



It was breezy and cool that early morning at the shooting range when my friend inquired, "I still do not understand if, in Texas, a citizen has the right to effect an arrest and how?"

I was enjoying the breeze, touching my Winchester romantically, and not paying my friend much heed. "You are a retired judge. I suppose you are familiar with the law. Did you know the answer to your own question when you were on the bench?" I inquired.

"Of course not; I was only a judge for crying out loud. I did not know the law then, and I still do not know the law," my friend quickly chided me. He went on, "And with this new castle law going into effect, I am really confused. I think a lot of ordinary people would like to know the law of citizen's arrest in Texas."

For a guy from Ohio, he seemed eager to hear an answer. So I promised him that I would answer his questions, provided he did not consider my answers legal advice. "If you do not pay me for the answers, then you should not think of them as legal advice." I declared.

He agreed. That goes for you, too. Now when your friends ask you about the right of a citizen to effect an arrest, you can address them with your sound thoughts.

Statutory Grounding

In Texas, any private citizen¹ may arrest someone without a warrant when the offense is committed in his presence, or within his view, if the offense is either a felony or an offense against the public peace.² The statute in its current form has changed from the laws in place nearly 140 years ago. In 1870,

the Supreme Court of Texas recognized the statutory proviso allowing ordinary citizens to "aid in the detection and repression of crime" by becoming "auxiliary" peace officers, clothed with the authority to arrest, "without warrant," those who commit felonies.³ The Court implied that the Texas statute was a deviation from the common law doctrines of the time, writing that allowing citizen's arrests was "an innovation upon the common law."⁴ The Court approved of the legislative mandate, wisely calling it "a wise provision."⁵

Later that decade, the Court of Appeals of Texas affirmed the purely statutory grounding for citizen's arrests in *Lacy v. State*.⁶ In that decision, the court first addressed the reasoning underlying the statute's passage: necessity. It wrote, "It is to our minds apparent that the whole authority given to arrest without warrant is founded in the law of necessity—a necessity for prompt action in order to arrest or detain the offender, so as to prevent his escape by delaying the time necessary to procure a warrant for his arrest."⁷ The court then laid out three requirements for a valid citizen's arrest. First, the arrest must comply with federal and state constitutional provisions guaranteeing against unreasonable searches and seizures.⁸ Second, "the person sought to be arrested [must] commit [...] an offence classed as a felony or as an offence against the public peace."⁹ Finally, "the offence must have been committed in [the citizen's] presence, or within his view."¹⁰ The statutory language and the requirements for a valid citizen's arrest remain little changed from these early cases.¹¹

Offense Committed in Citizen's Presence or View

This requirement seems fairly straightforward. In Texas, the right of a private individual to arrest someone is "limited to the time the offense is committed or while there is continuing danger of its renewal."¹² In other words, a private person may make a citizen's arrest only at the time he sees the actual offense being committed; he may not later pursue a guilty party in order to apprehend him for the police.¹³ An offense is deemed to have been committed in a person's presence when any of the senses afford an awareness of its occurrence.¹⁴

Courts generally interpret this requirement narrowly. The statute is not satisfied unless the offense is committed while the citizen and criminal share the same scene. For example, in *Satterwhite v. State*,¹⁵ the citizen observed a breach of the peace, but rather than make an arrest at the scene of the crime, he left to engage a deputy police officer. The court ruled that the five-minute interval destroyed the citizen's ability to make an arrest without a warrant and the subsequent arrest was illegal.¹⁶ In *Lacy v. State*,¹⁷ the court held that a person passing through the country who possessed a horse believed to be stolen, which constituted a felony, could not be arrested by another without a warrant where the arresting person did not see the offense committed.¹⁸ In *Henderson v. United States Fidelity & Guaranty Co.*,¹⁹ the court likewise held illegal, under the predecessor to the modern-day statute, a citizen's arrest made by two bank directors who failed to witness the actual bank robbery.²⁰ In *Johnson v. State*,²¹ the citizen initially, but unsuccessfully, attempted to arrest the criminals.

