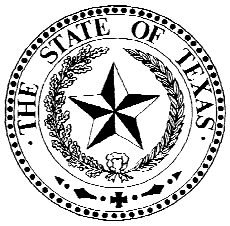
Affirmed and Opinion filed December 6, 2001.



In The

Fourteenth Court of Appeals

NO. 14-00-01314-CR

SANFORD WENDELL MONTGOMERY, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from 232nd District Court
Harris County, Texas
Trial Court Cause No. 846,007

O P I N I O N

Sanford Wendell Montgomery appeals a conviction for possession of less than one gram of a controlled substance[1] on the ground that the trial court erred in denying his motion to suppress evidence of a crack pipe and marijuana found in appellant's pockets because his arrest for public intoxication was not supported by probable cause. We affirm.

---

[1] Appellant pleaded guilty and was sentenced by the trial court to seven months confinement.

Appellant's sole point of error asserts that probable cause to arrest him for public intoxication was lacking because there was no evidence that he posed a potential danger to himself or anyone else.

In reviewing a trial court's ruling on a motion to suppress, we give almost total deference to the trial court's determination of historical facts, but review *de novo* the court's application of the law of search and seizure to those facts. *State v. Ross*, 32 S.W.3d 853, 856 (Tex. Crim. App. 2000). In this case, because the trial court did not make findings of historical fact, we review the evidence in the light most favorable to the trial court's ruling and assume that it made implicit findings of fact that support its ruling as long as those findings are supported by the record. *See id.* at 855.

A police officer may make a warrantless arrest only if: (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 specified in articles 14.01 through 14.04 of the Texas Code of Criminal Procedure. *Stull v. State*, 772 S.W.2d 449, 451 (Tex. Crim. App. 1989). Probable cause for a warrantless arrest exists when a police officer has reasonably trustworthy information, considered as a whole, that is sufficient to cause a reasonable person to believe that a particular person has committed or is committing an offense. *Hughes v. State*, 24 S.W.3d 833, 838 (Tex. Crim. App. 2000). Further, a peace officer may arrest an offender without a warrant for any offense committed in his presence or within his view. TEX. CODE CRIM. PROC. ANN. art. 14.01(b) (Vernon 1977). Once a suspect is validly arrested, he may be properly searched as incident to the arrest. *Busby v. State*, 990 S.W.2d 263, 270 (Tex. Crim. App. 1999).

A person commits the offense of public intoxication if he appears in a public place "while intoxicated to the degree that the person may endanger [himself] or another." TEX. PEN. CODE ANN. § 49.02(a) (Vernon 1994). Although physical manifestations of alcohol

consumption alone are not enough to constitute public intoxication,[2] section 49.02(a) requires only a *degree of intoxication* that may present a danger, not that a particular, identifiable danger be immediate or even apparent. *See Padilla v. State*, 697 S.W.2d 522, 524 (Tex. App.—El Paso 1985, no pet.).

In this case, at the hearing on appellant's motion to suppress, Officer Silas Montgomery testified that he was patrolling an apartment complex as a security guard when he heard a female scream and then saw appellant and another man standing with the female. As he approached appellant he could smell alcohol on his breath. When Montgomery spoke to him, appellant rambled and seemed disoriented and confused in answering even simple questions regarding his name and personal information. Montgomery also observed appellant swaying and having difficulty standing. Montgomery then told appellant that he was under arrest for public intoxication because Montgomery feared that appellant was a danger to himself and others as he was aggressive and combative. Montgomery felt that it was not safe for anybody involved in the disturbance to let appellant stay.[3]

Appellant's impaired behavior, involvement in a disturbance, and aggressive and combative demeanor were sufficient to cause a reasonable person to believe that appellant was intoxicated to a degree that he may endanger someone, and thus that there was probable cause to arrest him. Accordingly, appellant's point of error is overruled, and the judgment of the trial court is affirmed.

/s/ Richard H. Edelman
Justice

---

2 *Simpson v. State*, 886 S.W.2d 449, 454 (Tex. App.—Houston [14th Dist.] 1994, pet. ref'd).

3 When appellant resisted being handcuffed, Officer Silas Montgomery was aided by Officer Paul Montgomery to complete the arrest. When appellant tried to reach for his back pocket, the two officers patted down and searched him, finding a crack pipe in appellant's front pocket and marijuana in his back pocket.

Judgment rendered and Opinion filed December 6, 2001.

Panel consists of Justices Yates, Edelman, and Wittig.[4]

Do not publish — TEX. R. APP. P. 47.3(b).

[4] Senior Justice Don Wittig sitting by assignment.