State of Tennessee v. Anthony Jerome Miller

575 S.W.3d 807 (Tenn. 2019)

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On May 22, 2019, the Tennessee Supreme Court issued an opinion in *State v. Miller*, which held that "Tennessee Code Annotated section 39-17-1007 does not require search warrants to be applied for by the office of the district attorney general."[1] The issue in the case was whether the word "process" as used in T.C.A. 39-17-1007 included a search warrant. The Tennessee Supreme Court ruled that it did not. This comment will proceed in two parts. First, it will describe the history and holding of the *Miller* case. Second, it will argue that the Tennessee Supreme Court inappropriately ignored the rule of lenity, which required it to give deference to the defendant in resolving the meaning of an ambiguous statute.

The facts of the case as described in the Tennessee Supreme Court opinion are straightforward. The State alleged that on or about January 8, 2015, Mr. Miller committed the offense of Sexual Exploitation of a Minor as defined by Tenn. Code Ann. §39-17-1003(a).[2] As a part of the investigation, "Detective Michael O'Keefe of the Morristown Police Department obtained and executed a search warrant for the Defendant's residence and computers."[3] Detective O'Keefe also filed an affidavit indicating that law enforcement consulted with the district attorney's office before requesting the warrant.[4] The State gathered certain evidence because of this search warrant that they intended to introduce against Mr. Miller.[5]

Mr. Miller filed a motion to suppress the seized evidence arguing that law enforcement did not have the authority to file for a search warrant.[6] The centerpiece of the argument is the statute that governs Sexual Exploitation of a Minor and, specifically, T.C.A. §39-17-1007 which provides that "[n]o process, except as otherwise provided, shall be issued for the violation of [s]ections 39-17-1003 – 39-17-1005 unless it is issued upon the application of the district attorney of the district."[7] Mr. Miller raised the issue of whether the process referred to in this statute includes the search warrant that Detective O'Keefe obtained.[8] If the search warrant was "process," then the statute required the prosecutor to apply for the warrant, and Detective O'Keefe did not have the constitutional authority.[9] If he did not have constitutional authority to seize the evidence, then the evidence could not be introduced at trial.[10]

After a hearing, the trial court denied the motion.[11] The trial court held that a search warrant was an investigative tool and not "process" as referenced in the statute.[12] The court did not delve deeply into the law of process but held that process would refer to something like an arrest warrant, a presentment, or an indictment.[13] Because this did not fit into one of those categories, the trial court found that the search warrant was not process.[14]

Additionally, the trial court found that, even if the issuance of the search warrant constituted process, law enforcement met their obligation by consulting with the district attorney.[15] Although the statute says that the search warrant must be issued upon the *application* of the district attorney, the trial court found that a mere *consultation* with them prior to filing met the statutory definition.[16]

After this ruling, Mr. Miller pled guilty but reserved the certified question of law that is central to this case: "Whether the affidavit in support of [the] search warrant and [the] search warrant [itself] were subject to and complied with the requirements of T.C.A. §39-17-1007?"[17] On appeal, the Court of Criminal Appeals affirmed the trial court's ruling that the statute did not apply to search warrants.[18]

The Tennessee Supreme Court granted Mr. Miller the right to appeal and affirmed the Court of Criminal Appeals' ruling. The Supreme Court began their analysis by rejecting two Court of Criminal Appeals' cases that found in favor of similarly situated defendants.[19] The first case was *State v. Davis*.[20] In that case, the defendant raised the issue presented here, but the Court of Criminal Appeals upheld the warrant based upon other law.[21] The Court of Criminal Appeals did hold that section -1007 "is broad enough to include a search warrant" and that "involvement of the district attorney general was required . . . ."[22] The Tennessee Supreme Court in *Miller* rejected this holding as dictum because "the intermediate appellate court engaged in no particular analysis to arrive at this conclusion."[23]

The Court also addressed *State v. Doria*.[24] In *Doria*, the Court of Criminal Appeals held that the statute required the district attorney to apply for the search warrant but found that the State complied with this rule because the prosecutor signed the application for the warrant.[25] They found the prosecutor's signature to be a level of involvement sufficient to satisfy T.C.A. §39-17-1007's requirements.[26] The *Miller* Court noted that *Doria* cited the supposed dicta in *Davis* and, therefore, rejected the *Doria* holding.[27]

The Court then turned to an analysis of T.C.A. §§40-6-101 through -110 (2018), which provides "the general law regarding the issuance of search warrants."[28] The Court said that T.C.A. §§40-6-101 through -110 does not provide any circumstances under which the district attorney general alone may apply for a search warrant.[29] In fact, Tennessee Rule of Criminal Procedure 41(a) provides a list of the officials who can apply for a search warrant and that list includes any law enforcement officer.[30] The Court found that had the legislature intended to deviate from the wording of Rule 41 and the statutory scheme relating to search warrants, they "would have said so explicitly."[31] Therefore, the Court held that process as listed in T.C.A. 39-17-1007 does not include a search warrant and, therefore, the search warrant in *Miller* was proper.[32]

