Scenario 1- Probable Cause: More than Just an Affidavit

Defendant is cited for Class C assault. There is an incident report filed, although the officers issue a citation rather than making a full custodial arrest due to limited jail space. The actual citation, containing only the information required under Article 14.06 of the Code of Criminal Procedure, is filed with the court.[i] Now let us imagine that the defendant fails to appear when instructed to on the citation. Article 27.14(d) of the Code of Criminal Procedure requires that a complaint be filed when a defendant pleads not guilty to an offense or fails to appear based on written notice, thus a complaint is filed for the assault charge.

Using Article 45.014, does this complaint alone, based on a ticket with no facts and limited information, give the municipal judge the authority to issue an arrest warrant for Class C assault?

Article 45.014 of the Code of Criminal Procedure provides that "when a sworn complaint or affidavit based on probable cause has been filed before the justice or municipal court, the justice or judge may issue a warrant for the arrest of the accused…" This statute, referring to an *arrest warrant*, is the only time in the Code of Criminal Procedure when a warrant is issued by a judge, and not by a magistrate. While this procedure provides considerable utility for municipal courts, the precise statutory and constitutional requirements for this type of warrant are sometimes overlooked.[ii]

The plain language of the statute authorizes a judge to issue a warrant upon the filing of a sworn complaint (presumably defined as a charging instrument because of its placement in Chapter 45[iii]) *or* a probable cause affidavit (like what would be required for the issuance of an arrest warrant by a magistrate under Chapter 15 of the Code of Criminal Procedure). It does not require both a complaint and affidavit be filed for that authority to attach. It also does not address *probable cause*, aside from the actual affidavit.

Article 1.06 of the Code of Criminal Procedure provides that "no warrant to search any place or to seize any person or thing shall issue without describing them as near as may be, nor without probable cause supported by oath or affirmation." This protection follows the same rights enumerated in Article I, Section 9 of the Texas Constitution and the 4th Amendment to the U.S. Constitution. All these provisions make clear that no warrant shall issue without probable cause. Article 45.014 does not change this requirement.

Unfortunately, this is the practice that often occurs, with utility trumping the statutory and constitutional requirements to determine probable cause prior to issuing an arrest warrant. True, Article 45.014 does not require a probable cause *affidavit* be filed, but the judge must still be able to determine probable cause from something. The judge, from his own experience calling the docket with no answer from the defendant, may have enough information to determine probable cause for a failure to appear offense, but what about for the assault case?

This is an area in which many confuse *probable cause* with *probable cause affidavit*. Remember that Article 1.06 of the Code of Criminal Procedure allows probable cause to be supported by oath or affirmation, not in writing. Perhaps a judge could talk with the officer, or review the incident report filed in the hypothetical situation discussed above.[iv] Either way, it is important to read Article 45.014 together with, and not to the exclusion of, Article 1.06.

Scenario 2 - The Re-test Requirement for Provisional License Holders on Deferred Disposition

When it comes to deferred disposition, courts realize that there are special rules regarding young drivers. Subsection 45.051(b-1) of the Code of Criminal Procedure requires that all drivers younger than 25 who are charged with a traffic offense classified as a moving violation and that are placed on deferred must take a driving safety course.[v] Judges may also require an additional driving safety course designed for young drivers and approved under Section 1001.111 of the Education Code.[vi] An additional requirement that frequently leads to questions is that provisional license holders must be examined (or re-examined) by the Department of Public Safety (DPS). This brings up recurring questions about provisional licenses as well as the examination itself. Thankfully, this grey area can be clarified with a little digging.

What is a provisional license?

Simply put, a provisional license is any license issued to a driver under the age of 18 that expires on the 18th birthday of the license holder.[vii]Thankfully, if the court is dealing with a 16 or 17 year old driver, the provisional license should be easy to spot. Section 521.123 of the Transportation Code requires DPS to designate and clearly mark any license issued to a person under 18 years of age as provisional.

Which examination is required from DPS?

Frequently, court personnel call the Texas Municipal Courts Education Center wondering whether the required test for provisional license holders is the written test or the driving portion. Subsection 45.051(b-1)(3) specifies that the driver shall be examined as required by Section 521.161(b)(2) of the Transportation Code. So, which part of the tradition driver's license examination is that?

