IN THE MUNICIPAL COURT OF APPEALS

OF THE CITY OF EL PASO, TEXAS

JOSE R. PUENTES, Appellant

vs. NO. 86-MCA-1721

STATE OF TEXAS, Appellee

## OPINION

Appellant appeals his conviction in Municipal Court for permitting excessive vehicle emissions.

Appellant's contention which was raised at the Trial Court and before this Court, is that he transferred the title to the vehicle in question to another owner in 1983, and the present citation was not issued until October 11, 1985. Although the record is not clear, it does not appear that the citation was issued when the officer actually observed the violation, but evidently mailed the Appellant the citation after determining the owner through Title Registration Records.

The record reflects that the Appellant has made every effort to properly transfer this vehicle to the new owner without success. Persons in a similar situation as Appellant should insist that any purchaser of their vehicle accompany them to the County Tax Collector - Assessor's Office to effect the transfer, because if the new purchaser fails to do that, then the car registration remains in his name, with the possibility that he may continue to be responsible for matters relating to the vehicle in question.

However, Appellant should not be convicted when he is not liable for the criminal conduct charged. See Texas Penal Code, Section 7.01 et. seq. It would certainly seem better practice for the officer issuing such a citation to do so at the time he observes the violation, and then the Trial Court would be in a position to have evidence before

it identifying the driver of the vehicle at the time the offense allegedly occurred.

This Court cannot find any authority which requires the seller of a vehicle to do anything other than sign the title of the vehicle over to the purchaser, and execute a Seller's Affidavit before a notary public. Although the policy to see that the purchaser in fact effects a transfer is best, this Court believes that it is the purchaser's obligation to properly register the vehicle, and his failure to do so should not be attributable to the seller, particularly if subsequent criminal violations arise out of the operation or ownership of the vehicle. Certainly, if parking tickets were issued to the Appellant, for which he was not responsible, or even more serious charges, such as involuntary manslaughter were filed, Appellant would not be answerable to such offenses unless he in fact perpetrated them. This Court sees little distinction between those types of cases and the present one before it.

Therefore, the Judgment of the Trial Court is reversed and rendered in Appellant's favor.

Signed this 19 day of Sept, 1986.

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

Signed this 19 day of Sept, 1986.

JUDGE