



# C.A.L.L.



January 1, 2009

City Attorney Law Letter

Issue 09-1

## The Springdale City Attorney's Office Annual Report on Drunk Driving in Springdale, Arkansas For the Year 2007

and

## Report on Intimate Domestic Violence in Springdale, Arkansas For Year 2007

are now located on our website at  
[www.springdaleark.org/cosa](http://www.springdaleark.org/cosa)

## The Temporary Vehicle License Law: What are the Rules?

Since the law pertaining to temporary cardboard buyer's tags on purchased unregistered vehicles went into effect, several questions have arisen regarding their use. The most common question is whether it is proper to conduct a traffic stop on a vehicle solely on the basis that the vehicle displays a temporary cardboard tag. The answer is "no". A stop can only be made if the temporary cardboard tag is displayed improperly or if the tag is more than 30 days old.

Another question that is commonly asked pertains to the altering of these temporary cardboard tags by the purchaser. If there is probable cause that a temporary cardboard tag has been altered, the person should be cited for violating Ark. Code Ann. §27-14-305.

For a full explanation of the law on temporary cardboard tags, please see the full article on page 5.

## Case Law

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## The Importance of Detailed Testimony in DWI's

On August 16, 2008, Amber Roe tried a DWI case in which Office Michael Lisenbee was the arresting officer. Officer Lisenbee's report and testimony contained detailed information concerning his contact with the driver and his ultimate determination that the driver was driving while intoxicated which led to his arrest for DWI. The Judge found the defendant in this case guilty of DWI. The full article as to why detailed testimony in DWI cases is important is contained on page 20.



*Happy Holidays  
From the  
Springdale City Attorney's Office*



## **Arkansas Court of Appeals Affirms Conviction in DWI Case Out of Benton, Arkansas**

**Facts Taken From the Opinion:** Sheila Blair (Appellant) was arrested for DWI after Benton Police investigated a report made by a citizen, George Brooks. Brooks testified that he observed a silver compact car stopped under a red light at an intersection. Despite the fact that there was no place to turn left, the car's left-signal light was blinking. Brooks said that the other drivers were forced to go around the car, which remained stationary through a light change.

Concerned, Brooks followed the car when it finally moved forward. He saw the car weave over the center line, causing oncoming traffic to pull over to avoid being hit. When the car pulled into a driveway, Brooks also pulled aside. When the driver began to attempt to re-enter the roadway, Brooks exited his car, put his hands on the hood of the other car, and told the driver to stop.

Brooks went to the driver's side of the vehicle and spoke to the driver, who had lowered the window. He identified Appellant as the driver, and testified that Appellant was the only person in the car. According to Brooks, Appellant "smelled like a brewery." He told Appellant that she could either permit him to call his wife to drive Appellant home or he would report Appellant to the police. Appellant replied, "call em," and drove from the driveway, slinging gravel as she went. Brooks made a written note of her license plat number and then contacted the police.

Benton Police Officers Jeffrey Parsons and Eric Porter responded to the call. Parsons

testified that the call concerned a white, intoxicated female driving erratically in a silver Honda. Approximately six minutes later, the officers arrived at the address to which the Honda's license plate was registered. Appellant's car was parked in the space between her neighbor's driveway and her own; Porter testified that he saw the brake light flash as they approached Appellant's vehicle.

Appellant exited the car from the driver's seat, with the keys in her hand. By the time the officers approached her, she was on her front porch. She carried some brown paper bags, one of which contained an empty beer can and several unopened beer cans. Parsons said that Appellant's eyes were watery and bloodshot and that he could smell intoxicants on her breath; Porter similarly described her eyes as "bloodshot and glassy."

Parsons asked if Appellant had been drinking. She admitted that she had, but she said that her son drove her to her house and then left. She explained that her son had taken her to Wal-Mart, but she had no Wal-Mart bags. Parsons said that Appellant's speech was slurred. After Parsons spotted some prescription bottles in plain view in one of her bags, Appellant told him that she took Xanax three times per day.

Parsons administered the horizontal-gaze nystagmus test (HGN test), which indicated that Appellant was intoxicated. Parsons explained that three or more "clues" on the HGN test constitutes a 77% likelihood of impairment. He further explained that Appellant showed all six clues. Next, Parsons administered a one-leg stand test, which requires a person to stand on one leg and count aloud while looking at her feet. During this test, Appellant lowered her foot



down three times and once used her arms to balance herself. She agreed to blow into a portable breath tester, but Parsons testified that she purposely covered the mouthpiece with her tongue to cause a lower reading.

Appellant was arrested and placed in the back of the police car. At that point, her minor son, Colton Thomas, arrived. Appellant pleaded with Colton to tell Parsons that he had driven her home. Parsons said that Colton refused, saying, "I'm sorry, Mom, I'm not going to do that." Appellant became upset and yelled at her son.

When they arrived at the police station, Appellant made what Parsons called an "exaggerated" sucking noise with her mouth and told the officer that she had a mint in her mouth. When he instructed her to spit it out, she attempted to spit behind a pillar of the building. He then instructed her to spit it out in his view. When she spat, the officer saw no mint on the ground; he checked her mouth but found nothing. Even so, Parsons waited twenty minutes before administering the blood-alcohol test.

Appellant blew into the machine as instructed, but as the display approached the .08 level, she stopped blowing. After Appellant did that several times, Parsons was required to begin the test again. On the second test, the officer finally obtained a reading of .075. By this time, a little more than one hour had passed from when the officers first encountered Appellant.

Carrie Nelson, who works in the Saline County Sheriff's Department, collected a urine sample from Appellant. She described Appellant as "real slow, slow speech, slow movements." Allison Beekman, a forensic toxicologist with the Arkansas State Crime

Laboratory, testified that Appellant's urine sample revealed the presence of Xanax. Beekman said that when alcohol is consumed with Xanax, it increases the depressive effects of alcohol.

Colton testified on his mother's behalf. Colton, who was seventeen, claimed that he was the person driving Appellant's car, and that he picked up Appellant at work. Appellant worked in the hair salon located inside of Wal-Mart. Colton said that she had groceries with her, and that he drove her to the liquor store. He claimed that he "missed the red light" because he was "messaging with the radio." He said that he swerved because he and his mom were arguing over the fact that he was "messaging with the radio."

Colton said that a man followed them to Appellant's boyfriend's house, and that Appellant got out of the car and spoke to the man. Colton said that he took Appellant home, where his girlfriend was waiting, then unloaded the groceries, leaving Appellant's car keys on the table. He and his girlfriend thereafter left in his work truck to get gas, and returned to find Appellant in the back of the police car.

When questioned about whether he refused to tell the officers at the scene that he had been driving Appellant's car, Colton admitted that Appellant told him to tell the officers that he had been driving. He agreed that Appellant was "pretty upset." But, in contrast to Parson's testimony, Colton claimed that he told Parsons, "I'm not saying I'm driving her right now and I'm not saying I'm not . . . I said I'd tell them later."

At the close of the State's case-in-chief, Appellant moved for a directed verdict, arguing that the State had failed to meet its burden of showing that the defendant had been driving or that she had been driving



while she was intoxicated. The trial court denied the motion, and further denied Appellant's renewal on the same grounds. The jury found Appellant guilty of DWI and sentenced her to serve ten years' imprisonment.

Appellant had either been convicted or had pleaded guilty to ten DWI's in twelve years, seven of which occurred over the past five years. After the jury verdict, Appellant appealed to the Arkansas Court of Appeals.

