



TEXAS CENTER
FOR THE JUDICIARY

Impaired Driving Symposium
August 4 & 5, 2016
Sheraton Austin

What Would You Do?
Judge Laura A. Weiser
Judicial Resource Liaison

Ignition Interlock Device Order

- Drinking Dave is arrested for DWI. His B.A.C. was 0.19 following arrest. Magistrate orders installation of IID within 30 days. 30 days have expired. The County Attorney's office has not filed a charge in a county court.
- ? Who is responsible for determining whether Dave complied with the Magistrate's order to install an IID?



- The Magistrate is responsible.
- See *Ex Parte Clear*, 573 S.W.2d 224 (Tex. Crim. App. 1978); *Guerra v. Garza*, 987 S.W.2d 593 (Tex. Crim. App. 2009)
- Art. 17.441 allows the magistrate to designate a monitoring agency to verify compliance



Blood Search Warrant



- A law enforcement officer is seeking a blood search warrant for DWI in a county that does not have a judge of a municipal court of record or a county court who is a licensed attorney, a statutory county judge or a district court judge.
- ? May the non-attorney judge of the constitutional county court issue the warrant?



- Yes, if there is no lawyer magistrate in a county, any magistrate may issue the warrant
- See CCP 18.01 (i)



Magisterial Powers

- Johnny Walker is arrested for DWI. He has three previous convictions. After his arrest, the magistrate to whom he is presented orders him to install an IID within 30 days.
- 90 days later he is indicted for felony DWI in District Court. The District Clerk issues a capias pursuant to Art. 23.03 of the CCP.



- ? When Johnny is arrested pursuant to the capias, should he be presented to the on-duty magistrate, a municipal judge, at the county jail?



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- A capias shall require the arresting officer to bring the arrested person before the court which issued the capias. (See Art. 23.01 CCP)
- Additionally, a court in which a charging instrument has been filed has exclusive jurisdiction over the prosecution. (See Art. 4.16 CCP)

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Blood Search Warrants

- Toker Tom was arrested for DWI after a collision with a parked car. The officer smelled a strong odor of marijuana. The officer performed the HGN test but no other field sobriety tasks. The officer observed 4 clues on the HGN and noted that the driver had bloodshot eyes, was unsteady on his feet and was unable to answer simple questions, such as what his name and phone number were.

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- Tom refused both a breath and a blood test. The officer goes to a magistrate seeking a blood search warrant.
- ? May the magistrate, who is a licensed attorney, issue one?



- Yes
- See Article 18.01(j)
- Further discussion: What if Tom consented to a breath test and the results were 0.00. Tom then refused a blood test.
- ? Could the magistrate issue a blood search warrant?



Communication



- Soused Sally is arrested for DWI. Her B.A.C. is 0.17. The Magistrate orders that she install an IID within 30 days and abstain from alcohol. The DWI is filed in the County Court at Law 60 days later.
- ? How is the magistrate's order communicated to the County Court at Law? When does the CCL become responsible for monitoring compliance?



Communication Strategies

- CCL becomes responsible at the time the charge is filed in that court
- Copy of the conditions of bond sent with the bond to the CCL
- Monitoring agency notifies CCL
- Others?



Probable Cause

- In the early morning hours of July 27, 2015, Detective Doright heard a dispatch report that a blue VW with a ski rack was traveling erratically and at a high rate of speed. A vehicle matching that description approached the detective's location within one minute of the dispatch.



- Detective observed the vehicle pass through a yellow light at 60 mph and crash into a telephone pole while attempting a left turn.
- Detective Doright observed that the driver, Boozing Bob, was unsteady on his feet, slurred his speech and his eyes were bloodshot and glassy.



- Another officer, Officer Fife arrived at the scene within 35 seconds of the crash. He observed Bob to have a slight sway and to be unbalanced.
- Officer Fife smelled a strong odor of an alcoholic beverage on his breath. Bob admitted to drinking alcohol.



- Officer Fife administered several field sobriety tasks to Bob, including the HGN, walk and turn, and one-leg stand. Officer Fife reported that Bob failed all the tasks.
- Bob was placed under arrest and taken to a magistrate. After magistration, Jones complained of head injuries.
- ? Are these facts sufficient to establish probable cause for the DWI arrest?



Yes

- See *State v. Cullen*, 227 S.W.3d 278 (Tex. App. —San Antonio 2007, pet. ref'd). The court of appeals found that the facts demonstrated probable cause even if the trial court gave no weight to factors attributable to head trauma.



Ignition Interlock Device Removal

- Sober Scott complies with a magistrate's order to install an IID as a condition of bond. 4 months later, a county court places Scott on community supervision and requires him to install an IID and not to drive any vehicle not equipped with an IID. Scott fully complies with all terms and conditions of his community supervision. At the termination of his supervision, he would like to have the IID removed. The IID provider will not remove it without a court order.

- ? Who is responsible for issuing the removal order?



- The County Court is responsible. That court acquired exclusive jurisdiction over the case when a charging instrument was filed in that court.
- See *Trejo v. State*, 280 S.W.3d 258 (2009) and *Ex Parte Clear*, 573 S.W.2d 224 (Tex. Crim. App. 1978)



Occupational License

- Employed Eddie applies for an Occupational Driver's License. He does not currently possess a Texas driver's license.

- ? Can you grant his petition for an ODL?



Yes

- Language in your order must include a requirement that he take the Texas driver's license test and pass.
- If he passes, he can then have an ODL

- Source: DPS Enforcement and Compliance Division.



Occupational Driver's License Venue

- Habitual Hank has 3 DWI convictions. His latest one resulted in a DL suspension by the District Court for 2 years. His attorney has filed a petition for an ODL in the Justice Court where Hank resides.
- ? Is the Justice Court the correct venue?



No

- TTC Section 521.242(b) states that if a person's license has been automatically suspended or canceled for a conviction under the laws of this state the application must be filed with the clerk of the court in which the person was convicted


