinguish between truth and falsehood,

⁵⁰ *Stincer*, 482 U.S. at 734.

⁵¹ *Id.* at 745.

⁵² *Id.* (quoting *Snyder*, 291 U.S. at 105-06)).

⁵³ *Id.* at 745.

⁵⁴ *Id.*

⁵⁵ *Stincer*, 482 U.S. at 734.

⁵⁶ *Id.*

⁵⁷ *Id.* at 745-46.

and to their sense of moral obligation to tell the truth.⁵⁸ As such, the Court held that Stincer's due process rights were not violated by his exclusion from the competency hearing.⁵⁹

In conclusion, federal and New York holdings are similar with respect to the interpretation of the right to be present at material stages of a criminal trial. Under both the federal and New York Constitutions, a defendant is afforded the right to be present only if his presence "might bear a substantial relationship to his opportunity to better defend himself."⁶⁰ While the standard is similar, the New York Court of Appeals held that this right is explicitly guaranteed by the New York Constitution and New York statutory provisions, whereas the United States Supreme Court found this right to be implicitly guaranteed by the federal Constitution.⁶¹ Furthermore, New York has incorporated much of the constitutional requirement into statutes.⁶²

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⁵⁸ *Id.* at 746.

⁵⁹ *Id.* at 745.

⁶⁰ *See Stincer*, 482 U.S. at 745; *Velasco*, 570 N.E.2d at 1072.

⁶¹ *See Stincer*, 482 U.S. at 745 (holding that if a defendant's presence contributes to the fairness of the procedure, then he or she is guaranteed the right to be present at any stage of the criminal proceeding that is critical to its outcome); *Velasco*, 570 N.E.2d at 1072 ("[A]part from our statutory provision, due process requires the presence of a defendant at his trial 'to the extent that a fair and just hearing would be thwarted by his absence, and to that extent only.'").

⁶² *Morales*, 606 N.E.2d at 957.

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