**Decision by Arkansas Court of Appeals:**

Appellant first argued that the State failed to present substantial evidence that she was the driver because the police did not see her driving, because she did not confess to driving, and because there was no evidence of her intent to drive after the moment of arrest. On this issue, the Arkansas Court of Appeals held that this argument failed because the State is not required to prove that a law enforcement officer actually witnessed the intoxicated person driving or exercised control over the vehicle; rather, the state may make their showing by circumstantial evidence. *See Wetherington v. State*, 319 Ark. 37, 889 S.W.2d 34 (1994). Similarly, the Court held that the State is not required to prove that the defendant confessed or prove that she possessed an intent to drive drunk.

The Court noted that in this case, both direct eyewitness testimony and circumstantial evidence proved that the Appellant was the driver. Brooks identified Appellant as the driver who was behind the wheel of the car that he had observed stopped at the red light and later observed swerving. After Appellant stopped, he spoke with her and then saw her drive away after she challenged him to contact the police. In addition, Officer Porter saw the brake light flash on

Appellant's car before Appellant exited the car from the driver's side with the keys in her hand. This constitutes substantial evidence to establish that Appellant was the driver.

Appellant's second argument was that the State failed to prove that she was intoxicated because her blood alcohol content was .07, below the legal limit. In response to Parsons's testimony that she attempted to obstruct the blood-alcohol testing process, Appellant argued that she was not cited for refusal to submit to any of the tests.

As to this argument, the Arkansas Court of Appeals held it too fails. Proof of blood alcohol content, although admissible as evidence tending to prove intoxication, is not necessary to sustain a DWI conviction. *See Wilson v. State*, 285 Ark. 257, 685 S.W.2d 811 (1985). A blood-alcohol level of .04 but less than .08 does not give rise to a presumption that the defendant was intoxicated, but may be considered with other competent evidence in determining whether she was intoxicated. Ark. Code Ann. §5-65-206(a)(2) (Supp. 2007).

The Court held that a person is "intoxicated" if she was influenced or affected by the ingestion of alcohol, a controlled substance, any intoxicant, or any combination of alcohol, a controlled substance, or an intoxicant, to such a degree that her reactions, motor skills, and judgment are substantially altered and she, therefore, constitutes a clear and substantial danger of physical injury or death to herself and other motorists or pedestrians. Ark. Code Ann. §5-65-102(2) (Repl. 2005). The Court noted that observations of police officers with regard to the smell of alcohol and actions consistent with intoxication can constitute competent evidence to support a DWI



charge. See *Johnson v. State*, 337 Ark. 196 (1999).

The Court held that in sum, based on the eyewitness testimony identifying Appellant as the driver, Appellant's admission that she had been drinking, her blood alcohol reading, the failure of her field tests, the manner in which she drove the vehicle, and the witnesses' observations regarding her inebriated condition, the jury could have reasonably concluded that she was driving while intoxicated. Although Appellant's son testified that he was the driver, his testimony could have readily been discounted by the jury. As Appellant is his mother, he is an interested witness, and notably, his testimony contradicted the statement he made to the officers, as well as Brook's testimony.

The Court also held that the fact that Appellant was not cited for refusal to submit to the test is of no moment because she did not refuse to submit to testing. What Appellant did was to deliberately delay Parsons in obtaining a successful test result by blatantly interfering with the testing. By the time a successful result was obtained, more than one hour had passed, and her blood alcohol content had dropped to only .07. If the refusal to be tested is admissible evidence on the issue of intoxication and may indicate the defendant's fear of the results of the test and the consciousness of guilt, see *Johnson v. State, supra*, then a defendant's attempts to prevent accurate testing surely may be considered as similar proof of guilt.

Therefore, the Arkansas Court of Appeals affirmed the conviction of the Saline County Circuit Court.

**Note from City Attorney:** In my opinion, there are several important points to this case which led to a conviction. First, the officers were able to identify the citizen witness, George Brooks, and he actually testified at trial. Brooks was the only person who testified at this trial that Appellant was driving.

Second is the importance of the testimony of Officer Porter that when he arrived at Appellant's residence, he saw the brake lights flash as they approached Appellant's vehicle and further, that Appellant exited the car from the driver's seat with her keys in hand. Again, this is important evidence to the case.

Another important piece of evidence was what Officer Parsons observed and what he was able to testify to about defendant denying she had been driving, his observation of prescription bottles in plain view and in one of her bags, and her statement to him that she took Xanax three times per day. Also important is the conversation Officer Parsons had with Appellant's son at the scene. Parsons was able to testify that Colton said, when he was told by his mother to tell the officers that he had driven him home, responded, "I'm sorry, Mom, I'm not going to do that." Appellant then became upset and yelled at her son. This was very important evidence in my opinion when Colton later testified at his mother's trial that he had driven her home.

Also of importance to this investigation is the officer's testimony about how Appellant attempted to prevent accurate testing of her blood alcohol content. As the Court noted in their opinion, "if the refusal to be tested is admissible evidence on the issue of intoxication and may indicate the defendant's fear of the results of the test and



the consciousness of guilt, then a defendant's attempt to prevent accurate testing surely may be considered as similar proof of guilt.

Based on the totality of the circumstances in this case, it is my opinion that a thorough investigation of this case is what led to the conviction.

**Case:** This case was decided by the Arkansas Court of Appeals on October 29, 2008 and was an appeal from the Saline County Circuit Court. The case cite is *Blair v. State*, CACR 08-476 (10-29-2008).

Jeff Harper  
City Attorney

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### **The Temporary Vehicle License Law: What are the Rules?**

Beginning January 1, 2006, the State of Arkansas began requiring the use of temporary cardboard buyer's tags on purchased unregistered vehicles. The relevant statute is Ark. Code Ann. §27-14-1705. This statute provides that when a person purchases a vehicle, the dealer shall place a temporary cardboard buyer's tag on the vehicle, which shall be valid until the vehicle is registered or the 30<sup>th</sup> day after purchase, whichever comes first. The statute also requires that the temporary cardboard buyer's tag display, in ink, the date of purchase of the vehicle.

Since this statute went into effect, several questions have arisen regarding these temporary cardboard buyer's tags.

The most common question is whether it is proper to conduct a traffic stop on a vehicle solely on the basis that the vehicle displays a temporary cardboard tag. The answer is

"no". Just because a vehicle displays a temporary cardboard tag does not constitute sufficient legal grounds to conduct a traffic stop of the vehicle.

The answer would be different, however, if the temporary cardboard tag was not displayed correctly on the vehicle, if the tag was more than thirty (30) days old, if the tag did not display the information required by Ark. Code Ann. §27-14-1705, or if the tag appeared altered.

For example, the statute requires that the temporary cardboard tag "be placed at the location provided for the permanent motor vehicle license plate". In other words, displaying a temporary cardboard tag in the back window of a vehicle would not be in compliance with the statute, therefore justifying a traffic stop of the vehicle.

Another question which may arise pertains to the altering of these temporary cardboard tags by the purchaser. Actually, this scenario could result in more than one charge.

First, if there is probable cause that the person has altered the temporary cardboard buyer's tag, the person should be cited for violating Ark. Code Ann. §27-14-305. This statute provides that it is unlawful to use or make unofficial license plates, and this includes temporary cardboard buyer's tags. Any person who uses or makes an unofficial temporary cardboard buyer's tag shall be deemed guilty of a misdemeanor and shall be fined not less than one hundred dollars (\$100) and not more than five hundred dollars (\$500). Altering a temporary cardboard buyer's tag would certainly be making an unofficial tag, which would be a violation of Ark. Code Ann. §27-14-305.



