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Felony Complaint Filed in Justice Court Will Not Toll Limitations.

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consequently that the legislature may vest the power to grant pre-conviction clemency in any branch of government,[63] no basis for challenging the constitutionality of section 3d[64] would have existed. This would have obviated any need to arrive at two separate meanings for probation.[65] By holding that article IV, section 11A of the Texas Constitution prohibits pre-conviction probation, the court of criminal appeals undermines the tenet that the legislature may act on behalf of the sovereign, absent specific restrictions.[66] Furthermore, the decision that probation under article 42.12, section 3d of the Texas Code of Criminal Procedure differs, in some way as yet unspecified,[67] from probation which is granted after conviction under the same article[68] raises doubts whether the mechanics of pre-conviction probation can fit into the general scheme of the Adult Probation and Parole Act. Future decisions will have to determine whether "probation" in Texas encompasses a single form of clemency, regardless of when it is granted, or whether additional legislation, and possibly a constitutional amendment, is required to bring about a comprehensive clemency plan which includes pre-conviction probation.

Robert C. White

CRIMINAL PROCEDURE—Statute of Limitations—Felony Complaint Filed in Justice Court Will Not Toll Limitations

Ex parte Ward,
560 S.W.2d 660 (Tex. Crim. App. 1978).

Scottie Gene Ward was indicted for an aggravated rape allegedly committed on March 14, 1974. The indictment was presented on July 6, 1977, more than three years after the date of the alleged offense. The applicable limitations period, however, was one year.[1] In an attempt to avoid the

63. *See* cases cited notes 16, 17, and 20, *supra.*

64. TEX. CODE CRIM. PRO. ANN. art. 42.12, § 3d (Vernon Supp. 1966-1977).

65. *See* McNew v. State, No. 56,669, slip op. at 5 (Tex. Crim. App. Feb. 15, 1978), *reh. granted.*

66. Since the actual language in the constitution does not prohibit pre-conviction probation, the court's holding implicitly assumes that no power to grant clemency exists unless it is specifically authorized by the constitution. This is contrary to settled law. *Ex parte* Miers, 124 Tex. Crim. 592, 596-97, 64 S.W.2d 778, 780-81 (1933); *Ex parte* Muncy, 72 Tex. Crim. 541, 562, 163 S.W. 29, 44 (1914) (on motion for rehearing); *see* 52 TEXAS L. REV. 132, 140 n.37 (1973). *See also* cases cited notes 14-17, *supra.*

67. McNew v. State, No. 56,669, slip op. at 5-8 (Tex. Crim. App. Feb. 15, 1978), *reh. granted*; *see* TEX. CODE CRIM. PRO. ANN. art. 42.12, § 3d (Vernon Supp. 1966-1977).

68. *See* TEX. CODE CRIM. PRO. ANN. art. 42.12 (Vernon Supp. 1966-1977).

1. The 1974 version of article 12.01 of the Texas Code of Criminal Procedure provided

expiration of the limitations period, the indictment averred that a complaint of the alleged offense had been duly filed on or about March 14, 1974,[2] and was pending in the justice court at the time the indictment was issued.[3] Ward petitioned for a writ of habeas corpus alleging that the complaint had not tolled the limitations period and that since the limitations period had expired his indictment was void. The trial court denied relief in the habeas corpus proceeding and Ward appealed to the Texas Court of Criminal Appeals. Held—*Reversed.* A complaint, filed in a justice court, will not toll the limitations period in a felony case.[4]

At common law, no time limitations existed for prosecution of criminal offenses.[5] The subsequent development of time limits within which criminal prosecution must be brought has been purely statutory.[6] Today, statutes of limitations exist in forty-seven states;[7] forty-two of these states

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in pertinent part: "[F]elony indictments may be presented within these limits, and not afterward: . . . (4) one year from the date of the commission of the offense: any felony in the Penal Code Chapter 21 [Sexual Offense]." 1973 Tex. Gen. Laws, ch. 399, § 4, at 975. This one year statutory limitation was in effect on March 14, 1974, the date of the alleged offense. In 1975, article 12.01 was amended, extending the limitations period to three years for aggravated rape. TEX. CODE CRIM. PRO. ANN. art. 12.01(4) (Vernon 1977). Even if this amendment had been applicable, Ward's indictment would not have been filed within the statutory period. *Ex parte* Ward, 560 S.W.2d 660, 661 n.1 (Tex. Crim. App. 1978).

