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Touro Law Review

Volume 11 | Number 3 Article 19

1995

Due Process

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Recommended Citation
(1995) "Due Process," *Touro Law Review*: Vol. 11 : No. 3 , Article 19.
Available at: https://digitalcommons.tourolaw.edu/lawreview/vol11/iss3/19

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of due process.[102] Both courts have the same goal of discouraging prosecutors from withholding exculpatory evidence and ensuring that criminal defendants have a fair trial. However, New York courts have implemented a higher burden for prosecutors to meet in analyzing the failure to disclose exculpatory evidence. As a result, defendants will have a relatively easier burden of proof by pursuing a violation of a state constitutional right to due process in a motion to vacate a criminal conviction. The federal rule focuses more on the materiality of the evidence and less on the actions of the prosecutor.

SUPREME COURT, APPELLATE DIVISION

FIRST DEPARTMENT

People v. Douglas[103]
(decided October 27, 1994)

Defendant appealed his conviction of criminal possession of a controlled substance in the fifth degree, in violation of New York Penal Law section 220.06 (5).[104] Defendant made a motion for the court to review his conviction and retroactively apply the scienter requirement to the weight element, as enunciated in the subsequent decision of *People v. Ryan*.[105] Defendant claimed that the state's evidence was insufficient.[106] He asserted that the jury should have been precluded from finding him guilty since the

102. People v. Cwikla, 46 N.Y.2d 434, 441, 386 N.E.2d 1070, 1073, 414 N.Y.S.2d 102, 105 (1979) (recognizing prosecutor's obligation to disclose exculpatory evidence as "fundamental") (citing Brady v. Maryland, 373 U.S. 83 (1963)).

103. 205 A.D.2d 280, 617 N.Y.S.2d 733 (1st Dep't 1994).

104. N.Y. PENAL LAW § 220.06 (McKinney 1989).

105. 82 N.Y.2d 497, 626 N.E.2d 51, 605 N.Y.S.2d 235 (1993). The defendant was tried more than a year before *Ryan* was decided. *Douglas*, 205 A.D.2d at 282, 617 N.Y.S.2d at 734.

106. *Douglas*, 205 A.D.2d at 283, 617 N.Y.S.2d at 734.

state had failed to prove he knowingly possessed at least 500 milligrams of cocaine.[107]

The Appellate Division, First Department in *Douglas* held that *Ryan* should only be applied prospectively because retroactive application of *Ryan* "would 'create a substantial burden on the administration of justice and delay the disposition of countless pending cases.'"[108] Retroactive application would also have a drastic effect on various narcotics-related evidentiary rulings.[109] Finding the evidence sufficient to support defendant's conviction, the court found no denial of the defendant's constitutional due process rights under either the State[110] or Federal[111] Constitutions.[112]

The defendant was observed by the arresting officer, who was watching from a distance of approximately fifteen feet and then from approximately six feet, to be reaching into a brown paper bag and dropping vials into an unidentified woman's hand.[113] The officer testified that the defendant appeared to have been counting the number of vials as he was dropping them into the woman's hand.[114] When the officer approached, the unidentified woman fled and the defendant was arrested with the brown paper bag containing thirty-one vials of cocaine.[115] A chemical analysis performed on the contents of the thirty-one vials revealed that they contained a total of 1,591 milligrams of cocaine.[116] The

107. *Id.*

108. *Id.* 205 A.D.2d at 291, 617 N.Y.S.2d at 739 (quoting People v. Mitchell, 80 N.Y.2d 519, 606 N.E.2d 1381, 591 N.Y.S.2d 990 (1992)).

109. *Id.*

110. N.Y. CONST. art I, § 6. The provision states in pertinent part: "No person shall be deprived of life, liberty or property without due process of law." *Id.*

111. U.S. CONST. amend. VI. The provision states in pertinent part: "[N]or shall any person be deprived of life, liberty, or property, without due process of law . . . ." *Id.*; U.S. CONST. amend. XIV. The provision states in pertinent part: "No state shall . . . deprive any person of life, liberty, or property, without due process of law." *Id.*

112. *Douglas*, 205 A.D.2d at 292, 617 N.Y.S.2d at 740.

