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*** Current through the 2014 Regular Session ***

Annotations current through May 23, 2014 for the Tennessee Supreme Court

Title 40 Criminal Procedure

Chapter 6 Warrants

Part 3 Wiretapping and Electronic Surveillance

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Tenn. Code Ann. § 40-6-301 (2014)

40-6-301. Short title.

This part and §§ 39-13-601 -- 39-13-603 shall be known and may be cited as the "Wiretapping and Electronic Surveillance Act of 1994."

HISTORY: Acts 1994, ch. 964, § 2.

NOTES: Cross-References.

Prohibited acts, § 39-13-601.

Section to Section References.

This part is referred to in §§ 39-13-601, 39-13-603.

Collateral References.

Construction and application of 18 U.S.C. § 2511(1)(a) and (b), providing criminal penalty for intercepting, endeavoring to intercept, or procuring another to intercept wire, oral, or electronic communication. 122 A.L.R. Fed. 597.

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Communication Interception



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Tenn. Code Ann. § 40-6-302 (2014)

40-6-302. Legislative purpose.

(a) In order to protect the privacy of wire, oral, and electronic communications, to protect the integrity of court and administrative proceedings, to define, on a uniform basis, the circumstances under which a district attorney general may apply to a court of competent jurisdiction for the interception and use of wire, oral, and electronic communications, to define the circumstances under which a judge in a court of competent jurisdiction may authorize the interception and use of wire, oral and electronic communications, and to prohibit any unauthorized interception or use of those communications, it is necessary for the general assembly to define the circumstances and conditions under which the interception of wire, oral and electronic communications may be lawful. In defining these circumstances, the general assembly seeks to strike a balance between an individual's right to privacy and society's legitimate concern in being protected from criminal activity.

(b) In carrying out illegal activities, criminals often make extensive use of wire, oral and electronic communications. The lawful interception of these communications is an indispensable aid to investigative and law enforcement officials in obtaining evidence of illegal activities. Likewise, it is necessary for the general assembly to safeguard the privacy of innocent persons. Through this part and §§ 39-13-601 -- 39-13-603, the general assembly seeks to prohibit the unauthorized interception of wire, oral and electronic communications and to prohibit the use of illegally obtained wire, oral and electronic communications as evidence in courts and administrative proceedings. The interception of wire, oral or electronic communications, therefore, when no party to the communications has consented to the interception, should be allowed only under compelling circumstances when authorized and supervised by a court of competent jurisdiction and upon a finding of probable cause. Court authorization and supervision ensures that the interception is made only in narrowly defined circumstances and that the information obtained will not be misused. The privacy rights of Tennessee citizens are further protected by limiting the interception of wire, oral, and electronic communications to certain major types of felonies under this code.

HISTORY: Acts 1994, ch. 964, § 1.

NOTES:

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NOTES TO DECISIONS

1. Construction. 2. Expectation of Privacy.

1. Construction.

Court in a wiretapping damages suit erred by awarding less than \$10,000 in statutory damages where the statute mandated that if the court found liability it did not have discretion to refuse an award of damages. *Robinson v. Fulliton*, 140 S.W.3d 312, 2003 Tenn. App. LEXIS 122 (Tenn. Ct. App. Feb. 14, 2003), review or rehearing denied, -- S.W.3d --, 2003 Tenn. LEXIS 790 (Tenn. Sept. 2, 2003).

Defendant's conviction for first-degree premeditated murder was proper because the trial court did not err by admitting the recorded phone calls made by her from the county detention facility following her arrest, *T.C.A. § 40-6-302(b)*. At the beginning of each of defendant's phone calls, a recorded voice informs both parties to the conversation that the call might be recorded at any time; thus, defendant implicitly consented to the interceptions by continuing with the call after the recorded warning. *State v. Smith*, -- S.W.3d --, 2011 Tenn. Crim. App. LEXIS 830 (Tenn. Crim. App. Nov. 14, 2011).

