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**SUPREME COURT OF NEW YORK
KINGS COUNTY**

People v. Miller¹
(decided June 24, 2004)

Collins Miller was indicted on four counts of second degree murder and other charges relating to the homicide of Samuel Amaker, who was shot on February 12, 2004.² Miller moved to suppress certain inculpatory statements made to the police.³ The defendant argued that the statements were obtained in violation of his right to counsel under both the New York State Constitution⁴ and the Federal Constitution.⁵

A witness to the February 12, 2004 murder stated that shortly after Amaker responded to a knock at his door she heard several gunshots.⁶ The witness also heard the voices of three individuals, one of which she recognized as belonging to a woman called “Shatisha.”⁷ While she was unable to positively identify the remaining voices, she recognized that the voices were male.⁸ The

¹ 802 N.Y.S.2d 329 (Sup. Ct. 2005).

² *Id.* at 330.

³ *Id.* at 331.

⁴ N.Y. CONST. art. I, § 6, states in pertinent part: “In any trial in any court whatever the party accused shall be allowed to . . . defend in person and with counsel as in civil actions . . .”

⁵ U.S. CONST. amend., VI, states in pertinent part: “In all criminal prosecutions, the accused shall enjoy the right to . . . have the Assistance of Counsel for his defence.”

⁶ *Id.* at 331.

⁷ *Id.*

⁸ *Id.*

two male intruders, who were wielding guns, entered the bathroom where the witness was hiding and pointed the weapons at her.⁹ “Shatisha” requested that the male intruders hold fire, and they complied.¹⁰ The two men and “Shatisha” then left the apartment.¹¹ On February 13, 2004, Detective Lopez presented the eyewitness with a photo array.¹² At that time, she identified Collins Miller as one of the gunmen who was present at Amaker’s apartment the day before.¹³ While the police officers did not issue a warrant for Miller’s arrest, a federal warrant was issued pursuant to Miller’s violation of probation.¹⁴ Specifically, the violation consisted of a failure to comply with the terms of his drug treatment program.¹⁵

On May 4, 2004, the United States Marshals office executed the federal arrest warrant at 802 Goodlow Street in Dayton, Ohio.¹⁶ Accompanying the marshals were NYPD Detectives Robert Rivera and Kevin Smith, and NYPD Sergeant Coen.¹⁷ The federal officials entered the dwelling in Dayton, Ohio with a battering ram and seized the defendant.¹⁸ Miller was then brought to the United States Marshal’s office for interrogation.¹⁹ According to Detective Rivera, he did not seek an arrest warrant because he believed that the issuance of such a warrant would legally bar the police from

⁹ *Id.*

¹⁰ *Miller*, 802 N.Y.S.2d at 331.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Miller*, 802 N.Y.S.2d at 331.

¹⁶ *Id.*

¹⁷ *Id.* at n.3.

¹⁸ *Id.* at 331.

questioning the defendant.²⁰ The defendant was read his Miranda rights from a federal marshal's warning card at the United States Marshal's facility.²¹ Miller subsequently signed the warnings card and agreed to speak with the detectives.²² During the interrogation conducted by Detectives Rivera and Smith, Collins Miller made inculpatory statements.²³ The Defendant was indicted for murder based on these statements.²⁴ Miller moved for suppression of these statements arguing that his state right to counsel attached upon the issuance of a federal warrant.²⁵ The court denied Miller's motion and held that the federal warrant did not serve to trigger his right to counsel on the unrelated murder charge.²⁶

The New York Supreme Court denied his motion to suppress the inculpatory statements on August 8, 2005, reasoning that the defendant's arrest, by federal marshals pursuant to a violation of a federal parole program, did not invoke his right to counsel on an unrelated murder charge.²⁷ The court acknowledged that, while New York "affords search and seizure protections beyond those which the federal law provides," the state right to counsel provisions are not triggered by the issuance of a federal warrant.²⁸ Under both federal and New York law, a defendant's right to counsel attaches upon

¹⁹ *Id.*

²⁰ *Miller*, 802 N.Y.S.2d at 331 n.2.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 330.

²⁵ *Miller*, 802 N.Y.S.2d at 333.

²⁶ *Id.* at 335.

