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Court of Appeals of New York, People v. Ramos

Brooke Lupinacci

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RIGHT TO COUNSEL

United States Constitution Amendment VI:

In all criminal prosecutions, the accused shall enjoy the right to have . . . the Assistance of Counsel for his defence.

New York Constitution Article I Section 6:

[I]n any trial in any court whatever the party accused shall be allowed to appear . . . with counsel . . . .

COURT OF APPEALS OF NEW YORK

People v. Ramos[1]
(decided October 22, 2002)

Hilberto Ramos was convicted of murder in the second degree, burglary in the first degree, and criminal possession of a weapon in the second degree.[2] Following his conviction, Ramos appealed to the appellate division, arguing that the detectives' delay in his arraignment for the purpose of obtaining a confession violated his New York State constitutional right to counsel.[3] The appellate division held that Ramos' right to counsel claim could be raised on appeal even though it was not preserved at trial.[4] However, that court declined to reach the merits of the case because "the record was not sufficient to permit appellate review," and therefore affirmed Ramos' conviction.[5]

The New York Court of Appeals affirmed the decision of the lower court, however on different grounds.[6] The Court of Appeals determined that, "a delay in arraignment for the purpose

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[1] 99 N.Y.2d 27, 780 N.E.2d 506, 750 N.Y.S.2d 821 (2002).
[2] *Id.* at 31, 780 N.E.2d at 508, 750 N.Y.S. at 823.
[3] 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 . . . with counsel . . . ."
[4] People v. Ramos, 282 A.D.2d 623, 723 N.Y.S.2d 382 (2d Dep't 2001).
[5] *Id.*
[6] *Ramos*, 99 N.Y.2d at 32, 780 N.E.2d at 508-09, 750 N.Y.S. at 823-24.

of further police questioning does not establish a deprivation of the State constitutional right to counsel."[7] The court further noted that Ramos' claim involved only a violation of New York's Criminal Procedure Law Section 140.20.[8] Therefore, the Court of Appeals affirmed the appellate division's order and stated, the defendant "may not convert an unpreserved statutory claim into a constitutional right-to-counsel claim--and thus gain appellate review-by merely labeling the claim constitutional."[9]

The three offenses resulted when police found a woman shot to death in the bathtub of her home.[10] Upon further investigation, the police became aware that the victim and defendant were romantically involved.[11] After questioning Ramos about his whereabouts on the evening prior to the victim's death, there were several inconsistencies in his statement, and therefore, the police took the defendant to the precinct for further questioning.[12] At the precinct, Ramos was read his Miranda rights and waived his right to counsel.[13] Ramos admitted that he was at the victim's home the previous night, but denied any involvement in the crime.[14] Detectives also questioned Ramos' present girlfriend, who told them that the defendant had gone to her house in the early morning asking for clothes, and stated that "he [Ramos] 'messed up' and that the victim was 'gone.'"[15] Based on

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[7] *Id.* at 37, 780 N.E.2d at 513, 750 N.Y.S. at 828.

[8] N.Y. CRIM. PROC. LAW § 140.20 (McKinney 2002) provides in pertinent part:

> Upon arresting a person without a warrant, a police officer, after performing without unnecessary delay all recording, fingerprinting and other preliminary police duties required in the particular case, must except as otherwise provided in this section, without unnecessary delay bring the arrested person or cause him to be brought before a local criminal court and file therewith an appropriate accusatory instrument charging him with the offense or offenses in question." This section is also commonly referred to as the "prompt-arraignment statute.

[9] *Ramos,* 99 N.Y.2d at 37, 780 N.E.2d at 513, 750 N.Y.S.2d at 828.

[10] *Id.* at 30, 99 N.Y.2d at 507, 750 N.Y.S.2d at 822.

[11] *Id.*

[12] *Id.*

[13] *Id.* at 30, 780 N.E.2d at 507, 750 N.Y.S.2d at 823.

[14] *Ramos,* 99 N.Y.2d at 31, 780 N.E.2d at 507, 750 N.Y.S.2d at 823.

