IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

David Jonathan Tulis	)	
	)	No. 3:22-cv-00911
v.	)	
	)	
William Orange, et al	)	

ORDER OF INJUNCTION

City of Franklin is hereby ordered to comply with T.C.A. § 40-7-103, arrest by officer without warrant, by remediating its ordinance to conform with state law and correcting the understanding of its officers as to the duty required under Tenn. const. art . 1, sect. 7, regarding arrest warrants.

Respondent is duly and timely served notice of its breach of the warrantless arrest law and the continuing violation by ordinance and policy to T.C.A. § 40-7-103; it has failed to avoid or otherwise defend the equity demands contained in the petition for relief that authorizes the court to halt these wrongs in favor of petitioner.

The court exercises its authority through the First Amendment regarding freedom of speech and the press, the 14th Amendment that applies the U.S. Constitution Bill of Rights upon the states and the Ninth Amendment protecting unenumerated rights.

The court finds that the facts of this case include a misrepresentation of the law by respondent city in its ordinance and a breach of law against petitioner. Code Sec. 6-109 orders officers to make misdemeanor arrests without a warrant if the offense occurs in the officer's

presence. It finds the ordinance commands its officers to operate a system of general warrants. In such system, the officer has in his pocket an imaginary warrant to which he affixes any person's name on his own authority, and affects an arrest for any misdemeanor on the spot without first going to a magistrate for a warrant.

The court makes a finding of law in this case on the role of arrest warrants and the limits in what effectively is a Tennessee statutory escape clause from the constitutional requirement for an arrest warrant by officer in § 40-7-103, with its exceptions to the constitutional rule.

General warrants are forbidden as an injustice, even though they save steps for officers in the arrest process. In our law, arrest of a citizen is a terrible and important act, not to be done lightly as is now the case in city of Franklin. Magical warrants with quickie fill-in-blanks, as it were, are a disturbing custom, a problem evidenced in the petition; general warrants don't cut it under the U.S. and Tennessee constitutions. The arrest process is intended to be cumbersome, clunky and exacting upon the officer to best protect the rights and liberties of the people.

Ignoring the "public offense" standard in the law has allowed officers to escape the following rules for making arrest under warrant.

The magistrate or judge is one who "shall examine, on oath, the affiant or affiants, reduce the examination to writing, and cause the examination to be signed by the person making it" T.C.A. § 40-6-203. Informants; examination. "The written examination shall set forth the facts stated by the affiant or affiants that establish that there is probable cause to believe an offense has been committed and that the defendant committed it," § 40-6-204. Informants; examination; contents. The arrest process has a requirement that even hearsay have a "substantial basis" for believing its source to be "credible" and with a "factual basis."

> If the magistrate is satisfied from the written examination that there is probable cause to believe the offense complained of has been committed and that there is

> probable cause to believe the defendant has committed it, then the magistrate shall issue an arrest warrant. The finding of probable cause shall be based on evidence, which may be hearsay in whole or in part; provided, however, that there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished.

Tenn. Code Ann. § 40-6-205. Issuance; probable cause

The warrantless arrest statute § 40-7-103 begins this way:

> (a) An officer may, without a warrant, arrest a person:
> (1) For a **public offense** committed or a **breach of the peace threatened** in the officer's presence *** (emphasis added)

The court finds that two tests are required before a warrantless arrest for a misdemeanor offense not explicitly mentioned in any of the 11 grounds at § 40-7-103. The officer's presence is test No. 1. The second test is that of public offense *OR* threatened breach of the peace. To honor one test and ignore the other is a due process violation against federal- and state-protected rights.

Petitioner in instant case is not involved in a public offense attending the Tennessee judicial conference, the court finds, and has right to face an arrest only through the office of a magistrate and issuance of a warrant meeting the strict rule. The dispute between plaintiff and respondents Page and Crawford of AOC over his right to attend a government meeting is not left to officer opinion. The officer's duty is to investigate the parties' claims, present the results to a magistrate under oath for a judicial determination of whether arrest occurs. The law does not suffer findings of innocence ***after*** *the injury of arrest is inflicted*, as occurs in this case, with Williamson County general sessions judge M.T. Taylor making such finding of no probable cause.

