

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

JERRY L. MAY, Appellant

vs.

NO: 87-MCA-1820

STATE OF TEXAS, Appellee

O P I N I O N

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

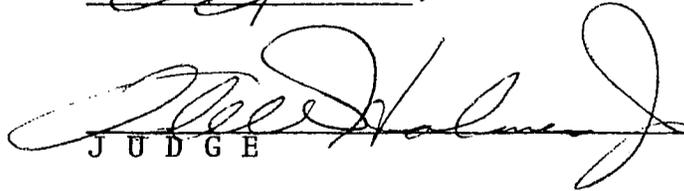
On appeal, Appellant contends that the evidence was insufficient for failure to identify him as the driver of the vehicle at the time of the alleged offense. After reviewing the Statement of Facts in this case, it appears that the Defendant appeared by attorney, and was not present at the trial of the case.

Under such circumstances, having appeared by attorney and not personally, he waived his right to raise the issue of in-court identification, and therefore no error is shown.

Of course, 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 v. State, 372 SW2d 393 (Tex. Crim. App. 1963). However, as held in a well-reasoned opinion by the Honorable Judge John Fashing of County Court at Law Number Two in Doblado vs. State, No. 81-30975-2, that Court held that an appearance by counsel can waive the rights provided under Art. 1.14 of the Code of Criminal Procedure, including the necessity to identify the accused in this instance.

Finding no reversible error, the Judgment of the Trial Court is affirmed.

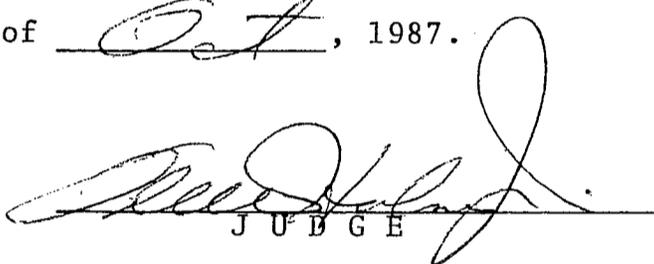
SIGNED this 5 day of Oct., 1987.


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 5 day of Oct., 1987.


J U D G E