

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

MICHAEL JOHNSON, Appellant

vs.

NO. 84-MCA-1172

STATE OF TEXAS, Appellee

O P I N I O N

Appellant was convicted in Municipal Court of failing to maintain financial responsibility as required by Texas Law.

The parties agree that the controlling law is as announced in Delaware v. Prouse, 440 U.S. 648, 99 S.Ct. 1391, and 59 L.Ed.2d 660 (1979). The Prouse case held that persons in automobiles cannot be randomly stopped to check for a driver's license without at least articulable and reasonable suspicion that the motorist is unlicensed or that the occupant is otherwise subject to seizure for a violation of law. In short, Prouse requires that an officer have some type of probable cause in order to randomly stop vehicles to check for a driver's license. Without probable cause, even though Article 6687b, Section 13, Tex. Rev. Civ. Stat. Ann. allows a peace officer to stop and detain any motor vehicle operator for determining whether such person has a driver's license as required by law, the stop is illegal.

The continued validity of the above section is highly questionable at the present time because of the decision in Prouse, but our own Court of Criminal Appeals has also questioned its validity. McMillan v. State, 609 SW2d, 784 (Tex.Crim.App. 1981)

Appellant cites this Court to Koonce v. State, 651 SW2d 46 (Tex.App., 5 Dist., 1983 no writ), as support of its position in this case. Koonce involved the arrest of a person for unlawfully carrying a club under Section 46.02 of the Texas Penal Code. The driver of the vehicle in that case was stopped at a routine driver's license check, and

the Court held that selective, random, and discretionary stops of a motorist for either a driver's license check or insurance check unsupported by probable cause is invalid, but that spot checks that are objective, nonselective, and nondiscretionary are valid. The Supreme Court of the United States in Prouse, infra, specifically held that their decision did not preclude any of the States from developing methods for spot checks that involve less intrusion or that do not involve the unconstrained exercise of discretion. The Court recognized that "questioning of all oncoming traffic at roadblock-type stops is one possible alternative" and would not be invalid.

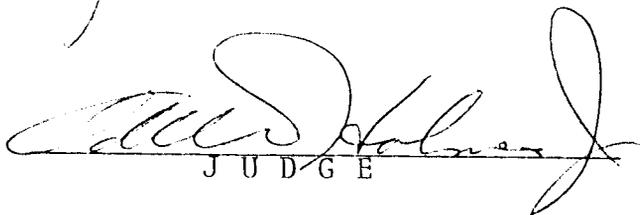
Appellant contends that since the record is silent, as to what the departmental procedures are in such cases, the police officers conducting this particular driver's license and insurance check could have permitted every third vehicle to pass without inquiry, and as such made the stopping of vehicles discretionary and illegal. However, the record reflects that this was a spot check where every vehicle that came through the checkpoint was being asked to produce a driver's license and insurance. Although, this Court agrees with Appellant to the extent that the evidence could have been more fully developed as to the underlying departmental procedures used in these type of situations, the Court does not agree that the evidence is insufficient in that respect. Therefore, point of error number one is overruled.

Appellant's second contention is based on the fact that there is no statutory authority for police officers to conduct any type of stop to inquire about insurance coverage as there is under Article 6687b, Section 13, infra, relating to police officers' authority to stop to check for driver's license. Without again discussing the viability of that section further, there is no question that routine driver's license checkpoints which are objectively conducted and

nondiscretionary are valid. This Court believes that such checkpoints are equally valid when the inquiry relates to whether the requirements of financial responsibility are being met under Article 6701h, Tex.Rev.Civ.Stat. In fact, assuring that drivers are properly licensed and have insurance coverage in accordance with the law are well within the bounds of legitimate governmental interest in promoting the safety and welfare of its citizens, and the government has a legitimate interest in the enforcement of such provisions. Therefore, no specific statutory authority is required to authorize otherwise valid stops and inquiries by a police officer in this area. Point of error number two is therefore without merit and is overruled.

The Judgment of the Trial Court is affirmed.

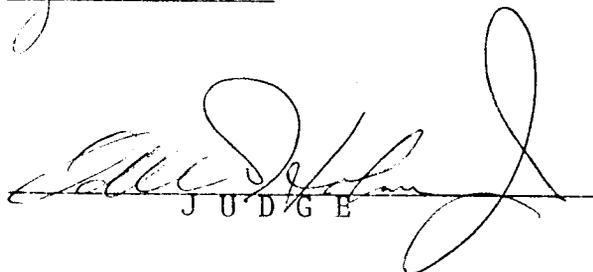
Dated this 5 day of Jan, 1985.

  
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 10 day of Jan, 1985.

  
J U D G E