need not be criminal; and (2) in forming reasonable suspicion, an officer is able to make rational inferences from those facts. The majority's statement that "[p]hotographs are routinely taken of people in public places, including at public beaches, where bathing suits are commonly worn, and at concerts, festivals, and sporting events"[1] is undoubtedly true. However, the same cannot be said for its claim that "[t]aking photographs of people at such places is not unusual, suspicious, or criminal."[2] As an initial matter, the broad statement is inaccurate.[3] Texas Penal Code § 21.15(b)(1)'s inclusion of language regarding the other's consent and specific intent defines when seemingly innocent photography becomes a state-jail felony. Moreover, whether the specific, articulable facts Officer Tolbert possessed were themselves criminal is irrelevant; the focus is "the degree of suspicion that attaches to particular non-criminal acts."[4] I believe common sense warrants a finding that taking pictures of people sunbathing at a pool from a car parked in the pool's parking lot is both unusual and suspicious.

The majority's opinion does not consider the rational inferences, based on common sense, Officer Tolbert may have deduced from Arguellez's behavior. Officers are entitled

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[1] *Ante*, op. at 10.

[2] *Id.*

[3] *See* TEX. PENAL CODE § 21.15(b)(1) (defining the offense of improper photography or visual recording as "photograph[ing] . . . a visual image of another at a location that is not a bathroom or private dressing room: (A) without the other person's consent; and (B) with intent to arouse or gratify the sexual desire of any person. . . .").

[4] *See Derichsweiler v. State*, 348 S.W.3d 906, 914 (Tex. Crim. App. 2011).