[15] *Id.*

the information obtained, and blood found on Ramos' shoes, the police officers arrested him.[16]

The following day two detectives interviewed Ramos and informed him of his Miranda rights.[17] Ramos again waived his right to counsel.[18] In the ensuing interview, Ramos fully confessed to his involvement in the crime by submitting a written confession.[19] Ramos was arraigned shortly after the completion of the interview.[20]

Ramos appealed his conviction, arguing for the first time that the detectives purposely delayed his arraignment in order to obtain a confession, and that this delay violated his New York State constitutional right to counsel.[21] He brought to the court's attention the testimony of Detective Toole, the arresting officer, who testified on cross-examination that she stopped the booking process about two hours and forty minutes after she arrested Ramos because she suspected Ramos of having more knowledge about the crime.[22] Detective Toole further testified that she wanted Detective Sica to interview the defendant because he was "more experienced at conducting interrogations."[23] Ramos argued that the delay in his arraignment caused by Detective Toole for further questioning by Detective Sica violated his New York State constitutional right to counsel.[24] The appellate division held that Ramos could raise this issue on appeal even though it was unpreserved at trial, but ultimately affirmed his conviction on different grounds.[25] However, the Court of Appeals held that Ramos' claim involved only a violation of the prompt-arraignment statute, a claim that Ramos failed to preserve at trial, rendering the records insufficient for appellate review.[26]

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[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Ramos*, 99 N.Y.2d at 31, 780 N.E.2d at 508, 750 N.Y.S.2d at 823.
[20] *Id.* It is important to note in this particular case that approximately 15 hours elapsed between defendant's arrest and arraignment. *Id.*
[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Ramos*, 99 N.Y.2d at 31, 750 N.Y.S.2d at 823, 780 N.E.2d at 508.
[25] *Id.* at 32, 780 N.E.2d 508-09, 750 N.Y.S.2d at 823-24.
[26] *Id.*

Before commencing an analysis of this case, the Court of Appeals recognized the right of a criminal defendant to raise the right to counsel on appeal even if it was not preserved at trial.[27] The court referred to its holding in *People v. Kinchen,*[28] where "a claimed deprivation of the state constitutional right to counsel may be raised on appeal, notwithstanding that the issue was not preserved by having been specifically raised in a suppression motion or at trial."[29] Despite this recognition, the court declared that Ramos' claim was not a state constitutional right to counsel claim; rather, it was a violation of the prompt-arraignment statute that must be preserved in order to have appellate review.[30] The Court of Appeals rendered Ramos' claim not reviewable because he failed to preserve that claim at trial.[31] Even though the claim was not reviewable, the Court of Appeals discussed why an undue delay in arraignment does not give rise to a constitutional right to counsel, characterizing this right as a "cherished principle"[32] worthy of the "highest degree of judicial vigilance."[33]

The Court of Appeals discussed two situations where the constitutional right to counsel attaches.[34] The court stated, "when formal judicial proceedings begin, whether or not the defendant has actually retained or requested a lawyer" the right to counsel attaches.[35] Additionally, the right also attaches "when an uncharged individual 'has actually retained a lawyer in the matter at issue, or while in custody, has requested a lawyer in that

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[27] *Id.* at 32, 780 N.E.2d at 508, 750 N.Y.S.2d at 823.

[28] 60 N.Y.2d 772, 457 N.E.2d 786, 469 N.Y.S.2d 680 (1983).

[29] *Ramos,* 99 N.Y.2d at 30, 780 N.E.2d at 507, 750 N.Y.S.2d at 822 (citing *Kinchen,* 60 N.Y.2d at 773-74, 457 N.E.2d at 787, 469 N.Y.S.2d at 681).

[30] *Id.* at 30, 780 N.E.2d at 507, 750 N.Y.S.2d at 822.

[31] *Id.*

[32] *Id.* at 32, 780 N.E.2d at 509, 750 N.Y.S.2d at 824 (citing People v. West, 81 N.Y.2d 370, 373, 615 N.E.2d 968, 970, 599 N.Y.S.2d 484, 486 (1993); People v. Harris, 77 N.Y.2d 434, 439, 570 N.E.2d 1051, 1054, 568 N.Y.S.2d 702, 705 (1991); People v. Settles, 46 N.Y.2d 154, 160-161, 385 N.E.2d 612, 614-15, 412 N.Y.S.2d 874 (1978)).

