Touro Law Review

Volume 13 | Number 3 Article 16

July 2019

Due Process People v. Scott (decided June 5, 1996)

deprived by a state government without the advantage of due process of law, that is, the defendant is entitled to discover evidence favorable to his defense with respect to either guilt or punishment.[49] The difference between federal and state law is a matter of interpretation: federal common law dictates undisclosed evidence will be considered material only if a "reasonable probability" exists that it would have an impact on the trial's outcome.[50] New York law, in contrast, abides by a higher standard that requires reversal for any instance in which the defendant has made a specific request for evidence and the prosecution has failed to disclose such material evidence.[51]

People v. Scott[52]
(decided June 5, 1996)

Defendant, George Scott, was convicted of first degree manslaughter and criminal possession of a weapon in the second and third degree.[53] Defendant moved to vacate his conviction pursuant to Criminal Procedure Law section 440.10,[54] claiming that the People's failure to disclose specifically requested, favorable evidence which was material to the verdict [hereinafter *Brady*[55] evidence] violated the Due Process Clauses of the

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49. *Id.* at 124, 666 N.E.2d at 223, 643 N.Y.S.2d at 518.

50. *Bagley*, 473 U.S. at 682.

51. *Vilardi*, 76 N.Y.2d at 77, 555 N.E.2d at 920, 556 N.Y.S.2d at 518.

52. 88 N.Y.2d 888, 667 N.E.2d 923, 644 N.Y.S.2d 913 (1996).

53. *Id.* at 889, 667 N.E.2d at 924, 644 N.Y.S.2d at 914.

54. N.Y. CRIM. PROC. LAW § 440.10(1)(h) (McKinney 1992). Section 440.10 states in pertinent part:

> 1. At any time after the entry of a judgment, the court in which it was entered may, upon motion of the defendant, vacate such judgment upon the ground that: h) The judgment was obtained in violation of a right of the defendant under the constitution of this state or of the United States.

Id.

55. Brady v. Maryland, 373 U.S. 83 (1963). Brady (petitioner) and Boblit, his companion were found guilty of first degree murder in separate trials. *Id.* at 84. At his trial, Brady admitted to participating in the crime, but he claimed that Boblit did the killing. *Id.* Before his trial, Brady requested that

Federal[56] and New York State[57] Constitutions.[58] The trial court granted the motion, but the Appellate Division, Second Department reversed and reinstated the conviction.[59] The New York State Court of Appeals affirmed the appellate division on different grounds.[60] The court of appeals held that the "reasonable possibility standard of prejudice" applied because of the specific discovery request,[61] but that there was no reasonable possibility on the facts that the outcome of the trial would have been different with disclosure of the evidence.[62]

At the defendant's trial, the only eyewitness, Glenn Shaw, testified that he heard what sounded like a gunshot and then saw the defendant holding a handgun.[63] Shaw also testified that he saw a woman identified as Jaqueline Lewis, an unidentified man, and a fourth person running away from the victim's house.[64] Shaw testified that he could not tell whether the fourth person

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the prosecution produce Boblit's extra-judicial statements for Brady to examine. *Id.* The prosecution provided some statements, but not the statement in which Boblit admitted to the actual murder. *Id.* The Court held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Id.* at 87.

56. U.S. CONST. amend V. The Fifth Amendment provides 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, § 1. The Fourteenth Amendment provides in pertinent part: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law . . . ." *Id.*

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

58. *See Scott*, 88 N.Y.2d at 890, 667 N.E.2d at 924, 644 N.Y.S.2d at 914.

59. *Id.* at 890, 667 N.E.2d at 924-25, 644 N.Y.S.2d at 914-15.

60. *Id.* at 891, 667 N.E.2d at 925, 644 N.Y.S.2d at 915.

61. *Id.* (quoting People v. Vilardi, 76 N.Y.2d 67, 77, 555 N.E.2d 915, 920, 556 N.Y.S.2d 518, 523 (1990)).