He then left the scene to secure the help of a policeman. The two later found the docile criminals, who had since ceased their criminal activities, and effected an arrest. The court ruled the arrest illegal because the citizen failed to make an arrest during the original commission of the crime.²²

By contrast, in *Smith v. Bryson*,²³ the citizen saw an assault occur at a distance of 350 feet.²⁴ He immediately ran towards the assailant and arrested him. Even though the assault was complete by the time the citizen apprehended the criminal, the court found the arrest to be legal because it occurred in his presence.²⁵ In *Turner v. State*, the citizen saw the alleged criminal holding a gun and placing it in his car's glove compartment, after which the citizen placed the alleged criminal under arrest.²⁶ There was no intervening time between the observation of the offense and the arrest, and there was a continuing danger that the criminal would take the gun out of the glove compartment and use it.²⁷ The citizen was, therefore, justified in placing the criminal under a citizen's arrest.²⁸ In view of the new castle law allowing for the carrying of a weapon in one's car, however, the legal validity of this case may be in question.

As one can see, Texas courts adhere to a common-sense approach with regards to the first requirement. As long as the citizen and criminal share the same spatial and temporal zones, any arrest should be legal, provided it comports with the other requirements.

Commission of Felony or Breach Against the Public Peace

One can easily dispense with the first half of this requirement since felonies are statutorily enumerated, and any criminal whose actions satisfy the statutory requirements for the commission of a felony can be arrested by a private citizen. The second half of the requirement poses a more difficult scenario. In Texas, there is no statute creating the offense of "breach of the peace."²⁹ The common-law definition generally accepted is taken from the opinion of the Texas Court of Criminal Appeals in *Woods v. State*,³⁰ which states:

The term "breach of the peace" is generic, and includes all violations of the public peace and order, or decorum; in other words, it signifies the offense of disturbing the public peace or tranquility enjoyed by the citizens of a community; a disturbance of the

public tranquility by any act or conduct inciting to violence or tending to provoke or excite others to break the peace; a disturbance of public order by an act of violence or by an act likely to produce violence, or which, by causing consternation and alarm disturbs the peace and quiet of the community. By "peace," as used in this connection, is meant the tranquility enjoyed by the citizens of a municipality or a community where good order reigns among its members The offense may consist of acts of public turbulence or indecorum in violation of the common peace and quiet, of an invasion of the security and protection which the laws afford to every citizen, or of acts such as tend to excite violent resentment or to provoke or excite others to break the peace. Actual or threatened violence is an essential element of a breach of the peace. Either one is sufficient to constitute the offense. Accordingly, where means which cause disquiet and disorder, and which threaten danger and disaster to the community, are used, it amounts to a breach of the peace, although no actual personal violence is employed. Where the incitement of terror or fear of personal violence is a necessary element, the conduct or language of a wrongdoer must be of a character to induce such a condition in a person of ordinary firmness.³¹

The determination of whether an act amounts to a breach of the peace is made on a case-by-case basis, looking to the facts and circumstances surrounding the act.³² The majority of cases dealing with a citizen's arrest involve intoxicated persons, i.e. the offender is drunk and disorderly.³³ However, Texas courts have found a breach of the peace in less egregious circumstances. For example, the First Court of Appeals found that the failure to stop and give information after a traffic accident was a breach of the peace, given the number of traffic-related incidents that lead to violence in Harris County and because the driver's actions were "likely to arouse violent resentment."³⁴ The same court later affirmed the ruling under similar circumstances.³⁵

Not all moving violations qualify as breaches of the peace. Traffic offenses such as speeding and running a red light do not constitute breaches of the peace for purposes of Article 14.01(a).³⁶ Nevertheless,

driving into an oncoming lane and forcing cars to move to another lane to avoid a collision falls within the statute's ambit.³⁷

Texas courts have held that actual or threatened violence is an essential element of a breach of the peace offense; personal violence is not required.³⁸ The Amarillo Court of Appeals found a breach of the peace when a private citizen attempted to arrest a man he knew had committed a robbery, and the robber threw a beer bottle in his attempt to escape.³⁹

Violations of a community sense of order or decorum that incite violence or tend to provoke or excite others to break the peace also constitute a breach of the peace. For instance, in analyzing the circumstances of the incident, the Fort Worth Court of Appeals found a breach of the peace when a high school student "extend[ed] the middle finger of his right hand" to the principal of his school during commencement exercises.⁴⁰ Moreover, the Court of Appeals affirmed the warrantless arrest of a criminal engaged in "loud and vociferous language or swearing or cursing in a public place . . . in a manner calculated to disturb the inhabitants [of a public place]."⁴¹

Generally, carrying a handgun is a misdemeanor.⁴² Nevertheless, possession of firearms in certain circumstances can constitute a breach of the peace. In *Turner*, the citizen saw the perpetrator holding a gun at night under suspicious circumstances. The court ruled that the perpetrator had breached the peace, stating that the "sight of someone holding a handgun under these circumstances would lead one . . . to the conclusion that violence or danger is threatened, and would certainly induce 'disquiet and disorder [or] terror or fear . . . and threaten danger . . . in a person of ordinary firmness.'"⁴³

An offense that is not a breach of the peace in the abstract may become so because of the circumstances of the case. For example, criminal trespass, which normally would not qualify as a breach of the peace, contravenes Article 14.01(a) when the criminal is attempting to conceal his presence on private property during a manhunt directed against him as an armed fugitive.⁴⁴

In short, any actions taken with an eye towards causing violence, inciting public unrest, or grossly offending others will likely qualify as a breach of the public peace. Similarly, those who act negligently or recklessly in causing any of the above offenses are also likely to breach the public peace.

