Touro Law Review

Volume 23 | Number 2 Article 20

May 2014

Appellate Division, Fourth Department, People v. McFarley

Erica R. Borgese

SUPREME COURT OF NEW YORK
APPELLATE DIVISION, FOURTH DEPARTMENT

People v. McFarley[1]
(decided July 7, 2006)

After a jury trial, defendant James McFarley was convicted of rape in the third degree and endangering the welfare of a child.[2] McFarley appealed his conviction arguing a violation of his Sixth Amendment[3] right to confrontation and his due process rights under the Fourteenth Amendment.[4] The Appellate Division, Fourth Department, reversed the conviction, holding that a criminal defendant must be afforded a "meaningful opportunity to present a complete defense."[5] The court ordered that the trial court's error required a reversal and a new trial because it was more than harmless error.[6] Therefore, the court concluded that McFarley's right to confrontation and due process were violated.[7]

The court stated " '[w]hether rooted directly in the Due Process Clause of the Fourteenth Amendment . . . or in the Compulsory Process or Confrontation Clauses of the Sixth

---

[1] 818 N.Y.S.2d 379 (App. Div. 4th Dep't 2006).

[2] *Id.* at 380.

[3] U.S. CONST. amend. VI states in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right to . . . be confronted with the witnesses against him . . . . "

[4] U.S. CONST. amend. XIV states in pertinent part: "[N]or shall any state deprive any person of life, liberty, or property, without due process of law . . . . " *See McFarley*, 818 N.Y.S.2d at 380.

[5] *McFarley*, 818 N.Y.S.2d at 380 (quoting Crane v. Kentucky, 476 U.S. 683, 690 (1986)).

[6] *Id.*

[7] *Id.*

Amendment . . . , the [United States] Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense.' "[8] The New York State Constitution also provides for the protection of criminal defendant's right to due process and the right to confront witnesses against him.[9] The lower court's denial of McFarley's opportunity to contradict answers given by a witness to show the witness' bias, interest, or hostility, deprived McFarley of his right to confrontation.[10]

During McFarley's trial, he sought to cross-examine a witness regarding a statement made by the victim's mother when she threatened to "sue."[11] He further attempted to present testimony that the victim had watched "Wild Things" and commented to a defense witness that she wanted to "try it on somebody."[12] The court found that McFarley was entitled to present his theory that the victim and her mother had a profit motive in the rape accusation against McFarley five months after the occurrence of the alleged rape based on the movie the victim had seen.[13] The appellate division deemed the lower court's decision to exclude such extrinsic proof as reversible error.[14] The *McFarley* court concluded that the defendant's right to confrontation under the Fourteenth and Sixth

---

[8] *Id.* (quoting *Crane*, 476 U.S. at 690).

[9] N.Y. CONST. art. I, § 6 provides: "In any trial in any court whatever the party accused shall be allowed to . . . be confronted with the witnesses against him or her. . . . No person shall be deprived of life, liberty or property without due process of law."

[10] *McFarley*, 818 N.Y.S.2d at 380.

[11] *Id.*

[12] *Id.* "Wild Things" is a movie about high school students who made false allegations of rape against a teacher. *Id.*

[13] *Id.*

[14] *Id.*

Amendments was violated because defense counsel could not cross-examine a prosecution witness regarding the rape victim's motivations for the allegations against McFarley.[15]

In *Crane v. Kentucky*,[16] the United States Supreme Court held that Kentucky courts violated the Due Process Clause and the Confrontation Clause by prohibiting the defendant from introducing environmental testimony obtained in his police confession.[17] In *Crane*, police questioned the defendant, then sixteen years old, regarding his suspected participation in a service station robbery.[18] According to police testimony, "out of the clear blue sky," defendant began to confess to a number of local crimes including robbery and shooting a police officer.[19] Police then transferred the defendant to a juvenile detention center and continued the interrogation.[20] After denying involvement in the Keg Liquors shooting,[21] the defendant eventually confessed to that crime as well.[22]

Crane moved to suppress the confession prior to trial on the ground that it was coerced in violation of his Fifth and Fourteenth Amendment rights.[23] The Kentucky court denied the defendant's motion and the case went to trial.[24] The jury returned a verdict of

---

[15] *McFarley*, 818 N.Y.S.2d at 380.

