IN THE MUNICIPAL COURT OF APPEALS

OF THE CITY OF EL PASO, TEXAS

GEORGE ANTHONY RANCICH, Appellant

vs.

NO: 87-MCA-1815

STATE OF TEXAS, Appellee

O P I N I O N

Appellant appeals his conviction in Municipal Court for speeding.

On appeal, Appellant complains that the Trial Court allowed the State to reopen to supply an essential element of proof which it did not develop on direct examination. After direct examination by the State's Attorney, the Defense Attorney indicated that he had no questions of the witness when no evidence had been introduced relating to the fact that the speed alleged was not prudent and reasonable under the circumstances. After indicating that he had no questions, the State's Attorney proceeded to introduce evidence to prove that element of the State's case.

Appellant had been cited for going 80 miles per hour in a 55 mile per hour zone.

The decision to allow the State to reopen the evidence after the State has rested is left to the sound discretion of the Trial Court, and a review of the record before this Court does not indicate that the Court abused that discretion. See Wolf vs. State, 674 SW 2d 831 (Tex. App. 13 Dist. - 1984); Cain vs. State, 666 SW 2d 109 (Tex. Crim. App. 1984) and Boatright vs. State, 472 SW 2d 765 (Tex. Crim. App. 1971). Further, Art. 36.02 of the Texas Code of Criminal Procedure provides that the Trial Court "shall

allow testimony to be introduced at any time before the argument of a cause is concluded, if it appears it is necessary to a due administration of justice". Therefore, Point of Error Number One is overruled.

Appellant's Second Point of Error relates to the overruling of his objection to the question asked of the officer relating to whether the speed was prudent and reasonable under the circumstances as calling for a conclusion. The question asked of the officer embraces both factual and legal implications, and was not objectionable on the basis presented, and the evidence was not inadmissible. Rule 704 of the Texas Rules of Criminal Evidence provides that such testimony is not objectionable because it embraces an ultimate issue to be decided by the trier of facts, and therefore the point is overruled.

Appellant's last Point of Error relates to the fact that after the case was reopened, and the State's Attorney asked the officer whether the speed in question was reasonable and prudent under the circumstances, and after an intervening objection by Appellant's attorney, the State rested without the officer responding to the question. The Court then indicated that the officer had not answered the question which this Court has held above was within the Trial Court's discretion to do, and the point is overruled.

Finding no reversible error, the Judgment of the Trial Court is affirmed.

SIGNED this 17 day of August, 1987.

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 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 12 day of August, 1987.

JUDGE