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

STATE OF FLORIDA,

Appellant,

v.

ALEXANDER STEPHEN GREEN,

Appellee.
_____/

CASE NO.: 2015-AP-000013-A-O
LOWER COURT NO.: 2015-CT-000053-A-O

Appeal from the County Court,
in and for Orange County, Florida,
Carolyn Freeman, County Court Judge.

Jeffrey Ashton, State Attorney
and Stacy G. Fallon, Assistant State Attorney,
for Appellant.

Michael J. Snure, Esq. and William R. Ponall, Esq.
for Appellee.

Before J. RODRIGUEZ, CARSTEN, and SCHREIBER, J.J.

PER CURIAM.

FINAL ORDER AND OPINION REVERSING TRIAL COURT

Appellant, State of Florida ("State"), timely appeals the trial court's partial granting of Appellee, Alexander Green's ("Green"), Motion to Suppress. This Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(1)(B).

Procedural History

On January 3, 2015, Green was arrested for Driving Under the Influence. As a result of this arrest, the officer at the scene did an inventory search of Green's vehicle. The officer found two partially full bottles of alcohol sitting on the passenger seat. On January 23, 2015, Green

filed a Motion to Suppress Evidence alleging that there was no probable cause or warrant to justify the stop. He argued that this constituted an illegal stop, detention, search and seizure and arrest and requested that "any and all evidence of any kind seized" be suppressed. Green did not specifically list any items or statements to be suppressed.

On February 26, 2015, State filed State's Motion to Strike Defendant's Motion to Suppress Evidence, alleging that Green did not properly put State on notice of what he sought to suppress as there was no clear statement of the particular evidence to be suppressed, the reason for the suppression, and a general statement of the facts as required by Florida Rule of Criminal Procedure 3.190(g)(2).

A suppression hearing was held on March 2, 2015. At the hearing, Green argued that State needed to prove that the stop was legal and had failed to do so, resulting in the need for suppression, also providing the trial court with a case in which a nearly identical motion to suppress was permitted. He argued that the inventory search was invalid because there was no evidence of an inventory policy introduced at the hearing. State argued that blanket allegations in a motion to suppress were not sufficient as they did not provide notice of the arguments to be made and Green needed to specifically state the items he wanted suppressed and mention that they were part of an inventory search. State also requested that the trial court permit the presentation of additional evidence if it was to make a finding on the issue. This request was denied. The trial court partially granted Green's motion to suppress as to the inventory search and all evidence obtained during this search.

Arguments on Appeal

State argues that the trial court erred in partially granting Green's Motion to Suppress. State argues that Green's Motion was insufficient as it was not specific and did not follow the

rules in stating the particular evidence which it sought to be suppressed, thereby failing to give proper notice of the issues to be argued. It is further alleged that there was no mention made of the inventory search in the entirety of the Motion. Additionally, at the hearing, State requested that the issues be crystallized prior to testimony and Green made no mention of an inventory search at that time.

Green responds by arguing that, based on his motion and the absence of a warrant, the trial court properly shifted the burden of proof to State. He states that State failed to meet its burden of establishing the validity of the inventory search of the vehicle, resulting in the proper partial granting of the Motion to Suppress.

Standard of Review

A review of the trial court's order on a motion to suppress is a mixed standard of review. "The trial court's 'determination of historical facts enjoys a presumption of correctness and is subject to reversal only if not supported by competent, substantial evidence in the record.'" *State v. Diaz-Ortiz*, 40 Fla. L. Weekly D1718 (Fla. 5th DCA July 24, 2015) (quoting *State v. Clark*, 986 So. 2d 625, 628 (Fla. 2d DCA 2008)). However, the trial court's application of the law to the historical facts is reviewed *de novo*. *State v. Myers*, 40 Fla. L. Weekly D1660 (Fla. 5th DCA July 17, 2015) (citing *State v. Triplett*, 82 So. 3d 860, 863 (Fla. 4th DCA 2011)).

Analysis

Florida Rule of Criminal Procedure 3.190(g)(2) states that "[e]very motion to suppress evidence shall state clearly the *particular* evidence sought to be suppressed, the reasons for suppression, and a general statement of facts on which the motion is based." (emphasis added). A motion to suppress must specify what evidence the party seeks to suppress. *State v. Leyva*, 599 So. 2d 691, 693 (Fla. 3d DCA 1992) (citing Fla. R. Crim. P. 3.190(h)). The motion or the court's

order granting the motion must identify the items to be suppressed with particularity. *State v. Jackson*, 513 So. 2d 797 (Fla. 4th DCA 1987) (reversing the order to suppress). When a motion to suppress is lacking a statement regarding the particular evidence sought to be suppressed, "it is more or less a boilerplate motion" and is legally insufficient. *State v. Hernandez*, 841 So. 2d 469, 471 (Fla. 3d DCA 2002).

A motion to suppress must provide the opposing party with notice that the filing party seeks to argue certain issues before the trial court. *State v. Christmas*, 133 So. 1093, 1096 (Fla. 4th DCA 2014) (in this dog sniff case, the motion to suppress mentioned the dog but made no allegations relating to the dog's training or reliability which was the issue the defendant sought to argue and suppress). If there is insufficient notice of an issue to be raised, the trial court should permit the State to present additional evidence on that issue. *State v. Laveroni*, 910 So. 2d 333 (Fla. 4th DCA 2005). Otherwise, untimely disclosure deprives the State of notice. *Christmas*, 133 So. 3d at 1097.

In this case, Green's statement of facts is limited to one sentence: "That the Defendant was stopped while driving an automobile by an officer of the Orange County Sheriff's Office on or about January 3, 2015, allegedly in Orange County, Florida." The motion sought to suppress:

> "any and all evidence of any kind seized from the Defendant or his person subsequent to his stop in this matter including, but not limited to, the results of any breath tests, or evidence of refusal to take such tests, any statements by the Defendant, the results of any field sobriety exercises, any observations by the police officer, and any items of evidence seized from the Defendant."

However, the statement of facts did not allege that an inventory search occurred nor did the motion mention that Green was seeking to suppress the evidence obtained from an inventory search of the vehicle. Green's motion attempts to broadly suppress "any and all evidence of any kind seized…." Green mentioned for the first time at the hearing that the inventory search was

invalid because there was no evidence of an inventory policy. Therefore, the State was not provided with notice that Green was challenging the inventory search and the trial court erred by not allowing the State to present additional evidence on the inventory search before ruling on the motion to suppress. *Id.*

Accordingly, it is hereby **ORDERED AND ADJUDGED** the Trial Court's ruling is **REVERSED AND REMANDED** for further proceedings.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 16th day of September, 2015.

/S/
JOSE R. RODRIGUEZ
Presiding Circuit Judge

CARSTEN and SCHREIBER, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished to **Judge Carolyn Freeman,** 425 N. Orange Avenue, Orlando, Florida 32801; **Stacy G. Fallon, Assistant State Attorney**, at 415 N. Orange Avenue, Suite 200, Orlando, Florida 32802-1673, as counsel for Appellant; and **Michael J. Snure, Esq.**, and **William R. Ponall, Esq.**, Snure & Ponall, P.A., at 425 West New England Avenue, Suite 200, Winter Park, Florida 32789, as counsel for Appellee on the 16th day of September, 2015.

/S/
Judicial Assistant