PD-0324-17
COURT OF CRIMINAL APPEALS
AUSTIN, TEXAS
Transmitted 4/10/2017 8:33:44 AM
Accepted 4/11/2017 3:17:06 PM
ABEL ACOSTA
CLERK

NO. 13-15-00069-CR

TO THE COURT OF CRIMINAL APPEALS

OF TEXAS

THE STATE OF TEXAS **Appellant,**

v.

ROGER ANTHONY MARTINEZ **Appellee.**

Appeal from Victoria County

STATE'S PETITION FOR DISCRETIONARY REVIEW

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FILED IN
COURT OF CRIMINAL APPEALS

April 11, 2017

ABEL ACOSTA, CLERK

Identity of Judge, Parties, and Counsel

Pursuant to Tex. R. App. P. 68.4(a) (2014), the Judge, parties, and counsel in this suit are:

TRIAL JUDGE:	**The Honorable Eli Elmo Garza** **377th Judicial District Court** **Victoria, Texas**
APPELLANT:	**The State of Texas**
APPELLEE:	**Roger Anthony Martinez**
TRIAL PROSECUTOR:	**Brendan Wyatt Guy** **State Bar # 24034895** **Assistant Criminal District Attorney** **205 N. Bridge St., Suite 301** **Victoria, TX 77901-6576**
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APPELLATE STATE'S ATTORNEY:	**Brendan Wyatt Guy** **State Bar #24034895** **Assistant Criminal District Attorney** **205 N. Bridge St., Suite 301** **Victoria, TX 77901-6576**
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No. 13-15-00069-CR

TO THE COURT OF CRIMINAL APPEALS

OF THE STATE OF TEXAS

THE STATE OF TEXAS, ...Appellant

v.

ROGER ANTHONY MARTINEZ, ...Appellee

* * * * *

STATE'S PETITION FOR DISCRETIONARY REVIEW

* * * * *

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

Comes now the State of Texas, by and through its Criminal District Attorney for Victoria County, and respectfully urges this Court to grant discretionary review of the above named cause, pursuant to the rules of appellate procedure.

Statement Regarding Oral Argument

Oral argument is waived.

Statement of the Case

Appellee was charged by indictment on June 26, 2014 in Cause Number 14-06-28047-A with one count of Possession of a Controlled Substance in a Correctional Facility and one count of Possession of a Substance in Penalty Group

1 in an amount of less than 1 gram. [CR-I-5]. On January 26, 2015, the Appellee filed a motion to suppress. [CR-I-17-20]. A hearing was held on that motion to suppress on February 4, 2015. [RR-I-1]. That same day the trial court, with the Honorable Eli Garza presiding, granted Appellee's motion to suppress with a written order. [CR-I-14]. On February 5, 2015, the State requested written findings of fact and conclusions of law. [CR-I-23-24]. On February 6, 2015, the trial court issued its written findings of fact and conclusions of law. [CR-I-26-28]. The State timely filed its notice of appeal on February 9, 2015. [CR-I-29-32]. On October 1, 2015, the Thirteenth Court of Appeals (hereafter Court of Appeals) affirmed the trial court ruling granting the motion to suppress. *State v. Martinez,* No. 13-15-00069-CR, 2015 WL 5797604 (Tex. App.-Corpus Christi 2015), *vacated,* No. PD-1337-15, 2016 WL 7234085 (Tex. Crim. App. 2016)(not designated for publication).

This Honorable Court declined the State's petition for discretionary review but granted its own petition, and on December 14, 2016 vacated the ruling of the Court of Appeals and ordered the case remanded to the Court of Appeals with instructions to remand the case to the trial court to prepare additional findings of fact on the question of whether there was sufficient circumstantial evidence provided by the testimony of the supporting officers to establish that the arresting officer had probable cause to arrest. See *State v. Martinez,* No. PD-1337-15, 2016

WL 7234085 at 8 (Tex. Crim. App. 2016)(not designated for publication)(plurality op.)

On January 26, 2017 the Court of Appeals abated the appeal and remanded the case back to the trial court with instructions to supplement its findings of fact. [SCR-I-6-7]. On February 2, 2017 the trial court filed its supplemented findings of fact which concluded that even in considering the testimony of the supporting officers there was insufficient evidence to establish that the arresting officer had probable cause. [SCR-I-8-11]. The Court of Appeals reinstated the appeal and on March 16, 2017 again affirmed the trial court's suppression ruling. See *State v. Martinez,* No. 13-15-00069-CR (Tex. App.-Corpus Christi 2017, pet. filed)(mem. op. on remand not designated for publication).

Statement of Procedural History

On March 16, 2017, the Thirteenth Court of Appeals upheld the trial court's suppression of evidence. *Id.* at 13. No motion for rehearing was filed. The State's petition is due April 14, 2017.

Statement of the Facts

Appellee was indicted on June 26, 2014 for Possession of a Controlled Substance in a Correctional Facility and Possession of a Substance in Penalty Group 1 in an amount of less than one gram. [CR-I-3]. On January 26, 2015, Appellee filed a motion to suppress. [CR-I-15-18]. The trial court conducted a

hearing on this motion on February 4, 2015. [RR-I-1].

At the hearing the State called Javier Guerrero, formerly of the Victoria Police Department. [RR-I-7-8]. Officer Guerrero established that on January 5, 2014, at approximately 11:40 in the evening, he met the Appellee when he was called out to the G&G Lounge to investigate a possible fight in the parking lot of that business. [RR-I-9-10].

Officer Guerrero then described how he arrived at the back parking lot of that location and observed the Appellee and another individual arguing. [RR-I-10-11]. Officer Guerrero then established he was the first office on the scene, and that Officers Ramirez, Dial, and Quinn also came to the scene. [RR-I-11].

Officer Guerrero then confirmed the confrontation between the two individuals was strictly verbal, but that the two people were screaming at each other. [RR-I-12]. Officer Guerrero also established that he believed the Appellee was intoxicated due to the Appellee having difficulty standing and due to the smell of alcohol on Appellee's breath. [RR-I-12]. Officer Guerrero also noted that the Appellee's eyes were "real glassy" and that the Appellee's voice was "slurred." [RR-I-13]. Officer Guerrero then characterized Appellee's behavior towards him as "very aggressive" and described how the Appellee would not let the officers talk. [RR-I-13]. Officer Guerrero then confirmed that the odor of alcohol was present on both Appellee's breath and person. [RR-I-14].

Officer Guerrero then established that the Appellee was arrested for public intoxication by Officer Quinn. [RR-I-16]. Officer Guerrero also established that he personally witnessed the arrest and did not observe any misconduct by Officer Quinn. [RR-I-17].

Officer Guerrero also testified that the parking lot was in use, that it had major roadways nearby, and that cars were able to freely access the parking lot. [RR-I-17].

On re-direct, Officer Guerrero explained he was about two feet away from the Appellee during the investigation. [RR-I-24]. Officer Guerrero also established that the Appellee did not explain how he had gotten to the G&G Lounge and did not appear to be in a condition where he could safely walk home. [RR-I-25].

The State then called Officer Timothy Ramirez of the Victoria Police Department. [RR-I-26-27]. Officer Ramirez explained that on January 5, 2014, he was one of the officers called to investigate a possible fight at the G&G Lounge. [RR-I-27-28].

Officer Ramirez confirmed meeting the Appellee that evening and stated he believed the Appellee was intoxicated that night. [RR-I-29]. Officer Ramirez then described the Appellee as having slurred speech, a swayed stance, red and glassy eyes, and having the odor of alcohol emitting from his breath and person. [RR-I-

29]. Officer Ramirez further established he was within two to three feet of the Appellee when he made those observations. [RR-I-29].

Officer Ramirez then described how Appellee's behavior was "very aggressive and belligerent", noted that Appellee would not cooperate with the police investigation, and indicated that the Appellee was yelling at the police. [RR-I-29].

Officer Ramirez then noted that the parking lot was approximately 15 feet away from a roadway that was in use and approximately 15 to 20 feet from South Laurent. [RR-I-31-32]. Officer Ramirez then explained that South Laurent gets "very heavy traffic" and that it can get heavy traffic even as late in the evening as the time when Officer Ramirez made contact with the Appellee. [RR-I-32].

Officer Ramirez then noted that there was no one present who was fit to take care of the Appellee and that the Appellee did not ask to have someone come and pick him up or ask to call for a taxi. [RR-I-32]. Officer Ramirez also stated that the Appellee was not in a fit condition to drive or to walk home. [RR-I-32-33].

Officer Ramirez then confirmed witnessing the actual arrest of the Appellee by Officer Quinn. [RR-I-33]. Officer Ramirez then stated he did not observe any misconduct on Officer Quinn's part and noted that none of the other officers present at the scene disagreed with Officer Quinn's arrest decision. [RR-I-33].

On re-direct, Officer Ramirez described how the police were unable to

effectively talk with the Appellee due to his continual yelling of obscenities and his refusal to follow police instructions. [RR-I-35-36].

After argument, the trial court issued its ruling. [RR-I-53]. The trial court declined to make any finding as to improper actions by Officer Ramirez or Officer Guerrero. [RR-I-54]. Nevertheless, the trial court granted Appellee's motion to suppress. [RR-I-55].

The trial court subsequently issued written findings of fact and conclusions of law. [CR-I-24-26]. The trial court found this incident occurred outside the D&G Lounge (a bar) at approximately 11:30 at night. [CR-I-24]. The trial court also concluded that Officer Quinn was the only officer who affected the arrest. [CR-I-26].

On remand the trial court issued supplemental findings of fact. [SCR-I-8-11]. The trial court found that both Officer Guerrero and Officer Ramirez perceived several indications of intoxication on the Appellee with Officer Guerrero observing the odor of alcohol, swaying, and slurred speech [SCR-I-9] while Officer Ramirez observed the Appellee to have slurred speech and a swayed stance. [SCR-I-10]. The trial court also found that Officer Quinn heard the Appellee screaming and yelling. [SCR-I-9]. And the trial court reiterated its earlier finding that there was no misconduct on the part of Officers Guerrero and Ramirez in this incident. [SCR-I-11]. Nevertheless, the trial court refused to find

that Officer Quinn was present at the time when Officers Guerrero and Ramirez perceived signs of intoxication on the Appellee. [SCR-I-11]. Thus the trial court reaffirmed its earlier ruling to grant suppression in this case. [SCR-I-11]. The trial court did not issue any findings of fact concerning the evidence the State had presented that the offense happened in a public place or any findings of fact concerning the evidence the State presented that the Appellee was a danger to himself or others. [SCR-I-8-11].

On February 22, 2017, the State filed a motion to abate the appeal requesting that the Court of Appeals remand the case back to the trial court to issue supplemental findings of fact concerning the evidence presented by the State that the offense occurred in a public place and that the Appellee was a danger to himself or others. [A-15, A-21-A22]. The State also raised the trial court's failure to issue findings of fact on these points in its brief. [A-58-A-61]. On March 16, 2017, the Court of Appeals affirmed the trial court's ruling. *Martinez*, No. 13-15-00069-CR at 13. The Court of Appeals ruling did not address the State's argument regarding the trial court's failure to address the public place and endangerment evidence in its findings of fact. *Id.* at 12.

Ground for Review

I. The Court of Appeals erroneously decided an important question of state law in a way that conflicts with the applicable decisions of the Court of Criminal Appeals, by finding that the knowledge of supporting officers cannot be used to establish probable cause.

II. The Court of Appeals failed to conduct the required *de novo* review of whether the evidence known to Officer Quinn was sufficient to establish probable cause and that failure constitutes a departure from the accepted and usual course of judicial proceedings that calls for an exercise of the Court of Criminal Appeals' power of supervision.

III. The Court of Appeals failed to require the trial court to provide findings of fact on every potentially case dispositive issue and that failure constitutes a departure from the accepted and usual course of judicial proceedings that calls for an exercise of the Court of Criminal Appeals' power of supervision

Argument and Authorities

I. The Court of Appeals failed to properly apply Court of Criminal Appeals precedent on how probable cause can be established through the knowledge of supporting officers

The Court of Appeals ruling holds that whether the State established probable cause to arrest depends on what was known or told to Officer Quinn. The Court of Appeals specifically identified the central issue of the case to be whether Officer Quinn observed or was informed that the Appellee was committing a crime. *Martinez,* No. 13-15-00069-CR at 9. And the Court of Appeals found it critical that there was no evidence that Officers Guerrero or Ramirez ever relayed their observations concerning the Appellee's condition to Officer Quinn. *Id.* at 10-11.

Thus the Court of Appeals implicitly rejected the idea that probable cause to arrest the Appellee could be established through the knowledge of the supporting officers. Such a holding ignores existing, controlling precedent from the Court of Criminal Appeals and thus the Court of Appeals ruling is plain error and should be reversed.

Texas law has long held that "when there has been some cooperation between law enforcement agencies or between members of the same agency, the sum of the information known to the cooperating agencies or officers at the time of an arrest or search by any of the offices involved is to be considered in determining whether there was sufficient probable cause." See *Pyles v. State,* 755 S.W. 2d 98, 109 (Tex.Crim. App. 1988). Nor does anything in the *Pyles* decision indicates that the only way supporting officers can de deemed to be cooperating in an investigation is by relaying their own observations to the officer who actually performs the arrest.

Pyles is also not the only case where this Honorable Court has permitted law enforcement agents to rely upon collective knowledge. The *Derichsweiler* case established that when evaluating whether the police have reasonable suspicion to detain, the "detaining officer need not be personally aware of every fact that objectively supports a reasonable suspicion to detain". *Derichsweiler v. State,* 348 S.W. 3d 906, 914 (Tex. Crim. App. 2011). Rather reviewing courts are to look to

"the cumulative information known to the cooperating officers at the time of the stop." *Derichsweiler,* 348 S.W. 3d at 914.

If the collective knowledge of all of the investigating officers can be used to establish the legality of a detention, it is only logical to apply the same approach to evaluating the legality of an arrest. In both circumstances the concern is the same: making sure the police do not infringe upon the rights of a citizen without adequate cause. And allowing the police to rely upon the collective knowledge of all officers involved in the investigation does not diminish the protections of the suspect. The police are still barred from arbitrary arrest by the requirement that they have sufficient knowledge to establish probable cause. Thus this approach fully protects the rights of suspects to be safe from arbitrary arrest while enabling effective law enforcement by allowing the police to pool their collective knowledge.

If the Court of Appeals had followed the precedent set down in *Pyles* and reaffirmed in *Derichsweiler* then it would have found the police had probable cause to arrest the Appellee. Probable cause is a low standard of proof that only requires a "fair probability" or "a substantial chance of criminal activity, not an actual showing of such activity." See *Illinois v. Gates*, 462 U.S. 213, 243 n.13 (1983); *Parker v. State*, 206 S.W.3d 593, 599 (Tex. Crim. App. 2006). Furthermore, evidence as sparse as red watery eyes, slurred speech, and swaying

has been upheld as sufficient to establish probable cause that a suspect was intoxicated. See *State v. Villarreal,* 476 S.W. 3d 45, 50 (Tex. App.-Corpus Christi 2014) *aff'd,* 475 S.W. 3d 784 (Tex. Crim. App. 2014).

In this case, the trial court's findings provided overwhelming grounds to establish probable cause that the Appellee was intoxicated. The trial court found credible Officer Guerrero's testimony that the Appellee had an odor of alcohol, slurred speech, and was swaying. [SCR-I-9]. The trial court likewise found credible Officer Ramirez's testimony that the Appellee had slurred speech and was swaying. [SCR-I-10]. And the trial court found that Officer Quinn heard the Appellee "yelling and screaming" [SCR-I-9] and concluded that this incident occurred outside a bar, late at night. [CR-I-24]. If evidence of red watery eyes, slurred speech, and swaying is sufficient to establish probable cause for intoxication then evidence that a defendant had slurred speech, an odor of alcohol, was swaying, and was yelling and screaming outside a bar late at night is more than enough to establish probable cause that the defendant was intoxicated.

