

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

BENIGNO CAZARES, JR.

Appellant

vs.

No. 89-MCA-2022
89-MCA-2023

STATE OF TEXAS,

Appellee

OPINION

Appellant appeals his conviction in Municipal Court for failing to maintain financial responsibility and to report an accident.

On Appeal, the parties agree that the case involving the failure to report an accident was not called for trial, even though the Court attempted to enter a finding of guilty after the proceedings. Therefore, the case involving the failure to report an accident in Cause No. 89-MCA-2022 is hereby reversed and remanded for retrial.

In regard to the failure to maintain financial responsibility, Appellant contends that the evidence is insufficient to support the conviction. This Court is obligated to review the evidence in the light most favorable to the verdict, and has reviewed the Statement of Facts contained in this record accordingly.

Although somewhat equivocal, the record reflects at the scene of the accident, the complainant asked Appellant if he

had insurance and he responded that he did. However, after he was told that the police would be called to investigate the accident, the Appellant disappeared, and as far as the complainant could tell he "took off and hid". Complainant further testified that it eventually turned out that he had no insurance even though she did not state the basis for that conclusion, and that her insurance company, not appellants, paid the damage claim. Obviously, the fact that the Appellant did not remain at the scene of the accident is also a factor which the Court could have considered in determining this particular issue even though that case was not before the Court. Evidence surrounding that incident was material to the instant charge, and clearly admissible.

However, even though the evidence on the above issue is somewhat weak, under Article 6701h, Section 1D, V.A.T.C.S. a defense to prosecution is provided if a person produces proof that he was in compliance with the financial responsibility laws of this State at the time that the offense occurred. As this Court has previously held, Section 2.03 of the Texas Penal Code imposes a burden on the Appellant to produce evidence as to a defense even though the State is required to disprove the application of the defense beyond a reasonable doubt after the issue has been properly raised by the evidence. Yousif vs. State 88-MCA-1988 (Mun. Ct. App. - 1988)

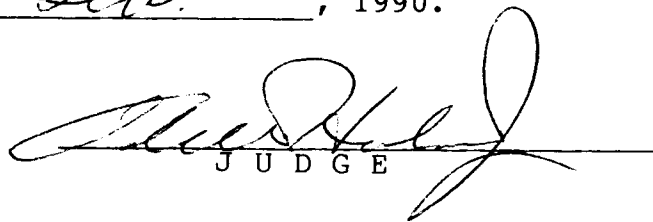
The Safety Responsibility Law imposes a duty on all persons who own or operate a motor vehicle in this State to

make certain that proof of financial responsibility is in effect to ensure against potential losses which may arise out of the operation of the vehicle. Moser vs. State, 691 SW2d 23 (Tex. App. 1985, Pet. ref'd). Although the failure to furnish evidence of financial responsibility does not constitute an offense under that law, such failure does give rise to a presumption that no policy of motor vehicle liability insurance is in effect. Coit vs. State, 728 SW2d 105 (Tex. App. - Austin, 1987 no writ).

That presumption, coupled with the facts developed at the trial of this case, established prima facie proof of a violation of the Safety Responsibility Law.

Appellant's failure to raise a defensive issue provided under Section 1D of Article 6701h allowed the Court to make the determination which it did, and this Court finds that the evidence was sufficient to support that finding.

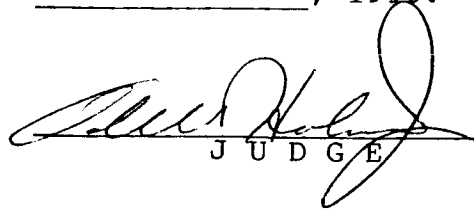
Therefore, the judgment of the Trial Court is affirmed.
Signed this 5 day of Feb., 1990.


J U D G E

J U D G M E N T

This case came on to be heard on the Transcript of the Record of the Court below, the same being considered, it is ORDERED, ADJUDGED and DECREED by the Court that the Judgment in cause number 89 MCA 2023 be in all things affirmed, and that the Appellant pay all costs in this behalf expended, and that cause number 89 MCA 2022 be reversed and remanded for retrial, and that this decision be certified below for observance.

Signed this 5 day of Feb, 1990.


J U D G E