113. *Id.* 282, 617 N.Y.S.2d at 734.

114. *Id.*

115. *Id.*

116. *Id.*

defendant was indicted on March 5, 1992.[117] He was charged with criminal possession of a controlled substance in the third degree in violation of New York Penal Law section 220.65 and in the fifth degree in violation of New York Penal Law section 220.06[5].[118] Although the trial court denied the defendant's motion to suppress the physical evidence obtained upon his arrest, it allowed the suppression of various underlying facts of the defendant's nine prior drug-related convictions.[119] At the end of the presentation of all the evidence, the defendant made a general motion to dismiss.[120] After a jury trial on August 27, 1992,[121] the defendant was acquitted of the third degree count, but was found guilty of the fifth degree count, the charge of knowing and unlawful possession of 500 milligrams or more of cocaine.[122] The Appellate Division, First Department affirmed the conviction, sentencing the defendant to a prison term of two and half to five years.[123]

The court began its analysis by noting that, as in the case at bar, in "the vast majority of pre-*Ryan* narcotics possession cases, the prosecution, the defense and the trial court operated under the then common assumption that there was no scienter requirement with respect to the weight element of a drug possession charge."[124] The New York Court of Appeals in *People v.*

117. *Id.* at 281, 216 N.Y.S.2d at 733.

118. N.Y. PENAL LAW §§ 220.06, 220.65 (McKinney 1989) (pertaining to knowing and unlawful possession of 500 milligrams or more of cocaine; possession of a controlled substance with intent to sell). *Douglas*, 205 A.D.2d at 281, 617 N.Y.S.2d at 733.

119. *Douglas*, 205 A.D.2d at 281-82, 617 N.Y.S.2d at 733-34. From May 1986 to November 1987, the nine prior drug-related convictions consisted of one misdemeanor possession, five misdemeanor sales, one criminal possession of a controlled substance in the seventh degree, one attempted criminal sale in the third degree, and one criminal possession of a controlled substance in the fifth degree. *Id.* Six of the nine convictions involved only marijuana and none of the convictions involved the possession of cocaine. *Id.* at 294, 617 N.Y.S.2d at 741. (Rosenberger, J., dissenting).

120. *Id.* at 282, 617 N.Y.S.2d at 734.

121. *Id.* at 293, 617 N.Y.S.2d at 741.

122. *Id.* at 283, 617 N.Y.S.2d at 734.

123. *Id.* at 293, 617 N.Y.S.2d at 741.

124. *Id.* at 282, 617 N.Y.S.2d at 734.

Ryan,[125] interpreted New York Penal Law section 220.18(5) and found that "there is a *mens rea* element associated with the weight of the drug."[126]

New York Penal Law section 220.18(5) states that "[a] person is guilty of criminal possession of a controlled substance in the second degree when he knowingly and unlawfully possesses: . . . six hundred twenty-five milligrams of a hallucinogen."[127] The *Ryan* court noted that in reading the statutory language in context, the term "knowingly" not only applied to the possession of something, "but also to the nature of the material possessed."[128] The *Ryan* court reasoned that because "the knowledge requirement carrie[d] through to the end of the sentence, eliminating it from the intervening element -- weight -- would rob the statute of its obvious meaning."[129] The *Ryan* court further explained that if a defendant did not need to have knowledge of the weight, the criminal possession of a controlled substance in the second degree would in effect be "a strict liability crime" which was not the Legislature's intent.[130]

125. 82 N.Y.2d 497, 626 N.E.2d 51, 605 N.Y.S.2d 235 (1993). Although the defendant was convicted of *attempted* possession of a controlled substance in the second degree, the *Ryan* court construed New York Penal Law § 220.18(5) as meaning the *completed* crime. *Ryan*, 82 N.Y.2d at 501, 626 N.E.2d at 53, 605 N.Y.S.2d at 237 .