Nor is there any dispute that this incident occurred in a public place or that the Appellee was a danger to himself or others. The State presented substantial evidence that this offense occurred in a public place (the parking lot outside the G&G Lounge) [RR-I-10; 16], and that the Appellee was a danger to himself or others (since he was found in a parking lot that was in use and near busy streets).

[RR-I-17, 25, 31-32]. But despite the State presenting this evidence the trial court did not issue any findings of fact addressing the State's evidence that the incident occurred in a public place and that the Appellee was a danger to himself or others, [CR-I-24-26; SCR-I-8-11] and the Court of Appeals did not remand the case back to the trial court to issue additional findings on either of those grounds. See *Martinez,* No. 13-15-00069-CR at 12.

It is plain error for the trial court to issue findings of fact that do not address every potentially case dispositive issue and for the Court of Appeals to affirm the trial court on incomplete findings. See *State v. Elias,* 339 S.W. 3d 667, 676-677 (Tex. Crim. App. 2011). Thus clearly neither the trial court nor the Court of Appeals believe the public place and endangerment elements are in dispute in the case (since if they were in dispute then the trial court would have been obligated to have issued findings of fact concerning the evidence on these issues). Accordingly, the only issue in dispute in the case was whether the Appellee was intoxicated.

As such if the Court of Appeals had followed existing Court of Criminal Appeals precedent then it would have considered the knowledge not just of Officer Quinn but also of Officers Guerrero and Ramirez in determining whether the police had probable cause to arrest the Appellee, and if the Court of Appeals had done so then it would have determined the police had the required probable cause to arrest the Appellee. For the Court of Appeals to rule otherwise is for it to rewrite state

law in a manner that is inconsistent with established Court of Criminal Appeals precedent, and thus this petition should be granted.

II. The Court of Appeals committed reversible error by failing to conduct a proper *de novo* review on whether the evidence known to Officer Quinn was sufficient to establish probable cause.

In the alternative the Court of Appeals ruling is also plain error because the Court of Appeals failed to review *de novo* whether Officer Quinn had sufficient knowledge to establish probable cause to arrest the Appellee.

Questions involving legal principles and the application of law to established facts are reviewed *de novo*. *See Kothe v. State,* 152 S.W. 3d 54, 62-63 (Tex. Crim. App. 2004). Likewise mixed questions of law and fact that do not turn on evaluations of credibility and demeanor are also reviewed *de novo*. *Losereth v. State,* 963 S.W. 2d 770, 772 (Tex. Crim. App. 1998). And whether police had probable cause is a legal question that must be reviewed *de novo*. See *Guzman v. State,* 955 S.W. 2d 85, 87 (Tex. Crim. App. 1997). Thus the determination of whether the facts known to Officer Quinn would have been sufficient to establish probable cause is properly a legal question and should have been reviewed by the Court of Appeals *de novo*. Unfortunately, the Court of Appeals failed to fulfill this responsibility.

The Court of Appeals based their ruling uphold the trial court's suppression order on the trial court's conclusion that there was "no evidence that the Court

found to be persuasive with regard to the defendant being intoxicated in the presence of Quinn." See *Martinez,* 13-15-00069-CR at 11. But whether the police had probable cause is a legal question not a factual question. See *Guzman,* 955 S.W. 2d at 87. Thus it was plain error for the Court of Appeals to simply adopt the trial court's determination on whether the facts known to Officer Quinn were sufficient to establish probable cause. Under *de novo* review it was the responsibility of the Court of Appeals not simply to reaffirm the trial court's legal conclusion but instead to perform its own analysis of all of the evidence found true by the trial court and decide whether that evidence was sufficient as a matter of law to establish probable cause. The Court of Appeals' failure to properly perform its required *de novo* review constitutes a clear and unjustified departure from the accepted and usual course of judicial proceedings that necessitates the exercise of the Court of Criminal Appeals' power of supervision.

If the Court of Appeals had conducted the required *de novo* legal analysis, it would have concluded Officer Quinn had probable cause to arrest the Appellee for the offense of public intoxication. Probable cause to arrest is determined by looking at the totality of the circumstances known to see if the facts and circumstances known to the arresting officer(s) are sufficient to warrant a man of reasonable caution in the belief that a particular person has committed or is committing an offense. See *Amores v. State,* 816 S.W. 2d 407, 413 (Tex. Crim.

App. 1991). In this case, even just considering what would have been known to Officer Quinn, the totality of the circumstances was clearly enough to establish probable cause to arrest.

The trial court found that Officer Quinn observed the Appellee "yelling and screaming." [SCR-I-9]. Such obnoxious behavior is a strong indicator of intoxication. See *Quesada v. State,* 751 S.W. 2d 309, 311 (Tex. App.-San Antonio 1988, no pet)(finding belligerent behavior an indication of intoxication); *Mack v. State,* No. 14-03-0036-CR, 2014 WL 524879 at 3 (Tex. App.-Houston [14th Dist.] 2004, no pet)(mem. op. not designated for publication)(finding a suspect yelling to be a factor that supports a finding of intoxication); *Henderson v. State,* No. 06-13-00010-CR, 2013 WL 5763296 at 2-3 (Tex. App.-Texarkana 2013, no pet)(mem. op. not designated for publication)(finding a suspect screaming to be a factor that supports a finding of intoxication).

Furthermore, the evidence of the Appellee yelling and screaming becomes an even stronger indication of intoxication when that evidence is paired with the trial court's finding of fact that this incident occurred outside a bar at approximately 11:30 at night. [CR-I-24]. Loud behavior, outside a bar, late at night is textbook intoxicated behavior and thus the trial court's findings on just these two points is sufficient to establish that Officer Quinn had probable cause to believe the Appellee was intoxicated.

Nor was the evidence that the Appellee was "yelling and screaming" outside a bar late at night the only evidence Officer Quinn had to determine the Appellee was intoxicated. The trial court also found that "Officer Quinn was the only officer who effectuated the arrest of the defendant." [CR-I-26]. If Officer Quinn was the officer who carried out the arrest of the Appellee then logically Officer Quinn must have gotten into close proximity to the Appellee. And since the trial court believed Officer Guerrero's testimony that the Appellee had an odor of alcohol on him [SCR-I-9], Officer Quinn would obviously have smelled that odor of alcohol when he was close to the Appellee. Thus the odor of alcohol on the Appellee would be another factor that would give Officer Quinn probable cause to believe the Appellee was intoxicated.

As previously discussed, both the Court of Appeals and the trial court clearly believed that whether the Appellee was intoxicated or not is the only issue in dispute in regards to whether the police had probable cause to arrest the Appellee. And the facts found true by the trial court are sufficient to establish that Officer Quinn had probable cause as a matter of law to conclude the Appellee was intoxicated. Thus if the Court of Appeals had performed the required *de novo* analysis and properly evaluated the legal significance of the trial court's factual findings then the Court of Appeals would have concluded Officer Quinn had probable cause that the Appellee was intoxicated. That the Court of Appeals failed

to perform the *de novo* review and instead just deferred to the trial court's erroneous legal conclusion of no probable cause is an abandonment of an appellate's court primary responsibility and is an egregious enough departure from the accepted and usual course of judicial proceedings that it calls for an exercise of the Court of Criminal Appeals' power of supervision in this case. As such this petition should be granted on this ground as well.

III. The Court of Appeals committed reversible error by failing to require the trial court to issue findings of fact addressing the State's evidence that the offense occurred in a public place and that the Appellee was a danger to himself or others.

In the alternative, the Court of Appeals also erred by failing to require the trial court to issue findings of fact that address the State's evidence establishing the public place and endangerment elements.

The losing party in a motion to suppress hearing is entitled to have the trial court express its "essential findings." *State v. Cullen,* 195 S.W. 3d 696, 700 (Tex. Crim. App. 2006). "Essential findings" consist of "the findings of fact and conclusions of law adequate to provide an appellate court with a basis upon which to review the trial court's application of the law to the facts." *Id.* If the trial court fails to provide the findings of fact necessary to address a potentially dispositive issue then that failure constitutes a "failure to act" on behalf of the trial court under Texas Rule of Appellate Procedure 44.4(a). *Elias,* 339 S.W. 3d at 676. The

remedy for such a failure is to remand the case back to the trial court for entry of additional, specific findings of fact that will address the potentially dispositive factual issues in the case. *Elias,* 339 S.W. 3d at 676. Furthermore, it is error for an appellate court to affirm the trial court's ruling on inadequate findings of fact rather than to remand the case back to the trial court with instructions to supplement the record with the missing findings of fact. *Id.* at 676-677.

For an offense of public intoxication, the State must prove not merely that a defendant was intoxicated but also that he was intoxicated in a public place and that his intoxication made him a danger to himself or others. TEX. PEN. CODE §49.02(a)(West 2011). In this case, the State offered ample testimony to establish probable cause for both these elements. Both Officer Guerrero and Officer Ramirez testified the Appellee was in a public place at the time of his arrest (the parking lot of the G&G Lounge). [RR-I-10, 16]. Parking lots around businesses are public places. See *York v. State,* 342 S.W. 3d 528, 537 (Tex. Crim. App. 2011). Both officers also testified that the parking lot was in use at the time of the arrest [RR-I-17, 25, 31], with Officer Guerrero further testifying that the arrest location was near Highway 185 [RR-I-17], and Officer Ramirez testifying that the parking lot where the arrest took place was 15 feet from the street, and that South Laurent gets very heavy traffic even in the evening [RR-I-32]. Being intoxicated in a parking lot of a public place where it is reasonable to assume cars would travel in and out is

enough to satisfy the endangerment element of public intoxication. See *White v. State,* 714 S.W. 2d 78, 79 (Tex. App.-San Antonio 1986, no writ). And being close to a public roadway in an intoxicated condition is also enough to establish that the intoxicated person has subjected themselves or others to potential danger. See *Balli v. State,* 530 S.W. 2d 123, 126 (Tex. Crim. App. 1975), *overruled on other grounds,* 540 S.W. 2d 314, 317 (Tex. Crim. App. 1976)(finding potential danger in walking down the street in an intoxicated condition). Thus if the trial court believed Officer Guerrero or Officer Ramirez's testimony on these points then that would have established the public place and endangerment elements.

Unfortunately, the trial court's findings of fact failed to address any of the State's evidence on the public place and endangerment elements. [CR-I-24-26; SCR-I-8-11]. Instead the trial court's findings only addressed the question of whether the State had established probable cause that the Appellee was intoxicated. [CR-I-24-26; SCR-I-8-11].

The State subsequently filed a motion to abate the appeal asking the Court of Appeals to remand the case back to the trial court to supplement its findings on these points. [A-15, A-21-A-22]. The State also raised this issue in its brief to the Court of Appeals as part of the State's first claim of error. [A-58-A-61]. The Court of Appeals denied to address this issue in its ruling, thus effectively denying the State's motion. See *Martinez,* 13-15-00069-CR at 12.

The State believes that the trial court's refusal to address the public place and endangerment elements in its findings of fact, and the Court of Appeals' acquiescence to the trial court's refusal to issue findings of fact on those issues, indicate that both the trial court and the Court of Appeals do not believe that either the public place element or the endangerment element are in dispute in this case. However, if it is held otherwise and concluded that those elements are in dispute then it constitutes clear error on the part of the Court of Appeals to affirm the trial court's ruling on findings that do not address every potentially case dispositive issue. *Elias,* 339 S.W. 3d at 676-677.

As such if it is concluded that the endangerment and public place elements are in dispute, then the petition should also be granted on this ground.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, the State prays that this Honorable Court grant this Petition for Discretionary Review and reverse the decision of the Court of Appeals.

Respectfully submitted,

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ATTORNEYS FOR THE APPELLANT,
THE STATE OF TEXAS

CERTIFICATE OF COMPLIANCE

In compliance with Texas Rule of Appellate Procedure 9.4(i)(3), I certify that the number of words in Appellant's Petition for Discretionary Review submitted on April 10, 2017, excluding those matters listed in Rule 9.4(i)(3) is 4,480.

/s/ Brendan W. Guy
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ATTORNEY FOR APPELLANT,
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CERTIFICATE OF SERVICE

I certify that a true and correct copy of Appellant's Petition for Discretionary Review has been served on Luis Martinez, Attorney for the Appellee by electronic mail, and on Lisa McMinn, State Prosecuting Attorney, by depositing same in the United States Mail, postage prepaid on the day of April 10, 2017.

/s/ Brendan W. Guy
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THE STATE OF TEXAS

APPENDIX

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NUMBER 13-15-00069-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

THE STATE OF TEXAS, **Appellant,**

v.

ROGER ANTHONY MARTINEZ, **Appellee.**

On appeal from the 24th District Court of Victoria County, Texas.

MEMORANDUM OPINION ON REMAND

Before Justices Contreras,[1] Benavides and Longoria
Memorandum Opinion on Remand by Justice Contreras

Appellee, Roger Anthony Martinez, was charged by indictment with one count of possession of a controlled substance in a correctional facility, a third-degree felony, *see* TEX. PENAL CODE ANN. § 38.11(d)(1) (West, Westlaw through 2015 R.S.), and one count

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[1] Justice Dori Contreras, formerly Dori Contreras Garza. *See* TEX. FAM. CODE ANN. § 45.101 *et seq.* (West, Westlaw through 2015 R.S.).

of possession of less than one gram of cocaine, a state jail felony. *See* TEX. HEALTH & SAFETY CODE ANN. § 481.115(b) (West, Westlaw through 2015 R.S.). Martinez moved to suppress the drug evidence. The trial court granted the motion and we affirmed. *State v. Martinez*, No. 13-15-00069-CR, 2015 WL 5797604, at *6 (Tex. App.—Corpus Christi Oct. 1, 2015) (mem. op., not designated for publication).

On its own petition, the Texas Court of Criminal Appeals vacated our judgment and remanded to this Court with instructions to "abate it to the trial court for supplemental findings of fact and conclusions of law consistent with this opinion." *State v. Martinez*, No. PD-1337-15, 2016 WL 7234085, at *7–8 (Tex. Crim. App. Dec. 14, 2016) (not designated for publication) (plurality op.) (finding that the trial court "failed to apply an appropriate legal standard" because "it erroneously believed that evidence of [the arresting officer's] knowledge could come only from his mouth or from what he was expressly told"). We abated the appeal on January 26, 2017, received a supplemental clerk's record containing the trial court's supplemental findings of fact and conclusions of law on February 14, 2017, and reinstated the appeal. We affirm.

I. BACKGROUND

Martinez's motion to suppress argued that police lacked probable cause to arrest him for public intoxication. On original submission, we described the suppression hearing testimony as follows:

> Javier Guerrero stated that he was an officer with the Victoria Police Department on January 5, 2014. On that date, at around 11:40 p.m., he was dispatched to the G & G Lounge, a bar located on South Laurent in Victoria, to investigate a possible fight in the parking lot. Three other officers eventually responded to the call. When Guerrero arrived at the scene, he observed Martinez and his wife, Daniela Jaquez, arguing and screaming at each other in the back parking lot. Guerrero stated he believed that both individuals were intoxicated because they smelled of alcohol, they were

having trouble standing, their eyes were glassy, and their speech was slurred. Additionally, Martinez's behavior was "very aggressive." According to Guerrero, Martinez was being uncooperative with police and would not let the officers talk or ask questions. Guerrero stated that "[w]e couldn't talk to him" because "[h]e would just talk over us."

Guerrero stated that fellow officer Patrick Quinn arrested Martinez for public intoxication.[2] *See* TEX. PENAL CODE ANN. § 49.02(a) (West, Westlaw through 2015 R.S.) ("A person commits an offense if the person appears in a public place while intoxicated to the degree that the person may endanger the person or another."). Guerrero stated that police administered no field sobriety tests to Martinez, and the encounter was not video-recorded because "the placement of the car was probably not [near] to where the scene was." According to Guerrero, the parking lot in question was in use at the time of the incident. Guerrero explained: "There is a Highway 185 directly in front of the bar. Then you have the local road to the other side of the bar where the parking lot is. So cars freely go in and out."

