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## Due Process: People v. Morales

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## DUE PROCESS

*N.Y. CONST. art. I § 6:*

*No person shall be deprived of life, liberty or property without due process of law.*

*U.S. CONST. amend. V:*

*No person shall . . . be deprived of life, liberty, or property, without due process of law . . . .*

*U.S. CONST. amend. XIV: § 1*

*No State shall . . . deprive to any person of life, liberty, or property, without due process of law . . . .*

## COURT OF APPEALS

People v. Morales<sup>335</sup>  
(decided December 17, 1992)

The defendant asserted that both his due process rights under the Federal Constitution,<sup>336</sup> as well as his statutory rights pursuant to Criminal Procedure Law (C.P.L.) section 260.20,<sup>337</sup> were violated when he was not permitted to attend a proceeding evaluating the testimonial capacity of a nine year old witness.<sup>338</sup> Moreover, defendant implicitly asserted violations of his due process rights under the New York State Constitution.<sup>339</sup> In a unanimous decision written by Judge Kaye, the New York Court of Appeals rejected the defendant's claims and concluded that

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335. 80 N.Y.2d 450, 606 N.E.2d 953, 591 N.Y.S.2d 825 (1992).

336. U.S. CONST. amend. XIV, § 1 (“[N]or shall any State deprive any person of life, liberty, or property, without due process of law . . . .”).

337. N.Y. CRIM. PROC. LAW § 260.20 (McKinney 1993). The statute states in pertinent part: “A defendant must be personally present during the trial of an indictment . . . .” *Id.*

338. *Morales*, 80 N.Y.2d at 452, 606 N.E.2d at 955, 591 N.Y.S.2d at 827.

339. N.Y. CONST. art. I, § 6 (“No person shall be deprived of life, liberty or property without due process of law.”).

neither federal due process protection nor the state statute entitled the defendant to be present at such an ancillary proceeding, as his presence would not substantially further his own defense.<sup>340</sup>

The defendant was indicted and subsequently convicted, *inter alia*, of the rape and sodomy of his two stepchildren, E.T. and R.H.<sup>341</sup> At the time of the trial, E.T. was thirteen and R.H. was nine.<sup>342</sup> Criminal Procedure Law section 60.20(2)<sup>343</sup> requires that before a child below the age of twelve be permitted to testify under oath, the court must first be satisfied that the child has the ability to appreciate the nature of the oath.<sup>344</sup> Thus, because R.H. was nine years old at the time of the trial, prior to allowing R.H. to testify, the court conducted a competency hearing in accordance with C.P.L. section 60.20(2).<sup>345</sup> Although the attorneys were not allowed to question R.H. directly, they were allowed to submit questions to be asked.<sup>346</sup>

The judge proceeded to assess R.H.'s ability to appreciate the meaning of an oath.<sup>347</sup> The judge asked R.H. if she knew why she was in court, what the distinction was between the truth and lies, what were the consequences of lying, and the importance of recounting only that of which she has personal knowledge.<sup>348</sup> In addition, at defense counsel's request, the court asked R.H. if she comprehended the roles of the judge, prosecutor, and defense counsel.<sup>349</sup>

340. *Morales*, 80 N.Y.2d at 451, 606 N.E.2d at 954, 591 N.Y.S.2d at 826.

341. *Id.* at 451-52, 606 N.E.2d at 954, 591 N.Y.S.2d at 826.

342. *Id.*

343. N.Y. CRIM. PROC. LAW § 60.20(2) (McKinney 1992). The statute provides in pertinent part: "A child less than twelve years old may not testify under oath unless the court is satisfied that he understands the nature of an oath." *Id.*

344. *Morales*, 80 N.Y.2d at 452, 606 N.E.2d at 954, 591 N.Y.S.2d at 826.

345. *Id.* at 452, 606 N.E.2d at 955, 591 N.Y.S.2d at 827.

346. *Morales*, 80 N.Y.2d at 452, 606 N.E.2d at 955, 591 N.Y.S.2d at 827.