2. Expectation of Privacy.

Secretly videotaped conversations between a suspect and parents made while alone in a police interrogation room were inadmissible since the suspect had a reasonable expectation of privacy; however, the trial court's denial of a motion to suppress the videotapes was harmless error at the guilt phase of trial, but not at the sentencing phase of trial. *State v. Munn*, 56 S.W.3d 486, 2001 Tenn. LEXIS 630 (Tenn. 2001).



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Tenn. Code Ann. § 40-6-303 (2014)

40-6-303. Definitions.

As used in this part and §§ 39-13-601 -- 39-13-603, unless the context otherwise requires:

(1) "Actual damages" means damages given as compensation; damages given as an equivalent for the injury done; damages in satisfaction of, or in recompense for, loss or injury sustained; those damages awarded to a person as compensation, indemnity, or restitution for harm sustained by the person;

(2) "Aggrieved person" means a person who was a party to an intercepted wire, oral or electronic communication, or a person against whom the interception was directed;

(3) "Attorney general and reporter" means the attorney general and reporter of Tennessee;

(4) "Contents," when used with respect to any wire, oral or electronic communication, includes any information concerning the substance, purport or meaning of that communication;

(5) "Court of record" means any circuit or criminal court in the state of Tennessee;

(6) "District attorney general" means the district attorney general of any judicial district where jurisdiction exists to prosecute an offense that is grounds for an intercept order under § 40-6-305, or the judicial district where the interception of communications is to occur;

(7) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by the aid of wire, radio, electromagnetic, photooptical or photoelectronic facilities, but does not include:

(A) Any wire or oral communication;

(B) Any communication made through a tone-only paging device; or

(C) Any communication from a "tracking device" as defined in 18 U.S.C. § 3117;

(8) "Electronic communications service" means any service which provides to users of the service the ability to send or receive wire or electronic communications;

(9) "Electronic, mechanical, or other device" means any device or apparatus which can be used to intercept a wire, oral, or electronic communication other than:

(A) Any telephone or telegraph instrument, equipment or facility or any component thereof;

(i) Furnished to the subscriber or user by a provider of wire or electronic service in the ordinary course of business and being used by the subscriber or user in the ordinary course of its business or furnished by the subscriber or user for connection to the facilities of the service and used in the ordinary course of its business;

(ii) Being used by a provider of wire or electronic communication service in the ordinary course of its business; or

(iii) Being used by an investigative or law enforcement officer in the ordinary course of that officer's duties;

(B) A hearing aid or similar device being used to correct sub-normal hearing to not better than normal;

(10) "Electronic storage" means:

(A) Any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission of the communication; and

(B) Any storage of communication by an electronic communication service for purposes of backup protection of that communication;

(11) "Intercept" means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device;

(12) "Investigative or law enforcement officer" means:

(A) In all counties having a population in excess of two hundred fifty thousand (250,000), according to the 1990 federal census or any subsequent federal census:

(i) Any officer of the state or a political subdivision of the state, who:

(a) Is empowered by law to conduct investigations of or to make arrests for offenses enumerated in § 40-6-305; and

(b) Has successfully completed a training course on the interception and use of wire, oral and electronic communications approved by the Tennessee peace officer standards and training commission or the Tennessee bureau of investigation; or

(ii) Any attorney authorized by law to prosecute those offenses; and

(B) In all other counties:

(i) An agent of the Tennessee bureau of investigation, who:

(a) Is empowered by law to conduct investigations of or to make arrests for offenses enumerated in § 40-6-305; and

(b) Has successfully completed a training course on the interception and use of wire, oral and electronic communications approved by the bureau; or

(ii) Any attorney authorized by law to prosecute those offenses;

(13) "Judge of competent jurisdiction" means a judge presiding over any court of record as defined in this part and §§ 39-13-601 -- 39-13-603 in the state of Tennessee;

(14) "Oral communication" means any oral communication uttered by a person exhibiting an expectation that the communication is not subject to interception under circumstances justifying that expectation, but "oral communication" does not include any electronic communication;

