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

JOHN FOX,	)	
	)	
Appellant,	)	
vs.	)	No. 97-MCA-2405
	)	
STATE OF TEXAS,	)	
	)	
Appellee.	)	

OPINION

Appellant appeals his conviction in Municipal Court for a stop sign violation. A jury found Appellant guilty and assessed his fine at $200.00.

The Statement of Facts reflects that Appellant was observed by Officer Hoss, a police officer for 17 1/2 years, failing to stop a small motorcycle at a stop sign located at the 4500 block of Maxwell in El Paso, Texas. Officer Hoss was the only witness called to testify in this case. The officer testified that Appellant went through the stop sign at approximately five to seven miles per hour, that he had a clear view of the intersection when the infraction occurred, and neither the weather nor the fact that he was wearing sun glasses obstructed his view of the intersection or his observation of the infraction. Appellant did a quite admirable job of cross-examining the officer. Regrettably for Appellant, the jury believed the testimony of the police officer, as they were free to do, and found Appellant guilty.

There is certainly sufficient evidence before this Court, both legally and factually, to support that determination. The jury, as the fact-finder, is the exclusive judge of the credibility of the witnesses and the weight to be given to their testimony. Flannigan v. State, 675 S.W.d 734 (Tex.Crim.App. 1984).

Appellant raises twenty-five points of error challenging this conviction.

In Point of Error Number One, Appellant contends the Trial Court erred in overruling his Motion to recuse the Judge. The premise of that Motion is that Municipal Court Judges raise revenue for the City as a result of the fines they assess, and that their tenure as a Municipal Judge somehow depends on keeping the "money rolling in." Appellant overlooks the fact that the Municipal Court judicial system is charged with the legal responsibility of enforcing the traffic laws of this State and community, City Ordinances, as well as Class C Misdemeanors prescribed by the Texas Penal Code. Those Courts have only criminal jurisdiction, and if an infraction occurs, the punishment is by fine only. It is only incidental to fulfilling their responsibility to the citizens of this State and community in enforcing those laws that revenue is generated that is used for the benefit of the City. Judges have the responsibility to fulfill the judicial duties for which they are elected, and there was no basis for recusal. Kirby v. Chapman, 917 S.W.2d 902 (Tex.App. - Ft. Worth 1996); Aguilar v. Anderson, 855 S.W.2d 799 (Tex.App. - El Paso 1993); Rogers v. Bradley, 909 S.W.2d 872 (Tex. 1995).

In Point of Error Number Two, Appellant contends that the Court abused its discretion in denying his Motion for Continuance. The Motion requested a continuance in order to obtain a psychological evaluation of the police officer who issued the citation, among other things, and presented no basis for being granted. Therefore the Court did not abuse its discretion in denying it. Furthermore, Appellant appeared and participated in the trial of his case when it was set without objection or reurging of his Motion for Continuance, and therefore waived any complaint thereby.

Point of Error Number Three argues that Appellant was denied a hearing on numerous pretrial Motions. That issue is addressed to the discretion of the Court, and no showing of abuse

has been made by Appellant. In fact, some of those Motions were granted allowing Appellant the names of the State's witnesses that would be called upon the trial of the case and to reveal any exculpatory evidence in the State's possession.

In Point of Error Number Four, Appellant complains that the jury was allowed to separate after the charge had been read to them, but there is no support in the record for such contention. Since they did not separate, there is no merit to the Point.

In Point of Error Number Five, Appellant contends there was error in not hearing Appellant's Motion for Change of Venue. Pursuant to Article 31.03 of the Texas Code of Criminal Procedure, a change of venue can only be granted in a felony or misdemeanor case punishable by confinement. The instant offense is a fine only offense. Therefore no change of venue would be justified, and the Court did not err in not hearing a Motion without merit.