126. *Id.* at 502, 626 N.E.2d at 54, 605 N.Y.S.2d at 238. In *Ryan*, the defendant was arrested after receiving a package, substituted by the police, containing only newspapers, but was assumed by the defendant to have contained approximately two pounds of hallucinogenic mushrooms. *Id.* at 499-50, 626 N.E.2d at 52, 605 N.Y.S.2d at 236. The defendant was convicted of attempted criminal possession of a controlled substance in the second degree and sentenced to an imprisonment term of ten years to life. *Id.* at 501, 626 N.E.2d at 53, 605 N.Y.S.2d at 237. The appellate division affirmed the conviction holding that the "knowingly" term should refer only to "'the element of possession and not to the weight requirement.'" *Id.* (quoting People v. Ryan, 184 A.D.2d 24, 27, 591 N.Y.S.2d 218, 220 (3d Dep't 1992)). The court of appeals reversed and held that the "knowingly" mens rea requirement does apply to the weight requirement. *Ryan*, 82 N.Y.2d at 502, 626 N.E.2d at 54, 605 N.Y.S.2d at 238.

127. N.Y. PENAL LAW § 220.18(5) (McKinney 1992).

128. *Ryan*, 82 N.Y.2d at 502, 626 N.E.2d at 54, 605 N.Y.S.2d at 238.

129. *Id.*

130. *Id.*

Although the defendant clearly attempted to possess two pounds of hallucinogenic mushrooms, there was no evidence adduced at trial supporting the assertion that the defendant knew the amount of psilocybin, the hallucinogen in question.[131] Consequently, because the state failed to show how much psilocybin would typically have been in two pounds of hallucinogenic mushrooms, which would link mushroom weight to psilocybin weight, the *Ryan* court held that there was insufficient evidence at trial to satisfy the weight of the drug knowledge requirement.[132]

In the case at bar, the defendant, by raising the same insufficiency of evidence argument, has effectively raised the issue of whether such claim of insufficiency was preserved for appellate review without making a specific objection at trial.[133] The court noted that the preservation issue may be analyzed in two distinct ways. As set forth in *People v. Cooper*,[134] relying on *People v. Kilpatrick*,[135] a *Ryan* claim is fundamentally a claim concerning the sufficiency of evidence.[136] The *Cooper* court held that in all cases where the state fails to sufficiently prove the *Ryan* "knowledge of weight" requirement, it amounts to a denial of constitutional due process.[137] Thus, there is no requirement to make a specific objection for the issue to be preserved for appellate review.[138] The *Kilpatrick* court, however, noted that in assessing whether an issue has been preserved for appellate

131. *Id.* at 507, 626 N.E.2d at 57, 605 N.Y.S.2d at 241.

132. *Id.*

133. *Douglas*, 205 N.Y.2d at 283, 617 N.Y.S.2d at 734.

134. 204 A.D.2d 24, 618 N.Y.S.2d 257 (1st Dep't 1994). In *Cooper*, the defendant was arrested after an officer observed the defendant with a plastic bag containing white powder and then "she spontaneously exclaimed 'It's coke' for which she had just paid $40." *Id.* The defendant was charged and convicted of criminal possession of a controlled substance in the fifth degree, 500 milligrams or more of "pure weight" cocaine in violation of New York Penal Law § 220.06 (5). *Id.* Finding that there was no proof as to whether the defendant knew the bag contained cocaine, or 500 milligrams or more of cocaine, the court modified the conviction to a lesser degree of criminal possession of a controlled substance in the seventh degree. *Id.*

135. 143 A.D.2d 1, 531 N.Y.S.2d 262 (1st Dep't 1988).