Probable Cause as a Prerequisite for Arrest

Texas law requires peace officers to have probable cause before making a warrantless arrest.⁴⁵ This same requirement applies to private citizens who wish to effect a warrantless arrest.⁴⁶ Probable cause has been defined as "the existence of reasonably trustworthy information sufficient to warrant a reasonable person to believe that a particular person has committed an offense."⁴⁷ Article 38.23 requires the suppression of any evidence flowing from a citizen's arrest made without probable cause.⁴⁸

Whether probable cause exists is determined by applying a totality-of-the-circumstances test to each case.⁴⁹ The State bears the burden to prove the existence of probable cause to justify a warrantless arrest or search.⁵⁰ In reviewing a warrantless arrest to determine the existence of probable cause, courts will look to the facts known to the citizen at the time of the arrest.⁵¹

Many of the citizen's arrest cases that give more than a cursory analysis of

probable cause deal with the apprehension of drunk drivers and the knowledge that the citizen-onlooker would have had after viewing the criminal's actions. For example, in *Miles v. State*,⁵² the court ruled that the private citizen, after observing the arrested party for 30 minutes and noticing a significant lack of coordination and motor skills, had probable cause to effect a warrantless arrest for driving under the influence of alcohol.⁵³ Similarly, the citizen in *Kocurek v. State*,⁵⁴ observed a driver weaving between lanes.⁵⁵ The court ruled that this observation was "more than sufficient to warrant a prudent man to believe appellant had committed or was committing the offense of driving while intoxicated."⁵⁶

Private citizens are not held to a standard higher or lower than that which applies to peace officers when analyzing whether their warrantless arrests are supported by probable cause.

Special Case: Theft of Property

While the general citizen's arrest statute provides for apprehension in a

narrow set of circumstances, other statutes permit arrest under otherwise impermissible conditions. For example, in Texas, all citizens have a right to make a warrantless arrest of a thief where the stolen property is found in the thief's possession.⁵⁷ The operative statute states:

All persons have a right to prevent the consequences of theft by seizing any personal property which has been stolen and bringing it, with the supposed offender, if he can be taken, before a magistrate for examination, or delivering the same to a peace officer for that purpose. To justify such seizure, there must, however, be reasonable ground to suppose the property to be stolen, and the seizure must be openly made and the proceedings had without delay.⁵⁸

The language quoted above obviates the need to prove that the felony or breach of the peace occurred within the presence of the arrestor, and it specifically states that searches and seizures must be based on reasonable grounds.⁵⁹ Just as with other statutes granting rights of arrest, this article inherently permits citizens to make

¹ Neither the statute, nor the relevant case law, makes any distinction between citizens and residents of Texas as opposed to citizens and residents of other states.

² TEX. CODE CRIM. PROC. ANN. art. 14.01(a). The statute grants both "peace officer[s]" and "other person[s]" the same rights of warrantless arrest for the two defined categories of crimes. *Id.*; see also Office of the Attorney General, Texas, White Opinion, Opinion No. MW-537, Dec. 22, 1987 (citing *Alexander v. United States*, 390 F.2d 101 (5th Cir. 1968); *Romo v. State*, 577 S.W.2d 251 (Tex. Crim. App. 1979); *Woods v. State*, 213 S.W.2d 685 (Tex. Crim. App. 1948)) ("Any individual may make a 'citizen's arrest' under that provision, provided that all applicable legal requirements are met.")

³ *Doughty v. State*, 33 Tex. 1, 1-4 (1870). The case references, as statutory authority for citizen's arrests, "articles 2677, 2678 and 2682, of the Code Cr. Proc. as published in Pas. Dig." The earliest statute I found relating to the citizen's right to make warrantless arrests comes from Article 226 of the Code Cr. Proc., passed by the Sixteenth Legislature in 1879, available at <http://www.sll.state.tx.us/codes/1879/1879.html>. The 1879 statutory language is identical to the current language found in Article 14.01(a). You should bear in mind though that this is all after the Yankees, through reconstruction laws, limited the right of Texans to bear arms.

