NOT FINAL UNTIL TIME EXPIRES FOR REHEARING
AND, IF FILED, DETERMINED

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY

STATE OF FLORIDA
Appellant,

v.

Appeal No.: 14-00055APANO
UCN: 522014AP000055000APC

MATHEW JAMES LUDLOW, also
known as MATTHEW JAMES LUDLOW
Appellee.

_____/

Opinion filed _____.

Appeal from judgment and sentence
entered by the Pinellas County Court
County Judge James V. Pierce

Elizabeth Constantine,
Assistant State Attorney
Office of the State Attorney
Attorney for Appellant

Andrew Shein, Esquire
Attorney for Appellee

ORDER AND OPINION

ANDREWS, Judge.

THIS MATTER is before the Court on Appellant, State of Florida appeal from the trial court's Order Granting Defendant's Second Motion to Suppress Evidence Illegally Obtained by Law Enforcement. In substance the court made a finding that probable cause to arrest the defendant for Driving Under the Influence of Alcoholic Beverages or Controlled Substances did not exist prior to Appellee's arrest.

Factual Background and Trial Court Proceedings:

The defendant was stopped by the Pinellas County Sheriff's Office for speeding on U.S. 19. He was clocked driving 82 miles per hour in a 55 mile per hour zone. Upon making contact with Appellee the deputy was concerned that the defendant displayed signs of driving under the influence. Field sobriety tests were conducted leading the deputy to opine that defendant was driving under the influence of drugs or alcohol. The defendant was arrested for DUI. At trial he filed two motions, one challenging reasonable suspicion and the other to challenge probable cause. The trial court found the existence of reasonable suspicion to conduct the stop and denied that motion. However, the trial court agreed that the deputy lacked probable cause to arrest Appellee.

Presumption of Correctness:

"An appellate court reviewing a ruling on a motion to suppress presumes that a trial court's findings of fact are correct and reverses those findings only if they are not supported by competent, substantial evidence." *Cuervo v. State*, 967 So.2d 155, 160 (Fla.2007). *See also, State v. Young*, 971 So.2d 968, 971 (Fla. 4th DCA 2008) ("We review orders on motions to suppress to determine whether the trial court's factual findings are supported by competent substantial evidence . . ." (citing *Thomas v. State*, 894 So.2d 126, 136 (Fla.2004)). In *Connor v. State*, 803 So.2d 598, 608 (Fla. 2001) the supreme court held "appellate courts should continue to accord a presumption of correctness to the trial court's rulings on motions to suppress with regard to the trial court's determination of historical facts, but appellate courts must independently review mixed questions of law and fact that ultimately determine constitutional issues arising in the context of the Fourth and Fifth Amendment and, by extension, article I, section 9 of the Florida Constitution." The trial court's application of the law to the historical facts is subject to *de novo* review. *Cuervo, supra*, at 160.

In its order granting the motion to suppress the trial court states, in sum and substance, the following:

> The Court, having heard the testimony of the officer, as well as observing the video and considering the totality of the circumstances in this case, I don't find that there was probable cause for the arrest for DUI.

No findings of facts are made either on the record or in the final order. What the trial judge was thinking when he made his ruling is absent in the transcript and in the written order. As such, in his brief the Appellee is forced to speculate as to what the trial judge was thinking when he made his ruling.[1] We are similarly forced to speculate. Where the trial court fails to make findings of fact either in its order or on the record the presumption of correctness is not accorded. *See State v. Reed*, 421 So.2d 754 (Fla. 4th DCA 1982) ("[t]he presumption of correctness ordinarily attributed to the findings of the trial court does not apply where there were no findings of fact. *Ponder v. State*, 323 So.2d 296 (Fla. 3d DCA 1975); *Herzog v. Herzog*, 346 So.2d 56 (Fla.1977)"). Because there have been no findings of fact we must also review, *de novo*, the facts as presented at hearing to determine if the state offered sufficient evidence to establish probable cause to arrest Appellee for DUI. *See Niles v. State*, 120 So.3d 658 (Fla. 1 DCA 2013) (Where trial court's ruling denying motion to dismiss contained no findings of fact or conclusions of law, our review is *de novo*); *Florida Ins. Guar. Ass'n, Inc. v. Waters*, --- So.3d ---, 2015 WL 485768 (Fla. 2 DCA 2015) (when the trial court makes no findings of fact and the facts are undisputed, appellate review is de novo); *United HealthCare of Florida, Inc. v. Brown*, 984 So.2d 583 (Fla. 4 DCA 2008) ("As the trial court made no findings of fact or law, we review the order *de novo*, applying the relevant law to the facts available in the record."). However,

