

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

**County Case No.: TT03-005046-XX  
Appeal No.: GG-13**

**MARK BROWN,**

**Appellant,**

**v.**

**STATE OF FLORIDA,**

**Appellee,**

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**OPINION OF THE COURT**

This is an appeal from the county court of Polk County, Judge Angela Cowden presiding. This court has jurisdiction. Fla. R. App. P. 9.030(c). The ruling of the county court is affirmed.

Appellant was charged with driving under the influence, in violation of §316.193, Florida Statutes (2003). A jury found Appellant guilty and the trial court placed him on probation for one year and suspended his driver's license for five years. A timely notice of appeal was filed.

The Appellant argues that the trial court erred in denying his motion for mistrial and allowing the prosecutor to imply that Appellant had the burden to prove his innocence. A trial court's ruling on a motion for mistrial is subject to an abuse of discretion standard of review. Fitzpatrick v. State, 2005 WL 168510 (Fla.). A motion for mistrial should be granted only when it is necessary to ensure that the defendant receives a fair trial. Id. The court, having reviewed the record and having considered the totality of the circumstances in which the statements were made, finds that the trial court did not abuse its discretion in denying the motion for mistrial.

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

DONE and ORDERED March 4, 2005.

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**RONALD HERRING**, Chief Judge