

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

CASE NO: 2011-AP-46
Lower Court Case No: 2011-CT-3376

JOHN JEROME BRENNAN, IV,

Appellant,

vs.

STATE OF FLORIDA,

Appellee.

_____ /

Appeal from the County Court,
for Orange County, Florida,
Faye L. Allen, County Court Judge

David S. Katz, Esq.
for Appellant

Lawson Lamar, State Attorney and
Dugald McMillan, Assistant State Attorney,
for Appellee

Before POWELL, MUNYON, and APTE, J.J.

PER CURIAM.

FINAL ORDER REVERSING TRIAL COURT

Appellant John Brennan appeals an order denying his pretrial motion to suppress. Oral argument is dispensed with pursuant to Florida Rule of Appellate Procedure 9.320. We reverse.

The facts are not in dispute and can be summarized briefly as follows. Orlando Police Officer Schellhorn in uniform in a marked Orlando Police car, while participating one evening in a "DUI Saturation Patrol," stopped Appellant in the City of Apopka driving 65 mph in a 45 mph zone and weaving a couple of times. He detained Appellant, noticed signs of impairment,

conducted field sobriety exercises, arrested him for DUI and transported him to a mobile testing unit in the city of Oak Hill. It is without dispute that all of this activity occurred without a warrant outside the city limits of Orlando.

Appellant met his initial burden of pleading and proof, and the burden shifted to the State to show the stop and all that followed was lawful, which the State attempted to do by arguing that the officer's extra-territorial activity was justified by one of three recognized exceptions to the general rule – that it was based on a Mutual Assistance Agreement provided for by section 22.2215, Florida Statutes.

Where an extra-territorial stop and arrest, as here, is based *solely* upon a mutual aid agreement, the State must establish by competent evidence following three requirements: (1) an authenticated copy of the agreement must be formally introduced in evidence; (2) the agreement must cover the time in question, and (3) the officer must have acted in strict conformity with the provisions of the agreement. The Florida District and Circuit Courts and County Courts have uniformly held that where these requirements are not met, the stop and all evidence obtained thereafter must be suppressed. *See Walker v. State*, 55 So. 3d 718 (Fla. 1st DCA 2011); *Moncrieffe v. State*, 55 So. 3d 736 (Fla. 4th DCA 2011); *LaClaire v. Dep't of Highway Safety & Motor Vehicles*, 2 Fla. L. Weekly Supp. 179a (Fla. 7th Cir. Ct. Mar. 25, 1994); *State v. Handren*, 18 Fla. L. Weekly Supp. 556b (Fla. 15th Cir. Ct. April 5, 2011); *State v. Ralph*, 18 Fla. L. Weekly Supp. 900b (Fla. 4th Cir. Ct. June 14, 2011).

In the case before us, no mutual aid agreement was introduced in evidence, nor any other competent evidence showing the provisions of any such mutual aid agreement. In fact, there was no mention whatsoever in the witness testimony of any mutual aid agreement. The only mention

of any mutual aid agreement is found in the argument of the assistant state attorney in the hearing below and in the State's Answer Brief. Arguments of counsel are not evidence.

Since the State failed to offer competent – indeed any – evidence of a valid mutual aid agreement, or that the “DUI Saturation Patrol” was a valid existing mutual aid agreement, or that Officer Schellhorn's extra-territorial actions conformed to the provisions of such an act, the order denying Appellant's motion was error and must be reversed, the case remanded with directions to the county court to grant the motion and exclude evidence of the stop and all evidence acquired thereafter.

REVERSED and REMANDED with directions.

DONE AND ORDERED at Orlando, Florida this 28th day of November, 2012.

/S/_____
ROM W. POWELL
Senior Judge

/S/_____
LISA T. MUNYON
Circuit Judge

/S/_____
ALAN S. APTE
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing order was furnished to **David S. Katz, Esq.**, Katz & Phillips, P.A., 121 South Orange Avenue, Ste. 1420, Orlando, Florida 32801; **Dugald McMillan, Assistant State Attorney**, 415 N. Orange Avenue, Ste. 200, Orlando, Florida 32802-1673; and **Honorable Faye L. Allen**, 425 N. Orange Avenue, Orlando, Florida 32801, by mail, this 28th day of November, 2012.

/S/_____
Judicial Assistant