⁴ *Doughty*, 33 Tex. at 3. One key difference lies in the fact that, at common law, one could arrest another for a felony not committed in one's presence, if a felony had actually been committed and the citizen had probable or reasonable cause to believe that the arrested person committed the felony. See, e.g., *United States v. Montos*, 421 F.2d 215 (5th Cir. 1970); see generally 6A C.J.S. Arrest §12, Arrests By Private Persons-Crime Not Committed in Arrestor's Presence.

⁵ *Doughty*, 33 Tex. at 3.

⁶ 7 Tex. Ct. App. 403 (1879) ("It is not necessary that we go to the common law or to the decisions of the courts of other States in order to ascertain the circumstances under which a private person . . . may arrest for crime without warrant, for the reason that in this State the whole subject is regulated by the Constitution and the statute law.")

⁷ *Id.* at 412.

⁸ *Id.* The interpretation of "unreasonable seizures or searches" is beyond the scope of this article.

⁹ *Id.* at 413.

¹⁰ *Id.* Technically, one can argue that there is a fourth requirement: the actual physical arrest of the supposed felon. That is, no citizen's "arrest" can be effected if the other's freedom of movement is not curtailed. See *United States v. Mendenhall*, 446 U.S. 544, 554 (1980). In Texas, an "arrest" occurs when a person's liberty of movement is restricted or restrained. See *Kunkel v. State*, 46 S.W.3d 328, 330-31 (Tex. App. -- Houston [14th Dist.] 2001, pet. ref'd); *Turner v. State*, 901 S.W.2d 767, 769-72 (Tex. App. -- Houston [14th Dist.] 1995, pet. ref'd); see also *Amores v. State*, 816 S.W.2d 407, 411 (Tex. Crim. App. 1991); *Hardinge v. State*, 500 S.W.2d 870, 873 (Tex. Crim. App. 1973). In *Kunkel*, the court found a citizen's arrest where a wrecker was used to block a driver's car between the wrecker and the entrance gate to a town home complex. See also *Miles v. State*, 194 S.W.3d 523, 527-28 (Tex. App. -- Houston [1st Dist.] 2006) (use of wrecker to block escape route constitutes arrest), *aff'd*, Nos. PD-1047-06, PD-1019-06, ___ S.W.3d ___, 2007 WL 3010420 (Tex. Crim. App. Oct. 17, 2007). In *Turner*, the court held that an arrest occurred when two security guards compelled all of the men to get out of the car, took the gun from the glove box, patted the men down for other weapons, took their identification, questioned them further, and called the sheriff's office. The guards then held the men there until the sheriff's deputy arrived. *Turner*, 901 S.W.2d at 770. In *Amores*, the court found appellant was arrested when the police officer blocked the appellant's car with his patrol car, pulled out his revolver, and ordered the appellant out of the car. *Amores*, 816 S.W.2d at 410. In *Hardinge*, the court held the appellant was arrested when a security guard "held" the appellant for the police. *Hardinge*, 500 S.W.2d at 873; see also *Romo v. State*, 577 S.W.2d 251, 253 (Tex. Crim. App. 1979) (finding defendant was arrested when citizen took defendant's driver's license and held him until state trooper arrived). More detailed interpretation of the scope of "arrest" falls outside the scope of this article.

¹¹ Texas courts were quick to strictly construe the requirements outlined in *Lacy*. Just one year later, the same court stated that, given the great respect placed on personal freedoms and liberties, the "exact instrumentalities" of statutes authorizing the deprivation of freedom (e.g., a statute allowing a citizen's arrest) "must be evoked" to effect a valid arrest. *Alford v. State*, 8 Tex. Ct. App. 545, 560-61 (1880). While the definition of "an offense against the public peace," see TEX. CODE CRIM. PROC. ANN. art. 14.01(a), was broadened in the twentieth century, courts have consistently interpreted the other remaining requirements quite strictly. See *De Leon v. State*, 201 S.W.2d 816, 817 (Tex. 1947) ("The power to arrest is controlled by statute and it has never been a tendency of the court to enlarge on that power.")

¹² *Woods v. State*, 213 S.W.2d 685, 688 (Tex. 1948).

