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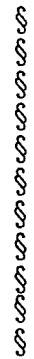
IN THE MUNICIPAL COURT OF APPEALS
OF THE CITY OF EL PASO, TEXAS

ROBERTO MEDINA,
Appellant

vs.

90-MCA-2039

STATE OF TEXAS,
Appellee



OPINION

Appellant appeals his conviction in Municipal Court for failure to maintain financial responsibility.

The record contains a certificate of insurance in the name of Virginia Flores with Dairyland County Mutual covering the vehicle which Appellant was driving at the time of the citation, together with a certificate from the servicing agent for the insurance company advising that the insurance coverage in the name of Virginia Flores has been continual since October of 1987 without lapse.

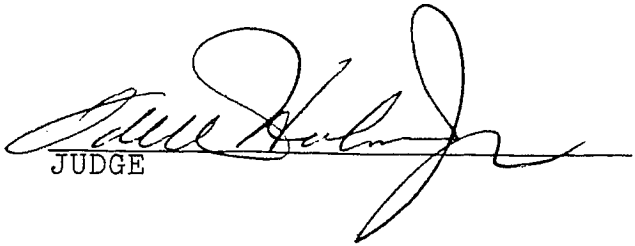
Appellant also contends that he is married to Virginia Flores by reason of a common law marriage, and the record contains a statement from Virginia Flores substantiating that fact. Article 6701(h), Section 1D provides a defense to prosecution when a person produces in court an automobile liability insurance policy

that was valid at the time the offense was alleged, and provides coverage to that person. The procedural consequence of raising such a defense shifts the burden of proof to the state to disprove the application of the defense beyond a reasonable doubt. Section 2.03, Texas Penal Code.

Under a Standard Texas Automobile Insurance Policy, the persons insured, by definition, include the named insured and any resident of the same household. Assuming that the common law marriage exists, it is also fair to assume that Appellant is a resident of the same household, and consequently, a person who is insured under his wife's policy even though not specifically named on the declaration page of that policy. Additionally, coverage under a Standard Texas Automobile Insurance Policy is also extended to those persons driving the vehicle with the permission of the insured, and the common law marriage alone would be sufficient basis to presume that the Appellant was a permissive user of the vehicle at the time the citation was issued, and therefore, met the requirements of the law of the State of Texas.

Having found that the Appellant, based on his relationship with the named insured, had coverage which met the requirements of the law in the State of Texas, the judgment of the trial court is reversed and rendered in his favor.

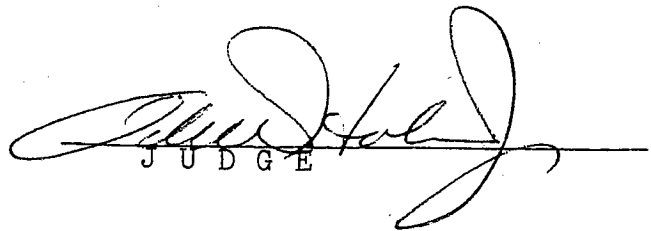
SIGNED this 4 day of June, 1990.


JUDGE

J U D G M E N T

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

SIGNED this 4 day of June, 1990.


J U D G E

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