In addition, the person could also be cited for *using* or *displaying* the altered temporary cardboard buyer's tag on the vehicle. There are two statutes which could be used.

1) Ark. Code Ann. §27-14-304 provides that no person shall operate a vehicle upon any highway unless it has a valid license plate attached thereto. Displaying an altered temporary cardboard buyer's tag would certainly run afoul of this statute. This is commonly known as "no VL".

2) Ark. Code Ann. §27-14-306 provides that, among other things, that no person shall display upon a vehicle any plate or permit not issued for the vehicle or not otherwise lawfully thereon. Since it is not lawful to display an altered or expired temporary cardboard buyer's tags on a vehicle, this statute could also be used. This is commonly known as "improper use of VL" or "fictitious VL".

The act of altering a temporary cardboard buyer's tag would constitute an offense. In addition, displaying it on a vehicle would constitute an additional offense.

Finally, the statute requires the dealer who issues the temporary cardboard tag to retain documentation regarding each of these tags, including the buyer's name, the date of sale, the VIN, the type of vehicle, etc. If a dealer misuses a temporary cardboard buyer's tag, the fine is up to \$250 for the 1<sup>st</sup> offense, \$500 for the 2<sup>nd</sup> offense, and \$1,000 for the 3<sup>rd</sup> and subsequent offenses.

Feel free to contact the City Attorney's Office if you have any questions regarding temporary cardboard tags.

Ernest Cate  
Senior Deputy City Attorney

## **Arkansas Supreme Court Holds Taped Custodial Statement Was Obtained in Violation of the Fifth Amendment Right to Counsel in Capital Murder Case From Union County, Arkansas**

**Facts Taken From the Opinion:** On July 16, 2005, Megan Harbison was murdered in her apartment in El Dorado, Arkansas. James Wedgeworth (Appellant) and the victim were in a relationship for more than one year and, according to Appellant, were suppose to marry when her divorce was final. However, after the victim's divorce became final, she ended her relationship with Appellant. On the night of the murder, he told his mother about the relationship and that the victim had ended it. He left the house, went to the victim's apartment, and shot and killed Megan Harbison.

The El Dorado Police Department was advised that A.F., the victim's eleven-year-old daughter, called 911 and told dispatchers that her mother was covered in blood. Upon arrival, police found A.F. and another juvenile crying and asking for help. Lieutenant Kevin Holt summoned emergency personnel to the residence. The victim's father advised police that his daughter had broken off her relationship with Appellant, and since that time, Appellant had been harassing her and making threats toward her.

Union County police officers arrested Appellant at his parent's residence in Smackover and transported him to the El Dorado Police Department where he was interviewed by Detective Jamie Morrow. At approximately 4 a.m., Detective Morrow read Appellant his rights, and Appellant signed the rights form. When asked if he



wished to have an attorney, Appellant replied that he wanted "his attorney," but he did not remember his attorney's name. Detective Morrow told Appellant that he would give him a few minutes to remember his attorney's name, and the detective left the room. Within five to ten minutes, Detective Morrow returned and asked Appellant if he remembered his attorney's name. Appellant replied that he had not. Detective Morrow asked Appellant, "What do you want to do?" At that time, Appellant indicated that he wanted to make a statement. Detective Morrow said, "Even without an attorney?" Appellant said, "Yes." Detective Morrow used the original form to re-Mirandize Appellant and took a statement from him. At the pretrial motion hearing, Detective Morrow testified that he "read his rights to him a couple of times." During the interview, before Appellant's confession, the following colloquy took place:

MORROW: O.k., James when . . . ah . . . when I read you your rights . . . ah . . . you said you wanted your attorney present . . . I give you an opportunity to . . . to . . . to tell me who your attorney was so we could get him up here . . . Is that correct?

WEDGEWORTH: Yes sir.

MORROW: At that time you told me you didn't have one but you wanted to go ahead and speak to me, is that correct?

WEDGEWORTH: Yes sir.

MORROW: O.k., you wasn't forced to give me . . . to talk to me or anything like that was you?

WEDGEWORTH: No sir.

After Appellant confessed to shooting the victim with a twenty gauge shotgun, the following colloquy took place:

MORROW: And you . . . you . . . you understand you had the right to talk to a lawyer before any questions were asked . . . you may have had one present . . . you understood that?

WEDGEWORTH: Yes sir.

MORROW: O.k. if you couldn't afford one . . . one would be appointed to represent you free of cost . . . you understood that . . . that correct?

WEDGEWORTH: Yes sir.

MORROW: O.k., as I said earlier . . . when I started talking to you . . . you said you wanted your attorney . . . but you didn't have . . . you . . . you didn't you didn't have an attorney and you . . . you choose to go ahead and speak to me of your own free will . . . is that correct?

WEDGEWORTH: Yes . . . I did not know of a name of an attorney right off hand.

MORROW: So . . . did I threaten you for you[r] statement?

WEDGEWORTH: No sir.

MORROW: Did I make you any promises for your statement?

WEDGEWORTH: No sir.

MORROW: O.k., your statement made of your own free will?



WEDGEWORTH: Yes sir.

On August 5, 2005, a criminal information was filed charging Appellant with the capital murder of Megan Harbison. On August 3, 2006, Appellant filed a motion to suppress, alleging that El Dorado police “conducted an illegal custodial interrogation of the defendant after the defendant made an unambiguous request for legal counsel and before counsel was provided in violation of the Fifth and Fourteenth Amendments to the United States Constitution and the Constitution of the State of Arkansas.” The circuit court entered an order on August 4, 2006, denying Appellant’s motion to suppress. The circuit court ruled that “the defendant was advised he had the right to counsel, implied he wanted his counsel but could not remember his name, and then did not ask for alternate counsel, did not ask to call his family or ask for a court-appointed attorney when asked what he wanted to do.” The circuit court found that Appellant understood his rights and voluntarily and intelligently waived his right to have counsel present.

A jury found Appellant guilty and sentenced him to life imprisonment without parole. A judgment and commitment order was filed on August 17, 2006. On August 30, 2006, Appellant filed his notice of appeal.

For his sole point on appeal, Appellant argued that the circuit court erred in denying his motion to suppress and in allowing evidence to be introduced at trial that was allegedly obtained in violation of his Fifth Amendment right to counsel. Specifically, Appellant contended that his right to counsel was violated when he continued to be interrogated by a police officer when he requested to have an attorney present. Appellant asserted that he clearly invoked

his Fifth Amendment right to counsel and that he did not initiate further communication with Detective Morrow.

In response, the State argued that the circuit court properly denied Appellant’s motion to suppress his custodial confession. The State conceded that it is undisputed that Appellant invoked his right to counsel after being advised of his Miranda rights and that Detective Morrow, rather than Appellant, initiated contact. The State asserted the detective’s postinvocation communications with Appellant did not amount to a re-initiation of an interrogation, but rather Appellant’s communication with Detective Morrow amounted to a self-incriminating statement.

**Decision by Arkansas Supreme Court:**

The Court noted that the narrow issue in this case is whether the detective interrogated Appellant after initiating contact with him. Both the Fifth and Sixth Amendments provide a right to counsel. *Vidos v. State*, 367 Ark. 296 (2006). Under the Fifth Amendment, the right to counsel is derived from the amendment’s prohibition against self-incrimination while in custody. *See Miranda v. Arizona*, 384 U.S. 436 (1966). Once a defendant invokes his Fifth Amendment right to counsel at a custodial interrogation, the police may not interrogate any further until counsel is provided, or the defendant initiates further communication. *Michigan v. Jackson*, 475 U.S. 625 (1986).

