



TOURO UNIVERSITY
JACOB D. FUCHSBERG LAW CENTER
Where Knowledge and Values Meet

Touro Law Review

Volume 10 | Number 3

Article 61

1994

Right to Counsel: People v. Ruff

Follow this and additional works at: <https://digitalcommons.tourolaw.edu/lawreview>



Part of the [Constitutional Law Commons](#), and the [State and Local Government Law Commons](#)

Recommended Citation

(1994) "Right to Counsel: People v. Ruff," *Touro Law Review*. Vol. 10: No. 3, Article 61.

Available at: <https://digitalcommons.tourolaw.edu/lawreview/vol10/iss3/61>

This New York State Constitutional Decisions is brought to you for free and open access by Digital Commons @ Touro Law Center. It has been accepted for inclusion in Touro Law Review by an authorized editor of Digital Commons @ Touro Law Center. For more information, please contact lross@tourolaw.edu.

the issue concerned whether the defendant's rights were violated by the overzealous standby counsel.¹⁸⁵⁰ The Supreme Court reversed the court of appeals judgment, which completely limited the role of standby counsel when defendant had objected, and instead held counsel may not substantially interfere with any significant tactical decisions, or control the questioning of witnesses or speak instead of the defendant on any matter of importance.¹⁸⁵¹

Therefore, under the New York State Constitution and the Federal Constitution, a pro se defendant, who is actively asserting his right to self-representation, cannot be arbitrarily and categorically barred from participating in sidebar conferences.¹⁸⁵²

People v. Ruff¹⁸⁵³
(decided June 8, 1993)

Petitioner, convicted of murder in the first degree, claimed that his right to counsel under both the New York¹⁸⁵⁴ and

1850. *Id.* at 176.

1851. *McKaskle*, 465 U.S. at 184. The Court made explicit what was already implied in *Faretta*:

A defendant's Sixth Amendment rights are not violated when a trial judge appoints standby counsel — even over the defendant's objection — to relieve the judge of the need to explain and enforce basic rules of courtroom protocol or to assist the defendant in overcoming routine obstacles that stand in the way of the defendant's achievement of his own clearly indicated goals. Participation by counsel to steer a defendant through basic procedures of trial is permissible even in the unlikely event that it somewhat undermines the pro se defendant's appearance of control over his own defense.

Id.

1852. *Rosen*, 81 N.Y.2d at 245, 613 N.E.2d 946, 597 N.Y.S.2d 914; *see also Faretta*, 422 U.S. at 818-19 (finding that Sixth Amendment guarantees a criminal defendant the corollary right to dispense with counsel and to present his defense in the manner of his choosing).

1853. 81 N.Y.2d 330, 615 N.E.2d 611, 599 N.Y.S.2d 221 (1993).

1854. 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 with counsel" *Id.*

Federal¹⁸⁵⁵ Constitutions was violated.¹⁸⁵⁶ In the absence of representation by counsel on the pending sexual abuse charges, the defendant gave statements to the police about murdering his cousin, which were not suppressed at trial.¹⁸⁵⁷ The court of appeals affirmed the appellate court's decision and held that the defendant's statements were not required to be suppressed because the police's questioning of defendant on the unrelated matter of the murder during the sex crime investigation, did not interfere with an attorney-client relationship.¹⁸⁵⁸

In 1987 an arrest warrant was issued, charging the defendant with sexual abuse in the first degree.¹⁸⁵⁹ When defendant's cousin, a police dispatcher, learned about the warrant, he informed investigators that he believed the defendant had murdered his brother.¹⁸⁶⁰ When state police officials located the defendant, they read him his *Miranda* rights, and questioned him about his participation in a number of sex crimes.¹⁸⁶¹ The defendant admitted to those crimes and signed a written confession.¹⁸⁶²

Initially, the defendant denied having any knowledge regarding the murder of his cousin.¹⁸⁶³ However, the following day, when the defendant took a polygraph test, he admitted that he killed his cousin, and was thereafter arrested.¹⁸⁶⁴ At the pre-trial hearing, the defendant made a motion to suppress the murder confession. He claimed that allowing the statements into evidence violated his

1855. U.S. CONST. amend. VI provides in pertinent part: "In all criminal prosecutions, the accused shall . . . have the assistance of counsel for his defense." *Id.*

1856. *Ruff*, 81 N.Y.2d at 333, 615 N.E.2d at 613, 599 N.Y.S.2d at 223.

1857. *Id.* at 332-33, 615 N.E.2d at 613, 599 N.Y.S.2d at 223.

1858. *Id.* at 334-35, 615 N.E.2d at 614, 599 N.Y.S.2d at 224.

1859. *Id.* at 332, 615 N.E.2d at 612, 599 N.Y.S.2d at 222.