[33] *Id.* (citing People v. Cunningham, 49 N.Y.2d 203, 207, 400 N.E.2d 360, 363, 424 N.Y.S.2d 421 (1980)).

[34] *Id.*

[35] *Ramos,* 99 N.Y.2d at 32, 780 N.E.2d at 508, 750 N.Y.S.2d at 823.

matter.'"[36] The court characterized these two circumstances as being similar to those under the Fifth[37] and Sixth Amendments to the Federal Constitution,[38] but noted that "New York's constitutional right to counsel jurisprudence developed 'independent' of its Federal counterpart[39] and offers broader protections."[40] The Court determined that Ramos' right to counsel did not attach under either circumstance because when he confessed, judicial proceedings were not underway and he had not retained or requested an attorney.[41] Further, the court highlighted that Ramos waived his right to counsel on two separate occasions.[42]

The Court of Appeals analyzed the cases that Ramos used to support his assertion that the constitutional right to counsel arose when the officers delayed his arraignment to obtain an "uncounseled confession."[43] The court examined *People v.*

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[36] *Id.* (quoting *West*, 81 N.Y.2d at 373-74, 615 N.E.2d at 970, 599 N.Y.S.2d at 486).

[37] U.S. CONST. amend. V provides in pertinent part:

> No person shall be held for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law . . . .

[38] U.S. CONST. amend. VI provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

[39] *Ramos*, 99 N.Y.2d at 33, 780 N.E.2d at 509, 750 N.Y.S. at 824 (citing *Settles*, 46 N.Y.2d at 160-61, 412, 385 N.E.2d 612, 614-15 N.Y.S.2d 874).

[40] *Id.* It is important to note that Ramos made no claim under the Sixth Amendment to the United States Constitution and did not cite any federal cases to support his claim.

[41] *Id.*

[42] *Id.*

[43] *Id.*

Wilson,[44] where the defendant argued that his inculpatory statements that were made without the presence of counsel, should be suppressed.[45] The *Wilson* court struck down the defendant's claim holding that "we cannot agree with defendant's argument that because he was physically in police custody awaiting arraignment his right to counsel had attached, and no decision in our court so holds."[46] However, Ramos claimed that the court had left open a distinguishing factor when it further stated that the delay in arraignment was not "calculated to deprive defendant of his right to counsel."[47]

Another case Ramos relied on and the Court of Appeals discussed, is *People v. Ortlieb.*[48] In *Ortlieb*, the defendant argued that his statements should have been suppressed at trial because the police postponed his arraignment in order to deprive him of his right to counsel.[49] The court concluded that there "was no unnecessary delay under CPL 140.20 (1)"[50]and as a result, the suppression was properly denied.[51] The Court of Appeals examined Ramos' contentions in light of these cases and firmly stated that the court "has never held that a deliberate delay of arraignment for the purpose of obtaining a confession triggers the state constitutional right to counsel."[52] The court further stated that

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[44] 56 N.Y.2d 692, 436 N.E.2d 1321, 451 N.Y.S.2d 719 (1982).

[45] *Id.* at 694, 436 N.E.2d at 1322, 451 N.Y.S. at 719.

[46] *Id.*

[47] *Id.*

[48] 84 N.Y.2d 989, 646 N.E.2d 803, 622 N.Y.S.2d 501 (1994).

[49] *Id.* at 990, 646 N.E.2d at 804, 622 N.Y.S.2d at 502. Defendant was arrested for stabbing his former girlfriend to death. *Id.* at 990, 646 N.E.2d at 804, 622 N.Y.S.2d at 502. Defendant was advised of his Miranda rights upon arrest and again at the station house but signed a written statement confessing to the crime. *Id.* Five hours later, the defendant was arraigned after police questioning, and defendant argued that he was entitled to suppression on the ground that arraignment was postponed for the sole purpose of depriving him of the right to counsel. *Id.* at 990, 646 N.E.2d at 804, 622 N.Y.S.2d at 502. The court found that there was no "unnecessary delay" making the suppression properly denied. *Id.*

[50] *See supra* note 8.

[51] *Ortlieb,* 84 N.Y.2d at 989, 646 N.E.2d at 804, 622 N.Y.S.2d at 502.

