IN THE SUPERIOR COURT OF WAYNE COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,	)	
	)	
v.	)	INDICTMENT NO. 14-CR-323
	)	
RANDALL MILLER,	)	
Defendant.	)	
	)	

MEMORANDUM IN SUPPORT OF DENYING OR DELAYING ISSUANCE OF PROBATION VIOLATION WARRANT

Randy Miller is currently on probation, based on a sentence imposed on March 23, 2016 in Wayne County Superior Court for the offense of involuntary manslaughter. Miller was sentenced to ten years, to serve one year. At the time sentence was imposed, he had already served in excess of 12 months and therefore, he was released from the Wayne County jail that day.

A special condition of probation was imposed at the time of sentencing, which provided as follows:

You are prohibited from serving as a director, first assistant director, or supervisor, with responsibility for safety in any film production. (Exhibit "A" attached).

Mr. Miller was recently involved in the production of a movie in Serbia and was given the title Director.

At no time did he have any role whatsoever in designing, implementing, or enforcing any aspect of the safety measures that were used during the production of the movie. In fact, he was subservient to Jason Allen, who was hired specifically to supervise all aspects of the safety measures that applied in the production of the movie.[1]

The issue before the court is this: Did the special condition of probation prohibit Miller from serving as a Director in any movie, regardless of who was in charge of safety? Or was he prohibited from serving as a director, or in any other capacity in the production of a movie, if his role had any safety responsibilities?

The state apparently contends that Miller could not serve as a director, even if safety precautions were carved out of the Director's responsibility and expressly assigned to another person. The defense contends that Miller could serve as a director, as long as safety was entirely the responsibility of another individual.

There is, apparently, ambiguity in the way the sentence was imposed. Consider these two examples:

1. You may not possess or consume any controlled substance, narcotic, or prescription drug, unless prescribed by a licensed doctor.

[1] The film was produced with the utmost safety and in full compliance with the Director's Guild of America, the Screen Actors Guild, the Writers Guild of America and British Actors Equity.

2. You may not possess a firearm, a destructive device, or a controlled substance, unless prescribed by a licensed doctor.

In the first example, the clarifying clause ("unless prescribed by a licensed doctor") obviously applies to each of the three prohibitions. In the second example, the clarifying clause presumably only applies to the controlled substance, not the firearm or destructive device prohibitions. Because the wording of the two hypothetical examples is virtually identical in form, the ambiguity is unmistakable.

The trial court has the authority to revoke a probationary sentence only when the defendant has violated rules and regulations prescribed by the court. Moreover, the trial court has the obligation to make criminal sentences, including the terms of probation, "certain, definite and free from ambiguity, and the benefit of any doubt shall be given the accused." *Marks v. State*, 703 S.E.2d 379, 380–81, 306 Ga. App. 824, 825 (2010); *Buice v. Bryan*, 212 Ga. 508 (1956).

If the words of a statute are unclear or ambiguous, then the Rule of Lenity applies and this *requires* that the tie goes to the defendant. *Cosmo v. State*, 320 Ga. App. 397, 739 S.E.2d 828 (2013); *Vines v. State,* 269 Ga. 438, 499 S.E.2d 630 (1998).

Another principle of criminal law is that when a statute is vague and open to interpretation, a criminal prosecution based on that law is unconstitutional. *McNair v. State*, 285 Ga. 514, 678 S.E.2d 69 (2009); *Roemhild v. State*, 251 Ga. 569, 308

S.E.2d 154 (1983). The same rules that apply to statutory construction, apply to the interpretation of a term of probation. *Marks v. State*, *supra;* and *Buice v. Bryan*, *supra*,

The Scalia / Garner rules of statutory construction describe the rule of statutory construction with which we are dealing as a "Series-Qualifier Canon."[2] The rule is this: "When there is a straightforward, parallel construction that involves all nouns or verbs in a series [e.g., director, first assistant director, supervisor], a prepositive or postpositive modifier [with responsibility for safety] *normally applies to the entire series*." This is the canon that would clearly apply in the example above that prohibits the possession of a narcotic, a controlled substance, or a prescription drug, unless prescribed by a doctor. Nobody would construe that prohibition in such a way that the defendant could not possess a narcotic or a controlled substance even if it was prescribed by a doctor. The qualifying phrase applies to all three of the types of drugs – a doctor's prescription is an exception to the prohibition.

