Court of Appeals
State of New York

The People of the State of New York,

Respondent,

vs.

Terrill Grice,

Appellant.

Brief of the
New York State Defenders Association

Amicus Curiae

Alfred O'Connor
New York State Defenders Association
194 Washington Avenue
Suite 500
Albany, NY 12210
(518) 465-3524

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INTEREST OF AMICUS

The New York State Defenders Association (NYSDA) is a not-for-profit membership association of more than 1300 public defenders, legal aid attorneys, 18-B counsel and private practitioners throughout the state. With funds provided by the state of New York, NYSDA operates the Public Defense Backup Center, which offers legal consultation, research, and training to more than 5,000 lawyers who serve as public defense counsel in criminal cases in New York. The Backup Center also provides technical assistance to counties that are considering changes and improvements in their public defense systems.

New York State contractually obligates NYSDA, through its Public Defense Backup Center, "to review, assess and analyze the public defense system in the state, identify problem areas and propose solutions in the form of specific recommendations to the Governor, the Legislature, the Judiciary and other appropriate instrumentalities." In this capacity, the Association has issued numerous reports identifying problems in the state's public defense system.

The Court of Appeals has granted NYSDA *amicus curiae* status in numerous cases involving the rights of criminal defendants, including People v. Burdo, 91 N.Y.2d 146 (1997), an important right-to-counsel precedent under the New York State Constitution.

The instant case raises an important issue about the meaning and vitality of the indelible right to counsel rule under this Court's "actual entry" line of state constitutional authority, as the rule was recognized and developed in such cases as People v. Donovan,

13 N.Y.2d 148 (1963); People v. Arthur, 22 N.Y.2d 325 (1968); People v. Hobson, 39 N.Y.2d 479 (1976) and People v. Skinner, 52 N.Y.2d 24 (1980). Under the familiar Donovan-Arthur-Hobson rule, once the police learn that a suspect is represented by counsel in the matter under investigation, they may not question that person in the absence of counsel unless there is an affirmative waiver, in the presence of counsel, of the suspect's right to counsel. The hearing court below erroneously superimposed a significant qualifying condition on application of this well-settled rule. The rule does not apply, the lower held, unless the police learn of a suspect's represented status through direct contact with an attorney. Thus, the police were free to disregard a message personally delivered by the defendant's father at 12:30 p.m. that he had retained a lawyer for his 19 year-old son, and that the attorney was enroute to the precinct. The court below held defendant's indelible right to counsel was triggered too late for suppression because his attorney failed to personally reach the investigating detective by telephone until 2:10 p.m., by which time defendant had already made incriminating statements.

The decision below is inconsistent with a time-honored principle in this State that the right to counsel is a "cherished" one that warrants the "highest degree of judicial vigilance." People v. West, 81 N.Y.2d 370, 373 (1993). The technical loophole created below is precisely the kind of "arbitrary" and "mechanical" requirement this Court has repeatedly warned against in the matter of state constitutional interpretation of the right to counsel. People v. Gunner, 15 N.Y.2d 226, 232 (1965). It is also directly contrary to this Court's holdings in People v. Ellis, 58 N.Y.2d 748 (1982) and People v. Schaeffer,

56 N.Y.2d 448 (1982). If adopted, it would needlessly interfere with the ability of New York attorneys to protect the constitutional rights of their clients during police interrogation, and otherwise undermine the rights of criminal defendants. For these reasons, the New York State Defenders Association has a substantial interest in the instant appeal.

STATEMENT OF FACTS

The hearing court determined that, on January 14, 1998, after appellant, Terrill Grice, was arrested and taken to the 105th precinct in Queens, his father, Joe Grice, arrived at the stationhouse and advised police that he had retained counsel for his son, attorney Stephen G. James, who was enroute to the precinct. Grice conveyed this information at 12:30 p.m., but the police then proceeded to question his son in the absence of counsel and elicited incriminating statements. The hearing court ruled these statements were admissible because police were not obliged to stop questioning appellant until the attorney directly spoke to an investigating detective over the telephone at 2:10 p.m., by which time it was too late as the statements had already been made. The lower court ruled that appellant's father had not invoked his son's right to counsel by earlier advising police he had retained Stephen G. James to represent him. On appeal following appellant's conviction of burglary and related charges, the Appellate Division affirmed the lower court's order denying suppression.

For the sake of brevity, *Amici* otherwise adopts the thorough statement of facts in Appellant's brief.

