State of Tennessee v. Charlotte Lynn Frazier and Andrea Parks

No. M2016-02134-SC-R11-CD

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The facts in State of Tennessee v. Charlotte Lynn Frazier and Andrea Parks are straightforward and uncontested. [1] Various law enforcement agencies within the 19th[2] and 23rd[3] Judicial Districts were engaged in a joint ongoing wiretap investigation looking into the distribution of methamphetamine in Middle Tennessee.[4] The investigation extended from July – October of 2015. The supervising judge of the wiretap investigation was an elected circuit court judge in the 23rd Judicial District, who in late October 2015 issued search warrants upon the homes of the defendant, both of whom resided in the 19th judicial district. [5] Law enforcement obtained the warrants from the supervising judge because of that judge's familiarity with the investigation and the suspects involved in the larger conspiracy. A significant amount of drugs, money and several guns were seized from both Frazier's home and Park's home during the execution of the search warrants.[6]

Ultimately, a presentment issued from Dickson County against the defendants and nearly 100 other people charging them with conspiracy to distribute 300 grams or more of methamphetamine. The Defendants challenged the validity of the search warrants of their residences located in the 19th Judicial District based on the lack of jurisdiction of the issuing

[1] *State v. Frazier,*558 S.W.3d 145 (Tenn. 2018).
[2] The 19th Judicial District is comprised of Montgomery and Robertson County.
[3] The 23rd Judicial District is comprised of Cheatham, Dickson, Houston, Humphreys, and Stewart Counties.
[4] Tenn. Code Ann. 40-6-301 *et.seq.* authorizes and regulates law enforcement's efforts to obtain wiretapping and other electronic surveillance orders to assist in certain criminal investigations.
[5] Tenn. Code Ann. 40-6-304(a) allows the supervising judge to issue wiretap orders for the interception of communications that occurs within his or her judicial district or in any judicial district where the underlying offense may be prosecuted.
[6] *Frazier* at 146-148.

judge from the 23rd Judicial District pursuant to Tenn. R. Crim. Proc. 41(a).[7] Specifically, the defendants challenged the authority of the supervising wiretap judge, admittedly a magistrate for purposes of search warrants, to issue search warrants on property not located in counties within his judicial district. The Circuit Court judge presiding over the proceedings arising from the presentment, granted the motion to suppress and excluded the seized property.[8]

The State sought and was granted an interlocutory appeal under Tenn. R. App. Proc. 9 on this issue and on the non-litigated issue of whether the good-faith exception to the exclusionary rule applies to the instant case. On appeal, the State cited Tenn. Code Ann. 40-1-106 to support its position that the circuit court judge had statewide jurisdiction.[9] In the alternative, the State argued for the first time that even if the judge exceeded his jurisdictional authority, this was a technical violation of Rule 41(a) and the evidence was subject to the good faith exception of the exclusionary rule.[10] The Court of Criminal Appeals affirmed the trial court's ruling on the limited jurisdictional authority of a circuit court judge to issue search warrants. Further, the Court of Criminal Appeals ruled that the good-faith exception to the exclusionary rule was inapplicable because the violation was a constitutional violation, not a technical one, and therefore, the court upheld the suppression of the evidence. The Tennessee Supreme Court accepted the State's Rule 11 application for permission to appeal on both issues raised and decided before the Tennessee Court of Criminal Appeals.[11]

The Tennessee Supreme Court, affirming the decisions of the lower courts, held that the Circuit Court judge of the 23rd Judicial District lacked authority to issue a search warrant for

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[7] Rule 41(a) states "A magistrate *with jurisdiction in the county* where the property sought is located may issue a search warrant authorized by this rule." (emphasis added).
[8] *Frazier* at 147-149.
[9] "The judges of the supreme, appellate, chancery, circuit, general sessions and juvenile courts *throughout the state*, judicial commissioners and county mayors in those officers' respective counties and the presiding officer of any municipal or city court within the limits of their respective corporations, are magistrates…" Tenn. Code Ann. 40-1-106
[10] *State v. Reynolds, 504 S.W.3d 283 (Tenn. 2016).*
[11] *Frazier* at 149.

property located outside of that judge's statutorily designated judicial district "in the absence of interchange, designation, appointment, or some other lawful means of obtaining expanded geographical jurisdiction."[12] Although the Court agreed with the State that the language of Tenn. Code Ann. 40-1-106 was unambiguous, contrary to the holding of the Court of Criminal Appeals, the Tennessee Supreme Court disagreed with the State's contention that the statute gave statewide authority to a Circuit Court judge to perform the duties statutorily bestowed upon magistrates, including, inter alia, the authority to issue search warrants.[13]