The United States Supreme Court applied the rule recently in a case that construed the statute governing restitution in a child pornography case. The statute read as follows:

[2] ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS § 19 (1st ed. 2012).

> The statute enumerates six categories of covered losses. These include certain medical services; physical and occupational therapy; transportation, temporary housing, and childcare; lost income; attorney's fees and costs; and a final catchall category for "any other losses suffered by the victim *as a proximate result of the offense*."

The victims claimed that the "proximate cause" modifier only applied to "any other losses" and not to the other categories (i.e., the victim did not have to prove proximate cause in order to get restitution for medical services, or lost income, etc). The government also advocated for this interpretation. The defense, on the other hand, held that the "proximate cause" qualifier at the end of the statute applied to *all* the prior categories. The Supreme Court agreed with the defense:

> "When several words are followed by a clause which is applicable as much to the first and other words as to the last, the natural construction of the language demands that the clause be read as applicable to all. *Porto Rico Railway, Light & Power Co. v. Mor*, 253 U.S. 345, 348, 40 S.Ct. 516, 64 L.Ed. 944 (1920)." *Paroline v. U.S.*, 134 S.Ct. 1710, 1721, 572 U.S. 434, 447 (2014).

Thus, accepting the canon of statutory construction applied in *Paroline*, the phrase "with responsibility for safety" applies to all the antecedent nouns: director, assistant director, and supervisor.

The prohibition on certain jobs that Miller could perform (director, assistant director, supervisor) only applies to the extent the job involved "responsibility for safety."

The defense urges the court to deny the application for a warrant. The arrest of Randy Miller in California where he lives would be in clear derogation of the principles that virtually every court in the country has advocated in response to the coronavirus pandemic. The court should take every measure that is reasonable to avoid the necessity of individuals being imprisoned, the court should take every measure to avoid the necessity of travel, and in this case, the court should take all reasonable measures to avoid the need to transport a prisoner from California to Jesup, Georgia, which would necessitate the constant quarantining of both Miller and his custodians as they travel across the country.

If the court believes that further inquiry into this matter is necessary, Miller and his counsel urge the court to set this matter down for a warrant application hearing and set it down for a date in the near future when the lawyers can argue the matter in a conference call (or zoom) format and if that does not resolve the issue, set the matter down for an in-court evidentiary hearing at which the lawyers and parties can appear once it is safe to do so.

RESPECTFULLY SUBMITTED,

GARLAND, SAMUEL & LOEB, P.C.

/s/ *Edward T. M. Garland*
EDWARD T. M. GARLAND
Georgia State Bar Number 284900

/s/ *Donald F. Samuel*
DONALD F. SAMUEL
Georgia State Bar Number 624475

/s/ *Amanda Clark Palmer*
AMANDA CLARK PALMER
Georgia State Bar Number 130608

Attorneys for Randall Miller

3151 Maple Drive, N.E.
Atlanta, Georgia 30305
(404) 262-2225 (law firm main number)
(404) 697-9400 (Samuel cell phone)
(404) 932-6664 (Garland cell phone)
(404) 210-2878 (Clark Palmer cell phone)

IN THE SUPERIOR COURT OF WAYNE COUNTY
STATE OF GEORGIA

STATE OF GEORGIA, v. RANDALL MILLER, Defendant.	))))))))	INDICTMENT NO. 14-CR-323

CERTIFICATE OF SERVICE

I hereby certify that I have electronically filed this MEMORANDUM IN SUPPORT OF DENYING OR DELAYING ISSUANCE OF PROBATION VIOLATION WARRANT using the PEACHCOURT E-filing system which will automatically send email notification of such filing, and it has been served directly via email, to all attorneys and parties of record:

John B. Johnson, III
Special Assistant District Attorney
145 North Brunswick Street
Jesup, GA 31546

This the 2nd day of June, 2020.

/s/ *Donald F. Samuel*
DONALD F. SAMUEL
Georgia State Bar Number 624475
GARLAND, SAMUEL & LOEB, P.C.
3151 Maple Drive, N.E.
Atlanta, Georgia 30305