

**Rothgery v. Gillespie County, 554 U.S. 191 (2008)**

**A General Summary**

**FACTS of the case:**

- In July of 2002, Rothgery was arrested for possession of a firearm by a felon based upon an erroneous background check that identified him as a convicted felon. In fact, he had never been convicted of any felony.
- He was brought before a magistrate in Gillespie County Texas for his initial appearance based upon the sworn affidavit of the police officer in reliance on the invalid background check.
- Based upon the affidavit, the court found probable cause for the arrest advised Rothgery of the charges against him, set bail at \$5,000 and put him in jail. (He later posted bond via a surety.) No prosecutor was part of this process.
- Mr. Rothgery had no money for a lawyer and made several requests both oral and written for appointed counsel which were ignored by the court for nearly six months.
- In January, 2003, Rothgery was indicted (formal charges filed) for unlawful possession of a firearm by a Texas Grand Jury. This resulted in a rearrest and an order setting bond at \$15,000. This time he could not afford to post bond and remained in jail for three weeks.
- Finally, on January 23, 2003, six months after the first arrest and advisement of charges against him, Rothgery was appointed a lawyer.
- In short order, this lawyer got the bond reduced so Rothgery could get out, obtained verification of the fact that Rothgery had never been convicted of a felony and gave this proof to the county attorney. At this point the county attorney filed a motion to dismiss the case and the court issued an order of dismissal.

**Gillespie County, Texas Position:**

- Gillespie County was following its longstanding policy that a defendant was NOT ENTITLED to court appointed counsel until such time that formal charges (meaning the formal involvement of the prosecutor) are filed. In this case – six months after Rothgery had been arrested, advised of the charges and put in jail.

**Rothgery's Position:**

- Rothgery argued that this policy violated his 6<sup>th</sup> amendment right to counsel and that he should have been advised of his right to court appointed counsel at the initial appearance when he was originally arrested and been provided with such counsel if requested.

## Rothgery – The Supreme Court’s Review and Decision

### **The Question Reviewed by the Court:**

- Whether the attachment of the right to counsel also requires that a public prosecutor (as opposed to a police officer) be aware of that initial proceeding or involved in its conduct.
  - (In other words, at what point in the process is the defendant’s right to counsel triggered and does it matter whether or not “formal” charges or actions of the prosecutor have occurred.)

### **The Ruling of the Court:**

- The right to counsel as guaranteed by the Sixth Amendment applies at the first appearance before a judicial officer at which a defendant is told of the formal accusation against him and restrictions are imposed upon his liberty. (Court expressly stated this is a narrow ruling and does not address the time frame for such appointment other than it must be reasonable.)