1860. *Id.*

1861. *Id.*

1862. *Id.*

1863. *Id.*

1864. *Id.* at 332-33, 615 N.E.2d at 612-13, 599 N.Y.S.2d at 222-23.

“right to counsel which had attached with regard to the pending sexual abuse charges.”¹⁸⁶⁵

The court found that the defendant’s Sixth Amendment rights were not violated by the lower courts’ refusal to suppress the defendant’s statements on matters unrelated to the original charges of sexual abuse.¹⁸⁶⁶ The court reasoned that the state police officials were not precluded from questioning the defendant on the unrelated murder because an attorney-client relationship had not been established with respect to the pending charges and therefore, the questioning had not interfered with such a relationship.¹⁸⁶⁷

The court’s reasoning was based primarily on its narrow interpretation, in *People v. Kazmarick*,¹⁸⁶⁸ of the holding in *People v. Rogers*.¹⁸⁶⁹ In *Kazmarick*, an alcoholic defendant was suspected of an act of arson which resulted in the death of five people.¹⁸⁷⁰ When the defendant took a polygraph test, he was in a state of intoxication and his test was voided.¹⁸⁷¹ Two days later, the defendant was arrested for disorderly conduct, assaulting a police officer, and criminal mischief.¹⁸⁷² Subsequent to his release, the defendant took another polygraph test in which he admitted to unintentionally setting the fire.¹⁸⁷³ On the trial level, the defendant made a motion to suppress his confession and claimed that the pendency of a shoplifting charge with an issuance of a warrant for his arrest “caused his right to counsel to attach ‘indelibly’ on the unrelated arson case.”¹⁸⁷⁴ The court found that the pending criminal charges did not preclude the

1865. *Id.* at 333, 615 N.E.2d at 613, 599 N.Y.S.2d at 223; *see also* *People v. Samuels*, 49 N.Y.2d 218, 400 N.E.2d 1344, 424 N.Y.S.2d 892 (1980).

1866. *Ruff*, 81 N.Y.2d at 335, 615 N.E.2d at 614, 599 N.Y.S.2d at 224.

1867. *Id.* at 334-35, 615 N.E.2d at 614, 599 N.Y.S.2d at 224.

1868. 52 N.Y.2d 322, 420 N.E.2d 45, 438 N.Y.S.2d 247 (1981).

1869. 48 N.Y.2d 167, 397 N.E.2d 709, 422 N.Y.S.2d 18 (1979).

1870. *Kazmarick*, 52 N.Y.2d at 325, 420 N.E.2d at 47, 438 N.Y.S.2d at 249.

1871. *Id.*

1872. *Id.*

1873. *Id.*

1874. *Id.* at 326, 420 N.E.2d 47, 438 N.Y.S.2d 249.

police from questioning the defendant on an unrelated matter when the defendant was not represented by counsel.¹⁸⁷⁵

The court in *Rogers* held that once a lawyer has entered the proceeding on prior pending charges, the police are prohibited from questioning the defendant on both related and unrelated matters.¹⁸⁷⁶ However, in *Kazmarick*, the court distinguished its prior decision in *Rogers*, and held that pending criminal charges do not bar the police from questioning the accused on an unrelated matter.¹⁸⁷⁷ Although the *Kazmarick* court affirmed the *Rogers* court's decision along with its line of cases, the court noted that these cases were only applicable to situations where a lawyer was present or had entered the pending proceedings.¹⁸⁷⁸ In the case at bar, the defendant was informed of his right to counsel but he waived his right since he never requested nor retained a lawyer.¹⁸⁷⁹ Consequently, no attorney-client relationship was ever formed and the investigators were not precluded from questioning the suspect on the unrelated murder.¹⁸⁸⁰

In addition, the court rejected defendant's claim that under *People v. Ermo*,¹⁸⁸¹ his rights were violated by the officer's questioning. In *Ermo*, the defendant was interrogated by officers on charges of two sex offenses.¹⁸⁸² During the interrogation, the police officers impermissibly questioned the defendant regarding an assault charge in order to secure a confession to an unrelated homicide charge.¹⁸⁸³ The court held that the defendant's statements with respect to the homicide charges should be suppressed because the defendant's initial waiver to an attorney

1875. *Id.* at 324, 420 N.E.2d at 46, 438 N.Y.S.2d at 248.

1876. *Rogers*, 48 N.Y.2d at 169, 397 N.E.2d at 710-11, 422 N.Y.S.2d at 19.

1877. *Kazmarick*, 52 N.Y.2d at 324, 420 N.E.2d at 46, 438 N.Y.S.2d at 248.

1878. *Id.* at 326, 420 N.E.2d at 48, 438 N.Y.S.2d at 250.

1879. *Ruff*, 81 N.Y.2d at 334, 615 N.E.2d at 614, 599 N.Y.S.2d at 224.

