IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. PD-1337-15

THE STATE OF TEXAS

v.

ROGER ANTHONY MARTINEZ, Appellee

ON COURT'S OWN MOTION FOR DISCRETIONARY REVIEW FROM THE THIRTEENTH COURT OF APPEALS VICTORIA COUNTY

YEARY, J., announced the judgment of the Court and delivered an opinion in which MEYERS, KEASLER, and RICHARDSON, JJ., joined. NEWELL, J., filed a concurring opinion in which JOHNSON, HERVEY, and ALCALA, JJ., joined. KELLER, P.J., dissented.

O P I N I O N

This case raises the issue of whether the facts and circumstances within an arresting officer's knowledge at the time of arrest may be shown, by implication, through the testimony of other officers who were present at the scene of the arrest. We hold that a finding of probable cause does not necessarily have to be supported by testimony from the arresting officer himself, or even by testimony from other officers who were at the scene concerning what they expressly told the arresting officer. Simply put, probable cause—like other

things—may be proven by circumstantial evidence.

BACKGROUND

The Motion to Suppress

The State charged Appellee with possession of a controlled substance in a correctional facility, a third-degree felony, TEX. PENAL CODE § 38.11(d)(1) & (g), and possession of less than one gram of cocaine, a state-jail felony, TEX. HEALTH & SAFETY CODE § 481.115(a) & (b). Both charges relied upon cocaine that police apparently found on Appellee's person after arresting him for public intoxication without a warrant.[1] Appellee filed a motion to suppress the cocaine as the fruit of an unlawful arrest.

Between the time that Appellee was arrested and the time the trial court heard his motion to suppress, the State charged the arresting officer, Patrick Quinn, with bribery and official oppression, allegedly committed in a different county. In an email, Quinn's attorney informed the State that he would advise Quinn to assert his Fifth Amendment privilege against self incrimination if called to testify at Appellee's suppression hearing. At the hearing, the State introduced the email into evidence and did not call Quinn to testify.[2] Nor did the State attempt to introduce Quinn's police report into evidence. Instead, the State

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[1] Because the trial court granted Appellee's motion to suppress and this is a State's appeal, *see* TEX. CODE CRIM. PROC. art. 44.01(a)(5), the case did not proceed to trial. The record of the hearing on the motion to suppress does not reveal exactly how or where the contraband was discovered following Appellee's warrantless arrest.

[2] Hearsay is admissible in a hearing on a motion to suppress. *Ford v. State*, 305 S.W.3d 530, 539 (Tex. Crim. App. 2009).

called two other police officers who had been present at the scene of Appellee's arrest, Javier Guerrero and Timothy Ramirez, to testify in support of a finding of probable cause for the arrest. Appellee called his wife, Daniela Jaquez, who had also been present. In the aggregate, these three witnesses testified as follows.

In the course of a fight in the back parking lot of a bar, a stranger punched Jaquez. Someone called the police around 11:40 p.m., and Officers Guerrero, Ramirez, Dial, and Quinn of the Victoria Police Department responded. Guerrero arrived first, and the other officers arrived one after another shortly thereafter.

Upon arrival, the officers encountered Jaquez and Appellee, her husband, in the parking lot behind the bar.[3] Guerrero testified that they were screaming at each other, and Ramirez testified that Appellee was pacing back and forth, yelling obscenities. Appellee was apparently dissatisfied with the response time of the police. But the police officers witnessed no physical contact between Jaquez and Appellee, and Appellee was not physically violent at any point during the encounter.

Guerrero testified that he was about two feet away from Appellee during the encounter, and Ramirez testified that he was within two to three feet of Appellee. Guerrero and Ramirez each concluded that Appellee was intoxicated. In particular, they smelled alcohol on Appellee's breath and person. Both testifying officers saw Appellee swaying and

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[3] The trial court's findings of fact and both testifying officers referred to the woman the officers contacted as Danielle Vasquez, but it is clear from the record that they are referring to Appellee's wife, Daniela Jaquez, who testified at the suppression hearing and spelled her name for the record.

noticed that his eyes were glassy and his speech was slurred. They both characterized Appellee's behavior as "very aggressive," and Ramirez added that Appellee was "belligerent." Guerrero and Ramirez both regarded these as signs of intoxication, though Guerrero had not mentioned Appellee's apparent intoxication in his offense report.[4]

Jaquez testified that she had consumed a single beer and that Appellee had consumed "maybe around three or four." She claimed that Appellee had driven to the bar, but that she had the keys to his car. She also explained that Appellee's family owned the bar, and there were "plenty" of family members inside the bar who could have driven him home. Guerrero and Ramirez, however, were not aware of the location of Appellee's keys, who owned the bar, or whether Appellee could secure a safe ride home.