One of the fundamental rules of statutory construction is the rule of lenity. The rule of lenity requires a court to resolve statutory ambiguity in favor of the criminal defendant.[33] A word is ambiguous if it "can reasonably have more than one meaning."[34] A statute is ambiguous if it "is susceptible [to] more than one reasonable interpretation."[35] As the United States Supreme Court has held, the rule of lenity "reflects not merely a convenient maxim of statutory construction but is based on fundamental principles of due process."[36]

The rule of lenity serves two functions: (1) protecting the legislature's authority to establish the rules of criminal law by preventing the judiciary from being overly punitive and (2) protecting the defendants' rights to due process by ensuring that they have notice of the rules to be used against them.[37] This rule should apply to this case because the legislature has the right to set the rules surrounding search warrants and defendants have the right to know who can obtain search warrants against them. If there is ambiguity in the definition of process, then it should be resolved in favor of the Defendant.

There are at least two points of ambiguity in the word "process" as used in T.C.A. §39-17-1007.[38] First, the definition of "process" in the statute is not obvious. The Supreme Court did not look to dictionary definitions of the word in their ruling, but the definition at the time of the statute's passage is certainly relevant. [39] If a fundamental word in the statute is unclear, then the court should find that the statute's applicability is ambiguous.

The legislature passed T.C.A. §39-17-1007 in 1990, and Black's Law Dictionary at that time included intermediate process in the definition of process.[40] Black's Law Dictionary defined intermediate process (or *mense* process) as "distinguished from *final* process . . . signifies any writ or process issued between the commencement of the action and the suing out of execution. 'Mense' in this connection may be defined as intermediate; intervening; the middle between two extremes." [41]

The definition unties process generally from the process at the beginning of the case. The modern colloquial definition of process is the service of process to begin the lawsuit and that colloquial definition may be how the Supreme Court became confused about this ambiguity. However, the legislators who wrote this statute had a broader understanding at the time they wrote the statute. This is an ambiguity that should be resolved in favor of the Defendant.

Second, the Supreme Court's conclusion makes an unwarranted jump in logic that, at minimum, supplies some ambiguity but arguably serves to discredit the opinion as a whole. The Court finds that the general law concerning search warrants allows law enforcement agents to apply for search warrants.[42] The Court rejected Mr. Miller's argument that T.C.A. § 39-17-1007 narrows this range because, the Court believed, the legislature would have been explicit about narrowing the authority for search warrants had it intended to do so.[43] It says this without providing sufficient examples of divergent rules that might meet its requirements.

This extension of logic is inappropriate. The legislature regularly adds specific rules to an area of established law with more generalized rules. [44] Such is frequently the purpose of legislation and that is likely what happened with this case. The typical rule for search warrants is that law enforcement officers can apply for them. However, it is reasonable to believe that, in cases of sexual exploitation of a minor, the legislature wanted the district attorney to be the applicant and therefore passed a statute to narrow the law.

There is even some precedent for the legislature to set different rules in child sex cases. Tennessee Rule of Criminal Procedure 16 regulates the discovery process in criminal cases.[45] Section (d) of the rule sets out the procedure for protecting discovery and the sanctions for failing to comply with discovery, but (d)(3) set out specific rules for child pornography cases.[46] Although normally the defendant can get a copy of all of the discovery available to the state, Rule 16(d)(3) prevents that copying when the discovery contains documents depicting sexual exploitation of minors.[47] The authors of those rules clearly wanted a difference in sexual exploitation cases and it was unreasonable for the Supreme Court to ignore that difference here.

Defenders of the Tennessee Supreme Court opinion may argue that the modification in Rule 16 is explicit to the point that practitioners can understand the difference while that in T.C.A. §39-17-1007 is not. Rule 16 notes that it overrides the conflicting portions of the law.[48] However, the deviation in T.C.A. §39-17-1007 is its own statute and, by that, declares itself separate and apart from the other law in the field. The sexual exploitation of a minor statute creates a statutory scheme that applies only to that set of crimes. The existence of this statutory scheme is an explicit

modification of the traditional law that should be sufficient for the Tennessee Supreme Court to respect it.

Cases involving sexual exploitation of a minor are sensitive and involve substantial harm to some of the most vulnerable people in society. It is important for the criminal system to get those cases right, but it is also important to investigate them carefully. Being charged with sexual exploitation of a minor can ruin someone's life even if they are eventually acquitted.[49]

If a search warrant is going to be issued on a sensitive case, then it makes sense that the application would have to come from the top officials and it makes sense that the legislature would provide that protection to the potentially harmed subject. Just because the rest of the body of law does not provide for the limitation implied by this statute does not mean that the legislature would not pass a statute containing a limitation. This logical leap supplies an ambiguity that should be resolved in favor of the defendant.

Overall, the rule of lenity provides that ambiguity should be resolved in favor of the defendant. In at least two places, this statute contains ambiguity. First, the definition of process at the time of the law's passage included intermediate process. Second, the addition of a rule to an existing body of law is often done purposefully, so ignoring it in this case is not logical. Therefore, the word process should be read to include a search warrant. The Supreme Court ignored this rule and, therefore, released an incorrect ruling.

