
Probable cause for a DUI arrest must be based upon more than a belief that a driver has consumed alcohol; it must arise from facts and circumstances that show a probability that a driver is impaired by alcohol or has an unlawful amount of alcohol in his system. There are many factors that contribute to such a finding. The smell or lack of smell of alcohol may be among the most important of these factors. Accordingly, a trooper did not have probable cause where the trooper knew that the defendant had probably caused an accident, had bloodshot eyes, and had been crying, but had no odor of alcohol. However, in Dep’t of Highway Safety & Motor Vehicles v. Rose, the court found that there was competent substantial evidence that the respondent was driving a car while under the influence of alcohol despite the lack of any odor of alcohol. Such an odor is a significant factor, but there are others and in this case, results on field sobriety exercises supported a finding of probable cause. The circuit court's conclusion that there could be no probable cause without the odor of alcohol was wrong, disregarded the other evidence, and was an improper reweighing of the evidence. On the other hand, the presence of an odor of alcohol alone is insufficient for a finding of probable cause. The one exception to the rule that an odor of alcoholic beverage alone is insufficient to establish probable cause is where the driver is under the age of 21. In Golden v. Dep’t of Highway Safety & Motor Vehicles, the court noted that by statute it is unlawful for such a person to drive with any breath alcohol level and a breath test is authorized. Sometimes the circumstances of an accident alone may be sufficient to establish probable cause for DUI. That was the conclusion in Dep’t of Highway Safety & Motor Vehicles v. Favino, where the defendant went home right after the accident. A trooper arrived about 25 minutes later. The defendant had all the indicia of being under the influence, but the trooper said he had no knowledge as to whether the defendant had anything to drink before the accident. Nevertheless, the
court held that the circumstances of the accident were sufficient to establish probable cause. The defendant rear-ended another car that was traveling 40 to 45 m.p.h.

More often, in accident situations, the officer develops probable cause from a number of factors. In one case, those included the circumstances of the accident and the defendant's speech, odor of alcohol, admissions, lack of...

... exercises. In another case, the factors included: (1) the officer's observations of the defendant's vehicle stopped in the middle of three lanes of traffic at 7 a.m.; (2) the defendant's efforts to start the vehicle; (3) the defendant's blood-shot eyes and flushed face; (4) the defendant's nervousness; (5) the defendant's balance; and (6) the defendant's poor performance on the field sobriety exercises. There are many examples of similar observations.

It is not necessary for the arresting officer to testify, for the court to find probable cause. The court may rely on the testimony of another officer who was in the same physical position as the arresting officer, so that he could make the same observations. While, as the foregoing authorities suggest, DUI stops most often involve consumption of alcoholic beverages, the role that chemical or controlled substances may play must not be overlooked.

In fact, an entire chapter of this book is devoted to the law concerning drug use and driving. Hence, in the recent civil case of Mathis v. Coats, the court found that a deputy had probable cause for a DUI arrest notwithstanding the absence of any odor of alcoholic beverage. The defendant had many explanations for the problems the deputy observed and protested that the deputy should have taken those matters into account. In rejecting that argument, the court said: “The deputy need not eliminate all possible defenses in order to establish probable cause …. [The deputy's] determination that probable cause for arrest existed was reasonable under the circumstances and based on information then available to him.”

Footnotes

a0 Circuit Court Judge, Sixth Judicial Circuit, Pinellas County Florida.

1 State v. Kliphouse, 771 So. 2d 16, 22 (Fla. 4th DCA 2000). See also Dep’t of Highway Safety & Motor Vehicles v. Possati, 866 So. 2d 737, 740 (Fla. 3d DCA 2004); Diaz v. State, 9 Fla. L. Weekly Supp. 165 (Fla. 11th DCA Jan. 15, 2002).