¹³ See *Rodriguez v. State*, 172 S.W.2d 502, 504 (Tex. 1943) ("It has been held that the right to make an arrest in cases of breaches of the peace is confined to the time of the commission of the offense.") (citations omitted). Texas courts have also construed the statutory language to mean that private citizens may not make a "Terry stop." See *Terry v. Ohio*, 392 U.S. 1 (1968); see also *Hill v. State*, 641 S.W.2d 543, 544 (Tex. Crim. App. 1982); *Irvin v. State*, 563 S.W.2d 920, 923-24 (Tex. Crim. App. 1978); *Garner v. State*, 779 S.W.2d 498, 501 (Tex. App. -- Fort Worth 1989), pet. ref'd, 785 S.W.2d 158 (Tex. Crim. App. 1990).

¹⁴ *Clark v. State*, 35 S.W.2d 420, 422 (Tex. 1931).

¹⁵ *Satterwhite v. State*, 17 S.W.2d 823 (Tex. 1929).

¹⁶ *Id.* at 828.

¹⁷ *Lacy v. State*, 7 Tex. Ct. App. 403 (1879).

¹⁸ *Id.*

¹⁹ *Henderson v. United States Fidelity & Guaranty Co.*, 298 S.W. 404 (Tex. 1927).

a search without a search warrant as long as the statutory conditions are met.⁶⁰

The Supreme Court of Texas, interpreting this statute, stated: "The owner or lawful custodian of stolen property, by virtue of the rights and privileges given him, under the article above quoted, has the right to pursue the thief and recapture property which has been stolen without a warrant of arrest."⁶¹ Just as Article 14.01(a) clothes ordinary citizens with police powers, this Article renders private person "officer[s] de facto invested with all the privileges and burdened with all the penalties of an officer de jure."⁶²

Thus, Article 18.16 can be used to save those citizen's arrests that would otherwise be illegal under Article 14.01(a). For example, the citizens in *Lacy and Henderson*, whose arrests were illegal when viewed solely under Article 14.01(a), did, in fact, effect proper and legal arrests under the predecessor to Article 18.16.⁶³

The Texas Civil Practice and Remedies Code ("TRCP") also carries a collateral statute known as the "shopkeeper's privilege."⁶⁴ This privilege states: "A person who reasonably believes

that another has stolen or is attempting to steal property is privileged to detain that person in a reasonable manner and for a reasonable time to investigate ownership of the property."⁶⁵ While this statute does not grant the power to arrest another citizen, it does buy time for the owner of an establishment until the police or other peace officers arrive.

Thus, a store employee who had reasonable grounds to believe that a patron had shoplifted a piece of merchandise has the authority under TRCP §124.001 to detain the criminal, as well as the authority to arrest him under Article 18.16. Furthermore, if the employee actually witnessed the crime, provided shoplifting fits the definition of "breach against the public peace," his authority to arrest the patron is augmented by Article 14.01(a).⁶⁶

Use of Force During a Citizen's Arrest

Texas law⁶⁷ provides that private citizens not acting under the direction of peace officers may use "force against another when and to the degree the actor reasonably believes the force is im-

mediately necessary to make or assist in making a lawful arrest, or to prevent or assist in preventing escape after lawful arrest."⁶⁸ However, the private citizen must, before the arrest is made, "manifest his purpose to arrest" and "give the reason for the arrest, or he must reasonably believe that his purpose and the reason for the arrest are already known by or cannot reasonably be made known to the person to be arrested."⁶⁹

The Texas Code of Criminal Procedure Annotated, which governs the allowable use of force during an arrest,⁷⁰ does not specifically address the question of what force may be used by a private citizen making a warrantless arrest. However, one Texas court extended Article 15.24 to arrests effected under Article 18.16 for the recovery of stolen property.⁷¹ The court held that "the force authorized by article 18.16 is the same as that provided in article 15.24, which provides that all reasonable means are permitted to be used to effect an arrest, but that no greater force shall be used than is necessary."⁷² One can reasonably assume that the force used under an

²⁰ *Id.* at 407. However, the court found the arrest legal under a different statute that allowed arrest for the return of property known to be stolen. Current law, under Article 18.16, permits the owner or lawful custodian of stolen property to pursue the thief and recapture property which has been stolen without a warrant of arrest. This subject will be explored in more detail *infra*.

²¹ *Johnson v. State*, 5 Tex. Ct. App. 43 (1878).

²² *Id.* at 46.

²³ *Smith v. Bryson*, 33 S.W.2d 268 (Tex. 1930).

²⁴ *Id.* at 270

²⁵ *Id.*

²⁶ *Turner*, 901 S.W.2d at 771.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Henderson v. State*, 600 S.W.2d 788, 789 (Tex. Crim. App. 1979).