In Point of Error Number Six Appellant contends that there was error in the Jury Charge, but there was no objection made at the Trial Court level, and therefore any error was waived. Thiel v. State 676 S.W.2d 593 (Tex.Cr.App. 1984); Article 36.14 Texas Code of Criminal Procedure.

Point of Error Number Seven complains about the Voir Dire, but no record of the Voir Dire examination is contained in the record before this Court, and therefore nothing is presented for review.

Point of Error Number Eight suggests, without basis in fact, that some communications between the Judge and the jury were improper. There is no evidence of any communications between the Judge and the jury members in the record before this Court.

Point of Error Number Nine complains about the prosecuting attorney disregarding proper Court procedure relating to a Motion in Limine and Discovery. A review of the record

indicates that the Court required the State to disclose the name of its witnesses, which it did, and to reveal any exculpatory material, which it did not have.

There is no error in the Court's ruling in regard to the Motion in Limine, and unless an objection is made at trial, nothing is preserved for review.

Points of Error Numbers Ten and Eleven complain about the prosecution's alleged comment upon the failure of Appellant to testify. Appellant did not testify in the case, which he had a right not to do, but a review of the record does not support his contention. The prosecutor is allowed to comment on the evidence and draw reasonable inferences therefrom, which he did in this particular case. Additionally, no objection was made at trial, and therefore any error would have been waived. Phillips v. State, 394 S.W.2d 814 (Tex.Crim.App. 1965); Johnson v. State, 629 S.W.2d 953 (Tex.Crim.App. 1982).

Appellant's Point of Error Number Twelve is somewhat unclear, but seems to suggest that since he was representing himself pro se, and was inexperienced, he was unable to obtain certain material through pretrial Motions and discovery. Discovery in criminal cases is extremely limited, and much of what Appellant sought to discover would not have been available to even the most capable of attorneys. Nonetheless, this Court has recently held that pro se defendants are held to the same legal standards as counsel. Lopez v. State, 96-MCA-2386 (Mun.Ct.App.).

Point of Error Number Thirteen suggests that the Statement of Facts was inaccurate and incomplete. This Court has reviewed the Statement of Facts which has been certified by the Court Reporter, and disagrees with Appellant. It clearly reflects the evidence that was presented on both sides of the issue.

Point of Error Number Fourteen alleges a violation of First Amendment rights for not allowing Appellant to discretely record his own trial. This Court is unfamiliar with Appellant's request, and has found no law to support it, nor has Appellant cited any such law to this Court. The Court Reporter was requested, and has provided this Court with a Statement of Facts which is authorized by Section 30.040, Title II, of the Government Code. The Court Reporters transcription of the proceedings would be the only source of reference that this Court could review for any alleged errors in the record.

Point of Error Number Fifteen contends that all Defendants should have a right to effective assistance of counsel.

Appellant had the right to hire an attorney to represent him, but chose not to do so. Appellant has no right to have an attorney appointed for a fine only offense. Argersinger v. Hamlin, 407 U.S. 2532 L.Ed. 2d 530; Empy v. State, 571 S.W.2d 526 (Tex.Crim.App. 1978); Jean Marie v. State, 90-MCA-2079 (Mun.Ct.App.).

Point of Error Number Sixteen contends that the City Attorney is not authorized to serve as counsel for the State in Municipal Court. This Court has previously held to the contrary. Aaronson v. State, 88-MCA-1932 (Mun.Ct.App.); Hill v. State, 83-MCA-23 (Mun.Ct.App.); Naff v. State, 946 S.W.2d 529 (Tex.App. - Ft. Worth 1997).

Point of Error Number Seventeen contends that the law improperly places the burden of proof on the Defendant regarding whether the stop sign was legally authorized. Section 12.20.020(b) of the El Paso Municipal Code indicates that the fact that a traffic control device is not properly installed or authorized is a defense. Although not raised by Appellant in the evidence before the jury, he clearly had the burden to do so. The Appellant has the burden of raising the defense in the evidence, and if he does so, then the prosecuting attorney has the

burden of persuasion on the issue before the jury. Since the defense was not raised in the evidence, no error is shown. Section 2.03 Texas Penal Code.