Quinn arrested Appellee for public intoxication.[5] At the moment of the arrest, Appellee was standing in the bar's parking lot approximately fifteen feet from a busy roadway. Ramirez testified that, under these circumstances, Appellee could possibly pose a danger to himself or others. The parking lot was accessible from both the busy roadway behind the bar and a highway in front of the bar. The bar was open and the parking lot was in use.

After closing arguments at the hearing on the motion to suppress, the trial court made

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[4] Guerrero explained that he had left it up to Quinn to describe Appellee's intoxication in Quinn's offense report, since Quinn was the arresting officer. The record does not reveal whether Ramirez filed an offense report.

[5] Guerrero and Ramirez both testified that Quinn arrested Appellee. Guerrero specified public intoxication as the reason for the arrest.

an oral finding that "[t]here is no testimony as to the actions of Officer Quinn. It appears that there is not going to be any testimony as to the actions of Officer Quinn if this case goes to trial."[6] The trial court then granted Appellee's motion to suppress, apparently on the basis that Appellee would be deprived of his "constitutional right to confront his accuser" if the case were to proceed to trial.

The Trial Court's Written Findings and Conclusions

The morning after the hearing, the State requested that the trial court provide written findings of fact and conclusions of law under *State v. Cullen*, 195 S.W.3d 696 (Tex. Crim. App. 2006), and the trial court issued its written findings the following day. These findings do not mention the trial right to confrontation. After briefly describing the arrival of the officers at the parking lot and the "verbal disturbance" they encountered, the written findings shift to merely describing the tenor of the testimony at the suppression hearing. Many of the findings simply recount the trial court's recollection of the hearing without evaluating the evidence for accuracy or credibility, or declaring what the trial court found to have happened on the night of the arrest.

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[6] These oral findings find no support in the record. It is true that Quinn himself did not testify. Thus, there was no testimony from Quinn at the suppression hearing with respect to his actions at the scene. But Guerrero and Ramirez both testified that Quinn was present and that he made the arrest. Moreover, each officer also testified that he did not see Quinn engage in "any misconduct" during Appellee's arrest. The trial court's oral finding that there would be no testimony regarding Quinn's actions should the case go to trial is likewise unsupported by the record. During his closing argument at the suppression hearing, the prosecutor suggested that, in the event that Quinn were to assert his Fifth Amendment privilege against self-incrimination at trial, the State would again call Guerrero and Ramirez to the stand as "witnesses [who] observed what Officer Quinn did and [who] observed the underlying facts[.]"

Three such examples of the trial court's written findings include:

1. "According to the testimony of Officer Guerrero, only Officer Quinn made 'personal' contact with the defendant Roger Martinez."[7]

2. "Officer Guerrero testified that Officer Quinn was the one who 'made the call' to arrest [Appellee] for public intoxication."

3. "Officer Guerrero and Officer Ramirez testified that [Appellee] demonstrated signs of intoxication."

Strictly speaking, these are not findings of the historical facts of the arrest. They simply describe the content of the officers' testimony at the hearing on Appellee's motion to suppress. The trial court made no express findings regarding the officers' credibility.

Ultimately, the trial court concluded: "No evidence was presented to demonstrate if Officer Quinn had probable cause to arrest [Appellee] for public intoxication. In addition, there was no evidence which demonstrated whether the offense of public intoxication was committed within Officer Quinn's presence or view." These conclusions seem to be

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[7] This written finding is also unsupported by the record. Guerrero never testified that Quinn was the only officer to have "personal contact" with Appellee. The trial court's finding apparently refers to the following exchange between defense counsel and Guerrero on cross-examination:

> Q. Officer Quinn was the one that had personal contact with him and made the determination that he at least had met the burden under the Penal Code to be arrested for public intoxication, correct?
>
> A. He is the one that placed him in handcuffs.

