

**Cause: 500448**

**DEER PARK CASH COW, LLC**

**A/K/A STATE OF TEXAS**

**VS**

**GLENN WINNINGHAM FEARN**

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**Colleyville Municipal Court**

**COUNTY OF TARRANT**

Now comes Glenn Winningham; house of Fearn, hereinafter referred to as "Defendant in Error" in the above styled case and moves the court as follows:

## **II. DEMAND FOR EXAMINING TRIAL**

### **A. Arrested For Onsite Offense**

Defendant, on 6 February, 2021 was arrested and issued a traffic citation by Officer Aguirre, Badge #242, who was purporting to be acting under the authority of Colleyville military police. Said citation contained citation number: 500448. (see copy attached).

It is the duty of the magistrate, when given notice that a crime has been committed to convene an examining court under Texas Code of Criminal Procedure Article 2.10 which reads as follows:

Art. 2.10. DUTY OF MAGISTRATES. It is the duty of every magistrate to preserve the peace within his 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.

It is the only duty a magistrate preserve the peace by convening an examining as considered by the Legislature on passage of Texas Code of Criminal Procedure Article 2.11 which reads as follows:

Art. 2.11. EXAMINING COURT. When the magistrate sits for the purpose of inquiring into a criminal accusation against any person, this is called an examining court.

Defendant in Error moves this court to convene an examining court as referenced above and hold said examining court in accordance with Texas Code of Criminal Procedure Chapter 16 and set bail if probable cause is found, Defendant in Error demands that Defendant in Error be accorded an examining trial when Defendant in Error appears.

## **III. MOTION TO DISMISS**

An examining trial is a threshold requirement as there must be, in the record, a determination of probable cause as required by Texas Code of Criminal Procedure article 16.17 which reads as follows:

Art. 16.17. DECISION OF JUDGE. After the examining trial has been had, the judge shall make an order committing the Defendant to the jail of the proper county, discharging him or admitting him to bail, as the law and facts of the case may require. Failure of the judge to make or enter an order within 48 hours after the examining trial has been completed operates as a finding of no probable cause and the accused shall be discharged.

Where there is no filing of an order under Art 16.17(supra), Defendant in Error will have a right to a ruling of no probable cause and discharge case.

## **A. Right To Examining Trial By Statutory Mandate**

Magistrates and prosecutors in Texas are trained to believe that a citizen does not have a right to an examining trial in a misdemeanor. The consideration of the right to an examining trial is not relevant. The statutory duty of the police, prosecutors, and magistrates concerning examining trials does not hinge on the rights of the accused.

### **1. Lack of Mandated Right Does Not Equate To A Prohibition**

In *Clark v. State*, 417 S.W.2d 402(1967) the court addressed Texas Code of Criminal Procedure Article 16.01 which states as follows:

Art. 16.01. EXAMINING TRIAL. When the accused has been brought before a magistrate for an examining trial that officer shall proceed to examine into the truth of the accusation made, allowing the accused, however, sufficient time to procure counsel. In a proper case, the magistrate may appoint counsel to represent an accused in such examining trial only, to be compensated as otherwise provided in this Code. The accused in any felony case shall have the right to an examining trial before indictment in the county having jurisdiction of the offense, whether he be in custody or on bail, at which time the magistrate at the hearing shall determine the amount or sufficiency of bail, if a bailable case. If the accused has been transferred for criminal prosecution after a hearing under Section 54.02, Family Code, the accused may be granted an examining trial at the discretion of the court. (emphasis added)

The Clark court opined as follows:

We do not construe Art. 16.01 of the 1965 Code as guaranteeing to an accused the right to an examining trial in a misdemeanor case. See: *Ex parte Way*, 48 Tex. Cr.R. 584, 89 S.W. 1075, wherein it was held that under the 1925 Code there was no necessity for an examining trial in a misdemeanor case. Further, there is no showing that appellant requested or was denied an examining trial.

In point of fact, in 1925 as today, rather or not a person had a right to an examining trial is not relevant. The well-established law clearly commanded every person making an arrest of another to take that person directly to the nearest magistrate by the most direct route as opined in *Heath v. Boyd* as follows:

