

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

County Case No.: TT03-000941-XX

Appeal No.: FF-63

CARLOS BATES,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

OPINION OF THE COURT

This is an appeal of a ruling in the county court of Polk County, Judge Timothy Coon presiding. Appellant, Carlos Bates, 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 arrested on February 21, 2003 for one count of refusal to submit to a breath, blood or urine test, in violation of §316.1939, Florida Statutes (2003). The arrest stems from a detective from the Polk County Sheriff's Office observing the Appellant switching places with a female occupant after being pulled over. Based on his belief that Appellant had been drinking, he placed him under arrest for suspicion of drunken driving. Appellant refused to perform field sobriety exercises and was advised that failure to submit would result in his driver's license being suspended and him being charged with a misdemeanor. After being transported to Polk County Jail, Appellant refused to submit to a breath, blood or urine test. At trial, defense counsel moved for a judgment of acquittal arguing that Appellant was not required to submit to any of the sobriety tests because he had never been issued a Florida driver's license. The trial court denied the motion and the jury found Appellant guilty. A timely notice of appeal was filed.

In reviewing a motion for judgment of acquittal, a de novo standard of review applies. Johnston v. State, 863 So.2d 71 (Fla. 2003). The directing of verdicts is within the sound discretion of the trial judge. Shea v. State, 167 So.2d 796 (Fla. 3d DCA 1965). If there is substantial evidence to support the verdict, the verdict should not be disturbed on appeal. Substantial evidence has been defined as "such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred." Cohen v. State, 99 So.2d 563, 564 (Fla. 1957). If there is not substantial error showing an abuse of discretion, the ruling of the trial court must be affirmed. Shea. Moreover, by moving for a judgment of acquittal, the defendant

accepts as proven all facts in evidence and every conclusion favorable to the state. A motion for directed verdict of acquittal should not be granted unless it is apparent that no legally sufficient evidence has been submitted upon which a jury could convict. Brown v. State, 294 So.2d 128 (Fla. 3d DCA 1974). The evidence must be reviewed in a light most favorable to the state. Cochran v. State, 547 So.2d 928 (Fla. 1989); Lynch v. State, 293 So.2d 44, 45 (Fla. 1974).

Appellant argues that the State failed to present sufficient evidence that he accepted the driving privileges as extended by the laws of Florida, without which he could not impliedly consent to the tests. As the trial court correctly held, the Implied Consent Statute codified in §316.1932 states that “any person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this state is, by so operating such vehicle, deemed to have given his or her consent to an approved chemical test or physical test...” Regardless of whether Appellant had a valid Florida driver’s license, by the sole act of operating a motor vehicle, it is deemed that he impliedly consented and accepted the consequences of failing to submit to a breath, blood or urine test. State v. Hoch, 500 So.2d 597 (Fla. 3rd DCA 1987).

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

DONE and ORDERED January 10, 2005.

RONALD HERRING, Chief Judge