

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

TRAVIS G. CHILDRESS,)	
)	
Appellant)	
)	
vs.)	89-MCA-2019
)	89-MCA-2020
)	
STATE OF TEXAS,)	
)	
Appellee)	

OPINION

Appellant appeals his conviction in Municipal Court for failing to remain at the scene of an accident and for not having proof of financial responsibility.

In a single ground of error, Appellant contends that his convictions are void because they were obtained in violation of his constitutional guarantee against double jeopardy under the 14th Amendment to the United States Constitution.

The record before this court, including the Statement of Facts, reflects that these cases, as well as others for which the Appellant was found not guilty, were called for trial. However, since a Court Reporter was not present at the time, a Motion to Dismiss made by Appellant's attorney was granted by the Court dismissing the charges. Almost immediately thereafter, evidently the Court Reporter arrived and the Court, on its own, reopened the case. A further Motion to Dismiss based on double

jeopardy grounds was denied by the trial court who then found Appellant guilty on these two charges.

A dismissal of charges is generally treated as a mistrial for purposes of double jeopardy and generally does not bar a retrial of a defendant. Teague, Texas Criminal Practice Guide, Section 51.05. United States v. Scott, 437 U.S. 82, 57 L.Ed.2d 65 and 98 S.Ct. 2187 (1978).

Further, since the Motion for Dismissal was made by the defendant, no barrier to re prosecution existed. United States vs. Scott, supra.

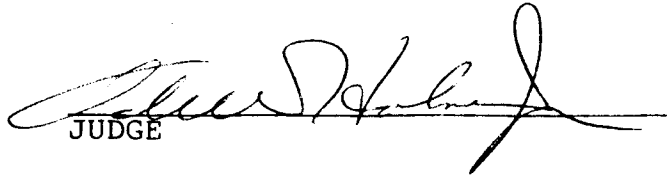
Lastly, the record before this Court further reflects at the time that the initial Motion to Dismiss was made and granted by the Court that jeopardy had not even attached, since no plea was entered or witnesses sworn to testify. Appellant recognizes, that in a non-jury trial, jeopardy does not attach until the first witness is sworn. Serfass vs. United States, 420 U.S. 377, 95 S.Ct. 1055, 43 L.Ed.2d 265 (1975) and Crist vs. Bretz, 437 U.S. 28, 98 S.Ct. 2156, 57 L.Ed.2d 24 (1978).

Although this Court does not condone the unavailability of Court Reporters when properly requested, nonetheless, the facts in this case are not tantamount to the situation where the prosecution is unable to prove its case because of absent witnesses or other situations making it impossible to prove the defendant's guilt. McClendon vs. State, 583 SW2d 777 (Tex. Cr. App. - 1979).

Having no reversible error, the judgments in the above

causes are hereby affirmed.

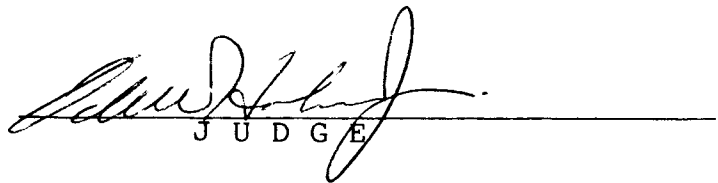
SIGNED this 28 of Feb., 1990.


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 in these causes, and that the Appellant pay all costs in this behalf expended, and that this decision be certified below for observance.

SIGNED this 28 day of Feb., 1990.


J U D G E