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

County Case No.: TT02-01294-LD
Appeal No.: EE-35

RAFAEL MATOS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

OPINION OF THE COURT

This is an appeal of a conviction in the county court of Polk County, Judge Mary Catherine Green 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.

I.

On December 23, 2001, Appellant was observed driving 80 mph in a 45 mph zone. The officer that pursued Appellant's vehicle also testified that he changed lanes several times without using the turn signal and cut off other drivers. After stopping Appellant, the officer approached his vehicle and noticed an odor of alcohol. Another officer, who arrived to conduct a DUI investigation, testified that Appellant's eyes were bloodshot and watery. The officer noticed that Appellant failed some of the tests by stepping off a line, by miss-stepping on a heel-to-toe walk, and by swaying while standing on one leg, after which he placed him under arrest.

Appellant was charged with reckless driving with a contributing factor of alcohol. During trial, defense counsel moved for a judgment of acquittal, arguing that there was insufficient evidence to establish reckless driving. The trial court denied the motion and the jury returned a guilty verdict against Appellant, though also finding that alcohol was not a contributing factor. Appellant seeks review of the denial of this motion.

II.

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).

III.

Pursuant to §316.192(1), Florida Statutes (2001), a person is guilty of reckless driving when he "drives any vehicle in willful or wanton disregard for the safety of persons or property." Testimony at trial established that Appellant drove 80 mph in a 45 mph zone. Furthermore, Appellant exhibited erratic driving by cutting off other drivers without using his turn signals. In light of the testimony presented at trial, the Court finds competent, substantial evidence to support the jury's finding. Therefore, the trial judge correctly denied the motion for judgment of acquittal and properly submitted the case to the jury.

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

DONE and ORDERED October 17, 2003.

RONALD HERRING, Chief Judge