The court finds that public offense is a crime *whose nature or form is visible*. A public offense is one *in the nature of a breach of the peace*. Statute says "public offense" or "threat of breach of peace." A public offense is an *existing* breach of peace, which excludes crimes such as

that alleged by co-defendant Orange in this case, criminal trespass. A public offense is a crime that contains the elements of visibility to the human eye; it is disturbance of the peace, uproar, threat, intimidation, spectacle, disturbance, notoriousness, riot, affray, causing alarm, fright, causing sense of imminent danger among members of the public.

Rules of statutory construction forbid any reading or use of a law that deletes, negates or renders useless any of its provisions, which instant criminal prosecution for trespass exemplifies, violating the state's peace and tranquility.

The court finds the practice in city of Franklin converts "public offense" into "any crime" to effectively delete the rest of the statute. For, if "public offense" means any crime, why would the general assembly bother to list 10 additional offenses for which the officer is allowed to arrest a citizen without a warrant?

The court finds existing practice of law enforcement in this case is outside the permission of this permissive statute, harming the public interest, and violates plaintiff's federally protected and protectable rights as citizen and press member.

WHEREFORE, in light of its findings of fact and law, it is hereby ORDERED that city Franklin comply with § 40-7-103, in granting the equity relief sought, by accounting for the two tests authorizing an officer to make an arrest without a warrant for an alleged misdemeanor.

1. That said city is enjoined negatively and prohibited from obeying its ordinance in current form, as it is a legal nullity, and void, contradicting state law and abusive against the rights of plaintiff and all people in like station in Tennessee;
2. That the city is mandatorily enjoined to properly restate state law in its ordinances and to train officers, privies and assigns to respect the constitutional rights of the citizenry by making all the steps the law requires to safeguard the peace and

safety of the citizenry so that its members are arrested under judicial sanction obtained *beforehand*, not after the person is seized and jailed, in which such cases errors are common and injury is done against the rights, property and dignity of the people of Tennessee;

3. That respondent city notify all employees that arrests must comply with state law, in protecting federal rights, immediately informing officer William Orange and all other assigns, agents and privies they must avoid false imprisonment and false arrest by performing the two-part warrantless arrest test of (1) "in the officer's presence" and (2) "public offense committed or a breach of the peace threatened" per § 40-7-103;
4. That respondent city yield injunctive relief to his person, and so the persons of those in like station as petitioner, in city of Franklin or whichever Tennessee municipal corporation he chooses to live or to which he visits or travels; Plaintiff herein is protected in the enjoyment of his federal protected and protectable rights and immunities by being in these cities where he has a protectable right to drive, travel by car, communicate, reside, do business, pursue his innocent and harmless occupation and enjoy private pleasures subject to the guarantees in the federal and state constitutions, as well as officer obedience to § 40-7-103 that enumerates warrantless arrest powers upon misdemeanor public offenses;
5. City of Franklin is given notice it is subject to summary proceedings such as contempt of court under the above-styled case if it (1) maintains in its city code a misstated version of Tennessee law (2) allows or accepts custom and usage that

violate § 40-7-103, a law effective statewide and under judicial notice routinely violated;

6. Given the statewide import of this case, injunction is upon any and all other persons or municipal entities in Tennessee of like station operating departments of police or sheriff, following notice and service of this injunction upon any such person, though they be not parties in this case; that they, in the public interest and on behalf of parties in like station as plaintiff, might restore again the presumed innocent members of the public to their rights and privileges.

7. Given that the public interest extends to formation of police officers, sheriff's deputies and other law enforcement officers with arrest powers, the injunction when served upon Tennessee Peace Officers Standards and Training commission and others in like station, dealing with training regarding §40-7-103, and the Tennessee Bar Association and the Tennessee Judicial Conference, whose members are officers of the court protecting the rights of the public, serving a public interest and requiring guidance on limits on warrantless arrest authority.

The court taxes costs of this action to respondent, and reserves other plaintiff rights to have a jury consider his equitable interests in remedy of his false imprisonment and false arrest under the complained-of ordinance.

So ORDERED.

BARBARA D. HOLMES
United States Magistrate Judge

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