ARGUMENT

THE HEARING COURT CONFLATED FEDERAL AND STATE CONSTITUTIONAL RULES GOVERNING A SUSPECT'S PRE-ACCUSATORY RIGHT TO THE ASSISTANCE OF COUNSEL WHEN IT HELD POLICE WERE FREE TO IGNORE A MESSAGE DELIVERED BY DEFENDANT'S FATHER THAT HIS SON WAS ACTUALLY REPRESENTED BY A LAWYER IN THE MATTER UNDER INVESTIGATION. UNDER THIS COURT'S CLEAR PRECEDENTS, THIS MESSAGE EFFECTIVELY INVOKED DEFENDANT'S INDELIBLE RIGHT TO COUNSEL UNDER THE NEW YORK STATE CONSTITUTION.

Introduction – 40 Years of Independent State Constitutional Decision-Making

On May 10, 1961, James Beatty, a payroll guard, was shot to death during a botched robbery at the Globe Lighting Company in Maspeth, Queens. In the following days, police arrested several suspects, including 24 year-old Peter Donovan. The suspects were brought to the 104th precinct for questioning. Upon learning of the arrests, Donovan's parents retained attorney Joseph Hallinan to represent their son. Hallinan went to the precinct and demanded to see his client. But he was turned away by Inspector James Knott, who later explained it was New York City police department policy that "no attorney would be allowed to see his client while the client was in police custody being questioned." Held incommunicado, Peter Donovan did not know his parent's had retained Hallinan or about the attorney's attempts to meet with him at the stationhouse. He later made incriminating statements during the course of a marathon three-day interrogation by police and prosecutors. Donovan was convicted of murder in the first degree and sentenced to die in the electric chair.

These simple facts gave rise to a landmark rule of law that, 40 years later, still distinguishes the rights accorded to criminal defendants under Article 1, section 6 of

the New York State Constitution from less protective guarantees of the United States Constitution. By ruling in People v. Donovan, 13 N.Y.2d 148 (1963), that the defendant's right to counsel was violated when the police took Donovan's confession after refusing to allow Hallinan to meet with him at the precinct, this Court held that a criminal suspect's right to counsel can attach prior to the initiation of formal criminal charges. No court in the country had ever said that before.

For a while it seemed as though the United States Supreme Court would follow this Court's lead and likewise rule that an attorney can endeavor to stop police from interrogating a client at the stationhouse. In Escobedo v. Illinois, 378 U.S. 478 (1964), the Court cited Donovan with approval when it held Chicago police violated the 6th Amendment by refusing the defendant's pre-charge request to consult with his retained attorney, and by barring the lawyer from consulting with his client at the stationhouse. However, eight years later, in Kirby v. Illinois, 406 U.S. 682 (1972), the Supreme Court retreated from its reliance on the 6th Amendment as the source of a criminal suspect's right to counsel prior to the initiation of formal criminal charges. In Kirby, the Court held the 6th Amendment right to counsel attaches only when adversary judicial proceedings have been initiated. Consequently, the constitutional violation in Escobedo v. Illinois was recast as one implicating only the 5th Amendment privilege against self-incrimination, a personal right that may be invoked only by the suspect himself. Because Danny Escobedo *knew* his attorney was present in the stationhouse and had demanded to speak with him, the Kirby court explained,

Escobedo merely presaged the Court's decision two years later in Miranda v. Arizona, 384 U.S. 436 (1966), which was based solely on the 5th Amendment privilege against self-incrimination.

These fundamentally different perspectives about the source of a pre-accusatory right to counsel have had a profound influence on the law governing police interrogations under the federal and state constitutions over the past four decades. Time and again, this Court has "breathed life" into the state constitutional safeguard first recognized in Donovan. In People v. Gunner, 15 N.Y.2d 226 (1965), this Court held that an attorney need not demand or be denied access to a client in order for the Donovan rule to apply. Then, in People v. Arthur, 22 N.Y.2d 325, 329 (1968), this Court announced what eventually came to be known as the "indelible" right to counsel in the context of "actual entry" of an attorney in a criminal proceeding: "Once an attorney enters the proceeding, the police may not question the defendant in the absence of counsel unless there is an affirmative waiver *in the presence of the attorney*, of the defendant's right to counsel."

The arrest in Arthur occurred in 1963 before the advent of Miranda warnings, and so it was later suggested that an uncounseled Miranda waiver alone should suffice to safeguard the rights of represented persons who are asked to waive their rights and submit to custodial interrogation. Although for several years the Court adopted this retrograde view [People v. Robles, 27 N.Y.2d 155 (1970); People v. Lopez, 28 N.Y.2d 23 (1971)], the indelible nature of the right to counsel was revitalized in People v.