2. The original complaint was not introduced, nor does the record disclose whether a warrant was ever issued on the complaint. *Ex parte* Ward, 560 S.W.2d 660, 662 n.3 (Tex. Crim. App. 1978). According to an attorney in the firm handling Ward's appeal, however, a warrant, bearing only a physical description of the alleged attacker, was issued on the basis of the complaint, but was never served. Three years after the original complaint, the alleged victim observed the accused in a restaurant and reported this fact to the police. The accused was arrested, and the indictment was filed. Interview by telephone with Roy Wingate, attorney with Wingate and Carlson in Orange, Texas (May 31, 1978).

3. This averment, when considered in conjunction with article 12.05 of the Texas Code of Criminal Procedure, could possibly permit a finding that the filing of the complaint had tolled the limitations period. *See* TEX. CODE CRIM. PRO. ANN. art. 12.05(b), (c) (Vernon 1977).

4. *Ex parte* Ward, 560 S.W.2d 660, 661-62 (Tex. Crim. App. 1978).

5. Vasquez v. State, 557 S.W.2d 779, 781 (Tex. Crim. App. 1977); White v. State, 4 Tex. Ct. App. 488, 490 (1878); Nock, *Pleading the Statute of Limitations in Criminal Cases,* 1977 B.Y.U. L. REV. 75, 78. In England today, there are evidently no general criminal statutes of limitations. A common law felon is dependent on the inclination of officials to be free from prosecution. *See Developments in the Law—Statutes of Limitations,* 63 HARV. L. REV. 1177, 1179 (1950).

6. State v. Disbrow, 106 N.W. 263, 266 (Iowa 1906); Nock, *Pleading the Statute of Limitations in Criminal Cases*, 1977 B.Y.U. L. REV. 75, 78; *see* Vasquez v. State, 557 S.W.2d 779, 781 (Tex. Crim. App. 1977); White v. State, 4 Tex. Ct. App. 488, 490 (1878). American statutes of limitations first appeared in the English colonies of the mid-1600's. In 1790, limitation periods were adopted for most crimes in the federal system. Note, *The Statute of Limitations in Criminal Law: A Penetrable Barrier to Prosecution,* 102 U. PA. L. REV. 630, 631 (1954).

7. Nock, *Pleading the Statute of Limitations in Criminal Cases,* 1977 B.Y.U. L. REV. 75, 79 (Ohio, South Carolina, and Wyoming excepted).

include limitation periods applicable to felony offenses.[8] Few states offer legislative histories indicating the intent and purpose of their statutes of limitations, but certain objectives can be presumed.[9] Basically, limitations upon criminal prosecutions are designed to promote the welfare of both the accused and the public.[10] The accused is protected by compelling law enforcement officials to proceed quickly with prosecution while evidence is fresh and available.[11] Rapid prosecution furthers the state's interest in protecting its citizens.[12] Limitation periods also reflect the fact that an important aspect of prosecution, rehabilitation, may become less urgent if prosecution is delayed. As time passes without further criminal activity, the probability of a criminal's self-reformation increases.[13] A further objective of statutes of limitations is to remove fear of prosecution after an individual has lived a law-abiding life for a certain time.[14]

Statutes of limitations are generally considered to be acts of grace or amnesty whereby the state surrenders, subject to certain exceptions, its right of prosecution.[15] The exceptions consist of statutory provisions setting forth situations that toll or interrupt the running of the limitations period.[16] A common situation that gives rise to tolling exceptions is commencement of prosecution,[17] or more specifically, presentation of an indict-

8. *Id.* at 79 (Kentucky, Maryland, North Carolina, Virginia, and West Virginia excepted).

