

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

**County Case No.: TT01-002523-XX
Appeal No.: DD-97**

CHRISTOPHER T. FITZGERALD,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

OPINION OF THE COURT

This is an appeal of a DUI conviction in the county court of Polk County, Judge Karla F. Wright 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 May 9, 2001, Deputy Tim Strickland of the Polk County Sheriff's Department was on routine patrol when he was dispatched to the Isle of Capri bar on Combee Road. When Strickland arrived at the bar, he discovered that Appellant's pickup truck was involved in an accident with another vehicle. Appellant was seated alone in the driver's seat and Strickland noticed the truck was not running but was warm.

As Strickland approached Appellant's truck, he noticed an odor of alcohol that led him to believe that Appellant had been drinking. He also observed that Appellant's eyes were bloodshot, his speech was slurred and his face was pale. Strickland administered several field sobriety tests on which Appellant performed poorly, after which he was taken under arrest. After being read his Miranda rights, Appellant admitted to drinking six or seven beers and operating the vehicle.

During trial, defense counsel moved for a judgment of acquittal on the DUI charge. The trial court denied the motion and the jury returned a guilty verdict against Appellant. 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.

Testimony at trial established that Appellant was seated in the driver's seat of the truck, which had just been involved in an accident. Furthermore, Appellant exhibited signs of alcohol intoxication, and failed to satisfactorily perform field tests. Therefore, the trial judge correctly denied the motion for judgment of acquittal and properly submitted the case to the jury.

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

DONE and ORDERED August 5, 2003.

RONALD HERRING, Chief Judge