On cross-examination, Guerrero conceded that, in a report he filed regarding the incident, he did not mention that Martinez showed various signs of intoxication. Guerrero explained that this information was instead contained in the "main officer report," which had been filed by Quinn, as Quinn was the arresting officer. Guerrero also conceded that he did not observe anyone physically fighting. Guerrero agreed that he was "more focused" on Jaquez during the investigation. Defense counsel asked Guerrero: "Isn't it true that [Jaquez] was trying to tell you about her being assaulted?" Guerrero replied: "Yes, but she was being very uncooperative also. . . . She wasn't answering my questions when I was asking her. . . . I asked her what happened, and she said she don't give a [****]." Guerrero later denied that Jaquez told him that she had been assaulted.

Another officer, Timothy Ramirez, was at the scene and testified that he believed Martinez was intoxicated because "[h]e had slurred speech, a swayed stance; his eyes were red and glassy; and I could smell the odor of alcohol emitting from his breath and on his person." According to Ramirez, Martinez was "very aggressive and belligerent" and "would not cooperate with our investigation." Martinez repeatedly complained that it took "[****]ing

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[2] We noted:

> At the outset of the suppression hearing, the prosecutor informed the trial court that Quinn would not be testifying because he is currently "under indictment in Harris County for charges of bribery and official oppression." The prosecutor explained that, according to Quinn's attorney, Quinn would invoke his Fifth Amendment right against self-incrimination and would not testify in the case. Guerrero testified that he saw no misconduct from Quinn at the time of the arrest.

State v. Martinez, No. 13-15-00069-CR, 2015 WL 5797604, at *1 n.1 (Tex. App.—Corpus Christi Oct. 1, 2015) (mem. op., not designated for publication).

forever" for police to arrive.

Ramirez explained that the parking lot was "[a]pproximately 15 feet from the roadway, and that was the roadway between that parking lot and the bar and maybe 15 to 20 feet away from South Laurent." He opined that Martinez was not in a suitable condition to drive or to walk home because "[h]e could possibly pose a danger to himself and possibly others that close to an active roadway." Ramirez also stated that Martinez never identified anyone who could come pick him up and never asked to call for a taxi; although he acknowledged on cross-examination that police never asked Martinez whether there was anyone who could pick him up or if he was going to call for a taxi.

Jaquez testified that Martinez's uncle owns the G & G Lounge and that "a lot of his family" was present at the bar on the night in question. She stated that she got into a fight with an unknown female, and that she was punched by the male companion of the unknown female. She testified that she told officers she was looking for her glasses, but the officers "just said that we needed to hurry up and leave there." She stated that she had one beer that night, and Martinez had "[m]aybe around, like, three, four." She did not know that Martinez had cocaine on his person. According to Jaquez, "[t]here was plenty of family" at the bar that night to drive her and her husband home.

Martinez, 2015 WL 5797604, at *1–2.

On remand, the trial court issued the following supplemental findings of fact and conclusions of law:

A. Testimony of Officer Javier Guerrero.

The Court finds that Officer Javier Guerrero (Guerrero) was the first officer at the scene. The Court finds that Guerrero heard the Defendant and others arguing. The record supports the notion that Guerrero perceived several indicators of intoxication on the defendant such as: odor of alcohol, swaying, and slurred speech. The Court does not find any credible evidence demonstrating that Officer Quinn perceived any indicators of intoxication based on the testimony of Guerrero. The Court finds that it is reasonable to believe that Officer Quinn heard the defendant yelling and screaming; however, that in and of itself is not sufficient to support an arrest of the defendant for the offense of public intoxication. Texas Penal Code § 49.02 (2015).

The record does not show when and for how long Quinn was present during the interactions between Guerrero and the Defendant. Based on Guerrero's testimony, the Court does not find that Quinn was physically present during the time that Guerrero perceived all the indicators of intoxication. Therefore,

upon review of Guerrero's testimony, the Court cannot infer that Quinn perceived any indicators of intoxication.

B. Testimony of Officer Timothy Ramirez.

The Court finds that Officer Timothy Ramirez (Ramirez) was the second officer at the scene. The Court believes that Ramirez noticed that the defendant showed signs of intoxication. Specifically, the court finds that Ramirez observed the defendant to have slurred speech, and a swayed stance. However, the Court does not find any credible evidence from Ramirez'[s] testimony that demonstrates that Quinn was physically present during the time which Ramirez perceived the defendant to be intoxicated. Once again, the record does not demonstrate when and for how long Quinn was present during the interactions between Ramirez and the Defendant. Therefore, the Court is unable to infer that Quinn perceived any indicators of intoxication upon review of Ramirez'[s] testimony.

C. Testimony of Daniella Jaquez.

Ms. Jaquez'[s] testimony is of little help to the Court. She testified about an altercation and about the arrival of the officers. Based on Ms. Jaquez['s] testimony, the Court cannot find that Quinn was present even though the Court of Criminal Appeals noted that "Jaquez testified all of the police officers arrived close in time to one another." [*Martinez*, 2016 WL 7234085, at *6]. The Court finds that the defendant had ingested alcohol; however, her testimony does not demonstrate if Quinn knew of this fact or if Quinn interacted with anyone prior to arresting the defendant.

D. Combination of Evidence to Show Probable Cause

The Court of Criminal Appeals held that "the record is replete with testimony that 1) Appellee exhibited symptoms that a trained officer would recognize as signs of intoxication, 2) Appellee exhibited those signs of intoxication while arguing with his wife in a bar parking lot open to traffic, and 3) Quinn was present when Appellee was exhibiting those signs of intoxication." [*Id.*].

The Court [of] Appeals noted that an offense occurs within the presence of an officer when any of his senses afford him an awareness of its occurrence. *Id. citing Amador v. State*, 275 S.W.3d 872 (Tex. Crim. App. 2009). Other than the defendant being loud, there is no evidence presented that would justify Officer Quinn to arrest the defendant for public intoxication. This Court cannot find any trustworthy information that Quinn relied on to make an arrest. This Court has searched the record and the evidence presented and cannot find one piece of objective data demonstrating the "totality of the circumstances" faced by Quinn. *Amador* at 878. While this Court found that there was no misconduct on the part of Officers Guerrero and Ramirez, it cannot make a finding either way on the

conduct of Quinn. There is no evidence as Quinn's experience, training, education, attitude or conduct as an officer (other than State's Exhibit No. I) on the day in question. State's Exhibit 1 demonstrates that Quinn was indicted for the offense of Official Oppression and Bribery.

This Court cannot find any credible evidence that Quinn was a "trained" officer that would recognize signs of intoxication. Further, there is no evidence that the Court found to be persuasive with regard to the defendant being intoxicated in the presence of Quinn. Finally, the Court does not find that Quinn was present when Guerrero and Ramirez perceived any signs of intoxication. Therefore, Quinn had no knowledge that the defendant probably committed the offense of public intoxication. Based on the lack of evidence and testimony presented, this Court will not find the actions of Quinn in this case to be proper. The Court finds that the defendant's arrest was contrary [to] Texas Law. Texas Code of Criminal Procedure, Art. 14.01(b) (2015).

II. Discussion

The State argues by eight issues that the trial court erred in granting the motion to suppress. Specifically, the State contends: (1) the trial court's findings of fact are insufficient for proper appellate review; (2) the standard of review should be *de novo*; (3) the facts known to Quinn were "sufficient to establish probable cause" to Martinez arrest for public intoxication; (4) the facts known to Quinn were sufficient to establish a valid arrest under article 14.01 of the Texas Code of Criminal Procedure; (5) facts known to Guerrero and Ramirez but not found to be communicated to Quinn can be used to establish probable cause; (6) an officer need not communicate his observations to the arresting officer to be considered part of the "arrest team" for purposes of article 14.01; (7) Martinez's constitutional right to confrontation was not violated by Quinn's failure to testify; and (8) Martinez's compulsory process rights were not violated by Quinn's failure to testify. As each of the issues challenges the propriety of the trial court's suppression ruling, we will consider them together.

A. Standard of Review

> An appellate court reviews a trial court's pre-trial suppression ruling under a bifurcated standard. Almost total deference is afforded to the trial court's determination of fact. Determinations of fact include "who did what, when, where, how, or why" and "credibility determinations." Because trial judges . . . are uniquely situated to observe first hand the demeanor and appearance of a witness, . . . they are the sole arbiter of questions of fact and of the weight and credibility to give testimony. In that capacity, a trial judge is free to believe or disbelieve any part of the testimony as he sees fit. When a trial judge makes written findings of fact, as he did in the instant case, a reviewing court must examine the record in the light most favorable to the ruling and uphold those fact findings so long as they are supported by the record. The reviewing court then proceeds to a *de novo* determination of the legal significance of the facts as found by the trial court.

Baird v. State, 398 S.W.3d 220, 226 (Tex. Crim. App. 2013) (footnotes and citations omitted).

B. Applicable Law

A warrantless arrest is generally considered an unreasonable seizure under the Fourth Amendment to the United States Constitution. *See* U.S. CONST. amend. IV; *Torres v. State*, 182 S.W.3d 899, 901 (Tex. Crim. App. 2005) (citing *Minnesota v. Dickerson*, 508 U.S. 366, 372 (1993)); *see also* TEX. CONST. art. I, § 9. However, a warrantless arrest is reasonable under the Fourth Amendment where there is probable cause for the arresting officer to believe that a criminal offense has been or is being committed. *Devenpeck v. Alford*, 543 U.S. 146, 152 (2004); *Baldwin v. State*, 278 S.W.3d 367, 371 (Tex. Crim. App. 2009). Moreover, "[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) (West, Westlaw through 2015 R.S.).

Probable cause for a warrantless arrest exists if, at the time the arrest is made, the facts and circumstances within the arresting officer's knowledge, or of which the officer has reasonably trustworthy information, are sufficient to warrant a prudent person to

believe that the arrested person had committed or was committing an offense. *Amador v. State*, 275 S.W.3d 872, 878 (Tex. Crim. App. 2009) (citing *Beck v. Ohio*, 379 U.S. 89, 91 (1964)); *Torres*, 182 S.W.3d at 901. The test for probable cause is an objective one, unrelated to the subjective beliefs of the arresting officer, and it requires a consideration of the totality of the circumstances facing the arresting officer. *Amador*, 275 S.W.3d at 878; *State v. Steelman*, 93 S.W.3d 102, 107 (Tex. Crim. App. 2002). A finding of probable cause requires more than bare suspicion but less than would justify conviction. *Amador*, 275 S.W.3d at 878 (citing *Brinegar v. United States*, 338 U.S. 160, 175 (1949)).

A person commits the offense of public intoxication, a Class C misdemeanor, "if the person appears in a public place while intoxicated to the degree that the person may endanger the person or another." TEX. PENAL CODE ANN. § 49.02(a), (c). "Public place" means "any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops." *Id.* § 1.07(a)(40) (West, Westlaw through 2015 R.S.); *see York v. State*, 342 S.W.3d 528, 536–37 (Tex. Crim. App. 2011) (holding that the "parking and sidewalk area" outside a gas station was a "public place"); *Kapuscinski v. State*, 878 S.W.2d 248 (Tex. App.—San Antonio 1994, writ ref'd) (holding that the evidence was sufficient to show that a nightclub parking lot, provided for guests of the nightclub and open to the public, was a "public place").

C. Analysis

The State contends by its second issue that we should review the trial court's decision *de novo* because "there are no meaningful factual issues in dispute." However,

the parties apparently disagree about the central fact issue involved in this case—i.e., whether Quinn observed or was informed that Martinez was committing a crime. *See Amador*, 275 S.W.3d at 878. The parties also disagree as to whether the "viewing officers"—Guerrero and Ramirez—effectively participated in the arrest such that Quinn's objective knowledge would be irrelevant. We will, in accordance with applicable law, defer to the trial court's fact findings that are supported by evidence and review its legal conclusions *de novo*.

The State cites *Willis v. State*, 669 S.W.2d 728, 730 (Tex. Crim. App. 1984), and *Astran v. State*, 799 S.W.2d 761, 764 (Tex. Crim. App. 1990), in arguing that the testimony of officers Guerrero and Ramirez established the legality of Martinez's arrest. In *Willis*, an undercover officer arranged by telephone to purchase heroin from the appellant. 669 S.W.2d at 730. After the purchase was completed, the undercover officer signaled other officers, who were waiting about two blocks away, that the appellant retained some drugs on his person. *Id.* The other officers followed appellant, stopped him, searched him, and arrested him. *Id.* The court of criminal appeals found that the arrest and search were valid—despite the fact that that the arresting officers did not observe the drug sale—because a crime had been committed in the undercover officer's presence. *Id.* The Court noted the undercover officer "had first-hand knowledge of the offense and relayed that knowledge to his fellow officers." *Id.* Moreover, the undercover officer observed the arrest from about three-quarters of a mile away. *Id.* Thus, even though the undercover officer did not personally make the arrest, he "was just as much a participant in the arrest as if he had seized appellant himself." *Id.* Accordingly, the arrest was proper under article 14.01. *Id.*

In *Astran*, which also involved a controlled undercover drug purchase, the appellant similarly argued that his arrest and search were constitutionally invalid "because the [undercover] officer who saw the felony did not actually make the arrest." 799 S.W.2d at 762. Unlike in *Willis*, the undercover officer in *Astran* did not observe the eventual arrest. *Id.* Nevertheless, the Court found that the arrest and search were valid because the undercover officer "saw the felony, was part of a team of officers present at the scene of the offense, and relayed appellant's physical description and geographic location to the arresting officer." *Id.* at 763. Additionally, "[e]ven though [the undercover officer] did not visually observe the arrest, he was parked two blocks away and maintained constant radio communication with [the arresting officer] during the arrest." *Id.* The Court held that that an arrest is proper under article 14.01 "[a]s long as the facts show that the viewing officer effectively participated in the arrest and was fully aware of the circumstances of the arrest." *Id.* at 764.

Martinez argues that *Willis* and *Astran* are distinguishable because, here, there was no evidence that the undercover officers (i.e., the "viewing" officers) ever related their information to the arresting officer. We agree that the cases are distinguishable on that basis. In both *Willis* and *Astran*, the viewing officer "participated in the arrest" by relaying his observations to other officers, who then made the arrest based on those observations. *See id.* at 763; *Willis*, 669 S.W.2d at 730. On the other hand, here, neither viewing officer testified at the suppression hearing as to what Quinn, the arresting officer, knew or was able to observe personally. The prosecutor did not ask the testifying officers what Quinn observed or was able to observe. The testifying officers did not state that they informed

Quinn of what *they* personally observed—i.e., that Martinez was intoxicated to the extent that he endangered himself or others.

The court of criminal appeals noted that a finding of probable cause does not require direct testimony about what an arresting officer observed or what he was told; instead, circumstantial evidence can suffice in that regard. *Martinez*, 2016 WL 7234085, at *1. The Court further noted that, in this case in particular, the testimony provided at the suppression hearing "provided circumstantial evidence that, *if believed*, would show that Quinn had probable cause to arrest Appellee for public intoxication." *Id.* at *8 (emphasis added).