Turning to the facts of this case, the Court noted that the facts show that Detective Morrow testified that he had read Appellant his rights and specifically told him that he had a right to have a lawyer present. Appellant indicated that “he wanted his lawyer present” but could not identify who his attorney was. Detective Morrow told

Appellant that he “would leave the room for a little bit, give him some time to think, [and] maybe remember who his attorney was.” After five to ten minutes, Detective Morrow returned to the room, asked Appellant if he recalled his attorney’s name, and Appellant said “he did not.” Detective Morrow then asked Appellant “what he wanted to do,” and according to the detective, Appellant “said he wanted to provide the statement.” Detective Morrow asked, “Even without an attorney?” Appellant replied, “Yes.” The detective then read his rights again, using the same form, and took Appellant’s taped statement. Detective Morrow testified that Appellant signed a Miranda form, which Detective Morrow signed and dated July 16, 2005, at 0350 hours. Appellant signed the form and dated it July 16, 2005, at 4:00 a.m. It is unclear from Morrow’s testimony when exactly Appellant signed the Miranda form.

The Court held that Appellant asked for his attorney, a clear invocation of his right to counsel. The State conceded that Detective Morrow initiated contact following a five to ten minute break taken to give Appellant the opportunity to remember his attorney’s name. Though the State argued waiver and that the two questions by Detective Morrow were not interrogation, it is clear that Appellant’s confession was taken after the invocation of right to counsel and before either counsel was present or Appellant initiated further conversation, as required by *Vidos, supra*.

The Court held therefore that Appellant's right to counsel was violated. Therefore, it was error for the circuit court to admit the confession. The Arkansas Supreme Court therefore reversed and remanded the case.

**Note From City Attorney:** This case makes it clear that when a suspect in custodial interrogation asks for an attorney, he is not subject to further interrogation until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police. It also makes no difference if the suspect does not know who his attorney is or whether he even has an attorney.

The U.S. Supreme Court held in *Edwards v. Arizona*, 451 U.S. 477 (1981), that when an accused expresses his desire to deal with the police only through counsel, the accused is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police. *Id.* When Wedgeworth indicated that "he wanted his lawyer present" there can be no further interrogation unless he himself initiated the communication, exchange, or conversation. After the five to ten minute break, it was the detective that initiated the contact with Wedgeworth.

**Case:** This case was decided by the Arkansas Supreme Court on October 2, 2008 and was an appeal from the Union County Circuit Court. The case cite is *Wedgeworth v. State*, CR 07-1042 (10-2-2008).

Jeff C. Harper  
City Attorney

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**Out of State License Plate; Stop Lacked Probable Cause in Drug Case Out of Pope County, Arkansas**

Sergeant Kyle Drown of the Arkansas State Police made a traffic stop in Pope County Arkansas on a vehicle with an improperly displayed out-of-state license plate. Drown stopped the vehicle because the license-plate bracket "completely covered the state name." Upon further investigation, the driver, Martin Hinojosa, was discovered to have a large amount of marijuana and was charged with possession of controlled substance with intent to deliver. Hinojosa was found guilty and was sentenced to 108 months in the Department of Corrections.

Hinojosa appealed his conviction for possession with intent to deliver because the officer did not have probable cause to stop his vehicle. Hinojosa argued Ark. Code Ann. §27-14-716, the statute that the initial traffic stop was based on, does not apply to out-of-state vehicles. Ark. Code Ann. § 27-14-716 states:

**Display of license plates generally.**

- (a)(1) License plates issued for a motor vehicle other than a motorcycle shall be attached thereto, one (1) in the front and the other in the rear.
- (2)(A) When one (1) plate is issued, it shall be attached to the rear.
- (B) License plates for trucks of one (1) ton capacity or larger may be displayed either on the front or rear of the vehicle.

(C) The license plate issued for a motorcycle required to be registered under this chapter shall be attached to the rear thereof.

(b) Every license plate shall, at all times, be securely fastened in a horizontal position to the vehicle for which it is issued so as to prevent the plate from swinging and at a height of not less than twelve inches (12") from the ground, measuring from the bottom of such plate, in a place and position to be clearly visible and shall be maintained free from foreign materials and in a condition to be clearly legible.

(c) Placing any type of cover over a license plate which makes the license plate more difficult to read or which reduces the reflective properties of the license plate is prohibited.

Hinojosa argued that Ark. Code Ann. §27-14-704 is the applicable statute in regard to out-of-state license plates and only requires that out-of-state plates "conspicuously display the registration numbers." Ark. Code Ann. §27-14-704 states as follows:

**Motor vehicles registered in foreign states.**

(a) Any motor vehicle or motorcycle belonging to any person who is a nonresident of this state who has registered the motor vehicle or motorcycle in and who has complied with all the laws of the state, territory, District of Columbia, or any province or territory of Canada in which the owner resides with respect to the registration of motor vehicles and the display of registration numbers and

who shall conspicuously display the registration number as required may be operated...

Upon review of the case the court reiterated that an officer must have probable cause that a vehicle has violated a law. Probable cause is defined as, "facts or circumstances within a police officer's knowledge that are sufficient to permit a person of reasonable caution to believe that an offense had been committed by the person suspected." *Burks v. State*, 362 Ark. 558, 559-60 (2005). The court went on to determine that the defendants argument prevailed because Ark. Code Ann. §27-14-704 was a specific statute addressing the particular subject matter of out-of-state licenses. Therefore Hinojosa's license plate only had to conspicuously display the registration number and it did not matter that the state name was obscured.

Because the Court held that §27-14-704 was the applicable statute for out-of-state license plates, Sergeant Drown did not have probable cause to perform a traffic stop on Mr. Hinojosa. Therefore, the marijuana that was ultimately discovered was suppressed because the stop lacked probable cause.

**Case:** This case was decided by the Arkansas Court of Appeals on October 29, 2008. The case cite is *Hinojosa v. State*, CACR 08-234 (10-29-2008).

Amber Roe  
Deputy City Attorney

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## **Arkansas Court of Appeals Upholds Search of Motel Room**

**Facts Taken From Opinion:** On February 11, 2007, Officer John Nannen (Nannen) of the North Little Rock Police Department

received at tip from a confidential informant that two black males, known as "Little Pat" and "Dan," were selling crack cocaine and ecstasy out of room 180 at the Howard Johnson Motel. The informant also advised that narcotics were being stored in "Little Pat's" PT Cruiser vehicle parked next to the room. Nannen along with Investigator Jeff Glover (Glover) and Officer David Petit (Petit) went to the motel at 4:30 p.m., bringing Petit's drug detecting canine. The officers observed the PT Cruiser in the parking lot. The canine alerted on the vehicle. The officers knocked several times on the door of room 180. Daniel Anderson (Anderson) opened the door and appeared sleepy. After being asked who owned the Cruiser, Anderson stated he would get the owner. Anderson left the door open, went into the bathroom and then awakened Patrick Givens (Givens).

Givens acknowledged that he borrowed the Cruiser from his sister and he consented to a search of the vehicle. Givens got dressed and accompanied Nannen and Petit to the vehicle while Glover and Anderson remained in the room. The officers found no drugs in the vehicle but they located \$4,360 in cash in the console. Officer Nannen asked Givens for permission to search the room, Givens agreed. Anderson was also asked for consent to search the room and he agreed.

