IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CRIMINAL): AC
CASE NO.: 502016AP900256AXXXMB
L.T. NO.: 502016CT009618AXXXSB

STATE OF FLORIDA,
     Appellant,

v.

CHRISTINE NIMAN,
     Appellee.

_____/

Opinion filed: JUN 1 1 2018

Appeal from the County Court in and for Palm Beach County,
Judge Martin Colin.

For Appellant:	Michael Scott Del Sontro, Esq.
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PER CURIAM.

We grant Appellee's Motion for Rehearing, withdraw our previous Opinion, and replace it with the following.

The State appeals the trial court's entry of a judgment of acquittal on a DUI conviction, claiming that the trial court applied the incorrect standard and erroneously found that the State presented legally insufficient evidence to support a conviction. We agree and reverse.

In cases where both direct and circumstantial evidence are presented, a conviction will be sustained if it is supported by competent, substantial evidence. *Pagan v. State*, 830 So. 2d 792, 803 (Fla. 2002). In cases "where the only proof of guilt is circumstantial, no matter how strongly the evidence may suggest guilt, a conviction cannot be sustained unless the evidence is inconsistent with any reasonable hypothesis of innocence." *Knight v. State*, 186 So. 3d 1005, 1009 (Fla. 2016) (quoting *Jaramillo v. State*, 417 So. 2d 257, 257 (Fla. 1982)). A purely circumstantial evidence standard "should not be applied based on any particular element of a crime being itself proved entirely by circumstantial evidence"; rather, it should be applied "where the only proof of guilt is circumstantial." *Knight*, 186 So. 3d at 1010.

In granting the judgment of acquittal, the trial court determined that the instant case was a circumstantial evidence case, and the evidence presented could not exclude every reasonable hypothesis of innocence. While the element of impairment was supported by entirely circumstantial evidence, *Knight* states that every element of the crime must be proved by circumstantial evidence for the circumstantial evidence standard to apply. Here, direct evidence that Appellant was driving was presented through eye-witness testimony. Thus, it is the competent, substantial evidence standard that applies. Reviewing the case under that standard, we find Appellant's conviction was supported by competent, substantial evidence. Therefore, we reverse the judgment of acquittal and remand for further proceedings consistent with this opinion.

REVERSED and REMANDED with instructions to reinstate the jury's verdict. The trial court is specifically instructed to rule on the pending motion for new trial and to make disposition accordingly. *See State v. Kelley*, 588 So. 2d 595 (Fla. 1st DCA 1991). Due to the retirement of Judge Colin, the presiding judge in the proceedings below, the trial court is further instructed that

"if the motion rests on the determination of credibility or resolution of conflicts, the court should grant the new trial motion, unless the original presiding judge is available to hear the motion." *State v. May*, 703 So. 2d 1097, 1100 (Fla. 2d DCA 1997).

KELLEY, COLBATH, and CARACUZZO, JJ., concur.

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STATE OF FLORIDA,
    Appellant,

Opinion/Decision filed: JUN 1 1 2018

v.

Appeal from County Court in and for
Palm Beach County, Florida;
Judge Martin Colin
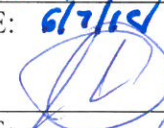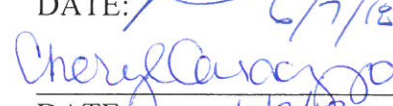
CHRISTINE NIMAN,
    Appellee.

Appealed: October 18, 2016

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DATE OF PANEL: October 23, 2017

PANEL JUDGES: KELLEY, COLBATH, CARACUZZO

AFFIRMED/REVERSED/OTHER: REVERSED

PER CURIAM OPINION/DECISION BY: PER CURIAM

CONCURRING:	) DISSENTING:	) CONCURRING SPECIALLY:)
	) With/Without Opinion	) With/Without Opinion)
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