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Office of the City Attorney

C.A.L.L.

City Attorney Law Letter

Traffic Violations in a Work Zone

Due to tremendous growth in our area, there are numerous areas of construction in Springdale and the surrounding cities. Unfortunately, not all motorists are considerate of the workers in construction zones. Because of the potential risks to workers present, traffic violations in a work zone involve additional penalties. There are multiple traffic infractions where an additional penalty can be assessed if the violation occurs in a work zone. Applicable law is contained in Ark. Code Ann. §27-50-408, which is set out in the full article contained on pages 10—12.

To assist the Judge, it is a good idea to write clearly on the face of the ticket that the offense occurred in a work zone with workers present.

Public Intoxication - A Refresher

When making an arrest for Public Intoxication, officers must gather as much information as possible to make sure the charge survives a trial. One suggestion is to perform all three standardized field sobriety tests. Chances are the subject will fail one of the three tests. All information gathered must be put into your report, which can make the difference between a conviction and a dismissal. The complete article can be found on page 16.

**Report on Intimate
Domestic Violence
and
Annual Report on Drunk
Driving
In Springdale for Year
2006**
now available online at
www.springdaleark.org/cosa
See related articles on pages
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Case Law

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Drug Recognition Experts: Making the Case

Recently a conviction on driving while intoxicated on prescription drugs was obtained on an appeal to Benton County Circuit Court. There are three keys to a successful DRE case—first, an evaluation by a DRE officer of a driver suspected of being impaired on something other than alcohol and the BAC result is not .08 or above; second, documentation of the evaluation following the standardized and systematic process that is the 12-step evaluation; and third, the DRE officer must be able to educate both the prosecutor and trier of fact during trial regarding the educational, testing and evaluation process. See the full article on page 18.

Orders of Protection, No Contact Orders and Restraining Orders—A Refresher

There still seems to be some confusion that exists as to how to deal with No Contact Orders, Orders of Protection, and Restraining Orders. A **Rule 9.3 No Contact Order** originates when a defendant pleads not guilty at arraignment and is issued by the District Court Judge as a condition of the defendant's pretrial release and orders the defendant to have no contact with certain individuals before trial. An **Order of Protection** is issued in situations involving intimate or family relations and after a petition is filed with the Circuit Court, a Circuit Judge may issue it. A **Restraining Order** is issued by a Circuit Judge, usually in context of a pending divorce. Violation of a Restraining Order is not a criminal offense. None of the aforementioned orders are issued by the City Attorney's Office. See related article on page 8.

Arkansas Supreme Court Holds Affidavit and Search Warrant Did Not Contain Sufficient Factual Basis to Justify Night Time Search in Case From Sherwood, Arkansas

Facts Taken From the Opinion: On November 7, 2005, the Sherwood Police Department received information from Texas authorities that Eric Wayne Kelley had outstanding arrest warrants from Dallas County, Texas, for sexual offenses against children. Sherwood Police Officers were also notified that Kelley was residing in the Audubon Cove apartments, number 101 C, in Sherwood, that he was using the alias Melvin Kelley, and that he had allegedly been having sexual relations with an eleven or twelve-year-old boy. On November 10th around 6:00 p.m., Officer Kevin Webb was patrolling in the area of Kelley's suspected residence, and he saw a man with a child who matched the description of the child Kelley was allegedly having sexual relations with, leave apartment 101 C, get into a black Nissan Maxima, and drive away. Officer Webb performed a traffic stop and asked the driver, Kelley, to exit the vehicle. Kelley could not produce a driver's license, and instead presented an identification card bearing his alias. Kelley told Officer Webb that the passenger was his "nephew." When Officer Webb talked to the child, M.M., alone, he advised the officer that he was Kelley's "friend." Officer Webb placed Kelley under arrest and Kelley and the child were taken to the police department.

At the police department, Sergeant Jeff Hagar interviewed M.M. with his mother's permission, and M.M. stated that he and Kelley had been friends for about a year and a half. He told Sergeant Hagar that Kelley had performed oral sex on him approximately 10 to 20 times during that

period of time. M.M. also stated that Kelley had taken nude pictures of him and stored the pictures on the digital camera and computer in Kelley's apartment.

In the early morning hours of November 11, the officers obtained a nighttime search warrant for Kelley's apartment. The affidavit in support of the warrant contained the facts detailed above, and the officers allegedly gave testimony before the magistrate that Kelley had been adamant in asking the officers at the police department to allow him to call his sister so she could retrieve his medicine from his apartment. The officers told the magistrate that they were concerned that Kelley would ask his sister to dispose of the camera and computer while she was in the apartment. However, the testimony was not recorded, and the affidavit did not contain any facts concerning Kelley's insistence on calling his sister. Additionally, with regard to the necessity for a nighttime search, the affidavit only stated that

I also request that the warrant be executed anytime during the day or night due to the fact that the objects to be seized are in danger of imminent removal.

The officers then executed the warrant at Kelley's apartment and seized various electronic equipment, including a computer, digital camera, compact discs and digital video discs.

The State filed a felony information charging Kelley with the rape of M.M. and later amended the information to include the offense of engaging children in sexually explicit conduct for use in visual or print medium. Kelley filed a motion to suppress the evidence seized during the search of his apartment, because, among other reasons, the search and seizure violated the Arkansas Rules of Criminal Procedure. After a

hearing, the circuit court denied Kelley's motion. He was later convicted on the rape charge. Kelley then appealed his conviction to the Arkansas Supreme Court.

Kelley's Argument on Appeal: Kelley's sole argument on appeal was the circuit court erred in denying his motion to suppress because the affidavit and warrant did not contain any factual basis to support a nighttime search under the Arkansas Rules of Criminal Procedure. The State, however, argued that Kelley did not have standing to challenge the search. In the alternative, the State presented three arguments: (1) that the circuit court's denial of Kelley's motion was not clearly against the preponderance of the evidence, (2) the good-faith exception to the warrant requirement, under *United States v. Leon*, 468 U.S. 897 (1984), applies to the instant case, and (3) the circuit court's decision to deny Kelley's motion was harmless error.

Decision by Arkansas Supreme Court: After deciding that Kelley did have standing to challenge the search of his apartment, the Court turned to the issue of whether the circuit court erred in denying Kelley's motion to suppress the evidence found at his home because the nighttime search warrant was not supported by a sufficient affidavit. The Arkansas Supreme Court held that the affidavit and warrant lacked any factual basis to support a nighttime search and the *Leon* good-faith exception was not applicable to the facts of this case.

