

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

County Case No.: TT03-002778-LD

Appeal No.: GG-24

RICHARD CHURCH,

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 Mark Carpanini presiding. The Appellant, Richard Church, appeals the judgment and sentence of the lower court. This court has jurisdiction. Fla. R. App. P. 9.030(a). The ruling of the county court is affirmed.

I.

Appellant appeals his conviction for driving under the influence in violation of §316.193, Florida Statutes (2003). The jury found Appellant guilty and he filed a timely notice of appeal. Appellant has three issues on appeal, each of which will be addressed in turn.

II.

First, Appellant argues that the trial court erred in denying his motion in limine. The standard of review on a lower court's ruling on a motion in limine is an abuse of discretion. A motion in limine is one in effect suppressing evidence; the trial court sits as both trier of fact and of law. The weight of the evidence presented is a matter within the province of the trial judge, whose determination of factual questions must be accepted by the Appellate Court if the record supports the finding. State v. Polak, et. al., 598 So.2d 150 (Fla. 1st DCA 1992).

During trial, defense counsel made an oral motion in limine to keep out this statement Appellant made to police during the course of a DUI investigation: "I've been nailed for this before." Appellant argues that the statement shows that he had been charged with a similar crime. Upon review of the statement and the circumstances surrounding it, the Court finds that the statement was not used as evidence of a prior crime. Rather, the statement was introduced to show Appellant's knowledge of the breathalyzer machine and his motive for refusing to blow into it. Therefore, the trial court did not err in denying the motion in limine.

III.

Second, Appellant asserts that the State improperly argued beyond the order of the court in closing arguments regarding Appellant's aforementioned statement. Defense counsel at trial did not object to the State's closing argument at trial and has therefore waived the right to raise this issue on appeal. Clark v. State, 363 So.2d 331 (Fla. 1978).

IV.

Third, Appellant argues that his statement from the videotape played to the jury violated a stipulated agreement between him and the State where that portion of the tape was to be omitted. The record indicates that defense counsel introduced the videotape into evidence. The jury asked to see the tape again during deliberations and during the replay, defense counsel inadvertently allowed the jury to see the portion of the tape that was supposed to be omitted. Again, defense counsel failed to raise an objection and in doing so, did not preserve this issue for appellate review. F.B. v. State, 852 So.2d 226 (Fla. 2003).

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

DONE and ORDERED August 1, 2005.

RONALD HERRING, Chief Judge