3 State v. Kliphouse, 771 So. 2d 16, 22 (Fla. 4th DCA 2000). See also Ben–Asher v. Dep’t of Highway Safety & Motor Vehicles, 12 Fla. L. Weekly Supp. 630 (Fla. 11th Cir. Ct. April 5, 2005) (being asleep in a vehicle parked on the side of the road did not establish grounds for detention even if the defendant had an odor of alcohol); State v. Bain, 14 Fla. L. Weekly Supp. 508 (Fla. Nassau Cty. Ct. March 1, 2007) (officer did not have probable cause based on visual observations of speeding and an odor of alcohol); State v. Werman, 12 Fla. L. Weekly Supp. 587 (Fla. Broward Cty. Ct. March 28, 2005) (officer did not have probable cause for DUI based on an odor of alcohol and poor results on the walk and turn test, where the defendant had suffered a knee injury).

4 Chait v. State, 27 Fla.Supp.2d 115 (Fla. 11th Cir.1988).


6 State v. Kliphouse, 771 So. 2d 16, 23 (Fla. 4th DCA 2000).

7 Dep’t of Highway Safety & Motor Vehicles v. Possati, 866 So. 2d 737, 740 (Fla. 3d DCA 2004) (officer had probable cause for DUI arrest where defendant crashed his car into a parked police vehicle, had the smell of alcohol on his breath, and bloodshot and watery eyes); Dep’t of Highway Safety & Motor Vehicles v. Whitley, 846 So. 2d 1163 (Fla. 5th DCA 2003) (officer had probable cause for DUI where the defendant took inappropriate time to stop, was driving erratically, had an odor of alcohol on his breath, glassy eyes, slurred speech, and admitted having too much to drink); Kehl v. Dep’t of Highway Safety & Motor Vehicles, 20 Fla. L. Weekly Supp. 253 (Fla. 17th Cir. Ct. Nov. 13, 2012) (officer had probable cause for DUI where the officer...
saw defendant’s northbound vehicle stopped in the southbound lane of travel and the defendant had red and glassy eyes, flushed face, and an odor of an alcoholic beverage on his breath; Parker v. Dep’t of Highway Safety & Motor Vehicles, 20 Fla. L. Weekly Supp. 218 (Fla. 9th Cir. Ct. Oct. 11, 2012) (officers had probable cause for DUI where they saw defendant alone and in driver’s seat of vehicle stuck on the railroad tracks, but there was no evidence of operability and the keys were not there; defendant’s speech was slurred, he staggered when he exited, had a strong odor of alcoholic beverage, eyes were bloodshot and glassy, and he swayed back and forth while standing; defendant admitted driving and that he had some beers and did poorly on FSEs); State v. Carter, 18 Fla. L. Weekly Supp. 863 (Fla. 7th Cir. Ct. May 27, 2011) (circuits judge as trial judge found sufficient facts for a DUI investigation and FSEs, but no probable cause of impairment where the evidence showed that the defendant was speeding, had an odor of alcohol on his breath, admitted that he had a couple of drinks, had bloodshot, watery, and glassy eyes was able to park car successfully when instructed by officer; FSES did not show signs of impairment; responses to officer were coherent and appropriate, voice did not appear slurred; established probable cause that the defendant had consumed alcohol, but “[c]onsuming alcohol and driving a vehicle in and of itself is not a crime.”); Norton v. Dep’t of Highway Safety & Motor Vehicles, 18 Fla. L. Weekly Supp. 571 (Fla. 4th Cir. Ct. March 3, 2011) (officer had probable cause for DUI arrest where officer observed defendant speeding, defendant had bloodshot and watery eyes, flush face, and an odor of alcohol on her breath; defendant admitted to having one beer); Lee v. Dep’t of Highway Safety & Motor Vehicles, 18 Fla. L. Weekly Supp. 374 (Fla. 16th Cir. Ct. Feb. 1, 2011) (officer had probable cause for DUI where officer observed driver fail to maintain his lane, follow too closely, stumble while exiting vehicle; driver had bloodshot and watery eyes, slurred and mumbled speech, strong odor of alcohol, admitted drinking, and refused FSEs and breath test); Jackson v. Dep’t of Highway Safety & Motor Vehicles, 18 Fla. L. Weekly Supp. 136 (Fla. 4th Cir. Ct. Sept. 23, 2010) (officer had probable cause for DUI arrest where driver failed to maintain a single lane in violation of § 316.089(1), Fla. Stat., by swerving to the right about three times causing a semi-tractor trailer to swerve to avoid a collision and driver had bloodshot watery eyes, slurred speech, was unsteady on her feet, performed poorly on FSEs, and admitted consuming two glasses of wine and a beer; odor of alcoholic beverage came from vehicle); Welch v. Dep’t of Highway Safety & Motor Vehicles, 18 Fla. L. Weekly Supp. 38 (Fla. 14th Cir. Ct. Dec. 7, 2010) (trooper had probable cause for DUI where person who was hit by defendant identified defendant as driver, defendant admitted drinking, had a strong