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Opinion No. 06-094

Warrantless Arrest on *Ex Parte* Orders of Protection

QUESTIONS

1. What punishment can a defendant receive for violating an *ex parte* order of protection when he or she has knowledge of or has been served with the order and when the violation would not itself be a crime?

2. Can a law enforcement officer arrest such a defendant without a warrant for violating an *ex parte* order of protection?

OPINIONS

1. When the defendant has knowledge of or has been served with the order at the time of the violation, and when the violation would not itself be a crime, punishment for violating an *ex parte* order of protection can include civil or criminal contempt and a civil penalty of fifty dollars ($50.00).

2. Yes, a law enforcement officer can arrest a defendant without a warrant if the defendant violates an *ex parte* order of protection and if the requirements of Tenn. Code Ann. § 36-3-611 have been met.

ANALYSIS

1. The legislature has provided for the punishment of individuals who violate orders of protection in Tenn. Code Ann. § 36-3-610:

> (a) Upon violation of the order of protection or a court-approved consent agreement, the court may hold the defendant in civil or criminal contempt and punish the defendant in accordance with the law. A judge of the general sessions court shall have the same power as a court of record to punish the defendant for contempt when exercising jurisdiction pursuant to this part or when exercising

> concurrent jurisdiction with a court of record. A judge of the general sessions court who is not a licensed attorney shall appoint an attorney referee to hear charges of criminal contempt.
>
> (b) In addition to the authorized punishments for contempt of court, the judge may assess any person who violates an order of protection or a court-approved consent agreement a civil penalty of fifty dollars ($50.00). The judge may further order that any support payment made pursuant to an order of protection or a court-approved consent agreement be made under an income assignment to the clerk of court.
>
> (c) Upon collecting the civil penalty imposed by subsection (b), the clerk shall, on a monthly basis, send the money to the state treasurer who shall deposit it in the domestic violence community education fund created by § 36-3-616.

The plain language of the statute answers the first question. Punishment for violation of an order of protection includes whatever punishments are allowed by law for civil or criminal contempt. Further, a civil penalty of fifty dollars ($50.00) may be assessed.

However, if the order of protection is *ex parte*, the defendant may *not* be found guilty of violation of a protective order under Tenn. Code Ann. § 36-3-612. Tenn. Code Ann. § 36-1-612 provides, as pertinent to this analysis:

> (a) A person who knowingly violates an order of protection issued pursuant to this part, or a restraining order issued to a party who is a victim, as defined in § 36-3-601 (11), commits the offense of violation of a protective order.
>
> (b) In order to be found guilty under this section:
>
> (1) The person must have received notice of the request for an order of protection or restraining order;
> (2) The person must have had an opportunity to appear and be heard in connection with the order of protection or restraining order; and
> (3) The court made specific findings of fact, in the order of protection or restraining order, that the person had committed domestic abuse, as defined in this part.

Tenn. Code Ann. § 36-3-612 (a) and (b). This statute does not apply in the situation of an *ex parte* order since the defendant has not had an opportunity to appear and be heard in connection with the underlying order of protection, and the trial court has not made specific findings of fact in the protective order that the respondent committed domestic abuse as alleged in the petition. Therefore,

punishment for violating an *ex parte* order of protection is limited to those available for contempt and a civil penalty as contemplated by Tenn. Code Ann. § 36-3-610.

2. The requirements for arresting a person who is believed to have violated an order of protection are set forth in Tenn. Code Ann. § 36-3-611:

> (a) An arrest for violation of an order of protection issued pursuant to this part may be with or without warrant. Any law enforcement officer shall arrest the respondent without a warrant if:
>
> (1) The officer has proper jurisdiction over the area in which the violation occurred;
> (2) The officer has reasonable cause to believe the respondent has violated or is in violation of an order for protection; and
> (3) The officer has verified whether an order of protection is in effect against the respondent. If necessary, the police officer may verify the existence of an order for protection by telephone or radio communication with the appropriate law enforcement department.
>
> (b) No ex parte order of protection can be enforced by arrest under this section until the respondent has been served with the order of protection or otherwise has acquired actual knowledge of such order.

Put briefly, law enforcement officers are *required* to arrest individuals *without a warrant* for violation of an order of protection if: (1) the officer has proper jurisdiction; (2) the officer has verified that an order of protection is in effect; and (3) the officer has reasonable cause to believe an order of protection is being violated. If the order of protection is *ex parte*, then it cannot be enforced by arrest until the individual has been served or has actual knowledge of the order.

Tenn. Code Ann. § 36-3-611 clearly authorizes, and in fact requires, arrest without a warrant if the statutory requirements have been met. Op. Tenn. Att'y Gen. 01-119 (July 27, 2001). If the individual has violated an *ex parte* order of protection, a warrantless arrest is still required so long as the defendant has been served with the order of protection or has actual knowledge of it. Therefore, the only remaining issue to be addressed is whether this authority is affected when the violation is due to behavior that would not in and of itself be a crime.

Tenn. Code Ann. § 36-3-611 does not distinguish between violations based on whether or not the behavior would itself be a crime. In fact, if it only pertained to inherently criminal behavior, then the statute would be mere surplusage.

Courts should give the language of a statute its natural and ordinary meaning in light of the substance of the entire statute. *Oliver v. King,* 612 S.W.2d 152, 153 (Tenn. 1981). Statues forming a single statutory scheme should be construed together to make the system consistent in all its parts and uniform in its operation. *Westinghouse Electric Corp. v. King,* 678 S.W.2d 19, 23 (Tenn. 1984),

app. dismissed, 470 U.S. 1075, 105 S. Ct. 1830, 85 L. Ed. 2d 131 (1985); *Pritchard v. Carter County Motor Co.*, 270 S.W.2d 642, 643 (1954); *Bodin Apparel, Inc. v. Lowe*, 614 S.W.2d 571, 573 (Tenn. Ct. App. 1980).

The legislature's intent in enacting the domestic abuse statutes was to "recognize the seriousness of domestic abuse as a crime and to assure that the law provides a victim of domestic abuse with enhanced protection from domestic abuse . . . the official response to domestic abuse shall stress enforcing laws to protect the victim and prevent further harm to the victim." Tenn. Code Ann. § 36-3-618.

When presented with the issue of the right to a jury trial prior to the issuance of orders of protection, the Tennessee Court of Appeals opined that the statute was silent on the issue and that, "the language of this act clearly conveys the legislature's intent to provide a swift and efficient summary proceeding which requires only a hearing in front of a judge, not a jury trial." *Clark v. Crow*, 37 S.W.3d 919, 921 (Tenn. Ct. App. 2000). The language that conveys the legislature's intent to provide a swift and efficient summary proceeding *(ex parte)* also conveys the intent to *prevent* domestic abuse by arresting violators prior to the victim's being harmed. Behavior enjoined by the order of protection can include both criminal and noncriminal acts. Tenn. Code Ann. § 36-3-619. It would be contrary to the legislature's intent for the courts to construe the statute as only applying to violations of the enjoined criminal behavior. Such an interpretation would leave law enforcement officers without the power to prevent domestic abuse, one of the expressly stated purposes of the statute.

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