LAW ENFORCEMENT MANAGEMENT INSTITUTE

MAGISTRATE'S DUTIES PERFORMED AT THE MUNICIPAL COURT AND JUSTICE OF THE PEACE LEVEL

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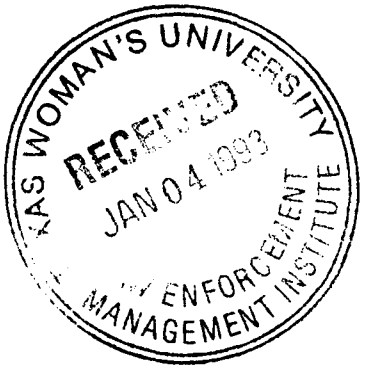

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INTRODUCTION

A magistrate is a vital and integral member of the criminal justice system. The magistrate's duties and actions fall within the purview of the judicial discipline. There have been many instances throughout the United States where magistrates consider themselves to be members of law enforcement rather than the judiciary. Although this concept is inaccurate, the magistrate plays a major role in supporting the law enforcement activities.

Magistrate. The term in its generic sense refers to a person clothed with power as a public civil officer, or a public civil officer invested with executive, or judicial power. Minor officials or officers with limited judicial authority; e.g., justices of the peace, judges of police courts, mayor's courts, or magistrate's courts. In a general sense, a "magistrate" is a public officer, possessing such power, legislative, executive, or judicial, as government appointing him may ordain, although narrowly regarded as an inferior judicial officer.[1] Surprisingly, a magistrate on the level of a municipal judge or justice of the peace is not required to be an attorney or have any legal training.

The Texas Legislature has determined each of the following persons to be magistrates in the State of Texas: The justices of the Supreme Court, the judges of the

Court of Criminal Appeals, the justices of the Courts of Appeals, the judges of the District Court, the magistrates appointed by the judges of the district courts of Dallas County or Bexar County that give preference to criminal cases, the magistrates appointed by the judges of the district courts of Lubbock County, and the magistrates appointed by the judges of the criminal district courts of Dallas County, the county judges, the judges of the county courts at law, judges of the county criminal courts, the judges of statutory probate courts, the justices of the peace, the mayors and recorders and the judges of the municipal courts of incorporated cities or towns.[2] It is the duty of every magistrate to preserve the peace within a jurisdiction by the use of all lawful means; to issue all process intended to aid in preventing and suppressing crime; to cause the arrest of offenders by the use of lawful means in order that they may be brought to punishment. [3]

Magistrates perform their many duties in cases pertaining to both civil and criminal actions. There are distinct differences in administering the requirements associated with each of the disciplines. One of the most important duties performed by a magistrate in criminal actions involves protecting the civil rights of persons accused of committing a criminal offense. Such duties entail the approval and acceptance of a complaint setting out the probable cause citing the reasons an affiant believes the person has committed a criminal offense. Once a person has been charged with committing a

criminal offense, and placed under arrest, the accused must appear before a magistrate to be informed of the charge, bail amount if authorized and warned of those rights guaranteed to preclude self incrimination. The magistrate is required to protect the rights of the prisoner, to comply with statutes enacted by the State, and to fulfill all the requirements of a proper arraignment.

WARRANTS

A "warrant of arrest" is a written order from a magistrate, directed to a peace officer or some other person specially named, commanding that the body of the person accused of an offense, be dealt with according to law.[4] Another type of warrant is commonly referred to as a capias.

There are specific requirements that must be met, or complied with, to ensure the warrant fulfills the legal mandates necessary to assure its validity. A warrant issued in the name of "The State of Texas" and shall be sufficient, without regard to form, if it recites certain substantial requisites. It must specify the name of the person whose arrest is ordered, if known; if unknown, then some reasonably definitive description must be given. It also must state that the person is accused of some offense against the laws of the State, and name the offense. It must be signed by the magistrate, along with the named in the body of the warrant, or in connection with the signature.[5] A warrant of arrest, issued by any county or district clerk, or by any magistrate (except mayors of an

incorporated city or town), shall extend to any part of the State.

