

**2IN THE TENTH JUDICIAL CIRCUIT
IN AND FOR HARDEE, HIGHLANDS
AND POLK COUNTY, FLORIDA**

County Case No.: TT03-003182-LD

Appeal No.: GG-42

JOHN BEYER,

Appellant,

v.

STATE OF FLORIDA,

Appellee,

OPINION OF THE COURT

This is an appeal from the county court of Polk County, Judge Angela Cowden presiding. Appellant was convicted of driving under the influence and appeals the ruling of the trial court. This court has jurisdiction. Fla. R. App. P. 9.030(c). The ruling of the county court is affirmed.

Appellant was pulled over for an investigatory stop after he was observed driving erratically. Defense counsel filed a pre-trial motion to suppress alleging that the police officer unlawfully stopped Appellant. After the trial court denied the motion, counsel moved for a judgment of acquittal at the close of the State's case, and renewed the motion at the close of all evidence. The court denied the motions and Appellant was adjudicated guilty of driving under the influence and filed this appeal.

The first issue on appeal is whether Appellant is deprived of the opportunity for meaningful review, as a full transcript of the record cannot be made. Pursuant to Florida Rule of Appellate Procedure 9.200(b)(4), this Court relinquished jurisdiction to the trial court for 30 days to make an attempt to reconstruct the record. At the hearing, trial counsel for Appellant stated that she had no specific recollection of the balance of the argument, which was not recorded. In her response, counsel for the Appellee provided her specific recollection of her argument and the events that occurred following her argument. In an Order entered on September 2, 2005, the trial judge determined that the reconstruction of the record is deemed successful. This Court agrees with the trial court and adopts the findings set forth in the Order.

The second issue on appeal is whether the trial court erred in denying the Appellant's motion to suppress as well as the motions for judgment of acquittal. 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). 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 officer had no lawful basis to stop his vehicle since there was no testimony elicited that the police officer pulled Appellant over because he believed Appellant had committed, was committing, or was about to commit a crime. In order to initiate a valid stop for driving under the influence, an officer need only have a founded suspicion of criminal activity. State v. Deshong, 603 So.2d 1349 (Fla. 2 DCA 1992). Furthermore, the driving pattern does not have to reach the level of that of a traffic violation in order to justify a stop for driving under the influence. Id. at 1352. Testimony at trial indicates that the officer observed Appellant drifting outside the lane several times, making sudden corrections to correct the drifting, making a wide left turn, and crossing the white lines. Therefore, the Court finds that the officer was justified in making an investigatory stop, and the trial court did not err in denying the motion to suppress and motions for judgment of acquittal.

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

DONE and ORDERED November 1, 2005.

RONALD HERRING, Chief Judge