136. *Id.*

137. *Id.*

138. *Cooper*, 204 A.D.2d at 27, 618 N.Y.S.2d at 259.

review, "it is important to distinguish a challenge addressed to the sufficiency of the evidence from one involving a claim of error in the trial court's charge or instructions to the jury."[139]

Another view, expounded by the court in *People v. Ivey*,[140] purports that a *Ryan* claim is fundamentally a claim based on an improper jury charge.[141] Under this view, the *Ivey* court held that where the defense had failed to object to the court's jury charge listing the elements of the crime, specifically, the knowledge of the weight element, the improper charge defining the element had not been preserved for appellate review as a "question of law."[142] The *Ivey* court distinguished its case from *Kilpatrick* by noting the *Kilpatrick* court's holding was specifically based on the fact that there was insufficient trial evidence pertaining to an element of the crime charged, not that the jury was improperly instructed.[143] Thus, the court found that there had been an improper jury charge but no "true insufficiency challenge." The *Ivey* court concluded that without any specific objection, the issue had not been preserved for appeal as a matter of law.[144] The *Ivey* court's conclusion was based upon the New York Court of Appeals' holding in *People v. Dekle*.[145] The *Dekle* court held that:

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139. *Kilpatrick*, 143 A.D.2d at 2, 531 N.Y.S.2d at 263.

140. 204 A.D.2d 16, 618 N.Y.S.2d 254 (1st Dep't 1994). In *Ivey*, the defendant was convicted of criminal possession of a controlled substance in the second degree in violation of Penal Law § 220.18(1), prior to the release of the *Ryan* decision. *Id.* at 17, 618 N.Y.S.2d at 254. The court held that because the defendant failed to raise the knowledge of the weight issue at trial, it was unpreserved for appellate review. *Id.* at 19, 618 N.Y.S.2d at 255.

141. *Douglas*, 205 A.D.2d at 283-84, 617 N.Y.S.2d at 735.

142. *Ivey*, 204 A.D.2d at 18, 618 N.Y.S.2d at 255.

143. *Id.*

144. *Id.* at 19, 618 N.Y.S.2d at 255. Similarly, the Appellate Division, Second Department in *People v. Okehoffurm* reached the same conclusion. 201 A.D.2d 508, 607 N.Y.S.2d 695 (2d Dep't 1994).

145. 56 N.Y.2d 835, 438 N.E.2d 101, 452 N.Y.S.2d 568 (1982). In *Dekle*, the defendant was convicted of robbery in the third degree and petit larceny for taking a radio from a store without purchasing it and subsequently, drew a closed knife when confronted outside the store by a security guard. *Id.* at 835, 438 N.E.2d at 102, 452 N.Y.S.2d at 569.

> [T]here [is no] due process violation when there is evidence from which a rational trier of fact could find the essential elements of the crime as those elements were charged to the jury without exception beyond a reasonable doubt. There is neither constitutional nor jurisprudential error in permitting guilt to be determined under a penal statute as construed by the common assumption of both attorneys and the court.[146]

This view is further supported in *People v. Monclavo*,[147] where the court upheld a fifth degree narcotics conviction, which had been tried prior to the decision in *Ryan*.[148] In *Monclavo*, a defendant picked up a paper bag containing crack-cocaine and was arrested as he walked away with it.[149] Citing *Ivey*, the *Douglas* court held that the proof of knowledge of the weight requirement was a jury charge question, and had not been preserved as the defendant failed to timely object.[150]

In a combination of these two views, the defendant in *People v. Gray*[151] raised both a *Ryan* claim and an improper jury charge claim regarding his knowledge of the weight of the cocaine.[152] Although the *Gray* court declined to address the improper jury charge claim, the court, in the case at bar, noted that there was no need to review the improper jury charge as set forth in *Gray* because the jury had been properly charged regarding the scienter requirement to the weight of the drug.[153] The defendant's claim

146. 56 N.Y.2d at 836-37, 438 N.E.2d at 102, 452 N.Y.S.2d at 569.

147. 620 N.Y.S.2d 378 (App. Div. 1st Dep't 1995).