The Court noted in their opinion that in 2003, they considered the question of whether a nighttime search was justified when the defendant, like Kelley (appellant) here, possessed child pornography and knew that investigating police officers suspected that he had pornographic pictures in his possession. *Cummings v. State*, 353 Ark. 618, 110 S.W.3d 272 (2003). In that case, the Arkansas Supreme Court found that

there was evidence in the affidavit supporting a nighttime search because the officers explained in the affidavit that the defendant knew he was under suspicion, and, therefore was likely to destroy the pictures before the officers could return the next day. *Id.* However, the court distinguished *Cummings* from this case. The Court noted that the affidavit in the *Cummings* case specifically stated that the evidence to be seized was in danger of imminent removal because officers had questioned the defendant about sexual pictures of his minor stepdaughter that were on a website, the defendant admitted to having racy pictures of his stepdaughter on his computer, and after the interview, the defendant was aware that he was under suspicion. *Id.* The defendant in *Cummings* was not only aware that he was under suspicion for sexual conduct with a child, but, more importantly, he was not detained and remained at home with his computer and the pictures after being made aware of the officers' suspicions. *See id.* Moreover, the affidavit explained that the defendant's knowledge about the officers' suspicions was the reason a nighttime search was necessary. However, the Arkansas Supreme Court noted in the instant case, Kelley knew he was under suspicion because he was arrested and placed in police custody, but nothing in the affidavit indicated that Kelley was capable of disposing of the evidence at his home before morning. Although Kelley's knowledge of the officers' suspicions could give cause for concern that he might destroy the evidence, the fact that he had been arrested and was being detained would put that concern to rest.

The Court held that the simple fact is that the affidavit did not contain any explanation why those facts justified a nighttime search, and the officer's testimony to the magistrate was unrecorded, and, thus, could not be used to save the warrant. *See Hall v. State*, 302 Ark. 341, 789 S.W.2d 456 (1990). The

Court held that in the instant case the affidavit and warrant only contained the conclusory statement that the objects to be seized were in danger of imminent removal without providing any facts or explanation in support of such a statement. "Thus, the affidavit lacked all indicia of reasonable cause to justify a nighttime search, and, under the Court's objective standard, the officers should have known that an affidavit not stating facts that support a nighttime search was in violation of our rules." Accordingly, the *Leon* good-faith exception does not apply here, and the Court reversed and remanded the case.

Justices Brown and Gunter both filed dissenting opinions in this case. Justice Brown noted in his opinion that Sergeant William Michaels gave sworn testimony to a district judge about why the child pornography in Kelley's home was in danger of imminent destruction. The testimony supplemented the Sergeant's affidavit and provided specific reasons why a nighttime search was warranted. The district judge then issued the search warrant. Justice Brown, in his dissent, further noted that Sergeant Michaels' sworn testimony that Kelley was "very, very adamant" about telephoning his sister from jail following his arrest, and the Sergeant feared that the sister would remove or destroy the pornographic evidence.

Justice Gunter, in his dissent, noted that in consideration of nighttime searches, we are guided by Rule 13.2(c) of the Arkansas Rules of Criminal Procedure (2007) which provides:

Except as hereafter provided, the search warrant shall provide that it be executed between the hours of six a.m. and eight p.m., and within a reasonable time, not to exceed sixty (60) days. Upon a finding by the

issuing judicial officer of reasonable cause to believe that:

- (i) the place to be searched is difficult of speedy access; or
- (ii) the objects to be seized are in danger of imminent removal; or
- (iii) the warrant can only be safely or successfully executed at nighttime or under circumstances the occurrence of which is difficult to predict with accuracy; the issuing judicial officer may, by appropriate provision in the warrant, authorize its execution at any time, day or night, and within a reasonable time not to exceed sixty (60) days from the date of issuance.

Pursuant to this rule, if any one of these exceptions is present, the issuing magistrate may, by appropriate provision in the warrant, authorize its execution at any time of day or night.

Justice Gunter further wrote in his opinion that the majority mistakenly concludes that that there should be: (1) the probable-cause determination in the affidavit for the execution of the search warrant and (2) a second probable-cause requirement for the justification of a nighttime search.

Note From City Attorney: This case makes it clear that the affidavit for a nighttime search warrant must contain an explanation of the facts which justify the nighttime search. The affidavit and warrant in this case only contained the conclusory statement that the objects to be seized were in danger of imminent removal without providing any facts or explanation in support of this statement. As noted by Justice Brown in his dissent, "the fault of the affidavit was not that it failed to contain facts that could support a nighttime search or that it failed to allege that the objects were in danger of removal, but that it failed to explicitly

link the facts to the opportunity for imminent removal.”

Also, this case holds that in determining good-faith, unless the officer’s testimony is recorded when the officer is sworn in before the judicial officer, the unrecorded statement will not be allowed, only the information contained in the affidavit. Therefore, officers might want to consider recording their testimony when they are under oath in front of the judicial officer, at the time of their application for the search warrant.

Case: This case was decided by the Supreme Court of Arkansas on December 6, 2007. It was an appeal from the Pulaski County Circuit Court. The case cite is *Kelley v. State*, CR 07-353 (12-6-2007).

Jeff Harper
City Attorney

Comments From Fourth Judicial District Prosecuting Attorney:

It is always the safest and best policy to include all the necessary information to obtain a nighttime search warrant in the affidavit before delivering it to the judge for his signature. The decision to seek a nighttime search warrant will have already been made prior to seeking out the judge’s signature so the basis for wanting the nighttime warrant will also have already been decided as well.

Courts seldom decline to uphold a search warrant that has the basis for the request for a nighttime warrant listed in detail in the affidavit. The courts never uphold a nighttime request when the basis for the request is absent from the affidavit or there are no details listed stating the reasons for the request.

If you find yourself in the judge’s office and there are details left out of the affidavit, I would suggest just writing them on the affidavit and having the judge and yourself initial next to the added language. That keeps all of the info contained in the same document and you don’t have to try to keep up with a tape nor make a transcript of the tape to have it file marked.

John Threet
Prosecuting Attorney

Arkansas Supreme Court Affirms Conviction in Springdale Murder Case

Facts Taken From the Opinion: On Thanksgiving Day in 2004, Fernando Navarro and his co-defendant, Michael Chavez, agreed to rob an apartment they expected to be unoccupied. Upon discovering the victim, David Edwards, in the apartment, Navarro began to punch him with his fist and stab him with a knife. After the knife broke, he stabbed Edwards with a screwdriver. Navarro also beat the victim with a dumb bell and strangled him with a cord. Chavez poured a hot pot of beans onto the victim. The medical examiner’s report later revealed that the causes of death were blunt force head trauma, multiple sharp force entries, and scalding burns on the victim’s head. A neighbor observed Navarro and Chavez removing several large items of property from the apartment and identified the car into which they were loading the items as a white Dodge Shadow. The car was later stopped for a traffic violation. Both men were inside the car, and Chavez was arrested for driving while intoxicated; but, because the homicide had not yet been discovered, Navarro was released. Shortly thereafter, the stolen property was dumped into a lake.

The following day after the homicide was discovered, Navarro responded to a request by law enforcement that he report to the police department for questioning. He initially denied any involvement in the crimes, but eventually confessed to hitting, kicking and stabbing the victim. Navarro claimed that his friend, Chavez, was not involved but happened to be driving near the apartment building and offered him a ride. During the interview, Navarro stated that he could not remember any details because he had been intoxicated. For example, he could not remember what objects he used to stab the victim or what items of property he loaded into the car. When asked if he thought that he killed David Edwards, Navarro responded, "probably, yeah." At the conclusion of the interview, Navarro was arrested.