During the search, a Crown Royal bag and a scale with residue were found underneath the covers on the bed where Givens had been sleeping. Inside the bag were 161 ecstasy pills and bags containing 60 grams of cocaine. More pills and cocaine were found in the bathroom. None of the officers recalled seeing any personal items or luggage in the room.



The motel manager testified that a person named Marlin Dwayne Patterson rented room 180 on February 11<sup>th</sup>, for one day.

At a bench trial, Anderson and Givens were found guilty of possession of cocaine with intent to deliver, possession of MDMA (ecstasy) with intent to deliver among other charges. They appealed stating that the trial court erred in denying their motion to suppress the drug evidence.

**Argument and Decision by Court:** In beginning their analysis, the Court stated that "a person's Fourth Amendment rights are not violated by the introduction of damaging evidence secured by the search of a third person's premises or property." *Travis v. State*, 95 Ark. App. 63, (2006). The inquiry to be made by the court is whether the person manifested a subjective expectation of privacy in the area searched and whether society is prepared to recognize that expectation as reasonable. *Id.* The expectation of privacy associated with a person's home applies with "equal force to a properly rented motel room during the rental period." *United States v. Rambo*, 789 F. 2d 1289, 1296 (8<sup>th</sup> Cir. 1986). However, a mere visitor, a person who is not an overnight guest, usually lacks a rightful expectation of privacy when present in the motel room of another person. *United States v. Sturgis*, 238 F.3d 956 (8<sup>th</sup> Cir. 2001).

Arkansas court decisions recognize that invited guests of the registered occupant of the motel room may possess a legitimate expectation of privacy depending on the circumstances. For example, if a defendant had permission from the registered occupant to stay overnight in the room and had a key to the room that he obtained from the desk clerk. *Owen v. State*, 75 Ark. App. 39 (2001).

In this case, the record shows that Appellants were napping during the afternoon in a motel room that was registered to another person and that they had no personal belongings in the room. Appellants did not pay for the room, nor was there evidence they had a key to the room. There was also no evidence shown that Appellants knew the person in whose name the room was registered. The Court found that the Appellants' physical presence in the motel room, without more, does not establish that they possessed a legitimate expectation of privacy in the motel room that society is prepared to accept as reasonable. The Court affirmed the trial court's denial of the Appellants' motion to suppress evidence.

**Case:** This case was an appeal from the Circuit Court of Pulaski County. It was decided by the Arkansas Court of Appeals. The case cite is *Anderson v. State*, CACR 07-1333 (Sept. 10, 2008).

Brooke Lockhart  
Deputy City Attorney

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### **Arkansas Supreme Court Affirms Conviction in Case in Which an Arkansas Department of Correction Employee had Sexual Relations With an Inmate**

**Facts Taken From the Opinion:** Anna Clark (Appellant) was employed in early 2006 by the Arkansas Department of Correction as a psychologist and one of her patients was Inmate Dan Burns. On April 17, 2006, a correctional officer, Latasha Robinson, discovered Appellant having sexual intercourse with Burns in her counseling office. Warden Gaylon Lay



interviewed Appellant shortly after the alleged incident. At that point, she denied the allegations. Then, in a subsequent interview conducted by Detective Kenneth Whitmore on April 18, 2006, she admitted the allegations. The detective did not record the entire interview; rather, the interview began around 3:15 p.m. and the recording of the confession did not start until 4:30 p.m. No one else was present in the interview room. In a separate interview, Inmate Dan Burns admitted the allegations.

By felony information, Appellant was charged with two counts of sexual assault in the third degree in the Circuit Court of Lincoln County, Arkansas. She eventually filed a motion to suppress claiming that her confession was involuntary and the product of false promises. Appellant further argued that the State failed to rebut the presumption of involuntariness due to the lack of a complete recording of the entire interview, as required by Article 2, Section 8 of the Arkansas Constitution. Following a hearing, the circuit court determined that the statement was freely and voluntarily given and denied the motion to suppress.

After a jury trial, Appellant was convicted of both counts of sexual assault. She was sentenced to three years in the Arkansas Department of Correction and fined \$5,000 on each count. Appellant appealed to the Supreme Court of Arkansas.

On the appeal of her motion to suppress, Appellant asserted that her confession was involuntary and the product of false promises. Based on that assertion, she contended that the trial court erred in denying her motion to suppress.

**Decision by Arkansas Supreme Court:**  
The Arkansas Supreme Court noted that a

statement made while in custody is presumptively involuntary, and the burden is on the State to prove by a preponderance of the evidence that a custodial statement was given voluntarily and was knowingly and intelligently made. *Grillot v. State*, 353 Ark. 294, 107 S.W.3d 136 (2003). In order to determine whether a waiver of *Miranda* rights is voluntary, this court looks to see if the confession was the product of free and deliberate choice rather than intimidation, coercion, or deception. *Id.* In making this determination, this court reviews the totality of circumstances surrounding the waiver. *Id.* The Court further noted that the credibility of the testimony of different witnesses is for the trial court to resolve, and the Court defers to the determinations of the trial judge. *Grillot v. State, supra.*

The Arkansas Supreme Court noted they had previously held that if a police officer makes a false promise that misleads the person in custody, and the person in custody gives a confession because of that false promise, then the confession has not been voluntarily, knowingly, and intelligently made. *Winston v. State*, 355 Ark. 11, 131 S.W.3d 333 (2003). "In determining whether there has been a misleading promise of reward the Court looks at the totality of the circumstances." *Id.* The totality is subdivided into two main components: first, the statement of the officer and second, the vulnerability of the defendant. *Id.* The Court employs a two-step analysis in determining the voluntariness of the confession. *Id.* If during the first step, this court decides that the officer's statement is an unambiguous false promise of leniency, there is no need to proceed to the second step because the defendant's statement is clearly involuntary. *Id.* If, however, the officer's statement is ambiguous, making it difficult for us to determine if it was truly a false promise of



leniency, the Court proceeds to the second step of examining the vulnerability of the defendant. *Id.* Factors to be considered in determining vulnerability include: (1) the age, education, and intelligence of the accused; (2) how long it took to obtain the statement; (3) the defendant's experience, if any, with the criminal-justice system; and (4) the delay between the *Miranda* warnings and the confession. *Id.*

In deciding this case, the Court first looked at whether the officer made an unambiguous false promise of leniency. Appellant testified that, during the unrecorded one hour and fifteen minutes of her interview, Detective Whitmore made false promises in order to induce her to confess. According to Appellant, the detective promised to keep the matter out of the press, and he assured her that she would not go to jail and that, hopefully, it would not affect her license as a psychologist. Detective Whitmore denied making any promise of leniency in return for her statement, but he did acknowledge telling her that he would speak to the prosecutor. The Arkansas Supreme Court noted that any conflict in the testimony of different witnesses is for the trial court to resolve. *Grillot v. State, supra*. The Court defers to the superiority of the trial judge to evaluate the credibility of witnesses who testify at a suppression hearing. *Id.* The Court then held that based on the record before them, they could not say that the trial judge was clearly erroneous in his evaluation of the credibility of the witnesses.