62. *Id.*

63. *Id.*

64. *Id.* at 889-90, 667 N.E.2d at 924, 644 N.Y.S.2d at 914.

was a man or a woman.[65] Shaw submitted to a polygraph examination by Detective Ponzi.[66] A "scratch" sheet dated November 18, 1985 and entitled "HOMICIDE BUREAU INFORMATION SHEET" contained information pertaining to Shaw's polygraph examination.[67] The defendant made a discovery request for "a copy of the report of the polygraph exam(s) given to the confidential informant showing date(s) of exam and all results."[68] Defendant's motion to vacate his conviction claimed that the People failed to produce *Brady* evidence in the form of the "scratch" sheet dated November 18, 1985, which alluded to a polygraph examination of Shaw and information that the defendant may have found useful.[69] At the hearing on the motion, the Assistant District Attorney who prepared the document testified that she had no recollection of the source of the information.[70] The trial prosecutor testified that Detective Ponzi told her that Shaw had been one hundred percent truthful.[71] Detective Ponzi submitted an affidavit stating that the examination showed that Shaw was truthful and that, contrary to the information in the "scratch" sheet, he never determined that Shaw was withholding information.[72]

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65. *Id.* at 890, 667 N.E.2d at 924, 644 N.Y.S.2d at 914.

66. *Id.*

67. *Id.* (quoting the form and the title of the document, according to the evidence). The "scratch" sheet contained the following information:

> Facts: The deceased was found by his father lying in the foyer of his apartment with a gunshot wound to the eye.
>
> Action taken: The witness, Glenn Shaw submitted to a polygraph test conducted on 11/4/85 at 3:00 P.M. by Mr. Joe Ponzi, Senior Investigator for the purposes of verifying the statement given to A.D.A. S. Miller on 9/23/85. Mr. Ponzi determined that the witness was withholding pertinent information. When confronted with this conclusion, the witness stated that he knew the identity of the second male but was unwilling to disclose the name.

Id.

68. *Id.* (quoting defense counsel's language in the discovery request).

69. *Id.*

70. *Id.* at 891, 667 N.E.2d at 925, 644 N.Y.S.2d at 915.

71. *Id.* (quoting the trial prosecutor's testimony at the hearing).

72. *Id.*

The New York State Court of Appeals agreed with the lower courts that the information at issue was *Brady* evidence.[73] The trial court granted a new trial, applying the "reasonable possibility" standard in its determination that the sheet was material because if produced, there was a reasonable possibility that the evidence would have affected the outcome of the trial.[74] The appellate division reversed the trial court based on its determination that there was not a specific request for the sheet, thus, the more stringent "reasonable probability" standard applied.[75] Under the latter standard, the court concluded that there was not a "reasonable probability" that the outcome of the trial would have differed if the defendant had the sheet.[76] Although the New York State Court of Appeals affirmed the denial of the motion to vacate the conviction, its holding was based on the less stringent "reasonable possibility" standard for demonstrating the materiality of the evidence.[77]

The court of appeals stated in its analysis that "[a] defendant has the right, guaranteed by the due process clauses of the Federal and State Constitutions, to discover favorable evidence in the People's possession which is material to guilt or punishment."[78] Federal case law has established that the "reasonable probability" standard applies, regardless of the form of the request, in determining whether favorable evidence is material and that if it is material, its nondisclosure violated the defendant's right to due process.[79] New York constitutional case

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73. *Id.*

74. *Id.* at 890, 667 N.E.2d at 924-25, 644 N.Y.S.2d at 914-15.

75. *Id.* at 890, 667 N.E.2d at 925, 644 N.Y.S.2d at 915.

76. *Id.*

77. *Id.* at 890-91, 667 N.E.2d at 925, 644 N.Y.S.2d at 915. In determining what constitutes a possibility or a probability in any case, although not explicitly stated, the courts have followed the totality of the circumstances analysis.

78. *Id.* at 890, 667 N.E.2d at 925, 644 N.Y.S.2d at 915 (citing *Brady*, 373 U.S. at 87; *Vilardi*, 76 N.Y.2d at 73, 555 N.E.2d at 917, 556 N.Y.S.2d at 520. *See infra* pp. 9-11 (discussing *Vilardi*).