Hobson, 39 N.Y.2d 479 (1976), where this Court explained that the rule was independently "grounded in this State's constitutional and statutory guarantees of the privilege against self-incrimination, the right to the assistance of counsel, and due process of law" (at 483). Several years later, in People v. Skinner, 52 N.Y.2d 24 (1980), the principle was extended to prohibit *non-custodial* interrogation of a suspect who is known by the police to be represented by a lawyer in the matter under investigation.

Thus, under the Donovan-Arthur-Hobson line of authority, this Court has exercised the "highest degree of [judicial] vigilance" to safeguard a suspect's pre-accusatory right to the assistance of counsel. People v. West, 81 N.Y.2d 370, 373 (1993).

Defendant's Exhibit H

Chief homicide prosecutor Bernard Patten questions Peter Donovan (l) and two other suspects in the Globe Lighting Company payroll robbery during an impromptu "news conference" with Gabe Pressman and other newspaper reporters on May 12, 1961. Although the press was invited into the interrogation room, a lawyer retained by Donovan's family, Joseph Hallinan, was denied access to his client during three days of intensive questioning.

By contrast, the United States Supreme Court has been equally steadfast in its refusal to recognize the attachment of any right to counsel before the initiation of formal criminal charges, other than the 5th Amendment right embodied in the familiar Miranda warnings. Unlike New York's Donovan-Arthur-Hobson rule, the right to counsel under Miranda is personal; it can be asserted only by the suspect who is about to be questioned, not by any person acting on his or behalf, *including a lawyer*. *See* Moran v. Burbine, 475 U.S. 419 (1986).

In the instant case, the hearing court conflated these federal and state constitutional rules when it denied appellant's motion to suppress his custodial statements.

The Hearing Court Conflated State and Federal Constitutional Rules

The hearing court determined that defendant's father, Joe Grice, could not assert his son's right to counsel because "the right to counsel was defendant Grice's *personal* right and could not be invoked on his behalf by family members or other third parties" (emphasis added) (A.184). The hearing court cited for this proposition People v. Cameron, 167 Misc.2d 61 (Sup. Ct. Queens Co. 1995). But Cameron concerned alleged invocation of the Miranda right to counsel prior to or during custodial interrogation, not actual entry of counsel under the Donovan-Arthur-Hobson rule. In Cameron, the defendant's father told the police, as his son was being arrested and led away, that the son "had an attorney and that he would notify her." The father's declared intention to notify the lawyer did not constitute a *request*

for counsel under Miranda, the court ruled, because the right is "personal to the suspect" and may not be invoked by others. Moreover, although the father's comment was sufficient to alert the police that his son had an attorney on an unrelated case, the court held it did not indicate that counsel had been retained on the matter under investigation and so was insufficient to constitute counsel's actual entry into the proceedings.

In general, this Court's Article 1, section 6 jurisprudence has not been focused on 5th Amendment rights encompassed by Miranda. In People v. Cunningham, 49 N.Y.2d 203 (1980), this Court relied on the state constitution to categorically prohibit any subsequent questioning of a suspect who has invoked the right to counsel under Miranda, a rule that proved to be more protective than the somewhat more limited prohibition later adopted by the Supreme Court.[1] In addition, whereas the government bears the burden of proving the voluntariness of a Miranda waiver by a preponderance of the evidence under the federal constitution [Colorado v. Connelly, 479 U.S. 157 (1986)], in New York the People must do so beyond a reasonable doubt. People v. Valerius, 31 N.Y.2d 51 (1972). But no special rules governing Miranda issues have otherwise been recognized in New York. S*ee e.g.,* People v. Glover, 69

[1]Under Edwards v. Arizona, 451 U.S. 477 (1981), and Arizona v. Roberson, 486 U.S. 675 (1988), once a suspect in police custody invokes the 5th Amendment right to counsel, police may not engage in further questioning on any matter – whether related or unrelated to the custodial charge – until counsel has been made available, *unless the suspect initiates further communication, exchanges or conversations with the police and then agrees to waive the right to counsel.* As noted, under Cunningham, the police are precluded from engaging in any further questioning even when the defendant initiates the discussion.