The Court further noted that even if they were to conclude that Detective Whitmore's promise to talk to the prosecutor was an ambiguous promise of leniency, which is contrary to our case law, *see Holland v. State*, 365 Ark. 55, 225 S.W.3d 353 (2006), the Court could not say that Appellant was

particularly vulnerable at that point in time such that her free will was overborne. It was undisputed that Appellant signed an acknowledgment and waiver of her *Miranda* rights. She testified that she had a doctoral degree in psychology and considered herself to be fairly intelligent. She admitted that the detective had reviewed her *Miranda* rights with her before she agreed to talk with him. Appellant also knew that having sex with an inmate was a crime, and that if she was charged, she could lose her license and go to jail. As an employee of the Department of Correction, Appellant was not a total stranger to the criminal-justice system. Moreover, between the time she signed the rights form and the time she gave her statement, a period of one hour and fifteen minutes elapsed, which is not undue. Therefore, the Court in viewing the totality of the circumstances, concluded that Appellant's confession was voluntarily, knowingly, and intelligently given.

Another issue brought up by Appellant on appeal concerned the constitutional right to recording of the entire interview. Appellant urged the Court to construe the due process clause in Article 2, Section 8 of the Arkansas Constitution to include a constitutional right to a recording of all phases of a police interrogation leading to a confession.

On this issue, the Arkansas Supreme Court declined to recognize a constitutional right to recordation under the due process clause in the Arkansas Constitution. Ark. Const. art. 2, §8. The Court further noted that Appellant acknowledged the Arkansas Supreme Court's prior holding in *State v. Sheppard*, 337 Ark. 1, 987 S.W.2d 677 (1999), which held that the lack of a recording does not invoke a constitutional safeguard. The Court further noted that even



before *State v. Sheppard*, they declared that no Arkansas law requires the police to record the interrogation in its totality. *Misskelley v. State*, 323 Ark. 449, 915 S.W.2d 702 (1996). As the Arkansas Supreme Court explained in the *Misskelley* case, “[w]e will consider such a factor in the totality of the circumstances mix, but we will not invalidate a confession for that reason alone.” *Id.*, at 472, 915 S.W.2d at 714.

The Court noted that the case law and secondary authority cited by Appellant reflected little if any agreement regarding how electronic recordation should be implemented, or whether it should be required, encouraged formally through evidentiary rules, or encouraged through other informal means. *State v. Cook*, 847 A.2d 530 (N.J. 2004). The Court noted that in view of these questions and many others that merit consideration, and bearing in mind the difficult task of drafting a rule that would clearly delineate the parameters of a recording requirement, the Court believes that the criminal-justice system will be better served if the Court's supervisory authority was brought to bear on this issue. Therefore, the Court referred the practicability of adopting such a rule to the Committee on Criminal Practice for study and consideration.

The Court noted that even if they were to adopt a recording requirement and exclude the confession in this case, any resulting error would be harmless in light of the otherwise overwhelming evidence of Appellant's guilt. Officer Latasha Robinson was an eyewitness to the alleged incident, and Dan Burns admitted the allegations.

The Appellant made other legal arguments in her appeal to the Arkansas Supreme Court, but the Court ruled against her on

each issue and affirmed the judgment of the Lincoln County Circuit Court.

**Note From City Attorney:** In their opinion, the Arkansas Supreme Court reviewed how other state courts have addressed the right of the suspect to have a recording of the entire interview. The Court noted in their opinion that only the Supreme Court of Alaska has recognized the right to have the entire interview recorded under its state constitution. The Arkansas Supreme Court also noted that while many courts have noted approvingly the protection provided by a complete recording of an interrogation, they have declined to hold that recording the entire interrogation is required by the respective state constitutions. The Arkansas Supreme Court also declined to make such a decision. If that in the future the Court promulgates a rule addressing this issue, it will be set out in *C.A.L.L.*

**Case:** This case was decided by the Arkansas Supreme Court on September 25, 2008. The case cite is *Clark v. State*, CR 07-1276 (Ark. 9-25-2008).

Jeff Harper  
City Attorney

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## **Arkansas Court of Appeals Affirms Conviction in Springdale Bank Robbery Case**

**Facts Taken From the Opinion:** On April 13, 2007, at approximately 9:30 in the morning, the Arkansas National Bank in Springdale, Arkansas was robbed. One individual perpetrated the robbery. The robber entered the bank carrying a green backpack and wearing red and black gloves.



The robber was also wearing a white motorcycle helmet that obscured the robber's facial features. The robber approached the clerk's window without removing the helmet while saying that he wanted to make a deposit. Based upon the tenor of the voice and the clerk's observations of the robber's physical characteristics, the teller identified the robber as male.

When the robber reached the clerk's window, he placed the backpack on the counter causing a clanging noise. He retrieved a semi-automatic pistol from the backpack and pointed it at the bank clerk, directed the clerk to give him all the money, then left after the clerk complied. The clerk described the barrel of the gun as black in color and a rectangular shape. The bank teller stationed at the drive-through window also heard the robber's demand for money.

An eye-witness testified that he was driving outside the bank when he saw a person walking up to the front of the bank with a backpack and with a white motorcycle helmet on his head. The witness explained that it struck him as odd that someone would be entering the bank with a helmet on his head, so he came back to the bank. He observed a red Jeep Cherokee parked behind the bank building with an individual sitting in the Jeep. This person also was wearing a white motorcycle helmet, and the passenger door of the Jeep was open. The witness stated that he turned his vehicle around in order to view the license plate number of the Jeep; however, before he could gain the vantage point, the Jeep sped off.

Detective Eric Gregory with the Springdale Police Department testified that shortly after he began documenting the scene of the robbery, he received a call that a red Jeep

was found burning just outside the city limits in Washington County's jurisdiction. A witness had already identified a red Jeep as the vehicle used by the suspects in the robbery. Despite the fire, the VIN of the vehicle was retrieved which lead the investigators to the registered owner, Tony King. Mr. King, who was incarcerated in a facility in Malvern at the time, stated he had given the vehicle to his ex-wife. Tracing the vehicle through several transactions, the officers obtained a warrant for the residence of Chris Miller. The search pursuant to the warrant produced no evidence of the robbery. In addition, after interviewing Mr. Miller, it was determined that, not only did Mr. Miller not physically match the description of the suspect, but Mr. Miller's employer as well as video surveillance on the employer's premises confirmed that Mr. Miller was working at the time of the robbery. In the course of investigating the possession and location of the Jeep prior to the robbery, the investigators were told by more than one source that people were saying that the Sawney brothers had taken it.

Detective Gregory also described a receipt for two motorcycle helmets that were purchased on April 12, the day before the robbery at 3:36 in the morning at a Wal-Mart. He also explained that the FBI confirmed that the purchased helmets were consistent with the ones used in the robbery. Special Agent Perry Wilson with the FBI based in Fayetteville explained that surveillance video at the Wal-Mart store showed that Wesley James Sawney, Jr. (Appellant) purchased the helmets.

Testimony also indicated that Appellant's uncle confirmed that Appellant and his brother stored a red Jeep at his shop for three to four weeks, but that, the night before the robbery, the Jeep had disappeared



from the shop. The uncle had written down the VIN of the Jeep while it was stored there, and this number matched the VIN of the red Jeep set on fire shortly after the robbery.

Detective Charles Rexford with the Washington County Sheriff's office investigated the fire involving the red Jeep. He noted the odor of accelerants on the vehicle, which test results from the crime lab confirmed were present. The detective testified that he was specifically looking for items associated with the robbery, but found nothing of substance in the vehicle to connect the red Jeep with the bank robbery.

