Limited Disclosure of Mental Health Records Under *Brady*

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Court Clarifies the Right to Access to Evidence Under *Brady v. Maryland*

DOI:10.29158/JAAPL.230039-23

Key words: *Brady*; records; confrontation clause

In *McCray v. Capra*, 45 F.4th 634 (2d Cir. 2022), Terrance McCray appealed a district court decision denying his petition for writ of *habeas corpus* on the basis that the court denied him full access to the victim-witness's mental health records. The Second Circuit Court of Appeals determined that the disclosure of a representative sample, in lieu of the entirety of the available medical records, is sufficient for satisfying the right to access to evidence under *Brady v. Maryland,* 373 U.S. 83 (1963).

Facts of the Case

Mr. McCray was charged with rape in the first degree. The victim, an 18-year-old woman with a history of psychiatric illness, provided an account of events that differed from Mr. McCray's. The victim, who remained unnamed in court documents, testified that she ultimately submitted to sexual intercourse with Mr. McCray. She reported she had done so after making efforts to prevent Mr. McCray from forcing himself on her. Mr. McCray testified that the intercourse was consensual. He filed a pretrial demand to obtain medical and psychiatric records for the prosecution's witnesses, including the alleged victim. In response to a court order, the prosecution obtained psychiatric records, which were submitted for an *in camera* review. The trial court ultimately released 28 of the thousands of pages of medical records that had been obtained. The trial court reasoned this sample was representative of the entirety of the documents. Mr. McCray was convicted of first-degree rape and sentenced to 22 years of imprisonment.

Mr. McCray appealed his conviction, alleging the trial court erred in refusing to allow all of the victim's mental health records into evidence. He argued that releasing only a sample of the available records amounted to withholding of evidence and therefore violated his due process right to relevant evidence as set forth in *Brady.* He also asserted violations of his Sixth Amendment right to confront the witness about certain behaviors and a history of "hypersexuality." Mr. McCray appealed to the Appellate Division, Third Department and subsequently to the New York Court of Appeals; both courts affirmed his conviction. He then filed a *pro se* petition to the U.S. District Court for the Northern District of New York for a writ of *habeas corpus*. Although his petition was denied, he was granted a certificate of appealability to the Second Circuit Court of Appeals on the basis of *Brady*. Mr. McCray successfully expanded the appeal question to include whether his Sixth Amendment right to confrontation had been violated by the nondisclosure of the full body of the victim's mental health records.

Ruling and Reasoning

The Second Circuit Court of Appeals affirmed the decision of the district court to deny his petition. The court noted that the Confrontation Clause of the Sixth Amendment states: "the accused shall enjoy the right. . . to be confronted with the witnesses against him" (U. S. Const. Amen. VI). The court cited *Alvarez v. Ercole*, 763 F.3d 223 (2d Cir. 2014), for the position that a criminal defendant is entitled to a meaningful opportunity to cross-examine witnesses against him. But, the court agreed with the determination of the state court of appeals that the Confrontation Clause does not apply to pretrial discovery. Instead, the court ruled that the Confrontation Clause only applies to the trial itself (citing *Pennsylvania v. Ritchie,* 480 U.S. 39 (1987)). The court indicated that, by extension, it agreed with the state court of appeals' decision to assess Mr. McCray's claims based solely on the requirements set forth in *Brady.*

The Second Circuit weighed the evidence available in the 28-page sample of the available records with the evidentiary value of the contents of the entirety of the medical records. The court found the 28 pages of records contained information regarding the victim's mental health, history of abuse, history of self-harming

behaviors, deficits in judgment and impulse control, memory loss, hypersexuality, and two prior instances in which she alleged she was the victim of forced sexual intercourse. The court noted this information was supplemented by the victim's testimony. The court found that the state appeals court was appropriate in its determination that the sample of the medical records was representative of the entirety of the available records and providing only a sample was not an unreasonable application of federal law. The Second Circuit further concluded that the information provided was sufficient for the defendant to cross-examine and challenge the witness's credibility.

The dissent stated that the trial court's decision to provide only the 28-page sample of records denied Mr. McCray the right to defend himself and compromised the fairness of the trial. The dissent said that access to the full records would have provided the defense with substantial evidence undermining the credibility of the witness, including that the victim experienced distortions of memory and reality, had a history of confabulating, and her prior accusations of her father raping her had been unfounded. The documentation revealed the victim had "short term memory loss" and selective memory. The withheld information was thus felt to have had the potential to undermine significantly the credibility of the witness as well as to corroborate Mr. McCray's account of events.

Discussion

Similar to *McCray*, the Third Circuit Court of Appeals considered the question of withholding mental health evidence in *Wilson v. Beard*, 589 F.3d 651 (3d Cir. 2009). In *Wilson*, the lack of access to mental health records relevant to the credibility of a witness was believed to have interfered with the fundamental fairness of the proceedings. Unlike in *Wilson,* in *McCray* the court concluded that the provision of only a sample of the available medical records did not interfere with the fundamental fairness of the proceedings.

The decision in *McCray* affirms the role of the courts as gatekeepers with regard to determining what medical records may be introduced into evidence. In this role, the courts must assess the relevance of the medical records as well as the evidentiary value of the information in such records when determining what records may be submitted into evidence. In *McCray*, the court found that a trial court might conduct such an analysis and reasonably conclude that a subset of documents, selected from the entirety of the medical record, provides a representative sample of the information from the medical record. In doing so, the court could determine that this sample was adequate to ensure the fundamental fairness of the proceedings.

The gatekeeping role of the judge has previously been identified as a protection against unnecessary or inappropriate use of sensitive materials, including confidential mental health records. This responsibility is further complicated by the need to determine when privileges afforded to mental health records might be outweighed by their relevance to a given case, as set forth in *Fuentes v. Griffin,* 829 F.3d 233 (2d Cir. 2016). For cases of alleged sexual assault, some jurisdictions, including New York, have imposed Rape Shield statutes (N.Y. C.P.L. R. 60.42 (2021)), allowing the court to exclude evidence related to the victim's reputation or sexual history if the information is felt to not be relevant to the present case. The questions raised in *McCray* ultimately reflect the challenges associated with balancing the right to evidence under *Brady* with the need to ensure that only information salient to the interests of justice be admitted into evidence. Forensic psychiatrists should understand the legal factors governing admission of medical records into court proceedings to be able to discuss the topic with the attorneys consulting them.

Deliberate Indifference by Officials in Case of Inmate-on-Inmate Violence

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Qualified Immunity Applies to Officials Performing Government Security Function in Case of Inmate-on-Inmate Violence

DOI:10.29158/JAAPL.230039L1-23

Key words: deliberate indifference; qualified immunity; *Monell* claim; failure to protect

In *Morgan v. Wayne County*, *Michigan*, 33 F.4th 320 (6th Cir. 2022), the U.S. Court of Appeals for