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[1] "However, there were certain statements made by Corporal Langlais during his investigation and testimony from which the Trial Court *may have reasonably inferred that Corporal Langlais either did not understand the law in that regard or was not inclined to apply it*." (Brief of Appellee at 19) (emphasis added).

"Given Corporal Langlais's statements as set forth above, and as the sole arbiter of the inferences to be drawn from and the weight and credibility to be given to the evidence, *it is reasonable to infer that the Trial Court may have had concerns as to whether Corporal Langlais applied the DUI statute properly...*" (Brief of Appellee at 21) (emphasis added).

even if the court had made finding of fact, *de novo* review would still be appropriate here. *See City of Clearwater v. Williamson*, 938 So.2d 985, 988 (Fla. 2d DCA 2006) (applying a de novo standard of review in a case involving an underlying probable cause question); *Mathis v. Coats*, 24 So.3d 1284, 1288 (Fla. 2 DCA 2010).

Probable Cause To Arrest:

Police may only arrest upon probable cause to believe that a crime has been, is being or is about to be committed. *Popple v. State*, 626 So.2d 185, 186 (Fla.1993) (citing *Henry v. United States*, 361 U.S. 98, 80 S.Ct. 168, 4 L.Ed.2d 134 (1959); § 901.15, Fla. Stat. (1991)). The existence of probable cause is an inexact science. *Murray v. State*, --- So.3d ----, 2015 WL 159052 (Fla. 4 DCA 2015). It is not based on a formulaic determination, but rather on the probability of criminal activity. *Id. See also, Doorbal v. State*, 837 So.2d 940, 952-53 (Fla.2003). Probable cause exists when the totality of the facts and circumstances within an officer's knowledge would cause a reasonable person to believe that an offense has been committed by the person being arrested. *Hatcher v. State*, 15 So.3d 929, 931 (Fla. 1st DCA 2009). *See also, Mathis v. Coats*, 24 So.3d 1284, 1288 (Fla. 2 DCA 2010) (The facts are to be analyzed from the officer's knowledge, practical experience, special training, and other trustworthy information). When analyzing the totality of the circumstances a deputy's experience is a relevant and significant factor in criminal investigations. *See State v. Hankerson*, 65 So.3d 502, 506 (Fla. 2011) ("The United States Supreme Court has expressly stated that a law enforcement officer 'may draw inferences based on his own experience in deciding whether probable cause exists.'"); *Strickroth v. State*, 963 So.2d 366, 369 (Fla. 2d DCA 2007) (Factors supporting a finding of probable cause include evidence of the officers' training and experience in criminal investigations). Probable cause for a DUI arrest must arise from facts and circumstances that show a probability that a driver is impaired by alcohol or has an unlawful amount of alcohol in

his system. *State, Dept. of Highway Safety and Motor Vehicles, Div. of Driver License v. Possati*, 866 So.2d 737, 740 (Fla.3 DCA 2004).

At the hearing on the motion to suppress there was only one witness to testify, Deputy Paul Langlais of the Pinellas County Sheriff's Office. The trial court also had occasion to view the video of the DUI field sobriety tests. During his testimony Deputy Langlais advised that he is a 16 year veteran of the Pinellas County Sheriff's Office. He has conducted over 700 DUI arrests and nearly 1000 DUI investigations. He is a DUI instructor and has had advanced DUI training.