“Moreover, if Heath's arrest had been authorized by the statutes, his subsequent detention as pleaded proved would make a case of false imprisonment against Boyd. The undisputed facts are that after his arrest Heath rode with the sheriff to the former's car, which he then entered and drove several miles to the courthouse, followed by Boyd. There he was detained in Boyd's office from one to three hours, while Boyd was seeking advice by telephone as to what to do, in the face of a plain statutory command as to [\*\*\*13] what must be done in all cases of arrest without warrant. Art. 217, C.C.P., 1925,

provides, "In each case enumerated in this chapter, the person making the arrest shall immediately take the person arrested \* \* before the nearest magistrate where the arrest was made without an order." Substantially the same requirement appears in Art. 325, C.C.P., 1925, and Art. 487, P.C., 1925. Presumably, there was a magistrate in Mertzon, the county seat. Yet Boyd offers no reason why he did not take Heath before that official. Neither in his pleadings nor in his testimony does he suggest that a magistrate was not reasonably available, although the arrest and detention all occurred between 8 o'clock in the morning and noon. If he had taken Heath to that official, he could have gotten the information and assistance he was seeking by telephone. He was under no obligation to seek advice or aid from Johnson. He was under a positive duty immediately to seek a magistrate. That such failure, unexcused, makes a case of false imprisonment, as a matter of law, is held by all the authorities. *Newby v. Gunn et al*, 74 Texas, 455, 12 S.W. 67; *McBeath v. Campbell*, 12 S.W. (2d) 118; *Alamo Downs, Inc., et al v. Briggs* (Civ. App.), 106 S.W. (2d) 733 (er. dismiss.); *Box v. Fluitt* (Civ. App.), 47 S.W. (2d) 1107; *Maddox v. Hudgeons* (Civ. App.), 72 S.W. 414 (er. ref.); [**\*\*218**] *Karner et al v. Stump* (Civ. App.), 34 S.W. 656; *Petty v. Morgan et al* (Civ. App.), 116 S.W. 141; *Bishop v. Lucy et al* (Civ. App.) 50 S.W. 1029; 35 C.J.S., p. 546, sec. 31." *Heath v. Boyd*, 141 Tex. 569; 175 S.W.2d 214; 1943 Tex. LEXIS 370

Prosecutors have advised the police and lower courts that the grant of a right to an examining trial before indictment in felony cases somehow negated the duty of the officer to take the person arrested before a "neutral and detached" magistrate for an examining trial in misdemeanor cases.

If it were to be construed that a magistrate could not hold an examining trial in a misdemeanor, there would be no mechanism for issuing arrest warrants and, thereby, no way for a trial court to accrue jurisdiction.

## **2. Warrants Issued At Examining Trial**

Warrants are issued by magistrates after a determination of probable cause. There is no other mechanism other than for a trial court to issue a warrant, but that can only occur when the trial court already has jurisdiction in the case. Without an examining court, there can be no jurisdiction as there can be no probable cause order as required by Texas Code of Criminal Procedure 16.17(supra).

## **3. Duties of Magistrates**

The courts and prosecutors seem to have lost their way when it comes to examining trials. First, who are magistrates? According to Texas Code of Criminal Procedure 2.09 magistrates are as follows:

Art. 2.09. WHO ARE MAGISTRATES. Each of the following officers is a magistrate within the meaning of this Code: 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 Bexar County, Dallas County, or Tarrant County that give preference to criminal cases, the criminal law hearing officers for Harris County appointed under Subchapter L, Chapter 54, Government Code, the criminal law hearing officers for Cameron County appointed under Subchapter BB, Chapter 54, Government Code, the magistrates or associate judges appointed by the judges of the district courts of Lubbock County, Nolan County, or Webb County, the magistrates appointed by the judges of the criminal district courts of Dallas

County or Tarrant County, the associate judges appointed by the judges of the district courts and the county courts at law that give preference to criminal cases in Jefferson County, the associate judges appointed by the judges of the district courts and the statutory county courts of Brazos County, Nueces County, or Williamson County, the magistrates appointed by the judges of the district courts and statutory county courts that give preference to criminal cases in Travis County, the criminal magistrates appointed by the Brazoria County Commissioners Court, the criminal magistrates appointed by the Burnet County Commissioners Court, the county judges, the judges of the county courts at law, judges of the county criminal courts, the judges of statutory probate courts, the associate judges appointed by the judges of the statutory probate courts under Chapter 54A, Government Code, the associate judges appointed by the judge of a district court under Chapter 54A, Government Code, the magistrates appointed under Subchapter JJ, Chapter 54, Government Code, as added by H.B. No. 2132, Acts of the 82nd Legislature, Regular Session, 2011, **the justices of the peace, and the mayors and recorders and the judges of the municipal courts of incorporated cities or towns. (Emphasis added)**

#### **4. What are Duties of Magistrates?**

The duties of magistrates are clearly stipulated by Texas Code of Criminal Procedure 2.10 which reads as follows:

Art. 2.10. DUTY OF MAGISTRATES. It is the duty of every magistrate to preserve the peace within his 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.