[52] *Ramos,* 99 N.Y.2d at 34, 780 N.E.2d at 825, 750 N.Y.S.2d at 510.

a deliberate delay bears on the voluntariness of the confession and "is a factor to be considered in that regard."[53]

The Court of Appeals determined that Ramos' constitutional right to counsel had "never attached" because when there is no request for an attorney, the right to counsel attaches only when formal judicial proceedings commence.[54] Moreover, the court observed that there was no case law to support that this right should attach at the point Ramos suggested.[55] The Court of Appeals also stated a delay in arraignment does not give rise to a right to counsel claim in that both the federal and state laws mandate that Miranda warnings are to be given to an individual who is arrested and brought into police custody.[56] The Court of Appeals reasoned that Ramos was free to invoke his right to counsel but failed to do so.[57] Additionally, the court noted that a delay in arraignment is a factor to be considered in determining whether a confession is involuntary requiring suppression, but is not a dispositive factor leading to automatic suppression of statements made during a delayed arraignment.[58] Moreover, the court observed, "except in cases of involuntariness, a delay in arraignment, even if prompted by a desire for further police questioning, does not warrant suppression."[59]

The final contention of the Court of Appeals is that the prompt-arraignment statute does not automatically create a right to counsel by its terms or by inference.[60] The court stated that under this statute, a person arrested without a warrant must be processed and brought before a criminal court with an accusatory instrument

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[53] *Id.* (citing People v. Hopkins, 58 N.Y.2d 1079, 1081, 449 N.E.2d 419, 420, 462 N.Y.S.2d 639, 640 (1983); People v. Holland, 48 N.Y.2d 861, 863, 400 N.E.2d 293, 294, 424 N.Y.S.2d 351, 352 (1979); People v. Dairsaw, 46 N.Y.2d 739, 740, 386 N.E.2d 249, 249, 413 N.Y.S.2d 640, 641 (1978)).

[54] *Id.* at 34-35, 780 N.E.2d at 511, 750 N.Y.S.2d at 826.

[55] *Id.*

[56] *Id.* at 34, 780 N.E.2d at 825, 750 N.Y.S.2d at 510 (citing Miranda v. Arizona, 384 U.S. 436, 471 (1966)). Under *Miranda*, if during the course of police interrogation, a person chooses to remain silent or invokes his right to counsel, all questioning must cease. *Id.* at 473-474.

[57] *Ramos*, 99 N.Y.2d at 35, 780 N.E.2d at 825, 750 N.Y.S.2d at 510.

[58] *Id.*

[59] *Id.*

[60] *Id.*

charging him with the crime "without unnecessary delay."[61] In the event of an unnecessary delay, remedies are available to defendants, which include release from custody and possible suppression of evidence if the confession is deemed to be involuntary.[62] Additionally, the Court of Appeals found that CPL 140.20, which parallels Rule 5(a) of the Federal Rules of Criminal Procedure[63] is meant to protect against "unlawful confinement and assure that persons accused are advised of their rights and given notice of the crime or crimes charged."[64] As such, the court characterized Ramos' effort to change CPL 140.20 into a constitutional claim of right to counsel as "misguided" because the right to a timely arraignment is "grounded neither in [the Court of Appeal's] jurisprudence nor (in the case of the federal rule) in the Supreme Court's interpretation of the Sixth Amendment." [65]

In support of its conclusion, the Court of Appeals discussed several reasons for declining to adopt Ramos' position. First, if the court were to adopt Ramos' position, any time there was an alleged unnecessary delay in arraignment, a right to counsel claim could be raised for the first time on appeal.[66] The court stated that adopting this position would, "skew our preservation of jurisprudence" because a non-preserved right to counsel claim has only been permitted when there has been a clear constitutional violation.[67]

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[61] *Id.*

[62] *Ramos,* 99 N.Y.2d at 35, 780 N.E.2d at 825, 750 N.Y.S.2d at 510. At this point in the Court of Appeal's analysis, the court took note of the Supreme Court's findings that an accused in custody has a federal constitutional right to a prompt probable-cause determination and that this right is "grounded in the Fourth Amendment's proscription against unreasonable seizures, not the right to counsel under the Fifth or Sixth Amendments." *Id.*

[63] FED. RULES OF CRIM. P. rule 5(a) (2003) provides: "An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest available federal magistrate judge . . . if a person arrested without a warrant is brought before a magistrate judge, a complaint, satisfying the probable cause requirements of Rule 4(a), shall be promptly filed."

