Affirmed and Opinion filed December 16, 1999.

In The

Fourteenth Court of Appeals

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NO. 14-98-00188-CR

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BRADFORD JENNINGS PHILLIPS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Criminal Court at Law Number Thirteen
Harris County, Texas
Trial Court Cause No. 97-34885

O P I N I O N

Appellant, Bradford Jennings Phillips, was charged by information with driving while intoxicated (DWI). Appellant entered an agreed plea of guilty and was assessed: 180 days confinement, probated for one year of community supervision; a $700 fine; and 140 hours of community service. Appellant appeals the validity of his warrantless arrest and the trial court's refusal to suppress the evidence obtained as a result of the arrest. We affirm.

The following facts were adduced from testimony at the motion to suppress hearing. On August 20, 1997, at approximately 2:00 a.m., Richard Rees was driving a motorcycle in Houston. Rees noticed a vehicle pull up beside him and begin drifting into the lane he occupied. Rees was forced to drive into another lane to avoid a collision. Rees honked his horn at the vehicle, but was again forced out of his lane. As Rees followed the vehicle, he watched it run several stop lights and stop in the middle of the intersection at another light. Rees continued to follow the vehicle until he saw it pull over to the side of the road and stop at the curb in front of a home, which happened to be appellant's residence.

Rees saw a Houston Police Department patrol car a couple of blocks down the street. Rees drove his motorcycle to the patrol car and told Officer Jones that he believed appellant, who was sitting in the driver's seat of the vehicle he had followed, was driving while intoxicated because "he just about ran me over and ran several lights as well." Officer Jones and Rees drove to where appellant had parked. Officers Yates and Garcia soon arrived on the scene. None of the officers saw appellant driving the vehicle. Officer Yates approached appellant's car on the driver's side, which was facing the street, and Officer Garcia approached on the passenger side. When the officers approached, the engine was still running. The officers requested appellant to turn off the vehicle's engine. Appellant looked confused at the request. The officers asked appellant and his passenger several times to unlock the vehicle. Appellant and his passenger sat there and looked at the officers. Appellant and passenger then attempted to unlock the doors, but had difficulty in doing so.

Once the vehicle was unlocked, Officer Yates opened appellant's door and grabbed his arm and escorted him to the back of the vehicle. As soon as the door was opened, the officers smelled a strong odor of alcoholic beverages coming from appellant and his passenger. Officer Yates noticed appellant was confused, his speech was slurred, his eyes were glassy, and he was very unsure as he walked. Officer Yates held appellant's belt loop to keep appellant steady as he walked. In Officer Yates' opinion, appellant was intoxicated, and he was a danger to himself and his passenger. Upon removing appellant from the vehicle

and finding him to be intoxicated, Officer Yates considered appellant to be under arrest. Officer Yates then escorted appellant to the curb and asked appellant if he could perform field sobriety tests; appellant refused. Appellant was then transported to the police station.

At trial, with the jury out of the courtroom, the court held a hearing on appellant's motion to suppress evidence. Appellant's motion asserted that the arresting officer had insufficient probable cause to arrest him for DWI or public intoxication (PI),[1] making any evidence obtained after the arrest inadmissable. The court denied appellant's motion to suppress. Appellant then entered a plea of guilty, conditioned on his ability to appeal the ruling on the motion to suppress.

A trial court's ruling on a motion to suppress is reviewed by an abuse of discretion standard unless the facts are undisputed. *See Oles v. State*, 993 S.W.2d 103, 106 (Tex. Crim. App. 1999). At a suppression hearing, the trial judge is the sole trier of fact and may choose to believe or disbelieve any or all of a witness's testimony. *See Reynolds v. State*, 902 S.W.2d 558, 559 (Tex. App.—Houston [1st Dist.] 1995, pet. ref'd) (citations omitted). This court is not at liberty to disturb any finding that is supported by the record. *See id*. Our inquiry is limited to whether the trial court improperly applied the law to the facts. *See id*.

Generally, officers must obtain an arrest warrant prior to taking someone into custody. *See Segura v. State*, 826 S.W.2d 178, 181 (Tex. App.—Dallas 1992, pet. ref'd) (citing *De Jarnett v. State*, 732 S.W.2d 346, 349 (Tex. Crim. App. 1987)). However, warrantless arrests are allowed under article 14.01(b) of the Texas Code of Criminal Procedure. *See* TEX. CODE CRIM. PROC. ANN. art. 14.01(b). Article 14.01(b) states that a "peace officer may arrest an offender without a warrant for any offense committed in his presence or within his view."

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[1] "A person commits an offense [of public intoxication] if the person appears in a public place while intoxicated to the degree that the person may endanger the person or another." TEX. PEN. CODE ANN. §49.02(a)(Vernon 1994). "Public place" is defined as any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops. *See* TEX. PEN. CODE ANN. §1.07(a)(40) (Vernon 1994).