odor of alcoholic beverage coming from his face, bloodshot and watery eyes, a flushed face and did poorly on FSEs; there was a 12 pack of beer in back seat with seven empty bottles); Nissen v. Dep’t of Highway Safety & Motor Vehicles, 17 Fla. L. Weekly Supp. 1071 (Fla. 6th Cir. Ct. July 22, 2010) (officer had probable cause for DUI arrest where defendant had odor of alcoholic beverage on breath, “a blank and uncomprehending expression,” flushed face, bloodshot and watery eyes, slurred and mumbled speech, stumbled and swayed, performed poorly on FSEs, and admitted drinking); Mastenbroek v. Dep’t of Highway Safety & Motor Vehicles, 17 Fla. L. Weekly Supp. 949 (Fla. 6th Cir. Ct. April 16, 2010) (deputy had probable cause for DUI arrest where defendant had strong odor of alcohol on his breath, slurred speech, was unsteady on his feet, rocked and swayed, made repetitive statements, was excited, and refused to do FSEs); Shoaf v. Dep’t of Highway Safety & Motor Vehicles, 17 Fla. L. Weekly Supp. 308 (Fla. 4th Cir. Ct. Oct. 7, 2009) (officer had probable cause for DUI arrest where driver was going 59 m.p.h. in a 35 m.p.h. zone, had an odor of alcohol coming from his person and watery eyes, admitted having two drinks, and had three clues of impairment on One Leg Stand and two clues on Walk & Turn); Fissette v. Dep’t of Highway Safety & Motor Vehicles, 17 Fla. L. Weekly Supp. 306 (Fla. 4th Cir. Ct. Jan. 26, 2010) (defendant was lawfully arrested for DUI where she was slumped over wheel of vehicle idling on the side of the road and keys in the ignition; witnesses observed the driver in that condition for 30 minutes; when officer arrived, rescue personnel were trying to wake the driver; defendant became combative with rescue personnel, closed driver’s door, and tried to start the car; defendant had a strong odor of alcohol on her breath, glassy watery eyes, slurred speech, was unsteady, and refused FSEs); State v. Timmons, 17 Fla. L. Weekly Supp. 261 (Fla. 17th Cir. Ct. Dec. 22, 2009) (deputy had probable cause for DUI arrest where defendant saw vehicle continuously weaving within lane and running a red light while turning left, and after stop, deputy observed that defendant had slurred speech, red and watery eyes, difficulty locating documents, smelled of alcohol, and admitted consuming a glass of wine); Steller v. Dep’t of Highway Safety & Motor Vehicles, 17 Fla. L. Weekly Supp. 152 (Fla. 6th Cir. Ct. Dec. 10, 2009) (officer had probable cause for DUI arrest where defendant was driving 82 m.p.h. in a 40 m.p.h. zone and failed to maintain his lane, had an odor of alcohol, bloodshot and glassy eyes, and “mumbled and incoherent” speech; defendant performed poorly on FSEs); State v. Mahadeo, 16 Fla. L. Weekly Supp. 829 (Fla. 17th Cir. Ct. June 18, 2009) (trial court did not err in finding no probable cause for DUI where defendant had odor of alcohol, was speeding and swerving in an out of light traffic at 3:00 a.m.; odor of alcohol was not enough—it must usually be combined with other factors like slurred speech, lack of dexterity, bloodshot eyes, or admissions); Barlow v. Dep’t
of Highway Safety & Motor Vehicles, 15 Fla. L. Weekly Supp. 44 (Fla. 20th Cir. Ct. Oct. 24, 2007) (a deputy had probable cause for DUI where defendant did not make a complete stop at a stop sign, had extremely dark tinting, a strong odor of an alcoholic beverage on his breath, a flushed face, and difficulty answering questions); Pagnosto v. Dep’t of Highway Safety & Motor Vehicles, 14 Fla. L. Weekly Supp. 115 (Fla. 4th Cir. Ct. Dec. 4, 2006) (officer had probable cause for DUI arrest where deputy saw defendant stop about 40 feet behind the limit line at an intersection, defendant was in driver’s seat with his head titled towards the window on the driver’s side, and "appeared to 'pass out' for a moment," then officer observed vehicle cross the center line, go back into his own lane, and then cross into bike lane; finally defendant used his turn signal and moved properly into the inside lane; defendant initially sped up when officer signaled him to stop; defendant had a strong odor of alcohol coming from his mouth, he admitted having a few alcoholic beverages and that he was coming from a bar; defendant had significant difficulty locating his license, registration, and proof of insurance, which were readily available; defendant swayed as he exited; defendant performed poorly on FSTs and indicated that he had no medical disabilities that would affect his performance); McNall v. Dep’t of Highway Safety & Motor Vehicles, 13 Fla. L. Weekly Supp. 1163 (Fla. 20th Cir. Ct. Sept. 11, 2006) (officer had probable cause for