79. United States v. Bagley, 473 U.S. 667, 682-83 (1985). *See infra* p. 8-9 (discussing *Bagley*).

law, however, has established that different standards apply depending on the form of the defendant's request.[80]

The New York State Court of Appeals in *Scott* agreed that the "scratch" sheet pertaining to the witness's polygraph examination was *Brady* evidence and thus its nondisclosure invoked a due process analysis.[81] In its reasoning, the court relied on *People* v. *Vilardi*[82] where the issue was whether New York should adopt the United States Supreme Court's decision to apply the "reasonable probability" standard to all cases in which this constitutional issue arises.[83] In deciding the issue, *Vilardi* provided an extensive comparison of the federal and state constitutional law, beginning with *Brady*.

In *Brady v. Maryland*[84] the U.S. Supreme Court held that the prosecution's nondisclosure of favorable evidence violates the defendant's due process rights if the evidence is material to guilt or punishment.[85] Therefore, if the prosecution failed to disclose *Brady* evidence, the defendant would be entitled to a new trial.[86] The Court noted that it is "constitutional error if the evidence would 'tend to exculpate' the defendant."[87] The purpose of the Brady rule is to "ensure that a miscarriage of justice does not occur."[88]

After the *Brady* decision, courts faced issues that included defining what constituted "material" evidence and whether the standard for determining materiality changed depending on the

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80. *Scott*, 88 N.Y.2d 888, 667 N.E.2d 923, 644 N.Y.S.2d 913 (1996); *Vilardi*, 76 N.Y.2d 67, 555 N.E.2d 915, 556 N.Y.S.2d 518 (1990).

81. *See Scott*, 88 N.Y.2d at 891, 667 N.E.2d at 925, 644 N.Y.S.2d at 915.

82. 76 N.Y.2d 67, 555 N.E.2d 915, 556 N.Y.S.2d 518 (1990).

83. *Id.* at 69, 555 N.E.2d at 915, 556 N.Y.S.2d at 518.

84. 373 U.S. 83 (1963).

85. *Id.* at 87.

86. *Id.*

87. *Vilardi*, 76 N.Y.2d at 73, 555 N.E.2d at 917, 556 N.Y.S.2d at 520 (quoting *Brady*, 373 U.S. at 88). The Court in *Brady* reasoned that "[a] prosecution that withholds evidence on demand of an accused which, if made available, would tend to exculpate him . . . helps shape a trial that bears heavily on the defendant." *Id.* at 87-88.

88. *Bagley*, 473 U.S. at 675. *See infra* pp. 8-9.

form[89] of the defendant's request.[90] Responding to these issues, the U.S. Supreme Court in *United States v. Agurs*[91] imposed a two-tiered framework for determining the materiality of favorable evidence.[92] The Court held that "evidence specifically requested . . . was material if it 'might have affected the outcome of the trial."[93] Moreover, the Court held that if there was no request or a general request for exculpatory information, "the prosecution's duty to disclose arose entirely from the notice provided by the very nature of the evidence, and the standard for [the defendant to obtain] a new trial would be higher . . . ."[94] In the latter situation, the evidence would be material if it "create[d] a reasonable doubt that did not otherwise exist."[95] The Court reasoned that two different standards were appropriate because in one situation the defendant puts the prosecution on notice.[96] The Court further reasoned that because of notice, the prosecution has a responsibility to avoid any trial deception, and it's nondisclosure of evidence is "seldom, if ever excusable."[97]

In *United States v. Bagley*,[98] the U.S. Supreme Court reconsidered its approach in *Agurs* and determined that a single standard would apply in all cases.[99] The Court held that

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89. *Id.* at 682 (noting that the three forms include a specific request, a general request, or no request at all).

90. *Vilardi*, 76 N.Y.2d at 73, 555 N.E.2d at 917-18, 556 N.Y.S.2d at 520-21.

91. 427 U.S. 97 (1976).

92. *Vilardi*, 76 N.Y.2d at 73, 555 N.E.2d at 917, 556 N.Y.S.2d at 520 (*citing Agurs*, 427 U.S. 97 (1976)).

93. *Id.* at 73, 555 N.E.2d at 918, 556 N.Y.S.2d at 521 (quoting *Agurs*, 427 U.S. at 104).

94. *Id.* (citing *Agurs*, 427 U.S. at 106-109).

95. *Id.* (quoting *Agurs*, 427 U.S. at 112).

96. *Id.* at 73-74, 555 N.E.2d at 918, 556 N.Y.S.2d at 521 (citing *Agurs*, 427 U.S. at 106-109).