> Sec. 521.161. EXAMINATION OF LICENSE APPLICANTS.
>
> (a) Except as otherwise provided by this subchapter, the department shall examine each applicant for a driver's license. The examination shall be held in the county in which the applicant resides or applies not later than the 10th day after the date on which the application is made.
> (b) The examination must include:
> (1) a test of the applicant's:
> (A) vision;
> (B) ability to identify and understand highway signs in English that regulate, warn, or direct traffic;
> (C) knowledge of the traffic laws of this state; and
> (D) knowledge of motorists' rights and responsibilities in relation to bicyclists;
> (2) a demonstration of the applicant's ability to exercise ordinary and reasonable control in the operation of a motor vehicle of the type that the applicant will be licensed to operate; and
> (3) any additional examination the department finds necessary to determine the applicant's fitness to operate a motor vehicle safely.
> (c) The department shall give each applicant the option of taking the parts of the examination under Subsections (b)(1)(B), (C), and (D) in writing in addition to or instead of through a mechanical, electronic, or other testing method. If the applicant takes that part of the examination in writing in addition to another testing method, the applicant is considered to have passed that part of the examination if the applicant passes either version of the examination. The department shall inform each person taking the examination of the person's rights under this subsection.

As Subsection (b)(1) above references a test of vision, highway sign identification, knowledge of laws, and knowledge of rights in relation to bicycles. Subsection (c) tells us that this test can be taken in writing or some other testing method (except for the vision portion). Reading these

subsections together, it is easy to see that (b)(1) is what is traditionally thought of as the written portion of the examination. Subsection (b)(2), however, is the part we must require provisional license holders to complete as a condition of deferred disposition and it refers to a demonstration rather than a test. This demonstration of the ability to exercise control in the operation of a vehicle would be done behind the wheel, and can be thought of as the driving portion of the exam.

If faced with the question of "Which part of the test do I have to take again?" from a teenage driver seeking deferred, the short answer is: "The driving part."

Scenario 3 – Fees for Services of Peace Officers: Mileage

A defendant is arrested on two municipal court warrants. He is arrested by constables and taken to a county jail. They call your police department to pick him, and they do. The defendant is later convicted on both charges. When calculating fees, he is required to pay 29 cents per mile for mileage required of an officer to perform the transfer to the city facility.

Can the city collect 29 cents per mile for each writ?

If the officer picked up two defendants with one warrant each, could they both be charged with mileage fee?

Art. 102.011. FEES FOR SERVICES OF PEACE OFFICERS.

(b) In addition to fees provided by Subsection (a) of this article, a defendant required to pay fees under this article shall also pay 29 cents per mile for mileage required of an officer to perform a service listed in this subsection and to return from performing that service. If the service provided is the execution of a writ and the writ is directed to two or more persons or the officer executes more than one writ in a case, the defendant is required to pay only mileage actually and necessarily traveled. In calculating mileage, the officer must use the railroad or the most practical route by private conveyance. The defendant shall also pay all necessary and reasonable expenses for meals and lodging incurred by the officer in the performance of services under this subsection, to the extent such expenses meet the requirements of Section 611.001, Government Code. This subsection applies to:

(1) conveying a prisoner after conviction to the county jail;

(2) conveying a prisoner arrested on a warrant or capias issued in another county to the court or jail of the county; and

(3) traveling to execute criminal process, to summon or attach a witness, and to execute process not otherwise described by this article.

Scenario 4 - Diversion Programs

You city employs a diversion program in an effort to divert juveniles from criminal adjudication. A juvenile case manager (JCM) employed by the city works with a school as a part of the diversion program. The school district is attempting to set the JCM's working hours and location as well as control the actions the JCM takes in working with students and parents. The JCM feels as though she is still an employee of the court, is a representative of the court, and is concerned about the appearance of impropriety in the way the school wants the diversion program to operate.

Does the school hold any supervisory authority over the JCM? Are there ethical concerns at play?

Art. 45.056. JUVENILE CASE MANAGERS.

Text of subsection as amended by Acts 2013, 83rd Leg., R.S., Ch. 1213 (S.B. 1419), Sec. 1

(a) On approval of the commissioners court, city council, school district board of trustees, juvenile board, or other appropriate authority, a county court, justice court, municipal court, school district, juvenile probation department, or other appropriate governmental entity may:

(1) employ a case manager to provide services in cases involving juvenile offenders who are before a court consistent with the court's statutory powers or referred to a court by a school administrator or designee for misconduct that would otherwise be within the court's statutory powers prior to a case being filed, with the consent of the juvenile and the juvenile's parents or guardians;

(2) employ one or more juvenile case managers who:

(A) shall assist the court in administering the court's juvenile docket and in supervising the court's orders in juvenile cases; and

(B) may provide:

(i) prevention services to a child considered at risk of entering the juvenile justice system; and

(ii) intervention services to juveniles engaged in misconduct before cases are filed, excluding traffic offenses; or

(3) agree in accordance with Chapter 791, Government Code, to jointly employ a case manager to provide services described by Subdivisions (1) and (2).