Additionally, the Tennessee Supreme Court, relying on the exercise of its general supervisory authority, addressed the issue raised by the State for the first time on appeal that the good-faith exception to the exclusionary rule should apply to the trial judge's action as argued before the Court of Criminal Appeals. The Supreme Court "decline[d] to extend the good-faith exception to the circumstances of this case." In doing so, the Court noted "the delay in raising the issue, the absence of a specific request for extension of the good-faith exception from the State, and the limited scope of review in interlocutory appeals."[14]

At first glance, the *Frazier* decision seems to be one of those mundane decisions that garner little attention in the legal community because of its limited applicability and the unlikelihood that it will be an issue in any future litigation. In practice, there are few situations that lend itself to law enforcement seeking a search warrant for property not within its judicial jurisdiction. And, unlike many opinions that create as many new questions as old ones are answered, the Court's opinion on the jurisdictional powers of circuit court judges as magistrates is clear i.e. a circuit court judge, unless specifically provided in accordance with any statute,[15]

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[12] *State v. Frazier,* 558 S.W.3d at 154-55.
[13] *Frazier* at 153; Tenn. Code. Ann. § 40-1-106.
[14] *Frazier* at 156.
[15] Tenn. Code Ann. 17-1-203 – "The judges and chancellors are…judges and chancellors for the state at large, and as such, may, *upon interchange and upon other lawful ground*, exercise the duties of office in any other judicial district in the state." (2009)(emphasis added); Tenn. Code Ann. 16-2-502 – "Any judge or challenger *may exercise*

cannot issue a search warrant on property outside the statutorily defined judicial district for that judge.[16]

The issue before the Court required it to apply the well-established rules of statutory construction to certain statutes and rules of criminal procedure to ascertain "the geographical jurisdiction of a circuit court judge who is acting as a magistrate."[17] After establishing that circuit court judges are magistrates for purposes of issuing search warrants,[18] the legal authority for the General Assembly to define the geographical makeup of each of the thirty-one (31) judicial districts,[19] and the authority of magistrates to issue search warrants[20] the court undertook a review of relevant statutes which, when read together, lead to the conclusion that a circuit court judge's authority is limited to the geographical jurisdiction to which that judge is elected when serving as a magistrate.[21]

Notably the State never contested the meaning or effect of these laws. Instead, the State argued that circuit court judges were granted statewide authority to perform the duties of magistrates to issue search warrants pursuant to Tenn. Code Ann. 40-1-106 relying on the phrase "throughout the state" for this expanded jurisdictional authority.[22] Although the Court agreed with the State that the statute was unambiguous, contrary to the finding of the Court of Criminal Appeals, it disagreed with the State's contention that the language cited operates to expand the jurisdictional authority of circuit court judges statewide when acting in the capacity of a

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by interchange, appointment, or designation the jurisdiction of any trial court other than that to which the judge or chancellor was elected or appointed."(2009)(emphasis added).

[16] *Frazier* at 151.

[17] *Id.*

[18] Tenn. R. Crim. Proc. 1(e)(3)(magistrates include all judges of courts of record); Tenn. C. Ann § 17-1-103(b)(circuit courts are courts of record).

[19] Tenn. Const. art. VI § 8 (jurisdiction of circuit courts to be established by the Legislature) and art VI, § 1 (the judicial powers of the circuit court shall be established by the Legislature).

[20] Tenn. R. Crim. Proc. 41(a)

[21] *Frazier* at 151.

[22] *Id.*

magistrate. The Court rejected this argument relying again on well-established rules of statutory construction.[23]

If the Supreme Court had limited its opinion to the sole issue raised at the trial court, then the story would have ended and *Frazier* likely would have faded off into obscurity seldom, if ever, to be cited as authority in future litigation. However, the Court, in accepting review of this interlocutory appeal and pursuant its inherent exercise of supervisory authority, also agreed to review the issue of the applicability of the good-faith exception to the exclusionary rule which was first raised by the State before the Court of Criminal Appeals. It is the decision by the Court to address the applicability of the good-faith exception that makes *Frazier* potentially intriguing and possibly serves as a precursor for future litigation.

The good-faith exception to the exclusion of unlawfully seized evidence was first adopted by the Tennessee Supreme Court to allow the introduction of blood evidence improperly seized without a warrant where it was determined that the police conducted the seizure in an objectively reasonable reliance on binding appellate precedent.[24] Later that same year, the Tennessee Supreme Court extended the good-faith exception to evidence seized pursuant to a search warrant reasonably and in good-faith executed by law enforcement believed to be valid, but later determined to be invalid because of a good-faith failure of the parties to comply with affidavit statutory and procedural requirements.[25] The good-faith exception was next invoked to deny suppression of evidence seized pursuant to a constitutionally issued warrant that was defective under Rule 41 due to an inconsequential clerical error which resulted in a variation in the three copies of the search warrant.[26] That same day, the Court found the good-faith exception to apply