97. *Id.* at 74, 555 N.E.2d at 918, 556 N.Y.S.2d at 521 (quoting *Agurs*, 427 U.S. at 106). *See* People v. Brown, 67 N.Y.2d 555, 496 N.E.2d 663, 505 N.Y.S.2d 574 (1986); People v. Cwikla, 46 N.Y.2d 434, 386 N.E.2d 1070, 414 N.Y.S.2d 102 (1979).

98. 473 U.S. 667 (1985).

99. *Id.* at 682. Although the Supreme Court in *Bagley* adopted a single standard, the Court was "deeply divided" on the issue, which has caused some

"undisclosed evidence is material only if there is a 'reasonable probability' that it 'would' have altered the outcome of the trial."[100] The Court defined a "reasonable probability" as a "probability sufficient to undermine confidence in the outcome."[101] The Court determined that the higher standard would apply in a specific request situation as well as a general or no request situation.[102] The Court in *Bagley* realized that a prosecutor's failure to respond to a *Brady* request might impede the adversarial process, but reasoned that this concern does not require different materiality standards because the reviewing court could assess any adverse consequences of the nondisclosure under the totality of the circumstances analysis.[103] The court of appeals explicitly rejected the Supreme Court's holding in *Bagley*.[104] In *People v. Vilardi*,[105] the court of appeals held that

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confusion in the lower court response. *Vilardi*, 76 N.Y.2d at 74 n.4, 555 N.E.2d at 918 n.4, 556 N.Y.S.2d at 521 n.4.

100. *Vilardi*, 76 N.Y.2d at 74, 555 N.E.2d at 918, 556 N.Y.S.2d at 521 (citing *Bagley*, 473 U.S. at 682).

101. *Id.* (quoting *Bagley*, 473 U.S. at 682). "In *Bagley*, the Court adopted the same test it used in Strickland v. Washington, 466 U.S. 668 (1984) for determining ineffective assistance of counsel claims . . . ." *Id. See infra* note 52.

102. *Id.* (citing *Bagley*, 473 U.S. at 682).

103. *Bagley*, 473 U.S. at 682-83 (applying the standard from *Strickland* to this issue).

104. *Vilardi*, 76 N.Y.2d at 77, 555 N.E.2d at 920, 556 N.Y.S.2d at 523. Notably, the New York Court of Appeals "has not adopted the *Strickland* test for determining ineffective assistance of counsel." *Id.* at 74, n.3, 555 N.E.2d at 918, n.3, 556 N.Y.S.2d at 521, n.3.

105. 76 N.Y.2d 67, 555 N.E.2d 915, 556 N.Y.S.2d 518 (1990). Defendant Vilardi was convicted of first degree arson, attempted arson, and conspiracy to plant and set off a pipe bomb at two locations. *Id.* at 69-70, 555 N.E.2d at 915, 556 N.Y.S.2d at 518. An officer from the Bomb Squad inspected one location where a bomb was supposed to have exploded and wrote an initial report concluding that there was no evidence of an explosion. *Id.* at 70, 555 N.E.2d at 915-16, 556 N.Y.S.2d at 518-19. The defendant requested all reports by "'ballistics, firearm, and explosive experts,'" but the prosecution did not send the initial report. *Id.* at 70, 555 N.E.2d at 916, 556 N.Y.S.2d at 519. The court ordered a new trial and held that there was a reasonable possibility that the defendant would not have been convicted if the prosecution

if the defendant made a specific discovery request for favorable evidence, the reviewing court must determine whether there was a "reasonable possibility" that the failure to disclose the evidence contributed to the verdict.[106] Additionally, the court reiterated that it has, in other cases, "chosen not to adopt the 'reasonable probability' standard as a matter of State law."[107] The court of appeals reasoned that New York's "view of due process in this area is . . . predicated both upon 'elemental fairness' to the defendant, and upon concern that the prosecutor's office discharge its ethical and professional obligations."[108] Moreover, the court stated that the standard followed in New York is premised on *Agurs* and has been the controlling standard throughout the state's courts.[109] The court further reasoned that

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had disclosed the favorable report. *Id.* at 78, 555 N.E.2d at 921, 556 N.Y.S.2d at 524.