³⁰ 213 S.W.2d 685, 687 (Tex. 1948).

³¹ *Woods*, 213 S.W.2d at 687 (quoting *Head v. State*, 96 S.W.2d 981, 982 (Tex. 1936)).

³² *Id.* at 687; see also *Crowley v. State*, 842 S.W.2d 701, 704 (Tex. App. -- Houston [1st Dist.] 2006), *pet. ref'd*, 830 S.W.2d 613 (Tex. Crim. App. 1992); *Estes v. State*, 660 S.W.2d 873, 875 (Tex. App. -- Fort Worth 1983, *pet. ref'd*) (both analyzing whether an offense was a breach of the peace under the attendant circumstances).

³³ See, e.g., *Romo v. State*, 577 S.W.2d 251, 253 (Tex. Crim. App. 1979) (holding that a patrol officer out of his jurisdiction was a "citizen" who could arrest DWI offender for breach of the peace); see also *Miles v. State*, 194 S.W.3d 523, 527 (Tex. App. -- Houston [1st Dist.] 2006) (holding that driving while intoxicated is a breach of the peace), *aff'd*, Nos. PD-1047-06, PD-1019-06, ___ S.W.3d ___, 2007 WL 3010420 (Tex. Crim. App. Oct. 17, 2007); *Trent v. State*, 925 S.W.2d 130, 133 (Tex. App. -- Waco 1996, no *pet.*) (same).

³⁴ *Crowley v. State*, 842 S.W.2d 701, 704 (Tex. App. -- Houston [1st Dist.] 2006), *pet. ref'd*, 830 S.W.2d 613 (Tex. Crim. App. 1992).

³⁵ See *McGuire v. State*, 847 S.W.2d 684 (Tex. App. -- Houston [1st Dist.] 1993, no *pet.*).

³⁶ *Perkins v. State*, 812 S.W.2d 326, 329 & n.4 (Tex. Crim. App. 1991).

³⁷ *Ruiz v. State*, 907 S.W.2d 600, 603 (Tex. App. -- Corpus Christi 1995, no *pet.*).

³⁸ *Woods*, 213 S.W.2d at 687.

³⁹ *Knot v. State*, 853 S.W.2d 802, 805 (Tex. App. -- Amarillo 1993, no *pet.*).

⁴⁰ *Estes v. State*, 660 S.W.2d 873, 875 (Tex. App. -- Fort Worth 1983, *pet. ref'd*).

⁴¹ *Leache v. State*, 3 S.W. 539, 546 (Tex. Ct. App. 1886).

⁴² TEX. PENAL CODE ANN. §46.02.

⁴³ *Turner v. State*, 901 S.W.2d 767, 769-72 (Tex. App. -- Houston [14th Dist.] 1995, *pet. ref'd*) (citing *Woods*, 213 S.W.2d at 687).

⁴⁴ *Dunn v. State*, 979 S.W.2d 403, 408 (Tex. App. -- Amarillo 1998, *pet. ref'd*).

⁴⁵ TEX. CODE CRIM. PROC. ANN. art. 14.03(2)-(6).

⁴⁶ See *Barahona v. State*, No. 14-97-00520-CR, 1999 WL 1123083 (Tex. App. -- Houston [14th Dist.] Dec. 9, 1999, no *pet.*); *Rollinger v. State*, No. 05-98-02136-CR, 1999 WL 993788 (Tex. App. -- Dallas 1999, *pet. ref'd*); *Trent v. State*, 925 S.W.2d 130 (Tex. App. -- Waco 1996, no *pet.*) ("the prosecution is still required to show that the private citizen had probable cause to make the arrest"); *McGuire v. State*, 847 S.W.2d 684, 686 (Tex. App. -- Houston [1st Dist.] 1993, no *pet.*); *Garner v. State*, 779 S.W.2d 498, 501 (Tex. App. -- Fort Worth 1989) (holding that a private citizen must have probable cause to believe an offense is being committed in order to justify an arrest or detention), *pet. ref'd*, 785 S.W.2d 158 (Tex. Crim. App. 1990).

⁴⁷ *Miles v. State*, 194 S.W.3d 523, 527 (Tex. App. -- Houston [1st Dist.] 2006) *aff'd*, Nos. PD-1047-06, PD-1019-06, ___ S.W.3d ___, 2007 WL 3010420 (Tex. Crim. App. Oct. 17, 2007) (citing *State v. Ballard*, 987 S.W.2d 889, 892 (Tex. Crim. App. 1999)).