[16] *Crane*, 476 U.S. 683.

[17] *Id.* at 691.

[18] *Id.* at 684.

[19] *Id.*

[20] *Id.*

[21] *Crane*, 476 U.S. at 684. On August 7, 1981, a clerk at the Keg Liquor Store was shot to death during what appeared to be a robbery. *Id.* There was no physical evidence to identify the shooter/robber. *Id.*

[22] *Id.*

[23] *Id.* at 684-85.

[24] *Id.* at 685.

guilty and sentenced the defendant to forty years in prison.[25] The defendant appealed to the Kentucky Supreme Court arguing that the exclusion of the circumstances of the confession violated his rights under the Sixth and Fourteenth Amendments.[26] The Kentucky Supreme Court rejected the defendant's claim, affirming both the conviction and sentence.[27] The United States Supreme Court granted certiorari and reversed the decision of the Kentucky Supreme Court.[28]

The *Crane* Court found that judges are granted "wide latitude" by the Constitution to make decisions whether to exclude evidence that is " 'repetitive . . . , only marginally relevant' or poses an undue risk of 'harassment, prejudice, [or] confusion of the issues.' "[29] Further, the Court explained that it never "questioned the power of the States to exclude evidence through the application of evidentiary rules that themselves serve the interests of fairness and reliability—even if the defendant would prefer to see that evidence admitted."[30] Without reducing the respect accorded to the states in establishing and implementing their own criminal trial rules and procedures, the *Crane* Court found that the general exclusion of the proffered testimony regarding the circumstances of the defendant's confession deprived him of a fair trial.[31]

Notably, the *Crane* Court explained that the Constitution

---

[25] *Id.* at 686.
[26] *Crane*, 476 U.S. at 686.
[27] *Id.*
[28] *Id.* at 687.
[29] *Id.* at 689-90 (quoting Delaware v. Arsdall, 475 U.S. 673, 679 (1986)).
[30] *Id.* at 690.
[31] *Crane*, 476 U.S. at 690.

guarantees criminal defendants " 'a meaningful opportunity to present a complete defense.' "[32] The opportunity to be heard is an essential element of a fair trial.[33] Allowing the state to exclude competent, reliable evidence that bears on the credibility of a confession, which is central to the defendant's claim of innocence, would render that opportunity useless.[34] Absent a valid state justification, exclusion of such exculpatory evidence "deprives a defendant of the basic right to have the prosecutor's case encounter and 'survive the crucible of meaningful adversarial testing.' "[35]

The *McFarley* court also relied on *People v. Hudy*,[36] where the New York Court of Appeals held that the defendant was improperly denied the right to present his case because the trial court excluded the examination of two investigating officers.[37] In *Hudy*, the younger brother of a remedial math student told his mother he heard about a teacher who put his hands down boys' pants.[38] His mother questioned the older son who confirmed that he, and other boys, had been fondled by the remedial math teacher.[39] The mother contacted another parent seeking to confirm the allegation; rumors about defendant's alleged misconduct with his students began to circulate.[40] The mother notified the principal, who had already heard

---

[32] *Id.* (quoting California v. Trombetta, 467 U.S. 479, 485 (1984)).
[33] *Id.*
[34] *Id.*
[35] *Id.* at 690-91 (quoting United States v. Cronic, 466 U.S. 648, 656 (1984)).
[36] 535 N.E.2d 250 (N.Y. 1988).
[37] *Id.* at 252.
[38] *Id.*
[39] *Id.*
[40] *Id.*

the rumors, and the police subsequently launched an investigation into defendant's conduct.[41] Within three weeks, the police obtained inculpatory evidence from eight boys who were all the defendant's students.[42]