²⁷ *Id.*

²⁸ *Id.* at 333.

initiation of criminal proceedings.²⁹ However, federal and New York views differ with respect to the definition of the time when criminal proceedings are commenced.³⁰ Thus, in contrast to federal law, which holds that the issuance of a warrant does not trigger the right to counsel, New York law holds that a warrant attaches a defendant's right to counsel.³¹

The court noted that the outcome of the defendant's motion to suppress may have been different had he argued that the state filed a violation of probation based on the murder charges, or if the New York officers had questioned him regarding the probation violation, which was the subject of the federal warrant.³² Furthermore, even if the defendant sought to show that the issuance of the federal warrant was merely used to circumvent the New York right to counsel rule, the outcome of the motion to suppress would still be denied.³³ Under New York law, "a pending unrelated case upon which an arrest warrant has issued does not bar the police from questioning a suspect when the suspect does not in fact have counsel on the unrelated charge."³⁴

In *Kirby v. Illinois*, the Supreme Court announced that a defendant's constitutional right to counsel "attaches only at or after the time that adversary judicial proceedings have been initiated

²⁹ *Id.* at 332 (citing *Kirby v. Illinois*, 406 U.S. 682, 689-90 (1972); *People v. Samuels*, 400 N.E.2d 1344, 1346 (N.Y. 2005)).

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 334.

³³ *Id.* at 335.

³⁴ *Miller*, 802 N.Y.S.2d at 335.

against him.”³⁵ In this case, the Court ruled that it was not constitutional error to admit a witness’ testimony regarding pretrial identification of the defendant at the police station, when the lineup was conducted by officers who did not inform the defendant that he had a right to counsel.³⁶ The Court explained that until the government has committed itself to prosecute, the defendant’s constitutional right to counsel is not invoked.³⁷

The initiation of judicial criminal proceedings is far from a mere formalism. It is the starting point of our whole system of adversary criminal justice. For it is only then that the government has committed itself to prosecute, and only then that the adverse positions of government and defendant have solidified . . . It is this point therefore, that marks the commencement of the “criminal prosecutions” to which alone the explicit guarantees of the Sixth Amendment are applicable.³⁸

While the right to counsel following the inception of formal adversarial proceedings was preserved, the Court refused to impose an absolute constitutional right to counsel, where it was “historically and rationally applicable only after the onset of formal prosecutorial proceedings.”³⁹

The dissent argued that the defendant’s constitutional right to counsel under the Sixth Amendment was violated by a police lineup, where the defendant was not informed of his right to counsel.⁴⁰

³⁵ *Kirby*, 406 U.S. at 688.

³⁶ *Id.* at 685, 687.

³⁷ *Id.* at 689.

³⁸ *Id.* at 689-90.

³⁹ *Id.* at 690.

⁴⁰ *Kirby*, 406 U.S. at 692 (Brennan, J., dissenting).

Relying on *United States v. Wade*,⁴¹ the dissent reasoned that the aid of counsel at a lineup “was indispensable to protect [the defendant’s] most basic right as a criminal defendant—his right to a fair trial . . .”⁴² While the majority in *Kirby* stated that the rules for custodial interrogation established in *Miranda v. Arizona*⁴³ were irrelevant to the issue before the court, the dissent viewed this as erroneous because *Wade* “specifically relied upon *Miranda* in establishing the constitutional principle that controls the applicability of the Sixth Amendment guarantee of the right to counsel at pretrial confrontations.”⁴⁴ The dissent feared that the majority’s denial of a defendant’s access to counsel in the pretrial setting could compromise the accused’s right to a fair trial.⁴⁵

Similarly, in *Powell v. Alabama*, decided in 1932, the Supreme Court determined whether a denial of the right to counsel violated the Fourteenth Amendment due process rights of the defendants facing the death penalty for rape.⁴⁶ In that case, the out-of-state defendants were not given an opportunity to employ counsel,

⁴¹ 388 U.S. 218 (1967).

⁴² *Kirby*, 406 U.S. at 692-93 (Brennan, J., dissenting) (citing *U.S. v. Wade*, 388 U.S. 218, 223-24 (1967)).

⁴³ 384 U.S. 436 (holding that a person subject to interrogation must be advised of certain procedural safeguards including that he or she has the right to remain silent, and the right to retain counsel).

⁴⁴ *Kirby*, 406 U.S. at 694 (Brennan, J., dissenting) (citing *Wade*, 388 U.S. at 226-27).

⁴⁵ *Id.* at 697.

⁴⁶ *Powell*, 287 U.S. 45 at 52; see also U.S. CONST. amend., XIV, which states:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protections of the laws.