9. *See id* at 80. *See generally* Callahan, *Statutes of Limitations—Background,* 16 OHIO ST. L.J. 130, 131-32 (1955); Note, *The Statute of Limitations in Criminal Law: A Penetrable Barrier to Prosecution,* 102 U. PA. L. REV. 630, 632 (1954); MODEL PENAL CODE § 1.07, Comment at 16-17 (Tent. Draft No. 5, 1956).

10. *See* Nock, *Pleading the Statute of Limitations in Criminal Cases,* 1977 B.Y.U. L. REV. 75, 80. *See generally* Thayer, Schoch & Ireland, *The Effect of a State of War Upon Statutes of Limitations or Prescription,* 17 TUL. L. REV. 416, 416-17 (1943).

11. MODEL PENAL CODE § 1.07, Comment at 16-17 (Tent. Draft No. 5, 1956); *see, e.g.,* United States v. Marion, 404 U.S. 307, 320-21 (1971); United States v. Wild, 551 F.2d 418, 423-24 (D.C. Cir.), *cert. denied,* 431 U.S. 916 (1977); United States v. Eliopoulos, 45 F. Supp. 777, 781 (D.N.J. 1942). Inevitable loss of evidence and prejudice caused by delay handicaps the defense. Comment, *The Statute of Limitations in a Criminal Case: Can It Be Waived?,* 18 WM. & MARY L. REV. 823, 823 (1977).

12. *See* Thayer, Schoch & Ireland, *The Effect of a State of War Upon Statutes of Limitations or Prescription,* 17 TUL. L. REV. 416, 416 (1943). Justice, along with the idea that the state is interested in protecting its citizens, is a public goal furthered by rapid prosecution. *Id.* at 416.

13. *See* MODEL PENAL CODE § 1.07, Comment at 16-17 (Tent. Draft No. 5, 1956).

14. *Id.*; *see* United States v. Marion, 404 U.S. 307, 323 (1975); United States v.Toussie, 397 U.S. 112, 114-15 (1970).

15. Vasquez v. State, 557 S.W.2d 779, 781 (Tex. Crim, App. 1977); *accord,* People v. Ross, 156 N.E. 303, 304 (Ill. 1927); State v. Latil, 92 So. 2d 63, 67 (La. 1956); Davenport v. State, 202 P. 18, 24 (Okla. Crim. App. 1921).

16. *See* Note, *The Statute of Limitations in Criminal Law: A Penetrable Barrier to Prosecution,* 102 U. PA. L. REV. 630, 645-48 (1954).

17. *See* ILL. ANN. STAT. ch. 38, § 3-5 (Smith-Hurd 1972); WASH. REV. CODE ANN. § 9A.04.080 (1977).

ment, filing of an information or complaint, or issuance of a warrant.[18] Other situations apart from the commencement of prosecution, such as absence from the state, give rise to interruptions in the limitations period.[19] Several states offset the time during which a defective prosecution for the same offense was pending.[20]

Texas has had statutes of limitations since it was a republic.[21] Generally, they are construed liberally in favor of the accused,[22] with the burden of bringing the prosecution within the limitations period resting upon the state.[23] In 1941, the Texas Legislature amended its criminal limitations statute to include two situations during which the limitations period would cease to run in favor of the accused: the accused's absence from the state and the pendency of an indictment, information, or complaint.[24] These provisions have been carried forward in the present Code and are codified in articles 12.05(a) and (b).[25] In article 12.05(c) "during the pendency" is