1880. *Id.*

1881. 47 N.Y.2d 863, 392 N.E.2d 1248, 419 N.Y.S.2d 65 (1979).

1882. *Id.* at 864, 392 N.E.2d at 1249, 419 N.Y.S.2d at 66.

1883. *Id.* at 865, 392 N.E.2d at 1249, 419 N.Y.S.2d at 66.

expired when the officers wrongfully questioned the defendant on unrelated homicide charges.¹⁸⁸⁴ The *Ruff* court rejected defendant's reliance on *Ermo* because once again, the case at bar did not present an interference with attorney-client privilege.¹⁸⁸⁵ Distinguishing *Ermo*, the court stated that the attorney-client relationship was interfered with because the police interrogated the defendant on a pending charge to elicit statements on an unrelated matter.¹⁸⁸⁶ Absent actual representation, statements made on unrelated matters, while being questioned on pending charges, do not require suppression.¹⁸⁸⁷

In the case at bar, the court concentrated solely on whether questioning of the defendant, in the absence of representation on the pending charges, required suppression of statements made on an unrelated matter.¹⁸⁸⁸ The court concluded that defendant's right to counsel was not violated and therefore suppression was not required.¹⁸⁸⁹

The federal constitutional right to counsel also includes more than the assistance of counsel during trial. As stated by the Supreme Court in *Maine v. Moulton*,¹⁸⁹⁰ "to deprive a person of counsel during the period prior to trial may be more damaging than denial of counsel during the trial itself."¹⁸⁹¹

The United States Supreme Court has also stated that to exclude evidence from pending charges, to which the right to counsel has not yet attached, would "unnecessarily frustrate the public's interest in the investigation of criminal activities."¹⁸⁹²

Therefore, the right to question a defendant concerning matters unrelated to pending charges does not violate the Sixth Amendment, even if the defendant has counsel appointed for the pending charges. Should the defendant make a statement about

1884. *Id.*

1885. *Ruff*, 81 N.Y.2d at 334, 615 N.E.2d at 614, 599 N.Y.S.2d at 224.

1886. *Id.*

1887. *Id.* at 335, 615 N.E.2d at 614, 599 N.Y.S.2d at 224.

1888. *Id.* at 331-32, 615 N.E.2d at 612, 599 N.Y.S.2d at 222.

1889. *Id.* at 332, 615 N.E.2d at 612, 599 N.Y.S.2d at 222.

1890. 474 U.S. 159 (1985).

1891. *Id.* at 170.

1892. *Id.* at 180.

charges to which his counsel rights have attached, this will violate the Sixth Amendment and, thus, be inadmissible. In short, while the federal courts do not distinguish between whether or not there has been a waiver of counsel for pending charges, the New York courts draw the distinction as evidenced in the *Kazmarick* line of cases.

People v. West¹⁸⁹³
(decided June 8, 1993)

The criminal defendant claimed that his right to counsel under the State Constitution¹⁸⁹⁴ attached indelibly when counsel entered his appearance at defendant's lineup and instructed law officials not to question his client.¹⁸⁹⁵ In addition, defendant claimed that his state right to counsel was violated when law officials used an informant to surreptitiously tape-record incriminating statements he had made.¹⁸⁹⁶ In deciding these issues, the court had to determine the precise meaning of "indelible attachment."

The New York Court of Appeals reversed the decision of the appellate division and held that since defendant's right to counsel had "attached indelibly," the taped statements were taken in violation of the defendant's right to counsel.¹⁸⁹⁷ Consequently, a new trial was ordered.¹⁸⁹⁸

In this case, the defendant was convicted of murder in the second degree in the Supreme Court, New York County, and that conviction was affirmed by the Appellate Division, First Department.¹⁸⁹⁹ Defendant was part of a three-man drug operation, based in Manhattan.¹⁹⁰⁰ On June 15, 1982, there was a fight in front of the house and Sylvester Coleman was

1893. 81 N.Y.2d 370, 615 N.E.2d 968, 599 N.Y.S.2d 484 (1993).

1894. N.Y. CONST. art. I, § 6. Section 6 provides in pertinent part: "In any trial in any case whatever the party accused shall be allowed to appear and defend in person and with counsel as in civil actions" *Id.*

1895. *West*, 81 N.Y.2d at 372, 615 N.E.2d at 969, 599 N.Y.S.2d at 485.

1896. *Id.* at 372, 615 N.E.2d at 969-70, 599 N.Y.S.2d at 485-86.

1897. *Id.* at 373, 615 N.E.2d at 970, 599 N.Y.S.2d at 486.

1898. *Id.*

1899. *People v. West*, 183 A.D.2d 419, 583 N.Y.S.2d 396 (1st Dep't 1992).

1900. *West*, 81 N.Y.2d at 372, 615 N.E.2d at 969, 599 N.Y.S.2d at 485.