A "complaint" is an affidavit made before a magistrate that charges a person with the commission of an offense. The complaint shall be sufficient, without regard to form, if it recites certain substantial requisites. It must state the name of the accused, if known, and if not known, must give some reasonably definite description of him. It must show that the accused has committed some offense against the laws of the State, either directly or that the affiant has good reason to believe, and does believe, that the accused has committed such offense. It must state the time and place of the commission of the offense as definitely as can be done by the affiant. It also must be signed by the affiant by either signature or by affixing of a mark.[6]

It is incumbent on the magistrate to judge each complaint with a "jaundiced eye"; the decision must be based on the facts stated in the complaint. The complaint must contain articulative statements and facts that purport to establish that a criminal offense had been committed. Various methods, documents, items and the five senses can be considered in establishing the facts that a criminal offense had probably been committed. A complaint is the written document that outlines the facts and probable cause that led the affiant to believe that a criminal offense had occurred. The complaint must stand on its own merits in order for a magistrate to decide whether or not he believes a criminal offense had been committed; if the magistrate believes the alleged criminal

offense had occurred, a warrant will be issued for the arrest of the person named in the warrant.

Officers seeking warrants from magistrates that "rubber stamp" the probable cause affidavit are essentially provided a false sense of security. The "rubber stamp" magistrate tends to lean toward the law enforcement family instead of performing the unbiased and impartial duties required in the judicial process. Some serious criminal charges can possibly be dismissed because a magistrate failed to ensure there was in fact sufficient probable cause to effect the arrest and charge an individual with a criminal act. Officers must constantly challenge those magistrates that make a mere cursory review of the affidavit and approve it with no questions. The magistrate, officer, prosecutor and victim of a criminal act are all losers when the magistrate and officer fail to ensure a legally sufficient probable cause exists to arrest a person and charge him with committing a crime.

COMPLAINTS

As stated earlier, a complaint is the legal written document the affiant completes that charges an individual with an alleged criminal act. There are many ways and methods the affiant can use and outline in the complaint to illustrate and articulate the facts needed for the magistrate to make a decision on whether or not there is probable cause to believe a criminal act was committed by the accused person. A magistrate may

issue a warrant of arrest "When any person shall make oath before the magistrate that another has committed some offense against the laws of the State," and that "The affiant made before the magistrate is called a complaint if it charges the commission of an offense."[7] The complaint must be sworn to before an officer authorized to administer an oath and the official capacity of the officer must be shown on the complaint.[8] A complaint may be sworn to before a Notary Public, including a notary of a county other than the county in which the offense was committed.[9] The complaint must be signed by some credible person. A credible person is a person who would be competent to testify against the accused, but it is not required that the affiant be a witness to the crime.[10]

Some examples of ways and methods the magistrate may consider are eye witness statements, information provided by credible informants, fruits-of-the-crime and some or all the five senses. Witnesses to a criminal act can normally provide all the information necessary to establish the probable cause that a criminal offense was committed by the accused. The magistrate also may consider information provided by confidential informants; however, many magistrates will not rely solely on such type of information. Various types of instruments that can be considered fruits-of-the-crime can be used to establish probable cause; documents such as forged negotiable instruments, weapons, vehicles, altered government records and physical evidence such as bodies,

blood and clothing. There are also the unique ways derived from some or all the five senses. The most notable of these in establishing probable cause are sight, smell and hearing. A confession by the accused provides the magistrate with an excellent probable cause to effect the arrest and or commitment to jail of the person alleged to have committed a criminal act.

PROBABLE CAUSE

A complaint is the necessary document the magistrate must accept for him to issue an arrest warrant; an individual may also be committed to jail pending indictment, may order a trial, or order the release from custody on bail until the case is disposed of by the court. The probable cause requirements are similar for both warrant and warrantless arrests and for search warrants. There are more methods and reasons for establishing probable cause than can logically be cited in a single writing. Probable cause for an arrest exists where, at the moment of arrest, the facts and circumstances within the knowledge of the arresting officer and of which reasonably trustworthy information exists would justify a reasonable and prudent person to believe that the arrested person had committed or was committing a criminal offense. Probable cause requires more than a hunch, suspicion or good faith by the arresting officer. However, the probable cause does not require the arresting officer to have enough evidence at the time of arrest to prove the arrestee is guilty.[11] An officer may rely on hearsay when creating a

reasonable ground of belief.[12] The substance of probable cause is a reasonable ground for belief of guilt.[13] Probable cause is based on the probability and not the certainty that a criminal offense had been or was being committed.[14]

