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Due Process

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).

New York State Constitution,[191] was violated by the introduction of certain "unduly suggestive" evidence,[192] and the People's failure to meet the statutory "speedy trial" provisions, as set forth in the New York Criminal Procedure Law.[193] The defendant asserted that his State[194] and Federal[195] Constitutional rights of due process were violated. The Appellate Division, First Department, disagreed and held that the defendant was not deprived of his right to a speedy trial, since it was defendant's counsel who had consented to, requested, and participated in a majority of adjournments which delayed the trial.[196] The court also ruled that there was no state or federal constitutional violation relating to the alleged unduly suggestive nature of an out-of-court identification of defendant's clothing.[197]

On February 6, 1992, the defendant was convicted of two counts of felony criminal possession of a weapon and one count

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191. Although the New York State Constitution contains no speedy trial provisions, applicable New York constitutional guarantees of due process are set forth by article I, § 6, which states, in pertinent part: "No person shall be deprived of life, liberty or property without the due process of law." N.Y. CONST. art. I, § 6. *See also* N.Y. CRIM. PROC. LAW § 30.20 practice commentaries (McKinney 1992) ("A speedy trial is guaranteed by the U.S. Constitution's Sixth Amendment, applied to the states through the Due Process Clause of the XIV Amendment . . . as well as by certain aspects of due process under the New York Constitution . . . .").

192. *Goodwin*, 618 N.Y.S.2d at 634.

193. N.Y. CRIM. PROC. LAW § 30.20 (McKinney 1992). Section 30.20 states, in pertinent part: "After a criminal action is commenced, the defendant is entitled to a speedy trial." *Id. See* N.Y. CRIM. PROC. LAW § 30.30(1)(a) (McKinney 1992). Section 30.30(1)(a) states in part: "[A] motion . . . [to dismiss] . . . must be granted where the people are not ready for trial within . . . six months of the commencement of a criminal action wherein a defendant is accused of one or more offenses, at least one of which is a felony . . . ." *Id.*

194. N.Y. CONST. art. I, § 6. Section six provides in pertinent part: "No person shall be deprived of life, liberty or property without the due process of law." *Id.*

195. U.S. CONST. amend. V. The Fifth Amendment states in relevant part: "[N]or shall any person . . . be deprived of life, liberty, or property, without the due process of law . . . ." *Id.*

196. *Goodwin*, 618 N.Y.S.2d at 633-34.

197. *Id.* at 634.

of felony assault. As a result, defendant received lengthy, concurrent prison sentences.[198] The commencement of the criminal action began on November 26, 1989, with the filing of a felony complaint by the People.[199] Section 30.30 of the New York Criminal Procedure Law provides that the People are required to announce their readiness for trial within 181 days of the commencement of a criminal action where the defendant is charged with at least one felony.[200]

The court in *Goodwin* viewed the defendant's "speedy trial" claim from a statutory standpoint rather than as a constitutional one.[201] The *Goodwin* court cited *People v. Sinistaj*,[202] in which the New York Court of Appeals viewed section 30.30 of the New York Criminal Procedure Law[203] as "not addressing problems involving speedy trial rights or due process in a constitutional sense. Rather it is purely a statutory 'readiness rule.' It was enacted to serve the narrow purpose of insuring prompt prosecutorial readiness for trial . . . ."[204]

The *Goodwin* court merely looked at the facts of the case and found that the majority of adjournments and delays were requested or consented to by the defense and as such could not be held against the People.[205]

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198. *Id.* The defendant was sentenced to concurrent terms of 4-12 years, 2 1/3 to 7 years and 2 1/3 to 7 years for criminal possession of a weapon in the second degree, criminal possession of a weapon in the third degree and assault in the second degree, respectively. *Id.*

199. *Id.*

200. N.Y. CRIM. PROC. LAW § 30.30 (McKinney 1992).

201. *Goodwin*, 618 N.Y.S.2d at 634.

202. 67 N.Y.2d 236, 492 N.E.2d 1209, 501 N.Y.S.2d 793 (1986).

