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Due Process Court of Appeals

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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. Bryce¹
(decided May 7, 1996)

The defendant, Blaine Bryce, was convicted of second-degree murder of his son under conditions demonstrating a depraved indifference to human life.² The defendant appealed the Appellate Division's order denying his motion to set aside the conviction of murder in the second degree without a hearing.³ The defendant claimed that the prosecution's actions in failing to preserve and give over Brady materials was a violation of his constitutional right guaranteed by the Due Process Clauses of the Federal⁴ and New York State⁵ Constitutions.⁶ The New York

1. 88 N.Y.2d 124, 666 N.E.2d 221, 643 N.Y.S.2d 516 (1996).

2. *Id.* at 126, 666 N.E.2d 222, 643 N.Y.S.2d 516, *citing* New York Penal Law § 125.25[2]. The cause of death was recorded as a brain hemorrhage due to a fracture in the skull. *Id.*

3. *Id.* at 126, 666 N.E.2d at 221, 643 N.Y.S.2d at 516.

4. U.S. CONST. amend. XIV, § 1. The Fourteenth Amendment provides in pertinent part: "[N]or shall any state deprive any person of life, liberty, or property, without due process of law" *Id.*

State Court of Appeals reversed the order of the appellate division and ruled that a hearing be held to ascertain whether the district attorney misrepresented that the human tissue had been preserved and was available for analysis, whether it constituted Brady material, and, if so, whether a new trial was required.⁷

The defendant's son died following an extensive brain hemorrhage due to a fractured skull.⁸ The cause of death was determined by two coroner's pathological reports and a third report by the state police forensic team pathologist.⁹ The prosecution attempted to show that the defendant caused the infant's death by inflicting injuries upon him.¹⁰ The defendant, however, claimed that he accidentally dropped the child while caring for him.¹¹

Medical experts for the prosecution testified that the fracture to the skull was of a similar nature to an injury that would occur had a body been dropped from the second story of a building.¹² The prosecution's expert witnesses concluded that the fracture and resulting hemorrhage were the result of "excessive blows to the head."¹³ The defendant's medical experts testified that there was no evidence of a fracture to the skull based on examinations of autopsy reports, CAT scans and x-rays.¹⁴

The defendant was promised by the prosecution that samples of brain tissue and the skull would be made available for expert examination.¹⁵ The only physical evidence provided, however, was a piece of bone that the prosecution represented to

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

6. *Bryce*, 88 N.Y.2d at 128, 666 N.E.2d at 223, 643 N.Y.S.2d at 518.

7. *Id.*

8. *Id.* at 126, 666 N.E.2d at 222, 643 N.Y.S.2d at 517.

9. *Id.* at 124, 666 N.E.2d at 222, 643 N.Y.S.2d at 517.

10. *Id.*

11. *Id.*

12. *Id.* at 127, 666 N.E.2d at 222, 643 N.Y.S.2d at 517.

13. *Id.*

14. *Id.*

15. *Id.*

be from the fractured area of the skull and other body tissue from organs unrelated to the injuries that may have caused the death.¹⁶ The prosecutor was able to elicit admissions by expert defense witnesses that the foundations for their testimony was weaker than the testimony of expert prosecution witnesses who were able to examine the skull during the autopsy.¹⁷

Following the appellate division's affirmation of conviction, the defendant exhumed the victim's body and found that the skull was buried with other remains, and thus was not preserved for analysis.¹⁸ The defense medical experts conducted an examination of the exhumed remains in the presence of prosecution's forensic experts and representatives, and found that the victim's injuries did not include a fracture on the front side of his skull.¹⁹ It was alleged by the defense, without contradiction by the prosecution, that the bone that had been turned over to the defense was not related to the infant's skull.²⁰

The defendant moved to vacate the county court's judgment and requested a new trial pursuant to the discoveries made of the victim's skull.²¹ That motion was denied without a hearing and the appellate division affirmed the lower court's decision.²² The court of appeals determined that an inquiry should be made into whether or not to hold a hearing to determine three issues: whether the prosecution misrepresented to the defense that material evidence was preserved and would be available for examination by defense experts; whether this evidence should be considered Brady material; and whether a new trial should be afforded to the defendant.²³

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.* at 127-28, 666 N.E.2d at 222, 643 N.Y.S.2d at 517.

20. *Id.* at 128, 666 N.E.2d at 223, 643 N.Y.S.2d at 518.