347. *Id.*

348. *Id.*

349. *Id.* None of the discourse in such a proceeding is considered evidentiary testimony. *Id.* at 453, 606 N.E.2d at 955, 591 N.Y.S.2d at 827. However, if the court determines the child to be incapable of comprehending the concept of an oath, the court may still permit the unsworn testimony to be

Upon completion of the evaluation, the court concluded that R.H. had demonstrated sufficient understanding of the oath to offer sworn testimony.<sup>350</sup> Subsequently, the jury found the defendant guilty of rape and sodomy.<sup>351</sup> The defendant appealed asserting that his constitutional and statutory rights were violated when he was excluded from R.H.'s competency proceeding.<sup>352</sup>

The court addressed the state constitutional claim without explicitly stating so. It explained that under state law, the analysis "look[s] to the effect that defendant's absence might have on the opportunity to defend."<sup>353</sup> The court concluded that there was no state constitutional violation.<sup>354</sup> It reached its conclusion by stating that the issue hinges upon whether the proceeding is at a trial or is a pre-trial proceeding.<sup>355</sup> The court explained that under state law, the defendant "usually has an unfettered right to attend a trial . . . but only a qualified right to attend ancillary proceedings."<sup>356</sup> The court further explained that a C.P.L. section 60.20 hearing is an ancillary part of the trial and thus could have been conducted pre-trial.<sup>357</sup> Because the proceeding in this case was in fact ancillary, the court's analysis hinged upon whether the defendant's exclusion from the hearing affected his ability to defend himself at trial.<sup>358</sup>

The court believed that the United States Supreme Court decision in *Kentucky v. Stincer*<sup>359</sup> was persuasive authority for

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used at trial if the court is satisfied that the child has sufficient intelligence and capacity. *Id.* Yet, C.P.L. § 60.20(3) ensures that a defendant will not be convicted of any offense based exclusively on this unsworn testimony. *Id.*; C.P.L. § 60:20(3) provides in pertinent part: "A defendant may not be convicted of an offense solely upon unsworn evidence given pursuant to subdivision two." N.Y. CRIM. PROC. LAW § 60.20(3) (McKinney 1992).

350. *Morales*, 80 N.Y.2d at 452, 606 N.E.2d at 955, 591 N.Y.S.2d at 827.

351. *Id.*

352. *Id.*

353. *Id.* at 456, 606 N.E.2d at 957, 591 N.Y.S.2d at 829.

354. *Id.* at 457, 606 N.E.2d at 958, 591 N.Y.S.2d at 830.

355. *Id.*

356. *Id.*

357. *Id.*

358. *Id.*

359. 482 U.S. 730 (1987).

the state law analysis.<sup>360</sup> The court explained that in *Stincer*, “[t]he hearing [at issue also] did not involve evidentiary testimony or issues about which defendant has shown he had special knowledge.”<sup>361</sup>

In *People v. Mullen*,<sup>362</sup> the court of appeals classified the scope of a defendant’s statutory and constitutional right to be present during criminal proceedings. Pursuant to C.P.L. section 260.20,<sup>363</sup> defendant’s right to be present at the trial of an indictment includes presence during voir dire, introduction of evidence, summations of counsel, and the court’s charge to the jury.<sup>364</sup> These proceedings are considered to be part of the trial because the defendant’s presence is necessary to achieve just and fair results.<sup>365</sup> In *Mullen*, the court held that defendant’s presence was not required at the hearing to determine potential juror’s qualifications because defendant’s absence “did not affect any substantial rights of the defendant.”<sup>366</sup> Similarly, in *People v. Velasco*,<sup>367</sup> the court stated that a defendant’s right to be present at the hearing of potential juror’s qualifications was not required because the issue was one solely for the court to decide.<sup>368</sup>

The court of appeals elucidated its analysis with examples of ancillary proceedings that either included or excluded a defendant’s presence.<sup>369</sup> The court listed examples of when it had permitted a defendant to be present, such as his *Sandoval*

360. *Morales*, 80 N.Y.2d at 457, 606 N.E.2d at 958, 591 N.Y.S.2d at 830.  
361. *Id.*

362. 44 N.Y.2d 1, 374 N.E.2d 369, 403 N.Y.S.2d 470 (1978) (holding that defendant’s absence from hearing questioning of juror’s qualifications did not constitute a constitutional due process violation on the ground that the hearing did not amount to a critical part of trial).

