

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
425 FIFTH AVENUE NORTH
NASHVILLE, TENNESSEE 37243

September 26, 2000

Opinion No. 00-147

Lawful Commands of Police

QUESTION

Whether an individual who intentionally but passively refuses to obey a law enforcement officer's reasonable, lawful command commits an offense under Tennessee law?

OPINION

No, an individual who intentionally but passively refuses to obey a law enforcement officer's reasonable, lawful command does not commit an offense under Tennessee law because force is a necessary element of resisting arrest.

ANALYSIS

This issue is controlled by the decision in *State v. Corter*, 854 S.W.2d 653 (Tenn. Crim. App. 1992), that construed Tenn. Code Ann. § 39-16-602(a), the provision making resisting arrest a misdemeanor offense. That statutory subsection provides, in relevant part, that “[i]t is an offense for a person to intentionally prevent or obstruct anyone known to the person to be a law enforcement officer . . . from effecting a stop, frisk, halt, arrest or search of any person, including the defendant, by using force against the law enforcement officer or another.” *Id.*

In determining the sufficiency of the evidence to convict the defendant on the charge of resisting arrest, the court in *Corter* held that force to resist a law enforcement officer's lawful command is a necessary element of the offense. 854 S.W.2d at 655. Based on the facts of that case, the court found the evidence of force insufficient where the defendant initially refused to get into the officer's patrol car and directed obscene language at the officer. *Id.*

The facts in your example reflect no forceful or aggressive conduct on the part of the individual who merely sits in the vehicle and refuses to exit when commanded by the officer. Based on the authority of *Corter*, this office concludes that passive resistance to a reasonable, lawful command from a law enforcement officer would not constitute an offense under the statute requiring use of force. It appears from the published and unpublished opinions that some kind of physical force is required.

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