But the trial court did not believe such circumstantial evidence in this case. The trial court found that "[o]ther than the defendant being loud, there is no evidence presented that would justify Officer Quinn to arrest the defendant for public intoxication." In particular, it found that Guerrero's testimony contained no "credible evidence demonstrating that Officer Quinn perceived any indicators" that Martinez was intoxicated; that Ramirez's testimony does not "demonstrate[] that Quinn was physically present during the time which Ramirez perceived [Martinez] to be intoxicated"; and that Jaquez's testimony "does not demonstrate if Quinn knew [that Martinez had ingested alcohol] or if Quinn interacted with anyone prior to arresting [Martinez]."[3] Overall, the trial court found "no evidence that the Court found to be persuasive with regard to the defendant being intoxicated in the presence of Quinn" and "[did] not find that Quinn was present when Guerrero and Ramirez perceived any signs of intoxication." The trial court concluded

[3] The trial court further found that there was no "credible evidence that Quinn was a 'trained' officer that would recognize signs of intoxication." This finding is irrelevant, however, because "[t]he test for probable cause is an objective one, unrelated to the subjective beliefs of the arresting officer." *Amador v. State*, 275 S.W.3d 872, 878 (Tex. Crim. App. 2009).

that, based on all the evidence presented—including circumstantial evidence—"Quinn had no knowledge that [Martinez] probably committed the offense of public intoxication." The trial court's fact findings are sufficient to provide a basis upon which we may review the trial court's application of law to the facts. *See State v. Cullen*, 195 S.W.3d 696, 700 (Tex. Crim. App. 2006) ("[U]pon the request of the losing party on a motion to suppress evidence, the trial court shall state its essential findings. By 'essential findings,' we mean that the trial court must make findings of fact and conclusions of law adequate to provide an appellate court with a basis upon which to review the trial court's application of the law to the facts."). And, viewing the findings in the light most favorable to the trial court's ruling, we conclude that they are supported by the record.[4] *See Baird*, 398 S.W.3d at 226 (noting that the trial court is the sole factfinder at a suppression hearing and may believe or disbelieve all or any part of a witness's testimony); *Amador*, 275 S.W.3d at 878. Accordingly, we may not disturb these findings. *See Baird*, 398 S.W.3d at 226.

Reviewing the legal significance of the fact findings *de novo*, we conclude that the trial court did not err in its determination that the State failed to meet its burden to show that the search was reasonable. *See id.*; *Ford*, 158 S.W.3d at 492. We overrule the State's first three issues and need not reach the remaining issues. *See* TEX. R. APP. P. 47.1.

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[4] On original submission, we mentioned that the State also contends on appeal that the arrest was valid because officers Guerrero and Martinez "participated in the arrest" and were "fully aware of the circumstances of the arrest." *See Astran*, 799 S.W.2d at 764. We noted that, though this may have been a reasonable inference from the suppression hearing testimony, the trial court evidently did not make that inference because it found that "only Officer Quinn made 'personal' contact" with Martinez and that "Officer Quinn was the only officer who effectuated the arrest of the defendant." The Texas Court of Criminal Appeals did not mention this part of our analysis in its opinion.

III. Conclusion

The trial court's judgment is affirmed.

DORI CONTRERAS
Justice

Do not publish.
TEX. R. APP. P. 47.2(b).

Delivered and filed the
16th day of March, 2017.

NO. 13-15-00069-CR

THE STATE OF TEXAS	§	**IN THE THIRTEENTH**
	§	
	§	
	§	**COURT OF APPEALS**
vs.	§	
	§	
	§	
ROGER ANTHONY MARTINEZ	§	**CORPUS CHRISTI,**

MOTION TO ABATE APPEAL AND REMAND CASE TO TRIAL COURT WITH ORDER TO SUPPLEMENT FINDINGS OF FACT

TO THE HONORABLE JUDGES OF THE COURT OF APPEALS:

Comes now the State of Texas by and through her Attorney and respectfully requests that the Court abate the above entitled and numbered action for a period of time sufficient to remand the case back to the trial court and order the trial court, pursuant to Texas Rule of Appellate Procedure 44.4(b), to correct an erroneous refusal to act which is preventing the proper presentation of this case to the court of appeals, by supplementing its findings of fact for this case. In support of this application the State would show the Court the following:

I.

On January 26, 2015, the Appellee filed a motion to suppress in this cause. [CR-I-12-14]. [CR-I-17-20]. A hearing was held on that motion to suppress on February 4, 2015. [RR-I-1]. That same day the trial court, with the Honorable Eli Garza presiding, granted Appellee's motion to suppress with a written order. [CR-

I-14]. On February 5, 2015 the State requested Judicial Findings of Fact and Conclusions of Law. [CR-I-22-23]

The State timely filed its notice of appeal on February 9, 2015. [CR-I-29-32]. On October 1, 2015, the Thirteenth Court of Appeals (hereafter Court of Appeals) affirmed the trial court ruling granting the motion to suppress. *State v. Martinez,* No. 13-15-00069-CR, 2015 WL 5797604 (Tex. App.-Corpus Christi, Oct. 1, 2015, pet. granted on Court's motion)(mem. op. not designated for publication). The State subsequently sought review with the Court of Criminal Appeals which declined the State's petition for discretionary review but granted review on their authority, and on December 14, 2016 the Court of Criminal Appeals vacated the ruling of the Court of Appeals and ordered the case to be remanded back to the Court of Appeals with instructions for this Honorable Court to abate the appeal and remand the case back to the trial court with instructions to issue supplemental findings of fact concerning whether the testimony of the two officers who testified at the suppression hearing established through circumstantial evidence that the arresting officer, Officer Quinn, had probable cause to arrest the Appellee. See *State v. Martinez,* PD 1337-15, 2016 WL 7234085 at 8 (Tex. Crim. App. 2016)(mem. op. not designated for publication). On January 26, 2017 this Honorable Court ordered the appeal abated and remanded back to the trial court with instructions to provide supplemental findings of fact and conclusions of law

"consistent with the opinion of the Court of Criminal Appeals." [SCR-I-6-7]. On February 2, 2017 the trial court issued supplemental findings of fact and conclusions of law. [SCR-I-8-11]. Unfortunately, the trial court's supplemental findings fail to provide factual determinations on several critical points of testimony.

As to the testimony of Officer Javier Guerrero, the trial court's supplemental findings do not address whether the trial court believed Officer Guerrero's testimony that: 1) it was Officer Quinn who put the Appellee in handcuffs [RR-I-19; SCR-I-9]; 2) Officer Quinn spoke to the Appellee prior to arresting him [RR-I-17; SCR-I-9]; 3) the parking lot where the arrest took place was in use at the time of the arrest [RR-I-17; SCR-I-9]; 4) Highway 185 is near the location where the arrest took place [RR-I-17; SCR-I-9]; and 5) cars were in the parking lot at the time of the arrest. [RR-I-25; SCR-I-9].

As to the testimony of Officer Timothy Ramirez, the trial court's supplemental findings do not address whether the trial court believed Officer Ramirez's testimony that: 1) the Appellee had the odor of alcohol on his breath and person [RR-I-29; SCR-I-9-10]; 2) the Appellee had red and glassy eyes [RR-I-29; SCR-I-9-10]; 3) there were cars in the parking lot at the time of the arrest [RR-I-31; SCR-I-9-10]; 4) the parking lot where the arrest took place was 15 feet from the street [RR-I-31-32; SCR-I-9-10]; and 5) South Laurent gets very heavy traffic even in the evening [RR-I-32; SCR-I-9-10].

As to the testimony of Ms. Daniela Jaquez, the trial court referenced the Court of Criminal Appeals citing the testimony of Ms. Jaquez when she testified that all the officers arrived really close in time to each other [RR-I-40; SCR-I-10], however the trial court did not state whether it believed Ms. Jaquez's testimony on this point. [SCR-I-10].

II.

The losing party in a motion to suppress hearing is entitled to have the trial court express its "essential findings." *State v. Cullen,* 195 S.W. 3d 696, 700 (Tex. Crim. App. 2006). "Essential findings" consist of "the findings of fact and conclusions of law adequate to provide an appellate court with a basis upon which to review the trial court's application of the law to the facts." *Id.* If the trial court fails to provide the findings of fact and conclusions of law necessary to fully address a potentially dispositive issue then that failure constitutes a "failure to act" on behalf of the trial court under Texas Rule of Appellate Procedure 44.4(a). See *State v. Elias,* 339 S.W. 3d 667, 676 (Tex. Crim. App. 2011). The remedy for such a failure is to have the case remanded back to the trial court for entry of additional, specific findings of fact that will address the potentially dispositive factual issues in the case. *Id.* This remedy holds true whether a party requested findings of fact and conclusions of law from the trial court, or if the trial court decided on its own to furnish findings of fact and conclusions of law. *Elias,* 339 S.W. 3d at 676. And it

is error on the part of an appellate court to affirm the trial court's ruling on inadequate findings of fact/conclusions of law rather than to remand the case back to the trial court with instructions to that court to supplement the record with the missing findings of fact and conclusions of law. *Elias,* 339 S.W. 3d at 676-677. An appellate court is not to presume factual findings that may be dispositive in a case when the trial court's findings of fact are an inadequate basis upon which to make a legal conclusion and when the losing party at the trial court level properly requested findings. *State v. Saenz,* 411 S.W. 3d 488, 495 (Tex. Crim. App. 2013).

III.

In the present case, it is clear the trial court's supplemental findings of fact are inadequate on the potentially dispositive issues in this case. The critical issue in dispute for the appeal in this case is whether the testimony of Officers Guerrero and Ramirez is sufficient to establish that there is circumstantial evidence to believe that Officer Quinn had probable cause to arrest the Appellee for the offense of public intoxication. And the legal standard for determining if officers had probable cause to conduct a warrantless arrest requires examining the totality of the circumstances. See *Amores v. State,* 816 S.W. 2d 407, 413 (Tex. Crim. App. 1991). As such it is critical to know exactly what the trial court believed as to every segment of testimony that could possibly contribute to the totality of the circumstances for determining probable cause.

The trial court's findings of fact fail to address whether the trial court believed Officer Guerrero's testimony that it was Officer Quinn who put the Appellee in handcuffs and that Officer Quinn spoke to the Appellee prior to arresting him. [RR-I-17, 19; SCR-I-9]. The trial court's findings likewise fail to address whether the trial court believed Officer Ramirez's testimony that the Appellee had the odor of alcohol on his breath and person and that the Appellee had red and glassy eyes [RR-I-29; SCR-I-9]. Whether the trial court believed these four points of testimony is a critical, case dispositive issue because the trial court did believe Officer Guerrero's testimony that the Appellee had the odor of alcohol on him and had slurred speech. [SCR-I-9]. If the Appellee had the odor of alcohol on his person, and Officer Quinn got close enough to him to put handcuffs on him then it is logical to conclude that Officer Quinn would have smelled that odor of alcohol. Likewise if the Appellee had slurred speech and red and glassy eyes and Officer Quinn conversed with the Appellee prior to arresting him (and was close enough to the Appellee to physically place handcuffs on him) then it is logical to conclude that Officer Quinn would have heard the Appellee's slurred speech and seen his red and glassy eyes. And since the trial court has already concluded that Officer Quinn did hear the Appellee screaming and yelling [SCR-I-9], that finding in conjunction with a finding that Officer Quinn could smell the odor of alcohol on the Appellee, hear the Appellee with slurred speech, and see the Appellee with red and glassy eyes would certainly be enough to give Officer

Quinn probable cause to believe the Appellee was intoxicated due to alcohol. As such whether the trial court believed Officer Guerrero and Officer Ramirez's testimony on these points is a necessary finding of fact for a complete appellate record and since the trial court's findings do not address whether the trial court believed Officer Guerrero's testimony on these two points, the trial court's supplemental findings of fact are inadequate. See *State v. Mendoza,* 365 S.W. 3d 666, 673 (Tex. Crim. App. 2012)(reversing and remanding for additional findings of fact because the dispositive credibility determination of the testifying officer was absent from the trial court's findings.)

The trial court's findings of fact also fail to address whether the trial court believed Officer Guerrero's testimony that the parking lot where the arrest took place was in use at the time of the arrest, that the arrest location is near Highway 185 and that cars were in the parking lot at the time of the arrest [RR-I-17, 25; SCR-I-9] and Officer Ramirez's similar testimony that that there were cars in the parking lot at the time of the arrest, that the parking lot where the arrest took place was 15 feet from the street [RR-I-31-32], and that South Laurent gets very heavy traffic even in the evening [RR-I-31-32; SCR-I-9-10]. Whether the trial court believed these points of testimony is also of critical importance since to support an arrest for public intoxication in violation of Section 49.02 of the Texas Penal Code it is not sufficient for the State merely to establish that a suspect is intoxicated. Rather the State must

also show that the suspect is in a public place and that he is a danger to himself or others. Being intoxicated in a parking lot of a public place where it is reasonable to assume cars would travel in and out is enough to satisfy the endangerment element of public intoxication. See *White v. State,* 714 S.W. 2d 78, 79 (Tex. App.-San Antonio 1986, no writ). If the trial court believed Officer Guerrero and/or Officer Ramirez's testimony regarding that the parking lot where the arrest took place was in use and in close proximity to active streets then logically Officer Quinn would have been aware of those facts as well (since he was at the exact same location as Officer Guerrero) and that in turn establishes that Officer Quinn had the requisite knowledge necessary to believe that the Appellee was a danger to himself, which is essential to show that Officer Quinn had probable cause to arrest for public intoxication. Thus the determination of what the trial court believed as to Officer Guerrero and Officer Ramirez's testimony on these points is also case dispositive and should have been included in the trial court's findings of fact.

The trial court's findings of fact also fail to establish whether or not the trial court believed the testimony of Ms. Daniela Jaquez on all the investigating officers (which would obviously include Officer Quinn) all arriving in close temporal proximity to one another. [RR-I-40; SCR-I-10]. As this testimony if believed by the trial court would give the trial court good cause to believe that Officer Quinn observed everything that Officers Guerrero and Ramirez observed, it is also

potentially a critical credibility matter in this case and thus also needs to be included within the trial court's findings of fact.

IV.

Because the trial court's supplemental findings of fact are incomplete the State therefore requests, pursuant to Texas Rule of Appellate Procedure 44.4(b), that the appeal be abated for such time as is necessary to have the case remanded back to the trial court and the trial court instructed to answer the following questions:

1) Does the trial court believe or not believe the testimony of Officer Guerrero that it was Officer Quinn who handcuffed the Appellee at the time of the arrest in this cause?

2) Does the trial court believe or not believe the testimony of Officer Guerrero that Officer Quinn spoke with the Appellee prior to arresting him?

3) Does the trial court believe or not believe the testimony of Officer Guerrero that the parking lot where the arrest of the Appellee took place was in use at the time of the arrest?

4) Does the trial court believe or not believe the testimony of Officer Guerrero that Highway 185 is located directly in front of the parking lot where the arrest in this case took place and that there is a local road on the other side of the bar where the parking lot is?

5) Does the trial court believe or not believe the testimony of Officer Guerrero that there were cars in the parking lot at the time of the arrest?

6) Does the trial court believe or not believe the testimony of Officer Ramirez that the Appellee had the odor of alcohol omitting from his breath and person?

7) Does the trial court believe or not believe the testimony of Officer Ramirez that the Appellee's eyes were red and glassy?

8) Does the trial court believe or not believe the testimony of Officer Ramirez that there were cars in the parking lot?

9) Does the trial court believe or not believe the testimony of Officer Ramirez that the parking lot was approximately 15 feet away from the roadway between the parking lot and the bar and approximately 15 to 20 feet away from South Laurent?

10) Does the trial court believe or not believe the testimony of Officer Ramirez that South Laurent gets very heavy traffic and can do so even in the evening?

11) Does the trial court believe or not believe the testimony of Daniela Jaquez, that all of the investigating officers pulled in right after one another, really close in time?

These eleven questions can, in conjunction with the finds of fact already made

by the trial court, potentially establish that Officer Quinn did have probable cause to believe both that the Appellee was intoxicated and that the Appellee was a danger to himself or others and as such these questions can help establish that under the totality of the circumstances Officer Quinn did have probable cause to arrest the Appellee for public intoxication. Therefore it is essential to get answers to these questions before the appeal of this case can proceed. Absent answers to these questions, the appellate courts will be forced to guess at how the trial court decided these critical factual questions, an intolerable approach that the Court of Criminal Appeals has already declared is unacceptable. Both the parties and the appellate courts are entitled to know exactly how the trial court resolved relevant factual issues in the suppression hearing, and therefore it is essential to have the trial court answer the above listed eleven questions. Once those questions are answered, the appellate courts will have a complete understanding of how the trial court decided all of the key credibility determinations in this case and that will insure a fair hearing for all parties in the appellate process. Conversely, proceeding on the existing findings of fact, findings which leave so many of the critical questions of this case unanswered, would constitute plain error as meaningful appellate review is not possible when so many of the essential findings of the case remain unknown.

