

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

JESUS MARQUEZ,	)	
	)	
Appellant,	)	
vs.	)	No. 97-MCA-2432
	)	
STATE OF TEXAS,	)	
	)	
Appellee.	)	

**OPINION**

Appellant appeals his conviction in Municipal Court for a speeding violation. On appeal, Appellant contends that he requested a Court Reporter who was present in Court, but for some unexplained reason was not summoned to make a record of the testimony.

This Court has held that if there is no Court Reporter available to make a record, a person is entitled to a new trial, Maxie v. State, 86-MCA-1782. This Court has also held that the setting of a case through the mail fails to provide a person with the opportunity to request a Court Reporter, and thus denies a person a right to have a Statement of Facts included in the record. Aguirre v. State, 87-MCA-1798; Trevizo v. State, 90-MCA-2044. In Hickson v. State, 87-MCA-1803, this Court held that a person cited to appear by summons was denied an opportunity to have a Court Reporter transcribe the proceedings and remanded the case for retrial.

Pursuant to Section 30.040 of the Texas Government Code, a Court Reporter is not required to take or record testimony in a case unless the Defendant, Prosecutor, or Judge requests it. However, once the Court Reporter is requested, it is the obligation of the Trial

Judge to insure that a Court Reporter is present and that the testimony is recorded in order that the person can have a Statement of Facts included in the record on appeal, if that becomes necessary.

Having found that Appellant requested a Court Reporter but none was provided, the Judgment of the Trial Court is hereby reversed and remanded for retrial.

SIGNED this 13 day of Feb, 1998.

  
JUDGE

### JUDGMENT

The Judgment of the Trial Court is hereby reversed and the case is remanded for new trial.

SIGNED this 13 day of Feb, 1998.

  
JUDGE