

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JULY TERM 2011

TOMMIE D. MCCREE, III,

Appellant,

v.

Case No. 5D10-3889

STATE OF FLORIDA,

Appellee.

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Opinion filed July 15, 2011

Appeal from the Circuit Court
for Volusia County,
J. David Walsh, Judge.

James S. Purdy, Public Defender, and
Michael S. Becker, Assistant Public
Defender, Daytona Beach, for Appellant.

Pamela Jo Bondi, Attorney General,
Tallahassee, and L. Charlene Matthews,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

AFFIRMED. See *Brewer v. State*, 413 So. 2d 1217 (Fla 5th DCA 1982) (a trial court must not grant a motion for judgment of acquittal unless there is no legally sufficient evidence on which the trier of fact may base a verdict of guilt), *review denied*, 426 So. 2d 25 (Fla. 1983); see also *Tibbs v. State*, 397 So. 2d 1120 (Fla. 1981) (where

a verdict depends upon a determination of the credibility of witnesses, an appellate court will ordinarily not disturb it), *affirmed*, 457 U.S. 31 (1982).

MONACO, TORPY and JACOBUS, JJ., concur.