Touro Law Review

Volume 9 | Number 3 Article 59

1993

Self Incrimination

SELF INCRIMINATION

N.Y. CONST. art. I, § 6:

No person shall . . . be compelled in any criminal case to be a witness against himself . . . .

U. S. CONST. amend. V:

No person shall . . . be compelled in any criminal case to be a witness against himself . . . .

COURT OF APPEALS

People v. Corrigan[1885]
(decided October 27, 1992)

Defendant, a police officer, claimed that his constitutional right against self-incrimination was violated under the federal[1886] and state[1887] constitutions when the prosecutor held in his possession an immunized statement made by defendant during grand jury proceedings.[1888] The New York Court of Appeals held that the lower court incorrectly dismissed the information since the prosecutor's actions did not force defendant to adjust his testimony in accordance with his prior immunized statement.[1889]

A confrontation occurred one evening at a restaurant where defendant was working as a "bouncer." The commotion began after defendant noticed that Bihn Nguyen, a patron of the restaurant, buying drinks for an underage individual. It was alleged that after the police arrived, defendant physically abused Nguyen.[1890]

As part of the Police Department's policy, defendant was compelled to make a statement or risk dismissal from the police

1885. 80 N.Y.2d 326, 604 N.E.2d 723, 590 N.Y.S.2d 174 (1992).

1886. U.S. CONST. amend. V.

1887. N.Y. CONST. art. I, § 6.

1888. *Corrigan,* 80 N.Y.2d at 328, 604 N.E.2d at 724, 590 N.Y.S.2d at 175.

1889. *Id.* at 331, 604 N.E.2d at 726, 590 N.Y.S.2d at 177.

1890. *Id.* at 328, 604 N.E.2d at 724, 590 N.Y.S.2d at 175.

force.[1891] It is this statement which is the focus of this appeal. Specifically, when the defendant testified during the grand jury proceedings, the prosecutor held in his possession the statement defendant made during the police department's internal investigations. However, the prosecutor never questioned defendant regarding this statement, never offered the statement as evidence, and defendant was never aware that the prosecutor held his statement during his grand jury testimony.[1892]

After an information was filed, defendant was officially accused of two counts of assault in the third degree.[1893] The town court dismissed the information on the basis that the prosecutor's actions constituted an unconstitutional use of an immunized statement.[1894] On appeal, the county court affirmed the lower court's holding even though it found that there was legally sufficient evidence to support the information.[1895] Rather, the county court held that the application of Criminal Procedure Law section 210.35(5)[1896] mandated an affirmance "because the prosecutor's use of the involuntary statement had the over-all effect of forcing defendant to conform his Grand Jury testimony to his prior statement and thereby restricted his right to testify freely."[1897]

As a preliminary matter, the court of appeals noted that under both the federal and state constitutions, a statement made under threat of dismissal from one's employment "is privileged against self-incrimination and automatically immunized from use in criminal proceedings."[1898] Not only is the prosecution barred

---

1891. *Id.*

1892. *Id.*

1893. *Id.*

1894. *Id.*

1895. *Id.*

1896. N.Y. CRIM. PROC. LAW § 210.35(5) (McKinney 1982).

1897. *Corrigan*, 80 N.Y.2d at 329, 604 N.E.2d at 724, 590 N.Y.S.2d at 175.

1898. *Id. See also* Lefkowitz v. Turley, 414 U.S. 70, 70 (1973) ("employees of the State do not forfeit their constitutional privilege [against self incrimination] and . . . they may be compelled to respond to questions about the performance of their duties but only if their answers cannot be used against them in subsequent criminal prosecutions"); Matt v. Larocca, 71 N.Y.2d 154,

from using any part of an immunized statement, but it must also demonstrate that any evidence offered "was derived from a source wholly independent of the statement."[1899]

The court found that the prosecutor's conduct did not rise to the level of an illegal use which violated the state and federal constitutions.[1900] The basis for this finding was grounded in the court's description of the prosecutor's examination technique, which embodied "nonspecific and nonleading[] questions."[1901] The court found that the prosecutor made every effort to insure that the underlying facts in the questions consisted of information derived from sources other than defendant's immunized statement.[1902] To that end, the prosecutor established, through documentary and testimonial evidence, that any questions which could be attributed to defendant's prior statement were effectively derived from independent sources such as previous grand jury testimony and the testimony of other police officers during the internal investigation.[1903] Therefore, since the prosecutor's actions did not violate any constitutional provisions, the mere fact that the prosecutor held the immunized statement in his possession during the grand jury proceedings had no constitutional significance.[1904]

The court further reasoned that defendant's statutory right to testify before the grand jury[1905] was not prejudiced by the prose-

159, 518 N.E.2d 1172, 1174, 74 N.Y.S.2d 180, 182 (1987) ("It would . . . offend the guarantee against self-incrimination to require a public servant to answer questions . . . and to make use of the incriminating statements in a subsequent criminal prosecution.").