(15) "Pen register" means a device which records or decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which the device is attached, but "pen register" does not include any device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communication services provided by the provider or any device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business;

(16) "Provider of wire or electronic communications service" means an entity which holds itself out to the public as engaged in the business of transmitting messages through the use of wire communication or electronic communication, as both terms are defined in this section;

(17) "Readily accessible to the general public" means, with respect to a radio communication, that the communication is not:

(A) Scrambled or encrypted;

(B) Transmitted using modulation techniques whose essential parameters have been withheld from the public with the intention of preserving the privacy of the communications;

(C) Carried on a subcarrier or other signal subsidiary to a radio transmission; or

(D) Transmitted over a communication system provided by a common carrier, unless the communication is a tone-only paging system communication;

(18) "Recorded device" means the tangible medium upon which sounds and/or images are recorded or otherwise stored, which includes any original phonograph record, disk, tape, audio or video cassette, wire, film, or other medium now known or later developed on which sounds and/or images are or can be recorded or otherwise stored, or any copy or reproduction which duplicates, in whole or in part, the original; and

(19) "Wire communication" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception, including the use of such connection in a switching station, furnished or operated by any person engaged as a provider of wire or electronic communications service in providing or operating those facilities for the transmission of communications.

HISTORY: Acts 1994, ch. 964, § 3; 1996, ch. 903, § 1; 2006, ch. 777, § 1; 2009, ch. 440, §§ 1, 2.

NOTES: Compiler's Notes.

18 U.S.C. § 3117, referred to in this section, concerns mobile tracking devices.

For tables of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

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NOTES TO DECISIONS

1. "Intercept."

1. "Intercept."

Unless an e-mail is actually acquired in its split second transmission over a computer network, it cannot be "intercepted" as that term is reasonably understood. *Cardinal Health 414, Inc. v. Adams*, 582 F. Supp. 2d 967, 2008 U.S. Dist. LEXIS 84713 (M.D. Tenn. Oct. 10, 2008).

Company's allegations that defendants intercepted emails in violation of the Tennessee Wiretap Act (TWA), T.C.A. § 39-13-601 et seq., and the Federal Wiretap Act (FWA), 18 U.S.C. § 2510 et seq., were dismissed because the company had not pled sufficient factual allegations that the emails at issue were obtained contemporaneously with their transmission. *Expert Janitorial, LLC v. Williams*, -- F. Supp. 2d --, 2010 U.S. Dist. LEXIS 23080 (E.D. Tenn. Mar. 12, 2010).



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Tenn. Code Ann. § 40-6-304 (2014)

40-6-304. Order for electronic surveillance -- Application -- Required findings -- Expiration of order -- Recordings -- Evidence -- Motions to suppress.

(a) Each application for an order authorizing the interception of a wire, oral or electronic communication shall be made in writing upon oath or affirmation to a judge of competent jurisdiction in the district where the interception of a wire, oral or electronic communication is to occur, or in any district where jurisdiction exists to prosecute the underlying offense to support an intercept order under § 40-6-305. The application shall state the investigative or law enforcement officer's authority to make the application and shall include the following information:

(1) Identity of the investigative or law enforcement officer making the application, and the district attorney general authorizing the application;

(2) A full and complete statement of the facts and circumstances relied upon by the applicant to justify the applicant's belief that an order should be issued, including:

(A) Details as to the particular offense that has been, is being, or is about to be committed;

(B) A particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted;

(C) A particular description of the type of communications sought to be intercepted; and

(D) The identity of all persons, if known, committing the offense and whose communications are to be or may be intercepted;

(3) A full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(4) A statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

(5) A full and complete statement of the facts concerning all previous applications known to the individuals authorizing and making the application, made to any judge for authorization to intercept wire, oral or electronic communications involving any of the same persons, facilities, or places specified in the application, and the action taken by the judge on each application; and

(6) Where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain results.

(b) The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.