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either before or after the indictment and arraignment.⁴⁷

[F]rom the time of [the defendants'] arraignment until the beginning of their trial, when consultation, thoroughgoing investigation and preparation were vitally important, the defendants did not have the aid of counsel in any real sense, although they were as much entitled to such aid during that period as at the trial itself.⁴⁸

Accordingly, the court held that a defendant has a right to counsel once adversary judicial proceedings have been initiated.⁴⁹

Additionally, in *United States v. Pace*, the Court of Appeals for the Ninth Circuit stated that the Sixth Amendment right to counsel does not attach upon arrest or issuance of an arrest warrant.⁵⁰ In that case, following arrest for robbery, the defendant made inculpatory statements to his cellmate who later reported the confession to authorities.⁵¹ The defendant argued that the statements should have been excluded from evidence at trial, because they were violative of his Sixth Amendment right to counsel.⁵² The defense theorized that when the defendant confessed to his cellmate, allegedly acting as a government agent, the defendant's right to counsel had already attached.⁵³ The court disagreed, reasoning that the defendant's right to counsel did not attach until formal charges were made.⁵⁴ Specifically, the court stated that the right to counsel was

⁴⁷ *Id.*

⁴⁸ *Id.* at 57.

⁴⁹ *Miller*, 802 N.Y.S.2d at 332 (citing *Powell*, 287 U.S. at 57).

⁵⁰ *United States v. Pace*, 833 F.2d 1307, 1312 (9th Cir. 1987).

⁵¹ *Id.* at 1309.

⁵² *Id.* at 1310.

⁵³ *Id.*

⁵⁴ *Id.* at 1312.

triggered when the indictment was handed down.⁵⁵ Because the defendant's inculpatory statements were made prior to the government's commitment to prosecute, the defendant's Sixth Amendment right to counsel was not violated.⁵⁶ However, the court specifically limited its holding to federal criminal prosecutions, noting that the time at which the right to counsel is triggered varies under state law, depending upon the criminal procedure rules of the particular state in which the defendant is being prosecuted.⁵⁷

One case which demonstrates the distinction of New York State law from federal law with respect to a defendant's right to counsel, is *People v. Kazmarick*.⁵⁸ In *Kazmarick*, the Court of Appeals held that "[a] pending unrelated criminal case upon which an arrest warrant has issued does not bar the police from questioning a suspect when the suspect does not in fact have counsel on the unrelated charge."⁵⁹ In that case, the defendant, an alcoholic, was a suspect in the arson deaths of five individuals.⁶⁰ He agreed to take a polygraph test on the day of the fire; however, the test was terminated due to his high level of intoxication.⁶¹ On the following day, the defendant was arrested on unrelated charges, including disorderly conduct, for which he was sentenced to fifteen days in county jail.⁶² After his unnecessary incarceration, an arrest warrant was filed

⁵⁵ *Pace*, 833 F.2d at 1312.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ 420 N.E.2d 45 (N.Y. 1981).

⁵⁹ *Id.* at 46.

⁶⁰ *Id.* at 47.

⁶¹ *Id.*

⁶² *Id.*

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pursuant to his failure to appear in court on a shoplifting charge.⁶³ At the time the disorderly conduct sentence ended, the defendant was met by detectives investigating the arson.⁶⁴ The detectives conducted a polygraph test to determine if the defendant was involved in the arson, but they did not attempt to execute the arson warrant.⁶⁵ After the defendant was informed that the polygraph results showed he was untruthful, the defendant confessed to inadvertently starting the fire, which he unsuccessfully tried to extinguish.⁶⁶ A pretrial motion to suppress the confession was denied, and he was convicted of criminally negligent homicide.⁶⁷ The defendant argued that issuance of the shoplifting complaint and arrest warrant “caused his right to counsel to attach ‘indelibly’ on the unrelated arson case.”⁶⁸ Additionally, he argued that this right could not be waived in the absence of counsel.⁶⁹

The court reasoned that while a suspect who has obtained counsel may not be interrogated about charges unrelated to the charge upon which he is being detained, the same is not true when the detainee has failed to retain counsel with respect to the charges for which he is being detained.⁷⁰ Thus, the court ruled that the defendant may have had the right to counsel, but he did not obtain it with

⁶³ *Kazmarick*, 420 N.E.2d at 47.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Kazmarick*, 420 N.E.2d at 48.

⁶⁹ *Id.* at 47.

