

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

**County Case No.: TT02-01553-LD  
MM02-07803A-XX**

**Appeal No.: FF-22**

**DAVID SAWYER,**

**Appellant,**

**v.**

**STATE OF FLORIDA,**

**Appellee,**

---

**OPINION OF THE COURT**

This is an appeal from the county court of Polk County, Judge Mark Carpanini presiding. This court has jurisdiction. Fla. R. App. P. 9.030(c). The ruling of the county court is **AFFIRMED**.

On August 9, 2002, Appellant was charged with driving under the influence of alcohol beverages in violation of §316.193(1), Florida Statutes (2002). On August 22, 2002, Appellant was charged with possession of cannabis in violation of §893.13 stemming from the same incident. Officers from the Lakeland Police Department confronted Appellant after witnesses reported that they observed him get out of the car he had been driving and walk around in an unstable manner. As one officer approached Appellant, he noticed that Appellant's face was flushed red, his eyes were extremely blood shot and watery, and that he emanated a very strong odor of alcoholic beverages. Appellant consented to a field sobriety test, and performed poorly according to the officer. Based on his observations, the officer placed Appellant under arrest for DUI. As he searched Appellant's pockets incident to arrest, the officer found marijuana in his right front pocket. After Appellant's motion to suppress was denied, he pled no contest and reserved his right to appeal the denial of his motion. Appellant was sentenced to one year of probation on the DUI, with a condition that he serves 120 days in county jail. On the possession charge he was sentenced to 90 days in county jail. A timely notice of appeal was filed.

The sole issue on appeal is whether the trial court erred in denying the Appellant's motion to suppress. A trial court's ruling on a motion to suppress comes to reviewing court clothed with presumption of correctness, and reviewing court will interpret evidence and reasonable inferences and deductions derived therefrom in manner most favorable to sustaining trial court's ruling. McNamara v. State, 357 So.2d 410 (Fla. 1978).

Appellant argues that the officer could not arrest him for DUI because he did not witness the Appellant operating his vehicle. A law enforcement officer may request that a driver perform field sobriety tests based on reasonable suspicion that crime of driving while intoxicated (DWI) was being committed; officer did not need probable cause to ask driver to submit to field sobriety exercises. Department of Highway Safety and Motor Vehicles v. Haskins, 752 So.2d 625 (Fla. 2d DCA 2000). Furthermore, upon lawful stop of a defendant who appeared intoxicated, additional indications of defendant's intoxicated state justified administration of field sobriety tests. Mendez v. State, 678 So.2d 388 (Fla. 4<sup>th</sup> DCA 1996). In the instant case, based on the officer's testimony regarding Appellant's physical condition along with the witnesses' testimony that Appellant was driving, the officer had reasonable suspicion to believe that Appellant was driving while under the influence, and thus administer the field sobriety tests.

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

DONE and ORDERED August 12, 2004.

---

**RONALD HERRING**, Chief Judge