

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

JANET P. URQUHART, Appellant

vs.

NO. 86-MCA-1680

STATE OF TEXAS, Appellee

O P I N I O N

Appellant appeals her conviction in Municipal Court for the offense of speeding, pursuant to Article 6701d, Section 166(a).

Pursuant to that section and the allegations of the Complaint, the State is required to prove that the speed which Appellant was traveling was greater than was reasonable and prudent under the circumstances then existing, even though it is in excess of the lawfully posted speed limit for that particular area.

Although Section 166(a) also establishes speed zones where traveling in excess of those speed limits would constitute "prima facie" evidence that the speed was not reasonable and prudent and that it is unlawful, the State did not rely on any of those specific provisions. Had it done so, it would then be required to plead and prove them. Abrams v. State, 563 S.W.2d 610 (Tex.Crim.App. - 1978).

Because the prosecution of the instant case was handled under state statute and not city ordinance, the issues presented as to the validity of a city ordinance conflicting with a state statute are not discussed in this opinion. See Abrams v. State, supra., Ex Parte Devereaux, 389 S.W.2d 672 (Tex.Crim.App. - 1965), Norris v. State, 576 S.W.2d 371 (Tex.Crim.App. - 1979).

It is in the light of the foregoing and Appellant's contention that the evidence is insufficient to support the conviction, that this Court has reviewed the record and Statement of Fact contained herein. In doing so, this Court

is mindful of its obligation to review the evidence in the light most favorable to the verdict. Thomas v. State, 605 S.W.2d 290 (Tex.Crim.App. - 1980), Paoli v. State, 83-MCA-98 (Mun.Ct.App.), Irvin v. State, 84-MCA-1162 (Mun.Ct.App.).

The record before this Court reflects that there is no evidence to support the allegation that the Appellant was driving at a speed that was greater than was reasonable and prudent under the circumstances then existing other than the fact that she was exceeding the posted speed limit. As indicated above, such proof is not sufficient to establish a prima facie case of unlawful speeding, and therefore this Court holds that the evidence is insufficient to sustain the conviction, and Appellant is entitled to be acquitted on such basis. Burks v. U.S., 437 U.S. 1, 98 S.Ct. 2141, 57 L.Ed.2d 1 (1978), Green v. Massey, 437 U.S. 19, 98 S.Ct. 2151, 57 L.Ed.2d 15 (1978).

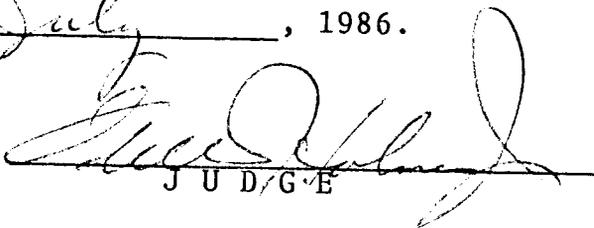
In brief, if the State prosecutes under Article 6701d, Section 166(a), and not the specific sections provided for thereafter in said section which establish a "prima facie" legal speed limit, then it must plead and prove the allegation that the speed was greater than reasonable and prudent under the circumstances then existing. However, if it does rely on those Sections which establish a "prima facie" unlawful speed, then it must plead and prove the application of the specific section upon which it relies. For instance, if the State wishes to rely on the "prima facie" evidence of speeding in an "urban district" in excess of 30 miles per hour is not reasonable and prudent and therefore unlawful, it must plead and prove the existence of such urban district in order to avail itself of the statutory presumption. Abrams, supra.

Although none of the cases which this Court cited, nor the parties' briefs before this Court specifically address the burden of proof applicable to such cases, the issue is

clearly presented by the parties' argument to this Court and the impact of this decision. In view of this Court's holding in the present case, if the State relies on any general allegation that a person is travelling at a speed that was greater and reasonable and prudent under the circumstances then existing, and not under any section establishing a "prima facie" unlawful speed, then it has the burden to prove that allegation. However, if it alleges and establishes the existence of a "prima facie" case under the specific sections provided by Article 6701d, Section 166(a) or as authorized thereafter in Sections 167, 168, and 169, then merely establishing that a person exceeded the lawfully posted speed limit would shift the burden of proof to the Defendant to show that the speed he was travelling was in fact reasonable and prudent under the circumstances then existing. That is, the presumption that is created under those sections relating to a "prima facie" case is rebuttable. Abrams v. State, supra, Ford v. State, 668 S.W.2d 477 (Tex.Civ.App. - 1984 - no writ).

This Court observes that the common thread to Article 6701d, Section 166(a) and the cases which address the issue of speeding all involve the common principle that a person shall not drive a vehicle at a speed greater than is reasonable and prudent under the circumstances then existing. The State may be well advised to establish that evidentiary fact in every case involving a speeding violation.

Signed this 1<sup>st</sup> day of July, 1986.

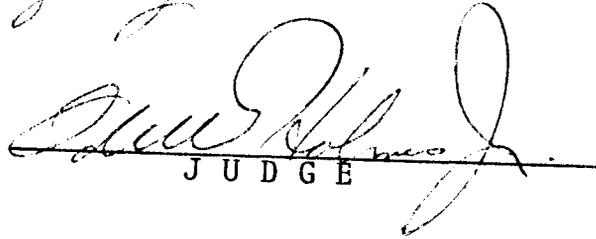
  
J U D G E

### 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 1<sup>st</sup> day of July, 1986.

  
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