

SUPREME COURT OF ARKANSAS

No.

Opinion Delivered 11-8-07

IN RE: ARKANSAS RULES OF
CRIMINAL PROCEDURE, RULES 6.1
AND 7.1

PER CURIAM

We asked the Supreme Court Committee on Criminal Practice to study Arkansas Rule of Criminal Procedure 7.1 in light of the decision in *Johnson v. State*, 98 Ark. App. 245, ___ S.W.3d ___ (2007). In the case, this rule was interpreted as mandating the issuance of a summons rather than an arrest warrant in misdemeanor cases unless the defendant is charged with a violent offense or it appears that the defendant will not respond to a summons. The Committee's research indicates that the intent has always been for the use of a summons to be discretionary although the language of Rule 7.1 may have clouded the issue. The Committee has recommended amendments to Rules 6.1 and 7.1 to clarify the use of a summons.

We accept the Committee's recommendations, adopt the amendments to Rules of Criminal Procedure 6.1 and 7.1 as set out below, and republish these rules. These amendments shall be effective immediately. The amendments are intended to overturn

Johnson v. State, 98 Ark. App. 245, ___ S.W.3d ___ (2007), insofar as that case held that issuance of a summons was mandatory in certain cases.

At the end of this order, the changes are set out in “line-in, line-out fashion” (new material is underlined, deleted material is lined-through) to illustrate the changes. We thank the Committee for its prompt attention to this matter.

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.

Reporter's Notes, 2007 Amendments.

The 2007 amendments made minor editorial changes to subsection (a) and rephrased subsection (b). Subsection (c), which was added in 2007, is based on language originally found in Rule 7.1.

In Johnson v. State, 98 Ark. App. 245, ___ S.W.3d ___ (2007), the Court of Appeals held that issuance of a summons is mandatory unless the defendant is charged with a violent offense or it appears that the defendant will not respond to a summons. The 2007 changes to Rule 6.1 and Rule 7.1 were intended to make clear that use of a summons rather than an arrest warrant is discretionary.

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.

Reporter's Notes, 2007 Amendments.

The 2007 amendments deleted language that addressed at length the issuance of a criminal summons in lieu of an arrest warrant. The amendments were intended to overturn Johnson v. State, 98 Ark. App. 245, ___ S.W.3d ___ (2007), insofar as that case held that issuance of a summons was mandatory in certain cases.

ILLUSTRATION OF RULES CHANGES

Rule 6.1. Authority to issue summons.

(a) ~~All officials having~~ 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 ~~all cases~~ any case in which a complaint, information, or indictment is filed or returned against a person not already in custody.

(b) ~~The clerk of a court may issue a summons only upon the filing of an information or upon affidavit sworn to by the complainant and approved and indorsed by a prosecuting attorney as provided in Rule 7.1(c).~~

(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. ~~If the offense is a misdemeanor a summons should issue unless:~~

~~(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 available to the judicial officer.~~

(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.