WHEREFORE PREMISES CONSIDERED, the State of Texas respectfully requests that all further proceedings in this cause be abated and the case be remanded

to the trial court with instructions to answer the eleven questions listed above by the State

Respectfully submitted,

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CRIMINAL DISTRICT ATTORNEY

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ATTORNEY FOR THE APPELLANT,
THE STATE OF TEXAS

CERTIFICATE OF COMPLIANCE

In compliance with Texas Rule of Appellate Procedure 9.4(i)(3), I certify that the number of words in Appellant's Motion to Abate Appeal and Remand Case to Trial Court with Order to Supplement Findings of Fact submitted on February 22, 2017, excluding those matters listed in Rule 9.4(i)(3) is 2,720.

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ATTORNEY FOR APPELLANT,
THE STATE OF TEXAS

CERTIFICATE OF SERVICE

I, Brendan Wyatt Guy, Assistant Criminal District Attorney, Victoria County, Texas, certify that a copy of the above and foregoing Motion to Abate Appeal and Remand Case to Trial Court with Order to Supplement Findings of Fact was sent by electronic mail to Luis Martinez, Attorney for the Appellee, Roger Anthony Martinez, on this the 22nd day of February, 2017.

/s/ BRENDAN WYATT GUY
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ATTORNEY FOR APPELLANT,
THE STATE OF TEXAS

NO. 13-15-00069-CR

IN THE COURT OF APPEALS
FOR THE THIRTEENTH DISTRICT OF
TEXAS
AT CORPUS CHRISTI

THE STATE OF TEXAS,
Appellant,

v.

ROGER ANTHONY MARTINEZ,
Appellee.

On Appeal from the
24th Judicial District Court
Of Victoria County, Texas
Cause No. 14-06-28047-A

BRIEF FOR THE STATE OF TEXAS

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ORAL ARGUMENT NOT REQUESTED

IDENTITY OF PARTIES AND COUNSEL

Pursuant to TEX. R. APP. P. 38.1(a) (2003), the parties to the suit are as follows:

APPELLANT	**The State of Texas**
APPELLEE	**Roger Anthony Martinez**
TRIAL JUDGE	**The Honorable Eli Elmo Garza** **377th Judicial District Court** **Victoria, Texas**
TRIAL PROSECUTOR	**Brendan Wyatt Guy** State Bar No. 24034895 Assistant Criminal District Attorney 205 N. Bridge St. Ste 301 Victoria, Texas 77901-6576
TRIAL DEFENSE ATTORNEY	**Micah Wayne Hatley** State Bar No. 24053260 The Hatley Law Firm P. O. Box 2113 Victoria, Texas 77902
APPELLATE STATE'S ATTORNEY	**Brendan Wyatt Guy** State Bar No. 24034895 Assistant Criminal District Attorney 205 N. Bridge St. Ste 301 Victoria, Texas 77901-6576
APPELLATE DEFENSE ATTORNEY	**Luis Adrian Martinez** State Bar No. 24010213 P.O. Box 410 Victoria, Texas 77902-0410

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NO. 13-15-00069-CR

IN THE COURT OF APPEALS
FOR THE THIRTEEN DISTRICT OF TEXAS
AT CORPUS CHRISTI

THE STATE OF TEXAS,.....Appelant

v.

ROGER ANTHONY MARTINEZ,.....Appellee

* * * * *

STATE'S BRIEF ON THE MERITS

* * * * *

TO THE HONORABLE COURT OF APPEALS:

COMES NOW, THE STATE OF TEXAS, by and through her Criminal District Attorney, Stephen B. Tyler, and as Appellant in the above numbered and entitled cause, and files this the Appellant's brief showing:

STATEMENT OF THE CASE

Appellee was charged by indictment with one count of Possession of a Controlled Substance in a Correctional Facility and one count of Possession of a Substance in Penalty Group 1 in an amount of less than 1 gram. [CR-I-3]. On January 26, 2015, Appellee filed a motion to suppress. [CR-I-15-18]. A hearing was held on that motion on February 4, 2015. [RR-I-1]. That same day, the Honorable Eli Garza presiding, granted Appellee's

motion to suppress with a written order. [CR-I-20]. On February 5, 2015, the State requested written findings of fact and conclusions of law. [CR-I-21-22]. On February 6, 2015, the trial court issued its written findings of fact and conclusions of law. [CR-I-24-26]. The State timely filed its notice of appeal on February 9, 2015. [CR-I-27-30]. On October 1, 2015 this Honorable Court affirmed the judgment of the trial court. *State v. Martinez,* No. 13-15-00069-CR, 2015 WL 5797604 (Tex. App.-Corpus Christi 2015, *vacated,* No. PD-1337-15 (2016). The State sought discretionary review from the Court of Criminal Appeals and while the Court of Criminal Appeals denied the State's petition for discretionary review it granted its own petition and on December 14, 2016 vacated the ruling of this Honorable Court and ordered the case remanded to this Honorable Court to return the case to the trial court to supplement its findings of fact. *State v. Martinez,* No. PD-1337-15, 2016 WL 7234085 (Tex. Crim. App. 2016)(not designated for publication). On January 26, 2017 this Honorable Court abated the appeal and remanded the case back to the trial court with instructions to supplement its findings of fact. [SCR-I-6-7]. On February 2, 2017 the trial court filed its supplemented findings of fact. [SCR-I-8-11]. This Honorable Court reinstated the appeal on February 15, 2017. On February 22, 2017, the State filed a motion to abate the appeal in order to remand the case back

to the trial court so as to provide additional findings of fact. This Honorable Court has not yet ruled upon the State's motion to abate.

ISSUES PRESENTED

1) Are the trial court's findings of fact insufficient for proper appellate review on this case?

2) Is the legal standard for review in this case *de novo*?

3) Were the facts known to Officer Quinn sufficient to establish probable cause for the offense of public intoxication?

4) Were the facts known to Officer Quinn sufficient to establish a valid arrest under Article 14.01 of the Texas Code of Criminal Procedure?

5) Can the facts known to Officers Guerrero and Ramirez but not found to have been communicated to Officer Quinn be used to establish probable cause to arrest the Appellee?

6) Must an officer specifically communicate his observations to the arresting officer to be considered part of the arrest team for purposes of that officer being considered the arresting officer under Article 14.01?

7) Is there a violation of the Appellee's confrontation rights in not having Officer Quinn testify in this case?

8) Is there a violation of the Appellee's compulsory process rights in not having Officer Quinn testify in this case?

STATEMENT OF THE FACTS

Appellee was indicted on June 26, 2014 with one count of Possession of a Controlled Substance in a Correctional Facility and one count of Possession of a Substance in Penalty Group 1 in an amount of less than one

gram. [CR-I-3]. On January 26, 2015, Appellee filed a motion to suppress. [CR-I-15-18]. The trial court conducted a hearing on this motion to suppress on February 4, 2015. [RR-I-1].

The State opened the hearing by noting that it would not be able to call the arresting officer, Patrick Quinn, to testify because Officer Quinn was facing criminal charges in Harris County and as such was invoking his Fifth Amendment right not to testify. [RR-I-6-7]. The State then submitted into evidence a letter from Mr. Quinn's attorney, Mr. Paul Aman, confirming that Mr. Quinn was invoking his Fifth Amendment rights. [RR-I-7; State's Exhibit 1].

The State then called Javier Guerrero, formerly of the Victoria Police Department, to testify. [RR-I-7-8]. Officer Guerrero established that he was a certified peace officer, who had worked for the Victoria Police Department for two years. [RR-I-8]. Officer Guerrero then established that on January 5, 2014, at approximately 11:40 in the evening, he was on duty and met the Appellee when Officer Guerrero was called out to the G&G Lounge to help investigate a possible fight in the parking lot of that business. [RR-I-9-10].

Officer Guerrero then described how he arrived at the back parking lot of that location and observed two individuals arguing, one of whom was the Appellee. [RR-I-10-11]. Officer Guerrero then established that he was the

first office on the scene, and that Officer Ramirez, Dial, and Quinn all also came to the scene. [RR-I-11].

Officer Guerrero then clarified that the confrontation between the two individuals in the parking lot was strictly verbal, but that the two people were screaming at each other. [RR-I-12]. Officer Guerrero also established that he believed the Appellee was intoxicated due to the Appellee having difficulty standing and due to the smell of alcohol on Appellee's breath. [RR-I-12]. Officer Guerrero also noted that the Appellee's eyes were "real glassy" and that the Appellee's voice was "slurred" and testified that both of those qualities could be signs of intoxication. [RR-I-13]. Officer Guerrero then characterized Appellee's behavior towards him as "very aggressive" and described how the Appellee would not let the officers talk and tried to talk over them. [RR-I-13]. Officer Guerrero also noted that the Appellee did not comply with police instructions and established that the Appellee's conduct was interfering with the police investigation. [RR-I-13-14]. Officer Guerrero then confirmed that the odor of alcohol was present on both Appellee's breath and person. [RR-I-14].

Officer Guerrero then testified that the other person at the scene with the Appellee was a woman named Danielle and explained why he believed Danielle was also intoxicated. [RR-I-14]. Officer Guerrero then established

he did not know if there was anyone else present at the location that could have taken care of the Appellee because Appellee's conduct made it impossible for the police to talk with him. [RR-I-14-15]. Officer Guerrero also stated that Appellee never said he had called a cab and stated that Appellee did not appear fit to drive. [RR-I-15].

Officer Guerrero then established that the Appellee was arrested for public intoxication by Officer Quinn. [RR-I-16]. Officer Guerrero also established that he personally witnessed the arrest and did not observe any misconduct by Officer Quinn. [RR-I-17].

Officer Guerrero also testified that the back parking lot was in use at the time of the incident, that it had major roadways nearby, and that cars were able to freely go in and out of that parking lot. [RR-I-17].

On re-direct, Officer Guerrero explained that he was about two feet away from the Appellee during the investigation. [RR-I-24]. Officer Guerrero also confirmed that none of the officers on scene disagreed with the decision to arrest the Appellee. [RR-I-24]. Officer Guerrero also established that the Appellee did not explain how he had gotten to the G&G Lounge and did not appear to be in a condition where he could safely walk home. [RR-I-25].

The State then called Officer Timothy Ramirez of the Victoria Police Department to testify. [RR-I-26-27]. Officer Ramirez established that he was a certified peace officer who had worked with the Victoria Police Department for approximately two years. [RR-I-27]. Officer Ramirez then explained that on January 5, 2014, he was one of the officers called to investigate a possible fight at the G&G Lounge. [RR-I-27-28].

Officer Ramirez then confirmed meeting the Appellee that evening and stated that he believed the Appellee was intoxicated that night. [RR-I-29]. Officer Ramirez then explained why he believed the Appellee was intoxicated and described the Appellee as having slurred speech, a swayed stance, red and glassy eyes, and having the odor of alcohol emitting from his breath and person. [RR-I-29]. Officer Ramirez further established he was within two to three feet of the Appellee when he made those observations. [RR-I-29].

Officer Ramirez then described how Appellee's behavior was "very aggressive and belligerent", noted that Appellee would not cooperate with the police investigation, and indicated that the Appellee was yelling at the police. [RR-I-29].

Officer Ramirez then established that the female on the scene with the Appellee was a Daniela Vasquez. [RR-I-30].

Officer Ramirez then noted that the parking lot was approximately 15 feet away from a roadway that was in use and approximately 15 to 20 feet from South Laurent. [RR-I-31-32]. Officer Ramirez then explained that South Laurent gets "very heavy traffic" and that it can get heavy traffic even as late in the evening as the time when Officer Ramirez made contact with the Appellee. [RR-I-32].

Officer Ramirez then noted that there was no one present who was fit to take care of the Appellee and that the Appellee did not ask to have someone come and pick him up or ask to call for a taxi. [RR-I-32]. Officer Ramirez also stated that in his opinion the Appellee was not in a fit condition to drive or to walk home. [RR-I-32-33].

Officer Ramirez then confirmed witnessing the actual arrest of the Appellee by Officer Quinn. [RR-I-33]. Officer Ramirez then stated he did not observe any misconduct on Officer Quinn's part and noted that none of the other officers present at the scene disagreed with Officer Quinn's arrest decision. [RR-I-33].

On re-direct, Officer Ramirez described how the police were unable to effectively talk with the Appellee due to his continual yelling of obscenities and his refusal to follow police instructions. [RR-I-35-36].

The State then rested and the defense called Appellee's wife, Daniela Jaquez. [RR-I-37]. Ms. Jaquez confirmed she was present when the Appellee was arrested for public intoxication. [RR-I-37]. On cross-examination, she likewise acknowledged that the Appellee had been drinking prior to his arrest and had had three or four beers. [RR-I-42-43].

After argument, the trial court issued its ruling. [RR-I-53]. The trial court declined to make any finding as to improper actions by Officer Ramirez or Officer Guerrero. [RR-I-54]. The trial court then granted Appellee's motion to suppress. [RR-I-55].

The trial court subsequently issued written findings of fact and conclusions of law. [CR-I-24-26]. The trial court found this incident occurred outside the D&G Lounge (a bar) at approximately 11:30 at night. [CR-I-24]. The trial court further established that Officer Guerrero and Ramirez both testified that "the defendant demonstrated signs of intoxication." [CR-I-24]. The trial court then noted there was no evidence from Officer Quinn about whether the offense of public intoxication was committed within his presence or view. [CR-I-24-25]. The trial court also noted that there was no evidence that Officer Guerrero or Ramirez's observations were communicated to Officer Quinn. [CR-I-26]. The trial court concluded that Officer Quinn was the only officer who affected the

arrest. [CR-I-26]. The trial court then declined to speculate as to what Officer Quinn observed prior to the arrest. [CR-I-26]. The trial court did not issue any findings stating that Officers Guerrero or Ramirez lacked probable cause for the arrest. [CR-I-24-26].

On remand the trial court issued supplemental findings of fact. [SCR-I-8-11]. The trial court specifically found that both Officer Guerrero and Officer Ramirez perceived several indications of intoxication on the Appellee with Officer Guerrero observing the odor of alcohol, swaying, and slurred speech [SCR-I-9] while Officer Ramirez observed the Appellee to have slurred speech and a swayed stance. [SCR-I-10]. The trial court also found that Officer Quinn heard the Appellee screaming and yelling. [SCR-I-9]. And the trial court reiterated its earlier finding that there was no misconduct on the part of Officers Guerrero and Ramirez in this incident. [SCR-I-11]. Nevertheless, the trial court refused to find that Officer Quinn was present at the time when Officers Guerrero and Ramirez perceived signs of intoxication on the Appellee. [SCR-I-11]. The trial court also found there was no evidence showing Officer Quinn had any specialized training in detecting intoxication. [SCR-I-11]. Thus the trial court reaffirmed its earlier ruling to grant suppression in this case. [SCR-I-11].

The trial court's supplemental findings did not address whether the trial court believed Officer Guerrero's testimony that: 1) Officer Quinn spoke to the Appellee prior to arresting him [RR-I-17; SCR-I-9]; 2) the parking lot where the arrest took place was in use at the time of the arrest [RR-I-17; SCR-I-9]; 3) Highway 185 is near the location where the arrest took place [RR-I-17; SCR-I-9]; and 4) cars were in the parking lot at the time of the arrest. [RR-I-25; SCR-I-9]. The trial court's supplemental findings also did not address whether the trial court believed Officer Ramirez's testimony that: 1) the Appellee had the odor of alcohol on his breath and person [RR-I-29; SCR-I-9-10]; 2) the Appellee had red and glassy eyes [RR-I-29; SCR-I-9-10]; 3) there were cars in the parking lot at the time of the arrest [RR-I-31; SCR-I-9-10]; 4) the parking lot where the arrest took place was 15 feet from the street [RR-I-31-32; SCR-I-9-10]; and 5) South Laurent gets very heavy traffic even in the evening [RR-I-32; SCR-I-9-10].

