IN THE MUNICIPAL COURT OF APPEALS

OF THE CITY OF EL PASO, TEXAS

EDWARD GUERRERO, Appellant

vs. NO. 84-MCA-1123

STATE OF TEXAS, Appellee

OPINION

Appellant appeals his conviction in Municipal Court for driving without a valid operator's license.

The main thrust of his attack on such conviction on appeal is the failure of the complaint to state any violation of law. Appellant contends that Article 6687B, Section 13, requires "every person shall have an operator's, commercial operator's or chauffeur's license in his immediate possession. . . " Appellant contends that a person could comply with the law by having a license other than an operator's license in his possession at the time of the alleged offense. Appellant cites no authority for the proposition, but his argument is persuasive except for the fact that that very same Section 13 of Article 6687B provides that it is a defense to any charge under that Section that the person so charged produce in Court an operator's, commercial operator's, or chauffeur's license theretofore issued to such person and valid at the time of his arrest.[1]

It therefore seems that a duty is imposed on a person driving a vehicle by the provisions of Section 13 of Article 6687B to produce, upon the request of a peace officer, a driver's license, and failure to do so is an offense for

[1] This Court notes that Section 13 of Article 6687B has been substantially amended effective January 1, 1984, and questions whether the complaint in this particular case would comply with the allegations necessary to support a conviction under those amendments.

which a penalty can be assessed. Although there is no statement of facts relating to the actual evidence presented in this case, this Court presumes that the Trial Court had such evidence before it, and that same justifies a conviction based on such evidence unless the Defendant can establish his defensive position to the contrary as provided by Section 13.

This Court holds that the Complaint does in fact charge an offense and the point is overruled.

Upon oral argument, the Appellant withdrew Point of Error Number 1, 5 and 6, and this Court will therefore not address same.

In Point of Error Number 3, Appellant contends that the City Attorney cannot represent the State, and that allowing him to do so is unconstitutional. The point has been overruled by this Court previously. Lopez v. State, 83-MCA-101 (Mun.Ct.App. - 1983). Moseley v. State, 83-MCA-102 (Mun.Ct.App - 1983). Rogers v. State, 83-MCA-264 (Mun.Ct.App. - 1983). The point is overruled.

In Points of Error Number 7 and 8, the Appellant contends that the complaint fails to allege statements regarding jurisdiction or limitations, but this Court holds that such allegations need not be specifically pled as long as they are determinable from the face of the document. In each case, those requirements are met, and the points of error are overruled.

Lastly, Appellant contends that the date on the Jurat of the complaint is defective. The complaint indicates that it was subscribed and sworn to before the Assistant City Attorney on Jan. 4, 1984.

The case relied upon by Appellant, Shackelford v. State, 516 SW2d 180 (Tex.Crim.App. - 1974) is not controlling because it involved the complete absence of a date in the Jurat. A Jurat must be dated, and an undated Jurat vitiates

the complaint. However, in this case, the Jurat contains a date which can be ascertained with reasonable certainty based on customary usage of date abbreviations. Commonly understood abbreviations used in the body of the complaint or in the Jurat do not render the document defective. Andrade v. State, 662 SW2d 446 (Tex.App.Dist. 13 - 1983).

The judgment of the Trial Court is affirmed.

Signed this 21 day of June, 1984.

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 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 21 day of June, 1984.

JUDGE

IN THE MUNICIPAL COURT OF APPEALS

OF THE CITY OF EL PASO, TEXAS

EDWARD GUERRERO, Appellant

vs. NO. 84-MCA-1124

STATE OF TEXAS, Appellee

OPINION

Appellant appeals his conviction in Municipal Court for failure to maintain financial reponsibility as required by Article 6701h, V.A.T.C.S.

The record originally did not contain a Motion to Quash which Appellant contended at oral argument that he had filed. This Court has allowed Appellant to supplement the record to reflect that a Motion to Quash directed at the failure of the complaint to properly identify the vehicle in question was in fact filed.

There is no doubt that had a Motion to Quash not been filed, that the complaint in this case was sufficient to invoke the Trial Court's jurisdiction and to charge an offense.

Appellant contends that the complaint fails to apprise him of the charges against him with such particularity so as to enable him to prepare a defense. Specifically, he urges that the complaint fails to identify the vehicle in question sufficiently. Although no written Motion to Quash appears in the record, the Court's docket sheet notes that the Motion was made prior to trial, and therefore raises fundamental constitutional protections of adequate notice and due process of law. McManus v. State, 591 SW2d 505 (Tex.Cr. App.). These protections require careful examination and consideration from the prospective of the accused. Haecker v. State, 571 SW2d 920 (Tex.Cr.App.).

The law is clear that when a Court is considering a Motion to Quash, it is not sufficient to say that the accused knew with what offense he was charged; rather, the question presented is whether the face of the instrument sets forth in plain and intelligible language sufficient information to enable the accused to prepare his defense. Jeffers v. State, 646 SW2d 185 (Tex.Crim.App - 1981).