18. *See* ARIZ. REV. STAT. § 13-106 (Supp. 1977) ("indictment, information or complaint . . . found or filed"); ARK. STAT. ANN. § 43-1602 (1964) (indictment found); CAL. PENAL CODE § 800 (Deering 1971) (indictment found, information filed, or case certified); HAW. REV. STAT. § 701-108 (1976) (indictment found, information filed, or arrest warrant or other process issued, provided process executed without unreasonable delay); KAN. STAT. § 21-3106 (1974) (when warrant delivered); TEX. CODE CRIM. PRO. ANN. §§ 12.01, .02 (Vernon 1977) (indictment or information presented). If an accused is a public official and the criminal act is related to his office, the statute may be tolled. *See* ILL. ANN. STAT. ch. 38, § 3-7(b) (Smith-Hurd 1972); IND. CODE ANN. § 35-41-4-2(d) (3) (Burns Supp. 1977); IOWA CODE ANN. § 802.6 (West Spec. Pamphlet 1978); UTAH CODE ANN. § 76-1-303(b) (1977). Another tolling exception may occur when the accused conceals evidence or the crime is concealed. *See* IND. CODE ANN. § 35-41-4-2(d) (2) (Burns Supp. 1977); KAN. STAT. § 21-3106(3) (c) (1974). At least one state provides for tolling when there is a breach of a fiduciary or legal duty, or fraud. *See* UTAH CODE ANN. § 76-1-303(a) (1977).

19. *See* ARK. STAT. ANN. § 43-1604 (1964); CAL. PENAL CODE § 802 (Deering 1971); IOWA CODE ANN. § 802.6 (West Spec. Pamphlet 1978). *See generally* Note, *The Statute of Limitations in Criminal Law: A Penetrable Barrier to Prosecution*, 102 U. PA. L. REV. 630, 645-48 (1954).

20. *See* ARK. STAT. ANN. § 43-1605 (1964); FLA. STAT. ANN. § 775.15(5) (West 1976); HAW. REV. STAT. § 701-108(6) (b) (1976); ILL. ANN. STAT. ch. 38, § 3-7(c) (Smith-Hurd 1972); KAN. STAT. § 21-3106 (1974); TEX. CODE CRIM. PRO. ANN. art. 12.05(b), (c) (Vernon 1977); WASH. REV. CODE ANN. § 9A.04.080 (1977); WIS. STAT. ANN. § 939.74 (West 1958).

21. *See* 1836 Tex. Gen. Laws, § 45, at 194, 1 H. GAMMEL, LAWS OF TEXAS 1254 (1898).

22. *See* State v. Asbury, 26 Tex. 67, 68 (1861) (in criminal cases, statutes of limitations construed strictly against prosecution and for accused); White v. State, 4 Tex. Ct. App. 488, 490 (1878) (statutes of limitations are to be construed liberally). *But see* Hattaway v. United States, 304 F.2d 5, 9-10 (5th Cir. 1962) (strict construction should not disregard context and legislative intent).

23. Donald v. State, 165 Tex. Crim. 252, 255, 306 S.W.2d 360, 362 (1957); *see, e.g., Ex parte* Dickerson, 549 S.W.2d 202, 203 (Tex. Crim. App. 1977); Cooper v. State, 527 S.W.2d 563, 565 (Tex. Crim. App. 1975); Jackson v. State, 489 S.W.2d 565, 567 (Tex. Crim. App. 1973).

24. *See* Tex. Code Crim. Pro. art. 183 (Supp. 1942) (amending Tex. Code Crim. Pro. art. 183 (1925)).

25. *See* TEX. CODE CRIM. PRO. ANN. art. 12.05(a), (b) (Vernon 1977).

defined as "that period of time beginning with the day the indictment, information or complaint is filed in a court of competent jurisdiction, and ending with the day such accusation is . . . determined to be invalid for any reason."[26] Since the 1941 amendment, few cases have dealt with the pendency provision.[27] In *Vasquez v. State*[28] the court rejected the defendant's contention that only a charging instrument that was later found to be invalid would interrupt the limitations period. Once an indictment was filed, limitations ceased to run even though it was replaced by a second valid indictment upon which the defendant went to trial.[29]

In *Ex parte Ward*[30] the Texas Court of Criminal Appeals dealt with the effect of the filing of a complaint upon the statute of limitations. The court was confronted for the first time with the issue whether a felony complaint filed in a justice court would fall within the pendency exception of article 12.05(b), and thus stop the limitation period.[31] Since according to article 12.05(c), the pendency of a complaint begins when it is "filed in a court of competent jurisdiction,"[32] the court viewed the essential question to be the proper definition of "court of competent jurisdiction."[33] Relying on a definition from a prior decision the majority limited the term "court of competent jurisdiction" to a court having jurisdiction of the offense, authority over the person and subject matter, and power to enter the particular judgment rendered.[34] Since a justice court does not have jurisdiction of felony offenses,[35] it would not be a "court of competent jurisdiction" when a felony complaint is made there.[36] The majority felt therefore, that a felony complaint filed in a justice court would not fall within the pendency provision of article 12.05(b) and would not affect the running of the limitations period.[37]

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26. *Id.* art. 12.05(c).