363. N.Y. CRIM. PROC. LAW § 260.20 (McKinney 1992).

364. *Mullen*, 44 N.Y.2d at 4, 374 N.E.2d at 370, 403 N.Y.S.2d at 472.

365. *Id.*

366. *Id.* at 5-6, 374 N.E.2d at 371, 403 N.Y.S.2d at 473.

367. 77 N.Y.2d 469, 570 N.E.2d 1070, 568 N.Y.S.2d 721 (1991).

368. *Id.* at 472-73, 570 N.E.2d at 1071, 568 N.Y.S.2d at 722.

369. *Morales*, 80 N.Y.2d at 456, 606 N.E.2d at 957-58, 591 N.Y.S.2d at 829-30.

hearing<sup>370</sup> or pretrial suppression hearing.<sup>371</sup> The court permitted the defendant to be present in those cases because, in such situations, the defendant is the person who is most informed to evaluate the issues presented.<sup>372</sup> In contrast, the court found no advantage in allowing a defendant to attend a pre-charge conference<sup>373</sup> or a colloquy concerning a read-back of jury instructions conducted outside of the jury's presence<sup>374</sup> because the defendant's presence would not aid his defense.<sup>375</sup>

The court of appeals also addressed the defendant's assertion that his federal due process rights were violated when he was excluded from the statutorily mandated proceeding of C.P.L. section 60.20.<sup>376</sup> In its analysis of this federal claim, the court relied upon the Supreme Court's holding in *Snyder v. Massachusetts*,<sup>377</sup> which was reaffirmed 50 years later in *Kentucky v. Stincer*.<sup>378</sup> In *Snyder*, Justice Cardozo, writing the

370. *Id.* at 456, 606 N.E.2d at 958, 591 N.Y.S.2d at 830; *see also* *People v. Dokes*, 79 N.Y.2d 656, 660, 595 N.E.2d 836, 839, 584 N.Y.S.2d 761, 764 (1992) (stating that defendant had the right to be present at *Sandoval* hearing "to determine the extent to which the defendant, if he testifies, will be subject to impeachment by cross-examination about prior bad acts").

371. *Id.*; *see also* *People v. Anderson*, 16 N.Y.2d 282, 287, 213 N.E.2d 445, 447, 266 N.Y.S.2d 110, 113 (1965) (stating that defendant's absence from hearing on his motion to suppress certain evidence with regard to the legality of the search and seizure warranted reversal of his conviction) .

372. *Morales*, 80 N.Y.2d at 456, 606 N.E.2d at 958, 591 N.Y.S.2d at 830.

373. *Id.* at 456, 606 N.E.2d at 957, 591 N.Y.S.2d at 829; *see also* *People v. Velasco*, 77 N.Y.2d 469, 472, 570 N.E.2d 1070, 1071, 568 N.Y.S.2d 721, 722 (1991) (holding that defendant has no constitutional right to be present at pre-charge conference or side-bar voir dire because these matters involve questions of law solely for the court to decide).

374. *Morales*, 80 N.Y.2d at 456, 606 N.E.2d at 958, 591 N.Y.S.2d at 830; *see also* *People v. Rodriguez*, 76 N.Y.2d 918, 921, 564 N.E. 2d 658, 659, 563 N.Y.S.2d 48, 49 (1990) (stating that defendant's absence from a read-back of jury instructions conducted outside the jury's presence did not violate defendant's right to be present at trial because the read-back did not affect defendant's ability to defend himself).

375. *Morales*, 80 N.Y.2d at 456, 606 N.E.2d at 957-58, 591 N.Y.S.2d at 829-30.

376. *Id.* at 452-53, 606 N.E.2d at 955, 591 N.Y.S.2d at 827.

377. 291 U.S. 97 (1934).

