

**IN THE TENTH JUDICIAL CIRCUIT  
FOR HARDEE, HIGHLANDS, AND  
POLK COUNTY, FLORIDA**

**County Case No.: CI03-003324-XX**

**Appeal No.: FF-36**

**RICHARD ATENZA,**

**Appellant,**

**v.**

**STATE OF FLORIDA,**

**Appellee.**

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**OPINION OF THE COURT**

This is an appeal of a conviction in the county court of Polk County, Hearing Officer Debra Wells presiding. Appellant raises on appeal the trial judge's ruling on defense counsel's motion for judgment of acquittal. This court has jurisdiction. Fla. R. App. P. 9.030(a). The ruling of the county court is affirmed.

Appellant was cited for a speeding violation pursuant to §316.187(1), Florida Statutes (2002). At trial, defense counsel moved for a judgment of acquittal alleging that the charging document was defective. After the trial court denied the motion, Appellant was adjudicated guilty and ordered to pay a fine of \$273.00.

On appeal, Appellant argues that the trial court erred in denying the motion for judgment of acquittal based on the defective §316.187(1) enabling statute being applied as a speeding violation subsection on a state road.

Florida Rule of Criminal Procedure 3.380 governs motions for judgment of acquittal and states in relevant part as follows:

(a) If, at the close of the evidence for the state or at the close of all the evidence in the cause, the court is of the opinion that the evidence is insufficient to warrant a conviction, it may, and on the motion of the prosecuting attorney or the defendant shall, enter a judgment of acquittal.

(b) A motion for judgment of acquittal is not waived by subsequent introduction of evidence on behalf of the defendant. The motion must fully set forth the grounds upon which it is based.

On appeal, the Court must determine if there was competent, substantial evidence to support the jury's finding. State v. Law, 559 So.2d 187 (1989).

Upon review of the record, the Court finds competent, substantial evidence to support the trial court's ruling. Therefore, the trial judge correctly denied the motion for judgment of acquittal.

Accordingly, it is ORDERED and ADJUDGED that the ruling of the county court is AFFIRMED.

DONE and ORDERED January 13, 2005.

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**RONALD HERRING**, Chief Judge