

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

**County Case No.: TT04-004916-XX**

**Appeal No.: HH-03**

**DALE WILSON,**

**Appellant,**

**v.**

**STATE OF FLORIDA,**

**Appellee.**

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**OPINION OF THE COURT**

This is an appeal of a ruling in the county court of Polk County, Judge Keith Spoto presiding. The Appellant, Dale Wilson, appeals the ruling of the county court denying his motion for judgment of acquittal. This court has jurisdiction. Fla. R. App. P. 9.030(a). The ruling of the county court is AFFIRMED.

Appellant was charged with driving under the influence, in violation of §316.193, Florida Statutes (2004). At trial, defense counsel moved for a judgment of acquittal, alleging that the State failed to prove that Appellant had actual physical control of the vehicle or that, if he was, that he was under the influence of alcohol. The motion was denied, and a jury found Appellant guilty. He was sentenced to 364 days in jail and the trial court permanently revoked his driving privileges. Appellant filed a timely notice of appeal on February 3, 2005.

Appellant argues that the trial court erred by not granting defense counsel's motion for judgment of acquittal and allowing the case to be decided by the jury. 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 circumstantial evidence presented by the State was legally insufficient to sustain a conviction for driving under the influence. Specifically, Appellant claims that the only evidence presented by the State placed Appellant at the scene some time subsequent to an accident, sitting on the driver's seat. This raises the inference that he had the opportunity to drive his vehicle while it was still operable. However, Appellant contends that the remainder of the evidence did not exclude Appellant's reasonable hypothesis of innocence that he was not driving the vehicle when the accident occurred.

The State argues that it is not required to rebut conclusively every possible variation of events that could be inferred from the evidence, but only to introduce competent evidence that is inconsistent with the defense's version or theory of events. If the trial court determines that the State has presented legally sufficient evidence that is inconsistent with the defense's version or theory of events, then it becomes the jury's duty to determine whether the circumstantial evidence is inconsistent with any reasonable hypothesis of innocence. State v. Law, 559 So.2d 187 (Fla. 1989).

Based on the evidence presented by the State, the Appellant was observed shortly after the accident trying to exit the vehicle from the driver's side door. Also, Appellant was the only person seen in the vehicle. Further, the Highway Patrol trooper testified that Appellant had a very strong odor of alcohol on him. The trooper also testified that she found a can of beer on the driver's side floorboard that was half full and still cold. According to Appellant's testimony, he lent his car to a friend and this friend crashed the vehicle before running off.

Since these theories appear to be in direct conflict, it is up to the jury to weigh the evidence and determine the credibility of witnesses. It is clear that the jury chose to accept the State's theory and the Court finds that there was substantial evidence to support its verdict. That being said, the trial court did not abuse its discretion in denying the motion for judgment of acquittal.

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

DONE and ORDERED \_\_\_\_\_ October 2005.

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**RONALD HERRING**, Chief Judge