IN THE MUNICIPAL COURT OF APPEALS

OF THE CITY OF EL PASO, TEXAS

SHARON DUNCAN	§	
	§	
Appellant,	§	
	§	
vs.	§	**No. 02-MCA-2806**
	§	
STATE OF TEXAS,	§	
	§	
Appellee.	§	

OPINION

Appellant appeals her conviction in Municipal Court for failing to signal her intent to make a lane change. A fine of $50.00 was assessed.

On appeal, Appellant contends that she complied with the applicable procedures available to her in El Paso's Municipal Court system for requesting a court reporter. Since 1981 when El Paso's Municipal Courts became courts of record, an Appellant has had the right to have a court reporter present during their trial proceedings so that a record can be made of those proceedings for purposes of appeal. That right has often been undermined because El Paso's Court of Record Act has always contained a provision that a court reporter was not required to take or record testimony in a case in which neither the defendant, the prosecutor, nor the judge demanded it. See Section 30.00130 Gov't Code. There is seldom, if ever, any reason for the prosecutor or the judge to demand a court reporter because they seldom have a need to appeal. At one time, the State had no right of appeal, and even now, has appeal rights only in limited instances. Therefore, generally, the only one that could benefit from a record being made of the proceedings would be the defendant who, if found guilty, could provide the Appellate Court with a record of the proceedings.

The reality of the circumscribed right to a court reporter is that this court has held, in too many cases to cite, that nothing was presented on appeal because no record had been requested by the Appellant at the Trial Court level and none was therefore contained in the record before the court on appeal. Clearly,

questions relating to the sufficiency of the evidence or it's admissibility, which make up most of the points of error raised by persons appealing their conviction in Municipal Court cannot be reviewed without a Statement of Facts. Additionally, this court has repeatedly cautioned that even if a Statement of Facts is contained in the record, and the court can review questions relating to the sufficiency or admissibility of evidence, that that does not necessarily mean that a person will prevail on appeal. But clearly, without a Statement of Facts, a person has little chance on appeal to prevail, and none whatsoever, if they raise the issues that require a Statement of Facts to have a meaningful review.

Since the author of this Opinion has been in the El Paso Municipal Court system since the inception of the Court of Records transformation, this court can give some historical perspective to the issue that may have been forgotten by some and never known by others who have not been so intimately familiar with that system. Initially, when El Paso adopted a Court of Record system, and in compliance with the spirit of that act, a number or court reporters were hired on a full time basis to be available if a request for a record was made covering a number of courts that were in existence at that time. Regrettably, because most people appear in Municipal Court pro se and were unaware of the duty imposed upon them by the law to request a court reporter, or even what a court reporter was or the importance of a Statement of Facts on appeal, seldom if ever, was a request for a court reporter made. The analogy that this court has made frequently is similar to the refrain when God asked Noah to build an Ark, and as Bill Cosby says in his comedy routine, Noah replied, "What's an Ark?" Truly that can be said about people who find themselves in the Court of Record system who do not know what a court reporter or a Statement of Facts are. Often times, because most people feel they are innocent, and they are going to be found innocent, they don't ask those questions until after their conviction, and generally that is too late.

What the City soon discovered was that keeping fulltime court reporters on the payroll who had .. little or nothing to do was expensive, and it was difficult to retain court reporters who, quite frankly, were bored because their services were not being utilized and therefore quit.

Then, came a number of different approaches which used part-time court reporters who contracted with the City and whose services would be used only on a limited basis when a person requested a Trial

with a court reporter. Inherent in that system were some of the same problems that existed under the other system, because even though persons were notified that they had a right to have a court reporter and were required to request a court reporter, many still didn't understand the significance of that, and confusion abounded.

In the present system which utilizes an Arraignment Court, a person cited for an offense over which the Municipal Court has jurisdiction to appear at arraignment, and if they plead guilty, that court has the authority to accept the plea of guilty and assess a fine or refer them to a Driving Safety Course. But if the person pleads not guilty, the case is referred to a regular Municipal Court Judge for a trial on the merits. That system also requires the person to request a court reporter for the trial of their case at arraignment, and it is supposedly noted by the Judge of the Arraignment Court, and then placed into the City's computer system to ensure that the forthcoming setting will be on a court reporter date. Needless to say, occasionally, that system fails. As this case reflects, Appellant, even though she requested a court reporter, ended up at trial on a day when no court reporter was available.

This court has always been mindful of the problems inherent in our use of court reporters, and in each instance, where a person has asked for a court reporter, but some other reason through no fault of their own, has not been able to have a court reporter present at their trial, this court has reversed and remanded those cases for re-trial.

Clearly, the law states that if a request is made for a court reporter, it becomes mandatory to provide one, and a failure to grant that request requires reversal even in the absence in a showing of harm. **Cartwright v. State 527 SW 2d. 535 (Tex. Crim. App. 1975), Froyd v. State 628 SW 2d. 866 (Tex. Civ. App. 1982), Gamble v. State 590 SW 2d. 507 (Tex. Civ. App. 1979)**

The record before this court shows clearly that Appellant requested a court reporter before the Arraignment Court. However, because of a glitch in the computer system, and the failure of the clerk to properly input that request, when she appeared for trial it was a non-court reporter date, and instead of the matter being reset by the Trial Judge to accommodate her request, the case proceeded to trial and she was convicted.

This court has no hesitancy in applying the applicable law to this situation, and reversing Appellant's conviction for the failure to comply with her request to have a court reporter present at the trial of her case. The concern that this court has is in the relief to be granted to Appellant in this case or in others where persons have requested a court reporter but one is not provided to them properly. In cases where a court reporter was not provided, the convictions are generally reversed and remanded and this court is quite frankly, reluctant to remand this case for re-trial and force this Appellant, or any for retrial. But this court is reluctant to remand this case for re-trial and force Appellant, or any others similarly situated as she is, to have to go back through the time, expense, and inconvenience of going back thought the system when it should have been handled properly in the first instance. It is much easier for the State to retry this case than it is for Appellant to be thrown back into a system that has failed her once already. Although, this court is inclined to render a decision in Appellant's favor, it is bound by legal precedent to the contrary, but strongly recommends that the prosecutor consider this particular case and the admitted failure of the system to provide a court reporter to Appellant, and weigh such facts in deciding whether to continue prosecution of this particular case..

Henceforth, this case should also put everyone on notice, that every effort should be made to ensure that someone who requests a court reporter is given one at trial, and if the system fails in respect, that a judgment of conviction will not stand, and may in the future, result in the judgment being rendered instead of remanded for re-trial.

This court is fully aware that in this particular case, that the error was inadvertent and was not a result of conscience indifference or an intentional effort to deny Appellant her right to have a court reporter present at her trial. For the record, this court notes that the Arraignment Court Judge duly noted her request for a court reporter on this docket, and it was not his fault nor the regular Municipal Court Judge who heard this case that a court reporter was not made available to Appellant as she had requested, but rather an innocent mistake and oversight by a clerk to input such information into the computer system. Although innocently done, such mistake led to a failure to provide Appellant with the right to have a record of her trial proceedings, and thus, to effect a meaningful appeal of her conviction.

Therefore, the judgment of the Trial Court is hereby reversed and remanded to the trial court.

SIGNED this 19 day of May, 2004.

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 her behalf.

SIGNED this 19 day of May, 2004.

JUDGE