148. *Id.* at 378.

149. *Id.*

150. *Douglas*, 205 A.D.2d at 284, 617 N.Y.S.2d at 733 (1st Dep't 1994) (citing People v. Ivey, 204 A.D.2d 16, 618 N.Y.S.2d 254 (1st Dep't 1994)).

151. 205 A.D.2d 353, 613 N.Y.S.2d 170 (1st Dep't 1994). In *Gray*, the defendant was convicted of criminal possession of a controlled substance in the fourth degree for possessing over one eighth ounce of cocaine. *Id.* at 353, 613 N.Y.S.2d at 170. After finding that the trial evidence did not support the conviction because the state failed to prove that the defendant knew of the weight of the drug, the court reduced the conviction to criminal possession of a controlled substance in the seventh degree. *Id.*

152. *Id.* at 285, 617 N.Y.S.2d at 735.

153. *Id.*

was also preserved for appellate review without specific exception pursuant to *Kilpatrick*.[154]

In further support of its holding, the *Douglas* court referred to *People v. Gordon*,[155] which arrived at essentially the same conclusion as did the court in *Gray*.[156] The *Gordon* court concluded that the defendant's *Ryan* claim was preserved for appellate review without requiring that a specific objection be made.[157] The court found that the jury had been properly charged with respect to the "knowledge of the weight requirement" and that there was no evidence brought forth at trial that would satisfy "[a] statutory threshold in terms of pure weight requir[ing] a showing of knowledge of both the aggregate weight of the contraband and the purity of the substance."[158]

The court agreed with the general proposition espoused in *Cooper* concerning a true sufficiency of evidence claim. For example, when the state fails to prove the *Ryan* "knowledge of weight" requirement, an essential statutory element of the crime charged, it amounts to a denial of constitutional due process requiring no specific objection for the issue to be preserved for appellate review.[159] The court disagreed that a violation of due process "occurs, even where all parties to the trial operate under the 'common assumption' that the legal test under which a defendant's guilt is to be adjudicated does not require such proof as is now required by Ryan."[160] The *Ryan* court, however, did not explicitly address the issue of whether this new scienter

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154. *Id.* at 285, 617 N.Y.S.2d at 736.

155. 618 N.Y.S.2d 261 (App. Div. 1st Dep't 1994). In *Gordon*, the defendant was arrested with 50 vials of crack cocaine after the police observed the defendant trafficking the drug on the street. *Id.* at 262. The defendant was convicted of criminal possession of a controlled substance in the fifth degree for possessing 1,283 milligrams of pure cocaine. *Id.*

156. *Douglas*, 205 A.D.2d at 285, 617 N.Y.S.2d at 736.

157. *Gordon*, 618 N.Y.S.2d at 262.

158. *Id.* The *Gordon* court reduced the conviction to criminal possession of a controlled substance in the seventh degree. *Id.*

159. *Id.* at 736 (citing *Cooper*, 204 A.D.2d at 26-27, 618 N.Y.S.2d at 259).

160. *Douglas*, 205 A.D.2d at 286, 617 N.Y.S.2d at 736.

requirement to the weight element may be applied retroactively to pre-*Ryan* cases. [161]

The court reasoned that in *Gray* and in *Gordon*, retroactivity of *Ryan* was not at issue because once a charge connecting knowledge to the weight requirement was given to the jury, the state's failure to prove it was a true question of proof and thus, no specific objection was required.[162] Conversely, the court implied that if *Ryan* is to be applied retroactively, and a jury charge was improper, a specific objection would be required in order to preserve the issue for appellate review.[163] The court, however, held that "any retroactive application [of the *Ryan* rule] must be precluded"[164] because retroactively applying *Ryan* would constitute a "new rule" that would have a "profound effect on the administration of justice . . . ."[165]

In assessing the retroactivity of a new rule, the court relied on *People v. Mitchell*.[166] The *Mitchell* court citing *People v. Pepper*[167] held that the rule in *People v. Antommarchi*[168] should only be applied prospectively.[169] In *Pepper*, the New York Court of Appeals stated that in determining the retroactive effect of a new rule, the following three factors are to be assessed: "(a) the purpose to be served by the new standards; (b) the extent of reliance . . . on the old standards; and (c) the effect on the

161. *Id.* at 282, 617 N.Y.S.2d at 734.