203. N.Y. CRIM. PROC. LAW § 30.30.

204. *Sinistaj*, 67 N.Y.2d at 239, 492 N.E.2d at 1210, 501 N.Y.S.2d at 794. *See* N.Y. CRIM. PROC. LAW § 30.20 practice commentaries (McKinney 1992). The *Goodwin* court reached its conclusions on this issue by observing that certain lengths of time are excludable, or more precisely, deductible from the statutory period in which the people must be ready for trial. *Id.* at 239, 492 N.E.2d at 1210, 501 N.Y.S.2d at 794; *see also* People v. Liotta, 79 N.Y.2d 841, 843, 588 N.E.2d 82, 83, 580 N.Y.S.2d 184, 185 (1992).

205. *Goodwin*, 618 N.Y.S.2d at 634. *But see* People v. Tarnovich, 37 N.Y.2d 442, 335 N.E.2d 303, 373 N.Y.S.2d 79 (1975). The determination of whether a speedy trial was denied is approached by using a balancing test

Examining the constitutionality of an out-of-court clothing identification,[206] the *Goodwin* court relied heavily upon *People v. Johnson.*[207] The court in *Johnson* found no violation of a defendant's constitutional right to due process where "identity of the clothing is not an element of the crime charged and bears only circumstantially on the identification of defendant."[208] The *Johnson* court held that any error by the court, in allowing such evidence of prior clothing identification, was "rendered harmless by the overwhelming evidence of the defendant's guilt."[209] In *Goodwin*, "overwhelming" evidence was introduced which was comprised of testimony by an eyewitness to the actual shooting,[210] evidence from the crime scene which was directly linked to the gun seen in the possession of the defendant, and defendant's fingerprints on the gun.[211]

Under federal law, as held by the Supreme Court, "inadmissibility" will be considered only when the totality of the circumstances suggest the risk of irreparable misidentification.[212] A "per se rule" which excludes evidence of pre-trial identification whenever it is made under inherently suggestive

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supplied by the New York Court of Appeals. *Id.* at 445, 335 N.E.2d at 306, 373 N.Y.S.2d at 81. The court looks at the following factors: (1) the extent of delay; (2) the reason for the delay; (3) the nature of the underlying charge; (4) whether there has been extended pre-trial incarceration; (5) whether the defense has been impaired in any way by reason of the delay. *Id.*

206. *Goodwin*, 618 N.Y.S.2d at 634.

207. 155 A.D.2d 236, 546 N.Y.S.2d 849 (1st Dep't 1989).

208. *Id.* at 237, 546 N.Y.S.2d at 850.

209. *Id.*

210. *Goodwin*, 618 N.Y.S.2d at 634. A photographer, standing nearby, witnessed the shooting. *Id.* A second witness observed Goodwin flee with what appeared to be a gun. *Id.* Goodwin's fingerprints were found on a gun. *Id.* Several witnesses identified clothing, worn by the gunman, as being the same as those worn by Goodwin. *Id.* Finally, Goodwin was observed in the area where the gun and spent shells were recovered shortly after the shooting. *Id.*

211. *Id.*

212. Manson v. Brathwaite, 432 U.S. 98, 115 (1977) ("[I]nflexible rules of exclusion that may frustrate rather than promote justice have not been viewed recently by this Court with unlimited enthusiasm.").

circumstances will not be adopted as a necessary component of federal due process.[213]

The New York Court of Appeals has often afforded additional protections above those set by the federal law.[214] In the area of pretrial identification, the court has expanded protections beyond those minimum standards established by the Supreme Court.[215] Despite these expanded protections, no "per se rule" excluding evidence of unduly suggestive pretrial identification, has been utilized in New York. In *People v. Adams*,[216] the New York Court of Appeals found that an out-of-court identification of the defendant was "so impermissibly suggestive"[217] that any testimony related to the identification should have been excluded. However, the error was deemed harmless, and did not require

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213. *Id.* at 110-14.

