

December 2014

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Recommended Citation

Pollack, Yale (2014) "Court of Appeals of New York, People v. Carranza," *Touro Law Review*: Vol. 21: No. 1, Article 9.

Available at: <https://digitalcommons.tourolaw.edu/lawreview/vol21/iss1/9>

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Court of Appeals of New York, People v. Carranza

Cover Page Footnote

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COURT OF APPEALS OF NEW YORK

People v. Carranza¹
(decided October 21, 2004)

On November 9, 2001, Francisco Carranza was convicted “of murder in the second degree and criminal possession of a weapon in the third degree, upon a jury verdict, and imposing sentence.”² The defendant appealed to the Supreme Court of New York, Appellate Division, Second Department, which affirmed his conviction on June 9, 2003.³ The defendant then appealed to the New York Court of Appeals arguing that the “statements he made to a police officer without a lawyer present should have been suppressed, relying on the rule [the court] announced in *People v. Arthur*.”⁴ The court rejected the defendant’s argument finding that the requirements of the rule in *Arthur* were not applicable here since “the police department questioning the defendant had not been informed that an attorney represented him or sought to communicate with the police on his behalf.”⁵

Prior to the murder case that was brought against the defendant he “had another, unrelated case pending in which he had been assigned a lawyer from the Legal Aid Society.”⁶ When the Legal Aid lawyer learned about the murder charge, he faxed letters

¹ 819 N.E.2d 997 (N.Y. 2004).

² 760 N.Y.S.2d 667 (N.Y. App. Div. 2003).

³ *Id.*

⁴ *Carranza*, 819 N.E.2d at 997; *People v. Arthur*, 239 N.E.2d 537, 539 (N.Y. 1968).

⁵ *Carranza*, 819 N.E.2d at 997.

to both the New York State Police as well as the Orange County District Attorney stating that the defendant “ ‘hereby exercises his rights to remain silent and to counsel.’ ”⁷ However, there was never any direct contact between the lawyer and either the Monticello Police department or Newburgh Police department, the agencies responsible for arresting and questioning the defendant.⁸ On the day the letters were faxed, the defendant was arrested by the Monticello Police and then transferred by Detective Zapata of the Newburgh Police back to Newburgh.⁹ The defendant waived his Miranda rights and spoke with Detective Zapata before, during, and after the journey from Monticello to Newburgh.¹⁰ “It is undisputed that Zapata knew nothing of the lawyer’s communications to the District Attorney and the State Police.”¹¹

The defendant’s motion to suppress the statements made to the detective without a lawyer present was based on his right to counsel granted in both the United States Constitution¹² and the New York State Constitution.¹³ The New York Court of Appeals

⁶ *Id.*

⁷ *Id.* at 997-98.

⁸ *Id.* at 998

⁹ *Id.*

¹⁰ *Carranza*, 819 N.E.2d at 998.

¹¹ *Id.*

¹² U.S. CONST. amend. VI provides in pertinent part: “In all criminal prosecutions, the accused shall enjoy the right to . . . have the Assistance of Counsel for his defence.” U.S. CONST. amend. XIV provides in pertinent part: “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law”

¹³ N.Y. CONST. art I, § 6 provides in pertinent part: “In any trial in any court whatever the party accused shall be allowed to appear and defend in person and

had to decide if that right attaches after the State Police and a local District Attorney had notice of the defendant's counsel as to impute that notice to all local police departments therefore precluding questioning of the defendant without counsel present. The court stated that "[a] lawyer may not prevent the police from questioning a suspect by communicating only with law enforcement agencies not involved in the investigation."¹⁴ The court then concluded that "[w]here a police officer does not know and cannot be charged with knowledge that the suspect has a lawyer, the officer has no obligation to refrain from asking questions."¹⁵

The United States Supreme Court has considered the issue of when a defendant's right to counsel attaches and when the right has been denied, thus violating the defendant's constitutional rights to counsel and due process. In *Powell v. Alabama*¹⁶ the Court noted that the defendants, from the time of arraignment until the beginning of trial, "when consultation, thoroughgoing investigation and preparation were vitally important, . . . did not have the aid of counsel in any real sense, although they were as much entitled to such aid during that period as at the trial itself."¹⁷

with counsel as in civil actions and shall be informed of the nature and cause of the accusation and be confronted with the witnesses against him."

¹⁴ *Carranza*, 819 N.E.2d at 998 (citing *People v. Pinzon*, 377 N.E.2d 721, 724 (N.Y. 1978)).

¹⁵ *Id.*

¹⁶ 287 U.S. 45 (1932).

