

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

**JAMIE R. AGUILERA**

Appellant,

v.

**STATE OF TEXAS**

Appellee.

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**No. 08-MCA-3271**

**Ticket #: 0094121**

**OPINION**

Appellant appeals his conviction in Municipal Court for failing to maintain financial responsibility. A fine of \$250.00 was assessed.

On appeal, through his capable counsel, Appellant contends that the evidence is legally insufficient to sustain his conviction.

His contention is that he was only asked if he had "insurance" rather than "proof of financial responsibility" by the person with whom he had been involved in an accident. Pursuant to Section 601.053, Tex. Transp. Code, a peace officer or a person involved in an accident with the operator can request evidence of financial responsibility by exhibiting any of the following:

1. Motor vehicle liability insurance policy covering the vehicle;
2. A standard proof of motor vehicle liability insurance form;
3. An insurance binder in compliance with this chapter;
4. A surety bond certificate;
5. A certificate of deposit with the comptroller covering the vehicle;
6. A copy of a certificate of deposit with the appropriate County Judge covering the vehicle; and
7. A certificate of self insurance covering the vehicle.

Further, an operator who does not exhibit evidence of financial responsibility upon request is presumed to have operated the vehicle in violation of Section 601.051, Tex. Transp. Code. (see Section 601.053 (b) Tex. Transp. Code)

Section 601.051, Tex. Transp. Code provides that financial responsibility can be established through any of the following:

1. A motor vehicle liability insurance policy that complies with subchapter (D);
2. A surety bond filed under section 601.121;
3. A deposit under section 601.122;
4. A deposit under section 601.123; or
5. Self insurance under section 601.124.

Although, it is clear, that a motor vehicle liability insurance policy is the most obvious way to comply with the Financial Responsibility Law, it is not the only way.

Therefore, it is been held, that asking only to produce insurance rather than to provide proof of financial responsibility is legally insufficient to sustain the conviction. The term "insurance" is not synonymous with financial responsibility, but is only one of numerous ways to establish it. Coit v. State, 808 S.W.2d 473 (Tex. Crim. App. 1991), McDaniel v. State, 820 S.W. 2d 914 (Tex. App.-Houston [1<sup>st</sup> Dist.] 1991, no pet.), Slye-Nelson v. State of Texas, 862 S.W. 2d 628 (Tex. App.-Tyler 1993), and Sanchez v. State, 137 S.W. 3d 860 (Tex. App.-Houston [1<sup>st</sup> Dist.] 2004).

In this case, the Reporter's Record reflects that the only witness called to testify was the person who had been involved in an accident with Appellant. He testified that after the accident, and after securing the scene and insuring no one was hurt, that the Appellant left the scene after he was cited by the police officer. The police officer did not testify at the trial. The witness testified that he called Appellant about a week later to find out if he had insurance or if he could give him further information. The witness testified that Appellant claimed he did not have any insurance and would not give him any further information. Lastly, in response to a question by

the City Prosecutor, the witness was asked then that “at no time did Mr. Aguilera (Appellant) ever provide you with proof of financial responsibility with regard to the accident,” and the witness responded, “at no time.”

On cross examination, he was asked exactly what he said to the Appellant, and the witness testified, “I asked him if he had insurance to take care of the damages for the car,” and the witness testified, “he said he didn’t” and refused to give any further information to the witness.

Clearly, a fair reading of the transcript reflects that the witness only asked about insurance. The above cases mandate that the evidence is legally insufficient. It would further seem that a fair reading of the witness’ testimony, being a layperson and not trained in the law, that he probably only asked for insurance information and not financial responsibility.

In fact, there is no evidence that the State’s witness requested proof of financial responsibility but only whether Appellant ever provided any. Without a request to produce financial responsibility, there is no duty to do so, nor does the presumption that the person is operating a vehicle without it apply. Sanchez v. State, 137 S.W. 3d 860 (Tex. App.-Houston [1<sup>st</sup> Dist.] 2004).

In reviewing the legal sufficiency of the evidence, this Court must view the evidence in the light most favorable to the verdict to determine if any rational trier of fact could have found the essential element of the crime beyond a reasonable doubt. King v. State, 29 S.W. 3d 556, 563 (Tex. Crim. App. 2000). As held in each of the above cited cases, and based on the record before this Court, this Court finds the evidence to be legally insufficient to sustain the conviction.

The lesson to be learned from the cases cited and the rationale of this decision is that the “magic question” that must be asked to prove this offense is to request proof of financial responsibility—not just to produce proof of insurance.

Because the Prosecution failed, in a fair opportunity, to offer whatever proof it could assemble at trial, the Double Jeopardy Clause of the Fifth Amendment to the U.S. Constitution, a

retrial is not permitted. Appellant is therefore entitled to a judgment of acquittal. Green v. Massey, 437 U.S. 19, 24, 98 S.Ct.2151, 57 L.Ed.2d 15 (1978) and Meraz v. State, 785 S.W. 2d 146, 155-156 (Tex. Cr. App. 1990).

Therefore, the judgment of the Trial Court is reversed and a judgment of acquittal is hereby rendered.

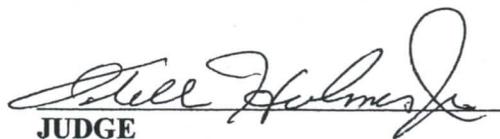
SIGNED this 6<sup>th</sup> day of August, 2009.

  
JUDGE

### **JUDGMENT**

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 in cause number 08MCA3271 be in all things reversed and rendered in Appellant's favor, and judgment of acquittal be entered in his behalf.

SIGNED this 6<sup>th</sup> day of August, 2009.

  
JUDGE