

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

CHRISTOPHER MICHAEL LOPEZ,

Appellant,

vs.

STATE OF TEXAS,

Appellee.

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No. 09-MCA-3323
Ticket # 18204511.1

OPINION ON MOTION FOR REHEARING

This Court affirmed Appellant's conviction in Municipal Court for a speeding offense on July 15, 2009. The basis of that Opinion was principally that there was no Reporter's Record before the Court so the complaints that Appellant was making on appeal could not be addressed.

In his motion for rehearing, Appellant now contends that he was not fully advised of his rights in regard to requesting a Record, and that he was at a disadvantage because he was not a licensed attorney, and advised the Court of such fact. Appellant, as do many others who appear in Municipal Court, represented himself. All persons appearing before Municipal Court have a right to be represented by an attorney, although not a court appointed attorney, but have a right to retain an attorney of their own choosing. However, if they choose not to retain an attorney, they do not have a right to receive personal instruction from the Judge or to require the Judge to take over the chores for a pro se defendant that would normally be attended to by trained counsel. Pro se litigants are subject to the same rules of evidence, procedure, and substantive law as parties represented by counsel. Williams v. State, 549 S.W. 2d 183 (Tex.Cr.App. 1977), Webb v. State, 533 S.W. 2d 780 (Tex.Cr.App. 1976)

In his original brief, Appellant contended that the Trial Judge reviewed his driving record and challenged his witness' testimony "that my dad does not speed" with the recitation of other speeding offenses. This Court recognized in its initial Opinion that such reference to extraneous offenses should be done by the Prosecutor and any impeachment of the witness' testimony should

be properly conducted by the Prosecutor and not the Judge, but his failure to object waived the error. Appellant's present contention that he did not know to object because he is not trained in the law is no excuse because, as stated above, pro se litigants are subject to the same rules of evidence as though they were represented by counsel. Again, this Court holds that failure to object to such evidence, either by Appellant pro se or any attorney that might have been representing him, would have waived such error.

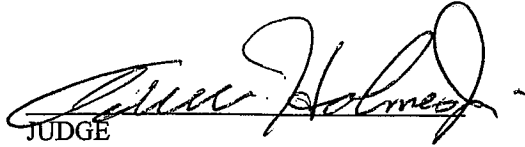
The more troublesome question that Appellant raises is the failure to record these proceedings. Appellant cites this Court's decisions in Maxey v. State 86-MCA-1782, and Shearman v. State 06-MCA-3084 in support of his contention that this case should be remanded for reconsideration to afford him an opportunity to request a Record. A copy of the Shearman decision which this Court feels is instructive on this issue, is attached to this Opinion, and the Trial Judges are again encouraged to reconsider this issue, and begin recording all proceedings so that anyone who wants a record can obtain one. This Court is mindful that our Court of Record's Statute requires a person to request a record, but the installation of recording equipment was directed to address this particular problem so it does not continue to arise on appeal after-the-fact.

Nonetheless, the distinguishing facts between the cases Appellant cites in previous holdings of this Court and his situation reflects that in those cases, unlike his, there was a specific request for a Record and none was provided. Appellant does not contend nor does the Record before this Court reflect that he ever made a request to have the trial proceedings recorded. Again, failing to follow the procedural rule applicable to such matter, any error is waived.

This Court has further repeatedly held in nearly every case where a Record was not provided to this Court, that having a Record would not necessarily have changed the result. It would have only allowed the Court to consider what evidence was actually introduced in the case, and apply the legal principals for determining the sufficiency of that evidence to uphold the conviction. There is nothing in the Record before this Court that suggests to this Court that had Appellant obtained a Record, that the result would have been any different.

Therefore, his Motion for Rehearing is overruled.

Signed this 3rd day of September 2009


JUDGE

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

GREGORY SHEARMAN,

Appellant,

vs.

STATE OF TEXAS,

Appellee.

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No. 06-MCA-3084

OPINION

Appellant appeals his conviction in Municipal Court for a speeding violation. A fine of \$100.00 was assessed.

Appellant contends that he requested a record before the Trial Court proceedings commenced, but no record was made. He also contends that the Court remained silent and did not rule on his request or provide a court reporter to take down the testimony. He further contends that he discussed the matter with the City Prosecutor who suggested he file a Motion for New Trial, and the City Prosecutor signed his request indicating he did not oppose the new trial because Appellant contends that the City Prosecutor recalled his request.

Appellant contends that the Trial Judge denied his Motion for New Trial, but the Order in regard to that is not signed by the Trial Judge, but eventually was overruled by operation of law.

This Court has held in too numerous occasions to cite, that Appellant must request a court reporter, and provide this Court with a Statement of Facts to contest many of the issues that are raised before the Trial Court, most importantly, whether there is sufficient evidence to sustain the Trial Court's finding. Too often, no request for a court reporter is made, and the Appellant on appeal is at a significant procedural disadvantage because of that failure.

This Court, in nearly every case, where an issue is raised as to whether a request was properly or timely made for a court reporter, has given the benefit of the doubt to the citizen, because too often their failure to request a court reporter is a result of their ignorance of the procedural requirements, and the importance of a record on appeal until after this Court renders an opinion to that effect. That belated education of the citizen has always been a source of some concern to this Court, and has taken every opportunity to ensure that a person's request for a court reporter is protected.

It has been, because of that concern, that this Court has encouraged the implementation of a recording system in our Trial Courts in order to facilitate the taking of a record, and fortunately, such a system now exists. Nonetheless, this Court has been advised, that the Trial Judges are still requiring people to request that a record be made, as the law requires, but it seems to this Court, that a recording of the trial proceedings should become commonplace, even without a request for a record. That action would allow this Court to address the merits of people's contentions on appeal, rather than affirming their convictions on procedural technicalities which most pro se defendants know nothing about. The result of the case, in probably most instances, will not be any different, as this Court has repeatedly forewarned in its opinions where a Statement of Facts is not contained in the record, however, but people who do appeal their case will not feel like they have been blindsided by the system.

If a person chooses to appeal a Trial Court's decision, and the proceedings were recorded, then it is incumbent on the person to secure a transcription of that record and to pay for it, and to include it in the record before this Court. They may well decide that that is not worth the time, effort, or expense, but this Court would prefer them making that decision rather than not being afforded the opportunity to have a record made of the proceedings, when that option is easily available and can be implemented.

Therefore, consistent with this Court's previous opinions in this area, this case is remanded to the Trial Court so that a record of the proceedings can be made, and that if another

appeal of this case is effected, Appellant will have the opportunity to present this Court a Statement of Facts as to what evidence was introduced before the Trial Judge.

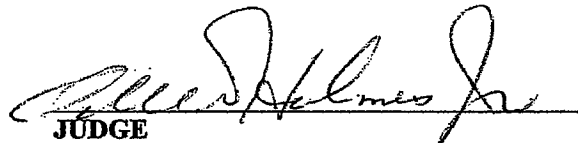
SIGNED this 30 day of June, 2006.


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 case be reversed and remanded to the Trial Court for re-trial.

SIGNED this 30 day of June, 2006.


JUDGE