Hudy's counsel closely cross-examined each prosecution witness to determine whether he had heard other students discussing the allegations against defendant or the police investigation.[43] The witnesses were further questioned as to why they failed to report the defendant's alleged conduct at the time it occurred, whether they liked or disliked the defendant, and whether they heard or thought the defendant was gay.[44] However, the court prohibited defense counsel from calling the two investigators who had originally interviewed the victims.[45] Counsel unsuccessfully argued for permission to question the officers about the initial interviews in order to elicit testimony that police tainted the victims' prior testimony.[46] Subsequently, the jury found the defendant guilty of all charges.[47] The appellate division affirmed, rejecting the defendant's arguments regarding the restriction of his right to question the investigating officers.[48]

Defendant was granted leave to appeal to the New York Court of Appeals.[49] The court reversed the appellate division and ordered a

---

[41] *Hudy*, 535 N.E.2d at 252.
[42] *Id.*
[43] *Id.*
[44] *Id.*
[45] *Id.* at 253.
[46] *Hudy*, 535 N.E.2d at 253.
[47] *Id.*
[48] *Id.*
[49] *Id.*

new trial.[50] According to the New York Court of Appeals, the trial court improperly denied the defendant the right to present his case, by prohibiting defense counsel from examining the investigating officers concerning the manner in which the officers questioned the child-witnesses.[51] While trial courts have broad discretion to keep proceedings within manageable limits and to minimize the exploration of collateral matters, extrinsic proof that establishes a reason to fabricate is never collateral and is not excludable.[52] In addition, the defendant's constitutional right to present a defense and confront his accusers confines the trial court's right to broad discretion.[53] Hudy's constitutional rights under the Sixth and Fourteenth Amendments were violated when the trial court prohibited defense counsel from questioning the police officers.[54] Furthermore, the defendant's limited opportunity to explore the issue during his cross-examination of the child-witnesses failed to rectify the court's error.[55]

The New York Appellate Division, Fourth Department, as in *McFarley*, also overturned decisions of lower courts for violating a criminal defendant's due process rights under the Fourteenth Amendment and confrontation rights under the Sixth Amendment. In *People v. Vigliotti*,[56] defendant, after being shackled and handcuffed

---

[50] *Id.* at 261.
[51] *Hudy*, 535 N.E.2d at 259.
[52] *Id.*
[53] *Id.* at 260.
[54] *Id.*
[55] *Id.*
[56] 611 N.Y.S.2d 413 (App. Div. 4th Dep't 1994).

during trial, was found guilty by a jury on counts two through four of his indictment.[57] Defendant appealed arguing a violation of his Sixth Amendment right to confrontation when he was precluded from eliciting evidence from a police officer during cross-examination regarding the officer's hostility and bias toward the defendant.[58] The appellate division reversed the lower court's ruling and ordered a new trial on counts two through four[59] stating that "[a] cross-examiner may impeach a witness for bias or hostility by extrinsic evidence."[60] The *Vigliotti* court held that the trial court violated the defendant's confrontation right because the defendant could not contradict answers given by the witness in order to show bias, interest, or hostility.[61] Since the error was not harmless beyond a reasonable doubt, the court reversed and granted a new trial.[62]

Similar to the court's findings in *McFarley*, the court in *People v. Bartell*[63] held the trial court violated a defendant's Sixth and Fourteenth Amendment rights when he was restricted from cross-examining a police officer.[64] In *Bartell*, the defendant appealed his conviction for second-degree burglary.[65] Specifically, he argued that the trial court violated his right to confrontation under the Sixth

---

[57] *Id.* at 413 ("The shackling of a defendant in the presence of the jury is inherently prejudicial and constitutes reversible error unless a reasonable basis therefore is in the record or it is clear that the jury was not prejudiced . . . . ").