DUI arrest where vehicle made a sudden jerk movement to the right and then back to the left while going eastbound; during that movement both left tires crossed the white line into the center eastbound lane; vehicle slowed down and sped up suddenly and made several drifting movements within the right lane; defendant had difficulty finding license and registration; defendant’s eyes were red and watery and defendant had a strong odor of alcohol on her breath, had trouble with her balance, had problems with the field sobriety tests, and she refused to submit to a breath test); Smart v. Dep’t of Highway Safety & Motor Vehicles, 13 Fla. L. Weekly Supp. 867 (Fla. 9th Cir. Ct. June 28, 2006) (officer had probable cause for DUI where he saw the defendant driving the wrong way on a one way street; defendant made wide turn and accelerated when officer put on overhead lights; officer detected a strong odor of alcohol coming from the car; defendant had difficulty locating the registration and insurance card, had balance problems, stated that she had consumed two drinks, and refused field sobriety tests); Lenart v. Dep’t of Highway Safety & Motor Vehicles, 13 Fla. L. Weekly Supp. 860 (Fla. 12th Cir. Ct. June 9, 2006) (officer had probable cause for DUI arrest where the officer clocked the defendant on radar doing 70 m.p.h. in a 45 m.p.h. zone; defendant had a strong odor of alcoholic beverage, watery eyes, slowed speech, and did poorly on the walk the line test); Truxton v. Dep’t of Highway Safety & Motor Vehicles, 13 Fla. L. Weekly Supp. 851 (Fla. 6th Cir. Ct. June 30, 2006) (officer had probable cause for DUI arrest where the defendant drove on the wrong side of the road; officer paced the vehicle doing 62 m.p.h. in a 45 m.p.h. zone and saw several signs of impairment and advised the DUI officer; and the DUI officer noted that the defendant had watery, bloodshot eyes, a strong odor of alcohol, and slurred speech; the defendant admitted that he had been drinking, failed the walk and turn test, and refused the other FSTs); Grant v. Dep’t of Highway Safety & Motor Vehicles, 12 Fla. L. Weekly Supp. 1130 (Fla. 13th Cir. Ct. Sept. 9, 2005) (troopers had probable cause where the defendant had an odor of alcoholic beverage on his breath and had bloodshot, watery eyes, poor balance, and did not follow instructions on field sobriety tests); Boston v. Dep’t of Highway Safety & Motor Vehicles, 12 Fla. L. Weekly Supp. 1109 (Fla. 4th Cir. Ct. Sept. 27, 2005) (officer had probable cause where the defendant drove completely off the road into the grass and returned to the pavement two times, and the defendant had glassy, bloodshot eyes, flushed face, slightly slurred speech, a strong odor of alcohol coming from his mouth, and refused to do the field sobriety exercises); Barbacci v. Dep’t of Highway Safety & Motor Vehicles, 12 Fla. L. Weekly Supp. 1000 (Fla. 4th Cir. Ct. Aug. 1, 2005) (despite officer’s statement on cross that there was no probable cause, the evidence supported a finding of probable cause where the defendant ran a stop sign, crashed into a curb, stumbled out of the car, had an odor of alcohol, disregarded instructions to remain seated on the curb, and on three occasions walked into the street in front of his car and crawled on his belly to look under his car); Zaffran v. Dep’t of Highway Safety & Motor Vehicles, 12 Fla. L. Weekly Supp. 628 (Fla. 9th Cir. Ct. April 1, 2005) (officer had probable cause, despite the defendant’s advance age, where another officer said the defendant was driving a car involved in an accident and the defendant had an odor of alcohol, glassy and red eyes, was argumentative, and stumbling); Golstin v. Dep’t of Highway Safety & Motor Vehicles, 12 Fla. L. Weekly Supp. 446 (Fla. 17th Cir. Ct. March 4, 2005) (officer had probable cause where defendant went 53 m.p.h. in a 35 m.p.h. zone, veaved from side to side, passed four cars in the right turn lane, reacted slowly to emergency lights, had a strong odor of alcohol, glassy and bloodshot eyes, a flushed face, and difficulty providing the requested documents); Miller v. Dep’t of Highway Safety & Motor Vehicles, 12 Fla. L. Weekly Supp. 439 (Fla. 12th Cir. Ct. Dec. 29, 2004) (officer had probable cause for DUI where the defendant drove over center line, drifted about two feet into a safety zone, and onto the lane marker four or more times, had bloodshot eyes, a flushed face, slurred speech, and a strong odor of alcohol); Saxon v Dep’t of Highway Safety & Motor Vehicles, 12 Fla. L. Weekly Supp. 111 (Fla. 9th Cir. Ct. Nov. 24, 2004) (officer had probable cause for DUI arrest based on odor of alcohol, bloodshot eyes, slow