378. 482 U.S. 730 (1987).

opinion of the Court, explained that due process requires a defendant's presence "to the extent that a fair and just hearing would be thwarted by his absence and to that extent only."<sup>379</sup> However, the defendant has no such entitlement if his "presence would be useless, or the benefit but a shadow."<sup>380</sup> Fifty years later, upholding the standard articulated in *Snyder*, the Supreme Court in *Stincer* rejected the defendant's assertion that he had a constitutional right to attend a proceeding in which the testimonial capacity of two children was assessed.<sup>381</sup> The Court reasoned that the proceeding contained neither substantive testimony, nor any indication that the defendant's presence would have enhanced the competency determination.<sup>382</sup>

Applying the same analysis as that used in *Stincer*, the court of appeals found no merit to the defendant's contention that he had a federal due process right to attend the C.P.L. section 60.20 proceeding.<sup>383</sup> First, the court of appeals ruled that the hearing involved no substantive testimony.<sup>384</sup> Second, the court gave no credence to the defendant's assertions that his relationship and familiarity with R.H. would have contributed to a more accurate assessment of her competence to testify.<sup>385</sup> Moreover, the court advised that, if in fact the defendant did have special knowledge, he could have allowed his attorney to raise that knowledge during the hearing as well as the cross-examination at trial.<sup>386</sup> The court of appeals stated that permitting the defendant to attend the competency proceeding would have been "useless, or the benefit but a shadow."<sup>387</sup>

Significantly, the court of appeals recognized that the defendant is guaranteed a comparable breadth of due process protection

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379. *Snyder*, 291 U.S. at 108.

380. *Id.* at 106-07.

381. *Stincer*, 482 U.S. at 744.

382. *Id.* at 745-47.

383. *Morales*, 80 N.Y.2d at 455, 606 N.E.2d at 957, 591 N.Y.S.2d at 829.

384. *Id.* at 454, 606 N.E.2d at 956, 591 N.Y.S.2d at 828.

385. *Id.* at 455, 606 N.E.2d at 956, 591 N.Y.S.2d at 828.

386. 80 N.Y.2d at 455, 606 N.E.2d at 956, 591 N.Y.S.2d at 828.

387. *Id.* at 455, N.E.2d at 957, 591 N.Y.S.2d at 829 (citations omitted).

under the Federal Constitution<sup>388</sup> and the New York State Constitution.<sup>389</sup> Both the state and federal due process protections governing ancillary trial proceedings are evaluated by the standard articulated in *Snyder*: whether the defendant's presence will contribute to his defense.<sup>390</sup> The court of appeals noted that there have been occasions in which it has afforded the defendant greater due process rights than those guaranteed by the Federal Constitution.<sup>391</sup> However, under both a state and federal due process analysis, a defendant has no right to attend a proceeding which evaluates the testimonial capacity of a witness.<sup>392</sup>

People v. Outley<sup>393</sup>  
(decided February 16, 1993)

In separate actions decided as companion cases, the defendants in *Outley*, *Maietta* and *Ogtong* contested enhanced criminal sentences imposed against them for violating no-arrest conditions in their plea agreements.<sup>394</sup> Defendants claimed that when a defendant denies post-plea criminal conduct, in keeping with the state<sup>395</sup> and federal<sup>396</sup> constitutional requirements of due process, the court must conduct an evidentiary hearing to determine the validity of the defendant's post-plea arrest.<sup>397</sup> The New York

388. 80 N.Y.2d at 457, 606 N.E.2d at 958, 591 N.Y.S.2d at 830.

389. *Id.*

390. *Id.*

391. *See, e.g.,* People v. Antommarchi, 80 N.Y.2d 247, 250, 804 N.E.2d 95, 97, 590 N.Y.S.2d 33, 35 (1992) (stating that a court may conduct side-bar conferences in defendant's absence in order to determine a juror's testimonial capacity but may not look into a potential juror's "ability to weigh the evidence objectively unless defendant is present"); People v. Dokes, 79 N.Y.2d 656, 656, 595 N.E.2d 836, 836, 584 N.Y.S.2d 761, 761.

392. *Morales*, 80 N.Y.2d at 457, 606 N.E.2d at 958, 591 N.Y.S.2d at 830.

393. 80 N.Y.2d 702, 610 N.E.2d 356, 594 N.Y.S.2d 683 (1993).

394. *Id.* at 707, 610 N.E.2d at 358, 594 N.Y.S.2d at 685.

395. N.Y. CONST. art. I, § 6 ("No person shall be deprived of life, liberty or property without due process of law.").

396. U.S. CONST. amend. XIV ("[N]or shall any State deprive any person of life, liberty, or property, without due process of law . . .").

397. *Outley*, 80 N.Y.2d at 712, 610 N.E.2d at 361, 594 N.Y.S.2d at 688.