**Affirmed and Opinion filed July 19, 2001.**

**In The**

# Fourteenth Court of Appeals

---

**NOS. 14-99-00729-CR & 14-99-00730-CR**

---

**JEFFREY ABAYA MACROHON, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

---

**On Appeal from the County Criminal Court at Law No. 13**
**Harris County, Texas**
**Trial Court Cause Nos. 99-00492 & 99-10487**

---

## O P I N I O N

Appellant, Jeffrey Abaya Macrohon, pleaded guilty to the misdemeanor offenses of driving while license invalid and driving while intoxicated. In two points of error, appellant contends that the trial court erred in denying his motion to suppress. We affirm.

The record of the suppression hearing demonstrates that shortly before 2:00 a.m. on January 4, 2000, Houston police sergeant Travis Semora discovered appellant passed out in his car in a moving lane of traffic. At the hearing, Sgt. Semora testified that he and another officer, Officer David Angelo, were able to wake appellant after shaking appellant's vehicle, tapping on the vehicle's windows, and shining a flashlight in appellant's eyes. Sgt. Semora further

testified that after they woke appellant he became belligerent and shouted obscenities at the officers. Sgt. Semora testified that he detected a strong odor of alcohol when appellant managed to open his car door. Sgt. Semora also testified that appellant exhibited other signs of intoxication including slurred speech and loss of balance. Sgt. Semora testified that appellant was immediately handcuffed because of his concern that appellant might become violent. Sgt. Semora further testified that, due to inclement weather, appellant was brought inside a convenience store where Officer Angelo removed appellant's handcuffs and asked appellant to perform several field sobriety tests. Officer Angelo testified that appellant performed poorly on all of the tests and was unable to follow the simplest of instructions. Officer Angelo further testified that based on appellant's performance on the tests and his observations of appellant's appearance and demeanor, he arrested appellant for the offense of driving while intoxicated.

Both of appellant's points of error challenge the trial court's denial of his motion to suppress. In a hearing on a motion to suppress, the trial judge is the sole and exclusive trier of fact. He is the judge of the credibility of the witnesses as well as the weight to be given to their testimony. *Romero v. State*, 800 S.W.2d 539, 543 (Tex. Crim. App. 1990). As a general rule, we give almost total deference to a trial court's findings of fact, especially when those findings are based on an evaluation of credibility and demeanor. *Guzman v. State*, 955 S.W.2d 85, 87 (Tex. Crim. App.1997). However, our inquiry into the issue of whether probable cause or reasonable suspicion exists for a warrantless arrest involves a mixed question of law and fact. *Id*. Therefore, when the issue to be determined on appeal is whether the officer had probable cause to seize a suspect, under the totality of the circumstances, "the trial judge is not in an appreciably better position than the reviewing court to make that determination." *Id*. at 87. Consequently, we conduct a *de novo* review of probable cause and reasonable suspicion issues. *Id*.

In his first point of error, appellant maintains that the trial court erred by overruling his motion to suppress because Officer Angelo lacked the necessary probable cause to arrest him for the offense of driving while intoxicated because Officer Angelo did not observe the

appellant driving his vehicle. Appellant bases this contention on the premise that an officer must observe an individual move a vehicle to establish probable cause to arrest someone for the offense of driving while intoxicated. In his second point of error, appellant contends the officers lacked probable cause to arrest him because there was no evidence of how long the vehicle had been stopped in the lane of traffic and, therefore, no evidence that appellant was intoxicated when he was operating his vehicle. We reject both arguments.

An officer is authorized to make a warrantless arrest when: (1) there is probable cause to believe an offense has been or is being committed; and (2) the arrest falls within one of the statutory exceptions to the warrant requirement enumerated in articles 14.01 through 14.04 of the Texas Code of Criminal Procedure. *Chilman v. State*, 22 S.W.3d 50, 55 (Tex.App—Houston [14th Dist.] 2000, pet. ref'd). Probable cause for a warrantless arrest exists when at the moment of arrest, the facts and circumstances within the officer's knowledge and of which the officer had reasonably trustworthy information are sufficient to warrant a prudent person in believing that the arrested person has committed or is committing an offense. *Id*. We consider the totality of the circumstances when determining whether the facts were sufficient to give the officer probable cause to arrest the defendant. *Id*.

A person commits the offense of driving while intoxicated if he: (1) is intoxicated; and (2) operates a motor vehicle in a public place. TEX. PEN. CODE ANN. § 49.04 (Vernon Supp. 2001). However, probable cause to arrest someone for the offense of driving while intoxicated may exist irrespective of whether the arresting officer observed the person move the vehicle. *Chilman*, 22 S.W.3d at 56. The facts known to the officers at the time of appellant's arrest were: (1) appellant was unconscious behind the wheel of a running vehicle blocking a moving lane of traffic; (2) once awoken, appellant exhibited multiple signs of intoxication; and (3) appellant failed a battery of field sobriety examinations. Considering the totality of the circumstances, we find these facts sufficient to for a prudent person to believe that appellant had committed the offense of driving while intoxicated.

Accordingly, we reject appellant's contention that Officer Angelo lacked the requisite

probable cause to arrest appellant for the offense of driving while intoxicated. We overrule appellant's first and second points of error and affirm the judgment of the trial court.

/s/ J. Harvey Hudson
Justice

Judgment rendered and Opinion filed July 19, 2001.

Panel consists of Justices Anderson, Hudson, and Seymore.

Do Not Publish — TEX. R. APP. P. 47.3(b).