

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

THEODORE A. MCCORMICK,	§	
	§	
Appellant	§	
	§	
vs.	§	90-MCA-2054
	§	
STATE OF TEXAS,	§	
	§	
Appellee	§	

OPINION

Appellant appeals his conviction in Municipal Court for failing to yield right-of-way causing an accident.

Although Oral Argument was set in this case at the request of Appellant, he did not appear at that time, and so this Court will proceed to a disposition of this case based on the record presently before it.

In passing, however, Appellant's request for Oral Argument would indicate that he intended to introduce additional evidence and attempt to establish certain defensive issues which he thought should be further considered. This Court does not hear evidence at Oral Argument, and can only base its decision on the record before it. This Court could not have heard or considered any evidence that may have been presented at Oral Argument on Appellant's behalf.

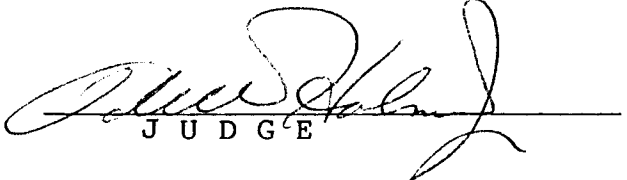
Appellant contends that the Trial Judge who heard this case was prejudice against him because the Judge commented that he was familiar with the intersection where this accident occurred. Although perhaps an inappropriate comment, there is nothing in this record which would indicate the Trial Judge was basing his decision on his own personal knowledge of the area as opposed to the evidence which was presented to him.

Appellant also contends that the driver of the other vehicle was at fault because he was driving at an excessive rate of speed. Even if such was the case, it would provide the Appellant with no relief, because, at most, it would raise the issue of comparative negligence which is not a defense to a traffic citation. Fontenette vs. State, 89 MCA 1998 (Mun.Ct.App. - 1989); Saldivar vs. State, 90 MCA 2072 (Mun.Ct.App. - 1990). Additionally, the law requires the driver of a vehicle to yield the right-of-way to vehicles which are within or approaching an intersection in such proximity thereto as to constitute a hazard, and may only proceed thereafter when such driver may safely enter the intersection without interference or collision with other traffic using such street or roadway. Article 6701d, Section 71 V.A.T.C.S. There are no exceptions to such rule, and certainly none applicable to the fact that the approaching traffic is approaching the intersection at an excessive rate of speed. The fact that an approaching vehicle is driving at an excessive rate of speed may be so egregious that the Judge could find the person

cited for failing to yield right-of-way "not guilty", or mitigate the punishment assessed, but such evidentiary fact does not entitle one to acquittal as a matter of law. That decision lies in the sole discretion of the Trial Judge, who as the Factfinder, is the exclusive Judge of the credibility of the witnesses and the weight to be given to the testimony. This Court does not have the legal authority to substitute its judgment for that of the Trial Court in such matters. The record before this Court as contained in the Statement of Facts clearly reflects that there was sufficient evidence to support the Trial Court's judgment, and therefore no reversible error is found.

THEREFORE, the judgment of the Trial Court is affirmed.

SIGNED this 11 day of Dec, 1990.

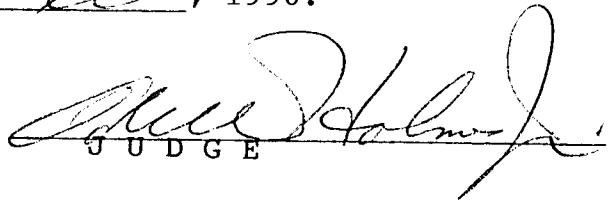

J U D G E

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 11 day of Dec, 1990.


J U D G E

24.48.1-2