The trial court's finding that Guerrero testified that only Quinn made "personal contact" with Martinez refers to some of the language in defense counsel's leading question, but not to Guerrero's actual answer. Guerrero's answer does not affirm the leading question. Apparently dissatisfied with this non-responsive answer, defense counsel modified his question—removing the reference to personal contact—and ultimately asked: "[Quinn] swore to the report that had [Appellee] arrested, right?" Guerrero answered, "Correct."

predicated on the following paragraph in the trial court's written findings of fact and conclusions of law:

> The evidence did not show the relay of information between any officer and Officer Quinn at the suppression hearing in this case. Officer Quinn was the only officer who effectuated the arrest of [Appellee]. There is no evidence of what facts or circumstances Officer Quinn used to justify the arrest. This court will not speculate as to what Officer Quinn's testimony would have been at the suppression hearing.

Thus, the trial court seems to have ruled that, in the absence of testimony from Quinn himself—or, failing that, at least some express testimony from Guerrero or Ramirez of what information they may have "relayed" to Quinn—the State could not present evidence of "facts or circumstances" that would "justify" Quinn's arrest of Appellee.

The Court of Appeals' Decision

On appeal, the Thirteenth Court of Appeals affirmed the trial court's ruling. *State v. Martinez*, No. 13-15-00069-CR, 2015 WL 5797604 (Tex. App.—Corpus Christi Oct. 1, 2015) (mem. op., not designated for publication). The State urged the court of appeals to treat the facts as undisputed and to hold, as a matter of its *de novo* review of the legal significance of those undisputed facts, that the trial court should have concluded that probable cause existed to support Appellee's arrest. *Id*. at *4. The court of appeals rejected this view of the case, observing that "the parties apparently disagree about the central fact issue involved in the case—i.e., whether Quinn observed or was informed that [Appellee] was committing a crime." *Id*. This observation echoes the trial court's apparent legal assumption that, in order to establish probable cause, the State must present one of two things. It must present either:

1) direct evidence, such as testimony from Quinn himself, with respect to what he knew at the time he arrested Appellee; or else 2) evidence that Guerrero or Ramirez informed Quinn of—or "relayed" to him, in the words of the trial court—the facts and circumstances that would supply probable cause. The court of appeals concluded that the trial court's ruling was supported by the record—and thus must be accorded deference—because the trial court was entitled to find that the State failed to provide a reasonable basis for Appellee's arrest in the absence of one of these two forms of evidence. *Id*. at *5.[8]

Discretionary Review

The State filed a petition for discretionary review. We did not grant the State's petition, but we did grant discretionary review on our own motion in order to scrutinize the court of appeals's deference to the trial court's legal assumption that the only way the State can establish probable cause is through the arresting officer's own testimony or direct evidence of what the arresting officer was expressly told. For reasons we will explain, we

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[8] The court of appeals reasoned:

> Here, it may or may not have been reasonable to infer from the officers' testimony . . . that Quinn personally observed [Appellee] commit the crime. Nevertheless, as is evident from its findings and conclusions, the trial court did not make those inferences. [At this juncture, the court of appeals dropped a footnote in which it observed that "the officers did not testify as to what the arresting officer observed or was able to observe, nor did they testify that they informed the arresting officer of their observations."] Instead, it found that "only Officer Quinn made 'personal' contact" with [Appellee] and that "Officer Quinn was the only officer who effectuated the arrest of the defendant." It concluded that the other officers' testimony did not establish "what facts or circumstances Officer Quinn used to justify the arrest." Because these findings are supported by the record, we must uphold them.

Martinez, 2015 WL 5797604, at *5.

vacate the judgment of the court of appeals and remand this cause to that court with instructions to abate it to the trial court for supplemental findings of fact.

THE LAW

A warrantless arrest for an offense committed in an officer's presence is reasonable under the Fourth Amendment as long as the officer has probable cause. *Amador v. State*, 275 S.W.3d 872, 878 (Tex. Crim. App. 2009) (citing *United States v. Watson*, 423 U.S. 411, 418 (1976)). In Texas, a lawful warrantless arrest requires both probable cause for the arrest and statutory authorization under Chapter 14 of the Texas Code of Criminal Procedure. *Torres v. State*, 182 S.W.3d 899, 901 (Tex. Crim. App. 2005). Article 14.01 of the Code of Criminal Procedure authorizes a peace officer to arrest an offender without a warrant for any offense committed in his presence or within his view. TEX. CODE CRIM. PROC. art. 14.01(b). 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.

