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Opinion No. 04-085

Effect of Tennessee Code Annotated § 40-6-215 upon Rule 4 of the Tennessee Rules of Criminal Procedure

QUESTIONS

1. What effect does Tennessee Code Annotated § 40-6-215 have upon Rule 4 of the Tennessee Rules of Criminal Procedure?
2. May the District Attorney General authorize a clerk to issue a warrant under the authority of Rule 4 of the Tennessee Rules of Criminal Procedure?

OPINIONS

1. Tennessee Code Annotated § 40-6-215 supercedes the provisions of Rule 4 and limits the authority of a magistrate or clerk to issue arrest warrants.
2. Yes, the District Attorney General may authorize a clerk to issue a warrant if it appears from the affidavit that there is probable cause that the defendant has committed an offense and one of the affiants is a law enforcement officer as defined by Tenn. Code Ann. § 39-11-106(21).

ANALYSIS

1. Tennessee Code Annotated § 40-6-215 Limits the Authority of a Magistrate or Clerk to Issue Arrest Warrants

Rule 4 of the Tennessee Rules of Criminal Procedure grants broad authority to a magistrate or clerk to issue arrest warrants or criminal summons. The only limitation placed upon this authority in Rule 4 is that the affidavit of complaint must establish that there is probable cause to believe that the defendant has committed an offense.

Tennessee Code Annotated § 40-6-215(a), which tracks the language of Tenn. Code Ann. § 40-6-205, likewise provides for the issuance of arrest warrants but authorizes the judge, magistrate,

or clerk to issue a summons “as an alternative to a warrant of arrest.” Section 215(a), by an amendment added in 2003,¹ then limits the authority of a judge, magistrate, or clerk to issue warrants to situations in which at least one of the affiants is a law enforcement officer. Absent this condition, § 215(a) requires the judge, magistrate, or clerk to issue a summons. Section 215(a) does provide an exception to the requirement that one of the affiants be a law enforcement officer.² In cases involving victims of domestic violence, § 215(a) allows a judge or magistrate to issue a warrant, even if none of the affiants are law enforcement officers, when there is probable cause to believe that an arrest warrant is necessary to prevent an immediate threat of imminent harm to the victim and the magistrate or judge makes a written finding of fact that an arrest warrant rather than a criminal summons is necessary.³

Though the broad grant of authority to issue warrants in Rule 4 and the limitations on that authority under § 215(a) appear to be in conflict, the latter provision controls. As noted in the Committee Comment to Rule 1 of the Tennessee Rules of Criminal Procedure, “statutes passed subsequent to [the Rules’] adoption which conflict with these rules shall control.” Thus, the provisions of § 215 limit the authority of a clerk to issue warrants under Rule 4.

2. The District Attorney General May Direct a Clerk to Issue a Warrant Under Rule 4 of the Tennessee Rules of Criminal Procedure If the Clerk is Otherwise Authorized to Issue a Warrant.

Rule 4 also allows a district attorney general to direct a clerk to issue either a warrant or a summons. The Commission Comment indicates that, when a clerk is performing the judicial function of issuing warrants and summons, the District Attorney General is “empowered to direct the clerk whether to issue a warrant or criminal summons upon a finding of probable cause.” Therefore, Rule 4 only authorizes a District Attorney General to direct a clerk to issue a warrant when the clerk would otherwise be empowered to do so. As noted above, Tenn. Code Ann. § 40-6-215, in conjunction with Tenn. Code Ann. § 40-6-205, limits the situations in which a clerk may issue arrest warrants under Rule 4.

Under these statutes, a clerk is only empowered to issue an arrest warrant if there is probable cause to believe the defendant committed the offense complained of and one of the affiants is a law enforcement officer. Where both requirements are met, a District Attorney General may direct the clerk to issue either a warrant or a summons. Where both requirements are not satisfied, however,

¹ See Acts 2003, Ch. 366, § 5.

² Section 205 also provides for this exception.

³ While the statute requires a “magistrate, judge, or clerk” to issue a summons instead of a warrant when an affiant is not a law enforcement officer, it provides only that a “magistrate or judge may issue a warrant of arrest notwithstanding [that] fact” upon a finding of an immediate threat of harm.

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a clerk will have no power to issue an arrest warrant, and a District Attorney General will thus have no authority to direct the clerk to issue a warrant.

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