27. *See Ex parte* Ward, 560 S.W.2d 660, 661 (Tex. Crim. App. 1978); Vasquez v. State, 557 S.W.2d 779, 782 (Tex. Crim. App. 1977); *Ex parte* Slavin, 554 S.W.2d 691, 692 (Tex. Crim. App. 1977); Hill v. State, 146 Tex. Crim. 333, 335, 171 S.W.2d 880, 882 (1943).

28. 557 S.W.2d 779, 784 (Tex. Crim. App. 1977).

29. *Id.* at 784.

30. 560 S.W.2d 660 (Tex. Crim. App. 1978).

31. *Id.* at 661.

32. *Id.* at 661; TEX. CODE CRIM. PRO. ANN. art. 12.05(c) (Vernon 1977).

33. *See Ex parte* Ward, 560 S.W.2d 660, 662 (Tex. Crim. App. 1978).

34. *Id.* at 661-62; *see* Hultin v. State, 171 Tex. Crim. 425, 434-35, 351 S.W.2d 248, 255 (1961).

35. *See Ex parte* Ward, 560 S.W.2d 660, 662 (Tex. Crim. App. 1978). *Compare* TEX. CONST. art. V, § 8 (granting original jurisdiction of felony cases to district courts) *and* TEX. CODE CRIM. PRO. ANN. art. 4.05 (Vernon 1977) (conferring original jurisdiction over felony cases to district courts) *with* TEX. CONST. art. V, § 19 (granting criminal jurisdiction to justices of the peace where penalty or fine is not more than two hundred dollars) *and* TEX. CODE CRIM. PRO. ANN. art. 4.11 (Vernon 1977) (prescribing justice court criminal jurisdiction where penalty or fine is less than two hundred dollars).

36. *See Ex parte* Ward, 560 S.W.2d 660, 662 (Tex. Crim. App. 1978).

37. *See id.* at 662.

The majority also implied that public policy might be offended if the mere filing of a complaint in a justice court was allowed to stop the limitations period.[38] Under the Texas Code of Criminal Procedure any "credible person" can make a complaint by affidavit;[39] an affiant's complaint is accepted without inquiry into his source of information.[40] As a result it was concluded that such a filing should not be allowed to "toll the statute of limitations forever."[41]

The dissent criticized the majority's definition of "court of competent jurisdiction." It advocated a broader meaning that would encompass any court with the power and authority to do a particular act or to deal with a particular matter.[42] Noting that the justice court had the authority to entertain the complaint and issue a warrant, the dissent concluded that the filing of the complaint should have tolled the statute.[43]

The dissenting and majority opinions offer two possible solutions when a complaint was made prior to the expiration of the limitations period but the defendant contends that the ensuing indictment or information was brought too late. Both opinions are based on interpretations of the pendency exception of article 12.05.[44] If the majority's reasoning, based on the narrow definition of "court of competent jurisdiction," is carried to a logical conclusion, felony complaints must be filed in a district court or criminal district court to halt the limitations period.[45] Since only those courts have jurisdiction to try felonies,[46] filing a felony complaint there would begin the pendency of a complaint within the meaning of article 12.05(b).[47] The majority opinion is supportive of a conclusion that filing a complaint with a court that would later be of the appropriate level to try the case, would toll the statute.[48] Conversely, a complaint not filed with a court of appropriate trial jurisdiction would have no effect on the limitations period,[49] and the subsequent indictment or information must be timely pre-

38. *See id.* at 662.