N.Y.2d 969 (1995) (request for counsel under Miranda must be unequivocal); Davis v. United States, 512 U.S. 452 (1994) (same); People v. Yukl, 25 N.Y.2d 585 (1969) (reasonable person standard governs Miranda custody determination); Stansbury v. California, 511 U.S. 320 (1994) (same). While this Court has never decided whether a relative, friend or associate may invoke the right to counsel under Miranda on behalf of an adult suspect in police custody [*cf.* People v. Lee, 155 Misc.2d 337 (Sup. Ct. Kings Co. 1992)], there is no need to do so here. Contrary to the hearing court's conclusion, Joe Grice did not seek to invoke his son's right to counsel under Miranda. He asserted it under the Donovan-Arthur-Hobson rule when he informed police his son was actually represented by counsel in the matter under investigation.

The Indelible Right to Counsel in New York is not dependent on Arbitrary or Mechanical Rules.

Under well-established New York law, there is no requirement that an attorney directly contact the police to inform them he or she represents a suspect in order to enter the proceedings and trigger a client's indelible right to counsel. As a practical matter, lawyers in New York almost always contact the police because the needs of a client in police custody are urgent, and the attorney's direct involvement tends to minimize credibility contests at Huntley hearings over such matters as the time of entry. But sometimes an attorney is not available to immediately communicate with the police, and other persons may effectively inform them that a suspect is represented by counsel. Under this Court's clear precedents, it is the content of the

message, not the identity of the messenger, that matters. The point was made clear long ago in People v. Arthur, 22 N.Y.2d 325, 329, where this Court stated:

> [O]nce the police know *or have been apprised* of the fact that the defendant is represented by counsel or that an attorney has communicated with the police for the purpose of representing the defendant, the accused's right to counsel attaches; and this right is not dependent upon the existence of a formal retainer.

This Court has expressed the same principle many times, often in memorable language. The Donovan-Arthur-Hobson rule is not dependent on "mechanical and arbitrary requirement[s]." People v. Gunner, 15 N.Y.2d at 232. And, the police may not seize on "arguable ambiguities" in the attorney-client relationship to deprive a suspect of the aid of counsel [People v. Marrero, 51 N.Y.2d 56, 59 (1980)], or otherwise play "fast and loose" with constitutional commands regarding the prohibition on interrogation in the absence of a suspect's lawyer. People v. Ramos, 40 N.Y.2d 610, 618 (1976). It does not matter who alerts the police that a suspect is represented by an attorney, so long as the message is effectively communicated in some manner. This conclusion is apparent not only from the Court's consistent pronouncements on the subject dating back nearly 40 years, but also from actual holdings of this Court.

The Decision Below is Inconsistent with Prior Holdings of this Court and other Courts.

People v. Ellis

For example, in People v. Ellis, 58 N.Y.2d 748 (1982), it was the defendant himself who effectively communicated to the police that he was represented by counsel in the matter under investigation. In Ellis, homicide detectives left a message with a desk clerk at the hotel where Ellis resided that they wished to speak to him about a dead body discovered in the building. The following day, Ellis phoned the precinct and left a message that he would voluntarily appear that morning with his attorney to answer questions. On arriving at the precinct, Ellis inquired whether his lawyer had arrived yet. Upon being informed that the lawyer was not there, Ellis produced the lawyer's business card and handed it to one of the detectives. Without waiting for the lawyer to arrive, Detective Vallone informed Ellis of the Miranda rights and asked him to waive them. Ellis did so and made incriminating statements, which he later sought to suppress. The hearing judge (Hon. Burton Roberts) rejected the prosecution's contention that defendant's indelible right to counsel had not attached because the attorney failed to personally communicate with the police:

> In determining whether a lawyer has entered the proceedings 'mechanical' and 'arbitrary' requirements should be avoided (People v. Gunner, 15 N.Y.2d 226, 231-232; People v. Arthur, 22 N.Y.2d 325, 328-329). Although in the cases cited above, the attorneys themselves did some affirmative act to make their presence known, Ellis was just as affirmative in declaring that he had an attorney. Indeed, he gave the attorney's name and telephone number to Detective Vallone. It would be a harsh rule, indeed, that would determine the existence of an attorney-client relationship solely upon the exertions of the attorney.

People v. Ellis, 91 Misc.2d 29, 35 (Sup. Ct. Bronx Co. 1977).