At trial, Navarro asserted the defense of not guilty by reason of mental disease or defect. The jury heard testimony from experts on both sides and rejected the defense. The jury convicted Navarro of first degree murder, aggravated robbery, residential burglary and felony theft of property. The Circuit Court sentenced him to two consecutive life sentences for the crimes of first degree murder and aggravated robbery, as well as five years and three years in prison for the offense of residential burglary and felony theft of property respectively. Navarro appealed his convictions to the Arkansas Supreme Court.

Decision by the Arkansas Supreme Court: For one point of his appeal, Navarro argued that the Circuit Court abused its discretion in permitting what he claimed was expert testimony by a lay witness. Detective Bryan Johnson of the Springdale Police Department, the lead investigator on the case, testified that there was no blood found on the screwdriver recovered from Navarro's home. He further explained that it was not unusual to not find blood or

fingerprints on objects, even after they had been touched or penetrated into a body. Navarro objected to this explanation on the basis that the detective was not qualified as an expert to make such a statement.

On this point, the Arkansas Supreme Court noted that they have previously dealt with this issue in *Robinson v. State*, 353 Ark. 372, 108 S.W.3d 622 (2003). In *Robinson*, an investigator with extensive experience in homicide testified that based on his experience with gunshot wounds to the head, there is often very little blood loss. *Id.* The defendant objected to this testimony, arguing that the investigator was not qualified as an expert. *Id.* The Arkansas Supreme Court held in that case that it did not need to determine the investigator's qualifications as an expert because the State never offered him as an expert and he was never qualified as one. *Id.* Rather, he was testifying as a lay witness, and the requirements of Ark. R. Evid. 701 (2007) applied the testimony in the form of opinions and inferences is limited to those opinions or inferences which are rationally based on the perception of the witness and helpful to a clear understanding of his testimony or the determination of a fact in issue. *Id.* The Court noted that Detective Johnson's testimony is analogous to the investigator's testimony in *Robinson*. He was not offered as an expert, nor was he qualified as one. The detective testified as to his opinion, rationally based on his thirteen years of experience as an investigator, which testimony was helpful to the jury's clear understanding of his testimony or the determination of a fact in issue. The Arkansas Supreme Court held that the circuit judge's evidentiary ruling on this point was not an abuse of discretion.

For his next to the last argument, Navarro suggested that a reference to his tattoo in the video and transcript of his interview with the detective should have been excluded by the

circuit court. During the course of the interview, Detective Johnson inquired about Navarro's tattoo, which read, "L.A." Specifically, the detective asked Navarro if he was born there, and Navarro responded that he was. Detective Johnson then asked how long he lived in L.A., whereupon Navarro replied, "Sixteen years." Finally, upon being asked if he had a lot of family and friends in L.A., Navarro answered, "I don't know. I didn't know nobody." That was the extent of the conversation on the subject. Navarro claims that the circuit court erred in refusing to excise that portion, because the tattoo is highly suggestive of gang affiliation and, therefore, prejudicial under Ark. R. Evid. 403 (2007).

The Arkansas Supreme Court agreed with Navarro's assertion that the United States Supreme Court has found constitutional error where evidence of gang affiliation was admitted. *Dawson v. Delaware*, 503 U.S. 159, 112 S.Ct. 1093 (1992). However, in this case, the Arkansas Supreme Court found that Navarro offered no argument regarding why a tattoo reading "L.A." is suggestive of gang affiliation or activity. Furthermore, the conversation with Detective Johnson about the tattoo sheds no light on his contention that the tattoo is suggestive of gang affiliation. The Arkansas Supreme Court held that in this case there was no follow-up or suggestion based on the questions and answers about the tattoo. Navarro's statement was transcribed over the course of 58 pages, and the discussion at issue here was a mere six lines. Based on the brevity of the discussion in an otherwise completely relevant statement, coupled with the fact that Navarro offers no explanation as to how the tattoo suggests gang affiliation, the Court held that the circuit court did not abuse its discretion in refusing to exclude the reference to Navarro's tattoo in the video and transcript of his interview with the detective.

For his final point on appeal, Navarro contended he was prejudiced by a showing of a video depicting his arrest. At the conclusion of his interview with Detective Johnson, Navarro was handcuffed and arrested. A video of the entire interview was played for the jury, and the circuit court denied Navarro's motion to excise that portion. Navarro argued that this ruling was an abuse of the circuit court's discretion.

As support for his argument on this point, Navarro suggested that the video of his arrest is analogous to appearing in court wearing prison clothing and visible shackles. The Arkansas Supreme Court disagreed and held that as the State pointed out, a defendant appearing in court in prison clothing and visibly shackled suggests to the jury that the defendant is a continuing threat, or that his tendencies for violence are so great that he must be restrained at all times. A video depicting an arrest for a crime that the jury is called upon to evaluate is not similarly prejudicial. No juror would be surprised to learn that Navarro was handcuffed and arrested after confessing to murder. Therefore, the risk of prejudice is minimal.

The Court noted that they have long held that a litigant is entitled to a fair trial, but not a perfect one, because there are no perfect trials. *Berna v. State*, 282 Ark. 563, 670 S.W.2d 434 (1984). The Court held that the circuit court did not abuse its discretion in denying Navarro's motion to edit the video. Navarro raised a total of seven points of error in his appeal, including lack of sufficiency of evidence, and the Court upheld the circuit court's ruling on all points of error, therefore, the judgment of the Washington County Circuit Court of conviction for first degree murder, aggravated robbery, residential burglary, and felony theft of property was affirmed.

Case: This case was decided by the Arkansas Supreme Court on October 4, 2007. The case was an appeal from the Washington County Circuit Court, the Honorable William A. Storey, Circuit Judge. The case cite is *Navarro v. State*, CR 06-549 (Ark. 10-4-2007).

Jeff Harper
City Attorney

Issue of Summons vs. Warrant Clarified by Arkansas Supreme Court

On November 8, 2007, the Arkansas Supreme Court issued an order to overturn the case of *Johnson v. State*, 98 Ark. App. 245, __ S.W.3d __ (2007). In the *Johnson* case Arkansas Rule of Criminal Procedure (A.R.Cr.P.) 7.1 was interpreted to mean that a mandatory summons should be issued for misdemeanor cases rather than an arrest warrant unless the defendant is charged with a violent offense or it appears that the defendant will not respond to a summons.

After committee review, the Arkansas Supreme Court clarified the intent of A.R.Cr. P. 6.1 and 7.1 and determined the intent has always been for the use of a summons to be discretionary.

The amendments to A.R.Cr.P. 6.1 and 7.1 are to be effective immediately. The new rules are set out below:

ARKANSAS RULES OF CRIMINAL PROCEDURE

Rule 6.1. Authority to issue summons.

(a) A judicial officer with the authority to issue an arrest warrant may issue, or authorize the clerk of the court to issue, a criminal summons in lieu thereof in any case in which a complaint, information, or

indictment is filed or returned against a person not already in custody.

(b) A prosecuting attorney who files an information or approves the filing of a complaint against a person not already in custody may authorize the clerk of a court to issue a criminal summons in lieu of an arrest warrant.

(c) A summons shall not be issued pursuant to this Rule if:

- (i) the offense, or the manner in which it was committed, involved violence to a person or the risk or threat of imminent serious bodily injury; or
- (ii) it appears that the person charged would not respond to a summons.