On the morning in question he clocked Appellee who was driving on U.S. 19 at a speed of 82 mph in a 55 mph zone. The hour was approximately 2:00 a.m. As he passed the officer, Appellee slowed abruptly pressing "hard on the brakes." Upon making contact with the defendant he observed him to have a strong odor of alcohol emanating from his breath. His eyes were "a little bloodshot and glassy." Appellee stated he was coming from a nearby bar. Appellee was asked to participate in field sobriety tests (hereinafter FSTs). As he was preparing to administer the horizontal gaze and nystagmus test (hereinafter HGN) Deputy Langlais observed Appellee sway as he was standing. Upon completion of HGN Deputy Langlais testified Appellee exhibited six out of six clues of impairment including involuntary jerking of the eye, lack of smooth pursuit and the onset of nystagmus prior to a 45 degree angle. Appellee was asked to perform other FSTs including the walk-and-turn test and the one leg stand test. During the walk-and-turn test Deputy Langlais testified that Appellee lost his balance during the instructions, did not touch heel to toe on two occasions and stopped while walking. During the one-leg-stand Appellee swayed while balancing. Appellee acknowledged he had been drinking and when asked if he felt the effects of the alcohol he stated he felt a "body high."

During the cross-examination of Deputy Langlais, defense counsel dwelled continually on the various observations that are, at times, evidence of impairment that were not observed by

the deputy in this case. However, as we have previously stated, probable cause is not founded upon any particular set of criteria that must or must not be present before an officer has probable cause to believe that a crime has been or is being committed. It is not formulaic. *See Doorbal v. State*, 837 So.2d 940, 952 (Fla.2003).

> Many factors contribute to a finding of probable cause for a DUI arrest. David A. Demers, "Probable Cause for DUI Arrest," in *DUI Handbook* § 4.6(c) (11 West's Fla. Practice Series 2008–2009 ed.). For example, although an odor of alcohol is significant, it may not be dispositive. *State v. Kliphouse*, 771 So.2d 16, 23 (Fla. 4th DCA 2000). Other factors "may include the defendant's reckless or dangerous operation of a vehicle, slurred speech, lack of balance or dexterity, flushed face, bloodshot eyes, admissions, and poor performance on field sobriety exercises."

Mathis v. Coats, 24 So.3d at 1288.

Deputy Langlais' testimony was sufficient, in and of itself, to establish probable cause that the defendant was DUI. The driving (excessive speed and hard breaking), strong odor of alcohol and glassy bloodshot eyes, swaying as the officer spoke to him and performed HGN, failure to successfully complete the FSTs including losing his balance and failing to walk heel-to-toe, and acknowledging feeling a "body high" was sufficient to establish probable cause for DUI. *See e.g., Department of Highway Safety and Motor Vehicles v. Rose*, 105 So.3d 22, 24 (Fla. 2 DCA 2012) (police had probable cause to arrest for DUI where defendant failed to maintain his balance, stepped off the line, swayed while balancing on one leg, had bloodshot and watery eyes, and slow movements); *Ingram v. State*, 928 So.2d 423 (Fla. 1st DCA 2006) (law enforcement had probable cause to arrest defendant for DUI where defendant drove erratically, drove completely off the road, and had watery and bloodshot eyes and impeded speech); *State, Dept. of Highway Safety and Motor Vehicles v. Whitley*, 846 So.2d 1163, 166 (Fla. 5 DCA 2003) (holding that there was probable cause to arrest defendant for DUI where, among other factors, the officer observed defendant driving erratically and defendant's eyes were glassy). We have also had occasion to watch the video of the FSTs. We find the video consistent with the

testimony provided by the deputy at hearing including evidence of Appellee swaying and losing his balance as he performed the tests.

Conclusion:

Based upon the foregoing, this court finds the trial court's order determining that the deputy lacked probable cause to arrest Appellee was not supported by competent, substantial evidence and the judgment should be reversed.

IT IS THEREFORE ORDERED that the Order Granting Defendant's Second Motion to Suppress Evidence Illegally Obtained by Law Enforcement finding that law enforcement did not have probable cause to arrest the Defendant is reversed and remanded for further proceedings consistent with this order.

ORDERED at Clearwater, Florida this 13 day of February, 2015.

Original Order entered on February 13, 2015, by Circuit Judges Michael F. Andrews, Joseph Bulone, and Sherwood Coleman.

cc: Honorable James V. Pierce
Andrew Shein, Esquire
Office of the State Attorney