SUMMARY OF THE ARGUMENT

The trial court's findings of fact in this case are inadequate for proper appellate review as they fail to address several potentially case dispositive issues that need to be addressed.

The trial court's findings of fact do not address whether the trial court believed Officer Guerrero's testimony that Officer Quinn spoke with the

Appellee. This point is critical because the trial court did believe Officer Guerrero and Ramirez's testimony that the Appellee had slurred speech and as such if Officer Quinn spoke with the Appellee he would have also realized the Appellee had slurred speech.

The trial court's findings also fail to address whether the trial court believed Officer Ramirez's testimony that the Appellee had the odor of alcohol on his breath and person. This is perhaps not as a critical since the trial court did believe Officer Guerrero's testimony on this same point, but it is still important because the trial court did believe that Officer Quinn was the officer who carried out the arrest of the Appellee, and thus logically if the Appellee smelled of alcohol then Officer Quinn would have detected that smell.

The trial court's findings of fact also entirely failed to address whether the trial court believed the testimony that established that the offense occurred in a public place and the testimony that established the Appellee was a danger to himself or others. Since those factors of are both elements of the offense of public intoxication, the trial court's findings are inadequate without a definitive ruling on those points and must be further supplemented.

Thus because the trial court's findings fail to address multiple potentially case dispositive issues, those findings are inadequate for proper appellate review and the case must be remanded back to the trial court so it can produce complete findings that fully address every potentially case dispositive issue.

Otherwise the critical questions of this appeal are all questions of law. As such the appropriate standard of review for this appeal is *de novo*.

Even under the current findings of fact it is clear as a matter of law that Officer Quinn had probable cause to arrest the Appellee for public intoxication. The trial court acknowledged that Officer Quinn heard the Appellee screaming and yelling and also found that it was Officer Quinn who affected the arrest of the Appellee. And the trial court found (through the testimony of Officer Guerrero that the Appellee had the odor of alcohol on his person.) If Officer Quinn got close enough to the Appellee to carry out an arrest then he would have smelled the odor of alcohol on the Appellee, and that knowledge coupled with the fact that Officer Quinn heard the Appellee screaming and yelling is enough to provide probable cause that the Appellee is intoxicated.

As for probable cause that the Appellee was in a public place and was a danger to himself or others, the very fact that the trial court did not issue

any findings of fact on these points supports the trial court did not consider these issues to be case dispositive issues. That conclusion only makes sense if the trial court sided with the State on these issues, because obviously if the trial court did not believe the State had established probable cause that the offense occurred in a public place and under conditions where the Appellee was a danger to himself or others then that would have been another ground for the trial court to grant the Appellee's motion to suppress and thus the trial court would have to have addressed it in the trial court's findings.

The trial court's findings can also be read as implicitly holding that the trial court accepted Officer Guerrero and Ramirez's testimony on these points. After all the trial court has twice found that Officers Guerrero and Ramirez committed no misconduct in their involvement in the case. Allowing a person to be arrested for an offense of public intoxication if the person was not in a public place and not under circumstances where they could be a danger to themselves or others would constitute misconduct on the part of Officers Guerrero and Ramirez (who certainly have a duty to prevent false arrests), thus the trial court's finding as to no misconduct from Officer Guerrero and Ramirez only makes sense if the trial court believed their testimony that the arrest occurred in a parking lot, that was in use, and near active streets.

The trial court's findings are also sufficient to establish that Officer Quinn arresting the Appellee was in compliance with the requirements of Article 14.01 since public intoxication is a breach of the peace offense and the trial court's findings establish that the offense occurred within Officer Quinn's presence or view.

In the alternative, even if the knowledge of Officer Quinn is deemed insufficient to establish probable cause, the arrest is still valid because the knowledge of all of the officers working the case is to be considered in determining if the police have probable cause, regardless of whether that knowledge was communicated to the arresting officer or not, and in this case the knowledge known to Officers Guerrero and Ramirez was sufficient to establish probable cause to arrest the Appellee for public intoxcation.

Likewise, Officer Guerrero and Officer Ramirez were clearly part of the arrest team who had knowledge of the arrest since they were serving as back-up officers to Officer Quinn would he made the arrest. Thus they count as the arresting officer for the purposes of Article 14.01 regardless of whether they communicated anything to Officer Quinn or not.

The State recognizes that this Honorable Court has previously rejected the State's argument on this point and held that non-arresting officers must communicate their knowledge to the arresting officers to be

considered part of the arrest team. The State re-urges its original argument on this point so as to keep the issue active for potential further appellate review.

There is also no violation of Appellee's constitutional rights should this case proceed to trial. Such a claim is premature anyway, since it is not certain Officer Quinn will actually invoke his Fifth Amendment rights at trial. But even if Officer Quinn does so invoke his right not to testify, that will not violate any of Appellee's rights. The right to confront the witnesses against you only applies to actual witnesses against you. If Officer Quinn does not testify against Appellee, and if the State does not offer any out of court testimonial statements from him into evidence against Appellee, then Officer Quinn is not a witness against Appellee, and thus Appellee has no right to confront him. Nor is Appellee's right to compulsory process violated if Officer Quinn invokes his Fifth Amendment rights. Appellee has not produced any evidence to show that Officer Quinn would provide favorable testimony for the Appellee, and even if Appellee could show that Officer Quinn would provide favorable testimony for the defense, the right to protection against self-incrimination trumps the right to compulsory process. As such an invocation of the Fifth Amendment by a potentially favorable defense witness does not constitute a violation of the right to

compulsory process. Therefore there is no constitutional violation if this case proceeds to trial and thus no justification for suppression.

ARGUMENT

I. The trial court's findings of fact are inadequate for proper appellate review and must be further supplemented.

The losing party in a motion to suppress hearing is entitled to have the trial court express its "essential findings." *State v. Cullen,* 195 S.W. 3d 696, 700 (Tex. Crim. App. 2006). "Essential findings" consist of "the findings of fact and conclusions of law adequate to provide an appellate court with a basis upon which to review the trial court's application of the law to the facts." *Id.* If the trial court fails to provide the findings of fact and conclusions of law necessary to fully address a potentially dispositive issue then that failure constitutes a "failure to act" on behalf of the trial court under Texas Rule of Appellate Procedure 44.4(a). See *State v. Elias,* 339 S.W. 3d 667, 676 (Tex. Crim. App. 2011)(emphasis added). The remedy for such a failure is to have the case remanded back to the trial court for entry of additional, specific findings of fact that will address the potentially dispositive factual issues in the case. *Id.* This remedy holds true whether a party requested findings of fact and conclusions of law from the trial court, or if the trial court decided on its own to furnish findings of fact and conclusions of law. *Id.*

Furthermore, it is error on the part of an appellate court to affirm the trial court's ruling on inadequate findings of fact/conclusions of law rather than to remand the case back to the trial court with instructions to that court to supplement the record with the missing findings of fact and conclusions of law. *Elias,* 339 S.W. 3d at 676-677. An appellate court is not to presume factual findings that may be dispositive in a case when the trial court's findings of fact are an inadequate basis upon which to make a legal conclusion and when the losing party at the trial court level properly requested findings. *State v. Saenz,* 411 S.W. 3d 488, 495 (Tex. Crim. App. 2013).

In the present case even though the trial court has now twice issued writing findings of fact, the trial court's findings have still failed to address several potential case dispositive issues. In particular the trial court's findings fail to address whether Officer Quinn would have had knowledge the Appellee had slurred speech and fail to address whether the trial court believed the State's evidence that the offense occurred in a public place and under such circumstances that the Appellee's intoxication rendered him a danger to himself or others. Since these are potentially case dispositive points, the trial court's failure to address them renders its findings

inadequate for proper appellate review and necessitates having the case remanded for additional findings.

A. The trial court's findings fail to address Officer Guerrero's testimony that Officer Quinn spoke to the Appellee.

During the suppression hearing Officer Guerrero testified that Officer Quinn spoke to the Appellee prior to arresting him [RR-I-17]. This is a potentially critical point of testify given that the trial court found (through the testimony of both Officer Guerrero and Officer Ramirez) that the Appellee exhibited slurred speech. [SCR-I-9-10]. Slurred speech is an indication of intoxication. See *State v. Thirty Thousand Six Hundred Sixty Dollars and no/100,* 136 S.W. 3d 392, 400 (Tex. App.-Corpus Christi 2004, pet. denied). And obviously if Officer Quinn spoke to the Appellee he would have heard the Appellee's slurred speech. Therefore this point of testimony is directly relevant to what knowledge Officer Quinn had about whether or not the Appellee was intoxicated. But the trial court issued no findings on whether it believed Officer Guerrero's testimony that Officer Quinn spoke to the Appellee. [SCR-I-9]. And since this is a potentially case dispositive point, the lack of trial court findings on this point renders the trial court's findings of fact deficient as a matter of law and thus mandates supplementation.

B. The trial court's findings fail to address Officer Ramirez's testimony that the Appellee had the odor of alcohol on his breath and person.

The trial court's findings also have an additional serious defect in that they fail to address whether the trial court believed Officer Ramirez's testimony that the Appellee had the odor of alcohol on his breath and person. [[RR-I-29; SCR-I-9-10].

Just as with slurred speech, the odor of alcohol is also a potential indicator of intoxication. See *Thirty Thousand Six Hundred Sixty Dollars and no/100,* 136 S.W. 3d at 400. And the trial court has already determined that it was Officer Quinn who exclusively carried out the arrest of the Appellee. [CR-I-26]. For Officer Quinn to carry out the arrest of the Appellee he would obviously have to get in close proximity to the Appellee, and thus if there was an odor of alcohol on the Appellee's breath or person then Officer Quinn would have smelled that odor. As such it is important to know whether the court believed Officer Ramirez's testimony on this point.

Now it is true that the trial court has already established that it did believe Officer Guerrero's testimony on this same point. [SCR-I-9]. That does somewhat reduce the State's need for an explicit finding on Officer Ramirez's testimony, since the testimony of Officer Guerrero should be sufficient by itself to establish that Officer Quinn would have detected the odor

of alcohol on the Appellee. However, receiving confirmation that a second officer also smelled the odor of alcohol on the Appellee makes it even more likely that Officer Quinn would have smelled that odor, and thus the State believes it is still important to also have the trial court's determination on Officer Ramirez's testimony on this point. Thus this point is also potentially case dispositive and should have been addressed in the trial court's findings.

C. The trial court's findings fail to address any of the State's evidence concerning that the offense occurred in a public place and that the Appellee's intoxication made him a danger to himself or others.

But perhaps most problematic is that the trial court's findings entirely fail to address any of the testimony that helped establish that the alleged offense occurred in a public place and that is occurred under conditions that made the Appellee a danger to himself or others. This is a critical defect because to prove the offense of public intoxication the State must prove not merely that a defendant was intoxicated but also that he was intoxicated in a public place and that his intoxication made him a danger to himself or others. TEX. PEN. CODE §49.02(a)(West 2011). Therefore since these are two elements of the offense it is absolutely essential they be addressed in the trial court's findings. The State can hardly establish it proved probable cause for

the offense of public intoxication if the trial court's findings do not even address the State's proof concerning two of the elements of that offense.

The State offered ample testimony at the suppression hearing to establish probable cause for both of these elements. Both Officer Guerrero and Officer Ramirez testified that Appellee was in a public place at the time of his arrest, specifically the parking lot of the G&G Lounge. [RR-I-10; 16]. Parking lots around businesses are public places. See *York v. State,* 342 S.W. 3d 528, 537 (Tex. Crim. App. 2011); *Gonzalez v. State,* 664 S.W. 2d 797, 801 (Tex. App.-Corpus Christi 1984), *vacated on other grounds,* No. 263-84 (Tex. Crim. App. 1984)(not designated for publication). And obviously if Officer Guerrero and Ramirez are correct that the incident occurred in a parking lot then Officer Quinn would have observed the same since he was also present at the scene. Thus if the trial court believed either Officer Guerrero or Officer Ramirez's testimony on this point that would establish the public place element.

Officers Guerrero likewise testified that the parking lot where this offense occurred was in use with cars freely entering and exiting [RR-I-17], that cars were in the parking lot at the time of the arrest. [RR-I-25], and that the location where the arrest occurred was near Highway 185. [RR-I-17]. And Officer Ramirez testified that there were cars in the parking lot at the time of

the arrest [RR-I-31]; that the parking lot where the arrest took place was 15 feet from the street; and that South Laurent gets very heavy traffic even in the evening [RR-I-32]. Being intoxicated in a parking lot of a public place where it is reasonable to assume cars would travel in and out is enough to satisfy the endangerment element of public intoxication. See *White v. State,* 714 S.W. 2d 78, 79 (Tex. App.-San Antonio 1986, no writ). And being close to a public roadway in an intoxicated condition is also enough to establish that the intoxicated person has subjected themselves or others to potential danger. See *Balli v. State,* 530 S.W. 2d 123, 126 (Tex. Crim. App. 1975), *overruled on other grounds,* 540 S.W. 2d 314, 317 (Tex. Crim. App. 1976)(finding potential danger in walking down the street in an intoxicated condition). See also *Bentley v. State,* 535 S.W. 2d 651, 653 (Tex. Crim. App. 1976)(finding potential danger from the possibility that an intoxicated defendant might have taken to the roadways if he had succeeded in his attempt to purchase chains for his vehicle); *Dickey v. State,* 552 S.W. 2d 467, 468 (Tex. Crim. App. 1977)(finding potential danger in the possibility that a sleeping, intoxicated defendant, might upon waking up have chosen to drive his vehicle into the roadway.) And obviously if Officer Guerrero and Ramirez could see that the parking lot was in use and close to major roadways then Officer Quinn would have observed the same as he was also

present at the scene. Thus if the trial court believed either Officer Guerrero or Officer Ramirez's testimony on these point that would likewise establish the endangerment element.

Unfortunately, neither the trial court's original finding of facts nor its supplemental findings of fact include any explicit findings as to what the trial court concluded concerning the State's evidence on the public place and endangerment elements. [CR-I-24-26; SCR-I-8-11]. Instead the trial court's findings only addressed the question of whether the State had established probable cause that the Appellee was intoxicated. [CR-I-24-26; SCR-I-8-11].

Accordingly, it is clear that the trial court's findings do not fully address every potentially dispositive issue in this case as they do not fully consider an important point of testimony for establishing what Officer Quinn would have known about the Appellee being intoxicated and do not address the public place and endangerment evidence presented by the State at all. As such the appeal should be abated and the case returned to the trial court with instructions to again supplement its findings of fact by directly addressing these points. *Elias*, 339 S.W. 3d at 676-677.

II. The appropriate standard of review in this case is *de novo*.

In the event that this Honorable Court declines to remand the case for supplementing the findings of fact and instead decides to immediately take up the merits of the case then the appropriate standard of review for the case is *de novo*.

A trial court's ruling on a motion to suppress is reviewed under a bifurcated standard of review. *Amador v. State,* 221 S.W. 3d 666, 673 (Tex. Crim. App. 2007). The trial court's determination of facts is entitled to almost total deference, so long as it is supported by the record. *State v. Weaver,* 349 S.W. 3d 521, 525 (Tex. Crim. App. 2011). However, the application law to fact questions that do not turn on the credibility and demeanor of witnesses is reviewed *de novo*. *Amador,* 221 S.W. 3d at 673. The Texas Court of Criminal Appeals has likewise established that determinations of probable cause should be reviewed *de novo*. See *Guzman v. State,* 955 S.W. 2d 85, 87 (Tex. Crim. App. 1997).

