

**IN THE TENTH JUDICIAL CIRCUIT COURT  
FOR HIGHLANDS COUNTY FLORIDA**

**Case No. 03-15521CIM**

**Appeal No.: 04-30**

**JOHN DURHAM,**

**Appellant,**

**v.**

**STATE OF FLORIDA,**

**Appellee.**

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**OPINION OF THE COURT**

This is an appeal from the county court of Highlands County, Judge Peter F. Estrada presiding. The Appellant, John Durham, was found guilty of operating vehicle in unsafe condition/improper equipment and seeks review of the judgment and sentence. This court has jurisdiction. Fla. R. App. P. 9.030(c). The ruling of the trial court is affirmed.

On appeal, Appellant argues that the evidence is insufficient to sustain a conviction for violation of right of way. A judgment of conviction comes to the appellate court with a presumption of correctness. Hitchcock v. State, 413 So.2d 741 (Fla. 1982); State v. Clements, 668 So.2d 980, 981 (Fla. 1996). Weight and credibility are solely within the province of the fact finder; the appellate court's only function is to determine sufficiency as a matter of law. State v. Santomaso, 764 So.2d 735 (Fla. 2d DCA 2000); Stewart v. State, 672 So.2d 865 (Fla. 2d DCA 1996); Chaudoin v State, 362 So.2d 398 (Fla. 2d DCA 1978). Conflicts in evidence and questions about witness' credibility will not justify reversal when evidence is legally sufficient to support conviction. Wetherington v. State, 263 So.2d 294 (Fla. 3d DCA 1972). The reviewing court should not substitute its opinion of the facts for that of the trier of fact. Tibbs v. State, 397 So.2d 1170 (Fla. 1981); State v. McIntyre, 393 So.2d 16 (Fla. 2d DCA 1980). After reviewing the record, the Court finds that there was legally sufficient evidence to support a finding of guilt.

For the foregoing reasons, it is ORDERED and ADJUDGED that the judgment and sentence is AFFIRMED.

DONE and ORDERED \_\_\_\_ January 2005.

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**RONALD HERRING**, Chief Judge