An arrest without a warrant cannot be based on mere suspicions or beliefs.[15] However, all that is required to authorize an officer to arrest without a warrant for an offense committed in his presence or within his view is that probable cause exists to believe that an offense is being committed.[16] An officer does not actually have to see an offense committed in order to arrest the subject without a warrant. If an officer becomes aware or has probable cause to believe, by using any of his senses, that a crime is being committed in his presence or within his view, he is fully justified in effecting the arrest without a warrant.[17] However, the officer must actually detect the offense and identify the offender. Simply being near enough to have detected the criminal act is not sufficient.[18] An officer who has probable cause to believe a criminal offense had been committed does not have to effect the arrest himself; other officers may be requested to make the arrest without a warrant based on probable cause, even though the arresting officers did not observe or detect the commission of the criminal offense.[19]

An officer may use one or more of the five senses to develop the probable cause that a criminal offense is being committed by the sense of sight. Some examples would be the observation of the accused with a hypodermic syringe in his hand; observes the

accused smoking marihuana; has marihuana that is openly visible to the officer; the accused is observed carrying a weapon; observation of the accused committing traffic violations based on erratic driving and an accused being intoxicated in a public place. One of the more prominent offenses visually observed by an officer is the erratic driving and physical appearance of the accused that suggests that he is driving while intoxicated.[20]

Smell is another of the five senses that can be used by an officer to develop probable cause. The smell of the odor of marihuana, illegal whisky or liquors or mash used in an illegal still can be excellent ways to establish a probable cause. Based on the sense of smell, he may arrest an accused without warrant.

An officer may become aware or have probable cause to believe that an offense is being committed by the sense of hearing.[21] The arresting officer can use any or all the senses to develop probable cause to effect the arrest of persons accused of committing criminal acts.

A confidential informant can be a very valuable resource to the law enforcement community. Informants of known reliability frequently furnish detailed information to officers that an accused had or is committing an offense. If the officer is able to corroborate or verify all the informant's information by personal observation, except whether the accused is actually committing a criminal act, the officer is entitled to believe

that all the information furnished by the informant is correct and the officer has probable cause to arrest the accused without a warrant for an offense.[22] If the informant is of known or proven reliability and the information is positive and detailed, corroborated and verified by the arresting officer, it is not required that the officer know where or how the informant obtained the knowledge through either personal knowledge or secondary knowledge. The detailed and positive nature of the information coupled with the officer's ability to verify it through personal observation are enough to validate the informant had personal knowledge or had gained information in a reliable way.[23]

Confidential informants have provided excellent information on numerous occasions. The informants I use are extremely knowledgeable of illegal drug traffic; they have provided names, places, times, dates and types of illegal drugs being sold throughout Travis County. Their information has been accurate on a recurring basis which has allowed me to obtain warrants based on the details they provided. The law enforcement officer must be able to get reliable information from their informants without making promises which they have no authority to make. I have informants who are in jail. They provide me the information necessary to obtain a warrant for assaults occurring in the jail. Each of my informants have been made aware of our partnership; I make no promises but try and keep them in a trustee position so that they can continue to provide me information on the illegal acts committed within the jail. Each officer

must keep the identity of their informants confidential at all legal costs; their lives could be in jeopardy if their identity became known.

From the "totality of the circumstances," probable cause may be based on the tip of an unknown and anonymous informant if the tip contains a detailed description of the accused, a prediction of the accused's future activity and information concerning the purpose of the accused's activity; the details of the tip are substantially corroborated and verified by independent observation and there are other suspicious circumstances, such as the accused's guilty reaction on being confronted or the officer's independent knowledge of the guilty character of the place where the accused is found.[24] In order for an informant's tip to be corroborated by independent observation, the information obtained by the officer through investigation must in some way verify or confirm that the suspect had committed, or was in the process of committing the crime.[25] The informant's report or tip must contain direct information. If the informant states merely that there is reason to believe that the accused is in the possession of contraband, there is no probable cause.[26] The informant's report or tip must contain detailed information. The officer shall be given an accurate description of the subject, where the subject will be, when the subject will be there and the type of contraband expected. Otherwise, there is not enough information for the officer to verify or confirm by independent observation.[27] It is not required that the accused's activity that was

observed through independent investigation be guilty conduct, because apparently innocent activity may become suspicious in light of the informant's tip. The amount of time the officers have for independent observation does not determine whether there is probable cause. Instead, the amount of effective corroboration that the officers make in the time allowed is the controlling factor. If the independent observation confirms every aspect of the informant's tip except whether the accused is in possession of contraband, there is probable cause to believe that there will be a subject in possession.[28]