[58] *Id.*

[59] *Id.* at 414.

[60] *Id.* at 413 (quoting People v. Green, 548 N.Y.S.2d 752, 753 (App. Div. 2d Dep't 1989)).

[61] *Vigliotti*, 611 N.Y.S.2d at 413.

[62] *Id.* at 413-14.

[63] 652 N.Y.S.2d 172 (App. Div. 4th Dep't 1996).

[64] *Id.* at 172.

[65] *Id.*

Amendment when it restricted the defense's cross-examination of a police officer regarding Mrs. Bartell's (defendant's wife) complaint against the officer for sexual harassment.[66] The appellate division agreed, stating that the lower court erred in restricting the cross-examination because defendant was entitled to show the officer's hostility or bias toward him.[67] By limiting his cross-examination, defendant was deprived of his right to confrontation.[68] Nevertheless, the court did not reverse the conviction because it found the evidence of defendant's guilt overwhelming and as such, the error was harmless beyond a reasonable doubt.[69]

In conclusion, although federal and state laws enumerate protections for defendant's due process rights and the right to confrontation under the United States Constitution and New York Constitution, they do not provide for identical protections. The Fourteenth Amendment and article I, section 6 of the New York Constitution require that no person be deprived of his/her procedural due process rights.[70] The United States Constitution grants the accused "in all criminal prosecutions" the right to "be confronted with the witnesses against him."[71] However, New York provides the accused in "any trial in any court" with the right to be "confronted with the witnesses against him or her."[72] The difference is that under

---

[66] *Id.*
[67] *Id.*
[68] *Bartell,* 652 N.Y.S.2d at 172.
[69] *Id.* at 173.
[70] U.S. CONST. amend. XIV; N.Y. CONST. art. I, § 6.
[71] U.S. CONST. amend. VI.
[72] N.Y. CONST. art. I, § 6.

the Sixth Amendment, the United States Constitution limits the ability to confront witnesses solely to criminal prosecutions.

Further, case law distinguishes between what the federal courts will decide and what it chooses to leave to the states. Judges are given "wide latitude" by the Constitution to exclude evidence that is repetitive or poses a risk of prejudice.[73] The *Crane* Court further stated that it has never questioned the power of the states to exclude evidence through evidentiary rules.[74] However, the constitutional guarantee of an opportunity to be heard would be merely an empty promise if states "were permitted to exclude competent, reliable evidence" that bears on the credibility of a confession, especially when the evidence is "central to defendant's claim of innocence."[75] Absent state justification, excluding such exculpatory evidence "deprives a defendant of the basic right to have the prosecutor's case encounter and 'survive the crucible of meaningful adversarial testing.' "[76] New York, however, restricts a trial court's discretion in the admittance of extrinsic proof by a defendant's constitutional right to confront his accusers and present a defense.[77] This restriction is not extended to a defendant's ability to show hostility or bias of a witness toward the defendant and restriction of cross-examination deprives a defendant of his right of confrontation.[78] "A cross-examiner may impeach a witness for bias or hostility by extrinsic

---

[73] *See Crane*, 476 U.S. at 689-90.
[74] *Id.* at 690.
[75] *Id.*
[76] *Id.* at 690-91 (quoting *Cronic*, 466 U.S. at 656).
[77] *See Hudy*, 535 N.E.2d at 259-60.
[78] *See Bartell*, 652 N.Y.S.2d at 172.

evidence."[79] Denying a defendant the opportunity to contradict a witness' testimony, to show bias or hostility, is a deprivation of the defendant's right to confrontation.[80] While the two constitutions may differ in certain respects, they both ensure that the accused is afforded the protections set forth in the Fourteenth and Sixth Amendments.

Erica R. Borgese

[79] *See Vigliotti*, 611 N.Y.S.2d at 413.
[80] *Id.*