#### **5. What Is An Examining Court?**

We will get to Texas Code of Criminal Procedure Chapter 16 shortly but for the moment, let us address Article 2.11 which reads as follows:

Art. 2.11. EXAMINING COURT. When the magistrate sits for the purpose of inquiring into a criminal accusation against any person, this is called an examining court.

Examining courts are held when someone has reason to believe that a crime has been committed. In order to meet the due process requirements of the Federal Constitution, a freeman cannot be deprived of his liberty absent a determination of probable cause by a neutral magistrate. This provision has been in law since the signing of the Magna Carta, drafted by the Archbishop of Canterbury and agreed to by King John of England on 15<sup>th</sup> of June, 1215.

The right to an examining trial has been entrenched in law from that time forward. While the right has not changed, the common practice has totally circumvented well-established law.

#### **6. Right to Arrest Changed**

In 1967 the Texas Legislature made what appeared to be a minor change to Texas Code of Criminal Procedure 14.01. Prior to 1967 Article 14.01 read as follows:

Art. 14.01. OFFENSE WITHIN VIEW.

A peace officer or any other person, may, without a warrant, arrest an offender when the offense is committed in his presence or within his view, if the offense is one classed as a felony or as an offense against the public peace.

In 1967 the law was changed by the addition of paragraph (b):

Art. 14.01. OFFENSE WITHIN VIEW. (a) A peace officer or any other person, may, without a warrant, arrest an offender when the offense is committed in his presence or within his view, if the offense is one classed as a felony or as an offense against the public peace.

(b) A peace officer may arrest an offender without a warrant for any offense committed in his presence or within his view.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1967, 60th Leg., p. 1735, ch. 659, Sec. 8, eff. Aug. 28, 1967.

This looks rather innocuous on its face, but coupled with the *Clark v State* (supra) decision which was handed down a month before this change went into place, everything changed. Now a police officer could arrest a citizen for anything, no matter how minor. With the *Clark* decision, the officer could take the person directly to jail where the person was then subjected to a prosecution without a determination of probable cause.

## **7. Change Not In Para Materia With Corpus Juris**

The addition of paragraph (b) to Article 14.01 puts (a) and (b) at odds with one another. Paragraph (b) is also at odds with Article 14.03 which further stipulates the conditions under which an arrest can be made without a warrant.

Art. 14.03. AUTHORITY OF PEACE OFFICERS.

(a) Any peace officer may arrest, without warrant:

(1) persons found in suspicious places and under circumstances which reasonably show that such persons have been guilty of some felony, violation of Title 9, Chapter 42, Penal Code, breach of the peace, or offense under Section 49.02, Penal Code, or threaten, or are about to commit some offense against the laws;

(2) persons who the peace officer has probable cause to believe have committed an assault resulting in bodily injury to another person and the peace officer has probable cause to believe that there is danger of further bodily injury to that person;

(3) persons who the peace officer has probable cause to believe have committed an offense defined by Section 25.07, Penal Code, if the offense is not committed in the presence of the peace officer;

(4) persons who the peace officer has probable cause to believe have committed an offense involving family violence;

(5) persons who the peace officer has probable cause to believe have prevented or interfered with an individual's ability to place a telephone call in an emergency, as defined by Section 42.062(d), Penal Code, if the offense is not committed in the presence of the peace officer; or

- (6) a person who makes a statement to the peace officer that would be admissible against the person under Article 38.21 and establishes probable cause to believe that the person has committed a felony.
- (b) A peace officer shall arrest, without a warrant, a person the peace officer has probable cause to believe has committed an offense under Section 25.07, Penal Code, if the offense is committed in the presence of the peace officer.
- (c) If reasonably necessary to verify an allegation of a violation of a protective order or of the commission of an offense involving family violence, a peace officer shall remain at the scene of the investigation to verify the allegation and to prevent the further commission of the violation or of family violence.
- (d) 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, a violation of Chapter 42 or 49, Penal Code, or a breach of the peace. A peace officer making an arrest under this subsection shall, as soon as practicable after making the arrest, notify a law enforcement agency having jurisdiction where the arrest was made. The law enforcement agency shall then take custody of the person committing the offense and take the person before a magistrate in compliance with Article 14.06 of this code.
- (e) The justification for conduct provided under Section 9.21, Penal Code, applies to a peace officer when the peace officer is performing a duty required by this article.
- (f) In this article, "family violence" has the meaning assigned by Section 71.004, Family Code.
- (g)
- (1) A peace officer listed in Subdivision (1), (2), or (5), Article 2.12, who is licensed under Chapter 1701, Occupations Code, and is outside of the officer's jurisdiction may arrest without a warrant a person who commits any offense within the officer's presence or view, other than a violation of Subtitle C, Title 7, Transportation Code.
- (2) A peace officer listed in Subdivision (3), Article 2.12, who is licensed under Chapter 1701, Occupations Code, and is outside of the officer's jurisdiction may arrest without a warrant a person who commits any offense within the officer's presence or view, except that an officer described in this subdivision who is outside of that officer's jurisdiction may arrest a person for a violation of Subtitle C, Title 7, Transportation Code, only if the offense is committed in the county or counties in which the municipality employing the peace officer is located.
- (3) A peace officer making an arrest under this subsection shall as soon as practicable after making the arrest notify a law enforcement agency having jurisdiction where the arrest was made. The law enforcement agency shall then take custody of:
- (A) the person committing the offense and take the person before a magistrate in compliance with Article 14.06; and
- (B) any property seized during or after the arrest as if the property had been seized by a peace officer of that law enforcement agency.