⁴⁸ See TEX. CODE CRIM. PROC. ANN. art. 38.23(a).

⁴⁹ See *Amores*, 816 S.W.2d at 413.

⁵⁰ *Id.*; see also *Victor v. State*, 995 S.W.2d 216, 221 (Tex. App. -- Houston [14th Dist.] 1999, *pet. ref'd*) ("[T]he State must show the existence of probable cause at the time of the arrest and the existence of circumstances which made the procuring of a warrant impracticable.")

⁵¹ See *Amores*, 816 S.W.2d at 413; *Guzman v. State*, 955 S.W.2d 85, 90 (Tex. Crim. App. 1997) (citing *Stull v. State*, 772 S.W.2d 449, 451 (Tex. Crim. App. 1989)) ("The test for the existence of probable cause is 'whether at that moment the facts and circumstances within the officer's knowledge and of which he had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the arrested person had committed or was committing an offense.'")

arrest authorized by Article 14.01(a) is constrained by Article 15.24 as well.

The use of deadly force is only authorized when a private citizen acts in a peace officer's presence and under his direction.⁷³ Use of deadly force, under any other scenario involving a citizen's arrest, is strictly forbidden.⁷⁴

False Arrest/False Imprisonment

Arresting others reasonably believed to have committed a felony or breach against the peace puts private citizens at personal risk for legal liability. Actually restraining the free movement of another citizen, without justification or defense, opens the door to possible charges of false imprisonment. The Texas Penal Code classifies false imprisonment as either a Class A misdemeanor or felonies of differing degrees, depending on the circumstances.⁷⁵ Civil liability may also lie.⁷⁶

The highest court's earliest interpretation of Texas's citizen's arrest statute carried the explicit warning that an improper citizen's arrest subjected the

private individual to "an action for false imprisonment."⁷⁷ Charges of false imprisonment can also flow from improper arrests under Article 18.16. However, such charges will not lie, even if the arrested party was actually innocent, if the arrestor had probable cause to apprehend the person upon suspicion that he or she carried stolen property. The court in *Henderson* implicitly recognized the possibility of false imprisonment charges when it wrote:

Moreover, in attempting to do these things authorized by this article, persons so acting would not be guilty of false imprisonment should there be reasonable ground to suppose the property stolen, and the party taken to be the offender, notwithstanding it should thereafter transpire that the property was not stolen, and that the person taken was not a thief. The very language of the statute shows this to be the situation, because the statute says that to justify such seizure there must be reasonable grounds to suppose the property to be stolen.

Other Considerations

While a private citizen does not have the authority to make an investigatory stop based solely on suspicion—i.e., without probable cause⁷⁹—his authority may be enhanced to the level applicable to a peace officer if the private citizen is commanded to assist in the execution of an arrest or search warrant by a peace officer.⁸⁰

A citizen making a warrantless arrest may adopt all the measures that may be adopted in cases of arrest under warrant.⁸¹ Whenever a citizen makes an arrest, the person arrested must be taken without unnecessary delay before a magistrate in the county in which the person was arrested or, if it would be faster, before a magistrate in a county bordering the county in which the arrest was made.⁸²



Simon Azar-Farr resides in San Antonio, Texas, and represents his clients across the United States in areas of immigration law and criminal defense.

⁵² *Miles v. State*, 194 S.W.3d 523 (Tex. App. -- Houston [1st Dist.] 2006), *aff'd*, Nos. PD-1047-06, PD-1019-06, ___ S.W.3d ___, 2007 WL 3010420 (Tex. Crim. App. Oct. 17, 2007).

⁵³ *Id.* at 528.

⁵⁴ *Kocurek v. State*, No. 14-97-00045-CR, 1999 WL 219165 (Tex. App. -- Houston [14th Dist.] 1999, no pet.).

⁵⁵ *Id.* at 6.

⁵⁶ *Id.* (citing *McBride v. State*, 946 S.W.2d 100, 102 (Tex. App. -- Texarkana 1997, pet. ref'd); *Wright v. State*, 932 S.W.2d 572, 576 (Tex. App. -- Tyler 1995, no pet.); *Trent v. State*, 925 S.W.2d 130, 133 (Tex. App. -- Waco 1996, no pet.); *Taylor v. State*, 916 S.W.2d 680, 682 (Tex. App. -- Waco 1996, pet. ref'd)).

⁵⁷ See generally *Lasker v. State*, 290 S.W.2d 901 (Tex. 1956); *Hepworth v. State*, 12 S.W.2d 1018 (Tex. 1928); *Morris v. Kasling*, 15 S.W. 226 (Tex. 1890).

