IN THE MUNICIPAL COURT OF APPEALS

OF THE CITY OF EL PASO, TEXAS

ARMANDO CHANEZ, Appellant

vs. No. 89-MCA-1964

STATE OF TEXAS, Appellee

OPINION

Appellant appeals his conviction in Municipal Court for failing to maintain financial responsibility.

Although no statement of facts is included in the record before this Court, the record does include the declaration page of the insurance policy and an insurance card reflecting coverage for the vehicle which Appellant was driving at the time he was cited. The vehicle is evidently owned by his sister, and presumably he was driving with his sisters permission. Article 6701h, Section 1D, V.A.T.C.S. provides a defense if a person produces in Court an automobile liability insurance policy reflecting that there was coverage at the time that the offense was alleged to have occurred, and if they do so, that the charge shall be dismissed.

Coverage questions under insurance policies can be quite complex, but suffice it to say presently, a standard Texas automobile liability insurance policy provides coverage for not only the owner of a vehicle, and any resident of the same household, but also extends to persons using such automobile with the permission of the named insured. This Court

assumes that the Appellant had his sister's permission to drive the vehicle at the time, and the City does not contest such issue nor contend that the Appellant was driving the vehicle without permission on appeal.

The City's contentions that the Appellant failed to produce an automobile liability policy in Court, or that he would not have been covered since he was an unlicensed driver do not diminish the fact that when the alleged offense occurred the vehicle which Appellant was driving was insured, and that Appellant was probably within the coverage extended by that policy. Therefore, this Court concludes that the Judge was in error in not accepting the proof presented by Appellant, and making further inquiry as to the coverage available to him under the permissive use provisions of the policy to ascertain if coverage was in effect.

The more difficult question that this Court must address is the relief to be granted to Appellant at this point. The City contends that the case should be remanded for retrial so that the issue of coverage can be further addressed. In order to address such issue, this Court considers the procedural consequences of characterizing a matter as a "defense" pursuant to Section 2.03 of the Texas Penal Code. Although, the State is not required to negate the existance of a defense, the State does have the burden of proof on the issue to prove, that beyond a reasonable doubt, that the defense is not applicable. Having failed to carry that burden renders the evidence insufficient to support the convic-

tion, and this Court so holds. The City should not be given another opportunity to address an issue on retrial which it should have litigated in the first instance.

Having found the evidence insufficient, the judgment of the Trial Court is reversed and rendered in Appellant's favor.

Signed this 10 day of July, 1989.

JUDGE

JUDGMENT

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 10 day of July, 1989.

JUDGE