1 *State v. Miller*, 575 S.W.3d 807 (Tenn. 2019).
2 *Id*. at 808.
3 *Id*.
4 *Id*. at 810.
5 According to the opinion, law enforcement seized "a Westell wireless router, a Logitech flash drive, Kingston SD card, Kingston micro SD adapter, LG flip phone, three pieces of paper with notes, eight gigabytes Scandisk memory stick, five CDRs, HP computer, three VHS tapes, a JVC video camera, a 32 gigabyte Scandisk from a camera and a Bart router and Samsung cell phone and ninety CDs and DVDs." *Id*. at 809.
6 The opinion discusses the factual basis for the search warrant, but Mr. Miller does not contest the basis for the search warrant so we will not analyze it here.
7 *Id.* at 811 (citing T.C.A. 39-17-1007).
8 *State v. Miller*, 574 S.W.3d at 808.
9 *Id*.
10 *Mapp v. Ohio*, 367 U.S. 643, 655 (1961).
11 *State v. Miller*, 574 S.W.3d at 808.
12 *Id*. at 809-10.
13 *Id*. at 809.
14 *Id.*
15 *State v. Miller*, at 810.
16 *Id.*
17 *Id*. (brackets added).
18 S*tate v. Miller*, No. E2016-01779-CCA-R3-CD, 2017 WL 2839745, at *4-5 (Tenn. Crim. App. July 3, 2017), *perm app granted* (Tenn. Nov. 16, 2017).
19 *Id.* at 811-12.
20 *Id*.
21 *Id*.
22 *State v. Davis*, E2003-02162-CCA-R3-CD, 2004 WL 2378251, at *7 (Tenn. Crim. App. Oct. 25, 2004), *aff'd on other grounds* 185 S.W.3d 338, 347 (Tenn. 2006).

[23] *State v. Miller*, 574 S.W.3d at 811.
[24] *Id*. at 811-12.
[25] *State v. Doria*, No. M2014-01318-CCA-R3-CD, 2016 WL 1694120, at *1 (Tenn. Crim. App. Apr. 26, 2016), *perm. app. denied.* (Tenn. Aug. 17, 2016).
[26] *Id*.
[27] *State v. Miller*, 574 S.W.3d at 811-12.
[28] *Id*. at 812.
[29] *Id.*
[30] *Id*. (citing Tenn. R. Crim. P. 41(a)).
[31] *Id*.
[32] *Id*. at 813.
[33] David S. Romantz, *Reconstructing the Rule of Lenity*, 40 Cardozo Law Review 523, 524 (2008).
[34] *State v. Bowens*, No. E2017-02075-CCA-R3-CD, 2018 WL 5279374, at *5, (Tenn. Crim. App. Oct. 23, 2018), *no perm app filed* (*quoting Lee Med. Inc*. v. *Beecher*, 312 S.W.3d 515, 527 (Tenn. 2010)).
[35] *Bowens*, 2018 WL 5279374, at *5, (*quoting Memphis Hous. Auth. v. Thompson*, 38 S.W.3d 504, 512 (Tenn. 2001)).
[36] *Dunn v. United States*, 442 U.S. 100, 112 (1979).
[37] Romantz, *supra* note 33, at 524.
[38] There are other potentially ambiguous points. For example, amendment No. 1 to § 39-17-1001 said "seizure for the possession of obscene matter shall be in accordance with 39-17-901 – 39-17-908" in section 9. Tenn. Code. Ann. § 39-17-903 states "Upon a showing of probable cause that the obscenity laws of this state are being violated, any judge or magistrate shall be empowered to issue a search warrant in accordance with the general law pertaining to searches and seizures in this state." Section 9 never made it into the final statute, which indicates that the legislature wanted these offenses to be treated differently than typical obscene material.
[39] Courts are restricted to the natural and ordinary meaning of the language used by the legislature in the statute, unless an ambiguity requires resort elsewhere to ascertain legislative intent. *Halbert v. Shelby County Election Comm'n*, 31 S.W.3d 246, 248 (Tenn.2000).
[40] Henry Campbell Black, *Black's Law Dictionary, Abridged Sixth Edition, Centennial Edition (1891-1991), West Publishing Co (1991), 837-838.*
[41] Id.
[42] *State v. Miller*, at 812.
[43] *Id*. at 813.
[44] One example of this comes from the federal law on firearm provisions. Typically, being convicted of a felony makes it illegal for one to own or possess a firearm. 18 U.S.C. § 922. Misdemeanors are typically excluded from this rule. However, Congress believed that domestic violence was a type of misdemeanor that deserved to be treated specially. They, therefore, extended the prohibition in 18 U.S.C. §922 to those convicted of a misdemeanor crime of domestic violence.
[45] Tenn. R. Crim. P. 16.
[46] Tenn. R. Crim. P. 16(d)
[47] *Id*.
[48] *Id*.
[49] For example, Michael Jackson was tried for molestation in 2005. He was acquitted but allegations continued to surface and his public reputation was tarnished.