IN THE CIRCUIT COURT FOR THE
NINTH JUDICIAL CIRCUIT IN AND
FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,

Appellant,
v.

RAMAN DANNY CHOPRA,

Appellee.
_____/

CASE NO.: 2014-AP-19-A-O
Lower Case No.: 2014-CT-93-A-O

On Appeal from the County Court
for Orange County
Judge Wilfredo Martinez

Jeffrey L. Ashton, State Attorney
Austin Price, Assistant State Attorney
Attorney for Appellant

Stuart Hyman, Esq.
Attorney for Appellee

Before J. KEST, MYERS, WHITEHEAD, J.J.

PER CURIAM.

FINAL ORDER REVERSING TRIAL COURT

The State appeals an order granting Appellee's motion to suppress evidence stemming from his DUI arrest. Where a motion to suppress involves mixed questions of fact and law, the standard of review for the trial court's factual findings is whether competent substantial evidence supports the findings; the court's application of the law to the facts is reviewed de novo. *Hawley v. State*, 913 So. 2d 98, 100 (Fla. 5th DCA 2005).

The only witness to testify at the suppression hearing held on March 24, 2014 was Orange County Deputy Liborio Rivera, a nine-year veteran of law enforcement. He attempted to testify about a call from dispatch regarding a report of an intoxicated driver at a McDonald's, but the court disallowed this testimony as hearsay. The deputy testified that when he arrived at the

McDonald's, he spoke to the manager, Samantha Rodriguez. She told him that a customer who had just left in a white Mercedes was drunk. She pointed to the vehicle, which was still in the parking lot. Rivera went back to his patrol car and drove around to intercept the vehicle. The Mercedes began driving toward him. The deputy stopped his car and the Mercedes stopped in front of him.

The deputy asked the driver, Appellee, to step out of his car but first had to remind him to put the vehicle into parking gear. The deputy testified that the driver stumbled out his vehicle, was disheveled and groggy-looking, had bloodshot eyes, had vomit on his face, and said "I know I shouldn't be driving." The deputy also testified that he smelled a strong odor of alcohol coming from Appellee's breath and that Appellee slurred his speech and stumbled through the parking lot. The deputy attempted to have Appellee perform field sobriety exercises but Appellee kept fumbling with and talking on his phone, ignoring the deputy's instructions. The deputy took the phone and arrested Appellee for driving under the influence. According to Rivera, Appellee subsequently refused to take a breath test.

The trial court did not explicitly rule on the legality of the initial stop and investigation. Instead, it granted the motion to suppress on the basis that there was no probable cause to arrest. The court said that it did not hear testimony about slurred speech or the odor of alcohol, and found that the deputy's description was "a rather generalized and unarticulated summary."

On appeal, the State contends that the trial court erred in disallowing hearsay testimony at the suppression hearing regarding what the deputy learned from dispatch. Hearsay is not, per se, inadmissible at a suppression hearing. *State v. Bowers*, 87 So.3d 704 (Fla. 2012) requires only that the officer who actually made the traffic stop and ensuing investigation testify as to his or her basis for those actions. It does not stand for the proposition that the officer cannot testify regarding what information was relied on in making a determination of reasonable suspicion or

probable cause. "An officer can testify in a suppression hearing as to his own knowledge and information received from other reliable sources, such as fellow officers." *Carter v. State*, 120 So. 3d 207, 209 (Fla. 5th DCA 2013), citing to *Bowers.* It would then be up to the trial court to determine whether that information was sufficiently reliable to allow the stop or arrest depending on its source, such as fellow officer or anonymous tip. See, also *State v. Robinson,* 21 Fla. L. Weekly Supp. 864a (Fla. 9th Cir. Ct. 2014). What Rivera learned from dispatch, although hearsay, was relevant in assessing what information was known to him and in assessing whether he could rely on it.

Law enforcement may conduct an investigatory stop based on a tip providing reasonable suspicion where that tip has been deemed sufficiently reliable. *State v. Hutz*, 144 So. 3d 618, 621 (Fla. 4th DCA 2014). The McDonald's manager was a citizen informant. Her identity was known and the deputy spoke with her face-to-face. Her tip alone was sufficient to create reasonable suspicion to conduct the traffic stop. *Hutz at* 621; *Keller v. State*, 71 So. 3d 927, 929 (Fla. 1st DCA 2011).

As for probable cause to arrest, the trial court's factual findings are not supported by the record. While it found that the deputy did not testify about slurred speech or the odor of alcohol, it is clear that he did, although it is understandable how these statements might have been missed, given the frequent interjections by counsel on both sides concerning hearsay and other issues. The fact that the deputy did not specifically testify the vomit was fresh or indicate just how the stumbles occurred, both of which the trial court found wanting, did not negate the overall picture of a driver who was likely impaired.

"Probable cause sufficient to justify an arrest exists where the facts and circumstances, as analyzed from the officer's knowledge, special training and practical experience, and of which he has reasonable trustworthy information, are sufficient in themselves for a reasonable man to

reach the conclusion that an offense has been committed." *State, Dept. of Highway Safety & Motor Vehicles v. Whitley*, 846 So. 2d 1163, 1165-66 (Fla. 5th DCA 2003) (internal citations omitted). "[T]he test for probable cause does not require the proof that the beyond a reasonable doubt standard or even the preponderance of the evidence standard requires." *State v. Grue*, 130 So. 3d 256, 260 (Fla. 5th DCA 2013). 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 & Motor Vehicles, Div. of Driver Licenses v. Possati*, 866 So. 2d 16, 23 (Fla. 2d DCA 2004).

The deputy, an experienced law enforcement officer, testified to a host of frequently cited signs of impairment, including bloodshot eyes, grogginess, stumbling, slurred speech, the odor of alcohol, disheveled appearance, vomit, and the inability or failure to follow the deputy's instructions. His testimony was both specific enough and sufficient to demonstrate a probability that Appellee was impaired. The trial court erred in granting the motion to suppress for lack of probable cause.

IT IS THEREFORE **ORDERED AND ADJUDGED** that the Order of the trial court is **REVERSED** and the matter **REMANDED** for further proceedings.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida on this the 15th day of April, 2015.

/S/
JOHN MARSHALL KEST
Presiding Circuit Judge

MYERS and WHITEHEAD, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order was furnished to the **Honorable Wilfredo Martinez,** Orange County Courthouse, 425 North Orange Avenue, Orlando, Florida, 32801**; Austin Price, Esq.,** Assistant State Attorney, Office of the State Attorney, 415 North Orange Avenue, Orlando, Florida 32801 and **Stuart Hyman, Esq**., 1520 East Amelia Street, Orlando, Florida 32803 on the 15th day of April, 2015.

/S/

Judicial Assistant