

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

WILLIAM EHRLICH

Appellant

vs.

No. 89-MCA-2015

STATE OF TEXAS,

Appellee

OPINION

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

On Appeal, Appellant contends that the Court erred in not granting his Motion to Dismiss because the police officer failed to identify him. Obviously, identification of an accused as the person who committed the offense is an element of the offense, and proof of such element is required to sustain a conviction. McCullen vs. State, 372 SW2nd 393 (Tex. Crim. App. - 1963)

However, in this case, the Appellant was represented by an attorney and did not appear before the bench with his attorney, but evidently was somewhere in the audience in the courtroom. The Court clearly advised Appellant's attorney that the issue of identity would be waived if his client did not appear with him in accordance with this Court's ruling in May vs. State, 87-MCA-1820 (Mun. Ct. App. 1987).

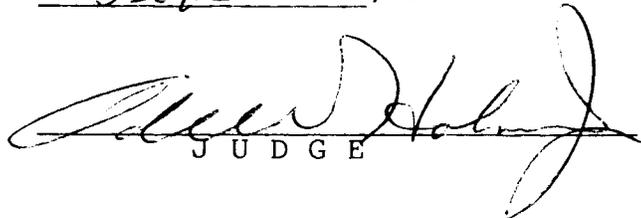
Nonetheless, Appellant remained hidden in the audience while

his attorney persisted in urging the court to dismiss the complaint because the officer indicated that he may not be able to definitely identify the Appellant. However, by failing to have his client appear before the bench and appearing by counsel, Appellant waived any right that he may have had under Article 1.14 of the Code of Criminal Procedure to complain, including the necessity to identify him in this case. Doblado vs. State, 81-30975-2 (County Court at Law Number Two, Opinion by the Hon. Judge John Fashing).

Appellant cites no legal authority for his position nor the tactic employed in this particular proceeding which this Court considers manifestly unfair to the State, deprives the officer of a fair opportunity to refresh his recollection as to identity, and reduces formal judicial proceedings to a game show format which is inappropriate and unauthorized under the law.

Having found no found reversible error, and holding that the issue of identity had been waived in accordance with the above authorities, the judgment of the Trial Court is affirmed.

Signed this 1 day of Feb, 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 1 day of Feb, 1990.

  
J U D G E