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A MUNICIPAL POLICE OFFICER'S JURISDICTION TO ARREST WITHOUT WARRANT

by

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It has long been difficult to discern clearly the jurisdictional boundaries for the exercises of a Texas peace officer's warrantless arrest authority. This is due in part to the variety of "peace officers" recognized in Texas law, and in part to the numerous imprecise statutes which govern the issue. It is also due largely to the difficulty in defining what "jurisdiction" means in this context.

For courts, "jurisdiction" refers to the power or authority to act respecting either the persons before the court or the nature of the matter to be adjudicated. Similarly, arrest "jurisdiction" may mean the authority to arrest for certain kinds of offenses, or it may refer to the power to make an arrest in a certain territorial area. It is territorial "jurisdiction," not jurisdiction to arrest for differing types of offenses, that is most difficult to confidently resolve in Texas. Resolution begins with consideration of the person who will make the arrest.

Who is a "peace officer?"

Article 2.12 of the Texas Code of Criminal Procedure purports to define those persons who are "peace officers." However, the statute is not exclusive; other persons are designated peace officers by various provisions of the Code of Criminal Procedure and Texas Revised Civil Statute. The determination of whether an arresting officer is a "peace officer," and, if so, what kind of officer, is especially important in determining that officer's territorial arrest jurisdiction.

Because the employment status of a peace officer ultimately decides the geographical boundaries within which he may exercise his arrest power, no single rule of territorial jurisdiction applies to all peace officers. This article focuses only on municipal police officers because such officers are the most numerous kind of peace officer, and because recent statutory amendments and case law have greatly changed traditional views of the territorial arrest jurisdiction of city police.

Warrantless arrests in Texas

A cursory reading of the principal statutes authorizing warrantless arrests in Texas seems to resolve the question of territorial jurisdiction. For example, Article 14.01(b) of the Code of Criminal Procedure says that, "(a) peace officer may arrest an offender without a warrant for any offense committed in his presence or within his view." Similar expressions are found in other statutes authorizing warrantless arrest.¹ This statutory language might be thought to confer on all "peace officers" the right to arrest without warrant anywhere within the state. While this view seemed to prevail at one time,² the Texas Court of Criminal Appeals has more recently rejected this interpretation, holding in Christopher v. State³ that the statutory warrant exceptions do not create the authority to arrest in any particular place, but only to arrest without a warrant if otherwise authorized to do so.⁴

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Territorial arrest authority is created for city police officers by statute or, if no statute controls, by common law. At common law city officers were limited to arrest within their "bailiwick" or city limits.⁵ The only exception to this limitation was for "hot pursuit" begun within the city boundaries resulting in an arrest outside the officer's jurisdiction.⁶ The "hot pursuit" exception remains intact; the common law rule limiting arrests to the municipality does not.⁷

The common law rule has been abrogated by the interpretation of Articles 998 and 999 of the Texas Revised Civil Statutes as legislatively defining the territorial arrest jurisdiction of city police officers. In Angel v. State,⁸ the Court of Criminal Appeals held that since Article 998 gave municipal police the same territorial "jurisdiction" as city marshals,⁹ and since Article 999 granted city marshals the same "jurisdiction" as the sheriff,¹⁰ city police, like the sheriff, could arrest without warrant anywhere within the county in

which the city is located.¹¹

The reasoning in Angel is certainly subject to dispute. It depends, for example, on the reading of “jurisdiction” in Articles 998 and 999 as referring to territorial jurisdiction rather than likening the powers and authority of the city officer to those of the city marshal and sheriff. Moreover, the decision in Angel completely overlooks the existence of Article 999b, a statute which provided an expansion of the authority of a city officer to areas outside his municipality when an interlocal assistance agreement had been executed with neighboring cities.¹² The implication of Article 999b is that the warrantless arrest authority of city police officers is limited to the officer’s municipality, an idea consistent with the common law rule confining a city officer to his “bailiwick.”¹³

The Code takes a different approach to classifying municipalities and uses somewhat different language to describe the duties and authority of municipal police, all of which further confuses the jurisdiction question.

