

**07-440 ROTHGERY V. GILLESPIE COUNTY, TX**

DECISION BELOW: 491 F.3d 293

LOWER COURT CASE NUMBER: 06-50267

**QUESTION PRESENTED:**

The Sixth Amendment right to counsel attaches when “adversary judicial proceedings have been initiated.” *Kirby v. Illinois*, 406 U.S. 682, 688 (1972). This Court has held that when a defendant is arrested, “arraigned on [an arrest] warrant before a judge,” and “committed by the court to confinement,” “[t]here can be no doubt . . . that judicial proceedings ha[ve] been initiated.” *Brewer v. Williams*, 430 U.S. 387, 399 (1977). In this case, petitioner was arrested and brought before a magistrate judge who informed petitioner of the accusation against him, found probable cause that he had committed the offense based on a police officer’s sworn affidavit, and committed him to jail pending trial or the posting of bail.

The question presented is whether the Fifth Circuit correctly held—in a decision that conflicts with those of other federal courts of appeals and state courts of last resort—that adversary judicial proceedings nevertheless had not commenced, and petitioner’s Sixth Amendment rights had not attached, because no prosecutor was involved in petitioner’s arrest or appearance before the magistrate.

**CERT. GRANTED 12/3/2007**