Once an arrestee shows that the challenged arrest was warrantless, the State bears the burden to establish probable cause at the suppression hearing. *State v. Woodard*, 341 S.W.3d 404, 411 (Tex. Crim. App. 2011). Probable cause is not reducible to a precise definition. *Florida v. Harris*, 133 S. Ct. 1050, 1055 (2013). All the United States Supreme Court has required is "the kind of 'fair probability' upon which reasonable and prudent people, not legal technicians, act." *Id.* (citing *Illinois v. Gates*, 462 U.S. 213 (1983)) (internal quotation marks omitted). "Probable cause for a warrantless arrest exists if, at the moment the arrest

is made, the facts and circumstances within the arresting officer's knowledge and of which he has reasonably trustworthy information are sufficient to warrant a prudent man in believing that the person arrested had committed or was committing an offense." *Amador*, 275 S.W.3d at 878 (citing *Beck v. Ohio*, 379 U.S. 89, 91 (1964)). "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 (citation omitted).

A person commits public intoxication if he "appears in a public place while intoxicated to the degree that [he] may endanger [himself] or another." TEX. PENAL CODE § 49.02(a). We have said before that, "[w]hen an officer is confronted with a person intoxicated in a public place, his determination as to possible danger that may befall the individual is not reviewed under the same standard used in a judicial determination of guilt." *Britton v. State*, 578 S.W.2d 685, 689 (Tex. Crim. App. 1978). That is to say, the officer need not be satisfied beyond a reasonable doubt, or even by a preponderance of the evidence, that he has witnessed the offense of public intoxication before he may make an arrest. Probable cause will suffice. *See Baldwin v. State*, 278 S.W.3d 367, 371 (Tex. Crim. App. 2009) ("Probable cause is a relatively high level of *suspicion*, though it falls far short of a preponderance of the evidence standard.") (emphasis added).

ANALYSIS

Because the test for probable cause is an objective one, the issue in this case is

whether the facts and circumstances within Officer Quinn's knowledge at the time he arrested Appellee would have warranted a prudent man in the belief that Appellee was committing the offense of public intoxication.[9] How may the State go about proving the facts and circumstances that were within an arresting officer's knowledge at the time of the arrest? Certainly, the State can put the arresting officer on the stand to testify to what he knew. The State could also present testimony from other officers at the scene as to what they *told* the arresting officer about the attendant facts and circumstances. But these are hardly the exclusive means by which the State might prove what an arresting officer knew. There is no reason why the arresting officer's knowledge may not be established by circumstantial evidence such as that presented in this case.

Officers Guerrero and Ramirez were able to testify as to the objective circumstances that suggested to them that Appellee was both intoxicated and a potential danger to himself or others. Moreover, their testimony placed Quinn at the scene of the arrest under circumstances that were sufficient to establish that Quinn was almost certainly aware of those same objective circumstances. This testimony, if credited by the trial court, would constitute evidence sufficient to support a finding of probable cause. There is no justification for

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[9] The trial court framed its inquiry in terms of whether the evidence at the suppression hearing demonstrated "what facts or circumstances *Officer Quinn used* to justify the arrest." (Emphasis added.) The court of appeals seemed content with this characterization of the issue. But the question is not what facts and circumstances Quinn may have personally believed would justify (and that he, therefore, personally "used" to justify) Appellee's arrest. *See Amador*, 275 S.W.3d at 878 (the test for probable cause is "unrelated to the subjective beliefs of the arresting officer"). Rather, the question is whether the facts and circumstances within Quinn's knowledge would have justified a *prudent man* in believing that an offense had been committed.

categorically disregarding it, as both the trial court and the court of appeals appear to have done in this case.

The court of appeals deferred to the trial court's finding that "[n]o evidence was presented to demonstrate if Officer Quinn had probable cause to arrest [Appellee] for public intoxication." But this is simply inaccurate. Evidence *was* presented from which a finder of fact could infer the facts and circumstances within Quinn's knowledge that would demonstrate that he had probable cause.