The arrest of a person without a warrant is an unreasonable seizure of the person and is unlawful unless it is expressly authorized by some statute. If the situation claimed to authorize an arrest without warrant does not come squarely within one of the statutes authorizing it, the authority does not exist and the officer must have a warrant.[29]

The Fourth Amendment to the United States Constitution, which prohibits unreasonable searches and seizures, applies to both arrest and search warrants. The magistrate before whom a complaint is filed must be able to personally judge whether the facts relied on by the person making the complaint establishes probable cause to believe that the accused committed the crime. The complaint also must establish probable cause to believe that the accused committed the crime. The complaint, therefore, must provide on its face a sufficient basis upon which the magistrate can find

there is probable cause for the issuance of a warrant.[30] The complaint must answer the question, "What makes you think the defendant committed the offense charged?"[31] Although merely stating the conclusion of the affiant that the accused committed the offense is not enough, all that is required is that enough information be presented in the complaint to enable the magistrate to decide that there is probable cause to believe that the accused committed the offense. An arrest made on a warrant issued on a complaint that contains no allegation of probable cause is unlawful; any search made incident to that arrest is unlawful and no evidence seized as a result of the search may be used against the accused. This rule applies to a misdemeanor capias as well as a felony warrant.[32] A general rule is that a search without a search warrant is unreasonable and violates the Fourth Amendment to the United States Constitution.[33] There are multitudes of things that can be searched for and or seized. Unless a statute authorizes the search for and seizure of any particular thing, a search warrant may not be obtained to search for and seize it, regardless of how serious the crime or great the need for a search.[34] A warrant to search for evidence of a crime may not be issued to search an office of a newspaper, news magazine, television station or radio station, or to search for or seize the personal writings by the accused.[35] Personal writings are non-business writings, such as diaries and personal letters and do not cover writings related to a business, even if it is unlawful.[36]

If the affidavit and search warrant do not contain a sufficient description of the place to be searched, the warrant is not valid. [37] The description of the place set forth in the affidavit limits and controls the description set forth in the warrant and the authority to search is restricted to the premises described in the warrant.[38] The place to be searched must be sufficiently described to effect the issuance of a search warrant. The description of the place to be searched does not have to be precise or technically accurate. All that is required is that it be sufficiently definite to enable the officers to locate the property and distinguish it from other places in the community.[39] The test is whether the description is sufficient to inform the officers of where they are to conduct the search. It is enough if the description is such that the officers can locate and identify the place to be searched with reasonable effort and there is no reasonable probability that another place might be searched by mistake. If the search warrant sufficiently describes the general location of the premises and specifically describes the premises themselves, the description is sufficient.[40] The description must state what county the place is located in; it also should state what kind of house it is and, if it is described with reference to a particular road or highway, it should state what side of the road or highway it is located.[41] A search warrant must be executed within three days from the time of its issuance. This means three whole days, exclusive of the day of issuance and of the day of its execution.[42] After a search warrant is issued, the magistrate cannot

change the date of its issuance so as to extend the time in which it may be executed.[43]

Executing a search warrant entails a number of actions on the part of the officer making the search. The officer will seize and take possession of the property reflected in the warrant, and the officer will also arrest any persons named in the warrant if they are found on the premises being searched. Any person arrested must be taken before the magistrate for arraignment. When the search warrant is returned to the magistrate, the officer must indicate how it was executed and provide an inventory of the property seized. The officer who seized the property must maintain custody of it until the magistrate issues an order directing where the property will be stored. The officer seizing the property must leave a written inventory of the property, sign the inventory, and present it to the rightful owner or the person who has possession. If no one is present at the search site, the officers will leave a copy of the warrant and inventory at the place searched.

ARRAIGNMENT

Whenever a person is arrested for allegedly committing a criminal offense, the person making the arrest shall without unnecessary delay take or have taken the person arrested before some magistrate of the county where the accused was arrested or if necessary to provide more expeditiously to the person arrested the warnings required by the State of Texas, before a magistrate in a county bordering the county in which the arrest was

made. Having the accused appear before a magistrate with undue delay is a critical requirement necessary for ensuring the arrest was a legal one and to help expedite the judicial proceedings.

