S T A T E O F T E N N E S S E E
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Opinion No. 08-71

Probable cause to arrest for the offense of violating an order of protection or restraining order

QUESTIONS

1. May a law enforcement officer arrest a suspect for the criminal offense of violating an order of protection or restraining order, under Tenn. Code Ann. § 39-13-113, without first independently verifying that the requirements of Tenn. Code Ann. § 39-13-113(f) are satisfied?

2. May a statement by the alleged victim that the suspect has violated an order of protection or restraining order support an arrest under Tenn. Code Ann. § 39-13-113 without the officer otherwise confirming that the requirements of Tenn. Code Ann. § 39-13-113(f) are satisfied?

OPINIONS

1. The arresting officer must have probable cause to believe that the suspect violated Tenn. Code Ann. § 39-13-113, including probable cause that the requirements of subsection (f) are satisfied. As in the case of an arrest for any other offense, the officer may develop probable cause of a violation of Tenn. Code Ann. § 39-13-113 through independent investigation or other reliable means.

2. If the alleged victim's statement provides the officer with probable cause to believe the suspect has violated Tenn. Code Ann. § 39-13-113 and the victim qualifies as a "citizen informant," the officer may make an arrest. The officer must have probable cause from the victim's statement or from some other means to believe that the requirements of subsection (f) are met.

ANALYSIS

1. Under Tenn. Code Ann. § 39-13-113 (2006), it is a Class A misdemeanor for a person to knowingly violate an order of protection issued under Tenn. Code Ann. §§ 36-3-601, *et seq*. (2005 & Supp. 2007), or a restraining order issued to a victim as defined in Tenn. Code Ann. § 36-3-619. However, under Tenn. Code Ann. § 39-13-113(f), the following circumstances must apply before the violation of an order of protection or a restraining order constitutes this criminal offense:

(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 abuse as defined in Tenn. Code Ann. § 36-3-601.

An arrest for this criminal offense may be with or without a warrant, as authorized by Tenn. Code Ann. § 36-3-611, and it must be conducted under the requirements of Tenn. Code Ann. § 36-3-619. Tenn. Code Ann. § 39-13-113(b).

This opinion request asks whether an officer may effectuate an arrest for this criminal offense without first independently verifying that the three conditions of subsection (f) are satisfied. The request notes that "[i]n many rural counties law enforcement, especially on weekends, has no way of knowing or determining any [of] the provisions of subsection (f)."

An arresting officer with probable cause to believe that a suspect has committed this criminal offense may arrest the suspect. This means that the officer must also have probable cause to believe that the three requirements in subsection (f) have been met, for if one of them is not satisfied, the suspect has not committed the criminal offense. The officer may develop probable cause of these three requirements through an independent investigation or any other reliable means.

Regardless whether someone may be immediately arrested for committing this criminal offense under Tenn. Code Ann. § 39-13-113, an officer may still arrest any respondent to an order of protection issued under Tenn. Code Ann. §§ 36-3-601, *et seq*., for violating the order of protection, so long as the respondent was previously served with the order of protection or otherwise acquired actual knowledge of it. Tenn. Code Ann. § 36-3-611. In fact, under Tenn. Code Ann. § 36-3-611(a), if the following conditions are met, the officer "shall" arrest the suspect without a warrant:

(a) The officer has proper jurisdiction over the area in which the violation occurred;

(b) The officer has reasonable cause to believe the respondent has violated or is in violation of an order of protection; and

(c) 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.

Anyone arrested for such a violation is subject to being held in civil or criminal contempt. Tenn. Code Ann. §§ 36-3-310 and 36-3-612 (Supp. 2007).

If an officer receives verification that an order of protection is in effect and if the officer has jurisdiction and reasonable cause to believe the order has been violated, the officer "shall" arrest the respondent. The officer has no discretion to do otherwise, as this Office previously noted in Op. Tenn. Att'y Gen. 01-119 (July 27, 2001). But this verification requirement merely triggers the statutory duty to arrest; it does not follow that any arrest executed under Tenn. Code Ann. § 36-3-611 must necessarily include this type of independent verification. Rather, an officer with reasonable cause to believe the respondent has violated an order of protection may arrest the respondent on that basis. This is true even if the requirements of Tenn. Code Ann. § 39-13-113(f) are not met to support an arrest for the criminal offense of violating an order of protection or restraining order under Tenn. Code Ann. § 39-13-113.

2. This opinion request also asks whether an alleged victim's statement that a suspect has violated an order of protection or restraining order "standing alone [is] sufficient to justify an arrest without confirming the requirements under subsection (f)[.]" A statement by the alleged victim may be sufficient to give an officer probable cause to arrest a suspect for violating Tenn. Code Ann. § 39-13-113. But the officer must have from the victim's statement or some other source probable cause to believe that the conditions of Tenn. Code Ann. § 39-13-113(f) have been satisfied.

If the alleged victim reporting a violation of an order of protection or a restraining order can also provide information to satisfy the three factors in subsection (f), then that person's statement could supply the probable cause necessary to support an arrest, provided the alleged victim is a "citizen informant." When an informant is a member of the "criminal milieu," the reliability of his or her information must be tested under *Spinelli v. United States*, 393 U.S. 410 (1969), and *Aguilar v. Texas*, 378 U.S. 108 (1964), to ensure (1) the basis of the informant's knowledge and (2) the credibility of the informant or the reliability of the information. *State v. Jacumin*, 778 S.W.2d 430, 432 (Tenn. 1989). But when the information supporting probable cause is gathered from a "citizen informant" with no ties to the criminal community, the information is presumed reliable. *State v. Melson*, 638 S.W.2d 342, 355 (Tenn. 1982).

In this context, the alleged victim already will have succeeded in securing an order of protection or restraining order against the suspect under Tenn. Code Ann. §§ 36-3-601, *et seq*. This fact weighs against considering the alleged victim a part of the "criminal milieu" and in favor of treating this person as a "citizen informant." Furthermore, "[t]he fact that information given by the informant is based upon his personal observation is a reliable basis for [the] conclusion that his statements are true." *Melson*, 638 S.W.2d at 355 (citing *United States v. Rollins*, 522 F.2d. 160 (2d Cir. 1975)). Thus, the alleged victim reporting direct knowledge of a violation of an order of protection or restraining order generally will qualify as a "citizen informant." If the alleged victim is a "citizen informant," the officer may presume that the alleged victim's statements supporting probable cause to arrest the suspect for violating Tenn. Code Ann. § 39-13-113 are reliable.

In any event, as discussed above, under Tenn. Code Ann. § 36-3-611, an officer can still arrest the respondent to an order of protection for violating the order of protection if the respondent was previously served with or informed of the order. A statement by the alleged victim, as a "citizen informant," of a violation is sufficient to give the officer probable cause to arrest the respondent

under Tenn. Code Ann. § 36-3-611, even if the requirements of Tenn. Code Ann. § 39-13-113(f) were not established from the victim's statement or some other means to support an arrest for the criminal offense in Tenn. Code Ann. § 39-13-113.

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