Nevertheless, the hearing court denied suppression of defendant's initial incriminating statement because Ellis was not in custody when he made it. Under the law prevailing at the time, the indelible right to counsel under the Donovan-Arthur-Hobson line had not yet been extended to non-custodial interrogations. However, by the time the case reached the Court of Appeals People v. Skinner, 52 N.Y.2d 24 (1980), had been decided, and it was then clear that if Ellis effectively communicated that he was represented by an attorney, all of his statements should have been suppressed. This Court held that he "adequately apprised the police that he had retained an attorney with respect to the matter under investigation" (at 750). Consequently, defendant's purported waiver of the right to counsel in the absence of his attorney was ineffective and the conviction was reversed.

The teaching of Ellis was aptly summarized by the Appellate Division in People v. Short, 110 A.D.2d 205, 209 (2d Dept. 1985): "[T]he right to counsel will attach under Skinner where the authorities have knowledge that the suspect has retained counsel in the matter under investigation, *and the fact that the attorney may not have directly contacted the authorities to apprise them of this fact or to direct them not to question his client is not controlling in this matter*" (emphasis added).

People v. Schaeffer

In People v. Schaeffer, 56 N.Y.2d 448 (1982) it was the defendant's mother who effectively conveyed a message to the police that her son was represented by counsel. In Schaeffer, police sought to question the defendant in a murder

investigation and located him at his mother's house. Defendant voluntarily agreed to accompany the police to the stationhouse and, upon departing, asked his mother to call an attorney named Lester. Later, after defendant had made incriminating statements, a Detective McTigue drove him back to his mother's house to retrieve the murder weapon. While they were still at the house, defendant's mother "called out that there was a lawyer on the telephone." Detective McTigue replied "he would not speak to any lawyer on the telephone and that, if it was defendant's lawyer, she should tell him to meet them at the stationhouse" (at 452-453). The police then returned defendant to the stationhouse, where he made a more detailed confession.

The mother was the sole witness for the defense at the Huntley hearing. The attorney who placed the call and spoke to her that day did not testify. The hearing court denied suppression of the statements made by defendant after he was returned to the stationhouse. This Court reversed, stating "Surely, at this stage in the development of our law on this subject, it hardly needs repetition that, under these circumstances, defendant's right to counsel had attached, that it could not be waived in counsel's absence and that any statements taken in violation of that right would be subject to suppression" (at 454).

The facts in Schaeffer, where defendant's mother alerted the police that an attorney was on the telephone, are not materially distinguishable from the facts here, where defendant's father communicated that his son's attorney was enroute to the precinct. Thus, this Court has expressly held that a parent can effectively advise the

police that an adult child is represented by counsel and thereby trigger the indelible right to counsel under the state constitution. *See also,* People v. Gomez, 90 A.D.2d 458 (1st Dept. 1982) (Denying suppression only because defendant's father's testimony that he informed police his son was represented by counsel was "equivocal" and had not been credited by the hearing court).

Appellate Division Authority

Indeed, under New York law there is no requirement that *anyone* deliberately communicate with the police for the purpose of informing them that a suspect is represented by an attorney in the matter under investigation. Even when such information is only indirectly or passively conveyed, law enforcement officials do not have license in New York to simply ignore it. *See e.g.,* People v. Short, 110 A.D.2d 205 (2d Dept. 1985) (Police were chargeable with knowledge that defendant was represented by counsel in connection with grand larceny investigation based, inter alia, on surreptitious tape recordings of his conversations with cooperating witness wherein defendant discussed his lawyer's efforts to resolve the charges under investigation); *see also* People v. Vataj, 164 A.D.2d 957 (2d Dept. 1990) (Comments made by defendant to cooperating witness regarding representation by counsel were not sufficiently specific so that knowledge of defendant's representation by counsel could reasonably be imputed to the police).

Out-of-State Authority

Moreover, although this Court certainly has no need to consult the law of other jurisdictions to elucidate the Donovan-Arthur-Hobson rule, the Supreme Court of Michigan has expressly held that police must honor a parent's message that an adult child is represented by counsel in the matter under investigation. In People v. Bender (Zeigler), 551 N.W.2d 71 (Sup. Ct. Mich. 1996), a case involving a challenge to the voluntariness of a Miranda waiver, defendant-Zeigler's mother called an attorney after her son was arrested on burglary charges. The lawyer advised her to "go to the police station and tell Zeigler not to talk to anyone" until the lawyer arrived (at 72). The mother went to the stationhouse but the police denied her permission to see her son. She told the desk officer that "she had a message for her son from his attorney," and was again told that she could not see him, that she could not convey a message to him, and that she should leave the stationhouse (at 73). The police did not inform Ziegler of these facts before he waived his Miranda rights and incriminated himself. The issue under review was whether Ziegler's waiver of his Miranda rights could be considered knowing and voluntary when the police had failed to advise him that his mother had actually retained an attorney.