(c) Upon an application the judge may enter an ex parte order, as requested or as modified, authorizing interception of wire, oral or electronic communications within the district in which the judge is sitting, and outside that district but within the state of Tennessee in the case of a mobile interception device, if the judge determines on the basis of the facts submitted by the applicant that:

(1) There is probable cause for belief that an individual is committing, has committed, or is about to commit a particular offense enumerated in § 40-6-305;

(2) There is probable cause for belief that particular communications concerning that offense will be obtained through the interception;

(3) Normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous; and

(4) There is probable cause for belief that the facilities from which, or the place where, the wire, oral or electronic communications are to be intercepted are being used, or about to be used, in connection with the commission of the offense, or are leased to, listed in the name of, or commonly used by the person.

(d) (1) Each order authorizing the interception of any wire, oral or electronic communication under this part or §§ 39-13-601 -- 39-13-603 shall specify:

(A) The identity of all persons, if known, whose communications are to be or may be intercepted;

(B) The nature and location of the communications facilities as to which, or the place where, authority to intercept is granted;

(C) A particular description of the type of communication sought to be intercepted, and a statement of the particular offense to which it relates;

(D) The identity of the agency authorized to intercept the communications, and the identity of the person authorizing the application; and

(E) The period of time during which the interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

(2) An order authorizing the interception of a wire, oral or electronic communication under this part or §§ 39-13-601 -- 39-13-603 shall, upon the request of the applicant, direct that a provider of wire or electronic communication service, landlord, custodian, or other person shall furnish the applicant with all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that the service provider, landlord, custodian, or person is according the person whose communications are to be intercepted. Any provider of wire or electronic communication service, landlord, custodian, or other person furnishing facilities or technical assistance shall be compensated by the applicant for reasonable expenses incurred in providing the facilities or assistance.

(e) No order entered under this section may authorize or approve the interception of any wire, oral or electronic communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than thirty (30) days. The thirty-day period begins on the earlier of the day on which the investigative or law enforcement officer first begins to conduct an interception under the order or ten (10) days after the order is entered. Extensions of an order may be granted, but only upon application for an extension made in accordance with subsection (a) and the court making the findings required by subsection (c). The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event for longer than thirty (30) days. Every order and extension of an order shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in a way as to minimize the interception of communications not otherwise subject to interception under this part or §§ 39-13-601 -- 39-13-603, and must terminate upon attainment of the authorized objective, or in any event in thirty (30) days. In the event the intercepted communication is in a code or foreign language, and an expert in that code or foreign language is not reasonably available during the interception pe-

riod, minimization may be accomplished as soon as practicable after interception. An interception under this part or §§ 39-13-601 -- 39-13-603 may be conducted in whole or in part by state personnel, or by an individual operating under a contract with the state, acting under the supervision of an investigative or law enforcement officer authorized to conduct the interception.

(f) (1) The contents of any wire, oral or electronic communication intercepted by any means authorized by this part or §§ 39-13-601 -- 39-13-603 shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any wire, oral or electronic communication under this subsection (f) shall be done in a way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order, or extensions of the order, the recordings shall be made available to the judge issuing the order and sealed under the judge's direction. All recordings of wire, oral or electronic communications shall be treated as confidential and shall not be open for inspection by members of the public. Custody of the recordings shall be wherever the judge orders. The recordings shall not be destroyed except upon an order of the issuing judge and in any event shall be kept for ten (10) years; provided, that upon the agreement of the person whose communications were intercepted, or that person's counsel, and the appropriate district attorney general, the issuing judge may order the destruction of all recordings at any time. Duplicate recordings may be made for use or disclosure, pursuant to § 40-6-306(a) and (b) for investigations, upon an order of the issuing judge. All duplicate recordings or written transcripts shall be treated as confidential and shall not be open for inspection by members of the public. Upon an order of the issuing judge, the contents of any wire, oral or electronic communication may be unsealed and used while giving testimony, pursuant to § 40-6-306(c). The presence of the seal provided for by this subsection (f), or a satisfactory explanation for the absence of the seal, shall be a prerequisite for the use or disclosure of the contents of any wire, oral or electronic communication or evidence derived therefrom under § 40-6-306(c). All wire, oral or electronic communications that are not disclosed while giving testimony retain their confidential character and shall not be open for inspection by members of the public. Immediately following duplication or use while giving testimony, the recordings shall be returned to the judge issuing the order and resealed under the judge's direction.