The impact of recent legislation

Regardless of whether the Court was correct in Angel, the issue has not been laid to rest. Articles 998, 999, and 999b were codified in the new Texas Local Government code effective September 1, 1987. The Code takes a different approach to classifying municipalities and uses somewhat different language to describe the duties and authority of municipal police,¹⁴ all of which further confuses the jurisdiction question.

Municipalities are not classified as Type A, Type B, or Type C general-law municipalities, home-rule municipalities, or special-law municipalities.¹⁵ While Type A, Type C, and home-rule municipalities may have police officers, no provision is made for Type B municipalities to maintain a police force.¹⁶ Further, the new statutes say nothing about the jurisdiction of police officers in Type C or home-rule municipalities,¹⁷ and refer to the powers, rights, and jurisdic-

tion” of Type A city police officers as being the same as a marshal of such a city.¹⁸

With respect to the territorial arrest jurisdiction of officers of Type A municipalities, the Court of Criminal Appeals might interpret the Code as it interpreted Articles 998 and 999 in Angel despite differences in the language of the three statutes.¹⁹ But if it does so, what is to be made of the fact that nothing is said about the territorial jurisdiction of Type C and home-rule municipalities? It seems unlikely that the legislature intended to give some city police officers county-wide arrest jurisdiction while limiting other city police to city-wide jurisdiction. It may be instead that the legislature intended all city police officers to be limited to arrest within their municipalities unless a statute expressly expands that authority.

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In the same legislature that restructured the treatment of municipalities and their police officers, one statute was enacted which did expressly expand the territorial arrest jurisdiction of police officers. Article 14.03(c) also became effective on September 1, 1987, and it provides that, “A peace officer who is outside his jurisdiction may arrest, without warrant, a person who commits an offense within the officer’s presence or view, if the offense is a felony or a violation of Title 9, Chapter 42, Penal Code. . . .”²⁰

To the extent that Article 14.03(c) authorizes a city police officer, or any peace officer, to arrest state-wide for on-view felonies, the statute merely restates what has long been the law in Texas. Article 14.01(a) permits “a peace officer or any other person” to arrest without warrant when the offense is committed in the presence or view of the officer, if the offense is a felony or breach of the public peace.²¹ Like Article 18.16 (preventing the consequences of theft), Article 14.01(a) has been interpreted to permit any citizen, including any peace officer, to arrest for certain offenses.²²

Article 14.03(c) goes beyond prior law in authorizing state-wide warrantless arrests for

misdemeanor violations of Title 9, Chapter 42. It is unclear why these crimes were chosen for special treatment, but it may be that the legislature thought them to be the equivalent of offenses "against the public peace."

The bottom line

The difficulty in determining territorial arrest jurisdiction is amply demonstrated by considering the effect of current case law and statutes on a single kind of peace officer. The arrest jurisdiction of a city police officer employed by a Type A general-law municipality, for example, may be summarized as follows:

1. "on-view" felonies - the officer has state-wide jurisdiction based on Articles 14.01(a) and 14.03(c), C.C.P.;

2. "on-view" misdemeanors which breach the public peace - officer has state-wide jurisdiction as does "any other person" by authority of Article 14.01(a), C.C.P.;

3. "on-view" misdemeanor violations of Title 9, Chapter 42 of the Texas Penal Code - state-wide jurisdiction provided by Article 14.03(c), C.C.P.;

4. theft offenses (misdemeanor or felony - need not be "on-view") - the officer, like "all persons," may arrest state-wide pursuant to Article 18.16, C.C.P.;

5. all "on-view" offenses in which "hot pursuit" begins within municipal boundaries and capture and arrest occurs outside city limits;²³

6. in all other situations, the officer's arrest jurisdiction is county-wide.²⁴

Although it is supported by judicial decisions and statutes, this summary is no more than a "best guess" in some respects. It assumes, for example, that for officers of a Type A municipality, the Texas Court of Criminal Appeals would interpret Chapter 341 of the Local Government Code in the same way it interpreted the prior law in Articles 998 and 999 of the Revised Civil Code, an assumption that may not be warranted. Nevertheless, the summary serves to demonstrate the synthesis of various sources of law necessary to determine when and where the Texas city police officer may arrest. This demonstration is by no means complete since it focuses only on officers of Type A municipalities, and not on police in Type C or home-rule municipalities. Moreover, it does not address difficult questions concerning the scope of the various statutory exceptions to the warrant requirement.