In determining whether the defendant would respond to a summons, appropriate considerations include, but are not limited to:

- (A) the nature and circumstances of the offense charged;
- (B) the weight of the evidence against the person;
- (C) place and length of residence;
- (D) present and past employment;
- (E) family relationship;
- (F) financial circumstances;
- (G) apparent mental condition;
- (H) past criminal record;
- (I) previous record of appearance at court proceedings; and
- (J) any other relevant information.

Rule 7.1. Arrest with a warrant: basis for issuance of arrest warrant.

(a) A judicial officer may issue an arrest warrant for a person who has failed to appear in response to a summons or citation.

(b) In addition, a judicial officer may issue a warrant for the arrest of a person if, from

affidavit, recorded testimony, or other information, it appears there is reasonable cause to believe an offense has been committed and the person committed it. A judicial officer may issue a summons in lieu of an arrest warrant as provided in Rule 6.1.

(c) A judicial officer who has determined in accordance with Rule 7.1(b) that an arrest warrant should be issued may authorize the clerk of the court or his deputy to issue the warrant.

Brooke Lockhart
Deputy City Attorney

Orders of Protection, No Contact Orders, and Restraining Orders: A Refresher

There seems to still be some confusion that exists as to how to deal with No Contact Orders, Restraining Orders, and Orders of Protection. Given these circumstances, it is important to know the difference between these types of orders, who issues them, where they may be enforced, and what action can (or cannot) be taken upon the violation of one of these orders.

Before describing the differences in these types of orders, it is first necessary to know exactly which type of order is being dealt with. To the average citizen, the terms “restraining order”, “no contact order”, or “protection order” can be used interchangeably. If a citizen contacts you regarding a violation of one of these orders, you must first determine which type of order, if any, is actually in effect. The action you take will certainly depend on which type of order is in effect. If possible, have the citizen show you a copy of the order. You can then tell which type of order is in effect. If they do not have a copy of the order, then you can either check in-house to

see if it is a No Contact Order, or you can run an ACIC to see if it is an Order of Protection. NEVER, NEVER, NEVER take someone’s “word for it” that a No Contact Order or Order of Protection actually exists. ALWAYS verify the existence of these orders before making an arrest.

Once the determination has been made as to which type of order is being dealt with, you can then apply the following rules and guidelines.

Orders of Protection

Orders of Protection or “protection orders” are issued by a Circuit Judge. These types of orders are issued in situations involving intimate or family relations, and the person seeking the Order of Protection has petitioned the Circuit Court stating they are afraid of physical harm from someone they used to be intimate with, or are related to. Orders of Protection are NOT issued by the City Attorney’s Office, and they are NOT issued by the Springdale District Court. If someone is interested in obtaining an Order of Protection, the City Attorney’s Office can provide them with the information they need, or you can refer them to the Washington County Prosecutor’s Office for assistance.

The violation of an Order of Protection is a crime. In fact, Violation of a Protective Order is a Class A Misdemeanor (*see* Ark. Code Ann. § 5-53-134). Therefore, if someone alleges a violation of a protection order, it is to be treated as a criminal offense and not as a civil matter. If you make contact with a citizen who alleges that someone has violated an Order of Protection, please verify that the order has been served on the person alleged to have violated the order, as an Order of Protection cannot be enforced until it has been served. This information can usually be obtained from an ACIC printout.

Furthermore, the statute provides that:

A law enforcement officer may arrest and take into custody *without a warrant* any person who the law enforcement officer has probable cause to believe is subject to an order of protection issued pursuant to the laws of this state and who the officer has probable cause to believe has violated the terms of the order, *even if the violation did not take place in the presence of the law enforcement officer.*

Ark. Code Ann. § 5-53-134(c) (emphasis added).

In other words, if someone alleges a violation of an Order of Protection, you may make an arrest without a warrant if you have probable cause to believe that person violated the Order of Protection, even if the violation did not occur in your presence.

One other note on a violation of an Order of Protection. If the violation occurs in the City of Springdale, the charge will go through Springdale District Court, even if the Order of Protection was issued by a Judge in some other jurisdiction. For example, you arrest John Smith for violating an Order of Protection. The protection order was issued out of Sebastian County. The prosecution of the offense of violating the Order of Protection would take place in Springdale District Court, and not in Sebastian County. The reason for this is because Violation of an Order of Protection is a crime, and is not treated as a contempt of court issue. Thus, jurisdiction will be where the crime occurred, instead of in the court that issued the order.

Please note that there is no preset bond on the charge of Violation of Order of Protection. Once an arrest is made, the person will remain in our jail until seen by the Judge (subject to the 48 hour rule).

Rule 9.3 No Contact Orders

The Rule 9.3 No Contact Order, commonly referred to as a “no contact order” or a “9.3 order”, originates when a defendant pleads not guilty at arraignment. Then the Judge, as a condition of the defendant’s pretrial release, orders the defendant to have no contact with certain individuals prior to trial. These are NOT issued by the City Attorney’s Office. Also, these are NOT issued until a person has been charged with a crime and has entered a plea of not guilty at arraignment.

A violation of a Rule 9.3 No Contact Order is treated as a Contempt of Court issue. As such, the charge will go through Springdale District Court ONLY if the No Contact Order was issued by Springdale District Court. If the No Contact Order was issued by another Court, the case will be prosecuted in that Court, not in Springdale District Court. For example, you arrest John Smith for violating a No Contact Order. The No Contact Order was issued by Fayetteville District Court. The prosecution of the offense of violating the Rule 9.3 No Contact Order would take place in Fayetteville District Court, and not in Springdale. The reason for this is because violating a No Contact Order is technically contempt of court. Thus, jurisdiction will not always be where the violation occurred. Instead, jurisdiction will be in the court that actually issued the Rule 9.3 No Contact Order.

Furthermore, Rule 9.5(b) of the Arkansas Rules of Criminal Procedure provide that “a law enforcement officer having reasonable grounds to believe that a released defendant has violated the...terms of an order under Rule 9.3 is authorized to arrest the defendant...when it would be impracticable to secure a warrant”. Attorney General’s Opinion #95-357 further provides that an officer having reasonable grounds to believe

that a violation of a Rule 9.3 No Contact Order has taken place may make an arrest without a warrant. However, this should only be done if the violation has taken place within the last several hours and if the defendant can be located outside his home. Otherwise, take a report and refer them to the City Attorney's Office for follow up. Obviously, if the violation of a No Contact Order should occur in your presence, you may make an arrest. Please note that there is no preset bond on a violation of Rule 9.3 No Contact Order. Once an arrest is made, the person will remain in our jail until seen by the Judge (subject to the 48 hour rule).

One other note on No Contact Orders. Remember, the No Contact Order means that the Defendant has been ordered to have no contact with specific individuals. It does NOT mean that these specific individuals have been ordered to have no contact with the defendant. Thus, you may NOT arrest these specific individuals for a violation of a No Contact Order. The only person who may be arrested and charged with contempt of court for violating a No Contact Order is the defendant who has been ordered by the Court to have no contact with specific individuals.

