

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT IN AND
FOR ORANGE COUNTY, FLORIDA

JACOB ARVEL LOOS,

Appellant,

vs.

STATE OF FLORIDA,

Appellee.

CASE NO. CJAP 09-37

County Court Case No. 48-2008-CT-002264-A

Appeal from the County Court
for Orange County, Florida

Honorable Faye L. Allen,
County Judge

Chelsea Simmons, Assistant Public Defender
for Appellant

Esther M. Whitehead, Assistant State Attorney
for Appellee

Before Powell, Kirkwood, and G. Adams, J. J.

FINAL ORDER AFFIRMING LOWER COURT

Appellant Loos appeals from a conviction of Driving While Under the Influence, contending that the trial court erred in denying his motion for judgment of acquittal made at the close of the state's case and renewed at the close of the evidence. We have carefully reviewed the brief filed by appellant, the record on appeal and the transcript of the trial proceedings. We dispense with oral argument pursuant to *Florida Rule of Appellate Procedure 9.320*.

The evidence at trial can be briefly summarized as follows: Two civilian witnesses were walking down the street when they saw appellant driving his car erratically. He stopped to talk

with them and began to act angrily and aggressively, shouting and using profanity. After attempting to back over them, he drove down the street knocking over a trash can and then knocking over a wooden street sign. Further down he pulled his car into a neighbor's driveway, got out and ran into the house. One of the witnesses telephoned 911, and 10 to 15 minutes later a patrol car with two officers arrived. The officers went into the house, came out with appellant in handcuffs, and placed him in the back of the patrol car. A third officer, officer Borne, arrived. There was no testimony as to how much time elapsed from when Borne heard the call and when he arrived at the scene. He stated it was much later from when the events first occurred and that he had to drive across town to get there. Borne arrested appellant and took him to the police station. He observed the appellant in an obvious state of alcohol impairment: red watery eyes, slurred speech, and the odor of alcohol. Appellant refused to take a breath alcohol test. Appellant did not testify, and rested his case without calling witnesses.

The standard of review of an order denying a motion for judgment of acquittal is *de novo*. See *Jones v. State*, 35 Fla. L. Weekly D1286 (Fla. 4th DCA June 9, 2010). The motion admits all facts in evidence adduced, but also every conclusion favorable to the state that a rational jury might fairly and reasonably draw from the evidence. *Id.* An appellate court must apply the substantial competent evidence standard, and consider all reasonable inferences from the evidence most favorable to the state. See *Slack v. State*, 30 So. 3d 684, 686 (Fla. 1st DCA 2010).

We conclude that there was sufficient competent evidence from which the jury could conclude appellant was under the influence of alcohol while operating his vehicle. This is so, given the erratic manner of his driving and his aggressive and unusual actions throughout. Also, and more importantly, the only opportunity he would have had to drink alcohol after he was seen

driving would have been the relatively short time he was in the neighbor's house before the first officers arrested him.

The trial judge did not err in denying his motions for judgment of acquittal.

AFFIRMED.

DONE and ORDERED this 5th day of August, 2010.

_____/S/_____
Rom W. Powell, Senior Judge

_____/S/_____
Lawrence R. Kirkwood, Circuit Judge

_____/S/_____
Gail Adams, Circuit Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy hereof has been furnished to Chelsea Simmons, Assistant Public Defender, attorney for appellant, 435 N. Orange Ave., Suite 400, Orlando FL 32801, and to Esther M. Whitehead, Assistant State Attorney, attorney for appellee, 415 N. Orange Ave., Orlando FL 32801, by mail, this 5th day of August, 2010.

_____/S/_____
Judicial Assistant