[64] *Ramos*, 99 N.Y.2d at 36, 780 N.E.2d at 512, 750 N.Y.S.2d at 827.

[65] *Id.*

[66] *Id.* at 37, 780 N.E.2d at 513, 750 N.Y.S.2d at 828.

[67] *Id.* (citing People v. Samuels, 49 N.Y.2d 218, 400 N.E.2d 1344, 424 N.Y.S.2d 892 (1979); People v. Ermo, 47 N.Y.2d 863, 392 N.E.2d 1248, 419 N.Y.S.2d 65 (1979)).

Ramos' conviction was properly determined because there was nothing on the record in Ramos' case showing a clear violation of his constitutional right to counsel.[68] Furthermore, the court had determined that a delay in arraignment does not automatically evidence a violation of his constitutional right to counsel.[69] Additionally, the court stated that if it were to allow Ramos and other defendants to raise claims such as this for the first time on appeal, the appellate review would be difficult and "it would also seriously prejudice the People."[70]

Furthermore, Ramos did not assert any violation of his Sixth Amendment[71] right under the United States Constitution and cited no federal cases to support his allegations.[72] In fact, as the Court of Appeals mentioned, there was an identical argument made by another defendant in *Holmes v. Scully*[73] that was struck down by a federal court.[74] In *Holmes*, the defendant was convicted in New York State court of burglary in the first and second degree.[75] The defendant appealed to the appellate division and that court affirmed his conviction, without issuing an opinion.[76] The defendant alleged ineffectiveness of appellate counsel; that the trial court should have suppressed certain evidence obtained when the state "illegally and unlawfully" delayed his arraignment in violation of the Fifth, Sixth, and Fourteenth Amendments; that this

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[68] *Id.*

[69] *Ramos*, 99 N.Y.2d at 37, 780 N.E.2d at 513, 750 N.Y.S.2d at 828.

[70] *Id.* The prejudice the court refers to here is that the People would have to show other reasons for delay in arraignment, "such as the need to continue the investigation, examine the crime scene, gather the accused's pedigree information, acquire the accused's criminal history or otherwise explain the procedures that are involved before a defendant is arraigned." *Id.*

[71] U.S. CONST. amend. VI.

[72] *Id.* at 33, 780 N.E.2d at 509, 750 N.Y.S.2d at 824.

[73] 706 F.Supp. 195 (1989).

[74] *Ramos*, 99 N.Y.2d at 33, 780 N.E.2d at 510, 750 N.Y.S.2d at 825.

[75] *Holmes*, 706 F. Supp. at 196. The defendant was convicted of burglary in the first and second degree and was sentenced as a second violent felony offender to consecutive prison terms. Defendant argued that evidence obtained when the state illegally and detained him without arraignment should have been suppressed. The court determined that, it could not review the inmate's claim stemming from the delayed arraignment absent a showing of an "unconscionable breakdown in the state's review process." *Id.* at 201.

[76] *People v. Holmes*, 103 A.D.2d 1047, 479 N.Y.S.2d 390 (2d Dep't 1984).

delay in arraignment "was tantamount to an illegal and unlawful detention" and resulted in the acquisition of incriminating evidence by coercion and/or by forestalling the petitioner's right to assistance of counsel.[77]

The court rejected the petitioner's Sixth Amendment argument that he was denied his constitutional right to counsel because a delay in arraignment does not automatically justify habeas corpus relief, unless the inculpatory statements resulted from police coercion.[78] Additionally, the court said, "the right to counsel only comes into existence 'at or after the initiation of adversary judicial criminal proceedings--whether by way of formal charge, preliminary hearing, indictment, information, or arraignment.'"[79] Therefore, the court determined that a "mere delay" in arraignment is not in and of itself a violation of the constitutional right to counsel.[80]

The language used in the *Holmes* court mirrors the language of several Supreme Court decisions.[81] In *Kirby v. Illinois*,[82] the Court held that the Sixth Amendment right to counsel attaches at post-indictment pre-trial line-ups, and refused to extend this right to identifications made prior to prosecution. In *Kirby*, the defendant was identified before he was arrested for robbery and the Court admitted pre-indictment identification even though there was no attorney present.[83] The Court reasoned that, "an accused is

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[77] *Id.*

[78] *Id.* at 203.