"Evidence" means "something (including testimony, documents, and tangible objects) that tends to prove or disprove the existence of an alleged fact." BLACK'S LAW DICTIONARY 673 (10th ed. 2014). Evidence tends to prove or disprove a fact if it has any tendency to make that fact more or less probable than it would be without the evidence. *See* 1 S. Goode et al., TEXAS PRACTICE: GUIDE TO THE TEXAS RULES OF EVIDENCE § 401.3, at 114 (3d ed. 2002) (describing Texas Rule of Evidence 401(a) as a requirement that evidence tend to prove the proposition for which it is offered). Evidence of the facts and circumstances within an arresting officer's knowledge may be presented in forms other than the arresting officer's own testimony. We have held that a non-testifying officer's unsworn offense report can serve as the factual basis for a trial court's ruling that the officer had probable cause, even over hearsay and Confrontation Clause objections. *Ford v. State*, 305 S.W.3d 530, 539 (Tex. Crim. App. 2009). And we readily defer to inferences that trial courts may draw from dash-cam videos about which facts are within the officer's knowledge. *State v. Duran*, 396 S.W.3d

563, 570-71 (Tex. Crim. App. 2013) ("the appellate court must defer to the trial judge's factual finding on whether a witness actually saw what was depicted on a videotape or heard what was said during a recorded conversation").

We can conceive of no good reason to treat the testimony of non-arresting officers who were at the scene any differently than police reports or dash-cam videos. Like dash-cam videos, accounts from eyewitnesses (including the accounts of other police officers) may constitute evidence of facts and events unfolding in the arresting officer's presence under circumstances that support the inference that the arresting officer was just as aware of them as were the eyewitnesses. Moreover, the State need not necessarily prove that the eyewitnesses (including other police officers) who were present expressly "relayed" their information to the arresting officer. As long as reliable circumstantial evidence permits a reasonable inference that the facts and circumstances giving rise to probable cause were known to the arresting officer, the trial court is free to draw that inference.

At the hearing on Appellee's motion to suppress, the testimony permitted the reasonable inference that Quinn perceived the same signs of public intoxication as Guerrero and Ramirez.[10] Appellee committed public intoxication if he appeared in a public place while

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[10] In all fairness to the court of appeals, it may have been led astray by the State's heavy reliance on two decisions of this Court. *Martinez*, 2015 WL 5797604, at *5. In *Willis v. State*, 669 S.W.2d 728 (Tex. Crim. App. 1984), and *Astran v. State*, 799 S.W.2d 761 (Tex. Crim. App. 1990), we addressed the propriety of an arrest under Article 14.01 of the Code of Criminal Procedure when the officer who effectuated the arrest was not the same as the officer who witnessed the offense. Both cases involved undercover drug buys in which the officers who purchased the contraband subsequently alerted other officers waiting nearby who then approached the defendants and arrested them. The arresting officers had not witnessed the offenses, but they were aware of the pre-arranged

intoxicated to the degree that he could have endangered himself or another. TEX. PENAL CODE § 49.02(a). Guerrero testified that he found Appellee arguing with Jaquez in the back parking lot of a bar, a public place. He described their volume as "screaming." According to his testimony, Guerrero approached them to investigate "a possible assault" and concluded that Appellee was intoxicated. When asked to elaborate on the basis for that conclusion, Guerrero testified that he smelled the odor of alcohol on Appellee's breath and person, and that Appellee was swaying. Guerrero further explained that Appellee exhibited glassy eyes, slurred speech, and "very aggressive" behavior. Ramirez testified that he noticed all of the same signs of intoxication and observed that Appellee "appeared intoxicated," adding that Appellee was "belligerent" and yelling obscenities.

There was also evidence that would warrant a prudent person in believing that Appellee may have become a danger to himself or another. Both Guerrero and Ramirez testified that Appellee appeared to be unfit to drive or walk home. Jaquez testified that the bar was open. Guerrero testified that the parking lot was in use, and that it could be accessed from both a highway in front of the bar and a busy roadway behind the bar. At the time of

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drug deals and had been signaled by the undercover officers that the buy had been completed. We held that, because the undercover officers had "first-hand knowledge of the offense" that they "relayed . . . to [their] fellow officers[,]" the arrest was authorized under Article 14.01. *Astran*, 799 S.W.2d at 763. The reason that first-hand knowledge of the offense had to be "relayed" to the arresting officers in *Willis* and *Astran* was that they had not been present to witness the offense itself. Here, by contrast, the evidence placed Quinn in the parking lot with Appellee under circumstances sufficient to suggest that he witnessed the same evidence of intoxication under potentially dangerous conditions that Guerrero and Ramirez also saw. There is nothing to suggest that Quinn had to be told of those circumstances by the other two officers. If credited, this evidence would show that the facts and circumstances within Quinn's knowledge were sufficient for a prudent man to conclude that Appellee had committed an offense within his presence for purposes of Article 14.01.