Arrested persons may be taken before the magistrate in person or the image of the arrested person may be broadcast by closed circuit television to the magistrate. The magistrate shall inform the person arrested in clear language, either in person or by closed circuit television, of the accusation and of any affidavit therewith, of the right to retain counsel, of the right to remain silent, of the right to have an attorney present during any interview with peace officers or attorneys representing the state, of the right to terminate the interview at any time, of the right to request the appointment of counsel if the accused is indigent and cannot afford counsel, and of the right to have an examining trial. The magistrate also shall inform the arrested person of the right against self-incrimination and that any statement made may be used against the arrestee. The magistrate shall allow the person arrested reasonable time and opportunity to consult counsel and shall admit the person arrested to bail if allowed by law.

A closed circuit television may not be used unless the system provides for a two-way communication of image and sound between the arrested person and the magistrate. The recording should be preserved until the earlier of the following dates: (1) the date on which the pretrial hearing ends; or (2) the 91st day after the date on

which the recording is made if the person is charged with a misdemeanor or the 120th day after the date on which the recording is made if the person is charged with a felony.

Persons taken before a magistrate who cannot understand the English language must be warned in a language that they can understand. Deaf persons will have an interpreter appointed by the magistrate; the interpreter shall interpret the required warning in a language the accused can understand, including but not limited to sign language. Persons who speak or understand only a foreign language will be provided their warnings by a person who speaks their native language.[44] The requirement to ensure a person understands these guaranteed rights by the magistrate is essential to ensure no violations of the arrested persons civil rights. Such a requirement to warn persons who cannot speak or understand the English language poses both a monetary and logistical hardship on the courts as interpreters must be provided by the magistrate.

The municipal court magistrates in the city of Austin, Texas, use a video tape to advise arrested persons of their rights. The video tape is shown twice; one tape for the English-speaking arrestee and the other for the Spanish-speaking arrestee. Once the basic rights have been provided by the video, the magistrate advises each arrestee of the charge and the bond necessary to secure release from jail, if a bailable offense. The magistrates provide individual warnings to the deaf and those who speak a language other than English or Spanish. This system allows the magistrate to warn a group of arrestees at

one time. The arrestees are grouped according to charges; one group is for class C misdemeanor charges and the other group is for jailable offenses: class A and B misdemeanors and all felony charges. This method of providing required warnings is quick, saves time and fulfills all legal requirements to ensure the rights of arrestees are fully protected.

There are varying philosophies concerning the period allowed for arraigning persons accused and charged with committing a criminal offense. Various judicial and political subdivisions have established their own criteria for the arraignment process. The arraignment process at the lowest level of the judicial system is also construed to be the magistrate's warning. Research of this controversial subject involved a review of the penal and civil statutes, case law decisions and newspaper articles. Considering the magnitude of their responsibilities regarding the impact it has on persons charged with a criminal offense, the lack of legal training requirements is absolutely amazing.

The requirements imposed on a magistrate seem very simple; they are not. Interpretations of the requirements for the magistrate's warning appear to be as numerous as there are magistrates. There seems to be no question on who can, or will present the accused to the magistrate for the warning. There also seems to be no controversy on what the magistrate must recite in his warning to the accused. The controversy emanates from the verbiage "In each case enumerated in this code, the

person making the arrest shall without unnecessary delay take the person arrested or have him taken before a magistrate of the county where the accused was arrested or, if necessary to provide more expeditiously to the person arrested the warnings described by this article, before a magistrate in a county bordering the county in which the arrest was made."[45] Interpretation of "without unnecessary delay" by various courts have resulted in many case law decisions throughout the United States.

Sanders v. City of Houston, 543 F. Supp. 694 (S.D. Tex. 1982), aff'd 741 F.2d 1379 (5th Cir. 1984), appears to stand as the premiere case law decision concerning the time constraints for arraigning persons charged with a criminal offense in the state of Texas.[46] This particular case cited the City of Houston, Texas, for detaining a person charged with a criminal offense for as long as five days before seeing a magistrate for a probable cause determination. Additional instances cited persons being held for 43 hours before seeing a magistrate. These lengthy periods of detention were experienced by persons charged with misdemeanor offenses; some of the charges were not jailable offenses as the maximum punishments were by fine only. Some other courts have rendered different time frames for the arraignment process while others have agreed with the Sanders case. The court in Dommer v. Hatcher, 427 F. Supp. 1040 (N.D. Ind. 1975), rev'd in part, 653 F.2d 289 (7th Cir. 1981), held that twenty-four (24) hours without presentation before a magistrate is the maximum permissible time period.[47] Conversely,