162. *Id.* at 286, 617 N.Y.S.2d at 736.

163. *Id.*

164. *Id.* at 290, 617 N.Y.S.2d at 739.

165. *Id.* at 286-87, 617 N.Y.S.2d at 736-37.

166. 80 N.Y.2d 519, 606 N.E.2d 1381, 591 N.Y.S.2d 990 (1992).

167. 53 N.Y.2d 213, 423 N.E.2d 366, 440 N.Y.S.2d 889 (1981).

168. 80 N.Y.2d 247, 604 N.E.2d 95, 590 N.Y.S.2d 33 (1992). In *Antommarchi*, the defendant was convicted of criminal possession of a controlled substance in the third degree. *Id.* at 249, 604 N.E.2d at 96, 590 N.Y.S.2d at 34. The court found that the defendant was denied the right to be present during voir dire, a material stage of the trial in violation of the Sixth and Fourteenth Amendments of the United States Constitution and article I, section 6 of the New York State Constitution. *Id.*

169. *Mitchell*, 80 N.Y.2d at 524, 606 N.E.2d at 1383, 591 N.Y.S.2d at 992. The *Mitchell* court found that there was no violation of the defendant's right to be present during a material stage of the trial by applying *Antommarchi* prospectively only. *Id.*

administration of justice of a retroactive application of the new standards."[170] The *Mitchell* court stated that "the question of retroactivity is one of State Law. The Supreme Court has no concern with the uniformity of our law and if only a local question is presented, the 'state courts generally have the authority to determine the retroactivity of their own decisions.'"[171]

In line with the *Mitchell* court's reasoning, the *Douglas* court found that because the case at bar involved the construction of the word "knowingly" as applied to the weight requirement in violation of New York Penal Law section 220.18(5), the three-prong analysis enunciated in *Mitchell* and *Pepper* applied to the case at bar.[172] The court reasoned that retroactive application of *Ryan* would create a "dramatic shift from prior procedures and while not all criminal cases are narcotics cases, thousands of matters would be affected throughout the state."[173] Noting that there have been 126,278 felony drug convictions in New York from 1989 to 1993, as well as recognizing that not all the convictions involved a weight element and a jury trial conviction, the court stated that "the sheer volume of felony narcotics convictions over this recent time period provides some indication of the potential effect of granting collateral relief pursuant to *Ryan* to defendants who did not preserve the issue."[174] The court further stressed that even if only a fraction of trial drug convictions with the weight element sought judicial review under *Ryan*, it "would 'create a substantial burden on the administration of justice and delay the disposition of countless pending cases.'"[175]

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170. *Pepper*, 53 N.Y.2d at 220, 423 N.E.2d at 369, 440 N.Y.S.2d at 892.

171. *Mitchell*, 80 N.Y.2d at 526, 606 N.E.2d at 1384, 591 N.Y.S.2d at 993 (quoting American Trucking Assn's, Inc. v. Smith, 496 U.S. 167, 177 (1989)).

172. *Douglas*, 205 A.D.2d at 287-90, 617 N.Y.S.2d at 737-39.

173. *Id.* at 287, 617 N.Y.S.2d at 737.

174. *Id.* at 290, 617 N.Y.S.2d at 739.

175. *Id.* at 291, 617 N.Y.S.2d at 739 (quoting People v. Mitchell, 80 N.Y.2d 519, 606 N.E.2d 1381, 591 N.Y.S.2d 990 (1992)).