39. *See* TEX. CODE CRIM. PRO. ANN. art. 15.05 (Vernon 1977) (no qualifications required of affiant to complaint); *id.* art. 21.22 (Vernon 1966) (complaint described as affidavit made by "some credible person").

40. Wells v. State, 516 S.W.2d 663, 664 (Tex. Crim. App. 1974); *see* TEX. CODE CRIM. PRO. ANN. art. 15.05 (Vernon 1977).

41. *See Ex parte* Ward, 560 S.W.2d 660, 662 (Tex. Crim. App. 1978).

42. *Id.* at 662-65 (dissenting opinion). While the dissent agreed that competent jurisdiction is jurisdiction of subject matter and authority to hear and determine a case, it stated the term should be extended to include the second definition of "having the power and authority of law at the time of acting to do the particular act." *See id.* at 662 (dissenting opinion) (quoting 22 C.J.S. *Courts* § 22 (1940)).

43. *See Ex parte* Ward, 560 S.W.2d 660, 665 (Tex. Crim. App. 1978) (dissenting opinion).

44. *See id.* at 661-62; *id* at 662-65 (dissenting opinion).

45. *See id.* at 662.

46. *See* TEX. CODE CRIM. PRO. ANN. art. 4.05 (Vernon 1977).

47. *See Ex parte* Ward, 560 S.W.2d 660, 662 (Tex. Crim. App. 1978).

48. *See id.* at 662.

49. *See id.* at 662.

sented. The majority's definition of a "court of competent jurisdiction" is well established.[50] Yet assuming that the result of the majority opinion would be to allow a complaint to toll limitations if filed with a court that could try offenses of the nature charged, it is undesirable from a policy perspective. As indicated in the dissent, a defendant should not be disadvantaged simply because the complaint against him was filed with a magistrate who happened to preside over a court that could try the offense charged.[51]

The dissent's interpretation of article 12.05(b) avoids such an undesirable result. According to the dissent, filing a complaint in any court would fall within the purview of article 12.05(b) as long as the receiving court had authority to act on the complaint.[52] The dissent's view of the effect of a complaint can be criticized on the ground that there are inadequate safeguards in the complaint process to justify the cessation of limitations merely by filing a complaint.[53] Although this criticism is weakened by the requirement of a speedy prosecution provided by the Speedy Trial Act,[54] the burden is on the defendant to invoke the Act.[55]

Both the majority and dissenting opinions were purportedly based on literal interpretations of the reference in article 12.05(b) to a "court of competent jurisdiction."[56] Nevertheless, neither recognized the significance of the fact that felony complaints are filed with magistrates.[57] When

50. *See* Martin v. State, 385 S.W.2d, 260, 261 (Tex. Crim. App. 1964); Hultin v. State, 171 Tex. Crim. 425, 434-35, 351 S.W.2d 248, 255 (1961); Bragg v. State, 109 Tex. Crim. 632, 634, 6 S.W.2d 365, 366 (1928); Parr v. State, 108 Tex. Crim. 551, 553, 1 S.W.2d 892, 893 (1928); Emery v. State, 57 Tex. Crim. 423, 424, 123 S.W. 133, 134 (1909); *Ex parte* Degener, 30 Tex. Crim. 566, 576, 17 S.W. 1111, 1114 (1891). *But see* Wilson v. State, 154 Tex. Crim. 39, 45-46, 224 S.W.2d 234, 237-38 (1949) (courts of limited jurisdiction may render judgment only within their limited authority); Lubbock Oil Ref. Co. v. Bourn, 96 S.W.2d 569, 571 (Tex. Civ. App.—Amarillo 1936, no writ) (in civil cases competent jurisdiction interpreted broadly as meaning to have power to do a particular act). *See also Ex parte* Cannon, 546 S.W.2d 266, 269 (Tex. Crim. App. 1976) (concurring opinion).

51. *See Ex parte* Ward, 560 S.W.2d 660, 665 (Tex. Crim. App. 1978) (dissenting opinion).

52. *See id.* at 662-63.

