

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

JOHN A. LYLE
Appellant

vs.

STATE OF TEXAS,
Appellee

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89-MCA-2032

OPINION

Appellant appeals his conviction in Municipal Court for a speeding offense.

Appellant's most serious attack on the Trial Court's judgment relies on the fact that the officer who issued the citation was late for Court, and testified without having been sworn by the Court. The fact that the testimony of the officer was given without being under oath is conceded by the State, but the State maintains that the error, if any, was waived by the failure to make a timely objection.

A defendant has a constitutional and statutory right to have witnesses against him placed under oath. Article 1, Section 5 Tx.Const.; Rule 603, Texas Rules of Criminal Evidence. However, even that valuable right can be waived. The law is well settled that almost every right, constitutional and statutory,

may be waived by the failure to object. Beck v. State, 719 SW2d 205 (Tx.Cr.App. - 1986).

Obviously, the requirement that a timely objection be made provides the Trial Court an opportunity to correct any error, and prevents the defendant from raising such an irregularity for the first time on Appeal.

Had Appellant objected to the fact that the officer had not been duly sworn, the Trial Court could have quickly corrected that error, and is, of course, the reason for the rule. Having failed to object, the Appellant can not now complain on Appeal of the error, and same was waived. Beck vs. State, supra.

Additionally, in Appellant's brief and in Oral Argument, he contends that he was not given a fair opportunity to cross-examine the witness concerning the use of radar, and questions the sufficiency of the evidence to support the conviction. However, no Statement of Facts was requested by Appellant and none appears in the record before this Court, and therefore, nothing is presented for review. This Court has repeatedly held that it cannot consider questions relating to the sufficiency of the evidence without a Statement of Facts. Paoli v. State, 83 MCA 98 (Mun.Ct.App. - 1987).

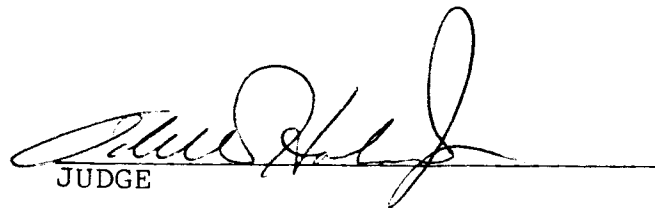
Perhaps, in this case, unlike others, this Court is inclined to give the Appellant relief because it is aware of the difficulties that are presented to the Trial Judges of the Municipal

Court because of the large case load under which they work, and the limited amount of time available to dispose of cases. However, this Court is bound to apply the principals of law which are applicable, and has attempted to do in this particular case.

Lastly, Appellant argues that this Court should play a supervisory role of some sort and correct errors made by the Trial Court on its own as a matter of its responsibility to review their judgments. This Court is not familiar with any Appellate Court which does so, unless the errors are timely preserved in the record, perhaps with the exception of fundamental error.

Having found no reversible error, the judgment of the Trial Court is affirmed.

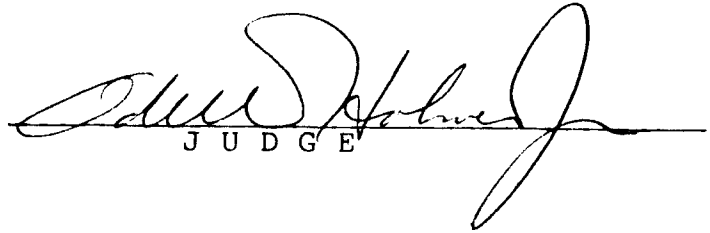
SIGNED this 4 of April, 1990.


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

SIGNED THIS 4 day of April, 1990.


J U D G E

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