

## 8 Fla. L. Weekly Supp. 421d

STATE OF FLORIDA, Appellant, vs. ROBERT ANNIS, Appellee. Circuit Court, 13th Judicial Circuit (Appellate) in and for Hillsborough County, Criminal Division. Case No. 00-12728, Division E. Lower Case No. 286872-W. April 19, 2001. William Fuente, Judge. Appeal from County Court for Hillsborough County: Joelle Ann Ober, Judge. Counsel: John P. Johnson, Assistant State Attorney, for Appellant. Jeff Keel, for Appellee. AFFIRMED

### OPINION

THIS MATTER is before the Court pursuant to Fla.R.App.P. 9.140 on the State's appeal of the lower court's order granting Appellee's renewed motion for judgment of acquittal. The Court, after reviewing the record, finds as follows.

On 25 May 2000 a jury found Appellee guilty of driving under the influence. On 5 July 2000 the lower court entered an order granting Appellee's renewed motion for judgment of acquittal.

The sole issue on appeal is whether the trial court erred in granting Appellee's motion for judgment of acquittal after a jury found Appellee guilty of driving under the influence. Appellant argues that the jury lawfully found Appellee guilty of driving under the influence of a controlled substance and the trial court should not have acquitted Appellee.

A motion for judgment of acquittal addresses the sufficiency of the state's evidence. *State v. Rivera*, 719 So.2d 335 (Fla. 5th DCA 1998), citing *State v. Smyly*, 646 So.2d 238 (Fla. 4th DCA 1994). A motion for judgment of acquittal must be granted when the trial evidence taken in a light most favorable to the state, does not support a conviction. However, if the state establishes the existence of each element of the crime then the motion must be denied. *Rivera*, citing *Taylor v. State*, 583 So.2d 323, 328 (Fla. 1991). The question before this Court is whether the State provided evidence which was sufficient to defeat Appellee's motion for judgment of acquittal.

Appellee was charged with driving under the influence in violation of § 316.193(1), Fla. Stat. (1997). A person is guilty of the offense of driving under the influence if the person is driving or is in actual physical control of a vehicle within the state and is under the influence of an alcoholic beverage, any chemical substance, or any controlled substance to the extent that the person's normal faculties are impaired. Sec. 316.193, Fla. Stat. (1997). The disputed issue was whether Appellee was under the influence of a controlled substance.

Officer Yeoman testified that he found Appellee slumped over the steering wheel, passed out, with his car running in an intersection. He testified that Appellee seemed totally lethargic, had urinated on himself, and had slobber running from his mouth. When asked to perform field sobriety tests, Appellee appeared completely incoherent. Based on these facts, Officer Yeoman arrested Appellee for DUI. At Central Breath Testing, Appellee gave two breath samples with the results of .000. Appellee refused to provide a urine sample. Appellant maintains that since Officer Yeoman had special training in detecting and apprehending impaired drivers, he could make an assertion of impairment based on his observations of Appellee. That assertion, Appellant contends, was enough evidence to support the jury's verdict that Appellee was under the influence of a controlled substance.

Appellee argues that the trial court reasonably concluded that the State failed to present enough substantial, competent evidence to prove a prima facie case that Appellee's impairment was caused by alcohol or a controlled substance. Appellee further contends that since circumstantial evidence was the only evidence of guilt presented at trial, the conviction could not stand.

A defendant's motion for judgment of acquittal should be granted in a circumstantial evidence case "if the state fails to present evidence from which the jury can exclude every reasonable hypothesis of guilt." *McLean v. State*, 754 So.2d 176, 179 (Fla. 2d DCA 2000) (citing *State v. Law*, 559 So.2d 187, 188 (Fla. 1989)). Also, the findings made by the trial court "are clothed with a

presumption of correctness, so that all facts and reasonable inferences therefrom will be construed in a light most favorable to sustaining the ruling." *State v. Baldwin*, 686 So.2d 682 (Fla. 1st DCA 1996). The Court must show deference to the trial court and only disturb the trial court's ruling if ``left with the definite and firm conviction that the trial judge erred." *Id.* at 684.

In this case, the State failed to present evidence from which the jury could exclude every reasonable hypothesis of innocence. Many other facts could have accounted for Appellee's behavior, including a disease or mental illness. It was reasonable for the trial court to grant the motion for judgment of acquittal based on that ground.

For the reasons outlined above, the order and judgment are **AFFIRMED**.

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