

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

August 1, 2008

No. 06-50267

Charles R. Fulbruge III
Clerk

WALTER ALLEN ROTHGERY

Plaintiff - Appellant

v.

GILLESPIE COUNTY TEXAS

Defendant - Appellee

Appeal from the United States District Court
for the Western District of Texas

ON REMAND FROM THE SUPREME COURT OF THE UNITED STATES

Before KING, WIENER, and OWEN, Circuit Judges.

PER CURIAM:

The Supreme Court vacated this court's judgment in this case and remanded the case to us for further proceedings consistent with its opinion. See *Rothgery v. Gillespie County*, --- U.S. ----, 128 S. Ct. 2578 (2008), rev'g 491 F.3d 293 (5th Cir. 2007). The Court decided what it termed a "threshold issue" in the case, holding that "a criminal defendant's initial appearance before a judicial officer, where he learns the charge against him and his liberty is subject to restriction, marks the start of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel." *Id.* at ----, 128 S. Ct. at 2592. The Court did not decide whether Rothgery's Sixth Amendment right had

been violated or, if so, whether Rothgery suffered cognizable harm. Proceeding from a different and incorrect premise on the threshold issue (as did this court), the district court had granted summary judgment in favor of Gillespie County. Under the circumstances, we think it advisable to vacate the district court's judgment and to remand for further proceedings that, from the beginning, are consistent with the Court's opinion.

VACATED and REMANDED. Costs shall be borne by Gillespie County.