speech, unsteady balance, and poor performance on field sobriety exercises); Cascante v. Dep’t of Highway Safety & Motor Vehicles, 11 Fla. L. Weekly Supp. 945 (Fla. 4th Cir. Ct. Aug. 18, 2004) (officer had probable cause for DUI arrest based on odor of alcohol combined with blood shot and watery eyes, a flushed face, driving pattern, admission of drinking, and poor performance on field sobriety exercises); Paisley v. Dep’t of Highway Safety & Motor Vehicles, 11 Fla. L. Weekly Supp. 83 (Fla. 9th Cir. Ct. Oct. 8, 2003) (trooper had probable cause based on identification of defendant as hit and run driver who caused damage to other vehicles, odor of alcohol, glassy eyes, occasionally slurred speech, and admission of drinking at least one beer); Sullivan v. Dep’t of Highway Safety & Motor Vehicles, 10 Fla. L. Weekly Supp. 304 (Fla. 19th Cir. Ct. Nov. 20, 2002) (officer had probable cause based on the odor of alcohol and defendant’s reckless driving); Diaz v. State, 9 Fla. L. Weekly Supp. 165 (Fla. 11th Cir. Ct. Jan. 15, 2002) (officer had probable cause for DUI where defendant was speeding and rear-ended a parked police car, had an odor of alcohol, slurred speech, and bloodshot eyes); Bolduc v. Dep’t of Highway Safety & Motor Vehicles, 6 Fla. L. Weekly Supp. 62 (Fla. 9th Cir. Ct. Oct. 2, 1998) (deputy had probable cause for DUI when she saw defendant fail to yield when making a left turn and driving erratically; defendant staggered, had difficulty standing, an odor of alcoholic beverage, bloodshot and glassy eyes, admitted consuming a few beers earlier in the day, and performed poorly on FSEs); State v. Betancourt, 29 Fla. Supp. 2d 121 (Fla. 11th Cir. 1988) (there was probable cause for a DUI arrest where the officer lawfully stopped the defendant for a traffic violation and defendant was staggering and smelled of alcohol); State v. Mattingly, 20 Fla. L. Weekly Supp. 591 (Fla. Brevard Cty Ct. Feb. 26, 2013) (officer had probable cause for DUI arrest where about half the truck was over the fog line and at least the tires were on the fog line for most of the video and speed varied from 45 to 60 mph in a 55 zone; defendant said she had been at a bar and had one or two drinks; she had an odor of an alcoholic beverage coming from her person and breath, watery and glassy eyes, flush face, mumbled speech, fumbled and did not do well on FSEs); State v. Neniskis, 20 Fla. L. Weekly Supp. 81 (Fla. Monroe Cty. Ct. Oct. 24, 2012) (officer did not have probable cause for DUI arrest where defendant was speeding and at one point was going 87 mph in a 35 mph zone, had an odor of alcohol, flush face, bloodshot watery eyes, and difficulty producing documents, but the video of FSEs and defendant’s performance was inconsistent with the officer’s testimony and did not support a finding of impairment); State v. Harkey, 19 Fla. L. Weekly Supp. 287 (Fla. Broward Cty. Ct. Nov. 28, 2011) (no probable cause for DUI arrest where officer followed vehicle for over 17 blocks for more than five minutes, defendant did not speed, but intermittently weaved between lanes without affecting traffic on a roadway that included a sever curve to the left that the judge found might have caused any citizen to cross; defendant pulled over in a normal manner, provided license, exited, and walked without difficulty; had an odor of alcoholic beverage consistent with one glass of wine earlier in the evening as she said; eyes were somewhat bloodshot and watery and she was talkative; she said she was nervous; her thought processes were clear; she had gaps between her feet as she walked during the walk-and-turn exercise, but she was always on the line, she took the proper number of steps forward and back and she did not use her arms for balance); State v. Miller, 16 Fla. L. Weekly Supp. 695 (Fla. Brevard Cty. Ct. Aug. 7, 2008) (officer had probable cause where defendant was speeding, could not find her documents, was confused about location, used door to exit and to stand upright, had glassy eyes and seemed unsteady with slow dexterity, did not perform the walk and turn as requested, took more steps than requested in each direction, rambled on regarding an incident which occurred at a hotel, could not stand on one leg without losing her balance, and had an odor of alcohol); State v. McClure, 15 Fla. L. Weekly Supp. 1008 (Fla. Manatee Cty. Ct. Aug. 4, 2008) (officer had probable cause for DUI arrest where defendant drove through a valid DUI checkpoint and before he exited the vehicle the officer observed bloodshot, glassy, and watery eyes, and upon exit the defendant was swaying; defendant had a strong odor of alcohol on his breath and admitted drinking two glasses of wine); State v. Henderson, 15 Fla. L. Weekly Supp. 370 (Fla. Volusia Cty. Ct. Feb. 22, 2008) (no probable cause for DUI arrest where car had an inoperable tag light, vehicle moved within its lane, turned off road at speed officer considered excessive, but no violation; defendant had odor of alcohol and an entry stamp from a local bar on her hand; when officer made contact, defendant passed over her license in her wallet, seemed to have slow and slightly slurred speech, exited vehicle slowly and appeared unsteady on her feet, but the video tape revealed no slurred or abnormally slow speech, unsteadiness or problems on FSEs); Sasser v. State, 6 Fla. L. Weekly Supp. 193 (Fla. Orange Cty. Ct. Jan. 19, 1999) (officer had probable cause for DUI where defendant pulled out of bar parking lot, veered into oncoming traffic, erratically jerked his vehicle back into his lane, had an odor of alcohol, moved slowly and deliberately when exiting his vehicle, and had glassy eyes).