Again, always verify the existence of a No Contact Order before making an arrest, and NEVER take someone's "word for it" that a No Contact Order actually exists.

Restraining Orders

Restraining Orders are issued by Circuit Judges, usually in the context of a pending divorce. These orders are intended to keep the parties from bothering each other, and are intended to maintain the *status quo* with regard to property, etc., until the divorce case is heard and decided by the Judge. Restraining Orders are NOT issued by the City Attorney's Office, and are NOT issued by the Springdale District Court.

Furthermore, a violation of a restraining order is NOT a criminal offense. Should you encounter a situation involving only a violation of a restraining order, tell the person it is a civil matter that is enforced by the Judge who issued the restraining order. Do NOT send them to the City Attorney's office to have charges filed for violating the restraining order. Being knowledgeable regarding these issues is important to keep the public from feeling like they are "getting the runaround", and bolsters public confidence in the police department.

Conclusion

Again, given the differences in these types of orders, it is first necessary to know exactly which type of order is being dealt with. To the average citizen, the terms "restraining order", "no contact order", or "protection order" can be used interchangeably. If a citizen contacts you regarding how to obtain one of these orders, you must know and understand the differences between them.

Possessing a good understanding of these different types of orders will prevent misinformation from being given to the general public, and will help all of us to more efficiently and competently do our jobs.

If you have any questions, please feel free to contact the City Attorney's Office.

Ernest Cate
Deputy City Attorney

Traffic Violations in a Work Zone

There are numerous areas of construction in Northwest Arkansas due to tremendous growth in our area. Unfortunately, not all

motorists are considerate of the workers in construction zones. Because of the potential risks to workers present, traffic violations in a work zone involve additional penalties. The statute pertaining to charging for construction zone violations is Arkansas Code Annotated § 27-50-408. The law applicable to the charging officer is as follows with emphasis added:

Fines for moving traffic violations in a highway work zone.

(a) As used in this section, unless the context otherwise requires:

(1) "Construction personnel" means employees of the Arkansas State Highway and Transportation Department or the counties or the municipalities of this state, or any contractors of the State Highway Commission or the counties or municipalities;

(2) "Conviction" means a person who is charged with a violation of law and who pleads guilty or nolo contendere, is found guilty, or forfeits a bond in lieu of a plea or trial;

(3) "Department" means the Arkansas State Highway and Transportation Department; and

(4) "Highway work zone" means any area upon or adjacent to any highway, road, or street of this state where construction, reconstruction, maintenance, or any other type of work is being performed or is in progress by employees of the Arkansas State Highway and Transportation Department, the counties or the municipalities of this state, or any contractors of the State Highway Commission or the counties or municipalities.

(b)(1)(A)(i) In addition to the fine otherwise provided by law, after the conviction of any person **for any moving traffic violation committed while the person is driving through a highway work zone in this state and if construction personnel were present in the highway work zone when the offense occurred**, the trial judge shall assess an additional fine equivalent to the fine imposed by law upon that person for committing a moving traffic violation in the highway work zone.

(c)(1) The additional fines and penalties shall not be assessed unless signs, either permanent or temporary, were present at the time of the violation in advance of the highway work zone warning the traveling public that fines are double in highway work zones.

(2) The signs shall be located no greater than one (1) mile nor less than one thousand five hundred feet (1,500') in advance of the highway work zone.

(3) Furthermore, the additional fines or penalties for speeding shall not be assessed unless signs, either permanent or temporary, are posted in advance of the highway work zone indicating the maximum speed limit to be obeyed while traveling through the highway work zone.

(4)(A) All signs authorized by this section shall conform with the Manual on Uniform Traffic Control Devices.

(B) The counties and municipalities, prior to utilizing any such signs, shall seek the advice of the Arkansas State Highway and Transportation Department in order that the signs shall be uniform throughout the state.

(e) For purposes of this section, "moving traffic violation" shall include, but not be limited to:

- (1) Careless or prohibited driving;
- (2) Driving while intoxicated;
- (3) Underage driving under the influence;
- (4) Refusal to submit;
- (5) Leaving the scene of an accident;
- (6) Driving with lights off;
- (7) Driving on an expired, suspended, or revoked license;
- (8) Improper use of lighting equipment;
- (9) Failure to obey traffic control devices and signs;
- (10) Failure to operate a vehicle in accordance with the rules of the road;
- (11) Failure to stop and render aid;
- (12) Following too closely;
- (13) Driving the wrong way on a one-way street;
- (14) Hazardous driving;
- (15) Impeding the flow of traffic;
- (16) Improper backing;
- (17) Improper lane change;
- (18) Improper entrance or exit to avoid an intersection;
- (19) Improper towing;
- (20) Improper turning;
- (21) Passing a stopped school bus;

- (22) Racing on the highway;
- (23) Reckless driving; and
- (24) Exceeding the speed limit.

Therefore it is not just speeding in a work zone that allows for additional fines. There are multiple traffic infractions where an additional penalty for violations can be assessed if done in a work zone. However, to incur additional penalties the motorist must, 1) be driving in work zone, 2) with workers present, 3) signs “no greater than 1 mile nor less than 1500 feet in advance” were present at the time of the violation warning the motorist fines are double in work zones. **To assist the Judge, please write clearly on the face of the ticket that the offense occurred in a work zone with workers present and in your written report detail the presence of signs.**

Amber Roe
Deputy City Attorney

Arkansas Court of Appeals Upholds Detention for Drug Dog to Arrive

Facts: On October 1, 2005, at 6:52 p.m., Shahid Iman Omar (Omar) was stopped by Officer Jason Aaron (Aaron) of the Arkansas State Police for speeding 79 miles an hour in a 70 mile an hour zone on Interstate 40 near Alma. Aaron, as he approached the stopped vehicle, smelled a strong odor of air freshener coming from the vehicle. Aaron observed several fast-food wrappers in the vehicle as well as a new cell phone on the armrest, a small black bag in the left rear seat and clothes hanging up in the vehicle. Aaron asked for a driver's license, insurance and registration. Omar's hands were trembling and fumbling through the paperwork. The car was a rental from

Los Angeles International Airport and was to be turned in two days later in Baltimore, Maryland.

Aaron asked about Omar's travel plans. Omar stated he had come from Los Angeles after flying there for a friend's wedding on Saturday. Aaron pointed out that "today is Saturday." Omar then stated the wedding was Friday and he rented a car to get back home. Omar could not give specifics on the wedding's time or place but stated he was in a hurry to get home. Omar could also not recall the phone number of the friend to verify the wedding.

Aaron asked Omar about previous arrests and Omar stated he had only one gun charge. Omar's previous arrests were for attempted murder, accessory to murder, armed robbery, and a handgun violation. Aaron asked if Omar was transporting anything illegal and asked for permission to search the car. At 7:00 p.m. Omar refused permission to search. Aaron told Omar he was requesting a drug dog.

