IN THE MUNICIPAL COURT OF APPEALS

OF THE CITY OF EL PASO, TEXAS

GARRY HAWKINS, Appellant

vs. NO. 85-MCA-1255

STATE OF TEXAS, Appellee

O P I N I O N

Appellant appeals his conviction in Municipal Court for making an improper left turn.

Appellant's first point of error questions the propriety of the City Attorney representing the City in Municipal Court. This Court has held that the City Attorney has the authority to represent the City in Municipal Court cases whether they involve City ordinances or State statutes. Of course, the County Attorney, if he chooses to do so, has authority to prosecute cases in Municipal Court, and the provisions giving the City Attorney authority to represent the City in Municipal Court cases is not constitutionally deficient. Hill v. State, 83-MCA-23 (Mun. Ct. App. - 1984) So long as the County Attorney is not precluded from prosecutions in Municpal Court by Article 1200ee-2, it is sufficient despite the dicta to the contrary in Favela v. State, 651 SW 2d 936 (Tex. App. - El Paso 1983) reversed on other grounds, 668 SW 2d 408 (Tex. Crim. App. - 1984)

Appellant's next point of error contends that the statute governing Muncipal Courts of El Paso denies a person due process and is therefore unconstitutional. A similar statute creating a court of record system at the Municipal Court level has been upheld as constitutional, and the point is overruled. Ex parte Spring 586 SW 2d 484 (Tex. Crim. App. - 1983) In Spring, the Court recognized the plenary power of the legislature to create such inferior courts as may be necessary, and certainly, the creation of El Paso Municipal Courts of Record and its appellate court are within that plenary power.

Appellant relies in his brief on a memo to lawyers which is not even applicable to procedure in that Court at the present time, nor was such memo in effect at the time Appellant was tried. But even if it were, it would not entitle Appellant to any relief at this point.

Appellant's third point of error attacks the enabling statute as unconstitutional because it changes the rules of evidence for the City of El Paso and not for the County of El Paso. For the reasons stated above, this Court holds that El Paso's Municpal Court of Record statute is constitutional. Point of error no. 3 is overruled.

Appellant's next ground of error attacks the City ordinance for establishing maximum speed limits in violation of State law, however, the instant offense does not involve a speeding violation, and the point is overruled. In this case, like many others, this Court continues to observe that form briefs are filed with the Court. Many of the points of error are not relevant to the particular charge involved as is the case here.

Appellant next contends that the City has attempted to change the Texas Code of Criminal Procedure and has restricted his right to trial by jury. However, the record reflects very clearly that the Appellant waived any right to trial by jury, and therefore has no standing to raise the constitutional question at this point. The point is likewise overruled. A constitutional attack may not be based on apprehension of a future injury. Bush v. Texas, 372 U.S. 586, 83 S. Ct. 922, 9 L. Ed. 2d 958 (1963) and Hill v. State, infra.

Appellant's ground of error no. 6 questions the sufficiency of the jurat of the Complaint, but a review of the Complaint in this case shows that it was signed and sworn to before an assistant city attorney as authorized by law, and dated December 4, 1984, alleging the instant offense. The point is overruled.

Appellant's ground of error no. 7 alleges that the Complaint is invalid because it does not allege an offense. Appellant then contends that the Complaint is defective because it does not allege speeding in proper terminology, however, as this Court has pointed out, the instant case does not involve the offense of speeding at all. The point is overruled.

Appellant's last point of error contends that the Article 1200ee-2 is unconstitutional because it is biased toward conviction in that the Appellant Judge can do less work by affirming without an opinion, but in order to reverse, must write an opinion. The Appellant cites Ward v. Village of Monroeville, 409 U.S. 57 (1972), which this Court has reviewed, and finds not to be in point.

Although this Court has overruled Appellant's points of error, and affirms the judgment of the trial court, this Court has tried to address each one of Appellant's points of error and respond appropriately to them. The point of error is overruled.

The judgment of the trial court is affirmed.

SIGNED this 18 day of April, 1985.

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 18 day of April, 1985.

JUDGE