21. *Id.* Defendant's motion was based on the following claims: "(1) misconduct by the District Attorney, (2) newly discovered evidence and (3) the violation of his constitutional rights, i.e., failure to preserve and deliver Brady material." *Id.*

22. *Id.*

23. *Id.* The court of appeals rejected defendant's first two claims as appealable issues. *Id.*

The court's first step towards making its determination was setting out the defendant's constitutionally guaranteed right "to discover favorable evidence in the People's possession which is material to either guilt or punishment"²⁴ under the Federal and New York State Constitutions. The court's precedent was an intersection between federal and state common law. If a demand for evidence is made, then such evidence is deemed material "if there is a reasonable probability that had it been disclosed to the defense, the result would have been different-- i.e., a probability sufficient to undermine the court's confidence in the outcome of the trial."²⁵

In *Brady v. Maryland*,²⁶ the petitioner and his partner, Boblit, were convicted of murder in the first degree and sentenced to death.²⁷ Boblit's statement in which he admitted the actual murder was withheld from petitioner's counsel after he had requested to examine Boblit's extra-judicial statements.²⁸ Petitioner had not become aware of Boblit's statement until after his conviction, sentencing, and affirmation of his conviction.²⁹ Petitioner's request for a new trial was based on the discovery of evidence that had been concealed by the prosecution.³⁰ The circuit court of appeals granted a new trial only on the question of punishment in holding that the suppressed evidence was grounds for violating the petitioner's right of due process.³¹ The sole issue before the Supreme Court of the United States in *Brady*

24. *Bryce*, 88 N.Y.2d at 128, 666 N.E.2d 223, 643 N.Y.S.2d at 518 (citing *Brady v. Maryland*, 373 U.S. 83 (1963)).

25. *Id.* (citing *People v. Vilardi*, 76 N.Y.2d 67, 555 N.E.2d 915, N.Y.S.2d 518 (1990)).

26. 373 U.S. 83 (1963).

27. *Id.* at 84. Petitioner Brady and Boblit were tried separately, with Brady's trial first. During closing arguments, "Brady's counsel conceded that Brady was guilty of murder in the first degree, asking only that the jury return a verdict 'without capital punishment.'" *Id.* This may have been the reason that the court of appeals remanded the case for new trial on the punishment, not guilt. *Id.* at 85.

28. *Id.* at 84.

29. *Id.*

30. *Id.*

31. *Id.* at 85.

was whether the petitioner's constitutional right of due process was violated when the court of appeals limited the issue for new trial to punishment only.³² In interpreting the Fourteenth Amendment of the Federal Constitution, the Court held that "suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution."³³

In *People v. Vilardi*,³⁴ the New York State Court of Appeals issued an opinion that adheres to the federal interpretation of the Due Process Clause set out in *Brady v. Maryland*, in that undisclosed *Brady* material violates a criminal defendant's Fourteenth Amendment constitutional right.³⁵ In *Vilardi*, the defendant was convicted on charges of arson in the first degree and conspiracy to plant and set off one bomb in the basement of a pizzeria, and another bomb in the basement of a nearby laundromat.³⁶ The prosecution failed to disclose the first investigative report of Officer Kiely which stated that there was no evidence of an explosion, when the prosecution had turned over twelve other requested reports regarding the laundromat explosion.³⁷ At trial, Officer Kiely testified that there was evidence of an explosion after further investigation.³⁸ The court found that the withheld report was "plainly exculpatory" with respect to the charge of arson.³⁹

The *Vilardi* court, however, critically examined *United States v. Bagley*⁴⁰ which set out a lesser standard.⁴¹ According to *Bagley* the prosecution's omission of favorable evidence is

32. *Id.*

33. *Brady*, 373 U.S. at 87. In an effort to avoid treading on Maryland's state sovereignty, the Court ultimately affirmed the court of appeals decision to restrict the issue for new trial to the issue of punishment. *Id.* at 90.

34. 76 N.Y.2d 67, 555 N.E.2d 915, 556 N.Y.S.2d 518 (1990).

35. *Id.* at 73, 556 N.Y.S.2d at 518, 555 N.E.2d at 917.

36. *Id.* at 70, 555 N.E.2d at 915, 556 N.Y.S.2d at 518.

37. *Id.* at 70, 555 N.E.2d at 916, 556 N.Y.S.2d at 518.

38. *Id.*

39. *Id.* at 72, 555 N.E.2d at 917, 556 N.Y.S.2d at 518.