At 7:09 p.m. Aaron informed Omar that he was being issued a citation for speeding and would be free to go if the dog did not alert. They waited for the only available canine at the time. Around 7:15 p.m. Omar signed for the citation. Sergeant Kyle Drown, (Drown), the canine officer, was in Sebastian County at Fort Chaffee when he received the request for a canine. The dog was at his home. Drown's wife met him at the traffic stop site with the dog. The canine arrived about 7:29 p.m. During the first walk around the car, the dog, Rudy, turned his head and jumped through the right, front passenger window and scratched inside the car. Drown pulled the dog out within a minute. Drown then walked Rudy around the car again and Rudy "indicated" on the left rear window by standing and scratching. Drown searched the inside of the vehicle and observed tool marks on screw heads of

the back passenger door. He pulled the door panel off and discovered a large amount of cocaine.

Omar was convicted by a jury of possession of drug paraphernalia and possession of cocaine with intent to deliver and sentenced on the respective convictions to forty and sixty year's imprisonment. Omar appealed.

Argument and Discussion: Omar first argues on appeal that the thirty-seven minute traffic stop ending with the canine sniff exceeded the scope and duration permitted; and, second, he argued that the drug dog's entry into the car through the window was a "search" without probable cause.

As part of a valid traffic stop, an officer may detain the motorist while completing the routine tasks related to the stop. *Laime v. State*, 347 Ark. 142 (2001). In addition, the officer may ask routine questions such as the person's destination, purpose of the trip, and whether the officer may search the vehicle; then the officer may act on whatever information is given. *Id.*

Arkansas Rule of Criminal Procedure 3.1's alternative time period to conduct a stop of "such time as is reasonable under the circumstances" is not restricted to a specific number of minutes. *Yarbrough v. State*, ___ Ark. ___ (May 10, 2007). If the officer has a reasonably articulable suspicion for believing the criminal activity is afoot, there can be a further detention of the driver. In assessing whether a detention is too long, the courts examine whether police diligently pursued means of investigation that was likely to confirm or dispel their suspicions quickly. *U.S. v. Sharpe*, 470 U.S. 675, 686 (1985).

Looking at the totality of the circumstances: (1) Omar's itinerary of flying to Los Angeles from Baltimore but returning by rental car, despite his "being in a hurry"; (2) his

changing stories about the time and location of the wedding; (3) his admission to only one previous criminal charge; (4) the cell phone and air freshener in the rental car; (5) a small black bag but no wedding clothes visible in the car; (6) his evasive answers and continued nervousness; the Court found that the officer had specific, particular and articulable reasons to continue the traffic stop beyond 15 minutes. The Court also held that the canine arrived at the scene without undue delay.

On the second argument, Drown testified in trial that he and Rudy had been re-certified as a team since 1999. Drown stated that Rudy did not normally jump through windows, but that when Rudy turned his head, jumped through the window, and scratched inside the car, he had no doubt that Rudy was "alerting on the vehicle". Drown also testified that Rudy, once out of the vehicle, alerted again on the left rear window by standing and scratching. Rudy is an aggressive alert dog that scratches and bites when he is alerting on a vehicle. A dog's "instinctive" entry into a car does not constitute police misconduct requiring suppression of evidence. *U.S. v. Stone*, 866 F.2d 359 (10th Cir. 1989). The Court found that in this case, as in *Stone*, the dog's actions did not violate the Fourth Amendment.

Case citation: The case citation for this case is *Omar v. State*, CACR 06-1321 (September 12, 2007).

Note from Deputy City Attorney: This is yet another case where a detention longer than fifteen minutes is upheld. However, the officer was able to articulate the factors that he deemed suspicious of criminal activity and these suspicions were formed before the citation was given and before the drug dog arrived, warranting a further detention. Also, while the Court did find that the dog's actions in the case did not

violate the Fourth Amendment, a handler cannot direct a dog to go into the inside of a vehicle.

Brooke Lockhart
Deputy City Attorney

Eighth U.S. Circuit Court of Appeals Upholds Stop in Minnesota Bank Robbery Case

Facts Taken From the Opinion: On the morning of December 21, 2005, a black woman entered the Wells Fargo Bank in Hopkins, Minnesota, and wrote a demand note on a deposit slip which stated: "Give me the money or I will shot you Don't try anything stupid Is your life worth It think[.]" The woman passed the note to a teller, the teller gave the woman \$1,359.00, and the woman exited the building. At 10:02 a.m., Officer James Stromberg of the Minnetonka, Minnesota Police Department received a police radio transmission reporting that the Wells Fargo Bank in Hopkins had just been robbed. The dispatch described the bank robber as a black female wearing black clothes and driving a tan Pontiac Grand Am. At the time, Stromberg was on patrol near the border between Hopkins and Minnetonka, and he proceeded to the border area to watch for the suspect. At 10:06 a.m., approximately four minutes after the initial robbery report, Stromberg saw a black woman standing outside of a tan or gold Pontiac Grand Am in front of the Brentwood Park Townhomes, located about one-half to three-quarters of a mile from the Wells Fargo Bank. The woman was wearing a coat with fur-trimmed hood pulled up over her head. Stromberg radioed to dispatch his observations and intention to investigate and then returned to where he had seen the woman and the vehicle. However, by the time Stromberg made it back to the

Brentwood Park Townhomes, the car and the woman were gone. Stromberg radioed this information to dispatch and requested a stop of the vehicle.

Meanwhile, Sergeant David Riegert, a Minnetonka police officer, who had also received the dispatches about the bank robbery and driven to the border area of Minnetonka and Hopkins, heard Officer Stromberg's transmission about a possible suspect in a tan Pontiac Grand Am leaving the vicinity of the Brentwood Park Townhomes. While going westbound on Highway 7, Riegert saw a tan Pontiac Grand Am traveling eastbound away from the Brentwood Park Townhomes. According to Sgt. Riegert, the driver and sole occupant of the car was a black woman, who appeared to have fur lining the hood of her coat. Riegert made a U-turn and followed the Grand Am eastbound on Highway 7. Riegert reached speeds of 80 to 85 miles per hour as he caught up to the vehicle. Then, Riegert observed the vehicle make a U-turn to travel west, whereupon he made a U-turn to follow. Riegert paced the vehicle traveling at rates varying from 60 to 63 miles per hour in a 55 mile per hour speed zone as the vehicle continued westbound and exited onto Highway 169. Shortly after going onto Highway 169, Riegert activated the patrol car's emergency lights to make a stop but did not turn on the siren. Riegert then followed two-car-lengths behind the vehicle for more than one mile until the Grand Am pulled off to the right and stopped, straddling the fog line, partly on the shoulder and partly in the right lane. Riegert waited to approach the car until Officer Stromberg, who had heard Riegert's radio reports and proceeded to the scene, arrived. According to Riegert, he pulled the vehicle over because of the information radioed in by Stromberg and the driver was speeding.

Stromberg arrived at the scene five to six minutes after Riegert made the stop. The

officers decided to approach the vehicle in a modified high-risk fashion with their weapons drawn but not raised. Officer Stromberg went to the driver's door and asked the driver for a driver's license. Stromberg recognized the driver as the woman he had seen at the town home complex. The woman was identified as the defendant, Veronica Sallis. Stromberg advised Sallis that she matched the description of the Wells Fargo Bank robbery suspect. Sallis responded that she was coming from the Knollwood Shopping Mall. Upon Stromberg's request, Sallis exited the vehicle, and she was pat searched and her vehicle was searched for weapons. The officers observed a dark knit stocking cap with cut out eye holes in the passenger seat area.