53. *See* TEX. CODE CRIM. PRO. ANN. art. 15.05 (Vernon 1977) (requisites of complaints show no requirement for any action by the state other than drawing the complaint itself). If a complaint is statutorily sufficient, there is no requirement to investigate the nature of the affiant's knowledge about the facts in the complaint supporting prosecution. Wells v. State, 516 S.W.2d 663, 664 (Tex. Crim. App. 1974).

54. TEX. CODE CRIM. PRO. ANN. art. 32A.02 (Vernon Supp. 1978) (providing time limitations within which trial must begin after commencement of criminal action).

55. If the prosecution is not ready for trial within the specified time period after an indictment, information, or complaint has been filed, the defendant may move to have it set aside. *Id.* § 1. Failure to make such a motion prior to trial results in a waiver of the time limitations. *Id.* § 3. In computing the time limitations several periods are excluded. *Id.* § 4.

56. *See Ex parte* Ward, 560 S.W.2d 660, 662 (Tex. Crim. App. 1978); *id.* at 665 (dissenting opinion).

57. *See* Kinley v. State, 29 Tex. Crim. 532, 533-34, 16 S.W. 339, 339-40 (1891); TEX. CODE CRIM. PRO. ANN. art. 2.05 (Vernon 1977) (felony complaints filed with a magistrate).

serving as a magistrate in receiving complaints, the functions and authority of a justice of the peace are equal to those of a district court judge officiating in the same capacity.[58] When a district court judge or a justice of the peace accepts a felony complaint or holds an examining trial, he acts with the authority of a magistrate, not with the authority of a district court judge or a justice of the peace.[59] None of the statutes in the Texas Code of Criminal Procedure that prescribe the duties and powers of magistrates, grants magistrates the authority to render a judgment or to try a case.[60] Criminal trial jurisdiction is specifically designated by statute to various courts without mention of magistrates.[61] Magistrates, therefore, are without authority to render a judgment or to try a criminal case,[62] and consequently cannot be considered to have competent jurisdiction under the limited definition of that phrase as applied in *Ward*.[63] Thus, according to a strictly literal reading of article 12.05(b), it makes little sense to speak of filing a felony complaint in a court of competent jurisdiction.

Even assuming that such a literal interpretation of article 12.05(b) is appropriate, the reference in the article to the filing of a complaint in a court of competent jurisdiction as a procedure for tolling limitations is not completely without meaning. After a complaint is made to the proper

58. *See* O'Quinn v. State, 462 S.W.2d 583, 587 (Tex. Crim. App. 1970); TEX. CODE CRIM. PRO. ANN. arts. 2.09, 2.10 (Vernon 1977). *But see* TEX. CODE CRIM. PRO. ANN. art. 52.01 (Vernon Supp. 1966-1977) (district court judges, in certain circumstances, provided with authority as magistrates which justices of the peace do not have).

59. *See, e.g.*, O'Quinn v. State, 462 S.W.2d 583, 587 (Tex. Crim. App. 1970); Mays v. State, 112 Tex. Crim. 441, 443, 17 S.W.2d 59, 60 (1929); Kerry v. State, 17 Tex. Ct. App. 178, 181 (1884). The court has been emphatic in distinguishing the difference between a magistrate's authority and that of judges. In *Brown v. State*, a 1909 case, the court stated:

> [T]he difference between the office of magistrate and that of justice of the peace is decidedly marked and evident. It is as distinctly marked where the justice of the peace is acting as magistrate and where he is acting as justice of the peace, as is the difference in the authority of a district judge in a writ of habeas corpus and where the same judge is acting as magistrate.

Brown v. State, 55 Tex. Crim. 572, 580, 118 S.W. 139, 143 (1909).

60. *See* TEX. CODE CRIM. PRO. ANN. art. 2.10 (Vernon 1977) (duty of magistrate is to preserve peace, issue all process, cause arrest of offenders). Elsewhere the Code is quite specific concerning the duties and qualifications of magistrates.