the court in Lively v. Cullinane, 451 F. Supp. 1000 (D.D.C. 1978), ruled that one-and-a-half (1 1/2) hours is the longest a person can be lawfully detained before presentation before a magistrate.[48] Another court, Niehouse v. State, 761 S.W. 2d 491 (Tex. App. - Dallas 1988), discussed in their findings a review of Texas cases citing acceptable periods of detention ranging from one and one-half hours to 15 hours.[49] There have been extreme differences in the time frame established by various political subdivisions stipulating the length of time allowed for the arraignment or warning the arrested person of the charge lodged, to set bond, if allowed by law and to be advised of legal rights. The times have been established from the short one and one-half hour to as long as 24 hours by the various courts. The apparent maximum period of time seems to have been established at 24 hours. There are many law enforcement administrative requirements recognized in establishing the allowable times by the various courts. Such administrative requirements considered are the booking procedures, fingerprinting and photographing, interviewing witnesses and interrogation by law enforcement officials.

CONCLUSIONS

The magistrate who dedicates energies primarily to the criminal actions discipline encounters varied technical legal requirements. These actions impact the civil rights of persons accused of committing a criminal offense. The magistrate issues warrants based

on the probable cause evidence contained in the complaint alleging a criminal act had been committed and also issues search warrants based on probable cause information that alleges some area contains contraband of a criminal nature, or a suspect is secreting himself in or at the place to be searched. It is imperative that the magistrate determine there is probable cause established by the affiant for the issue of the warrant. The magistrate ensures the rights of the accused are protected and the statutes of the state are enforced.

The complaint is the document that articulates the facts alleging a criminal act had been committed by the accused. It must cite the probable cause; outlining the facts that would lead a reasonable and prudent man to believe the alleged criminal offense had been committed by the accused. The complaint must meet the requisites mandated by statute; it must state the name of the accused, if known, and if not known, must give some reasonably definite description of him; it must show the accused had committed some offense against the laws of the State, either directly or that the affiant had good reason to believe, and does believe, that the accused had committed such offense; it must state the time and place of the commission of the offense as definitely as can be done by the affiant, and it must be signed by the affiant by writing his name or affixing his mark. It is absolutely necessary, and a legal requirement, that the magistrate ensure compliance with the documentation contained in the complaint for the issue of a valid and legal

warrant.

The probable cause affidavit contains and outlines the facts necessary for establishing the probability that a criminal offense had been committed by the accused. The magistrate must determine if the facts and evidence outlined in the complaint are legally sufficient to establish that some criminal act had been committed and it was probably committed by the accused. Facts to establish probable cause can be obtained in many ways. Criminal acts committed in the view or presence of a peace officer; criminal acts detected by any of an officer's five senses; information provided by a proven and reliable confidential informant and evidence seized at a crime as fruits of the crime are some of the many ways a probable cause can be established. The magistrate cannot "rubber stamp" complaints and issue warrants and must base decisions on facts that would lead a reasonable and prudent person to believe that the accused committed the alleged criminal offense.

The arraignment, or magistrate's warning, continues to be a controversial subject contrary to the opinions rendered by various courts throughout the United States. Many civil law suits are filed against political subdivisions for both false arrest and false imprisonment because of the period of time between the arrest and the time the accused is warned. The administrative requirements associated with the arrest, booking, fingerprinting, photographing, taking statements from witnesses and interrogation fall

within the purview of the time frames established for the magistrate's warning. Continuing to use the phrase "without unnecessary delay" may preclude enforcing timely magistrate's warnings to those persons accused of committing a criminal offense.

The magistrate is continually faced with making decisions based on information provided by others and must be prudent, protect the rights of the accused and enforce the criminal statutes mandated by the State. Conversely, the magistrate does not have to have any legal training but be consistently tasked with making legal decisions that will have a have a life-long impact on persons accused of committing a criminal act. The magistrate's actions, or inaction, can impact the social status of those arrested whether or not they are later judged guilty or not guilty of the charges lodged against them. The magistrate's job requires patience and trust and will continue to be a challenge until there are standard time frames established for providing the magistrate's warning throughout the United States.