The court further noted that the retroactive application of *Ryan* would also "necessarily increase[] the quantum of proof, required for such drug convictions[,]" thereby profoundly altering various evidentiary rulings in drug convictions prior to the *Ryan* decision.[176] The court stated that "matters once routinely suppressed in *Sandoval*[177] hearings, may now, in certain cases, be deemed admissible for the purpose of showing a defendant's prior experience with narcotics in order to prove his 'knowledge of the weight.' . . ."[178] The court reasoned that because "the issue of prior experience with narcotics may be relevant in every narcotics case with a weight element, the prior arrest, convictions and bad acts may be admitted whether or not these defendants chose to testify."[179] Thus, in the case at bar, the court noted that with regard to the defendant's nine prior drug convictions,[180] evidence of how much cocaine a typical vial contained may also have been admitted to allow the "jury to infer the defendant's knowledge of the weight simply from the number of vials [he] possessed"[181] pursuant to a *Sandoval* ruling.[182]

Therefore, the *Douglas* court held that *Ryan* is to be applied prospectively. Thus, when evaluated under the pre-*Ryan* legal instruction as given in the court's charge, the trial evidence was sufficient to support the defendant's conviction and there was no denial of due process.[183]

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176. *Id.* 205 A.D.2d at 287, 617 N.Y.S.2d at 737. Evidently, the difficulties associated with *Ryan*'s new standard of proof requirement includes difficulties in proving the defendant's knowledge of the specific weight of the drug. *Id.*

177. People v. Sandoval, 34 N.Y.2d 371, 314 N.E.2d 413, 357 N.Y.S.2d 849 (1974). The court in *Sandoval* ruled that a person may obtain a prospective ruling regarding prior convictions concerning the commission of specific criminal vicious and immoral acts prior to their being brought out on cross-examination and prior to deciding whether to take the stand in his own defense. *Id.*

178. *Douglas*, 205 A.D.2d at 291, 617 N.Y.S.2d at 739.

179. *Id.* at 291-92, 617 N.Y.S.2d at 740.

180. *Id.* at 291, 617 N.Y.S.2d at 740.

181. *Id.* at 292, 617 N.Y.S.2d at 740.

182. *Id.*

183. *Id.*

The distinction between the federal and state law on the issue of retroactivity is presented in *Griffith v. Kentucky*.[184] The federal law, similar to the state view, disallows collateral attack of final convictions using the three part test enunciated in *Stovall v. Denno*.[185] The test analyzes: "(a) the purpose to be served by the new standards; (b) the extent of the reliance by law enforcement authorities on the old standards; and (c) the effect on the administration of justice of the new standards."[186]

Although the *Stovall* test is similar to the three prong analysis of *Mitchell* and *Pepper*, their application contrasts as the United States Supreme Court's holding in *Griffith* provided that "new rules governing criminal procedure should be retroactive to cases pending on direct review."[187] The majority opinion expressed concern over what would amount to disparate treatment of similarly situated defendants if the new rule only applied to the case at bar, while leaving the old rule to apply to cases on direct review.[188] Thus, if the new rule encompassed some federal constitutional principles, it would be applied retroactively. Whereas if the new rule involved solely a construction of state law, the retroactivity of the new rule would be analyzed under the three-prong analysis enunciated in *Mitchell* and *Pepper*.

People v. Goodwin [189]
(decided November 10, 1994)

The defendant, Linnie Goodwin, claimed his right to a speedy trial, as protected by both the United States Constitution[190] and

184. 479 U.S. 314 (1987).
185. 388 U.S. 293 (1967).
186. *Id.* at 297.
187. *Griffith*, 479 U.S. at 326.
188. *Id.* at 323.
189. 618 N.Y.S.2d 633 (App. Div. 1st Dep't 1994).
190. U.S. CONST. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . . ."). *See* United States v. Marion, 404 U.S. 307 (1971) (stating that the right to a speedy trial acts to limit pretrial incarceration, to lessen the anxiety accompanying public association, and to limit delays which may impair an adequate defense).