The Michigan Supreme Court declined to follow Moran v. Burbine, 475 U.S. 412 (1986), wherein the United States Supreme Court held that an uncounseled Miranda waiver is not rendered involuntary when the police intentionally withhold from a suspect that a family member has retained a lawyer to provide immediate

representation on the custodial charge. Relying on the Michigan Constitution, the court held that a waiver executed under these circumstances is per se invalid, as there is a critical difference between a suspect waiving a theoretical right to counsel during police interrogation and foregoing the assistance of an attorney who has already been retained.[2]

The court determined that an attorney need not personally appear at the stationhouse in order to trigger a police duty to notify the suspect. It also held that a third party messenger (*i.e.,* Ziegler's mother) can effectively inform the police of the existence of the attorney-client relationship. The court stated:

> In many cases a phone call or messenger may well be the most efficient, effective - and most diligent - means of transmitting a message to a client. This is true, for example, when an attorney is 1) engaged in trial, 2) handling an urgent matter for another client, 3) located far from where the suspect is being detained, or 4) delayed by traffic or weather conditions (emphasis added) (at 81).

By so holding, the Michigan Supreme Court applied a principle of law that has long inspired this Court's Article 1, section 6 jurisprudence: state constitutional rules governing a suspect's pre-accusatory right of access to counsel should not depend on "arbitrary" or "mechanical" requirements. Contrary to the People's arguments here,

[2] Many other courts have similarly rejected Moran v. Burbine under their state constitutions. *See* People v. Houston, 724 P.2d 1166 (Sup. Ct. Ca. 1986); State v. Stoddard, 537 A.2d 446 (Sup. Ct. Conn. 1988); Bryan v. State, 571 A.2d 170 (Sup. Ct. Del. 1990); Haliburton v. State, 514 So.2d 1088 (Sup. Ct. Fla. 1987); People v. McCauley, 645 N.E.2d 923 (Sup. Ct. Ill.1994); West v. Commonwealth, 887 S.W.2d 338 (Sup. Ct. Ky. 1994); State v. Reed, 627 A.2d 630 (Sup. Ct. N.J. 1993); State v. Simonsen, 878 P.2d 409 (1994) (Sup. Ct. Ore. 1994); Commonwealth v. Mavredakis, 725 N.E.2d 169 (Sup. Jud. Ct. Mass. 2000).

this principle has lost none of its vitality in New York, the birthplace of the pre-accusatory right to counsel.

This Court Should Adhere to its Prior Decisions

In the cherished area of the state constitutional right to counsel, this Court has only once laid aside concerns about *stare decisis* and overruled a leading precedent. *See* People v. Bing, 76 N.Y.2d 331 (1990), *overruling* People v. Bartolomeo, 53 N.Y.2d 225 (1981). In the end, the decision to do so was justified by the undeniable fact that the rule under review was riddled with exceptions, and by widely held perceptions that it was "unworkable" and had imposed "unacceptable burden[s] on law enforcement" (Bing at 337, 360). In the instant case, the People ask this Court to significantly narrow the indelible right to counsel under the Donovan-Arthur-Hobson rule, a result that would be unprecedented since Hobson was decided in 1976. The People also ask this Court to overrule its holdings in People v. Ellis, 58 N.Y.2d 748, and People v. Schaeffer, 56 N.Y.2d 448. However, there is nothing about the uncontroversial rule under review here – *i.e.*, that a family member, friend or associate may effectively inform police that a suspect is represented by counsel – that even remotely justifies casting aside the principle of *stare decisis*. And there is nothing about the hair-splitting rule the People now ask this Court to adopt – *i.e.*, that police need only honor direct communications from an attorney concerning a suspect's represented status - that is worthy of this Court's proud heritage of state constitutional interpretation.

The order of the Appellate Division should be reversed.

CONCLUSION

FOR THE ABOVE-STATED REASONS, AND THE REASONS SET FORTH IN APPELLANT'S BRIEF, THE ORDER OF THE APPELLATE DIVISION SHOULD BE REVERSED.

Respectfully submitted

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Alfred O'Connor

Jonathan E. Gradess
Alfred O'Connor
New York State Defenders Assoc.
194 Washington Ave. Suite 500
Albany, New York 12210
(518) 465-3524

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