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

JESUS MELENDEZ	§	
	§	
Appellant,	§	**No. 10-MCA-3407**
v.	§	**Ticket #: 18281504.2**
	§	
STATE OF TEXAS	§	
	§	
Appellee.	§	

OPINION

Appellant appeals his conviction in Municipal Court for failing to maintain financial responsibility. A fine of $175.00 was assessed.

Appellant contends that the complaint filed was defective because it failed to negate exceptions which he claims are set forth in Section 601.052, Tex. Trans. Code. Additionally, he recognizes that a Defendant must object to a defect, error, or irregularity of form or substance in a charging document before the date on which the trial on the merits commences, or he waives or forfeits the right to object to such defect, error, or irregularity. See Article 45.019 (f) Tex. Crim. Proc.

Appellant contends that his objection to the complaint in this case was timely and properly made. Appellant filed an Entry of Appearance, Waiver of Arraignment, Motions and Requests document form which has a general objection to any and all defects in the charging instrument and requests the Court to quash the complaint after a Hearing. No specific objection is directed at the complaint. Nothing in the Record before this Court reflects that such a Motion was presented to the Trial Judge or that a Hearing was held in order to give the Trial Court an opportunity to address the merits of the Motion. This Court

finds it insufficient to file such a document, and buried within, is a general, global objection to the complaint, which is not presented to the Court or heard by it.

Therefore, Appellant's failure to have the Trial Court address his Motion waives his complaint about any defects in the complaint.

Additionally, where an exception is in a separate section from the provisions that state the offense, and a prima facie case be made without negating the exception, it is not an essential requirement that the exception be negated in the complaint. American Plant Food Corporation v. State, 508 S.W. 2d 598 (Tex. Crim. App. 1974) McClain v. State, (1997 Tex. App. Lexis 3085) Bragg v. State, 740 S.W. 2d 574 (Tex. App.—Houston 1987, pet. ref'd)

In this case, the Statute defining the offense of driving without proof of financial responsibility is found in Section 601.051, Tex. Trans. Code, and the exceptions as alleged as being applicable by Appellant, are found in Section 601.052, Tex. Trans. Code, a separate section, not part of the defining Statute.

Moreover, Section 2.02 (a) Tex. Penal Code, identifies an exception to an offense when it is labeled by the phase: "IT IS AN EXCEPTION TO THE APPLICATION OF ...". Case law holds to be considered an "exception" within the meaning of Section 2.02 (a) of the Texas Penal Code, the precise statutory language must be applied. (Francois v. State, (1998 Tex. App. Lexis 1979) Lopez v. State, 846 S.W. 2d 90 (Tex. App..--Corpus Cristi 1992 pet. ref'd) Borkowicz v. State, 802 S.W. 2d 115, (Tex. App.--Texarkana 1990, no pet.) Johnson v. State, 760 S.W. 2d 797 (Tex. App.--Dallas 1988, no pet.)

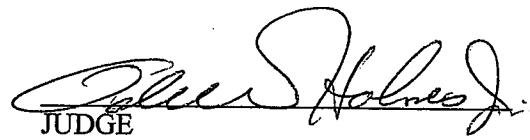
If not plainly labeled as required by Section 2.02 (a), the matter is treated as a "defense" and the proviso need not be negated in the State's pleading. Bean v. State, 691

S.W. 2d 773 (Tex. App.--El Paso 1995, pet ref'd.) Of course, pursuant to Section 2.03 (c), Tex. Penal Code, the existence of a defense is not submitted to the fact finder unless evidence is admitted supporting the defense.

Therefore, Appellant's Motion to quash, even if it had been timely presented, would have been overruled by the Trial Court, and there would have been no error in doing so.

Therefore, the judgment of the Trial Court is hereby affirmed.

SIGNED this 9th day of February, 2011.

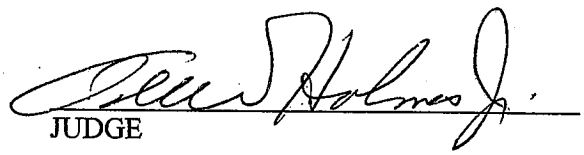


JUDGE

JUDGMENT

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 case be affirmed.

SIGNED this 9th day of February, 2011.



JUDGE