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What is clear from this example is that Texas law respecting territorial arrest jurisdiction is presently unduly, and probably unworkably, complex. While appellate courts in Texas may adopt interpretations of recently enacted statutes which somewhat clarify these limits, the ultimate solution lies in the adoption of uniform legislation expressly addressing territorial arrest jurisdiction.

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¹ See, e.g., TEX. CODE CRIM. PROC. ANN. arts. 14.02 ("a peace officer may arrest . . ."), 14.03(a)(1) ("any peace officer may arrest . . ."), 14.04 ("such peace officer may, without warrant, pursue and arrest . . .") (Vernon Supp. 1988).

² See *Green v. State*, 490 S.W.2d 826, 827 (Tex. Crim. App. 1973); *Buse v. State*, 435 S.W.2d 530, 532 (Tex. Crim.App. 1968) (*dicta*).

³ 639 S.W.2d 932 (Tex. Crim. App. 1982).

⁴ *Id.* at 937.

⁵ See, e.g., *Buse v. State*, 435 S.W.2d 530, 532 (Tex. Crim. App. 1968); *Irwin v. State*, 147 Tex. Crim. 6, 177 S.W.2d 970, 973 (1944); *Weeks v. State*, 132 Tex. Crim. 524, 106 S.W.2d 275, 275 (1937). These cases have been overruled by *Angel v. State*, 740 S.W. 2d 727, 736 (Tex. Crim. App. 1987).

⁶ See *Minor v. State*, 153 Tex. Crim. 242, 219 S.W.2d 467 (1949).

⁷ See *Angel v. State*, 740 S.W.2d 727 (Tex. Crim. App. 1987).

⁸ 740 S.W.2d 727 (Tex. Crim. App. 1987).

⁹ See TEX. REV. CIV. STAT. ANN. art. 998 (Vernon Supp. 1987).

¹⁰ See TEX. REV. CIV. STAT. ANN. art. 999 (Vernon Supp. 1987).

¹¹ *Angel v. State*, 740 S.W.2d 727, 732-36 (Tex. Crim. App. 1987).

¹² See TEX. REV. CIV. STAT. ANN. art. 996 (Vernon Supp. 1987).

¹³ The holding in *Angel* is doubtful authority in light of the fact that four judges dissented on the jurisdiction issue and one judge concurred without writing an opinion. Three other judges concurred with Judge Campbell, the author of the plurality opinion.

¹⁴ See TEX. LOCAL GOV'T CODE ANN. Ch. 341 (codifying Articles 998 and 999) and Sec. 362.002 (codifying Article 999b) (Vernon 1988).

¹⁵ See TEX. LOCAL GOV'T CODE ANN. Ch. 5 (Vernon 1988).

¹⁶ See TEX. LOCAL GOV'T CODE ANN. Ch. 341 (Vernon 1988). Type B municipalities may have a city marshal. *Id.* at Sec. 341.022.

¹⁷ See TEX. LOCAL GOV'T CODE ANN. Secs. 341.002, 341.003 (Vernon 1988).

¹⁸ See TEX. LOCAL GOV'T CODE ANN. Sec. 341.001(e)(1) (Vernon 1988).

¹⁹ The new version says that "[a] police officer has: (1) the powers, rights, and jurisdiction of a marshal . . . and (2) other powers and duties prescribed by the governing body." TEX. LOCAL GOV'T CODE ANN. Sec. 341.001(e) (Vernon 1988). Does this mean that "powers, rights, and jurisdiction" is the equivalent of "powers and duties?" If so, "jurisdiction," as used in this statute, does not refer to a territorial limitation.

²⁰ TEX. CODE CRIM. PROC. ANN. art. 14.03(c) (Vernon Supp. 1988).

²¹ TEX. CODE CRIM. PROC. ANN. art. 14.01(b) (Vernon Supp. 1988).

²² See *Romo v. State*, 577 S.W.2d 251, 253 (Tex. Crim. App. 1979) (peace officer outside his jurisdiction has same authority as citizen to arrest without warrant).

²³ See *Minor v. State*, 153 Tex. Crim. 242, 219 S.W.2d 476 (1949).

²⁴ See *Angel v. State*, 740 S.W.2d 727 (Tex. Crim. App. 1987).