Id. Accordingly, a warrantless arrest for a misdemeanor including driving while intoxicated, is only permissible if it is committed in the view or presence of the arresting officer. *See Warrick v. State*, 634 S.W.2d 707, 709 (Tex. Crim. App. 1982). Thus, appellant is correct in pointing out that he could not have been arrested pursuant to article 14.01(b) for the offense of driving while intoxicated because appellant did not operate a motor vehicle within the presence or view of the officers. However, under certain circumstances, a defendant may be arrested for PI even though an arrest for DWI is unlawful. *See Warrick*, 634 S.W.2d at 709; *Arnold v. State*, 971 S.W.2d 588 (Tex. App.—Dallas 1998, no pet.); *Reynolds v. State*, 902 S.W.2d 558 (Tex. App.—Houston [1st Dist.] 1995, pet. ref'd); *Mathieu v. State*, 992 SW.2d 725 (Tex. App.—Houston [1st Dist.] 1999, no pet.); *Lopez v. State*, 936 S.W.2d 332 (Tex. App.—San Antonio 1996, no pet.).

Appellant asserts that there was insufficient probable cause to arrest him for the offense of PI because he was (1) located in his front yard and (2) did not pose a danger to himself or others. We will discuss each of these assertions in turn.

Appellant relies on *Commander v. State*, 748 S.W.2d 270 (Tex. App.—Houston [14th Dist.] 1988, no pet.), for the proposition that he was not in a public place at the time of his arrest for PI and therefore the arrest was improper. In that case, the defendant was in a van parked in a driveway of a residence when a peace officer observed him exit the vehicle. *See Commander*, 748 S.W.2d at 271. Upon exiting, the defendant walked around the van and leaned against the rear of the vehicle. *See id*. The officer approached the defendant and noticed that he was unsteady, glassy eyed, and had a strong odor of alcohol on his breath. *See id*. After asking some questions, the officer placed the defendant under arrest for public intoxication. *See id*. This court held that there was not sufficient probable cause to for the defendant's arrest for public intoxication. *See id*. at 272. The court based this conclusion on the fact that there was "no testimony even intimating a real possibility of danger to appellant or to the public." *Id.* The court also noted that a private residence is not a public place, nor has a yard or driveway of a private residence ever been construed as such. *See id*.

In this case, however, the record contradicts appellant's argument that he was arrested in his yard. Appellant's counsel elicited the following testimony from Officer Yates as to the arrest.

> Q: So he was actually outside his vehicle on a public street when you made [the determination that he was intoxicated]?
>
> A: Yes, sir.
>
> Q: And that's when you determined he was under arrest?
>
> A: Yes, sir.

The Texas Penal Code includes street in the definition of "public place." *See* TEX. PEN. CODE ANN. § 1.07 (a)(40); *see also Banda v. State*, 890 S.W.2d 42, 52 (Tex. Crim. App. 1994) (application of public place in penal code). Applying the penal code's definition to Officer Yates' testimony, the trial court could find that the arrest took place in a public place, rather than in appellant's yard as he suggests. Thus, we will not disturb the trial court's implied finding that appellant was in a public place when he was arrested.

We now turn to appellant's argument that probable cause was lacking for his arrest for PI because he did not present a danger to himself or others. Appellant bases this argument on his being arrested in close proximity to his residence and that he "could have simply walked into his residence." In determining whether a defendant presents a danger to himself or others, the issue is whether the fact finder could have reasonably inferred that the defendant posed a danger to himself and others based on the arresting officer's personal knowledge, together with the information given to him by witnesses. *See Segura v. State*, 826 S.W.2d 178, 184-85 (Tex. App.—Dallas 1992, pet. ref'd).

Officer Yates testified that, in his opinion at the time, appellant was intoxicated and posed a danger to himself. In particular, Officer Yates stated, "if I would not have braced him whenever he exited the vehicle, that he possibly could have fallen and hurt himself." The PI statute is not onerous in its requirements; Officer Yates was only required to have a

reasonable belief that appellant *may* be a danger to himself or others, not that he *was* such a danger. Appellant's argument concerning the proximity of the place of the arrest to his residence is without merit because it does not negate the fact that Officer Yates believed appellant was a danger to himself. Officer Yates' belief was not dependent upon the distance appellant was from his home. Furthermore, while appellant could have walked into his residence, as pointed out by appellant, he also could have walked out into traffic, or driven his car down the road.

Accordingly, we hold that there is sufficient evidence to support the trial court's finding of probable cause. Finding no error by the trial court, we affirm the trial court's judgment.

/s/ Leslie Brock Yates
Justice

Judgment rendered and Opinion filed December 16, 1999.
Panel consists of Justices Yates, Fowler and Frost.
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