

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

THEODORE MCCORMICK,
Appellant

vs.

STATE OF TEXAS,
Appellee

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90-MCA-2054

OPINION ON RE-HEARING

Appellant has filed a Motion for Rehearing with this Court after this Court rendered its Opinion affirming the Trial Court's decision on December 11, 1990.

In the Motion for Rehearing, Appellant contends that the oncoming vehicle was not visible to him, and because of that fact he cannot be guilty of failing to yield right-of-way to a vehicle which was impossible to see. This Court has reviewed the Statement of Facts, and Appellant's Brief, and he primarily relied on the excessive speed of the oncoming vehicle in his defense both before the Trial Court and before this Court on appeal. In this Court's previous Opinion, the Court held that the speed of the other vehicle did not provide a legal defense to the instant charge. Fontenette v. State, 89 MCA 1998 (Mun.Ct. App. - 1989); Saldivar v. State, 90 MCA 2072 (Mun.Ct.App. - 1990).

In reviewing the file on the Motion for Rehearing, this Court has noticed that Appellant alluded to the problem of visibility occasionally, but that such fact was not principally relied on by the Appellant until the filing of the Motion for Rehearing. Although, admittedly, the visibility at this particular location may be obscured, it still does not relieve the driver of the vehicle to yield to oncoming traffic, and the underlying rationale of this Court's original Opinion is equally applicable to the problem presented by reduced visibility.

THEREFORE, the Motion for Rehearing is hereby overruled.

SIGNED this 24 day of Jan, 1991.


J U D G E

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