

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

**County Case No.:** TT03-05286-XX  
TT03-05285-XX  
**Appeal No.:** GG-12

**CARLOS BATES,**

**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 Timothy Coon presiding. Appellant argues that the evidence was insufficient to support a conviction. This court has jurisdiction. Fla. R. App. P. 9.030. The ruling of the county court is affirmed.

**I.**

Appellant was arrested and charged with one count of driving under the influence and one count of driving while license suspended or revoked. At the close of the State's cases, defense counsel moved for a judgment of acquittal arguing that the state had failed to prove that the Appellant had driven with a suspended license. The jury convicted Appellant of both charges. In case number TT03-5285, Appellant was ordered to serve 90 days in county jail followed by a one-year probation term. In case number TT03-5286, the trial court sentenced Appellant to sixty days in county jail. On appeal, the appellant argues that the trial court erred in denying the Appellant's motion for judgment of acquittal because the state did not present sufficient evidence to show that the Appellant knowingly drove with a suspended license.

**II.**

A judgment of conviction comes to the appellate court with a presumption of correctness. Hitchcock v. State, 413 So.2d 741 (Fla. 1982); State v. Clements, 668 So.2d 980, 981 (Fla. 1996). In moving for a judgment of acquittal a defendant admits all facts and evidence at trial and all reasonable inferences that may be drawn from such evidence. Corpoz v. State, 733 So.2d 1048 (Fla. 4<sup>th</sup> DCA 2001); Woods v. State, 733 So.2d 980 (Fla. 1999). On review, the appellate court must view the conflicting evidence in a light most favorable to the state. Id. An appellant's claim of insufficient evidence will not prevail if substantial competent evidence exists to support the verdict. Id. The standard of review of a trial court's denial of a motion for judgment of acquittal is whether the trial court abused its discretion. Terry v. State, 668 So.2d 954 (Fla. 1996). If substantial

competent evidence exists to support the jury's verdict the case will not be overturned on appeal.  
Id.

III.

The appellant was charged with a violation of section 322.34, Florida Statutes (2002), which provides:

\* \* \*

(2) Any person whose driver's license or driving privilege has been canceled, suspended, or revoked as provided by law, . . . who, knowing of such cancellation, suspension, or revocation, drives any motor vehicle upon the highways of this state while such license or privilege is canceled, suspended, or revoked, upon :

\* \* \*

(b) A second conviction is guilty of a misdemeanor of the first degree, . . .

\* \* \*

The element of knowledge is satisfied if the person has been previously cited as provided in subsection (1); or the person admits to knowledge of the cancellation, suspension, or revocation, or the person received notice as provided in subsection (4). There shall be a rebuttable presumption that the knowledge requirement is satisfied if a judgment or order as provided in subsection (4) appears in the department's records for any case except for one involving a suspension by the department for failure to pay a traffic fine or for a financial responsibility violation.

\* \* \*

(3) In any proceeding for a violation of this section, a court may consider evidence, other than that specified in subsection (2), that the person knowingly violated this section.

\* \* \*

IV.

The Appellant argues the State did not present sufficient evidence to make a prima facie showing that the Appellant knew his license was suspended. The Court finds that based on the officer's observation of Appellant switching positions in the car with a passenger coupled with Appellant's statements during the investigation, provided the trial court with sufficient evidence to deny the motion for judgment of acquittal.

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

DONE and ORDERED August 5, 2005.

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**RONALD HERRING**, Chief Judge

