

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

PAUL PAOLI, Appellant

NO. 83-MCA-98

STATE OF TEXAS, Appellee

Appeal from El Paso
Municipal Court

O P I N I O N

This is an appeal from a conviction in Municipal Court for changing lanes unsafely and causing an accident.

Appellant attacks the sufficiency of the evidence to support this conviction, and although oral argument was waived in this case, this Court has reviewed Appellant's brief and the statement of facts contained therein in determining the merits of this contention. Questions relating to the sufficiency of the evidence or its admissibility cannot be reviewed on appeal unless a statement of facts is included in the record, or the record otherwise reflects adequately the issue to be presented to the Appellate Court.

The test for reviewing challenges based on the sufficiency of the evidence requires the Appellate Court to consider the evidence in a light most favorable to the jury's or Judge's verdict. Thomas v. State, 605 S.W.2d, 290 (Ct.Crim.App. - 1980). That test was applicable whether the case is one of direct or circumstantial evidence. Vaughn v. State, 607 S.W.2d 914 (Ct.Crim.App. - 1980). The Appellate Court, although sometimes tempted to do so, cannot substitute its judgment for that of the Trial Judge.

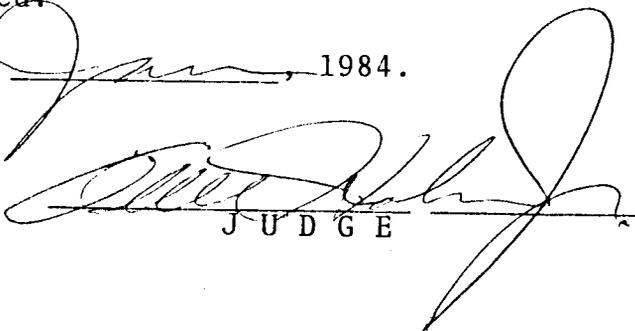
As a trier of fact, the Judge or jury judges the credibility of the witnesses and the weight to be given to their testimony and each is free to accept or reject the testimony of any witness. Limuel v. State, 568 S.W.2d 309 (Ct.Crim.App.).

In this case, as in many cases involving traffic violations there is a direct contradiction as to how this particular accident occurred, and there is no independent evidence or witnesses weighing on either side of the case. However, viewed in the light most favorable to the Judge's decision in this case, this Court holds that the evidence was sufficient to support the conviction, and Appellant's point of error number one is overruled.

Appellant's second point of error attacks the jurat of the complaint because it does not state the official character of the person taking the oath nor does it indicate that the allegations contained in the complaint are true. A review of the complaint does indicate that one Hector Ortega signed the complaint and that such was sworn to before the Assistant City Attorney for the City of El Paso, Texas, who is authorized to administer oaths for that purpose, and is therefore sufficient. The Assistant City Attorney, and therefore this Court, is not inclined to look beyond the face of the document itself in that respect, and therefore overrules Appellant's point of error number two.

The Judgment is affirmed.

DATED this 7 day of Jan, 1984.


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, because it is the opinion of this Court that there was no error in the Judgment, it is ORDERED, ADJUDGED and DECREED by the Court that the Judgment be in all things affirmed,