

**NOT FINAL UNTIL TIME EXPIRES FOR REHEARING
AND, IF FILED, DETERMINED**

**ON APPEAL TO THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF
THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY**

APPELLATE DIVISION

STATE OF FLORIDA

Appellant,

Appeal Case No.: CRC 08-00059 APANO
UCN No.: 522007CT061157XXXXXX

v.

PERRY MARTIN EARLE,

Appellee.

Opinion filed: 4/12/10.

Appeal from the County Court
for Pinellas County
County Judge James Pierce

Bernie McCabe, Esquire
State Attorney, Sixth Judicial Circuit of Florida
Attorney for Appellant

Deborah S. Moss
Attorney for the Appellee

ORDER AND OPINION

DEMERS, JUDGE

Appellee was charged with DUI. He filed a Motion to Suppress the evidence secured by the stopping officer on the grounds that the officer was outside of his jurisdiction. The trial judge granted the Motion to Suppress. The State appealed. This Court has jurisdiction.

This Court's review of the trial court's ruling on a Motion to Suppress is a mixed question of law and fact. A presumption of correctness is afforded to the trial court's

determination of facts when it is supported by competent, substantial evidence. However, the application of the law to those facts is reviewed *de novo*. *Ornelas v. United States*, 517 U.S. 690, 116 S. Ct. 1657, 134 L.Ed.2d 911 (1996); *Conner v. State*, 803 So.2d 598 (Fla. 2001); *State v. Pruitt*, 967 So.2d 1021 (Fla. 2d DCA 2007); *Newkirk v. State*, 964 So.2d 861,863 (Fla. 2d DCA 2007).

This case began when a Kenneth City officer observed Appellee on a motorcycle. Both the officer and the Appellee were outside Kenneth City. The officer saw Appellee exit a parking lot without stopping and enter the middle lane, causing a truck to slam on the brakes. Appellee then tried to go into the right lane, causing the truck to swerve and go up on the sidewalk. The officer stopped the defendant for a traffic violation. (R 34-35). He called his supervisor, who came to the scene. They performed a DUI investigation outside of their jurisdiction, including administration of field sobriety exercises. (R 31-32). After the investigation, the officer arrested Appellee. There was a mutual aid agreement in force, but the officer failed to comply with the agreement by not contacting a Pinellas County Deputy.

Based on these facts, the State argued that this was a valid citizen's arrest. The trial judge agreed with the State, but nevertheless, granted the Motion to Suppress because the officer did not comply with the mutual aid agreement. The trial judge wrote:

The court finds, by a preponderance of the evidence, that on May 3, 2007, the Defendant's driving did constitute a breach of the peace and therefore Officer Daniels had lawfully arrested the Defendant based on a citizen's arrest theory. (citing *Roberts v. DHSMV*, 976 So.2d 1241 (Fla. 2d DCA, 2008)) However, the court also finds that because Officer Daniels did not follow the mutual aid agreement the evidence should be suppressed. (citing *Ball v. State*, 14 Fla. L. Weekly Supp. 133a) (R 16).

The trial judge's ruling suggests that where there is an applicable mutual aid agreement, evidence secured as a result of a valid citizen's arrest is inadmissible unless the State proves compliance with the mutual aid agreement. Presumably, that was not the trial judge's intent.

Officers acting outside of their jurisdiction have the same authority as any other citizen. *See e.g. State v. Sobrino*, 587 So.2d 1347 (Fla. 3d DCA 1991). That means for offenses occurring in their presence, they may make an arrest for all felonies and any misdemeanors constituting a breach of peace. *Phoenix v. State*, 455 So.2d 1024 (Fla. 1984). DUI qualifies as a breach of peace. *State v. Furr*, 723 So.2d 842 (Fla. 1st DCA 1998). Courts have ruled that erratic driving endangering other drivers creates a breach of the peace and justifies a citizen's arrest. *Edwards v. State*, 462 So.2d 581 (Fla. 4th DCA 1985). *See also Roberts v. Dep't of Highway Safety and Motor Vehicles*, 976 So.2d 1241, 1241-42 (Fla. 2d DCA 2008). These authorities explain why the trial judge in the instant case concluded that the stop constituted a valid citizen's arrest.

But this Court respectfully disagrees with the trial judge's conclusion that the stop constituted a citizen's arrest. The stop was not an arrest. The officer did not turn the defendant over to an officer with jurisdiction or do anything else to suggest that the stop was an arrest. Instead, he made a stop for a traffic violation and proceeded to do a DUI investigation. Citizens have no authority to make stops for traffic infractions nor do they have authority to conduct investigations. Similarly, officers operating and observing conduct outside of their jurisdictions, but failing to comply with a mutual aid agreement, have no authority to make stops for traffic infractions. *Dep't of Highway Safety & Motor Vehicles v. Pipkin*, 927 So.2d 901 (Fla. 3d DCA 2005)(stop outside jurisdiction for failure to maintain a proper lane was improper). Nor do officers have authority to do investigations outside of their jurisdiction. *State v. Allen*, 790 So.2d 1122, 1125 (Fla. 2d DCA 2001); *State v. Sobrino*, 587 So.2d 1347 (Fla. 3d DCA), *rev. denied*, 591 So.2d 184 (Fla. 1991).

This Court also finds that everything the officer did after the stop was under color of office, and therefore, cannot constitute a valid citizen's arrest. *Phoenix v. State*, 455 So.2d 1024

(Fla. 1984). It is true that the mere fact that an officer is in uniform and in a patrol car does not mean the officer acted under color of officer. *Id.* But where the officer uses his position as a police officer to secure evidence that a private citizen could not secure, the officer is acting under color of office. *Phoenix v. State*, 455 So.2d 1024 (Fla. 1984); *State v. Sills*, 852 So.2d 390 (Fla. 4th DCA 2003)(officers acted under color of office where they induced the defendant by promises of leniency to go with them outside of their jurisdiction). Here the officer and his supervisor used their position and training as officers to conduct a DUI investigation outside of their jurisdiction and secure evidence. The trial judge properly suppressed that evidence.

The State makes no attempt to rely on the alternative grounds that the officer was clothed with authority by the mutual aid agreement. That is understandable because it is un rebutted that the officer did not comply with the agreement; therefore, it cannot justify the officer's activity outside his jurisdiction. *State v. Allen*, 790 So.2d 1122, 1125 (Fla. 2d DCA 2001); *State v. Medford*, 16 Fla. L. Weekly Supp. 6 (Fla. 6th Cir. Ct. June 12, 2008). Thus, the trial judge properly granted the Motion to Suppress.

ACCORDINGLY, the Order granting the Motion to Suppress is AFFIRMED.

BULONE and HELINGER, C. JJ. Concur.

ORDERED at St. Petersburg, Florida this 12th day of April 2010.

Original order entered on April 12, 2010 by Circuit Judges David A. Demers, Joseph A. Bulone, and Chris Helinger.

Copy to:

County Judge James Pierce

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