

IN THE MUNICIPAL COURT OF APPEALS
OF THE CITY OF EL PASO, TEXAS

TINA C. HATCH, Appellant

vs.

No. 87-MCA-1871

STATE OF TEXAS, Appellee

O P I N I O N

Appellant appeals her conviction in Municipal Court for passing another vehicle on the right contrary to Article 6701d, Section 55(b), V.A.T.C.S.

However, this court notes that the complaint alleges that Appellant drove to the left of a laned roadway, and such allegation constitutes a fatal variance of which this court takes cognizance. Lopez v. State, 708 SW2d 446 (Tex. Crim. App.-1986), Valdez v. State, 555 SW2d 463 (Tex. Crim. App.-1977), Rancich v. State, 86-MCA-1699 (Mun. Ct. App.-1986).

There was no evidence introduced to support the charge of driving to the left, but rather, all the evidence was that she passed a vehicle on the right.

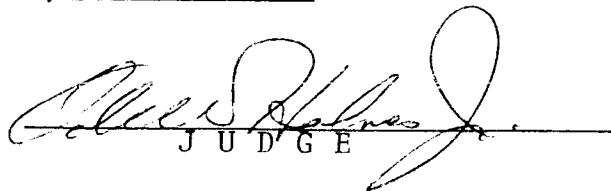
A fatal variance between the allegations and the proof may render the evidence insufficient to sustain a conviction. Seiffert v. State, 501 SW2d 124 (Tex. Crim. App.-1973), Franklin v. State, 659 SW2d 831 (Tex. Crim. App.-1983), Ellis v. State, 714 SW2d 465 (Tex. Crim.

App.-Hou. 1st Dist. -1986).

If the evidence is insufficient to sustain the conviction, Appellant is entitled to have the judgment of the Trial Court reversed and rendered and an acquittal ordered. Burks v. U.S., 437 U.S. 198 S.Ct. 2141, 57 LEd2 1 (1978), Greene v. Massey, 437 U.S. 19, 98 S.Ct. 2151, 57 LEd2d 15, (1978).

Having found that the evidence is insufficient, it is ordered accordingly.

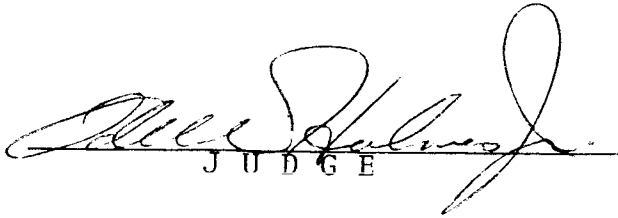
Signed this 21 day of March, 1988.


J U D G E

J U D G M E N T

This case came on to be heard, the same being considered, because it is the opinion of this Court that there was error in the Judgment, it is ORDERED, ADJUDGED and DECREED by the Court that the Judgment be in all things reversed and rendered in Appellant's favor, and judgment of acquittal be entered in his behalf.

Signed this 21 day of March, 1988.


J U D G E