

#### 4.27. Defendant's Right to Present a Defense

**(1) In a criminal proceeding, a defendant has a constitutional right to present a defense.**

**(2) Depending on the circumstances presented, the constitutional right to a defense may authorize the admission of evidence on behalf of a defendant that would normally be precluded by the State's rules of evidence, albeit the right to present a defense does not give a defendant carte blanche to circumvent the State's rules of evidence.**

**(3) Erroneous evidentiary rulings precluding meaningful defense evidence may constitute a violation of the defendant's constitutional right to present a defense.**

#### Note

**Subdivision (1)** states a defendant's due process right in a criminal proceeding "to a fair opportunity to defend against the State's accusations." (*Chambers v Mississippi*, 410 US 284, 294 [1973]; *Washington v Texas*, 388 US 14, 19 [1967] ["The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense"]; *People v Foy*, 32 NY2d 473, 478 [1973] [" 'Few rights are more fundamental than that of an accused to present witnesses in his own defense' " (quoting *Chambers*)]; *People v Carroll*, 95 NY2d 375, 385 [2000] ["A court's discretion in evidentiary rulings is circumscribed by the rules of evidence and the defendant's constitutional right to present a defense"].)

**Subdivision (2)** states the primary significance of the constitutional right to a defense; namely, depending on the circumstances of a particular case, the defendant's right to present a defense may overrule a state evidentiary rule barring the admission of evidence a defendant seeks to present.

As the rule also states, a defendant's right to present a defense, however, " 'does not give criminal defendants carte blanche to circumvent the rules of evidence' " (*People v Hayes*, 17 NY3d 46, 53 [2011] [internal quotation marks and citation omitted], quoting *United States v Almonte*, 956 F2d 27, 30 [2d Cir 1992]; *People v Jin Cheng Lin*, 26 NY3d 701, 727 [2016]).

*Almonte*, cited by *Lin* and *Hayes*, noted the same limitations on the right to present a defense: “The right to present a defense, however, does not give criminal defendants carte blanche to circumvent the rules of evidence. Restrictions on a defendant’s presentation of evidence are constitutional if they serve ‘legitimate interests in the criminal trial process,’ *Rock v. Arkansas*, 483 U.S. 44, 55, 107 S.Ct. 2704, 2711, 97 L.Ed.2d 37 (1987) (quoting *Chambers v. Mississippi*, 410 U.S. 284, 295, 93 S.Ct. 1038, 1046, 35 L.Ed.2d 297 (1973)), and are not ‘arbitrary or disproportionate to the purposes they are designed to serve.’ *Rock*, 483 U.S. at 56, 107 S.Ct. at 2711. *See also Taylor v. Illinois*, 484 U.S. 400, 414-16, 108 S.Ct. 646, 655-56, 98 L.Ed.2d 798 (1988)” (*Almonte*, 956 F2d at 30).

Examples of the application of the defendant’s right to a defense which permits the introduction of evidence that might otherwise be inadmissible under New York’s evidentiary rules include:

- In *People v Robinson* (89 NY2d 648, 650 [1997]), the defendant’s right to a defense required “the admission of hearsay not encompassed within a hearsay exception when the court finds that the declarant is unavailable to testify and the hearsay is material, exculpatory and has sufficient indicia of reliability” (*see* Guide to NY Evid rule 8.01 [1] [b], Admissibility of Hearsay; *cf. People v Burns*, 6 NY3d 793, 795 [2006] [the defendant’s right to present a defense was not violated given that the trial court “afforded defendant another way to elicit the (hearsay) information”; and “(i)n any event, . . . the hearsay statement lacked any indicia of reliability”]).
- In *People v Sidbury* (42 N.Y.3d 497 [2024]), the Court held that the trial court “impinged [the defendant’s] constitutional right to present a defense and call witnesses” when it precluded his psychiatric defense for his failure to provide, as required by statute, a timely notice of an intent to present that defense. (42 NY3d at 508.) *Sidbury* found that the trial court did not consider “potential prejudice to the People” from the late notice “or alternatives that might cure any prejudice, such as a delay of the trial.” (42 NY3d at 510.) Thus, the court failed “to balance prejudice to the People resulting from the delayed notice against [the defendant’s] constitutional right to present a defense.” (42 NY3d at 509.)

**Subdivision (3)** is derived from *People v Deverow* (38 NY3d 157 [2022]), where the trial court’s four erroneous evidentiary rulings in sum deprived the defendant of the right to present a defense. More specifically, *Deverow* found that the trial court erred in excluding a defense witness on the grounds that the witness’s proffered evidence was collateral, and the trial court erred in excluding three 911 calls that the defense offered and were admissible

pursuant to the “present sense impression” exceptions to the hearsay rule. Those trial court rulings, *Deverow* held, “deprived defendant of ‘a meaningful opportunity to present a complete defense’ ” (*id.* at 168). “Although this ‘right to present a defense does not give criminal defendants carte blanche to circumvent the rules of evidence’ (*People v Hayes*, 17 NY3d 46, 53 [2011] . . . ), a trial court must not apply the rules ‘mechanistically to defeat the ends of justice’ (*Chambers v Mississippi*, 410 US 284, 302 [1973])” (*id.* at 164; *see People v Oddone*, 22 NY3d 369, 377 [2013] [“technical limitations on the impeachment of witnesses must sometimes give way, in a criminal case, to a defendant’s right to a fair trial” (citing *Chambers*)]).

Following *Deverow*, *People v Cerda* (40 NY3d 369, 371, 377 [2023]) held that the “exclusion of forensic evidence” under the interest of justice exception of the Rape Shield Law erroneously deprived the defendant of the constitutional right to present a defense, given that the proffered evidence provided an “alternative, innocent explanation for the cause of the [complainant’s] identified injuries and bears on the issue of guilt or innocence.”

In *People v Dixon*, (42 NY3d 609, 618 [2024]), the Court noted that “the People’s monitoring of an incarcerated pro se defendant’s jail phone calls may have a chilling effect on the defendant’s trial preparation that threatens the right to present a defense—particularly if the People are able to make use of the information in the calls in the pending trial.” On the facts of *Dixon*, however, the Court determined “any chilling effect here was negligible” and not a constitutional violation.