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State v. Miller - New Jersey Supreme Court Gives Short Shrift to Right to Counsel

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No person, rich or poor, guilty or not guilty, should be forced to endure the rigors and risks of a criminal trial the very same day he is introduced to his attorney. No attorney can ever be prepared adequately to try a case without having first discussed the case with his client. Period. End of story. Our system should be better than that. It depends upon faith and confidence in the integrity of the system. In turn, the integrity of the system, and public perception of the integrity of the system, require that each accused has a competent attorney by his side.

One component of competent counsel is being fully prepared and conversant in the state's proofs. But competent counsel means much more. Competent counsel is counsel who has spent the necessary time to learn about the background of the accused and the case, the strategy that the accused believes should be followed during the course of the trial, and who has spent the time to answer the many questions that criminal defendants pose to their attorneys. Competent and prepared counsel is one who has interviewed potential witnesses, and one who has strategized together with the accused to develop a theory for defending the case. Competent counsel represents a client, and the role of competent counsel is not simply to usher a file through the next phase of the criminal justice assembly line. These concepts are long-standing, universal truths, not radical notions.

In the recent, shocking decision in *State v. Miller*, the New Jersey Supreme Court abandoned its role as ultimate guarantor of the right to effective counsel and a fair trial for criminal defendants. That statement may sound hyperbolic, but there is no other way to characterize the Court's decision to uphold the conviction of a man whose only contact with his appointed attorney before his trial began was an introductory conversation of less than an hour in a courthouse stairwell. As Justice Albin pointedly observed in his dissent, "today, the majority holds that the right to effective assistance of counsel guarantees nothing more than the presence of an appointed attorney at counsel's table."

The *Miller* case is not about whether an indigent criminal defendant has a constitutional right to bond with or form a social relationship with his attorney. It is about whether an attorney who has never met with his client even to discuss the case can ever be prepared for trial. The facts, briefly. Terrence Miller was arrested on Aug. 4, 2006, and charged with drug distribution offenses that exposed him to ten years' prison time. He was initially represented by private counsel, and then appeared *pro se*. His first court appearance as a client of the Public Defender's Office was on Oct. 29, 2007. At that hearing, a trial date was set for Dec. 10, 2007. His assigned public defender informed the court in late November that she would be unable to try the case. New counsel was assigned by the Public Defender's Office on Thursday, Dec. 6, 2007. That lawyer did some rudimentary work on the case, researching the law and reviewing the discovery. The attorney did not meet the client, however, until Monday morning, Dec. 10, the date the trial was scheduled to begin. The assigned attorney meekly asked for an adjournment on his client's behalf, and was told that the trial would commence immediately, beginning with a motion to suppress the drugs seized. At 10:30, the motion commenced. At this point, the attorney had yet to even discuss the facts of the case or possible witnesses with his brand-new client. As the dissent describes, the attorney and Miller "did not converse about a defense, trial strategy, or whether witnesses should be called or subpoenaed. The attorney did not prepare his client for testimony he might give on the stand." In fact, the attorney heard his client's story for the first time while he was testifying under oath at the suppression hearing.

The Supreme Court in *Miller* would not presume prejudice and found no abuse of discretion in the judge's denial of a request for adjournment. Both the trial court and the Supreme Court majority repeatedly described Miller's case as "a simple drug case," involving "nothing difficult or complex." Anyone who has represented a client in any type of case knows that no case is "simple," particularly so with the prospect of a state prison sentence looming as a result of a conviction. Certainly, counsel could not have presumed the case was "simple," because counsel had never discussed the substance of the case with his client before the case began.

The *Miller* case stems from a complete breakdown, which started when the defense attorney did not stand up before the trial judge to argue to the trial judge, zealously and forcefully, that there was no way he could be prepared to try a case when he had never discussed it with his client. Counsel knew that the trial judge was intent on proceeding with trial, and he likely decided not to raise the ire of the court by making a forceful argument for an adjournment. But when defending the rights of the accused, counsel cannot fear being scolded by the trial judge. The breakdown continued when the trial court placed dispositive weight on its administrative goal of moving its calendar along, sacrificing along the way Miller's right to competent and prepared counsel.

As it has time and time again in the past, our Supreme Court had the opportunity to correct a manifest injustice, and restore faith and integrity to the criminal justice process not only to Miller, but to the trial courts of this state, to the attorneys who appear in our courts daily, and perhaps most importantly, to the public. The *Miller* opinion sadly did not repair the breakdown, and instead will promote future breakdowns of the system that will come in the days and years ahead.

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