¹⁷ *Id.* at 57; see also *Massiah v. United States*, 377 U.S. 201, 205 (1964).

A question of when the right to counsel attaches was further clarified by the Court in *Kirby v. Illinois*.¹⁸ In *Kirby*, the defendant was indicted for robbery after being identified at a lineup.¹⁹ While at the precinct, no lawyer was present on his behalf, he did not request legal advice, nor did he obtain advice of any right to the presence of counsel.²⁰ The *Kirby* Court stated “that a person’s Sixth and Fourteenth Amendment right to counsel attaches only at or after the time that adversary judicial proceedings have been initiated against him.”²¹ Examples of adversary judicial proceedings include a “formal charge, preliminary hearing, indictment, information, or arraignment.”²² The Supreme Court declined to expand the *Wade-Gilbert per se* exclusionary rule²³ to an identification that took place before the start of a prosecutorial proceeding.²⁴

In the interim between the decisions of *Powell* and *Kirby*, the Supreme Court dealt more specifically with how the right to

¹⁸ 406 U.S. 682 (1972).

¹⁹ *Id.* at 684-85.

²⁰ *Id.* at 685.

²¹ *Id.* at 688.

²² *Id.* at 689.

²³ See *United States v. Wade*, 388 U.S. 218 (1967) and *Gilbert v. California*, 388 U.S. 263 (1967) holding that:

[A] post-indictment pretrial lineup at which the accused is exhibited to identifying witnesses is a critical stage of the criminal prosecution; that police conduct of such a lineup without notice to and in the absence of his counsel denies the accused his Sixth [and Fourteenth] Amendment right to counsel and calls in question the admissibility at trial of the in-court identifications of the accused by witnesses who attended the lineup.

Gilbert, 388 U.S. at 272.

²⁴ *Kirby*, 406 U.S. at 690.

counsel can attach based on the communications between the defendant's attorney and the police. In *Spano v. New York*,²⁵ the defendant had surrendered himself to the police for a homicide and was left by his lawyer in the custody of the police with instructions not to answer any questions.²⁶ Defendant's surrender to the police put him "under indictment for first degree murder . . . [which] is supposed to be followed by an arraignment and trial."²⁷ Subsequently, the police questioned the defendant for approximately eight hours and continuously refused the defendant's requests to have his lawyer present.²⁸ Consequently, he confessed to the murder.²⁹ The means by which the police obtained the confession became "a kangaroo court procedure whereby the police produce the vital evidence in the form of a confession which is useful or necessary to obtain a conviction."³⁰ The Court reversed the defendant's conviction based on evaluating the conduct of the police with "the most careful scrutiny" since their intent was to extract a confession from the defendant.³¹

The Supreme Court elaborated on the issue in *Escobedo v. Illinois*,³² holding that "when the [interrogation] process shifts from investigatory to accusatory – when its focus is on the accused and its purpose is to elicit a confession – our adversary system begins

²⁵ 360 U.S. 315 (1959).

²⁶ *Id.* at 317.

²⁷ *Id.* at 327 (Stewart, J., concurring).

²⁸ *Id.* at 322-23.

²⁹ *Id.*

³⁰ *Spano*, 360 U.S. at 325 (Douglas, J., concurring).

³¹ *Id.* at 324.

³² 378 U.S. 478 (1964).

to operate, and . . . the accused must be permitted to consult with his lawyer.”³³ In *Escobedo*, the defendant was arrested for murder but was released after his lawyer obtained a state court writ of habeas corpus.³⁴ Subsequently, the police obtained a statement from a person they had in custody that defendant was the person who killed the victim, whereby the police arrested the defendant.³⁵ The defendant’s lawyer arrived at police headquarters after the defendant was arrested and was continuously refused the opportunity to speak with his client.³⁶ The defendant stated that the police gave him certain assurances, which resulted in his giving them a statement.³⁷ However, the state attorney who took the statement “testified that he did not advise [defendant] of his constitutional rights, and it is undisputed that no one during the course of the interrogation so advised him.”³⁸ The Court further stated:

No system worth preserving should have to *fear* that if an accused is permitted to consult with a lawyer, he will become aware of, and exercise, these rights. If the exercise of constitutional rights will thwart the effectiveness of a system of law enforcement, then there is something wrong with that system.³⁹

The Court concluded that under these circumstances, where the police were attempting to obtain a confession from the

³³ *Id.* at 492.

³⁴ *Id.* at 479.

³⁵ *Id.*

³⁶ *Id.* at 480-81.

³⁷ *Escobedo*, 378 U.S. at 482.

