



You Are Under Arrest!

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So that there is no misunderstanding as to the attitude with which I undertake penning this article, please know that, without exception, I sincerely believe that a law enforcement officer, carrying out

his/her daily assignment, has not only the right, but the duty, to do all that is necessary and legal to return home safely at the end of their tour of duty.

Louisiana Code of Criminal Procedure Articles 201 through 233 provide an expansive codification of the rationale for making an arrest, as well as the duties of the arresting officer(s). These articles also provide the rationale for summons and detention, and the provisions for arrest by a private person. Further, these articles detail the discretion an officer has when determining whether to make an arrest or to issue a summons in each situation, and authorize the right to use necessary force to make an arrest.

Despite these clear definitions/instructions, each year there are numerous petitions filed claiming that the petitioner was falsely arrested and/or was subjected to excessive force while being arrested, which must be resolved by either judicial action or negotiated settlement. When the petitioner is convicted of, or pleads guilty to, the charges forming the basis for the arrest, the false arrest issue becomes moot; however, the excessive force claim may remain a viable issue to be decided by the judge or jury.

Sadly, in many cases, the criminal charges are not prosecuted, leaving the municipality and the arresting officer in jeopardy on the issue of false arrest.

The Code of Criminal Procedure also states that, "a person shall peacefully submit to a lawful arrest", thereby establishing their obligation to obey the law. Yet their failure to "peacefully submit" seems to be overlooked or downplayed in some cases, while, simultaneously, the officer's actions are strictly scrutinized under the required legal standard.

Let's first deal with the issue of failure to prosecute: is this decision reasonable? If the officer has failed to execute a lawful arrest, or fails to provide sufficient documentation of the offense to support the charge for which the arrest occurred, the decision to not prosecute is principled. Otherwise, considering the consequences to the municipality and the officer, the failure to prosecute doesn't seem appropriate.

The issue of excessive force can be complicated because while the officer is permitted to use whatever force is reasonable and necessary to overcome resistance of the individual, that decision must be made by the officer based on the perception and judgment of immediate, cogent circumstances - often in a split second. This is a critical consideration in excessive force claims since hindsight and after-the-fact analysis can alter what the officer would have done had he/she had exhaustive facts and time to make the decision.

In the months and years following an incident, litigation may unfold. Because delays are permitted for filing an action and serving notice, it is critically important that the entity insuring or indemnifying the municipality be notified immediately of incidents that will likely result in future civil action. Further, the successful defense of a claim for damages will strongly depend on detailed reporting of all that was said and done by all parties, witness statements, and available audio and/or video evidence of the incident.

Diligence in collecting and preserving all evidence - good and bad - is essential for bringing the claim to a proper resolution. Equally important are the officer's ability to demonstrate professionalism and the officer's credibility on the stand.

Providing additional guidance, the Code obliges an officer to "advise fully the reason for his arrest." Failure to adequately advise a subject has, in some cases, justified subsequent resistance. It appears, then, that clarification of the officer's rationale behind an arrest would be helpful to gain peaceful submission.

Although I have never been arrested, I believe that the moment is fraught with emotion for the subject, regardless of the actions giving rise to the arrest. For the officer, executing an arrest may also be an emotional experience, depending on the circumstances preceding the arrest. However, as a law enforcement professional, the officer is expected to maintain emotional control. The demeanor, tone, and attitude of the officer may go a long way toward defusing a very bad situation and fostering a peaceful outcome.

The officer can do everything right and the arrest may still go awry. In those cases, it is the job of defense counsel to ensure that the court/jury understand that the officer was faithfully performing his/her duty and exercising his/her right to return home safely.

If you have questions concerning this article contact me at Risk Management, Inc.