Items consistent with the robbery, however, were found in Appellant's car. Lieutenant Lester Coger with the Springdale Police Department described the search of the car belonging to Appellant and his wife. The search revealed a semi-automatic handgun with a square nose. He explained that when he saw this handgun, he recalled the description provided by the bank clerk of the gun that the robber pointed at her and recognized that this weapon was consistent with her description. The lieutenant found this consistency significant, reasoning that people who have had a gun pointed at them often remember the details of the barrel and the nose of the gun. He further testified that documentation discovered in the search identified where the gun was purchased, when the gun was purchased, and by whom it was purchased. The signature of the purchaser was that of Appellant.

In the trunk of Appellant's vehicle, Lieutenant Coger found two motorcycle helmets, the buyer's guide to the red Jeep with the matching VIN written on the guide, and a gas can with a nozzle that had been burned to the point of breaking. This gas can

was admitted into evidence and the disformity of the container, apparently caused by exposure to heat and flame, was discussed and explained to the jury.

Another witness, Ryan Plaster, testified regarding statements made by Appellant and Appellant's brother, who was the best man in Mr. Plaster's wedding. He described how the police had shown Mr. Plaster a video of the robbery and that following that viewing, the two brothers had come to his place of employment. Appellant stood behind Mr. Plaster with Appellant's brother in front. Mr. Plaster stated he felt intimidated by the two men and that Appellant told him that he needed to stay quiet about the robbery. At one point, they escorted him to a vehicle to show him motorcycle helmets, and when they popped the trunk he believed they were going to try to hit him and throw him into the trunk. He also testified that Appellant's brother, in the presence of the Appellant, commented that he had burned all the physical evidence.

A Washington County jury convicted Appellant of being an accomplice to aggravated robbery, arson, and theft of property. The jury also found that Appellant used a firearm in the commission of a felony. He was sentenced to ten years imprisonment for aggravated robbery, one year for arson, and five years for theft of property, to run consecutively. The seven year firearm sentence was imposed concurrently. The Appellant appealed his conviction to the Arkansas Court of Appeals.

**Decision by Arkansas Court of Appeals:**

In this case, Appellant argued that while testimony provided at trial pointed to Appellant's brother as the individual who committed the alleged crimes, the testimony



also established that his brother lived with Appellant and as a resident of Appellant's home had access to all of Appellant's property. He asserted that the circumstantial evidence which purportedly led to Appellant actually led to him only by virtue of his living situation.

Appellant urged the Court on appeal to find that the circumstantial evidence in the case cannot support a conviction because the fact that his brother lived with him provides other reasonable conclusions inconsistent with his guilty. *See Carmichael v. State*, 598, 12 S.W.3d 225 (2000).

Appellant argued that no testimony sufficiently identified him as the driver of the red Jeep, that there were no eye-witnesses to the starting of the fire of the Jeep, that Detective Gregory failed to investigate a report of another individual not matching Appellant's description seen driving a red Jeep in the area where the Jeep was found burned, and that there was insufficient evidence that the gun used in the robbery was the gun found in Appellant's vehicle.

The Court agreed with Appellant that most of the circumstantial evidence could lead to him by virtue of his living arrangement to his brother; however, the testimony of Mr. Plaster provides a critical basis to support the conviction and demonstrates that the evidence is consistent with Appellant's guilt and inconsistent with any other reasonable conclusion. Appellant's brother was Mr. Plaster's best man at his wedding, and the jury was free to use their common knowledge to draw conclusions from the fact about their relationships, how well Mr. Plaster would interpret the brothers' actions toward him, and other issues of credibility. *See Bailey v. McRoy*, 99 Ark. App. 185, 190,

258 S.W.3d 388, 392 (2007). The testimony describing Appellant's presence during his brother's confession of destroying the evidence by fire, Mr. Plaster's feelings of fear and intimidation with Appellant standing behind him, and Appellant's admonition to Mr. Plaster that he should be quiet relating to Mr. Plaster's conversations with the police establish a nexus sufficient to support the jury's determination that the circumstances revealed Appellant's role as an accomplice. *See Jefferson v. State* 86 Ark. App. 325, 185 S.W.3d 114 (2004). The Court held that when that connection is made, all of the evidence is consistent with Appellant's guilt and inconsistent with any other reasonable conclusion. Therefore, the Arkansas Court of Appeals affirmed the conviction of the Washington County Circuit Court.

**Case:** This case was decided by the Arkansas Court of Appeals on November 12, 2008, and was an appeal from the Washington County Circuit Court, Honorable William A. Storey, Judge. The case was not designated for publication.

Jeff Harper  
City Attorney

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### **8<sup>th</sup> Circuit Says Arrest in Oklahoma Not a Violation of Fourth Amendment in Certain Circumstances**

**Facts Taken From Opinion:** On January 11, 2005, Stephen James Engleman (Engleman) dialed 911 to report three prowlers at his parents' home at 24512 Van Fleet Road, Siloam Springs, Arkansas. The call was routed to the Benton County



Sheriff's Office in Arkansas. Caller identification on the 911 system indicated that Engleman made the call from his parents' home from a telephone number with a 479 area code, which is assigned to northwest Arkansas telephones. Engleman instructed officers to travel north on Highway 43 (an Arkansas road that runs from downtown Siloam Springs to Van Fleet Road) before turning west onto Van Fleet Road.

Benton County Deputy Sheriff Murray and a Gentry, Arkansas, police officer responded to the call. Dispatch informed the officers that Engleman had an outstanding Arkansas warrant for failure to comply. Officers told Engleman's father they had a warrant for Engleman's arrest. The officers explained about the Arkansas warrant, to which Engleman's father stated that they were in Oklahoma. Officers arrested Engleman. Engleman protested that the officers could not arrest him because he was in Oklahoma. Also, Engleman's mother told officers they were currently in Oklahoma.

Engleman sued Gentry Police Chief Keith Smith, Benton County Sheriff Keith Ferguson and Deputy Murray under 42U.S.C. §1983, alleging, among other things, that the arrest in Oklahoma was unreasonable under the Fourth Amendment. During litigation, a Global Positioning System map revealed that the house at 24512 Van Fleet Road was physically located in Oklahoma, and the parties agreed that the Engleman's mailbox is located in Arkansas. The district court denied Deputy Murray's motion for summary judgment based on qualified immunity. Deputy Murray appealed.

**Argument and Decision by Court:**  
Engleman claimed that in arresting him in

Oklahoma on an Arkansas warrant, Deputy Murray exceeded his jurisdictional authority, which violated Engleman's Fourth Amendment right to be free from unreasonable seizures. Deputy Murray argued that he is entitled to qualified immunity for the alleged Fourth Amendment violation because it was objectively reasonable to believe that he was arresting Engleman in Arkansas.

Engleman conceded that the Arkansas arrest warrant was valid and supported by probable cause. Deputy Murray cited no Oklahoma authority that would permit an Arkansas officer to affect an arrest on an Arkansas warrant in Oklahoma.

The Eighth Circuit concluded that even though Deputy Murray lacked the authority to execute the valid Arkansas arrest warrant in Oklahoma, Deputy Murray was entitled to qualified immunity because it was objectively reasonable for an officer in Deputy Murray's position to have believed that he was executing the arrest in Arkansas. "Officers can have reasonable, but mistaken, beliefs as to the facts establishing the existence of probable cause or exigent circumstances, for example, and in those situations courts will not hold that they have violated the Constitution." *Saucier v. Katz*, 533 U.S. 194, 206 (2001). The "objective facts available" to Deputy Murray at the time would lead a reasonable officer to believe he was arresting Engleman in Arkansas. *Maryland v. Garrison*, 480 U.S. 79, 88 (1987). The 911 system identified the call as originating from a telephone with an Arkansas area code and a Siloam Springs, Arkansas, address. The call was routed by the system to the Benton County Sheriff's Office and Benton County deputies were summoned to a location with an Arkansas address. The arrest warrant had been issued



in Arkansas and stated that Engleman resided at 24512 Van Fleet Road in Arkansas.

