IN THE MUNICIPAL COURT OF APPEALS

OF THE CITY OF EL PASO, TEXAS

CHARLES MARQUEZ, Appellant

v. 84-MCA-1186

STATE OF TEXAS, Appellee

OPINION

Appellant has timely filed a Motion for Rehearing asking this Court to reconsider its decision of November 1, 1984. Appellant again relies on the fact that the violation occurred under emergency circumstances as Appellant was taking medication to his grandmother.

This Court has carefully reconsidered this file, as well as the reasons set forth in Appellant's Motion for Rehearing, and the Court has again concluded that the defenses raised by the Appellant are not supported by the record since no statement of facts was requested nor filed in this case. Therefore, this Court cannot evaluate the evidence presented to the Trial Court for the reasons set out in its original opinion. However, this Court did not intend to leave the impression that there is no defense for traffic violations committed in emergency situations. On the contrary, this Court recognizes that the defense of a traffic offense committed under emergency conditions is valid if raised by the evidence and found to have existed by the factfinder. Particularly, since a traffic violation does not require any intentional act nor any element of mental culpability, such a violation under emergency conditions is excusable. See Brune v. Texas, 83-MCA-259, (Mun.Ct.App. - 1984)

To the extent that the original opinion leaves the impression to the contrary, it is expressly overruled hereby.

It is not the function of this Court to substitute its judgment for that of the Trial Judge, who under the circumstances, is the exclusive judge of the credibility of the witnesses and the weight to be given to their testimony, and his finding cannot be disturbed on appeal unless it is erroneous in law or not supported by the evidence. Having found no cognizable error, the Motion for Rehearing is overruled, and the judgment of the Trial Court is affirmed.

Signed this 4 day of Dec, 1984.

JUDGE