The critical issue on appeal in this case is not what Officer Quinn (or Officers Guerrero and Ramirez) knew. That has already been decided by the trial court. Instead the critical questions for this case are whether the knowledge of Officer Quinn (or the knowledge of the arrest team as a whole) was sufficient to establish probable cause for the offense of public

intoxication. That is a legal question not a factual question and therefore the case should be subject to *de novo* review.

III. The trial court's findings establish that Officer Quinn had probable cause to arrest the Appellee for public intoxication and that the arrest was permissible under Article 14.01 of the Texas Code of Criminal Procedure.

Accordingly, should this Honorable Court choose to proceed on the existing findings of facts, those findings of fact, while incomplete, still provide sufficient information to establish both that Officer Quinn had probable cause to arrest the Appellee for public intoxication and that the arrest was lawful under Article 14.01 of the Texas Code of Criminal Procedure. Thus the trial court erred by granting the suppression motion.

A. The trial court's findings establish that Officer Quinn had probable cause to conclude the Appellee was intoxicated.

A lawful arrest requires probable cause that an arrestable offense has taken place. See *Torres v. State*, 182 S.W. 3d 899, 901 (Tex. Crim. App. 2005). And a person commits the offense of public intoxication when they appear in a public place while intoxicated to the degree that they may endanger themself or another. TEX. PEN. CODE §49.02(a)(West 2011). The test for probable cause to arrest for public intoxication is whether the officer's knowledge at the time of the arrest would warrant a prudent person in believing that a suspect, albeit intoxicated, was in any way a danger to

themselves or others. *Rodriguez v. State,* 191 S.W. 3d 428, 445 (Tex. App.-Corpus Christi 2006, pet. ref'd). The essential element is that a person must be so intoxicated that they may endanger themselves or someone else. See *White,* 714 S.W. 2d at 79 (citing *Dickey,* 552 S.W. 2d at 468). The danger does not have to be immediate, and a specific, identifiable danger need not be apparent to the arresting officer. See *Padilla v. State,* 697 S.W. 2d 522, 524 (Tex. App.-El Paso 1985, no pet).

Probable cause is also a much lower standard than beyond a reasonable doubt. It requires more than bare suspicion but less evidence than what is required to justify a conviction. *Amador,* 275 S.W. 3d at 878. Moreover, probable cause only requires only a "fair probability" or "a substantial chance of criminal activity, not an actual showing of such activity." *Illinois v. Gates*, 462 U.S. 213, 243 n.13 (1983); *Parker v. State,* 206 S.W.3d 593, 599 (Tex. Crim. App. 2006) ("[P]robable cause is the accumulation of facts which, when viewed in their totality, would lead a reasonable officer to conclude, with a fair probability, that a crime has been committed or is being committed by someone.")

With that legal framework in mind, a review of the trial court's findings of fact makes it clear that the trial court found enough facts to be

true to establish as a matter of law that Officer Quinn had probable cause that the Appelle was intoxicated.

In this case the trial court specifically found that Officer Quinn observed the Appellee "yelling and screaming." [SCR-I-9]. Such behavior is a strong indicator of intoxication. See *Quesada v. State,* 751 S.W. 2d 309, 311 (Tex. App.-San Antonio 1988, no pet)(finding belligerent behavior an indication of intoxication); *Mack v. State,* No. 14-03-0036-CR, 2014 WL 524879 at 3 (Tex. App.-Houston [14th Dist.] 2004, no pet)(mem. op. not designated for publication)(finding a suspect yelling to be a factor that supports a finding of intoxication); *Henderson v. State,* No. 06-13-00010-CR, 2013 WL 5763296 at 2-3 (Tex. App.-Texarkana 2013, no pet)(mem. op. not designated for publication)(finding a suspect screaming to be a factor that supports a finding of intoxication). And this evidence becomes an even greater indication of intoxication when paired with the trial court's findings that this incident occurred outside a bar at approximately 11:30 at night as loud behavior, outside a bar, late at night is pretty much textbook example of intoxicated behavior. [CR-I-24].

That the Appellee "yelling and screaming" outside a bar late at night might very well be enough by itself to constitute probable cause that the Appellee was intoxicated. But that was not the only evidence that Officer

Quinn had to determine the Appellee was intoxicated. The trial court also found that "Officer Quinn was the only officer who effectuated the arrest of the defendant." [CR-I-26]. If Officer Quinn was the officer who actually carried out the arrest of the Appellee then logically Officer Quinn must have gotten into close proximity to the Appellee. And since the trial court believed Officer Guerrero's testimony that the Appellee had an odor of alcohol on him [SCR-I-9], logically Officer Quinn would have smelled that odor of alcohol when he was in close proximity to the Appellee. Thus the odor of alcohol on the Appellee would be another factor that would give Officer Quinn probable cause to believe the Appellee was intoxicated that night.

Nor does it matter that there is no evidence that Officer Quinn has any specialized training in detecting intoxicated individuals. Intoxication has long been recognized as one of the factors about which lay witnesses are competent to testify. See *Denham v. State,* 574 S.W. 2d 129, 131 (Tex. Crim. App. 1978). Thus even if Officer Quinn has no specialized training regarding recognizing intoxication he would still be capable as a lay witness of recognizing it when he observes it. (Especially when the intoxicated behavior is manifesting itself in such an obvious manner as a person yelling and screaming in the middle of the night right outside a bar.)

Evidence as sparse as red watery eyes, slurred speech, and swaying back and forth has been upheld as sufficient to establish probable cause a suspect was intoxicated. See *State v. Villarreal,* 476 S.W. 3d 45, 50 (Tex. App.-Corpus Christi 2014) *aff'd,* 475 S.W. 3d 784 (Tex. Crim. App. 2014). If red watery eyes, slurred speech, and swaying back and forth are enough to establish probable cause for intoxication then certainly a suspect smelling of alcohol and screaming and yelling outside a bar late at night is more than enough evidence as a matter of law to establish probable cause. A reasonable person with the knowledge the trial court has conceded that Officer Quinn had, would have concluded there was a fair probability the Appellee was intoxicated, and that is all that Officer Quinn needed for probable cause.

Accordingly, even on the existing findings of fact it is clear that as a matter of law Officer Quinn had sufficient evidence to have probable cause that the Appellee was intoxicated.

B. The trial court's findings establish Office Quinn had probable cause that the Appellee was in a public place and was a danger to himself or others.

With the trial court's findings sufficient to show that Officer Quinn had probable cause that the Appellee was intoxicated, the only remaining questions are whether the trial court's findings also are sufficient to show

there was probable cause the Appellee was in a public place and whether there was probable cause the Appellee was a danger to himself or others. This issue is admittedly trickier than whether the Appellee was intoxicated, since as previously described in Section I, Subsection C of the State's Answer, the trial court's findings of fact do not explicitly address what the trial court concluded as to any of the evidence the State presented on these points. [CR-I-24-26; SCR-I-8-11]. Still, it can be inferred that the trial court decided these issues in favor of the State because 1) the trial court failed to address this issue and 2) because the trial court has now twice stated that neither Officer Guerrero nor Officer Ramirez did anything wrong in their part of the case. [RR-I-54; SCR-I-11].

The explicit findings of a trial court are those the trial court deemed essential to its ruling. *Elias,* 339 S.W. 3d at 676. And if a trial court declines to include a fact issue within its findings of fact that means the trial court considered that particular issue to be peripheral or non-essential to its ultimate legal holding. *Id.*

In this case the trial court's decision not to include any findings of fact concerning what the trial court believed as to the State's evidence regarding the public place and endangerment elements shows the trial court did not consider those elements to be important considerations in the resolution of

the Appellee's suppression motion. And logically those issues could only be non-essential issues to the resolution of the case if the trial court decided those issues in favor of the State. (After all if the Appellee had decided either that the State failed to establish probable cause that the Appellee was in a public place or failed to establish probable cause that the Appellee was a danger to himself or others then that would have provided an additional basis to justify granting the suppression motion and thus could hardly be considered peripheral or non-essential to the court's ultimate legal holding.) Thus the trial court's very lack of explicit findings on these issues constitute an implicit finding that the trial court decided both these issues in favor of the State.

Additionally, the trial court's explicit findings can also be logically read as endorsing Officer Guerrero and Ramirez's testimony that the arrest occurred in a parking lot, [RR-I-17] that said parking lot was in use [RR-I-17, 25, 31], and that the parking lot was near active streets. [RR-I-17, 31-32]. This is because the trial court explicitly found both after the original suppression hearing and then again in its supplemental findings of fact that neither Officer Guerrero nor Officer Ramirez committed any misconduct in this case. [RR-I-54; SCR-I-11].

A police officer must have probable cause to arrest a suspect without a warrant. *Lunde v. State,* 736 S.W. 2d 665, 666 (Tex. Crim. App. 1987). And obviously it would constitute misconduct on the part of a police officer to permit a warrantless arrest to occur right in front of him if the officer knew that arrest was not supported by probable cause. Thus by the trial court concluding that neither Officer Guerrero nor Officer Ramirez did anything wrong in this case, the trial court must have found their testimony about where the arrest occurred and that the parking lot was in active use near active streets to be credible. This is because allowing a person to be arrested for an offense of public intoxication if the person was not in a public place and not a danger to themselves or others would constitute misconduct on the part of Officers Guerrero and Ramirez (who certainly have a duty to prevent unlawful arrests).

As such the trial court's finding that there was no misconduct from Officer Guerrero or Officer Ramirez only makes sense if the trial court believed their testimony that the arrest occurred in a parking lot, that was in use, and near active streets. And obviously if that knowledge was known to Officers Guerrero and Ramirez then it would have also been known to Officer Quinn, since he was at the exact same location and thus would have

also known that the offense was occurring in a parking lot that was in active use and near active streets.

Therefore the existing findings of fact establish that as a matter of law Officer Quinn also had probable cause that the Appellee's offense occurred in a public place with the Appellee's intoxication being under conditions that made him a danger to himself or others, and in conjunction with the trial court's findings also establishing that Officer Quinn had sufficient knowledge to have probable cause the Appellee was intoxicated, that means Officer Quinn had the required probable cause to arrest the Appellee for the offense of public intoxication.

C. The trial court's findings establish Officer Quinn was authorized pursuant to Article 14.01 to arrest the Appellee

Of course to establish a valid warrantless arrest in Texas it is not enough to show simply that the police had probable cause to arrest. The arrest must also be valid under Article 14.01 of the Texas Code of Criminal Procedure. *Martinez,* 2016 WL 7234085 at 4. This requires that the suspected offense be either a felony or a breach of the public peace and that the offense occurred within the arresting person's presence or view.

The Appellee was arrested for public intoxication. [RR-I-16]. Public intoxication is considered a breach of the peace offense. See *Heck v. State,*

507 S.W. 2d 737, 740 (Tex. Crim. App. 1974); *York*, 342 S.W. 3d at 564. Thus it is an arrestable offense pursuant to Article 14.01 of the Texas Code of Criminal Procedure.

Accordingly, the only remaining question is was the offense committed within Officer Quinn's presence or view. An offense occurs in the presence of an officer when any of the officer's senses afford him an awareness of its occurrence. *Amador*, 275 S.W. 3d at 878. And in this case the trial court's findings make it clear the offense occurred within Officer Quinn's senses given that the trial court directly found that Officer Quinn heard the Appellee screaming and yelling [SCR-I-9] and clearly would have smelled the odor of alcohol on the Appellee since Officer Quinn was found to be the person who actually arrested the Appellee. [CR-I-26]. As such the offense occurred within Officer Quinn's view, and the subsequent arrest was valid under Article 14.01.

Therefore with the trial court's findings of fact making it clear that Officer Quinn both had probable cause to arrest the Appellee for the offense of public intoxication and could lawfully arrest the Appellee in accordance with Article 14.01, it is clear the arrest in this case was lawful and as such the trial court committed reversible error by granting the Appellee's motion to suppress.

IV. Officers Guerrero and Ramirez's testimony fully established that Appelle's arrest was lawful.

A. Officers Guerrero and Ramirez's testimony established probable cause.

In the alternative, even if this Honorable Court concludes the State has failed to produce sufficient evidence to show that Officer Quinn, by himself, had probable cause to arrest the Appellee for public intoxication, the arrest was still valid because the testimony of Officers Guerrero and Ramirez established conclusively that the arrest team as a whole had sufficient knowledge to establish probable cause that the Appellee had committed the offense of public intoxication.

When there has been cooperation between officers of the same agency, the sum of the information known to the co-operating officers at the time of the arrest by any of the officers involved is to be considered in determining whether there was sufficient probable cause for the arrest. See *Oviedo v. State,* 767 S.W. 2d 214, 217 (Tex. App.-Corpus Christi 1989, no pet)(emphasis added). Therefore in determining if the police had probable cause to arrest the Appelee we are not restricted to just considering what Officer Quinn himself personally knew at the time of the arrest. The testimony of Officers Guerrero and Ramirez is just as relevant, and if that

testimony establishes probable cause then the arrest of the Appellee was lawful, and the fruits of that arrest should not have been suppressed.

In the present case the trial court found credible Officer Guerrero's testimony that the Appellee had an odor of alcohol, slurred speech, and was swaying. [SCR-I-9]. The trial court also found credible Officer Ramirez's testimony that the Appellee had slurred speech and was swaying. [SCR-I-10]. It can also be logically inferred that both Officer Guerrero and Ramirez heard the Appellee screaming and yelling, since the trial court recognized that Officer Quinn heard the Appellee screaming and yelling [SCR-I-9] and the trial court found that Officers Guerrero and Ramirez arrived on the scene before Officer Quinn did. [SCR-I-9]. (Besides even if the trial court did not conclude that Officers Guerrero and Ramirez heard the Appellee screaming and yelling, the trial court did find that Officer Quinn heard the Appellee screaming and yelling and thus that knowledge was still part of what was collectively known to the arrest team. [SCR-I-9.])

Accordingly, the collective knowledge of the arrest team as determined by the trial court is that late at night, outside a bar [CR-I-24], the Appellee was yelling and screaming [SCR-I-9], and had slurred speech [SCR-I-9-10], an odor of alcohol [SCR-I-9], and was swaying [SCR-I-9-10].

That is clearly sufficient evidence to establish the arrest team had probable cause to believe the Appellee was intoxicated.

It should likewise be held that the trial court also found probable cause that the Appellee committed this offense in a public place and under conditions that made him a danger to himself and others for the reasons already described in Section III, Subsection B of the State's answer.

Accordingly, following *Oveido* and considering the knowledge known to the police force as a whole in this case, it is clear there was probable cause the Appellee had committed the offense of public intoxication.

B. Officers Guerrero and Ramirez's testimony established the arrest was lawful under Article 14.01.

Officer's Guerrero and Ramirez testimony also is sufficient to establish, independent of Officer Quinn's testimony, that the requirements of Article 14.01 were satisfied in this case.

Article 14.01 of the Texas Code of Criminal Procedure requires for a valid warrantless arrest that the offense be committed within the presence or view of the arresting officer. However, case law has clarified that the arresting officer does not have to be the officer who conducted the actual physical detention of the suspect. Rather so long as the non-arresting officer is part of the arrest team and has first-hand knowledge of the offense, than

that officer is just as much a participant in the arrest for the purposes of Article 14.01 as if they had seized the defendant themselves. See *Willis v. State,* 669 S.W. 2d 728, 730 (Tex. Crim. App. 1984). Indeed this holds true even under circumstances where the participating officer with knowledge of the offense is not even physically present at the time of the arrest. See *Astran v. State,* 799 S.W. 2d 761, 764 (Tex. Crim. App. 1990). The test is not which officer actually carried out the physical arrest itself, but whether the officer with the required knowledge was so much a part of the arrest or such an integral part of the arrest team that they effectively participated in the arrest and also whether the "viewing officer" was substantially aware of the circumstances of the arrest. See *Astran,* 799 S.W. 2d at 764. As such as long as the facts show that the viewing officer effectively participated in the arrest and was fully aware of the circumstances of the arrest then Article 14.01 is satisfied even if they were not the officer who physically affected the arrest. *Astran,* 799 S.W. 2d at 764.