1899. *Corrigan,* 80 N.Y.2d at 329, 604 N.E.2d at 724-25, 590 N.Y.S.2d at 175-76. *See also* Braswell v. United States, 487 U.S. 99, 117 (1988) (once defendant testifies under immunity, "the government [has] the heavy burden of proving that all of the evidence it proposes to use was derived from legitimate independent sources") (quoting *Kastigar v. United States,* 406 U.S. 441, 461 (1972)).

1900. *Corrigan,* 80 N.Y.2d at 331, 604 N.E.2d at 726, 590 N.Y.S.2d at 177.

1901. *Id.* at 330, 604 N.E.2d at 725, 590 N.Y.S.2d at 176.

1902. *Id.*

1903. *Id.*

1904. *Id.* at 331, 604 N.E.2d at 726, 590 N.Y.S.2d at 177.

1905. N.Y. CRIM. PROC. LAW § 190.50(5) (McKinney 1982).

cutor's conduct. The court relied on two critical factors in making this determination. Primarily, in light of the fact that defendant was unaware that the prosecutor possessed his prior statement, the court found that it was highly unlikely that defendant's testimony was affected.[1906] Second, defendant was given every opportunity to tell the jury his story. "His answers were complete and, at times, lengthy and wide-ranging. He was never cut off or interrupted."[1907] As a consequence, the court of appeals reinstated the information since defendant's constitutional and statutory rights were not violated.

Judge Bellacosa's dissent was grounded on a different analysis of the prosecutor's conduct. He argued that the prosecutor illegally used defendant's immunized statement "as part of his general preparation of the case and particularly for his interrogation of the target defendant in the Grand Jury."[1908] Additionally, since the prosecutor held the statement in defendant's view, "[t]he likely strategic advantage sought was to assist in structuring the interrogation and in intimidating the target witness against testifying at variance with his prior sworn immunized statement."[1909] Under this analysis, the prosecutor's actions violated the defendant's constitutional and statutory rights.

The dissent further reasoned that an affirmance was mandated since defendant was the target of grand jury proceedings. "[A] prospective defendant or one who is a target of an investigation may not be called and examined before a Grand Jury and, if he is, his constitutionally-conferred privilege against self-incrimination is deemed violated . . . ."[1910] Therefore, under Judge

---

1906. *Corrigan*, 80 N.Y.2d at 331, 604 N.E.2d at 126, 590 N.Y.S.2d at 177.

1907. *Id.*

1908. *Id.* at 332, 604 N.E.2d at 727, 590 N.Y.S.2d at 178 (Bellacosa, J., dissenting).

1909. *Id.* at 332-33, 604 N.E.2d at 727, 590 N.Y.S.2d at 178 (Bellacosa, J., dissenting).

1910. *Id.* at 334, 604 N.E.2d at 727-28, 590 N.Y.S.2d at 178-79 (Bellacosa, J., dissenting) (quoting People v. Avant, 33 N.Y.2d 265, 272, 307 N.E.2d 230, 233, 352 N.Y.S.2d 161, 166 (1973) quoting People v. Steuding, 6 N.Y.2d 214, 216-17, 160 N.E.2d 468, 468-69, 189 N.Y.S.2d 166, 167-68 (1959)).

Bellacosa's analysis, the application of this standard requires a dismissal of the information since defendant was a target of the grand jury proceedings. Judge Bellacosa would affirm the lower court's decision because the prosecutor unconstitutionally used defendant's immunized statement.

The federal law appears to comport with the the majority's view in this case. In *Lefkowitz v. Turley*,[1911] the Supreme Court held that the privilege against self-incrimination protects government employees who are compelled to answer questions regarding their job performance from having those answers used against them in a subsequent criminal trial.[1912] However, in *Bradwell v. United States*,[1913] the Supreme Court ruled that if the prosecutor is able to overcome the "heavy burden" that the evidence against the employee was derived not from the compelled statement but from wholly indpendent sources, it may be used against that employee at his or her subsequent criminal trial.[1914]

Therefore, it appears that under both the federal and state constitutions, the privilege against self-incrimination prohibits the introduction of a government employee's compelled statement, or the evidence derived therefrom, into evidence at the employee's subsequent criminal trial unless the prosecution can prove that all the evidence he or she intends to introduce was obtained from wholly independent sources.

1911. 414 U.S. 70 (1973).
1912. *Id.* at 70.
1913. 487 U.S. 99 (1988).
1914. *Id.* at 118.