(2) Applications made and orders granted under this section shall be treated as confidential and shall not be open for inspection by members of the public. Applications and orders shall be sealed by the judge and custody shall be wherever the judge directs. The applications and orders shall be disclosed only upon a showing of good cause before a judge of competent jurisdiction and shall not be destroyed except on order of the issuing or denying judge and in any event shall be kept for ten (10) years. Upon the agreement of the person named in the order or application, or that person's counsel, and the appropriate district attorney general, the issuing judge may order the destruction of such applications and orders at any time.

(3) Any violation of this subsection (f) may be punished as contempt of the issuing or denying judge.

(4) Within a reasonable time, but not later than ninety (90) days after the termination of an order of approval under subsections (c) and (d), or an order authorizing an extension under subsection (e), or the denial of an order under subsection (c), the issuing or denying judge shall cause an inventory to be served on the persons named in the order or application and any other parties to intercepted communications as determined by the judge exercising judicial discretion in the interest of justice. The inventory shall include notice of:

(A) The fact of entry of the order or the application;

(B) The date of the entry and the period of authorized interception, or the denial of the application; and

(C) The fact that during the period wire, oral or electronic communications were or were not intercepted.

(5) The judge, upon the filing of a motion, may, in the judge's discretion, make available to the person or the person's counsel for inspection any portions of the intercepted communications, applications and orders as the judge determines to be in the interest of justice. On an ex parte showing of good cause to a judge of competent jurisdiction, the serving of the inventory required by this subsection (f) may be postponed for ninety (90) days. At the end of this period, the judge may allow additional ninety-day extensions, but only on further showing of good cause.

(g) The contents of any intercepted wire, oral or electronic communication or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in a state court unless each party, not less than ten (10) days before the trial, hearing, or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized. This ten-day period may be waived by the judge if the judge finds that it was not possible to furnish the party with the information ten (10) days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving the information.

(h) (1) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the state of Tennessee or a political subdivision of the state may move to suppress the contents of any intercepted wire, oral or electronic communication, or evidence derived therefrom, on the grounds that:

(A) The communication was unlawfully intercepted;

(B) The order of authorization under which it was intercepted is insufficient on its face; or

(C) The interception was not made in conformity with the order of authorization. The motion shall be made before the trial, hearing or proceeding, unless there was no opportunity to make the motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire, oral or electronic communication, or evidence derived therefrom, shall be treated as having been obtained in violation of this part or §§ 39-13-601 -- 39-13-603. The judge, upon the filing of a motion by the aggrieved person, may, in the judge's discretion, make available portions of the intercepted communication, or evidence derived therefrom, as the judge determines to be in the interest of justice.

(2) In addition to any other right to appeal, the state has the right to appeal from an order granting a motion to suppress made under subdivision (h)(1), or the denial of an application for an order of approval, if the district attorney general certifies to the judge or other official granting the motion or denying the application that the appeal is not taken for purposes of delay. The appeal shall be taken within thirty (30) days after the date the order was entered and shall be diligently prosecuted.

HISTORY: Acts 1994, ch. 964, § 5; 2005, ch. 87, § 1.

NOTES: Cross-References.

Confidentiality of public records, § 10-7-504.

Section to Section References.

This section is referred to in §§ 40-6-305, 40-6-308.