In the present case the trial court's findings establish that both Officer Guerrero and Officer Ramirez were part of the arrest team as the trial court specifically noted that Officer Guerrero was the first man on the scene and Officer Ramirez was the second man on the scene. [SCR-I-9]. The trial court also found that both Officer Guerrero and Officer Ramirez noticed

multiple indications of intoxication on the Appellee. [SCR-I-9-10]. And the trial court further confirmed the Appellee was acting in a belligerent manner by "yelling and screaming." [SCR-I-9]. Thus both officers were clearly closely involved with the arrest in this case. They may not have been the officer who made the actual decision to arrest the Appellee or the officer who actually placed physical handcuffs on the Appellee, but they were both present at the location, providing backup for another officer who was having to investigate a suspect who was displaying signs of intoxication and acting in a loud, belligerent manner.

Back-up officers obviously play a critical part in any arrest. The presence of back-up officers at an arrest scene helps discourage the arrestee from trying to resist and makes intervention by third parties less likely (since they would have to fight multiple officers instead of just one). The presence of back-up officers also ensures the arresting officer will have immediate support if the arrestee attempts to fight, flee, or destroy evidence. Back-up officers being present also enables the arresting officer to focus his full attention on enacting the arrest. And back-up officers provide witnesses to the behavior of the arresting officer, who can help address any accusations against that officer's conduct while also helping to corroborate any statements made by the arrestee. (This is particularly critical in cases such

as this one where the arrest was not record on video.) [CR-I-24]. Thus on-scene backup officers are just as much a part of any arrest as the officer who actually physically detains the suspect. Thus both Officer Guerrero and Ramirez were a key part of the arrest team, and both officers effectively participated in the arrest of the Appellee in this case. Therefore the first *Astran* prong is satisfied.

As for the second *Astran* prong, it is equally clear that both Officer Guerrero and Officer Ramirez were fully aware of the circumstances of the arrest. The trial court found they were the first and second man at the arrest scene [SCR-I-9], so they would have had full knowledge of where, when, and under what circumstances the arrest happened. The trial court also found that both of them witnessed the Appellee showing obvious signs of intoxication. [SCR-I-9-10]. And while the trial court did not make an explicit finding on if they observed the Appellee screaming and yelling, it is reasonable to infer they did observe that from the trial court's findings, since the trial court did conclude that Officer Quinn observed the Appellee screaming and yelling [SCR-I-9], and also found that Officers Guerrero and Ramirez were at the scene prior to Officer Quinn. [SCR-I-9].

As such Officer Guerrero and Officer Ramirez were fully aware that Appellee was intoxicated. And the State believes, for the reasons described

in Part III, Subsection B of the State's Answer, that the trial court also implicitly found that Officer Guerrero and Ramirez were fully aware that the Appellee was intoxicated in a public place and that his intoxication made him a danger to himself and others. Therefore both Officer Guerrero and Officer Ramirez were fully aware of the circumstances of the arrest of the Appellee which means Officers Guerrero and Ramirez also satisfy the second *Astran* prong.

With Officers Guerrero and Ramirez satisfying both of the *Astran* prongs they qualify under Article 14.01 as participating officers in the arrest of the Appellee just as much as if they were the officer who actually physically effected the arrest of the Appellee. As such their testimony as to what they knew is sufficient to establish that the arrest of the Appellee was valid under Article 14.01 of the Texas Code of Criminal Procedure.

Nor does it matter that there is no evidence that either Officer Guerrero or Officer Ramirez ever relayed any of their observations to the Appellee. *Astran* did not make the non-arresting officer reporting what they had observed to the arresting officer to be an requirement for them to be considered participating in the arrest. Rather, as previously discussed, *Astran* instead established that the two criteria for the non-arresting officer to be deemed a participant in the arrest are: 1) that the non-arresting officer

was so much a part of the arrest team that they effectively participated in the arrest, and 2) that they were substantially aware of the circumstances of the arrest. See *Astran,* 799 S.W. 2d at 764. Thus there is no explicit requirement that the non-arresting officer relayed his observations of the crime to the arresting officer.

Now admittedly both *Astran* and *Willis* involved the non-arresting officer relaying information to the officer who made the actual physical arrest. See *Astran,* 799 S.W. 2d at 763; *Willis,* 669 S.W. 2d at 730.) However, in both of those cases the non-arresting officers were undercover officers purchasing narcotics from suspects. See *Astran,* 799 S.W. 2d at 762; *Willis,* 669 S.W. 2d at 730. Thus in both of those cases the non-arresting officers role in the investigation was to relay their observations to the rest of the arrest team. Their relaying their observations was precisely what made them a key part of the arrest team.

In the present case the facts are very different and thus here there is no requirement for either Officer Guerrero or Officer Ramirez to have relayed their observations about the Appellee's condition to Officer Quinn to establish they were part of the arrest team. In this case, unlike in *Astran* and *Willis,* the testifying, non-arresting officers were not undercover agents whose role in the case was to covertly obtain information about criminal

activity and then pass that on to the officers who would make the actual arrest. Rather Officer Guerrero and Ramirez were directly on-scene during the arrest as part of the force of police officers that responded to a reported fight, arrived on scene, and observed Appellee in a public place in such an intoxicated condition as to be a danger to himself and others. As such in this case it was not necessary to show that either Officer Guerrero or Officer Ramirez relayed their observations about the Appellee to another officer to show they were a key part of the arrest team or to establish that they were aware of the circumstances of Appellee's arrest. Their physical proximity at the arrest location during the arrest already establishes that they were an integral part of the arrest team, and their direct observations of the Appellee's condition and of the arrest itself establish they were fully aware of the circumstances of the arrest. That is all that is required under *Astran* for Officers Guerrero and Ramirez to be considered participants in the arrest pursuant to Article 14.01 for while a non-arresting officer relaying their observations about a suspect to the arresting officer is one way for a testifying, non-arresting officer to demonstrate they were a key part of an arrest team, it is also clearly not the only way. In this case the evidence conclusively shows that Officer Guerrero and Officer Ramirez were part of the arrest team just as much as Officer Quinn was and as such it was

reversible error for the trial court to conclude that Officer Guerrero and Officer Ramirez did not participate in the arrest of the Appellee simply because there was no evidence they relayed their observations of the Appellee's condition to Officer Quinn.

The State is also aware that this Honorable Court rejected this exact same argument in the first iteration of this case and concluded that the current case is distinguishable from *Willis* and *Astran* because in those cases there was evidence the "participating officers" relayed their observations to the arresting officer. *Martinez,* 2015 WL 5797604 at 5. The State is re-urging its original position, not out of disrespect for this Honorable Court previous ruling on this subject but solely as to preserve the issue of the exact scope of Article 14.01 (and indeed of the Collective Knowledge Doctrine itself) for possible future appellate review.

V. There is no constitutional violation in admitting evidence of Appellee's arrest without the testimony of Officer Quinn.

The trial court made a verbal pronouncement at the end of the suppression hearing that it believed that the Appellant's constitutional right to confront his accusers would be violated if this case went to trial. [RR-I-54]. Even though this does not appear to be the basis of the trial court's

ultimate ruling, the State will address this issue so as to avoid any possibility of procedural default on such an argument.

At any rate such an argument from the trial court is both pre-mature and an improper reading of the Sixth Amendment right to confront ones accusers. Nor is there any other violation of Appellee's constitutional rights should this case proceed to trial with Officer Quinn invoking his Fifth Amendment right to protection against self-incrimination. As such to the extent the trial court relied upon its belief that Appellee's constitutional rights would be violated if the case proceeded to trial, that was additional reversible error.

The trial court's holding about a violation of Appellee's constitutional rights should the case proceed to trial is premature because even though Officer Quinn invoked his Fifth Amendment protection against self-incrimination to avoid testifying at the suppression hearing, that does not necessarily mean he will likewise invoke that right at the actual trial. There are many possible ways that Officer Quinn could chose to testify or be made to testify when this case proceeds to trial. His case that is pending in Harris County could be resolved prior to the trial date in this case and if that case is resolved with Officer Quinn pleading or being found guilty or being acquitted either outcome would extinguish his Fifth Amendment right

concerning that incident. Thus he would then have to testify if subpoenaed by either party. Likewise even if the Harris County case is still pending, the State might be able to secure testimonial immunity for Officer Quinn, which would in turn bar him from being able to invoke the Fifth Amendment to refuse to testify in this case. See *Coffey v. State,* 744 S.W. 2d 235, 238 (Tex. App.-Houston [1st Dist] 1987), *aff'd*, 796 S.W. 2d 175, 180 (Tex. Crim. App. 1980). It's also possible the State might be able to satisfy Officer Quinn that it will be able to prevent the defense from being allowed to question him about the accusations against him in Harris County when this case goes to trial which would remove the need for him to invoke his Fifth Amendment rights. (Oddly enough it is actually much easier for the State to block questioning about allegations of extraneous misconduct of a witness at trial than at a pre-trial suppression hearing since at a pre-trial suppression hearing the Rules of Evidence except privileges do not apply. See *Granados v. State,* 85 S.W. 3d 217, 227 (Tex. Crim. App. 2002). Without the Rules of Evidence the State has no real ability to block irrelevant and improper impeachment questioning at a suppression hearing, so a witness facing charges in another county can be freely interrogated about those charges. It is very different at an actual trial though where the Rules of Evidence do apply, and thus the State has actual options for successfully blocking such

questioning.) Or Officer Quinn could simply change his mind about invoking his Fifth Amendment rights, either from an attack of conscience, or from a cynical calculation that his cooperating with a prosecution despite it putting himself at risk might make a favorable impression on the sentencing authority should he be convicted in his Harris County case. As such there is simply no way at this time to know if Officer Quinn will actually invoke his Fifth Amendment right not to testify once this case proceeds to trial, and as such it is premature for the trial court to conclude that Appellee's constitutional rights will be violated at trial.

The trial court's statement concerning the Appellee's confrontation rights was also erroneous because it involved a misinterpretation of what the Confrontation Clause actually protects. The Confrontation Clause provides that in all criminal prosecutions, the accused shall enjoy the right to be confronted with the witnesses against him. U.S. CONST. amend. VI. (emphasis added). It provides two types of specific protection to a defendant: the right to physically face those who testify against him and the right to conduct cross-examination. *Pennsylvania v. Ritchie,* 480 U.S. 39, 51 (1987). Thus the Confrontation Clause guarantees a defendant a face-to-face meeting with witnesses appearing before the trier of fact. *Coy v. Iowa,* 487 U.S. 1012, 1016 (1988)(emphasis added). In practice this protection bars the

admission of testimonial statements of people who do not appear at trial unless the declarant is unavailable to testify, and the defendant had a prior opportunity to cross-examine them. See *Crawford v. Washington,* 541 U.S. 36 (2004); *Burch v. State,* 401 S.W. 3d 634, 636 (Tex. Crim. App. 2013).

As such it is clear that the right to confrontation only applies against people who are serving as witnesses against you (either directly by taking the stand and testifying or indirectly by having their out of court testimonial statements offered into evidence through some other means.) If they are not testifying against you or having their testimonial statements introduced against you then they are not a witness, and you do not have a constitutional right to confront them.

In the present case Officer Quinn was not a witness against the Appellee. Officer Quinn did not testify at the suppression hearing, and the only statement of his that was offered into evidence at the suppression hearing was the fact that he had invoked his Fifth Amendment right to refuse to testify. [RR; State's Exhibit 1]. The State otherwise did not offer any testimony from Officer Quinn at the suppression hearing about the actual case itself (even though such testimony would have been admissible since *Crawford* does not apply at pre-trial suppression hearings.) See *Vanmeter v. State,* 165 S.W. 3d 68, 74-75 (Tex. App.-Dallas 2005, pet. ref'd). Nor does

the State need to call Officer Quinn at the actual trial, since, as discussed in Parts IV of the State's argument, the State believes it can establish the legality of Appellee's arrest entirely through the testimony of Officer Guerrero and Officer Ramirez. (And even if it becomes necessary for the State to establish what Officer Quinn knew at the time of the arrest, those fact can be established through circumstantial evidence provided by the testimony of Officers Guerrero and Ramirez. See *Martinez*, 2016 WL 7234085 at 5.)

If Officer Quinn is not called as a witness, and the State does not offer any testimonial statements from him into evidence, then he is not actually a witness against the Appellee, and thus the Appellee has no right to confront him under the Confrontation Clause.

Now separate from the Confrontation Clause, the Sixth Amendment also provides the defense the right to have compulsory process for obtaining witnesses in his favor. (The trial court did not specifically discuss the right to compulsory process either in its verbal pronouncement at the end of the suppression hearing or in its written findings of fact, but the State will still address this issue as well so as to establish that this right also does not form a valid basis for suppression in this case.) There is also no basis for finding

a violation of this right should Appellee's case proceed to trial with Officer Quinn still invoking his Fifth Amendment rights.

The right to compulsory process is not unlimited. It does not guarantee the right to secure the attendance and testimony of any and all witnesses; rather, it guarantees only compulsory process for obtaining witnesses testimony would be both material and favorable to the defense. See *United States v. Valenzuela–Bernal,* 458 U.S. 858, 866–67 (1982); *Coleman v. State,* 966 S.W. 2d 525, 527-28 (Tex. Crim. App. 1998). As such to exercise the compulsory process right, the defendant must make a plausible showing to the trial court, by sworn evidence or agreed facts, that the sought witness' testimony would be both material and favorable to the defense. *Coleman,* 966 S.W. 2d at 528. In the present case Appellee presented no evidence showing that Officer Quinn's testimony was favorable to the defense, and thus the Appellee has no basis for any sort of claim under the right to compulsory process.

Furthermore, even if Appellee could show that Officer Quinn's testimony would be favorable to the defense that would not override Officer Quinn's right to invoke the Fifth Amendment. A person's constitutional privilege against self-incrimination overrides a defendant's constitutional right to compulsory process of witnesses. See *Bridge v. State* 726 S.W.2d

558, 567 (Tex.Crim.App.1986). Nor does a potential defense witness invoking his Fifth Amendment rights constitute a deprivation of the defendant's right to compulsory process. The State is not even required to assent to a grant of immunity for a potential defense witness who has invoked their Fifth Amendment rights. See *Norwood v. State,* 768 S.W. 2d 347, 350 (Tex. App.-Corpus Christi 1989) *pet. dism'd, improvidently granted,* 815 S.W. 2d 575 (Tex. Crim. App. 1991). Thus it is clear that a potential defense witness invoking their Fifth Amendment rights does not constitute a violation of the right to compulsory process.

Therefore, there will not be a violation of either the Appellee's confrontation or compulsory process rights in this case even if Officer Quinn continues to invoke his right not to testify, and as such it was error by the trial court to conclude that any of Appellee's constitutional rights would be violated if this case proceeds to trial. As such to the extent the trial court considered such a potential constitutional rights violation as a basis for granting Appellee's motion to suppress that was plain error and should be reversed.

PRAYER

WHEREFORE, PREMISES CONSIDERED, the State prays that this Honorable Court reverse the judgment of the trial court.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

In compliance with Texas Rule of Appellate Procedure 9.4(i)(3), I, Brendan Wyatt Guy, Assistant Criminal District Attorney, Victoria County, Texas, certify that the number of words in Appellant's Brief submitted on March 14, 2017, excluding those matters listed in Rule 9.4(i)(1) is 11,179.

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CERTIFICATE OF SERVICE

I, Brendan Wyatt Guy, Assistant Criminal District Attorney, Victoria County, Texas, certify that a copy of the foregoing brief has been served on Luis Martinez, P.O. Box 410, Victoria, Texas, Attorney for the Appellee, Roger Anthony Martinez, by electronic mail on the day of March 14, 2017.

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