

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

**Case No. CI03-41121-XX**

**Appeal No.: GG-01**

**FRANK HERNANDEZ,**

**Appellant,**

**v.**

**STATE OF FLORIDA,**

**Appellee.**

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**OPINION OF THE COURT**

This is an appeal from the county court of Polk County, Judge Mark Carpanini presiding. The Appellant, Frank Hernandez, was found guilty of driving at an unlawful speed, in violation of §316.183, Florida Statutes (2003). Appellant seeks review of the judgment. This court has jurisdiction. Fla. R. App. P. 9.030(c).

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). Appellant argues that the trial court erred in considering evidence of speed as measured by the radar speed-measuring device absent the predicates set forth by §316.1906(2). Based on the decision of the 9<sup>th</sup> Judicial Circuit Court in Hertless v. State, CVA104-5.L.C.Case No. 03-TR-224752-O, the Appellee concedes error and argues that the judgment and sentence of the trial court should be reversed and remanded for a new trial.

For the foregoing reasons, it is ORDERED and ADJUDGED that the judgment of the lower court is REVERSED. This matter is further REMANDED to the lower court for a new trial.

DONE and ORDERED May 24, 2005.

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**RONALD HERRING**, Chief Judge