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Pre-Arrest Contacts Require Voluntary Cooperation or Reasonable Suspicion

COUNTY LAW UPDATE

by Mike Rainwater on 10/16/06

There are two categories of pre-arrest contacts: 1) a request that a person voluntarily cooperate with a law enforcement officer (which does not interfere with a person's liberty) and 2) a request that a person involuntarily cooperate with a law enforcement officer (which does interfere with a person's liberty). A pre-arrest request that a person voluntarily stop and cooperate must be based on voluntary cooperation. A pre-arrest request that a person involuntarily stop and cooperate must be based upon reasonable suspicion.

The "Voluntary Cooperation" Pre-Arrest Contact – Voluntariness Required: Like any other person, the Sheriff and his deputies are authorized to *request* any person to *voluntarily* furnish information, cooperate in an investigation, cooperate in the prevention of crime, respond to questions, appear at a police station, or comply with any other reasonable request. Ark. R. Crim. Pro., Rules 2.2 and 2.3.

"Voluntary Cooperation" Defined: To assure that a request for voluntary cooperation is entirely voluntary, there are two rules the law enforcement officer must follow: i) there can be no indication that a person is legally obligated to furnish information or to otherwise cooperate (if no legal obligation exists) and ii) any request that a person come to or remain at a police station or prosecuting attorney's office or other similar place be accompanied by reasonable steps taken by the officer to make it clear that there is no legal obligation to comply with such a request. Ark. R. Crim. Pro., Rules 2.2 and 2.3.

The "Stop and Detain" Pre-Arrest Contact – Reasonable Suspicion Required: The Sheriff or his deputy (when lawfully present in any place) are authorized (in the performance of law enforcement duties) stop and detain any person – so long as: 1) the officer *reasonably suspects* that person is committing, has committed, or is about to commit (i) a felony or (ii) a misdemeanor involving danger of forcible injury to a person or of appropriation of or damage to property and 2) such action is reasonably necessary either to obtain or verify the identification of the person or to determine the lawfulness of his conduct. An officer who has detained a person based on reasonable suspicion shall immediately advise that person of the officer's official identity and the reason for the detention. An officer acting under this rule may require the person to remain in or near such place in the officer's presence for such time as is reasonable under the circumstances and in no event more not more than 15 minutes. At the end of such period, the person detained shall be released without further restraint, or arrested and charged with an offense (if the "reasonable cause to believe" requirement for an arrest has been met). Ark. R. Crim. Pro., Rules 3.1 and 3.2.

"Reasonable Suspicion" Defined: A reasonable suspicion is a suspicion that is reasonable as opposed to an imaginary or purely conjectural. A suspicion is reasonable if it is based on facts or circumstances which of themselves do NOT give rise to the probable cause requisite to justify a lawful arrest (i.e. "a reasonable cause to believe ... an offense has been or is being committed"), but which give rise to more than a bare suspicion that an offense has been or is being committed. Ark. R. Crim. Pro., Rule 2.1.