106. *Id.* at 77, 555 N.E.2d at 920, 556 N.Y.S.2d at 523. *But see Id.* at 78, 555 N.E.2d at 921, 556 N.Y.S.2d at 524 (Simons, J., concurring)(disagreeing with "the majority's standard for determining materiality based on the nature of the defendant's request . . . [and] agree[ing] with the Supreme Court that exculpatory evidence is either material to guilt or not material; it does not become more so because of the form of the defendant's request for it").

107. *Id.* at 77, 555 N.E.2d at 920, 556 N.Y.S.2d at 523.

108. *Id.* at 76, 555 N.E.2d at 919, 556 N.Y.S.2d at 522 (citing People v. Novoa, 70 N.Y.2d 490, 517 N.E.2d 219, 522 N.Y.S.2d 504 (1987); People v. Cwikla, 46 N.Y.2d 434, 386 N.E.2d 1070, 414 N.Y.S.2d 102 (1979); People v. Simmons, 36 N.Y.2d 126, 325 N.E.2d 139, 365 N.Y.S.2d 812 (1975); People v. Savvides, 1 N.Y. 2d 554, 136 N.E.2d 853, 154 N.Y.S.2d 885 (1956); People v. Creasy, 236 N.Y. 205, 140 N.E. 563 (1923)).

109. *Id.* (citing People v. Smith, 63 N.Y.2d 41, 468 N.E.2d 879, 479 N.Y.S.2d 706 (1984); People v. Porter, 128 A.D.2d 248, 516 N.Y.S.2d 201 (1987) (holding that reversal of conviction for defendant charged with possession of cocaine was not necessary without a finding of materiality where the district attorney's failure to disclose an exculpatory police report was not failure to disclose evidence pursuant to a specific relevant request); People v. Velez, 118 A.D.2d 116, 504 N.Y.S.2d 404 (1986) (holding that the prosecution's failure to disclose to defendant that the prosecution's main witness may have strong animosity against defendant cannot be considered a collateral matter); People v. Kitt, 86 A.D.2d 465, 450 N.Y.S.2d 319 (1982) (holding that the district attorney's failure to disclose laboratory test results where defendant had made requests for all laboratory test results entitled defendant to a new trial); People v. Ramos, 146 Misc. 2d 168, 550 N.Y.S.2d

"a backward-looking, outcome-oriented standard of review (the *Bagley* standard of "reasonable probability") that gives dispositive weight to the strength of the People's case clearly provides diminished incentive for the prosecutor" to review files for and ultimately disclose exculpatory material.[110] In addition, the court concluded that the "reasonable possibility" standard is an unambiguous rule that encourages prosecutorial compliance with its disclosure obligations.[111]

The New York State Court of Appeals in *Scott* relied on the holding from *Vilardi*, with little policy analysis. The court in *Scott* held that the "reasonable possibility" standard applied because the defendant made a specific discovery request.[112] Moreover, consistent with *Vilardi*, the court reasoned that "[w]here the defense has provided specific notice of its interest in particular material, heightened prosecutorial attention is appropriate."[113] The court found the defendant's request to be specific because it "provided particularized notice of the information sought."[114] The court noted that the defendant doesn't need to know or request the exact form of the document.[115]

Applying the "reasonable possibility" standard to the facts in *Scott*, the court determined that the defendant's motion to vacate should not have been granted.[116] The court stated the rule that "a polygrapher's opinions regarding the witness's veracity are not

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784 (1990) (projecting that the New York Court of Appeals will retain *Agurs* and reject *Bagley*).

110. *Id.* at 77, 555 N.E.2d at 920, 556 N.Y.S.2d at 523.

111. *Id. But see Id.* at 78-80, 555 N.E.2d at 921-22, 556 N.Y.S.2d at 524-25 (Simons, J. concurring) (deciding that the Federal standard of "reasonable probability" is appropriate for determining the materiality of *Brady* evidence primarily because the language of the New York State Due Process Clause does not differ materially from that of the Federal Due Process Clause and thus, requires state analysis consistent with the federal analysis).

112. People v. Scott, 88 N.Y.2d 888, 891, 667 N.E.2d 923, 925, 644 N.Y.S.2d 913, 915 (1996).

113. *Id.* at 890, 667 N.E.2d at 925, 644 N.Y.S.2d at 915.