NOTES

1. Black's Law Dictionary (5th ed. 1979).

2. TEX. CODE CRIM. PROC. ANN. art. 2.09 (Vernon 1989).

3. TEX. CODE CRIM. PROC. ANN. art. 2.10 (Vernon 1981).

4. TEX. CODE CRIM. PROC. ANN. art. 15.01 (Vernon 1981).

5. TEX. CODE CRIM. PROC. ANN. art. 15.02 (Vernon 1981).

6. TEX. CODE CRIM. PROC. ANN. art. 15.05 (Vernon 1981).

7. TEX. CODE CRIM. PROC. ANN. art. 15.04 (Vernon 1981).

8. Medkiff v. State, 209 S.W.2d 354 (Tex. Crim. App. 1948).

9. Stallings v. State, 252 S.W.2d 939 (Tex. Crim. App. 1952).

10. Ealy v. State, 319 S.W.2d 710 (Tex. Crim. App. 1958).

11. Brown v. State, 481 S.W.2d 106 (Tex. Crim. App. 1972).

12. Draper v. U.S., 358 U.S. 307 3 L.Ed.2d 327, 79 S.Ct. 329 (U.S. Sup. Ct. 1959).

13. U.S. v. Wysocki, 457 F.2d 1155 (U.S. Ct. App. 5th Cir. 1972); U.S. v. Jacquillon, 469 F2d 380 (U.S. Ct. App. 5th Cir. 1972).

14. Southland Theatres, Inc. v. Butler, 350 F. Supp. 743 (U.S. Dist. Ct., W.D. Tex. 1972).

15. Giacona v. State, 298 S.W.2d 587 (Tex. Crim. App. 1957); Brown v. State, 481 S.W.2d 106 (Tex. Crim. App. 1972).

16. Garcia v. State, 457 S.W.2d 262 (Tex. Crim. App. 1972); Stafford v. State, 487 S.W.2d 337 (Tex. Crim. App. 1972).

17. Taylor v. McDonald, 346 F. Supp. 390 (U.S. Dist. Ct., N.D. Tex. 1972).

18. Gonzales v. State, 95 S.W.2d 972 (Tex. Crirn. App. 1936).

19. Caraballo v. State, 706 S.W.2d (Tex. App. - Houston 14th 1986).

20. Forderson v. State, 467 S.W.2d 476 (Tex. Crim. App. 1971).

21. U.S. v. Bush, 466 F.2d 236 (U.S. Ct. App. 5th Cir. 1972).

22. Draper v. U.S., 358 U.S. 307 3 L.Ed.2d 327, 79 S.Ct. 329 (U.S. Sup. Ct. 1959); Clifton v. State, 399 S.W.2d 353 (Tex. Crim. App. 1966), cert. den., 386 U.S. 1008.

23. Almendarez v. State, 460 S.W.2d 921 (Tex. Crim. App. 1970), cert. den., 402 U.S. 974; U.S. v. Drew, 436 F.2d 529 (5th Cir. 1970), cert. den., 402 U.S. 977.

24. Angulo v. State, 727 S.W.2d 276 (Tex. Crim. App. 1987 en banc); Eisenhauer v. State, 678 S.W.2d 947 (Tex. Crim. App. 1984 en banc).

25. Truitt v. State, 505 S.W.2d 594 (Tex. Crim. App. 1974).

26. Brunson v. State, 506 S.W.2d 594 (Tex. Crim. App. 1974).

27. Kaser v. State, 505 S.W. 2d 806 (Tex. Crim. App. 1974).

28. Angulo v. State, 727 S.W.2d 276 (Tex. Crim. App. 1987 en banc).

29. Heath v. Boyd, 175 S.W.2d 214 (Tex. Crim. App. 1943); Giacona v. State, 298 S.W.2d 587 (Tex. Crim. App. 1957).

30. Giordenello v. U.S., 357 U.S. 480, 2L.Ed.2d 1503, 78 S.Ct. 1245 (U.S. Sup. Ct. 1958).

31. Jaben v. U.S., 381 U.S. 214, l4 L.Ed.2d 345, 85 S.Ct. 1365 (U.S. Sup. Ct. 1965).

32. Knox v. State, 586 S.W.2d 504 (Tex. Crim. App. 1979).

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37. Rhodes v. State, 116 S.W.2d 395 (Tex. Crim. App. 1938).

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