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

LIZETH SERNA	§	
	§	
Appellant,	§	**No. 11-MCA-3464**
v.	§	**Ticket #: 18082675.3**
	§	
STATE OF TEXAS	§	
	§	
Appellee.	§	

OPINION

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

Appellant was cited for the above violation on July 8, 2008, and contends that she retained an attorney and provided him with documentation showing that she was in fact insured and had a valid driver's license, an offense for which she also was cited. She claims that a number of months passed, and since she had not heard from anybody, including her attorney, she checked on line, and was shocked to see that all citations that were issued to her were in warrant status. She immediately contacted her attorney who initially indicated he had not received the documentation. Appellant contends that she was able to establish that the proper documentation was given to the attorney, and then she claims she was given the runaround for several more weeks by her attorney after that. Eventually, she was told that the attorney could do nothing further and she would need to appeal the case on her own. Appellant filed an Appeal Bond on March 11, 2011, and paid her Appellant docketing fee on the same day which perfected her appeal, although belatedly, to this Court.

Appellant has also submitted proof of insurance to this Court showing that insurance was in effect on the date she was cited. The City Prosecutor has verified that information and found the insurance to be valid for the date she was cited. Under Section 601.193, Tex. Trans. Code, it is a defense to prosecution that the person charged produces to the Court proof of financial responsibility that was valid at the time that the offense is alleged to have occurred.

The City Prosecutor opposes this appeal because of the delay that occurred since Appellant's conviction and the actual perfecting of this appeal. All applicable time limits for this Court to have granted an extension to file the appeal have long since expired. So the issue becomes does this Court have jurisdiction to accept the defense which Appellant, through diligent effort, has finally been able to present to this Court. It has been this Court's philosophical position that if a person can prove compliance with the Financial Responsibility Law but, through no fault of their own, that proof was not presented, this Court has granted relief. Although direct appeal may not be available to such a person, a Bill of Review may allow this Court to address the issue, and reach the same conclusion. Additionally, a conviction for violation of the Financial Responsibility Law not only imposes a fine of $175.00 to $350.00 for the first offense, Section 601.191(b), Tex. Trans. Code, but also has further serious consequences including increased penalties for a subsequent conviction, under Section 609.191 (c), Tex. Trans. Code, and surcharges of $250.00 annually for three (3) years, pursuant to Section 708.103, Tex. Trans. Code.

In this case, and based on the representations of Appellant as to the problem she had with her attorney and her diligence in contacting the Court and eventually filing her own

appeal, persuades this Court that Appellant is entitled to relief and should be allowed to raise her defense to this charge, although belatedly.

However, it is not for this Court, but for the Trial Court to determine if Appellant has provided adequate proof of financial responsibility which was effective on the date she was cited, and therefore this case is hereby remanded to the Trial Court for further consideration.

SIGNED this 13th day of July, 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 reversed and remanded to the Trial Court for re-trial.

SIGNED this 13th day of July, 2011.

JUDGE