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Opinion No. 08-181

Misdemeanor Arrests: the "police team doctrine"

QUESTION

Can a police officer issue a citation to appear in court for a misdemeanor that has not been committed in his presence?

OPINION

Under the "police team" doctrine, a police officer who receives specific information about unlawful conduct from another law enforcement officer can make a warrantless arrest and issue a citation to a misdemeanant even though the misdemeanor was not committed in the presence of the arresting officer.

ANALYSIS

Tennessee Code Annotated § 40-7-103(a)(1) authorizes a law enforcement officer to make a warrantless misdemeanor arrest of a person who commits a public offense or threatens a breach of the peace "in the officer's presence." Likewise, Tenn. Code Ann. § 40-7-118 directs that "[a] peace officer who has arrested a person for the commission of a misdemeanor committed in the peace officer's presence, or who has taken custody of a person arrested by a private person for the commission of a misdemeanor, shall issue a citation to the arrested person to appear in court in lieu of continued custody and the taking of the arrested person before a magistrate." *Id.* at (b)(1). The answer to your question turns on the construction of the phrase, "the officer's presence."

After surveying Tennessee cases dating from 1907 to 1988 that imposed a strict interpretation of the presence requirement, the court in *State v. Ash*, 12 S.W.3d 800 (Tenn. Crim. App. 1999), observed that Tennessee courts and other state courts had recently "taken a less stringent approach to the presence requirement in certain limited circumstances, including the involvement of more than one law enforcement officer." *Id.* at 804-805. The court in *Ash* concluded that the "police team" approach to the presence requirement is a "viable doctrine in Tennessee." *Id.* at 806.

The "police team" approach allows an officer to arrest an individual for unlawful conduct that did not occur in the presence of that officer but was observed by another law enforcement officer and communicated to the arresting officer. *Id.* at 805-806. Citing *Posser v. Parsons*, 245 S.C. 493, 141 S.E.2d 342, 346 (1965), the court in *Ash* quoted with approval the following description of the "police team" approach: "an act taking place within the view of one officer [is] in legal effect within the [presence and] view of the other cooperating officers." 12 S.W.3d at 805-806.

Although the cases do not specifically delineate the extent of "limited circumstances," a review of the decisions approving the "police team" approach to the presence requirement reveals that the witnessing and arresting actors must be law enforcement officers and that the information leading to the arrest must be reliable and specific. For example, in *State v. Bryant*, 678 S.W.2d 480 (Tenn. Crim. App. 1984), an officer pursuing a speeding defendant's car radioed a description of the car and requested assistance. A second officer heard the dispatch and stopped the defendant even though that officer had not witnessed any unlawful conduct by the defendant. The court held that the presence requirement did not deprive "a pursuing officer, who has grounds upon which to arrest a fleeing offender, of the assistance of a fellow officer when that assistance is requested in a reliable manner." *Id.* at 485.

Similarly, in *State v. Maxey Lewis Hunter*, No. 89-101-III, (Tenn. Crim. App. Oct. 13, 1989), the state appealed after the trial court dismissed a DUI charge against the defendant on the ground that the offense was not committed in the presence of the arresting officer. The Court of Criminal Appeals reversed, holding that "the information in question was quite specific and . . . had been conveyed from one law enforcement officer, who had observed the commission of the offense, to another law enforcement officer . . . who made the arrest in the presence of the witnessing officer." *Id.* at *1. The panel observed that "the purpose of the statute, to prevent groundless misdemeanor arrests of citizens based on hearsay or speculation, has not been frustrated in this case." *Id.* at *2.

Other panels have reached the same conclusion in situations involving an officer's use of reliable information from another officer. *See, e.g., State v. Grady Paul Daverson*, No. E2003-00596-CCA-CD, (Tenn. Crim. App. Dec. 30, 2003)("an officer's use of reliable information from another officer does not violate the statute's purpose 'to protect citizens from harassment and baseless arrest'"); *State v. Teri L. Hopson*, No. 03C01-9601-CC-00007 (Tenn. Crim. App. July 8, 1997)(defendant lawfully arrested for a misdemeanor offense even though the arresting officer did not witness the commission of the offense but relied on a fellow police officer's investigation of a possible drunk driver).

Accordingly, a police officer who receives specific information about unlawful conduct from another officer can make a warrantless arrest and issue a citation to a misdemeanant even though the misdemeanor was not committed in the presence of the arresting officer.

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