Point of Error Number Eighteen contends the evidence was insufficient to sustain the conviction as it relates to the issue if the stop sign was legally authorized. The previous discussion disposing of Point of Error Number Seventeen also addresses this issue.

Point of Error Number Nineteen complains that the complaint did not cite the Statutes or Municipal Ordinance under which the prosecution proceeded. Appellant cites no authority, and this Court is aware of none, that requires a charging document to cite the specific statutory or municipal enactment on which the prosecution is founded.

Point of Error Number Twenty alleges that the evidence is insufficient because there was no allegation or proof that the offense was "knowingly" committed. Running a stop sign, like most other traffic violations, does not require culpable mental state. Hills v. State, 84-MCA-681 (Mun.Ct.App.).

Point of Error Number Twenty-One suggests the evidence of an extraneous offense was improperly admitted. Appellant himself asked the police officer about notations on his ticket which reflected that he was driving the vehicle in question without a proper endorsement on his license, and for which offense, he was not cited. Appellant cannot complain about evidence which he himself introduced before the jury.

Point of Error Number Twenty-Two suggests the evidence was insufficient to support the jury's verdict. This Court has reviewed the evidence, both from a legal and factual standpoint, and finds that it is sufficient to support the conviction.

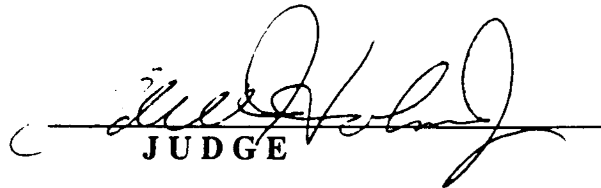
In Point of Error Number Twenty-Three Appellant complains that he was denied the right to secure witnesses to testify on his behalf. The record reflects otherwise, and suggests that Appellant failed to subpoena the witnesses that he thought would be needed to support his defense. Appellant had the responsibility to secure those witnesses which he felt would aid in his defense, and his effort to shift that responsibility to others is misplaced.

Point of Error Number Twenty-Four suggests that Appellant is entitled to relief because the effect of cumulative errors in the trial of this case. Since this Court has not found any error in any of the Points of Error raised by Appellant, they can have no cumulative effect on the outcome of this trial.

Point of Error Number Twenty-Five complains that the prosecution failed to disclose exculpatory evidence, but it had none to disclose. It cannot produce what it does not have. Appellant was allowed to ask the officer on cross-examination if he had ever been denied a promotion because of any actions in the traffic department, his background in law enforcement and the period of his training, his location and distance from the alleged offense, his ability to see the alleged defense because of weather conditions or the fact he was wearing sunglasses, traffic conditions at the time and whether the officer had any kind of medical condition that would make it difficult to ride his own motorcycle or that would divert his attention. He was not allowed to ask the officer's salary or whether or not the officer had ever been disciplined or delving in to the officer's psychological background. Appellant complains that he was not able to even run a credit check on the police officer. Clearly none of those inquiries would have been relevant or appropriate.

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

SIGNED this 17 day of Oct, 1997.

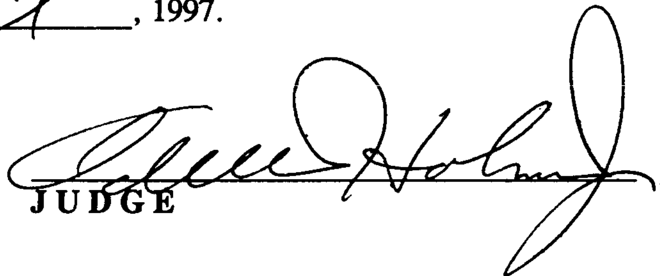


JUDGE

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 17 day of Oct, 1997.



JUDGE