his arrest, Appellee was standing "about fifteen feet" from the busy roadway, according to Ramirez. Ramirez testified that Appellee "could possibly pose a danger to himself and possibly others that close to an active roadway." And most importantly, both officers testified to Quinn's presence at the scene, and Jaquez testified that all of the police officers arrived very close in time to one another. In short, the record is replete with testimony that: (1) Appellee exhibited symptoms that a trained police 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 that Appellee was exhibiting those signs of intoxication.

Each of these pieces of testimony tends to make it more probable that Appellee was committing the offense of public intoxication in Quinn's presence, and that Quinn was aware of the facts giving rise to probable cause to arrest Appellee for the offense. Thus, the testimony at the hearing on Appellee's motion to suppress was "evidence" that Appellee committed public intoxication in Quinn's presence and that Quinn was aware of the facts and circumstances giving rise to probable cause to believe public intoxication had been committed. The trial court erred to reject this testimony categorically as somehow irrelevant to probable cause. The court of appeals erred to follow suit.

DISPOSITION

Apparently believing that any evidence proving what Quinn knew could come only from Quinn's own testimony or the testimony of others about what they expressly "relayed"

to Quinn concerning the facts and circumstances supplying probable cause, the trial court concluded that there was "no evidence" of what was within Quinn's knowledge that would justify a prudent person in the belief that an offense had been committed. This was incorrect as a matter of law. There was circumstantial evidence to show what was within Quinn's knowledge. What is presently lacking in the record is the trial court's assessment of that circumstantial evidence.

When a trial court enters explicit findings of fact under *Cullen*, as it did here, the presumption is that the findings the trial court entered are "those it deemed 'essential' to its ruling, and that it made no finding of fact whatsoever with respect to other fact or credibility issues because it regarded them (however erroneously) as peripheral or non-essential to its ultimate legal holding." *State v. Elias*, 339 S.W.3d 667, 676 (Tex. Crim. App. 2011). Because the trial court here never regarded the testimony of Guerrero, Ramirez, and Jaquez as relevant to a probable cause determination, it never reached the key questions of the credibility of those witnesses or what inferences should be drawn from their testimony. It is therefore appropriate to remand the cause to the trial court for that assessment.

A remand is necessary because "courts of appeals should not be forced to make assumptions (or outright guesses) about a trial court's ruling on a motion to suppress evidence." *Cullen*, 195 S.W.3d at 698. To prevent such guessing, *Cullen* requires that trial courts, upon request of the losing party, state their essential findings. *Id*. at 699. "Essential

findings" are 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.*

The trial court here failed to apply an appropriate legal standard in a suppression hearing. Because it erroneously believed that evidence of Quinn's knowledge could come only from his mouth or from what he was expressly told, the trial court never asked whether the objective facts—as established by other evidence admitted at the suppression hearing—would have justified a reasonable officer in Quinn's shoes in arresting Appellee. *See Elias*, 339 S.W.3d at 675 (noting the trial court's failure ask whether the objective facts would have justified an officer in the arresting officer's shoes in detaining the appellee). As a result, the trial court never decided which facts in evidence at the hearing were within Quinn's knowledge. An appellate court cannot properly review whether the facts or circumstances within an officer's knowledge would warrant a prudent person in the belief that a crime is being committed if the trial court has not issued a finding of what the officer knew at the time of the arrest.[11] Findings of what historical facts occurred in the parking lot

