

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

CASE NO: 2011-AP-41
Lower Court Case No: 2011-MM-546

JOEL CHARLES ABBOTT,

Appellant,
vs.

STATE OF FLORIDA,

Appellee.
_____ /

Appeal from the County Court,
for Orange County, Florida,
Leon B. Cheek, III, County Court Judge

Robert Wesley, Public Defender and
James Steven Fisher, Assistant Public Defender,
for Appellant

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

Before POWELL, LAUTEN, and MIHOK, J.J.

PER CURIAM.

FINAL ORDER AFFIRMING TRIAL COURT

Appellant appeals from an order denying his pretrial motion to suppress evidence stemming from the stop of his vehicle based upon an alleged violation of section 316.3045, Florida Statutes, colloquially known as Florida's "Boom Box" law. We dispense with oral argument pursuant to Florida Appellate Rule 9.320, and affirm.

Appellant argues that since section 316.3045 had been held constitutionally invalid at the time of the stop by the Second District Court of Appeal in *State v. Catalano*, 60 So. 3d 1139 (Fla. 2d DCA 2011), the stop was likewise invalid.

We agree with the State, however, and conclude that the Good Faith Exception¹ to the 4th Amendment Exclusionary Rule applies to the facts of this case, and that the trial court did not err in denying the motion. The stop occurred at 11:00 p.m. on May 11, 2011, just a few hours after the *Catalano* opinion had been published that same day. There is no way a reasonably trained law enforcement officer could have known, indeed should have known of the holding of that case. Further, the *Catalano* court in its opinion certified to the Florida Supreme Court an issue of great public importance; thus its opinion was not final until it was affirmed by the Florida Supreme Court over a year later.² It might also be noted that our Fifth District Court of Appeal had upheld the statute's constitutionality in *Davis v. State*, 710 So. 2d 635 (Fla. 5th DCA 1998), and it was not challenged again until *Catalano*.

AFFIRMED.

DONE AND ORDERED at Orlando, Florida this 20th day of March, 2013.

/S/ _____
ROM W. POWELL
Senior Judge

/S/ _____
FREDERICK J. LAUTEN
Circuit Judge

/S/ _____
A. THOMAS MIHOK
Circuit Judge

¹ See *Illinois v. Krull*, 480 U.S. 340 (1987); *Montgomery v. State*, 69 So. 3d 1023 (Fla. 5th DCA 2011) (agreeing with *Catalano* that the later version of the statute was unconstitutional, but applying the Exclusionary Rule Exception thus validating the stop made thereunder.

² See *Catalano v. State*, 104 So. 3d 1069 (Fla. 2012).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing order was furnished to **James Steven Fisher, Assistant Public Defender**, 435 N. Orange Avenue, Ste. 400, Orlando, Florida 32801; **Dugald McMillan, Assistant State Attorney**, 415 N. Orange Avenue, Ste. 200, Orlando, Florida 32802-1673, this 20th day of March, 2013.

/S/ _____
Judicial Assistant