⁵⁸ TEX. CODE CRIM. PROC. ANN. art. 18.16.

⁵⁹ Analyzing whether the grounds upon which an arrest is based are reasonable uses the same reasoning as the "reasonable grounds" analysis under Article 14.01(a). See *Douglas v. State*, 695 S.W.2d 817, 820 (Tex. App. -- Waco 1985, pet. ref'd) (citing *Adams v. State*, 128 S.W.2d 41 (Tex. 1939)) ("The legality of an arrest and a seizure under this article depends upon whether the party making the arrest and seizure had a 'reasonable ground' or 'probable cause' to believe that the property seized had been stolen and that the party arrested was the thief who had stolen the property."). Thus, when an off-duty officer was informed that a man fitting the description of a supposed shoplifter was on the streets of Amarillo with the stolen goods, the officer was authorized to arrest him, without a warrant, even though the officer did not witness the commission of the crime. See *Hepworth v. State*, 12 S.W.2d 1018, 1019 (Tex. 1928). Of course, one can reasonably assume that the outcome of the case may have been different if the informant or the information provided could not have served as reasonable grounds for the officer's belief.

⁶⁰ See *Levine v. State*, 4 S.W.2d 553 (Tex. Crim. App. 1928).

⁶¹ *Henderson*, 298 S.W. at 407 (Tex. 1927). The court placed some restrictions on the exercise of this power, stating: "However, this right does not authorize the owner to pursue and take the life of the supposed thief. That is to say, it does not authorize the owner to kill the thief should the latter make resistance merely to effect a recovery of the stolen property." *Id.* at 408 (citing *Perez v. State*, 29 Tex. Crim. Cts. 618).

⁶² *Id.* at 408.

⁶³ See, e.g., *Henderson*, 298 S.W.2d at 407 ("But we do not think [...] [A]rticle [14.01(a)] is applicable to the facts in this case. Upon the contrary, we think Article [18.16], under the facts which are without substantial contradiction, fully justifies the contention of the plaintiffs in error that the arrest of Blasingame was legal.")

⁶⁴ See 5-123 TEXAS CRIMINAL PRACTICE GUIDE § 123.06.

⁶⁵ TEX. CIV. PRAC. & REM. CODE ANN. § 124.001.

⁶⁶ See generally *Simpson*, 815 S.W.2d 900, 902 (Tex. App. -- Fort Worth 1991, no pet.); *Rhodes v. State*, 712 S.W.2d 235 (Tex. App. -- San Antonio 1986, no pet.).

⁶⁷ TEX. PENAL CODE ANN. § 9.51.

⁶⁸ *Id.* § 9.51(b).

⁶⁹ TEX. PENAL CODE ANN. § 9.51(b); see also *Simpson v. State*, 815 S.W.2d at 902.

⁷⁰ See TEX. CODE CRIM. PROC. ANN. art. 15.24 ("In making an arrest, all reasonable means are permitted to be used to effect it. No greater force, however, shall be resorted to than is necessary to secure the arrest and detention of the accused.")

⁷¹ *Simpson*, 815 S.W.2d at 900.

⁷² *Id.* at 902.

⁷³ TEX. PENAL CODE ANN. § 9.51(d).

⁷⁴ *Id.* § 9.51(g) ("Deadly force may only be used under the circumstances enumerated in Subsections (c) and (d).")

⁷⁵ TEX. PENAL CODE ANN. § 20.02(a), (c).

⁷⁶ See, e.g., *Childers v. A.S.*, 909 S.W.2d 282 (Tex. App. -- Fort Worth 1995, no writ) ("The elements of a cause of action for false imprisonment are: (1) a willful [sic] detention of another; (2) without consent; and (3) without authority of law.")

⁷⁷ *Doughty v. State*, 33 Tex. 1, 3 (1870); see also *Lacy v. State*, 7 Tex. Ct. App. 403, 15-16 (1879) (noting that a citizen's arrest can only be legally performed if the offense is committed within the presence of the citizen; all other arrests subjected the individual "to all the consequences resulting from an illegal arrest").

⁷⁸ *Henderson*, 298 S.W. at 408.

⁷⁹ See *Garner*, 779 S.W.2d at 501.

⁸⁰ See TEX. CODE CRIM. PROC. ANN. art. 18.08.

⁸¹ See TEX. CODE CRIM. PROC. ANN. art. 14.05.

⁸² See TEX. CODE CRIM. PROC. ANN. arts. 14.06, 15.16, 15.17, 15.18.