[11] The State contends the collective knowledge doctrine requires that we impute the knowledge of the testifying officers to the arresting officer as a matter of law, eliminating the need for the trial court to decide which facts were within Quinn's knowledge. The collective knowledge doctrine, also known as the "fellow officer rule," states that "police are, in a limited sense, 'entitled to act' upon the strength of a communication through official channels directing or requesting that an arrest or search be made." 2 W. LaFave, SEARCH AND SEIZURE § 3.5(b), at 338 (5th. ed. 2012) (interpreting *Whiteley v. Warden, Wyo. State Penitentiary,* 401 U.S. 650 (1971)). The Fifth Circuit applies the collective knowledge doctrine "so long as there is 'some degree of communication' between the acting officer and the officer who has knowledge of the necessary facts." *United States v. Ortiz*, 781 F.3d 221, 227 (5th Cir. 2015). Because the circumstantial evidence in this case, if credited, would be sufficient to support an inference that Quinn himself was aware of facts that establish probable cause, we have no occasion at this juncture to address the scope of the collective knowledge doctrine.

of the bar on the night of the arrest, and which of those facts were known to Quinn at the time he arrested Appellee, are therefore essential to appellate review.[12]

CONCLUSION

To sum up: The testimony at the hearing on Appellee's motion to suppress provided circumstantial evidence that, if believed, would show that Quinn had probable cause to arrest Appellee for public intoxication. However, the courts below did not consider this testimony in their probable cause analysis because they found that the absence of testimony from Quinn himself, or other testimony to show what information was expressly "relayed" to him, to be—by itself—dispositive of the probable cause issue. As a result, the trial court stopped short of evaluating the accuracy and credibility of the testimony to ascertain which facts were shown by circumstantial evidence to be within Quinn's knowledge at the time of Appellee's arrest. Findings on that issue are essential to appellate review of the trial court's probable cause determination, and the court of appeals should not have affirmed the trial court's

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[12] In entering its new findings of fact and conclusions of law, the trial court should avoid once again simply describing the evidence and testimony. Such findings and conclusions are not helpful to the reviewing court because they fail to resolve disputed fact issues or to assess the credibility of the witnesses. *State v. Mendoza*, 365 S.W.3d 666, 672 (Tex. Crim. App. 2012). A good example is the trial court's finding, discussed earlier in note 7, *ante*, that, "[a]ccording to the testimony of Officer Guerrero, only Officer Quinn made 'personal' contact with" Appellee. Contrary to the conclusion of the court of appeals, this does *not* constitute a finding that only Quinn made personal contact with Appellee. *See Martinez*, 2015 WL 5797604, at *5. It is only a finding that Guerrero so *testified* (and a finding which, as we have already observed, is not even supported by the record). "[A]ny reviewing court can read the record and see [the officer's] testimony, but did the trial judge believe that testimony?" *Mendoza*, 365 S.W.3d at 671. It is the trial court's role in the first instance to determine witness credibility and resolve issues of historical fact. *Id.* at 669.

judgment in the absence of such findings.[13] We therefore vacate the judgment of the court of appeals and remand this cause to that court with instructions to abate it to the trial court for supplemental findings of fact and conclusions of law consistent with this opinion.

DELIVERED: December 14, 2016
DO NOT PUBLISH

[13] The concurring opinion seems to question the necessity to inquire whether the evidence at the suppression hearing was at least sufficient to support probable cause. *See* Concurring Opinion at 2-3. The suggestion seems to be that we are placing the determine-probable-cause cart before the remand-for-supplemental-findings-of-fact horse. We disagree. If the evidence at the suppression hearing, even as properly considered, would not serve to at least *support* a finding of probable cause—under *any* view of the evidence—then there would be no need to remand the cause for additional findings. Only by examining the evidence and concluding that a fact finder *could* infer that Quinn had probable cause to arrest Appellee for public intoxication does it become necessary to the disposition of the appeal to send it back for the trial court to disclose his assessment of the credibility of the witnesses. If the evidence at the suppression hearing were to provide *no* support for a finding of probable cause, even assuming that all of the officers' testimony was credible, there would be no point in remanding for a credibility determination. No further findings would be necessary because there would be no unresolved, *potentially dispositive* issues of fact. *See Elias*, 339 S.W.3d at 676-77 (noting that it is the omission of findings with respect to "potentially dispositive fact issues" that constitutes a "failure to act" under Rule 44.4 of the Rules of Appellate Procedure, authorizing the court of appeals to remand to the trial court for further fact-finding). But we are not "assuming" that the police officers will be found to be credible. Concurring Opinion at 2. In determining that the trial court *could* find probable cause on the record before us, we should in no way be understood to be "telegraphing" to the trial court how we think it ought to resolve the credibility issues in this case or, ultimately, whether it necessarily must infer probable cause from the circumstantial evidence. *Id*.