Golden v. Dep’t of Highway Safety & Motor Vehicles, 15 Fla. L. Weekly Supp. 590 (Fla. 9th Cir. Ct. April 16, 2008). See also Kubala v. Dep’t of Highway Safety & Motor Vehicles, 17 Fla. L. Weekly Supp. 1008 (Fla. 9th Cir. Ct. June 23, 2010) (where defendant is under 21, an officer has probable cause based solely on driving or actual physical control and the odor of alcohol).
Golden v. Dep’t of Highway Safety & Motor Vehicles, 15 Fla. L. Weekly Supp. 590 (Fla. 9th Cir. Ct. April 16, 2008) (court found probable cause based on the language of the statute, the basis for the stop, and the evidence presented, which included an odor of alcohol beverage coming from the underage driver and an admission to drinking alcohol).

Wacker v. Dep’t of Highway Safety & Motor Vehicles, 11 Fla. L. Weekly Supp. 489 (Fla. 9th Cir. Ct. Feb. 18, 2004) (officer had probable cause based on “odor associated with alcoholic impurities” coming from defendant’s breath; slurred speech; bloodshot, watery, red, and glassy eyes; and production of insurance card when asked for a license); Rice v. Dep’t of Highway Safety & Motor Vehicles, 11 Fla. L. Weekly Supp. 173 (Fla. 7th Cir. Ct. Dec. 9, 2003) (officer had probable cause where another officer told him that the defendant ran a stop sign; and the defendant had a strong odor of alcoholic beverages coming from his breath, bloodshot and watery eyes, swayed while standing, leaned on the car for support, admitted to drinking alcohol, and performed poorly on field sobriety exercises); State v. Sopko, 10 Fla. L. Weekly Supp. 987 (Fla. 17th Cir. Ct. Oct. 2, 2003) (officer had probable cause based on observations of defendant’s driving, her left turn across three lanes of traffic, the need for others to evade defendant, odor of alcohol, and slurred speech); Kelly v. Dep’t of Highway Safety & Motor Vehicles, 10 Fla. L. Weekly Supp. 173 (Fla. 7th Cir. Ct. Dec. 6, 2002) (officer had probable cause where officer saw defendant use the vehicle for support as the defendant exited, the defendant had slurred speech, bloodshot and watery eyes, a strong odor of alcoholic beverages, and refused to do field sobriety exercises).