61. *Id.* arts. 4.01 (criminal jurisdiction vested in court of criminal appeals, district courts, criminal district courts, domestic relations courts, county courts, all county courts at law with criminal jurisdiction, county criminal courts, justice courts, corporation courts), 4.05 (jurisdiction of felonies and certain misdemeanors in district courts and criminal district courts), 4.07 (jurisdiction of county courts for most misdemeanors), 4.11 (jurisdiction of justice courts where fine does not exceed two hundred dollars), 4.14 (limited jurisdiction of corporation courts).

62. A court's jurisdiction is prescribed by statutory enactment and "the authority must be found there not only to hear the case," but to dispose of the matter. Wilson v. State, 154 Tex. Crim. 39, 45, 224 S.W.2d 234, 237 (1949).

63. *See Ex parte* Ward, 560 S.W.2d 660, 662 (Tex. Crim. App. 1978).

authority, prosecution proceeds according to the nature of the offense as a misdemeanor or felony. Complaints of felony offenses are filed with magistrates who initiate proceedings which may result in the presentation and filing of an indictment.[64] Complaints of misdemeanors, in most cases, become the basis of informations which are "forthwith" prepared and filed "in the court having jurisdiction."[65] In a few instances, however, misdemeanor prosecutions may proceed upon a complaint alone without the imposition of an information. Under articles 45.01 and 45.16, it appears that certain trials in corporation courts or justice courts may proceed upon a complaint.[66] Further, under article 2.05, misdemeanor cases may be tried upon a complaint alone in counties having no county attorney.[67] It is important to note that when the offense charged is a felony, such a situation will not arise.[68] As to misdemeanors, however, these provisions illustrate that there are situations where a defendant may go to trial upon a complaint rather than an information or indictment. In these situations it makes sense to speak of complaints as having been filed in a court of competent jurisdiction, thus upon such filing, limitations would be tolled. This analysis is desirable because it gives meaning to the language of article 12.05(b), which indicates that complaints are to have some effect on the statute of limitations, without violating a literal reading of those words. Furthermore, the result is desirable from a policy perspective; when a complaint functions as an indictment or information by serving as the charging instrument upon which the defendant goes to trial, it should have the same effect upon limitations.

A restrictive view of the circumstances in which a complaint will toll limitations is warranted when article 12.05(b) is read in conjunction with the other limitations statutes in the Texas Code of Criminal Procedure. Under articles 12.01 and 12.02, the presentment of indictments or informations must be within specified time periods, otherwise prosecution is barred.[69] Therefore, the question arises whether the legislature intended article 12.05(b) to qualify articles 12.01 and 12.02 in a manner that would also allow limitations to be tolled by the filing of complaints.

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64. *See* TEX. CODE CRIM. PRO. ANN. arts. 2.05, 20.01-.22 (Vernon 1977).

65. *See id.* arts. 2.05, 21.22.

66. *See* TEX. CODE CRIM. PRO. ANN. art. 45.01 (Vernon Supp. 1966-1977), art. 45.16 (Vernon 1966). Several cases indicate that a complaint in a corporation court may be the basis of prosecution. *See* Bernard v. State, 481 S.W.2d 427, 429 (Tex. Crim. App. 1972) (on motion for rehearing); Vallejo v. State, 408 S.W.2d 113, 115 (Tex. Crim. App. 1966).

67. TEX. CODE CRIM. PRO. ANN. art 2.05 (Vernon 1977). Several cases have interpreted predecessor statutes to article 2.05. *See* Day v. State, 127 Tex. Crim. 19, 20, 74 S.W.2d 699, 700 (1934) (on motion for rehearing) (misdemeanor cases may be tried on complaint alone); *Ex parte* Nitsche, 75 Tex. Crim. 131, 133-34, 170 S.W. 1101, 1103 (1914) (prosecution may be maintained in justice court upon complaint alone).

68. *See* TEX. CODE CRIM. PRO. ANN. art. 2.05 (Vernon 1977), art. 45.01 (Vernon Supp. 1966-1977), art. 45.16 (Vernon 1966).

69. *See id.* arts. 12.01, .02.