Officer Stromberg noticed the odor of intoxicants on Sallis's breath and that she appeared confused and stumbled over her words during their four- to five-minute conversation. Based on his experience, Stromberg suspected that Sallis was intoxicated. The officers asked Sallis to perform several field sobriety tests. Sallis failed the heel to toe walking test, a one-leg stand test, and two of the three aspects of the eye gaze nystagmus test. Sallis also failed a preliminary breath test when she refused to provide an adequate sample. At approximately 10:45 a.m., Sallis was arrested for driving while impaired, and she was handcuffed, searched, and taken to the Minnetonka Police Department. Sallis submitted to a breath test at approximately 11:42 a.m., which registered a .13 blood-alcohol content. Sallis was later transferred to the Hopkins Police Department. There, Federal Bureau of Investigation Special Agent Dave Rapp advised Sallis of her *Miranda* rights, and Sallis confessed to him that she had robbed the Wells Fargo Bank in Hopkins.

On January 18, 2006, Sallis was charged with one count of bank robbery in violation of federal law (18 U.S.C. § 2113(a)). Sallis moved to suppress evidence seized pursuant to the vehicle stop, which she alleged violated the Fourth Amendment because she was not stopped for speeding and police officers did not have a reasonable articulable suspicion of criminal activity when they stopped her vehicle. The district court, adopting the report and recommendation of the magistrate judge, denied the motion concluding that the vehicle stop did not violate Sallis's Fourth Amendment rights because Officer Riegert had: (1) reasonable suspicion of a traffic violation for speeding and (2) reasonable articulable suspicion that the driver had been involved in a bank robbery in that the vehicle and the driver met the description of the robbery suspect and were observed within close proximity to the crime scene. Sallis thereafter conditionally pled guilty, reserving her right to appeal the denial of her motion to suppress. The district court imposed a sentence of 37 months with a three year term of supervised release and ordered \$1,359.00 in restitution. Sallis then appealed her case the Eighth U.S. Circuit Court of Appeals.

Decision of Eighth Circuit Court of Appeals: Sallis claimed that the vehicle stop violated the Fourth Amendment, contending that the district court's contrary conclusion was in error in two ways. First, the district court clearly erred in finding that the vehicle stop was based on a traffic violation because Officer Riegert actually stopped the vehicle to investigate the bank robbery. Second, the district court's determination that the stop was justified on the basis of Officer Riegert's reasonable articulable suspicion that the driver had been involved in a bank robbery was in error because the description of the suspect in the police alert was not sufficiently particular to justify the stop.

The Eighth Circuit noted that an officer has probable cause to conduct a traffic stop when he observes even a minor traffic violation. This is true even if a valid traffic stop is a pretext for other investigation. *United States v. Coney*, 456 F.3d 850, 855-56 (8th Cir. 2006) (internal citation omitted).

The Court held that because Sallis did not dispute that she was speeding, Officer Riegert's actual motivation for stopping Sallis's vehicle is not relevant. Therefore, the Court held that the district court's finding that there was a traffic violation is supported by the evidence, and as such, there was probable cause to stop Sallis's vehicle. Accordingly, the Eighth U.S. Circuit Court of Appeals held that the district court properly denied the motion to suppress.

Sallis also made an argument that the district court erred in applying the sentence enhancement pursuant to Guidelines section 2B3.1(b)(2)(F). The Eighth U.S. Circuit Court of Appeals also ruled against Sallis on this point and affirmed the conviction.

Case: This case was decided by the United States Court of Appeals for the Eighth Circuit on November 2, 2007. This was an appeal from the United States District Court for the District of Minnesota. The case cite is *U.S. v. Sallis*, 07-1263 (8th Cir. 11-2-2007).

Jeff Harper
City Attorney

Public Intoxication- A Refresher

The Arkansas Code defines the offense of public intoxication as a person appearing in a public place "manifestly" under the influence of alcohol or a controlled substance to such a degree as to likely be a

danger to themselves or others OR unreasonably annoying other people in the vicinity. A.C.A. Section 5-71-212. Judging by the definition alone, a person admitting to drinking is not enough for the charge. A person not passing the Horizontal Gaze Nystagmus test is not enough for the charge. A person smelling like intoxicants is not enough for the charge.

Officers must gather as much information as possible to make sure the charge survives a trial, especially since many of these same people are arrested for this same charge time and time again. Some suggestions are to perform all three field sobriety tests, even though it is not a Driving While Intoxicated case. Chances are the subject will either lose their balance, slur words when they speak, fidget or twitch, transpose words or letters in their speech, or stumble; and all these can be clues to their intoxication. Also look for glassy eyes, trouble finding identification, trouble recounting how much they have had to drink, and trouble remembering from where they are coming or going. Also remember to include in your narrative all actions on the part of the person that leads you to believe they are under the influence of alcohol or a controlled substance to such a degree that they are likely to endanger themselves or others OR are they are unreasonably annoying other people in the vicinity.

Gathering this information and putting it in a report can make the difference between a conviction and a dismissal.

Brooke Lockhart
Deputy City Attorney

Drug Recognition Experts; Making the Case

The City of Springdale recently obtained a conviction on an appeal of a driving while intoxicated on prescription drugs case in Benton County Circuit Court. The case involved testimony by two Drug Recognition Experts from the Springdale Police Department and was the first case Judge David Clinger had ever had in front of him that included Drug Recognition Expert testimony.

On September 26, 2005 Springdale Police Officers responded to a one-vehicle accident on Puppy Creek Road in Springdale, Benton County, Arkansas. Officer Del Atkinson responded to the scene and noted that although no alcohol was detected, the driver was acting oddly and Atkinson requested a Drug Recognition Expert, ("DRE"). Sgt. Jerry Corken, a DRE instructor for the State of Arkansas, arrived on scene, questioned the driver about her medications and performed the initial field sobriety tests. Sgt Corken determined that there was probable cause to arrest the driver for DWI drugs and she was transported to the Springdale Police Department. Upon arrival at the station, DRE Officer Michael Hendrix performed the twelve-step DRE evaluation on her and determined that she was under the influence of a CNS depressant and was unable to operate a motor vehicle safely. The driver was subsequently convicted of Driving While Intoxicated on drugs in Rogers District Court and appealed that decision to the Benton County Circuit court. That appeal, and the testimony of the DRE's which led to the conviction, is the basis of this article.

Sgt. Jerry Corken testified as to the emergence of Drug Recognition Experts, the training that is required to become certified, and the standardized and systematic process that is the 12-step DRE evaluation. In essence, Sgt. Corken's testimony provided an engaging description of drug recognition experts. Sgt. Corken described the history and nationwide trend in using DRE's, he then went on to describe the hours of classes required, the practical training, the testing procedures, and the supervised evaluations necessary to be certified as a DRE in Arkansas. Next, Sgt. Corken went through and explained each step of the DRE evaluation, the purpose of that step and what the officer is looking for in conducting the test. Finally, Sgt. Corken explained the drug influence chart and what clues are present in the seven different drug categories. I cannot say enough about the impact Sgt Corken's testimony had on this case.