## **B. Clark Overruled by Gerstein**

While *Clark v State* (supra) appears to do away with an examining trial in a misdemeanor, however, that 1967 case was rendered ineffective by the decision of the

Federal Courts in GERSTEIN v. PUGH ET AL, 95 S. Ct. 854, 420 U.S. 103, 43 L. Ed. 2d 54, 1975.SCT.40602, which reads in pertinent part as follows:

[28] Maximum protection of individual rights could be assured by requiring a magistrate's review of the factual justification prior to any arrest, but such a requirement would constitute an intolerable handicap for legitimate law enforcement. Thus, while the Court has expressed a preference for the use of arrest warrants when feasible, Beck v. Ohio, at 96; Wong Sun v. United States, 371 U.S. 471, 479-482 (1963), it has never invalidated an arrest supported by probable cause solely because the officers failed to secure a warrant. See Ker v. California, 374 U.S. 23 (1963); Draper v. United States, 358 U.S. 307 (1959); Trupiano v. United States, 334 U.S. 699, 705 (1948).

[29] Under this practical compromise, a policeman's on-the-scene assessment of probable cause provides legal justification for arresting a person suspected of crime, and for a brief period of detention to take the administrative steps incident to arrest. Once the suspect is in custody, however, the reasons that justify dispensing with the magistrate's neutral judgment evaporate. There no longer is any danger that the suspect will escape or commit further crimes while the police submit their evidence to a magistrate. And, while the State's reasons for taking summary action subside, the suspect's need for a neutral determination of probable cause increases significantly. The consequences of prolonged detention may be more serious than the interference occasioned by arrest. Pretrial confinement may imperil the suspect's job, interrupt his source of income, and impair his family relationships. See R. Goldfarb, Ransom 32-91 (1965); L. Katz, Justice Is the Crime 51-62 (1972). Even pretrial release may be accompanied by burdensome conditions that effect a significant restraint of liberty. See, e. g., 18 U. S. C. 3146 (a)(2, (5). When the stakes are this high, the detached judgment of a neutral magistrate is essential if the Fourth Amendment is to furnish meaningful protection from unfounded interference with liberty. Accordingly, we hold that the Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest.

### **C. Statutory and Due Process Duty To Take To Magistrate**

As shown above, when a freeman (male or female), is restricted at their liberty under force of law, without regard to the rights of the person arrested, the arresting officer has a statutory duty to take the person arrested directly to the nearest for an examining trial by a neutral magistrate.

Where a person has been arrested without a warrant or, on a warrant in the county of issuance, the arresting officer is required to take the person directly to the nearest magistrate by the most direct route as stipulated by Heath v. Boyd(supra).

In the instant case, the arresting officer, had a duty to take the person arrested before the nearest magistrate or release the person under [Article 14.06\(b\)\(supra\)](#), or on a promise to appear before some magistrate at a time and place stipulated so that a proper examining trial could be held.

### **8. Article 16.17 Goes To Jurisdiction**

Under [Texas Code of Criminal Procedure Chapter 14](#) and [Texas Transportation Code 543.003](#), a police officer may arrest a person without a warrant. Under those same provisions, the officer is required to bring the person before a magistrate. The court

should take judicial notice that in no case is the arresting officer required to bring the person so arrested before a judge, but rather before one of the magistrates named under Texas Code of Criminal Procedure Article 2.09 which reads as follows:

Art. 2.09. WHO ARE MAGISTRATES. Each of the following officers is a magistrate within the meaning of this Code: 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 Bexar County, Dallas County, or Tarrant County that give preference to criminal cases, the criminal law hearing officers for Harris County appointed under Subchapter L, Chapter 54, Government Code, the criminal law hearing officers for Cameron County appointed under Subchapter BB, Chapter 54, Government Code, the magistrates or associate judges appointed by the judges of the district courts of Lubbock County, Nolan County, or Webb County, the magistrates appointed by the judges of the criminal district courts of Dallas County or Tarrant County, the associate judges appointed by the judges of the district courts and the county courts at law that give preference to criminal cases in Jefferson County, the associate judges appointed by the judges of the district courts and the statutory county courts of Brazos County, Nueces County, or Williamson County, the magistrates appointed by the judges of the district courts and statutory county courts that give preference to criminal cases in Travis County, the criminal magistrates appointed by the Brazoria County Commissioners Court, the criminal magistrates appointed by the Burnet County Commissioners Court, the county judges, the judges of the county courts at law, judges of the county criminal courts, the judges of statutory probate courts, the associate judges appointed by the judges of the statutory probate courts under Chapter 54A, Government Code, the associate judges appointed by the judge of a district court under Chapter 54A, Government Code, the magistrates appointed under Subchapter JJ, Chapter 54, Government Code, as added by H.B. No. 2132, Acts of the 82nd Legislature, Regular Session, 2011, the justices of the peace, and the mayors and recorders and the judges of the municipal courts of incorporated cities or towns.

When a person is brought before one of the above named magistrates, the magistrate must hold an examining trial in accordance with [Texas Code of Criminal Procedure Chapter 16\(supra\)](#). After the hearing, the magistrate is required by [Article 16.17\(supra\)](#) to issue an order. The judge has 48 hours in which to issue said order.

### **1. Must Forward Documents Sealed Up to Clerk of Court**

The magistrate is then required so transmit the documents to the court of original jurisdiction as follows:

[Art. 17.30. SHALL CERTIFY PROCEEDINGS](#). The magistrate, before whom an examination has taken place upon a criminal accusation, shall certify to all the proceedings had before him, as well as where he discharges, holds to bail or commits, and transmit them, sealed up, to the court before which the Defendant may be tried, writing his name across the seals of the envelope. The voluntary statement of the Defendant, the testimony, bail bonds, and every other proceeding in the case, shall be thus delivered to the clerk of the proper court, without delay.

This seems straight forward enough. The magistrate had jurisdiction to hold an examining court based on the filing of a criminal accusation. After an examination into the sufficiency of the allegations, where probable cause is found, jurisdiction is transferred to the trial court by way of [Article 17.30](#). Absent the above, the Defendant in Error has a statutory right to a finding of no probable cause.



#### IV. PRAYER

Defendant in Error moves this court to Dismiss this case for failure to convene an Examining Trial in accordance with the statutory mandate of the Texas Code of Criminal Procedure.

Respectfully,

\_\_\_\_\_  
L.S.  
glenn winningham; house of fearn, sui juris  
sovereign living soul, holder of the office of "the People"  
a man on the soil of Texas  
With full responsibility for my actions  
under the Laws of YHWH as found in the Holy Bible  
with a Proper Mailing address (18 USC § 1342) of;  
General Post Office, ZIP CODE EXEMPT  
C/O 6340 Lake Worth Blvd., #437  
Fort Worth, Texas [RR 76135]  
Non-Domestic Mail, Without the United States, Inc.

**Cause: 500448**

**DEER PARK CASH COW, LLC  
A/K/A STATE OF TEXAS**

**VS**

**GLENN WINNINGHAM FEARN**

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§  
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§  
§

**Colleyville Municipal Court  
COUNTY OF TARRANT**

#### ORDER

This, the \_\_\_\_\_ day of \_\_\_\_\_, 2022 the foregoing motion having been presented and heard by the Court, it is hereby ORDERED that:

All relief requested is hereby granted.

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Judge Presiding

The relief requested is granted in part as follows:

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Judge Presiding

All relief requested is DENIED, to which action Defendant in Error excepts.

\_\_\_\_\_  
Judge Presiding

## VERIFICATION

I, glenn winningham; house of fearn, do swear and affirm that all statements made herein are true and accurate, in all respects, to the best of my knowledge.

\_\_\_\_\_  
L.S.  
glenn winningham; house of fearn, sui juris  
sovereign living soul, holder of the office of "the People"  
a man on the soil of Texas  
With full responsibility for my actions  
under the Laws of YHWH as found in the Holy Bible  
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The Person above, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this document and acknowledged to me that he/she executed the same in his authorized capacity and that by his signature on this instrument who is the person who executed this instrument.

I certify under PENALTY OF PERJURY under the laws of this State that the foregoing paragraph is true and correct.  
Witness my hand and official seal.

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NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

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Notary Seal