³⁸ *Id.* at 483.

defendant during an interrogation, the defendant was denied his right to the assistance of counsel and “no statement elicited by the police during the interrogation may be used against him at a criminal trial.”⁴⁰

The New York Court of Appeals considered the issue in a series of cases in the 1960s. In *People v. Donovan*⁴¹ the defendant was questioned by the police after they denied his request to see or speak with his attorney, resulting in the defendant’s giving a written confession.⁴² The court stated that “[i]t would be highly incongruous if our system of justice permitted the district attorney . . . to extract a confession from the accused while his own lawyer, seeking to speak with him, was kept from him by the police.”⁴³ The court held that a confession that is induced by the police after a defendant has requested and has been denied access to his counsel will be inadmissible at trial.⁴⁴

In *People v. Gunner*⁴⁵ the police obtained a confession from the defendant while he was in their custody.⁴⁶ The defendant had been captured in California and the police there had interrogated him before transporting him back to New York.⁴⁷ However, the defendant’s attorney in New York told the police in California that

³⁹ *Id.* at 490.

⁴⁰ *Id.* at 490-91.

⁴¹ 193 N.E.2d 628 (N.Y. 1963).

⁴² *Id.* at 629.

⁴³ *Id.*

⁴⁴ *Id.* at 630.

⁴⁵ 205 N.E.2d 852 (N.Y. 1965).

⁴⁶ *Id.* at 853.

⁴⁷ *Id.* at 854.

he did not want the police to interrogate his client.⁴⁸ The court noted that the police's ability to interrogate a defendant should not turn on "whether the [attorney] presents himself at the place where his client is in physical custody and expressly requests the opportunity to consult with him."⁴⁹ The court held:

that once a retained attorney contacts the police officer in charge and informs him . . . that he represents the suspect and does not want any statements taken from him, the police are precluded from thereafter questioning him or, if they do, from using against him any statements which he made in the absence of counsel.⁵⁰

The defendant in the instant case relied upon the New York Court of Appeals' holding in *People v. Arthur*.⁵¹ In *Arthur*, the defendant was in the process of giving a statement to the police when his attorney arrived.⁵² The attorney was told he would be able to see his client once the police had finished their questioning.⁵³ The defendant made further incriminating statements to a detective the following morning, in the absence of his attorney.⁵⁴ The statements made to the police were admitted at trial and the defendant was convicted of attempted murder in the second degree.⁵⁵ The New York Court of Appeals reversed the conviction and held that "once the police know or have been

⁴⁸ *Id.*

⁴⁹ *Id.* at 855.

⁵⁰ *Gunner*, 205 N.E.2d at 855.

⁵¹ 239 N.E.2d 537 (N.Y. 1968).

⁵² *Id.* at 538.

⁵³ *Id.*

⁵⁴ *Id.*

apprised of the fact that the defendant is represented by counsel or that an attorney has communicated with the police for the purpose of representing the defendant the accused's right to counsel attaches."⁵⁶ The court distinguished *Carranza* in that the lawyer did not contact either of the local departments who had arrested and interrogated the defendant. Contacting the New York State Police was not sufficient to put the local departments on notice that defendant was represented by counsel.⁵⁷

The right to counsel and the concomitant duty of the police to protect that right was further refined by the New York Court of Appeals in *People v. Pinzon*.⁵⁸ In *Pinzon*, the defendant had given the police a statement regarding the beating of his stepson.⁵⁹ The defendant's attorney had been trying to locate the defendant by contacting the police but to no avail since the police told him they did not have the defendant in their custody.⁶⁰ The court concluded that "once a person has been taken into custody, the burden is on the police to keep track of him and to establish and maintain procedures which will insure that an attorney representing him may communicate with him and with officials responsible for the investigation, without unreasonable delay."⁶¹

In conclusion, both the United States Supreme Court and New York Court of Appeals recognize the importance of an

⁵⁵ *Id.* at 539.

⁵⁶ *Arthur*, 239 N.E.2d at 538.

⁵⁷ *Carranza*, 819 N.E.2d at 998.

⁵⁸ 377 N.E.2d 721 (N.Y. 1978).

⁵⁹ *Id.* at 723.

⁶⁰ *Id.*

accused's right to counsel and acknowledge that certain procedures must be followed to protect that right. The Supreme Court has extended the protection of the right to a defendant who had been subjected to an investigation that has shifted from investigatory to accusatory thereby resulting in a confession by the defendant. In New York, the Court of Appeals has established that once the police have been notified of the defendant's representation of counsel, they may not deny the attorney access to the defendant and interrogate him further. New York goes further and puts an affirmative duty on the police to maintain certain procedures so that counsel has an opportunity to be present after he or she has been identified.

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⁶¹ *Id.* at 725.

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