After Sgt Corken laid down the DRE framework in general for the Court, Michael Hendrix (now a Detective) testified as to the DRE evaluation he performed on the driver. Detective Hendrix went thorough each of the 12 steps and detailed the results of each step. Detective Hendrix then testified as to his opinion that the driver was under the influence of a CNS depressant and went through the DRE matrix detailing which of the CNS depressant clues were present in this case. Finally, Detective Hendrix testified that in his opinion the driver was unable to operate a motor vehicle safely on the date she was evaluated. Detective Hendrix's testimony helped to provide the basis for the State to meet its burden that the defendant was intoxicated under the statutory definition of Driving While Intoxicated ACA § 5-65-101 et seq.

In finding defendant guilty of DWI drugs, Judge Clinger stated that this was the first case he has had before him that involved testimony by Drug Recognition Experts.

Judge Clinger reviewed the proffered case law on DRE testimony, Mace v State of Arkansas, 328 Ark. 536 (1997), and ruled during the case that the DRE's testimony qualified as expert testimony. Judge Clinger then went through the various witnesses testimony and based on that testimony he found that the defendant was intoxicated on the date in question.

The first key to a successful DRE case is of course to have a DRE perform an evaluation whenever a driver is suspected of being impaired on something other than alcohol and the BAC result is not .08 or above. Second, the DRE must perform and document the evaluation following the standardized and systematic process that is the 12-step evaluation. Next, a DRE must be able to educate both the prosecutor before trial and the trier of fact during trial regarding the educational, testing, and evaluation process a DRE must go through and the how and why of the 12 steps. Finally, the DRE must be able to give his opinion based on his training and experience. Driving while intoxicated on prescription drugs is one of the most difficult cases to prove, but where, as in this case, there is good police work, and excellent DRE officers that are able to educate both the prosecutor and the Court, a conviction is obtainable.

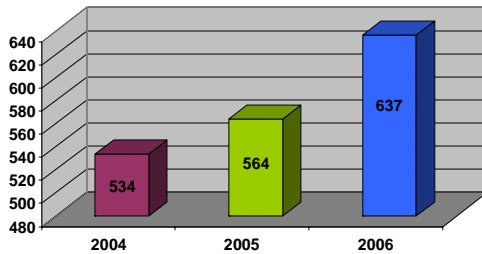
Amber Roe
Deputy City Attorney

City Attorney's Report on Intimate Domestic Violence

On October 18, 2007, our office published our Annual Report on Intimate Domestic Violence. A copy of the report can be accessed on our website at www.springdaleark.org/cosa and click on the report which is listed on the homepage.

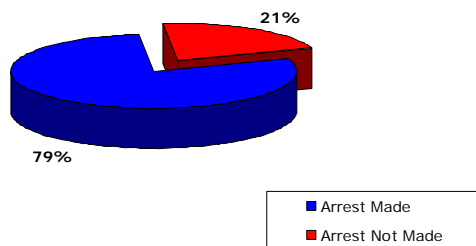
The report compares intimate domestic violence with domestic violence in general, as well as total violence in Springdale. There are several charts contained in the report, including the two that follow:

Comparison of Domestic Violence Incidents Reported to Springdale Police in Past Three Years



Another interesting statistic in the report is that an arrest was made or a warrant issued in about 79% of the total intimate domestic violence incidents reported to Springdale Police.

Intimate Domestic Violence Incidents Reported to Springdale Police in 2006



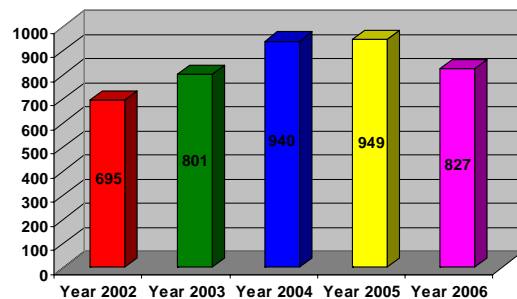
Jeff Harper
City Attorney

Annual Report on Drunk Driving on City Attorney Website

On December 5, 2007, our office published our Annual Report on Drunk Driving in Springdale for the year 2006. Officers can

access this report on our website at www.springdaleark.org/cosa and click on the 2006 DWI Report on our home page. There were 827 total DWI arrests made in 2006, and the chart that follows is one of the many charts contained in the report and sets out the number of DWI arrests made in Springdale during the last five years.

DWI Arrests



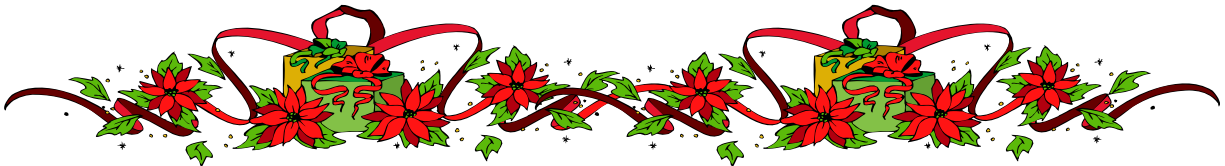
DWI crashes reached an all time high in Springdale during 2006, as we had a total of 151 DWI crashes. The highest day and time for DWI crashes was Sunday between 1:00 a.m. and 1:59 a.m., which accounted for nine total crashes, followed by Saturday between 9:00 p.m. and 9:59 p.m. which accounted for eight total crashes. The following chart sets out the total DWI crashes by type of crash for the last five years:

Total DWI Crashes by Type of Crash for The Last Five Years					
Type of Crash	No. of Crashes				
	2002	2003	2004	2005	2006
Fatality	1	0	1	2	2
Personal Injury	47	37	42	40	47
Property Damage	<u>82</u>	<u>111</u>	<u>100</u>	<u>87</u>	<u>102</u>
Totals	130	148	143	129	151

The chart that follows sets out the 2006 dispositions on all DWI cases (those handled by the City of Springdale and those handled by the Washington County Prosecutor's Office). As of December 5, 2007, 761 of the total cases have been adjudicated, and convictions for DWI have been obtained in 755 of those cases, for a conviction rate on adjudicated cases of 99.21%. This statistic is an indication that officers are doing a good job in their DWI investigations, including report writing.

2006 Dispositions on DWI Cases Handled by City of Springdale and Washington County Prosecutor (as of 12/5/07)	
Total Arrested	827
Total Handled by City of Springdale	818
Total Handled by Washington County Prosecutor's Office	9
Total No. of cases ending in a finding of Guilty	755
Total No. of cases ending in a finding of Not Guilty	6
Total No. Defendants Failed to Appear (warrants issued)	64
Defendant Died Before Case Adjudicated	1
Cases Pending (Springdale District Court)	1
Total Convicted/Total No. Arrested (755/827)	91.29%
Conviction Rate on Cases Adjudicated (755/761)	99.21%

Jeff Harper
City Attorney



*Have a Wonderful
Holiday Season!*

Jeff Ernest Amber Brooke

Cindy Lynda Linda Dixie Truman Jacque