By the same token, the general rule is that a Motion to Quash will be allowed if the facts sought are essential to giving notice. However, unless a fact is essential, the indictment need not plead evidence relied on by the State. Smith v. State, 502 SW2d 133 (Tex.Crim.App. - 1973); Cameron v. State, 401 SW2d 809 (Tex.Crim.App. - 1966). Further, when a term is defined in the statutes, it need not be further alleged in the indictment. American Plant Food Corporation v. State, 508 SW2d 598 (Tex.Crim.App. - 1974). See also Jeffers v. State, infra.

Article 6701h, V.A.T.C.S., requires that any motor vehicle operated in this State must have a policy of automobile liability insurance in at least the minimum amounts to provide evidence of financial responsibility under the Act in effect to insure against potential losses which may arise out of the operation of that vehicle.

Section 1(3) defines a motor vehicle for purposes of the Act. It is this Court's opinion that the complaint in this case provided adequate notice to the Defendant in order to prepare his defense, and the fact that the motor vehicle alleged in the complaint was not further identified is not essential to providing such notice to the Appellant. The type of vehicle may be evidence which the State would introduce, but it need not be alleged in the charging document. Further, since the term "motor vehicle" is defined in the statute, this Court holds that it needs not be further alleged in the complaint. Jeffers v. State, infra, and

cases cited therein. This Court holds that it is sufficient in the charging document to allege, tracking the statute in question, that a motor vehicle was being operated in this State without financial responsibility in accordance with the terms of the Act. If this Court were to hold that Appellant's Motion to Quash was valid, then the impossible issue of identifying the car would place an intolerable burden on the prosecution. For instance, what would be the identifying characteristics which a Defendant would seek? The car's color, its make, model, registration number or even worse, its motor vehicle identification number? Based on the record before this Court, it is unclear as to what identifying characteristics the Appellant was even seeking in his Motion to Quash, but rather, only generally allege that the vehicle was not properly identified.

For the above reasons, Appellant's point in that respect is hereby overruled.

Appellant next contends that Article 6701h is unconstitutional in that it violates the Defendant's right against self-incrimination because Section 1B of the Act requires a person, upon request, to furnish information regarding evidence of financial responsibility, and upon a failure to do so, the person can be fined in accordance with Section 32(e) of the Act.

This Court declines Appellant's invitation to declare the Act unconstitutional since the present prosecution in this case is not based on either one of those sections, and therefore they are not applicable. Further, there is a strong presumption that a statute is constitutional, and Courts will not address the constitutionality of acts which are not an issue.

Also relating to this issue, Appellant cites no authority for such proposition, and the Court considers it

unnecessary to address the issue because it is not directly involved in this present prosecution.

Next, Appellant contests the right of the City Attorney to represent the State in the prosecution of the present offense under State statute. This Court has held otherwise, and continues to confirm the right of the City Attorney to represent the prosecution authority in the Municipal Courts of El Paso, Texas. Hill v. State, 83-MCA-23 (Mun.Ct.App. - 1984).

Next, Appellant maintains that the complaint failed to deny the existence of the statutory exceptions contained in the law, but the point is without merit. Upchurch v. State, on rehearing, (2-83-023-CR).

Next, Appellant claims that the Municipal Court is without jurisdiction to hear the case because the Municipal Courts can hear cases and punishment can be by fine only, but in the case of this particular type of offense, a suspension of your driver's license and motor vehicle registration are provided in Section 1F.

Specifically, Section 1C of Article 6701h, V.A.T.C.S., provides that failure to maintain financial responsibility as defined therein is a Class C misdemeanor, punishable by a fine of not less than $75.00, and of course, the maximum for a Class C misdemeanor is $200.00. The fact that there are additional penalties provided upon conviction of such events does not divest the Municipal Court of jurisdiction, particularly because the suspension of the driver's license and motor vehicle registration is handled through administrative rather than judicial procedures, and not imposed by the same Court which convicts the Defendant in the first instance, and therefore are not additional penalties provided by law for the Municipal Court to impose beyond its own jurisdiction.

Next, Appellant insists that the complaint is defective because it does not specifically allege that the offense was committed within the jurisdiction of the Municipal Court. The complaint does allege that the offense occurred in the City of El Paso, County of El Paso, State of Texas, on its face, and the law does not require an additional allegation relating to the location.

Appellant then complains that the complaint is defective because it does not contain an allegation that the offense is not barred by limitations. The date of the alleged offense is on the face of the complaint from which limitations can be determined, and no additional allegation relating to that specific matter is required.

Appellant's last point of error complains that the complaint is defective because the jurat states no date or an impossible date of execution. The complaint shows that it was sworn to on the "_____ day of Jan. 04, 1984, and 19___".

All well defined and well understood abbreviations may be used in indictments without rendering them defective and same should be true for jurats and complaints. The date shown on the jurat of the complaint does not render it defective because such abbreviation is well defined and well understood. Andrade v. State, 662 SW2d 446 (Tex.App. 13 Dist. - 1983).

All of Appellant's points are overruled for the reasons stated herein, and the Judgment of the Trial Court is affirmed.

Signed this 21 day of June, 1984.

JUDGE

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 21 day of June, 1984.

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