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Opinion No. 00-048

Authority of Law Enforcement Officers to make Misdemeanor Arrests.

QUESTIONS

1. May a law enforcement officer, responding to a crime involving misdemeanor domestic abuse, obtain an arrest warrant for the person who has allegedly committed the crime if that individual has left the scene but the officer has probable cause to make an arrest?

2. If an officer does not take any action to arrest an individual who he has probable cause to believe committed an offense, is the officer liable for his failure to act if that individual commits another act of violence?

3. May a law enforcement officer obtain an arrest warrant for an individual who has committed a misdemeanor that does not involve domestic abuse?

OPINIONS

1. An officer who has probable cause to believe a person has committed a crime involving domestic abuse may obtain an arrest warrant for that individual, after a probable cause finding by a magistrate, or may make a warrantless arrest of that individual, regardless of whether that individual has left the scene.

2. Generally, public employees are provided immunity by the public duty doctrine for injuries caused by a breach of duty owed to the public at large. Therefore, unless a law enforcement officer's actions involve an exception to the public duty doctrine he cannot he held liable for failing to take any action to arrest an individual who he has probable cause to believe committed an offense if that individual commits another act of violence.

3. A law enforcement officer may obtain an arrest warrant, upon a finding of probable cause, for an individual who has committed a misdemeanor that does not involve domestic abuse committed outside the officer's presence.

ANALYSIS

1. Under Tenn. Code Ann. §36-3-619 "[i]f a law enforcement officer has probable cause

to believe that a person has committed a crime involving domestic abuse, whether the crime is a misdemeanor or felony, or was committed within or without the presence of the officer, the preferred response of the officer is arrest."[1] However, an officer also has authority to obtain an arrest warrant for that individual, if he so chooses, and upon a finding that "there is probable cause to believe that the offense was committed and that the defendant committed it." Tenn. R. Crim. P. 4; Tenn. Code Ann. §40-6-205.

2. The public duty doctrine generally provides immunity to public employees for injuries that are caused by the employee's breach of duty owed to the public at large. *Ezell v. Cockrell*, 902 S.W.2d 394, 397 (Tenn. 1995). The purpose of the public duty doctrine is to prevent excessive court intervention into the governmental process by protecting the exercise of law enforcement discretion. *Id.* at 400-401. In *Ezell v. Cockrell*, the plaintiff's husband was killed and she was seriously injured by an intoxicated driver. *Id.* at 396. Prior to the accident, the police chief of the city of Elkington had allowed the defendant to drive the car of an intoxicated friend despite the fact that he knew or should have known that the defendant was intoxicated. *Id.* at 396. The plaintiff sued the city of Elkington and the police chief due to the negligence of the police chief in refusing to arrest the intoxicated driver. *Id.* at 396-397. The Supreme Court concluded that the public duty doctrine barred the plaintiff's suit. *Id.* at 404. *See also Hurd v. Woolfork*, 959 S.W.2d 578 (Tenn. 1997) (public duty doctrine barred plaintiff's lawsuit against sheriff for failing to execute an arrest warrant for an individual who later murdered two people). In its opinion, however, the Court reiterated that an exception to the rule applied where a "special relationship" exists between the plaintiff and the public employee, which gives rise to a special duty that is more particular than the duty owed by the employee to the public at large. *Id.* at 401. The special duty exception is applicable when:

> 1) a public official affirmatively undertakes to protect the plaintiff and the plaintiff relies on the undertaking;
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> 2) a statute specifically provides for a cause of action against an official or municipality for injuries resulting to a particular class of individuals, of which the plaintiff is a member, from failure to enforce certain laws; or
>
> 3) a plaintiff alleges a cause of action involving intent, malice, or reckless misconduct.

Id. at 402.; *See, e.g., Matthews v. Pickett County, et. al.*, 996 S.W.2d 162 (Tenn.1999) (Special duty exception applied where sheriff's deputies failed to arrest plaintiff's husband who they had reasonable cause to believe had violated an order or protection).

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[1]While this provision conflicts with Tenn. Code Ann. §40-7-103, which only authorized an officer to arrest an individual without a warrant for a misdemeanor committed in his presence, as a matter of statutory construction, a specific statutory provision will control over a more general statutory provision. *Matter of Harris*, 849 S.W.2d 334, 337 (Tenn. 1993)

The enforcement of criminal statutes is generally a duty owed to the public at large. Therefore, unless an officer's acts are exempted from the public duty doctrine he will be immune from liability for failing to take any action to arrest an individual who he has probable cause to believe has committed an offense if that individual returns and commits another act of violence.

3. A law enforcement officer may arrest an individual who commits a misdemeanor in his presence or may obtain an arrest warrant for an individual who commits a misdemeanor outside his presence, upon the finding by a magistrate or other authorized officer that there is probable cause to believe that the offense has been committed and that the defendant committed it. Tenn. Code Ann. §40-7-103(1); Tenn. Code Ann. §40-6-205; Tenn. R. Crim. P. 4.

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