⁷⁰ *Id.* at 48.

respect to the unrelated shoplifting charge.⁷¹ However, the court made clear that this did not trigger the defendant's right to counsel on the murder charge, which was the subject of the questioning.⁷² Because the defendant was not represented by counsel on the shoplifting charge, upon which he was detained, he did not have a right to counsel on the unrelated murder charge.⁷³ Furthermore, the court noted that if defendant's argument—an unwaivable right to counsel attached upon the filing of an unrelated arrest warrant—was correct, law enforcement officers would face a form of procedural strict liability.⁷⁴ Accepting “the ‘strict liability’ rule for which defendant argued would tax law enforcement officials anywhere with knowledge of accusatory instruments on unrelated charges everywhere, and unnecessarily and unrealistically limit police interrogation procedures.”⁷⁵

Further, in *People v. Rogers*, the Court of Appeals clarified the rules regarding a defendant's right to counsel by holding that “once an attorney has entered the proceeding, thereby signifying that the police should cease questioning, a defendant in custody may not be further interrogated in the absence of counsel.”⁷⁶ Thus, the rights of a defendant are not violated when he or she is not represented by counsel on a charge upon which criminal proceedings have commenced, if the defendant is questioned in the absence of counsel

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Kazmarick*, 420 N.E. 2d at 48.

⁷⁴ *Id.* at 49.

⁷⁵ *Id.* at 48-49 (citing *People v. Servidio*, 433 N.Y.S.2d 169 (App. Div. 2d Dep't 1980); *People v. Miller*, 430 N.Y.S.2d 865 (App. Div. 2d Dep't 1980)).

⁷⁶ *People v. Rogers*, 397 N.E.2d 709, 711 (N.Y. 1979).

regarding a separate, unrelated matter for which criminal proceedings have not yet commenced.⁷⁷ The court in *Miller* clarified the proposition:

[T]he right to counsel on one matter does not trigger for another charge merely upon commencement of criminal proceedings on the unrelated charge. Rather, the right to counsel triggers for an unrelated charge only if counsel actually appears on the matter or if the defendant requests legal representation on the unrelated charge.⁷⁸

In *People v. Blanchard*, the defendant was arrested on an outstanding warrant for violation of probation.⁷⁹ Pursuant to the warrant, he was brought to the detectives' office where he made statements implicating himself in the homicides of two individuals.⁸⁰ Subsequently, he was convicted of four counts of murder in the second degree and two counts of burglary in the second degree.⁸¹ The defendant appealed, arguing among other things, that the inculpatory statements he made to detectives were obtained in violation of his Sixth Amendment right to counsel.⁸² The court stated that the defendant's right to counsel "indelibly attached on the violation of probation charge when the instrument was filed with the court and the arrest warrant issued."⁸³ Nonetheless, the court held that the "pendency of that charge, did not, by itself, bar the police

⁷⁷ *Id.* at 713.

⁷⁸ *Miller*, 802 N.Y.S.2d at 335 (citing *People v. West*, 615 N.E.2d 968 (N.Y. 1993)).

⁷⁹ *People v. Blanchard*, 718 N.Y.S.2d 722, 723 (App. Div. 3d Dep't 2001).

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

from questioning defendant on the unrelated murders since the record does not establish that defendant was actually represented or had requested counsel on the violation of probation charge.”⁸⁴ Therefore, the court held that defendant’s incriminating statements were not admitted in violation of his right to counsel.⁸⁵

While the federal right to counsel arises through the initiation of criminal adversary proceedings, where the government has committed itself to prosecute through the institution of either a formal charge, preliminary hearing, indictment, information or arraignment,⁸⁶ the New York right to counsel is more stringent and arises prior to the filing of an arrest warrant. Additionally, in New York, the initiation of criminal proceedings is defined by statute, while the federal rule has been adopted through caselaw.⁸⁷ Moreover, in New York, a defendant’s right to counsel is not triggered by the filing of a federal arrest warrant.⁸⁸ However, the right to counsel on a state charge could be triggered, if the defendant has retained or requested counsel on a pending unrelated federal charge upon which criminal proceedings have commenced.⁸⁹

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⁸³ *Id.* at 724.

⁸⁴ *People v. Blanchard* 718 N.Y.S.2d at 724 (citing *West*, 615 N.E.2d at 973).

⁸⁵ *Id.* at 725.

⁸⁶ *Kirby*, 406 U.S. at 689.

⁸⁷ *Miller*, 802 N.Y.S.2d at 332.

⁸⁸ *Id.* at 333.

⁸⁹ *Id.* at 335.

EQUAL PROTECTION

United States Amendment XIV, Section 1:

No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.

New York Constitution article I, section 11:

No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, color, creed or religion, be subjected to any discrimination in his civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state.