Text of subsection as amended by Acts 2013, 83rd Leg., R.S., Ch. 1407 (S.B. 393), Sec. 7

(a) On approval of the commissioners court, city council, school district board of trustees, juvenile board, or other appropriate authority, a county court, justice court, municipal court, school district, juvenile probation department, or other appropriate governmental entity may:

(1) employ a case manager to provide services in cases involving juvenile offenders who are before a court consistent with the court's statutory powers or referred to a court by a school administrator or designee for misconduct that would otherwise be within the court's statutory powers prior to a case being filed, with the consent of the juvenile and the juvenile's parents or guardians; or

(2) agree in accordance with Chapter 791, Government Code, to jointly employ a case manager.

(b) A local entity may apply or more than one local entity may jointly apply to the criminal justice division of the governor's office for reimbursement of all or part of the costs of employing one or more juvenile case managers from funds appropriated to the governor's office or otherwise available for that purpose. To be eligible for reimbursement, the entity applying must present to the governor's office a comprehensive plan to reduce juvenile crimes in the entity's jurisdiction that addresses the role of the case manager in that effort.

Text of subsection as amended by Acts 2013, 83rd Leg., R.S., Ch. 1213 (S.B. 1419), Sec. 1

(c) An entity that jointly employs a case manager under Subsection (a)(3) employs a juvenile case manager for purposes of Chapter 102 of this code and Chapter 102, Government Code.

Text of subsection as amended by Acts 2013, 83rd Leg., R.S., Ch. 1407 (S.B. 393), Sec. 7

(c) A county or justice court on approval of the commissioners court or a municipality or municipal court on approval of the city council may employ one or more juvenile case managers who:

(1) shall assist the court in administering the court's juvenile docket and in supervising its court orders in juvenile cases; and

(2) may provide:

(A) prevention services to a child considered at-risk of entering the juvenile justice system; and

(B) intervention services to juveniles engaged in misconduct prior to cases being filed, excluding traffic offenses.

Scenario 5 – The Third Deferred

A defendant that you had seen a few months earlier has returned to court upset that their license is suspended due to an alcohol violation that you had place her on deferred disposition for. She says that DPS told her that you ordered her license to be suspended. You are sure that you did not suspend her license. You call DPS and they tell you that when you put the defendant on deferred disposition, it was her third one which is not permitted under the law. You were unaware of the previous two convictions, and you would not have placed her on deferred for the charge had you known. DPS then changed it to a conviction and suspended her license, marking as a court-ordered suspension.

Is there anything to be done about this? How should the court proceed?

Sec. 106.071. PUNISHMENT FOR ALCOHOL-RELATED OFFENSE BY MINOR.
(a) This section applies to an offense under Section 106.02, 106.025, 106.04, 106.05, or 106.07.

(b) Except as provided by Subsection (c), an offense to which this section applies is a Class C misdemeanor.

(c) If it is shown at the trial of the defendant that the defendant is a minor who is not a child and who has been previously convicted at least twice of an offense to which this section applies, the offense is punishable by:

(1) a fine of not less than $250 or more than $2,000;

(2) confinement in jail for a term not to exceed 180 days; or

(3) both the fine and confinement.

(d) In addition to any fine and any order issued under Section 106.115:

(1) the court shall order a minor placed on deferred disposition for or convicted of an offense to which this section applies to perform community service for:

(A) not less than eight or more than 12 hours, if the minor has not been previously convicted of an offense to which this section applies; or

(B) not less than 20 or more than 40 hours, if the minor has been previously convicted once of an offense to which this section applies; and

(2) the court shall order the Department of Public Safety to suspend the driver's license or permit of a minor convicted of an offense to which this section applies or, if the minor does not have a driver's license or permit, to deny the issuance of a driver's license or permit for:

(A) 30 days, if the minor has not been previously convicted of an offense to which this section applies;

(B) 60 days, if the minor has been previously convicted once of an offense to which this section applies; or

(C) 180 days, if the minor has been previously convicted twice or more of an offense to which this section applies.

(e) Community service ordered under this section must be related to education about or prevention of misuse of alcohol if programs or services providing that education are available in the community in which the court is located. If programs or services providing that education are not available, the court may order community service that it considers appropriate for rehabilitative purposes.

(f) In this section:

(1) a prior adjudication under Title 3, Family Code, that the minor engaged in conduct described by this section is considered a conviction; and

(2) a prior order of deferred disposition for an offense alleged under this section is considered a conviction.

(g) In this section, "child" has the meaning assigned by Section 51.02, Family Code.

(h) A driver's license suspension under this section takes effect on the 11th day after the date the minor is convicted.

(i) A defendant who is not a child and who has been previously convicted at least twice of an offense to which this section applies is not eligible to receive a deferred disposition or deferred adjudication.

Scenario 6 – Not Enough Revenue

A clerk in the midst of her annual review is told that she is being “written up” for not producing enough revenue.

Is it permissible for revenue to be included in criteria for evaluating court personnel?