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NOTES TO DECISIONS

1. Relationship With Federal Law. 2. Requirements. 3. "Commonly Used." 4. Substantial Basis. 5. Standing.

1. Relationship With Federal Law.

Courts interpret *T.C.A. § 40-6-304(a)(3)* in light of Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. § 2518(1)(c) precedents. *State v. Moore*, 309 S.W.3d 512, 2009 Tenn. Crim. App. LEXIS 645 (Tenn. Crim. App. Aug. 10, 2009), appeal denied, -- S.W.3d --, 2010 Tenn. LEXIS 191 (Tenn. Feb. 22, 2010), cert. denied, *Moore v. Tennessee*, 178 L. Ed. 2d 190, 131 S. Ct. 290, -- U.S. --, 2010 U.S. LEXIS 7450 (U.S. 2010).

2. Requirements.

Electronic wiretap application contained a sufficient statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous; it set out, in detail, both general information about the difficulties involved in investigating a large drug trafficking organization and particular facts of the case which would indicate that wiretaps were not being routinely employed as the initial step in criminal investigation. *State v. Moore*, 309 S.W.3d 512, 2009 Tenn. Crim. App. LEXIS 645 (Tenn. Crim. App. Aug. 10, 2009), appeal denied, -- S.W.3d --, 2010 Tenn. LEXIS 191 (Tenn. Feb. 22, 2010), cert. denied, *Moore v. Tennessee*, 178 L. Ed. 2d 190, 131 S. Ct. 290, -- U.S. --, 2010 U.S. LEXIS 7450 (U.S. 2010).

Wiretapping and Electronic Surveillance Act, *T.C.A. § 40-6-301 et seq.*, does not contain a per se requirement that an issuing judge be advised of call waiting or call forwarding features for minimization purposes; absent such a requirement, a party challenging police minimization procedures must address the specific procedures and calls at issue

and demonstrate that monitoring was not conducted in a way as to minimize the interception of communications not otherwise subject to interception. *State v. Moore*, 309 S.W.3d 512, 2009 Tenn. Crim. App. LEXIS 645 (Tenn. Crim. App. Aug. 10, 2009), appeal denied, -- S.W.3d --, 2010 Tenn. LEXIS 191 (Tenn. Feb. 22, 2010), cert. denied, *Moore v. Tennessee*, 178 L. Ed. 2d 190, 131 S. Ct. 290, -- U.S. --, 2010 U.S. LEXIS 7450 (U.S. 2010).

Wiretap applications satisfied the requisite necessity requirement, as an officer explained the shortcomings of traditional investigative techniques if applied to the investigation of a major drug-trafficking organization, including specific facts and specific examples. *State v. King*, -- S.W.3d --, 2013 Tenn. Crim. App. LEXIS 821 (Tenn. Crim. App. Sept. 24, 2013).

3. "Commonly Used."

Wiretap application set forth a substantial basis from which the issuing court could find probable cause to believe that an individual was the person making telephone calls, based on information about the individual's drug-dealing activities, and pen register statistics; accordingly, the application established probable cause to believe that the individual commonly used the intercepted telephone. *State v. King*, -- S.W.3d --, 2013 Tenn. Crim. App. LEXIS 821 (Tenn. Crim. App. Sept. 24, 2013).

4. Substantial Basis.

Information regarding several buys made by a confidential informant and telephone conversations in which the informant tried to purchase cocaine provided the issuing judge with a substantial basis to conclude that the wiretap investigation would reveal evidence of an ongoing conspiracy to traffic large amount of cocaine and the identity of the co-conspirators. *Elliot v. State*, -- S.W.3d --, 2013 Tenn. Crim. App. LEXIS 1047 (Tenn. Crim. App. July 16, 2013).

5. Standing.

Defendant qualified as an aggrieved person under T.C.A. § 40-6-304(h)(1), and thus, had standing to challenge the validity of the wiretap applications. *Elliot v. State*, -- S.W.3d --, 2013 Tenn. Crim. App. LEXIS 1047 (Tenn. Crim. App. July 16, 2013).



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Tenn. Code Ann. § 40-6-305 (2014)

40-6-305. Interception of communications for evidence of certain crimes.