114. *Id.* at 891, 667 N.E.2d at 925, 644 N.Y.S.2d at 915.

115. *Id.*

116. *Id.*

admissible evidence."[117] Additionally, the court considered that all the testimony at the hearing was contrary to the information on the requested sheet.[118] The court concluded that "under these circumstances, there is no reasonable possibility that the outcome of the trial would have differed had the document been produced."[119]

In conclusion, New York law differs from federal law with regards to the applicable standard for determining if a defendant's due process rights were violated when he was denied favorable evidence in the prosecution's possession. Under the Federal and State Constitutions, a due process violation occurred if the prosecution failed to disclose favorable evidence which is material to the defendant's guilt.[120] Federal law has established that evidence is material if there is a "reasonable probability" that with disclosure, the result of the proceeding would have been different.[121] This single standard must be employed irrespective of the form of the discovery request, or lack thereof.[122] New York law, however, has established that when a specific request is made, evidence is material if there is a "reasonable possibility" that with disclosure, the outcome of the proceeding would have been different.[123] Furthermore, New York law distinguishes between the forms of request in determining the applicable standard.[124] Under federal and state law, courts analyze the totality of the circumstances to reach the final decision under the applicable standard.[125]

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117. *Id.* (citing People v. Angelo, 88 N.Y.2d 217, 666 N.E.2d 1333, 644 N.Y.S.2d 460 (1996)).

118. *Id.*

119. *Id.*

120. *Brady*, 373 U.S. at 87.

121. *Bagley*, 473 U.S. at 682.

122. *Id.*

123. *Scott*, 88 N.Y.2d at 891, 667 N.E.2d at 925, 644 N.Y.S.2d at 915; *Vilardi*, 76 N.Y.2d at 77, 555 N.E.2d at 920, 556 N.Y.S.2d at 523.

124. *Scott*, 88 N.Y.2d at 891, 667 N.E.2d at 925, 644 N.Y.S.2d at 915; *Vilardi*, 76 N.Y.2d at 77, 555 N.E.2d at 920, 556 N.Y.S.2d at 523.

125. *Bagley*, 473 U.S. at 683; *See Scott*, 88 N.Y.2d at 891, 667 N.E.2d at 925, 644 N.Y.S.2d at 915.

In *Scott*, the New York State Court of Appeals affirmed its decision in *Vilardi* to depart from the United States Supreme Court's decision to apply a single standard in all cases. New York law, thus, continues to afford defendants greater protection than Federal law by using the less stringent standard for determining the materiality of favorable evidence under its Due Process Clause.

Pringle v. Wolfe[126]
(decided June 28, 1996)

The plaintiff, Michael Pringle, was arrested and charged with driving while intoxicated.[127] The plaintiff brought this action for a declaratory judgment to determine the constitutionality of the New York Vehicle and Traffic Law section 1193 (2)(e)(7),[128] commonly referred to as the "prompt suspension law."[129] Pringle asserted this statute violated the Fourteenth Amendment of the United States Constitution[130] and article I, section 6 of the New York State[131] Constitution.[132] The challenged statute required "that a driver who is charged with driving while

126. 88 N.Y.2d 426, 668 N.E.2d 1376, 646 N.Y.S.2d 82 (1996).

127. *Id.* at 430, 668 N.E.2d at 1378-79, 646 N.Y.S.2d at 85.

128. N.Y. VEH. & TRAF. LAW § 1193(2)(e)(7) (McKinney 1996). Section 1193(2)(e)(7) provides in pertinent part: Suspension pending prosecution; excessive blood alcohol content. (a) A court shall suspend a driver's license, pending prosecution, of any person . . . alleged to have had .10 of one percent or more by weight of alcohol in such driver's blood . . . .
Id.

129. *Pringle*, 88 N.Y.2d at 429-30, 668 N.E.2d at 1378-79, 646 N.Y.S.2d at 85.

130. U.S. CONST. amend. XIV. The Fourteenth Amendment provides in pertinent part: "No State shall . . . deprive any person of life, liberty, or property, without due process of law." *Id.*

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

132. *Pringle*, 88 N.Y.2d at 430, 668 N.E.2d at 1378-79, 646 N.Y.S.2d at 85.