40. 473 U.S. 667 (1985).

41. *Vilardi*, 76 N.Y.2d at 77, 556 N.Y.S.2d at 518, 555 N.E.2d at 920.

“constitutional error . . . only if the evidence is material in the sense that . . . there is a reasonable probability that had the evidence been disclosed to the defense, the result of the proceeding would have been different.”⁴² This federal standard set out in *Bagley* was reconciled with the New York standard that is based on “elemental fairness” to the defendant and the importance of the prosecution’s professional and ethical obligations.⁴³ The state common law has adopted a rule of automatic reversal when the prosecution has failed to disclose material evidence.⁴⁴ Thus the Court of Appeals of New York opted to secure its concerns of promoting fairness and discouraging prosecutorial misconduct by declining to comply with the lesser *Bagley* standard.⁴⁵ The court reasoned that accepting the “reasonable probability” standard would defer a jury’s impaired decision, due to nondisclosure of material evidence, to appellate review.⁴⁶

The post-conviction issue in *Bryce* was whether the defendant’s constitutional right to due process of law had been violated when he was denied a hearing to determine whether the prosecution’s failure to preserve and deliver material evidence mandated a new trial.⁴⁷ The court of appeals found that, because the prosecution misrepresented that material evidence would be preserved and delivered to the defense, the defendant should have been afforded a hearing to determine if the newly discovered evidence was exculpatory and, if so, whether the defendant should be afforded a new trial.⁴⁸

The Federal and New York laws are not in complete accord with regard to the Due Process rights of defendants relating to the requisite standards of nondisclosure by prosecuting authorities. Under both Federal and New York State Constitutional law, a criminal defendant’s liberty will not be

42. *Bagley*, 473 U.S. at 682.

43. *Vilardi*, 76 N.Y.2d at 76, 556 N.Y.S.2d at 518, 555 N.E.2d at 919.

44. *Id.*

45. *Id.* at 77, 555 N.E.2d. at 920, 556 N.Y.S.2d at 518.

46. *Id.*

47. *Bryce*, 88 N.Y.2d. at 128, 666 N.E.2d at 223, 643 N.Y.S.2d at 518.

48. *Id.* at 130, 666 N.E.2d at 224, 643 N.Y.S.2d at 519.

deprived by a state government without the advantage of due process of law, that is, the defendant is entitled to discover evidence favorable to his defense with respect to either guilt or punishment.⁴⁹ The difference between federal and state law is a matter of interpretation: federal common law dictates undisclosed evidence will be considered material only if a "reasonable probability" exists that it would have an impact on the trial's outcome.⁵⁰ New York law, in contrast, abides by a higher standard that requires reversal for any instance in which the defendant has made a specific request for evidence and the prosecution has failed to disclose such material evidence.⁵¹

People v. Scott⁵²
(decided June 5, 1996)

Defendant, George Scott, was convicted of first degree manslaughter and criminal possession of a weapon in the second and third degree.⁵³ Defendant moved to vacate his conviction pursuant to Criminal Procedure Law section 440.10,⁵⁴ claiming that the People's failure to disclose specifically requested, favorable evidence which was material to the verdict [hereinafter *Brady*⁵⁵ evidence] violated the Due Process Clauses of the

49. *Id.* at 124, 666 N.E.2d at 223, 643 N.Y.S.2d at 518.

50. *Bagley*, 473 U.S. at 682.

51. *Vilardi*, 76 N.Y.2d at 77, 555 N.E.2d at 920, 556 N.Y.S.2d at 518.

52. 88 N.Y.2d 888, 667 N.E.2d 923, 644 N.Y.S.2d 913 (1996).

53. *Id.* at 889, 667 N.E.2d at 924, 644 N.Y.S.2d at 914.

54. N.Y. CRIM. PROC. LAW § 440.10(1)(h) (McKinney 1992). Section 440.10 states in pertinent part:

1. At any time after the entry of a judgment, the court in which it was entered may, upon motion of the defendant, vacate such judgment upon the ground that: h) The judgment was obtained in violation of a right of the defendant under the constitution of this state or of the United States.

Id.

55. *Brady v. Maryland*, 373 U.S. 83 (1963). *Brady* (petitioner) and *Boblit*, his companion were found guilty of first degree murder in separate trials. *Id.* at 84. At his trial, *Brady* admitted to participating in the crime, but he claimed that *Boblit* did the killing. *Id.* Before his trial, *Brady* requested that