[79] *Id.* (citing Kirby v. Illinois, 406 U.S. 682, 689 (1972)).

[80] *Id.* at 203.

[81] *See e.g.*, Coleman v. Alabama, 399 U.S. 1 (1970) (finding that, in all cases, "a person's Sixth and Fourteenth Amendment right to counsel attaches only at or after the time that adversary judicial proceedings have been imitated against him."); United States v. Wade, 388 U.S. 218 (1967); Gilbert v. California, 388 U.S. 263 (1967); Gideon v. Wainwright, 372 U.S. 335 (1963); White v. Maryland, 373 U.S. 59 (1963); Hamilton v. Alabama, 368 U.S. 52 (1961); Johnson v. Zerbst, 304 U.S. 458 (1938); Powell v. Alabama, 287 U.S. 45 (1932).

[82] 406 U.S. 682 (1972).

[83] *Id.* at 684-86. Defendant was arrested for robbery and taken to the police station. The victim of a robbery identified defendant as the perpetrator at the police station. The same victim who testified at to the police station also made an in-court identification of defendant. The Court found that the Sixth Amendment right to counsel did not extend to the identification that took place because it was "before the commencement of any prosecution." *Id.*

entitled to counsel at any 'critical stage of the *prosecution*,' and that a post-indictment lineup is such a 'critical stage.'"[84] As such, the Court declined to adopt an exclusionary rule for testimony dealing with out of court identifications that take place before the "commencement of any prosecution."[85]

Likewise, in *Massiah v. United States*,[86] the Court held that the defendant was denied his Sixth Amendment protection when incriminating statements were used as evidence at his trial, which were from deliberately elicited by federal agents after his indictment and in the absence of an attorney.[87] In *Massiah*, after the defendant had been indicted for federal narcotics violations, he retained counsel and pleaded not guilty.[88] A co-defendant invited Massiah into his car to discuss illegal matters that pertained to the case.[89] Massiah was unaware that his co-conspirator was cooperating with the government and that the damaging statements made during this conversation were being transmitted to a federal agent.[90] The Court found that the secret taping of the conversation, "from and after the finding of the indictment, without the protection afforded by the presence of counsel, contravened the basic dictates of fairness in the conduct of the criminal cause and the fundamental rights of [Massiah]."[91]

It is clear when comparing the federal court decision in *Holmes* and the Supreme Court decisions with the New York State court decision in *Ramos,* that the treatment of a delay in arraignment is handled in a similar manner. In both situations, may it be under the Sixth Amendment to the United States Constitution or under the New York State Constitution, the right to counsel does not automatically attach.[92] The right to counsel will attach, "only at or after the time that adversary judicial proceedings

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[84] *Id.* at 690 (quoting Simmons v. United States, 390 U.S. 377, 382-83 (1968)).
[85] *Id.*
[86] 377 U.S. 201 (1964).
[87] *Id.* at 206.
[88] *Id.* at 201.
[89] *Id.*
[90] *Id.* at 203.
[91] *Massiah*, 377 U.S. at 205 (citing People v. Waterman, 9 N.Y.2d 561, 565, 175 N.E.2d 445, 448, 215 N.Y.S.2d 70, 71 (1961).
[92] *See supra* notes 79-80 and accompanying text.

have been initiated against the [defendant]."[93] Furthermore, it appears that neither the federal courts nor the states courts will allow the right to counsel to attach earlier then what the courts have thus held. Therefore, in accordance with the *Ramos* decision, a criminal defendant in New York has a right to counsel when formal judicial proceedings are underway. Additionally, a mere delay in arraignment will not give rise to a constitutional claim of right to counsel; rather, if the defendant so chooses, he or she should file a claim that the police violated the prompt-arraignment statute. Furthermore, it is important to raise this claim at trial in order for it to be reviewed on appeal.

Brooke Lupinacci

[93] *See, e.g., Coleman*, 399 U.S. at 1.