Florida Statutes, Section 316.193(1).

See §§ 9:1 et seq.

Mathis v. Coats, 24 So. 3d 1284 (Fla. 2d DCA 2010) (plaintiff sued for false arrest based on DUI charge). See also Basaraba v. Dep’t of Highway Safety & Motor Vehicles, 19 Fla. L. Weekly Supp. 996 (Fla. 18th Cir. Ct. Aug. 27, 2012) (deputy, who was experienced in drug cases, had probable cause for driving while under the influence of controlled substances where he saw petitioner swerving from right lane to middle lane, almost striking his marked patrol car; petitioner had watery eyes, sweating, shaking throughout his entire body, grinding his teeth, mental confusion and no indication of alcohol consumption); State v. Francis, 18 Fla. L. Weekly Supp. 250 (Fla. 6th Cir. Ct. Dec. 16, 2010) (officers had probable cause for DUI arrest even though there was no odor of alcohol, but the defendant was passed out in a vehicle at a convenience store, the defendant displayed the indicia of impairment, and the officers could see Oxycodone from outside the car).

Defendant struck the center median, nearly sideswiped another vehicle, and struck the center median again. She seemed agitated and moved in a very jerky fashion, had bloodshot or glassy eyes, slow coordination, difficulty following conversation, and a flushed face. However, she was cooperative, had no odor of alcohol, and had clear speech. The defendant did not satisfactorily complete field sobriety tests. Breath and urine test results were both negative. 24 So.3d at 1286–87.