

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

RAYMUNDO TREVIZO,	§	
	§	
Appellant	§	
	§	
vs.	§	90-MCA-2044
	§	
STATE OF TEXAS,	§	
	§	
Appellee	§	

OPINION

Appellant appeals his conviction in Municipal Court for a truck route violation.

The law applicable to this particular offense restricts the movement of certain trucks on the streets of the City of El Paso except when making a pick up or delivery. The prosecution in this case, alleged that exception in its complaint. Under Section 2.02 of the Texas Penal Code, the prosecuting attorney must negate the existence of an exception in the accusation charging the commission of an offense and prove beyond a reasonable doubt that the defendant's conduct did not fall within the exception.

In this case, Appellant submitted to the Trial Court certain exhibits, received by this Court without objection by the prosecuting attorney, which clearly reflect that Appellant was making

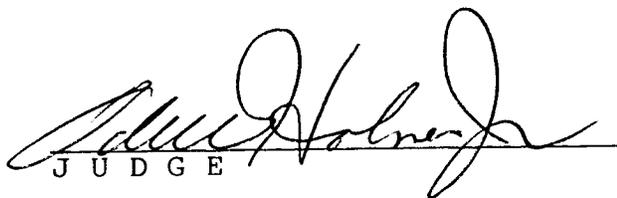
a delivery at the time, and therefore the State failed to negate the exception alleged beyond a reasonable doubt.

Although the above ruling will require this Court to reverse and render the judgment of the Trial Court, a recurring problem concerning the availability of a court reporter and the burden of requesting a court reporter remain a source of concern for this court. As this Court has held, and the law requires, the burden is on the Appellant to timely request a court reporter. Covey vs. State, 85 MCA 1262 (Mun.Ct.App.) Hall vs. State, 83 MCA 572, (Mun.Ct.App.) and Quezada vs. State, 88 MCA 1940, (Mun.Ct.App.) Section 30.040(b), Gov't Code. In this case, Appellant mailed a request for a trial setting as authorized by the procedures of the Municipal Court, but which did not advise him of his right to have a court reporter present at trial. This Court has previously held that the State's failure to advise a person as to their right to have a Court reporter available at trial when requesting a trial setting by mail entitles them to relief. Aguirre vs. State, 87 MCA 1798 (Mun.Ct.App.) Likewise, in this case, Appellant would be entitled to have his case remanded had the Court not found error as a matter of law. Nonetheless, the trial courts should be alerted again to this potential procedural defect in the process involving trial settings through the mail. This Court need not, nor does it attempt to, in this Opinion

address the trial court's responsibilities in regard to advising defendants of their rights or the consequences of their failure to exercise them. Suffice it to say, the Trial Court should attempt to notify a person of their right to have a court reporter present, and the consequences of not having a record on appeal if they should be found guilty, so that they can make an intelligent decision concerning the exercise of that right. This Court does not want to impose a duty on the Trial Court to educate persons in respect to every right they may have. Such a holding would alter the trial court's traditional function as an impartial factfinder to an adversarial position. Nonetheless, in view of the fact that a court reporter is not available at all times upon immediate request of the defendant, then other concessions must be made to accommodate that fact. This continuing source of problems could be eliminated if the trial judges and the city government could provide a court reporter on a full-time basis and assure the reporter's availability during all sessions of the municipal courts. Short of that, a concerted effort should be made to insure that a person be advised of his right to have a court reporter present at his trial, that he made aware of that right so that he can make an intelligent decision in regard thereto.

Having found error in the trial court's judgment, IT IS HEREBY REVERSED, AND RENDERED in Appellant's favor.

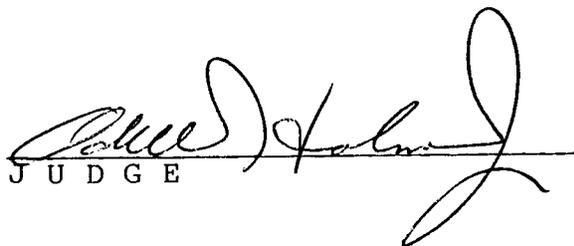
SIGNED this 22 day of August, 1990.

  
J U D G E

J U D G M E N T

This case came on to be heard, the same being considered, because it is the opinion of this Court that there was error in the Judgment, it is ORDERED, ADJUDGED and DECREED by the Court that the Judgment be in all things reversed and rendered in Appellant's favor, and judgment of acquittal be entered in his behalf.

SIGNED this 22 day of August, 1990.

  
J U D G E

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