Engleman argued that Deputy Murray should have known he was making an arrest in Oklahoma when Engleman and his mother and father informed the deputy that he was in Oklahoma. However, the Court noted that the protests of a resisting arrestee generally do not make an objectively reasonable arrest unreasonable. *Hill v. California*, 401 U.S. 797, 803 (1971).

The Court concluded that Deputy Murray did not violate the Fourth Amendment and was entitled to qualified immunity.

**Note From Deputy City Attorney:** There was a strongly worded dissenting opinion by Judge Bye stating that "a deputy sheriff, employed by a county which borders another state, would be aware of where the state line is, and further, would not reasonably assume homes located on the opposite side of a state-line road are still within his jurisdiction."

This case is included in this edition of *C.A.L.L.* not only because in Northwest Arkansas, we border two states and have many county roads and residences that have a mailbox in one state, while the house sits in another state; but also, this principle could be applied to city versus city jurisdictions. As the cities in Northwest Arkansas expand and grow, it becomes more difficult, but just as important, to know exactly where you are making an arrest.

**Case:** This case was an appeal from the United States District Court for the Western District of Arkansas. It was decided by the United States Court of Appeals for the

Eighth Circuit. The case cite is *Engleman v. Murray*, 07-2060 (8<sup>th</sup> Cir. 11-17-2008).

Brooke Lockhart  
Deputy City Attorney

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### **The Importance of Detailed Testimony in DWI's**

On August 16, 2008 Springdale Police Officer Michael Lisenbee performed a traffic stop. Lisenbee's report stated as follows, "On August 16, 2008 at approximately 22:46 hours, I was patrolling south bound on N. Thompson when I approached a vehicle in the inside lane going south bound. The vehicle was a red GMC Envoy. As I followed the vehicle, I noticed the vehicle weaving from left to right and was frequently braking. As I continued to follow the vehicle and we approached the intersection of North Thompson and Christian, I proceeded to perform a traffic stop on the vehicle.

The report went on to detail the contact Lisenbee made with the driver and his ultimate determination that the driver was driving while intoxicated, and an arrest was made. The defendant pled not guilty and hired an attorney. The defense did not dispute that the state could prove that the defendant was intoxicated. The defense wanted a trial solely on whether the stop was proper.

I prosecuted the case and had concerns due to the fact that the swerving was within the drivers own lane. However, Officer Lisenbee testified with great detail as to exactly what he observed. Officer Lisenbee testified that it was almost 11pm on a Saturday night. That the vehicle was not just tapping the brake but was actually braking

hard enough for the car to rock forward and that he had to keep his patrol car back so as not to rear-end the defendant. Officer Lisenbee also testified that while the weaving was within the defendant's own lane of traffic he was afraid to drive around the defendant in the adjoining lane because of the frequency of the swerving. Under the totality of these circumstances the Judge found that the stop was proper and found the defendant guilty of DWI.

This case demonstrates that as an officer you must be able to articulate your observations and clearly state why you took the actions you did. Defend your actions and tell your story with details so the Judge or jury "sees" what you observed.

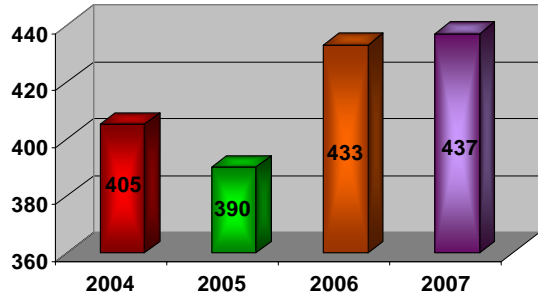
Amber Roe  
Deputy City Attorney

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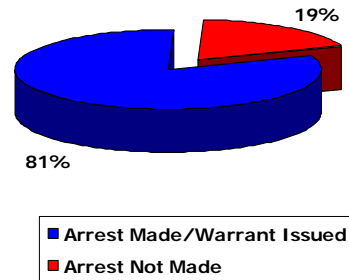
**City Attorney's Office Releases Report on Intimate Domestic Violence in Springdale in Year 2007**

On October 15, 2008, our office released its Report on Intimate Domestic Violence in Springdale for the Year 2007. Set out below is Chart 4 and Chart 5, which are taken from the report. You will notice in Chart 5 that in 81% of the total incidents in which a report was filed by Springdale Police, an arrest was made or a warrant issued.

**CHART 4**  
Comparison of Intimate Domestic Violence Reported to Springdale Police in Past Four Years



**CHART 5**  
Intimate Domestic Violence Incidents Reported to Springdale Police in 2007



I recommend officers go to our website and review the report in its entirety. Our website address is [www.springdaleark.org/cosa](http://www.springdaleark.org/cosa). Click on the "Report on 2007 Intimate Domestic Violence" at the bottom of the home page.

Jeff Harper  
City Attorney

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### City Attorney's Office Releases Annual Report on Drunk Driving for Year 2007

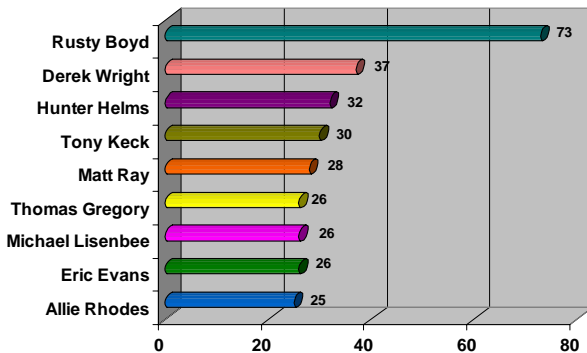
On December 1, 2008, our office released our annual drunk driving report. In 2007, there were 707 persons arrested for violating the Omnibus DWI Act in Springdale, which is down from 827 in 2006. However, the good news is that Springdale's drunk driving crashes went down from 151 in 2006 to 137 in 2007. Below are Diagram 5 and Chart 16 taken from the report. Diagram 5 gives special recognition to those Springdale officers who made 25 DWI arrests or more, with Rusty Boyd being first making 73 DWI arrests in 2007. Chart 16 sets out the dispositions as of December 1, 2008 on all DWI arrests made in 2007.

I recommend officers go to our website and review the report in its entirety.

Jeff Harper  
City Attorney

Chart No. 16 2007 Dispositions on DWI Cases Handed by City of Springdale and County Prosecutor's Office (as of 12/1/08)	
Total Arrested	707
Total Handled by City of Springdale	683
Total Handled by County Prosecutor's Office (23 in Washington County and 1 in Benton County)	24
Total No. of cases ending in a finding of Guilty	636
Total No. of cases ending in finding of Not Guilty	17
Total No. Defendants Failed to Appear (warrants issued)	48
Defendant Died Before Case Adjudicated	3
Cases Pending	3
Total Convicted/Total No. Arrested (636/707)	89.95%
Conviction Rate on Cases Adjudicated (636/653)	97.39%

Diagram 5  
SPD Officers Who Made 25 or More DWI Arrests in 2007



*C.A.L.L. is a publication of the Springdale City Attorney's Office  
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