A district attorney general may apply to a judge of competent jurisdiction for, and the judge may grant, in conformity with § 40-6-304, an order authorizing the interception of wire, oral, or electronic communications by investigative or law enforcement officers having responsibility for the investigation of the offense as to which the application is made when interception may provide evidence of:

- (1) The commission of criminal homicide, as defined in § 39-13-201;
- (2) Criminal conspiracy, as defined in § 39-12-103, to commit criminal homicide;
- (3) The commission of a violation of § 39-17-417(j); or
- (4) The commission of, or conspiracy to commit, a criminal gang offense by a criminal gang member, as defined in § 40-35-121.

HISTORY: Acts 1994, ch. 964, § 6; 1996, ch. 680, § 1; 2011, ch. 493, § 1.

NOTES: Section to Section References.

This section is referred to in §§ 40-6-303, 40-6-304.

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Tenn. Code Ann. § 40-6-306 (2014)

40-6-306. Disclosure of communications to law enforcement officers.

(a) Any investigative or law enforcement officer who, by any means authorized by this part or §§ 39-13-601 -- 39-13-603, has obtained knowledge of the contents of any wire, oral or electronic communication, or evidence derived therefrom, may disclose such contents to another investigative or law enforcement officer to the extent that disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

(b) Any investigative or law enforcement officer who, by any means authorized by this part or §§ 39-13-601 -- 39-13-603, has obtained knowledge of the contents of any wire, oral or electronic communication or evidence derived therefrom may use the contents to the extent the use is appropriate to the proper performance of the officer's official duties.

(c) Any person who has received, by any means authorized by this part or §§ 39-13-601 -- 39-13-603, any information concerning a wire, oral or electronic communication, or evidence derived therefrom, intercepted in accordance with this part or §§ 39-13-601 -- 39-13-603 may disclose the contents of that communication or derivative evidence while giving testimony under oath or affirmation in any proceeding held under the authority of the state of Tennessee, or a political subdivision of the state, or of the United States, or a political subdivision of the United States.

(d) Nothing in this part or §§ 39-13-601 -- 39-13-603 shall be construed as permitting the interception of a wire, oral or electronic communication that is made privileged by law unless the judge issuing the order for the interception finds probable cause to believe that all parties to the privileged communication are criminally responsible for the commission of a homicide offense, conspiracy to commit a homicide offense or commission of a violation of § 39-17-417(j).

(e) When an investigative or law enforcement officer, while engaged in intercepting wire, oral or electronic communications in the manner authorized in this part, intercepts wire, oral or electronic communications relating to offenses other than those specified in the order of authorization, the contents thereof and evidence derived therefrom, may be disclosed or used as provided in subsections (a) and (b). The contents and any evidence derived therefrom may be used under subsection (c) when authorized by a judge of competent jurisdiction where the judge finds on subsequent application that the contents were otherwise intercepted in accordance with this part or §§ 39-13-601 -- 39-13-603. The application shall be made as soon as practicable after the interception.

HISTORY: Acts 1994, ch. 964, § 7; 1996, ch. 680, § 2.

NOTES: Section to Section References.

This section is referred to in §§ *39-13-601, 40-6-304*.

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Tenn. Code Ann. § 40-6-307 (2014)

40-6-307. Use of contents in evidence.

Whenever a wire, oral or electronic communication has been intercepted, no part of the contents of the communication and no evidence derived therefrom may be received in evidence in a trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the state of Tennessee, or a political subdivision of the state if the disclosure of that information would be in violation of this part or §§ 39-13-601 -- 39-13-603.

HISTORY: Acts 1994, ch. 964, § 8.

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Tenn. Code Ann. § 40-6-308 (2014)

40-6-308. Reports.

(a) Within thirty (30) days after the expiration of an order or each extension of an order entered under § 40-6-304(c) and (e), or the denial of an order approving an interception, the issuing or denying judge shall report to the attorney general and reporter:

- (1) The fact that an order or extension was applied for;
- (2) The kind of order or extension applied for;
- (3) The fact that the order or extension was granted as applied for, was modified, or was denied;
- (4) The period of interceptions authorized by the order and the number and duration of any extensions of the order;
- (5) The offense specified in the order or application, or the extension of an order;
- (6) The identity of the applying investigative or law enforcement officer or agency making the application and the person authorizing the application; and
- (7) The nature of the facilities from which, or the place where, communications were to be intercepted.

