

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

DAVID LIGHTBOURN, Appellant

vs.

NO. 86-MCA-1755

STATE OF TEXAS, Appellee

O P I N I O N

Appellant appeals his conviction in Municipal Court for failure to maintain an automobile liability insurance policy as required by the Texas Financial Responsibility Law.

The case was tried to a jury, and Appellant was convicted and assessed a fine of \$75.00.

In his brief, Appellant initially contends that his rights under the Speedy Trial Act were violated. A review of the record indicates that Appellant was cited on August 16, 1986, at which time the time limits applicable under the Speedy Trial Act commenced. A complaint was filed on August 27, 1986, and the State announced ready on the same date, well within the sixty (60) days allowed under that Act. Once the State announces ready, the burden of proof then shifts to the Appellant to prove otherwise. A review of this file does not indicate that the State was not in fact ready for trial other than the mere lapse of time which is insufficient to establish a violation of the Speedy Trial Act. Borsberry v. State, 85-MCA-1560 (Mun. Ct. App.). Declerq v. State, 83-MCA-576 (Mun. Ct. App.).

Appellant's second point of error relates to the sufficiency of his identification as the driver of the vehicle in question at the time of the issuance of the citation. Although Appellant withdrew this point at oral argument, this Court has reviewed the Statement of Facts in connection therewith, and has determined that the identification goes to the weight of the evidence and not its admissibility and was sufficient to establish that the Appellant was in fact

the driver of the vehicle. Although there was no direct evidence, there was sufficient circumstantial evidence to support this element of the State's case, and therefore the point is overruled.

Appellant, at oral argument, raised other points of error which were not briefed, and which this Court is not required to consider. The failure of the Appellant to brief those other points of error constitutes a waiver of them on appeal. However, in the interest of justice, this Court has given due consideration of those points of error and found them to be without merit and therefore they are overruled. Those points of error related to Appellant's assertion that the Trial Court failed to advise him of his right to make an opening statement relying on Rule 265 of the Texas Rules of Civil Procedure. Appellant represented himself before the jury in a pro se capacity, and is held to the same standards of performance of that legal task as an attorney would have been, and therefore he is charged with knowledge of his right to make an opening statement if he so desired. However, the record reflects that no request to make an opening statement was made, and in fact, when Appellant began to present his case in chief, he affirmatively waived his right to make an opening statement at that time. Although this Court believes no error was committed in this respect, any error would have been harmless.

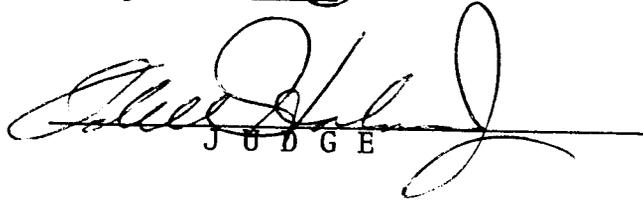
Appellant's last point of error, which was not briefed but presented at oral argument, related to the charge of the Court to the jury. Specifically, the Court charged the jury on the defense applicable to this particular charge to the effect that a person can produce in court an automobile liability insurance policy that was valid at the time the offense was alleged to have occurred. No objections to the Court's charge were made by the Appellant, and therefore, any error in the charge was waived. This Court has reviewed

the charge under the standards of Almanza v. State, 686 SW2d 157 (Tex. Cr. App. - 1984), and has determined that the error in charge, if any, was not sufficiently egregious to amount to fundamental error.

However, this Court calls to the Trial Court's attention the provisions of Section 2.03 of the Texas Penal Code relating to the procedural and evidentiary consequences of a defense to the prosecution of an offense, and that such issue should not be submitted to the jury unless evidence is admitted supporting the defense.

Having found no reversible error, the judgment of the Trial Court is affirmed.

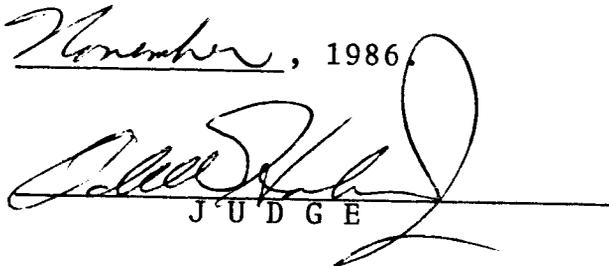
Signed this 18 day of November, 1986.


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 be in all things affirmed, and that the Appellant pay all costs in this behalf expended, and that this decision be certified below for observance.

Signed this 18 day of November, 1986.


J U D G E