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## Touro Law Review

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Volume 8 | Number 3

Article 61

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1992

### Trial by Jury

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#### Recommended Citation

(1992) "Trial by Jury," *Touro Law Review*: Vol. 8: No. 3, Article 61.

Available at: <https://digitalcommons.tourolaw.edu/lawreview/vol8/iss3/61>

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## TRIAL BY JURY

*N.Y. CONST. art. I, § 2:*

*Trial by jury in all cases in which it has heretofore been guaranteed by constitutional provision shall remain inviolate forever; but a jury trial may be waived by the parties in all civil cases in the manner to be prescribed by law.*

## COURT OF APPEALS

People v. Ribowsky<sup>1364</sup>  
(decided February 14, 1991)

The defendant, an attorney, contended that his right to be tried in the county where the crime was allegedly committed, as construed under article I, section 2 of the New York State Constitution,<sup>1365</sup> was violated when the trial court failed to submit the question to the jury of whether there was improper venue to hear the case. The New York Court of Appeals held that while the trial court erred by not submitting the question of venue to the jury, it was harmless error because the jury's guilty verdict inferred that the criminal act occurred in the county that asserted jurisdiction.<sup>1366</sup>

The defendant was convicted of one count of first degree conspiracy, six counts of offering a false instrument for filing in the first degree and two counts of first degree perjury. This conviction arose over a scheme to defraud insurance companies by fabricating the injuries of automobile accident victims. As an associate for the law offices of Stuart R. Kramer, P.C.,<sup>1367</sup> the

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1364. 77 N.Y.2d 284, 568 N.E.2d 1197, 567 N.Y.S.2d 392 (1991).

1365. N.Y. CONST. art. I, § 2.

1366. *Ribowsky*, 77 N.Y.2d at 294, 568 N.E.2d at 1203, 567 N.Y.S.2d at 398.

1367. The principal of this firm, Mr. Stuart Kramer, was already convicted of various felony counts and disbarred because of his role in the insurance scheme. See *People v. Kramer*, 132 A.D.2d 708, 518 N.Y.S.2d 189 (2d Dep't), *aff'd*, 72 N.Y.2d 1003, 531 N.E.2d 633, 534 N.Y.S.2d 912 (1988);

defendant was accused of “knowingly rel[ying] on . . . false medical reports to represent claimants at arbitration hearings and . . . settlement negotiations.”<sup>1368</sup> The defendant also conspired with Kramer and another attorney of Kramer’s firm, Stephen Kihl, to allow Kihl to “use defendant’s home as a business address on retainer and closing statements filed with the Office of Court Administration.”<sup>1369</sup> According to the court, this “arrangement allowed the firm to conceal its dual representation of both the driver and the passengers involved in an automobile accident by using Kihl’s name and defendant’s address for one client and the Kramer name and address for the other.”<sup>1370</sup> Lastly, the defendant was accused of making perjurious statements before the Grievance Committees of both the Second and Eleventh Judicial Districts regarding his role in the scheme.<sup>1371</sup>

The defendant argued, *inter alia*,<sup>1372</sup> that his conviction should be overturned because the trial court failed to submit a separate question of venue to the jury regarding the conspiracy count.<sup>1373</sup> Because the jury did not have this instruction, according to the defendant, it is not known whether the jury believed that he and his co-conspirators committed the alleged act in the county asserting jurisdiction. In this case, the proper venue would be Kings County because that was the location where the Grievance Committee heard the defendant’s perjurious testimony.<sup>1374</sup>

The court agreed with the defendant’s claim that a trial error was committed, but upheld the conviction because they ruled that it was a harmless error. The court noted that a “defendant has the

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*In re Kramer*, 120 A.D.2d 299, 509 N.Y.S.2d 47 (2d Dep’t 1986).

1368. *Ribowsky*, 77 N.Y.2d at 288, 568 N.E.2d at 1199, 567 N.Y.S.2d at 394.

1369. *Id.*

1370. *Id.*

1371. *Id.*

1372. *Id.* The defendant also argued that the perjury counts against him were “duplicious” and the manner in which they were submitted to the jury constituted error. The court of appeals rejected these claims and concluded “that there was no error requiring reversal of the perjury convictions.” *Id.*

1373. *Id.*

1374. *Id.* at 297 n.1, 568 N.E.2d at 1202 n.1, 567 N.Y.S.2d at 397 n.1.

right at common law and under the State Constitution to be tried in the county where the crime was committed unless the Legislature has provided otherwise.”<sup>1375</sup> The court further noted that the prosecution has to prove, by a preponderance of the evidence, that the proper venue for the prosecution of the crime is the same location as that where the crime was committed.

In regard to conspiracy, the proper venue can either be in the county where the act was entered into or any county where an overt act was committed in furtherance of the conspiracy. Therefore, the trial court erred by not submitting a separate question to the jury regarding proper venue. The court of appeals, however, found the error harmless because “it appears from the verdict that the jury necessarily found that an overt act occurred in the county asserting jurisdiction.”<sup>1376</sup> The court noted that:

Because the jury found defendant guilty of perjury in Kings County beyond a reasonable doubt and the perjury constituted an overt act in furtherance of an ongoing conspiracy, it necessarily follows that the jury passed on the question of venue and found by a preponderance of the evidence that at least one overt act in furtherance of the conspiracy was committed there. It could have done no more if properly instructed and the failure to do so was harmless.<sup>1377</sup>

The court cautioned, however, that to be considered harmless error, there must be a showing that the jury, at least by implication, made a proper finding of venue. According to the court, it is not enough for the trial record to merely contain evidence of which county is the proper venue to adjudicate the action, or evidence of an overt act in that county.

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1375. *Id.* at 291, 568 N.E.2d at 1201, 567 N.Y.S.2d at 396 (citing *People v. Moore*, 46 N.Y.2d 1, 385 N.E.2d 535, 412 N.Y.S.2d 795 (1978); *People v. Goldswor*, 39 N.Y.2d 656, 350 N.E.2d 604, 385 N.Y.S.2d 274 (1976)).

1376. *Id.* at 292, 568 N.E.2d at 1202, 567 N.Y.S.2d at 397.

1377. *Id.* at 294, 568 N.E.2d at 1203, 567 N.Y.S.2d at 398.