Notes

Section 720.002, T.C., *Prohibition on Traffic-Offense Quotas*, prohibits cities from establishing or maintaining a plan to evaluate, promote, compensate, or discipline peace officers according to a predetermined or specified number of any type or combination of types of traffic citations (quotas). Sec. 702.002(a)(1), T.C. This same prohibition also applies to judges. Cities may not evaluate, promote, compensate, or discipline a judge according to the amount of money the judge collects from persons convicted of a traffic offense. Sec. 702.002(a)(2), T.C.

Further, cities may not consider the source and amount of money collected from a municipal court when evaluating the performance of the judge. Section 702.002(c) was repealed by the 81st Regular Legislature. Cities may obtain budgetary information from the municipal court including an estimate of the amount of money the court anticipates will be collected in a budget year. Sections 702.002, T.C.

A violation of Chapter 702, T.C., by an elected official is misconduct and grounds for removal from office. Sec. 702.002(e), T.C.

What does a clerk have to do with revenue?

Scenario 7 – The Little Rascals

At school, a group of 11 year olds surround another 11 year old, taunting, bullying, and kicking dirt at him. Eventually the victim of the bullying has had enough and he attacks one to kids, beating him up pretty good. The prosecutor has reviewed the facts and would like to bring charges against the two of the kids.

Can the 11 year olds be charged with class C misdemeanors?

The amendments to Disruption of Class (Section 37.124, Education Code) and Disruption of Transportation (Sec. 37.126, Education Code), and Disorderly Conduct (Sec. 42.01, Penal Code) are clarifications of the changes to the respective laws made in 2011 to give full effect to the Legislature's intent. The exceptions to such offenses now apply to persons younger than 12 years of age. Law enforcement and prosecutors agree that it is easier to prove age than grade level.

While, S.B. 393 creates new exceptions for children younger than 12 years of age, S.B. 1114 (Section 6) fundamentally realigned the focus of the offenses of Disruption of Class and Disruption of Transportation. Such offenses cannot be committed by primary or secondary school students. S.B. 1114 (Section 9), however, expands the scope of Disorderly Conduct, clarifying that "public place" includes a public school campus or the school grounds on which a public school is located.

Scenario 8 – Combining Courts

Your city has been crunching numbers and trying to set the upcoming budget. They decide they would like to combine courts with another city in an effort to save costs. Under the new arrangement, the city would establish concurrent jurisdiction with the neighboring city. The court in the neighboring city would receive all class C tickets and complaints issued in your city. This includes ordinances, failure to attend school, and traffic cases.

Would the city's new agreement be possible legally?

Concurrent Jurisdiction. Under 29.003, Govt. Code, you can enter into an agreement with a neighboring city. This would allow cases to be filed in Wimberley, for example, if they pertained to ordinances, Health & Safety Code Offenses, or Failure to Attend School. Compensation for judicial services, clerk services, software, and prosecution would need to be addressed in any agreement.

Holding Proceedings in another city. Under 29.104, Govt. Code, cities with a population of 3500 or less, can hold court proceedings in a contiguous city (sharing a common border or touching). You would still need a judge, clerk, city attorney, etc, but proceedings could be held elsewhere. It might be possible to appoint the other city's officials as your own, and have them handle it. Again, there are still costs involved.

[i] This information that must be contained is the written notice of the time and place the person must appear before the magistrate, the name and address of the person charged, the offense charged, and the domestic violence admonishment. See, Article 14.06(b), Code of Criminal Procedure.

[ii] Notice that the specific requirements for the warrant in Article 45.014 differ from those in Article 15.02 of the Code of Criminal Procedure, as does the procedure to be followed by the officer upon executing the warrant. In practice, the Chapter 45 arrest warrant issued by a municipal judge or justice of the peace operates more like a capias (per Chapter 23 or Chapter 43 of the Code of Criminal Procedure), as it is issued by a judge having jurisdiction of a case and directs the officer to bring the arrestee before that court, rather than before a magistrate as required under Chapter 15.

[iii] For more on the several definitions of the term *complaint*, see, Ryan Kellus Turner, "Complaints, Complaints, Complaints: Don't Let the Language of the Law Confuse You" *Municipal Court Recorder* (July 2004) 6-9.

[iv] For more on what may be considered in determining probable cause for an arrest warrant, albeit in a magistrate context, see, Mark Goodner, "Rounding the Corners: Criminal Application of the Four Corners Rule" *The Municipal Court Recorder* (June 2012) 16-18.

[v] Article 45.051(b-1)(2), Code of Criminal Procedure.

[vi] This additional driving safety course has been commonly referred to as Alive at 25. This new option was added with the passage of Senate Bill 1330 in the 82nd Legislature, and became effective on January 1, 2012.

[vii] Sec. 521.271 (a)(2), Transportation Code.