[23] *Frazier* at 152-54.
[24] *State v. Reynolds,* 504 S.W.3d 283, 313 (Tenn. 2016)
[25] *State v. Davidson,* 509 S.W.3d 156. 185-86 (Tenn. 2016)
[26] State v. Lowe, 552 S.W.3d 842, 860 (Tenn. 2018)

to evidence seized pursuant a validly issued search warrant, but the police failed to comply with the technical requirement of Rule 41 to leave a copy of the warrant with the defendant.[27]

It is against this backdrop that the State again sought application of the good-faith exception to the exclusionary rule when a circuit court judge exceeds his or her jurisdictional authority as a magistrate to issue a search warrant. First, the State urged the Court to apply the good faith exception because the defect in the warrant was an inadvertent, clerical or technical error to the requirements of Rule 41, similar to the facts in *Davidson, Lowe, and Daniel.* In rejecting this argument, the Court determined that *Frazier* did not "involve an inadvertent, clerical or technical error." Instead the warrant in question in *Frazier* went beyond the constitutional and statutory jurisdictional authority granted him, and therefore, was void ab initio.[28] The State also argued that the good-faith exception should apply because the police acted in an objectively reasonable good-faith reliance on binding appellate precedent under authority approving searches under facts similar to those in this case. However, the Court rejected this argument, stating that the cases cited by the State were not binding on it, but were instead only persuasive authority which it declined to follow.[29]

The *Frazier* opinion marks the first time the Tennessee Supreme Court has refused to extend the good-faith exception to a case before it since its adoption in *Reynolds.* That makes *Frazier* unique, at least momentarily. What makes it interesting and intriguing is why the Court felt the obligation to exercise its supervisory authority to consider the good-faith issue based on the facts before it in the first instance. Frequently, this is done to avoid needless litigation[30] or particularly to eliminate confusion with respect to common law doctrines and procedures.[31]

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[27] *State v. Daniel,* 552 S.W.3d 832, 840-41 (Tenn. 2018)
[28] *State v. Frazier* at 155.
[29] *Frazier* at 156
[30] *Moore-Pennoyer v. State*, 515 S.W.3d 271, 276 (Tenn. 2017)
[31] *Van Tran v. State,* 6 S.W.3d 257, 260 (Tenn. 1999)(overruled in part by *State v. Irick,* 320 S.W.3d 283 (Tenn. 2010) on other grounds).

However, as pointed out by the Court in its opinion and as referenced above, the act of the circuit judge in signing the search warrant for property outside his jurisdiction was a nullity from the start. Clearly there was no relevant common law to the original issue before the court. And if the warrant was void from the start, is there any circumstance that would permit the good-faith or any other exception to somehow breathe life into a non-existent order that needed to be addressed to avoid needless litigation? As farfetched as that question may seem, the Court only relied upon the warrant being void to reject the State's argument that the good-faith exception under *Davidson, Lowe,* and *Daniel* applied.[32] It did not extend this reasoning to its denial under *Reynolds,* instead stating that the State failed to present binding rather than persuasive authority for its argument to apply the good-faith of the exception to this case.[33] Ultimately, the Court observed that under the circumstances of this case "the delay in raising the issue, the absence of a specific request for extension of the good-faith exception from the State, and the limited scope of review in interlocutory appeals, we decline to extend the good-faith exception."[34]

The Court's reasoning not to apply the good-faith exception, while correctly decided, is not reassuring to the finality of its ruling on the jurisdictional authority of the circuit courts to issue search warrants. If one of the reasons for denial was "the delay in raising the issue," then why exercise its judicial authority to agree to consider it? The same question may be asked of the court's reasoning for considering the issue despite the lack of a specific request to extend the good-faith exception and based on the limited scope of review of interlocutory appeals. The court was fully aware of all of these circumstances when it chose to consider the issue. So, what was the point of addressing the good-faith exception?

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[32] *Frazier* at 156
[33] *Id.* (The State relied for legal authority on an Attorney General opinion and two federal district court opinions).
[34] *Id.*

If there is anything that we can learn from *Frazier* it is that the good faith exception to the exclusionary rule is alive and vibrant. It is unprecedented for the Supreme Court to grant permission to review the same exception to the exclusionary rule five times in a span of two years, but that is the reality of what has occurred with the good-faith exception. Clearly the law laying out this recently created exception is evolving and will continue to evolve. In the case of *Frazier,* the Court seemed to send out a standing invitation to "come visit again" when a party is timely in raising and specific in seeking application of the good-faith exception that is presented to them in a Tenn. R. App. Proc. 3 appeal of right. Oh and by the way, it wouldn't hurt to bring a little federal *appellate* authority to the table to support the position that the good-faith exception can overcome a void act. We may find that "under the unique circumstances of that case" even an act that is void ab initio or a nullity might yet have legs to prevent the exclusion of evidence.