214. *See* Cooper v. Morin, 49 N.Y.2d 69, 399 N.E.2d 1188, 424 N.Y.S.2d 168 (1979) The court re-emphasized its position stating:

> We have not hesitated when we concluded that the Federal Constitution as interpreted by the Supreme Court fell short of adequate protection for our citizens to rely upon the principle that that document defines the minimum level of individual rights and leaves the States free to provide greater rights for its citizens through its Constitution, statutes or rule making authority.

Id.; People v. Isaacson, 44 N.Y.2d 511, 519, 378 N.E.2d 78, 82, 406 N.Y.S.2d 714, 718 (1978) (holding that "under our own State due process clause . . . this court may impose higher standards than those held to be necessary by the Supreme Court under the corresponding constitutional provision").

215. People v. Blake, 35 N.Y.2d 331, 335, 320 N.E.2d 625, 629, 361 N.Y.S.2d 881, 887 (1974) (holding that "the right to counsel [at pretrial identification viewing] under the State Constitution has, in some areas, been interpreted more expansively than under the Fifth and Sixth Amendments as interpreted by the Supreme Court").

216. 53 N.Y.2d 241, 423 N.E.2d 379, 440 N.Y.S.2d 902 (1981).

217. *Id.* at 248-49, 423 N.E.2d at 382, 440 N.Y.S.2d at 905. The subjects were shown to the victims at one time, increasing the likelihood that identification of one subject would taint the identification and unduly suggest the guilt of the other subjects. *Id.* The defendant, who was not apprehended at the scene, was shown to the victims along with other suspects who *were* arrested immediately outside the scene of the robbery. *Id.* This show-up identification did not occur until hours after the robbery; show-ups are usually done at the scene and immediately after the occurrence. *Id.*

reversal of the defendant's robbery conviction since there was proper identification at trial by five eyewitnesses to the crime.[218]

Wortzman v. Kaladjian[219]
(decided October 20, 1994)

Petitioner claimed that respondent's method of calculation used to determine petitioner's eligibility for medical assistance violated his right to due process and equal protection as guaranteed by both the New York State[220] and Federal[221] Constitutions.[222] Petitioner alleged that the method of calculation was arbitrary and capricious and sought relief through an article 78 proceeding.[223] Petitioner requested a declaration that the respondent had violated his constitutional rights.[224] Furthermore, petitioner sought an order directing respondent to retroactively recalculate his eligibility "based on his actual expenses and an allocation of a personal needs allowance."[225] Although the Appellate Division,

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218. *Id.* at 252, 423 N.E.2d at 384, 440 N.Y.S.2d at 907.

219. 617 N.Y.S.2d 466 (App. Div. 1st Dep't 1994).

220. N.Y. CONST. art. I, § 6. This provision provides: "No person shall be deprived of life, liberty or property without due process of law." *Id.*; N.Y. CONST. art. I, § 11. This provision provides: "No person shall be deprived the equal protection of the laws of this state or any subdivision thereof." *Id.*

221. U.S. CONST. amend. XIV, § 1. This provision provides: "No state shall . . . deprive any person of life, liberty or property without due process of law." *Id.*; U.S. CONST. amend. XIV, § 1, cl. 3. This provision provides: "No state shall . . . deny to any person within its jurisdiction the equal protection of the laws." *Id.*

222. *Wortzman*, 617 N.Y.S.2d at 468.

223. Article 78 of the Civil Practice Law & Rules § 7803, provides for judicial review of respondent's determination of the issue raised in the proceeding to consider "whether a determination was made in violation of lawful procedure . . . or was arbitrary and capricious or an abuse of discretion . . . ." N.Y. CIV. PRAC. L. & R. § 7803(3) (McKinney 1993).

224. *Wortzman*, 617 N.Y.S.2d at 468.

225. *Id.* at 467. Petitioner contended that eligibility should be

> based upon a computation of his net income which treats as surplus income available to meet medical expenses only Petitioner's net income after deduction of the payment actually made to the adult care facility in each month and the personal allowance provided in that month under