(b) In January of each year the attorney general and reporter shall report to the administrative office of the United States courts, the speaker of the senate and the speaker of the house of representatives:

- (1) The information required by subdivisions (a)(1)-(7) with respect to each application for an order or extension made during the preceding calendar year;
- (2) A general description of the interceptions made under the order or extension, including:
 - (A) The approximate nature and frequency of incriminating communications intercepted;
 - (B) The approximate nature and frequency of other communications intercepted;
 - (C) The approximate number of persons whose communications were intercepted; and
 - (D) The approximate nature, amount, and cost of the manpower and other resources used in the interceptions;
- (3) The number of arrests resulting from interceptions made under the order or extension, and the offenses for which arrests were made;

- (4) The number of trials resulting from the interceptions;
- (5) The number of motions to suppress made with respect to the interceptions, and the number granted or denied;
- (6) The number of convictions resulting from the interceptions and the offenses for which the convictions were obtained and the general assessment of the importance of the interceptions; and
- (7) The information required by subdivisions (b)(2)-(6) with respect to orders or extensions obtained in a preceding calendar year.

(c) Whenever an order authorizing interception is entered pursuant to § 40-6-304(c), the order shall require that reports be made to the judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Reports shall be made at ten-day intervals, with the first report required on the tenth day after the interception begins or is extended. However, in cases where orders for multiple telephones have been issued by a single judge and pertain to the same investigation, the issuing judge may direct that all progress reports be consolidated into a single report and filed at such times as directed by the judge.

HISTORY: Acts 1994, ch. 964, § 9; 2014, ch. 984, § 2.

NOTES: Amendments.

The 2014 amendment, in (c), substituted "after the interception begins or is extended" for "after the order is entered" at the end of the penultimate sentence and rewrote the last sentence which read: "In the event of an extension under § 40-6-304(c), a new ten-day reporting requirement will begin, with a report required on the tenth day after the extension is granted."

Effective Dates.

Acts 2014, ch. 984, § 3. July 1, 2014.

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NOTES TO DECISIONS

1. Motion to Suppress.

1. Motion to Suppress.

In a case in which two defendants appealed their convictions on various federal offenses for their part in a multi-defendant drug conspiracy in Tennessee, they unsuccessfully argued that the government violated the express terms of the state wiretap orders when they failed to present oral reports to the issuing state judge at the time that the written reports were submitted. They offered no factual or legal support for their argument that the appear and report language in the order required an oral presentation of the report. *United States v. Smith*, -- F.3d --, 395 Fed. Appx. 223, 2010 FED App. 579N, 2010 U.S. App. LEXIS 18532 (6th Cir. Aug. 31, 2010).



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Tenn. Code Ann. § 40-6-309 (2014)

40-6-309. Application of law.

Notwithstanding any other provision of law to the contrary, this part and §§ 39-13-601 -- 39-13-603 shall govern the interception and use of wire, oral and electronic communications in this state.

HISTORY: Acts 1994, ch. 964, § 12.

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Tenn. Code Ann. § 40-6-310 (2014)

40-6-310. Construction of ambiguous provisions.

Any ambiguity in this part or §§ 39-13-601 -- 39-13-603 shall be resolved in favor of the aggrieved party and against the state.

HISTORY: Acts 1994, ch. 964, § 13.

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Tenn. Code Ann. § 40-6-311 (2014)

40-6-311. Pen register or trap and trace order.

Any circuit or criminal court judge may issue a pen register or trap and trace order pursuant to the provisions and requirements of *18 U.S.C. § 3123* et seq.

HISTORY: Acts 1996, ch. 903, § 2.

NOTES: Compiler's Notes.

18 U.S.C. § 3123, referred to in this section, concerns issuance of an order for a pen register or a trap and trace device.

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