

*Sub. Under  
#5*

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

JESUS PONCE, Appellant

NO. 83-MCA-9

Appeal from El Paso  
Municipal Court

STATE OF TEXAS, Appellee

O P I N I O N

The original opinion rendered in this case on November 21, 1983 dismissing this appeal for want of jurisdiction is withdrawn, and the following is substituted therefor.

This Court has considered Appellant's Motion for New Trial and what he has styled a Notice of Objection to the Record, and the grounds of error assigned in both of such documents. They are primarily directed at evidentiary matters, but no statement of facts was requested and none is in this file. Without a statement of facts, the Appellate Court cannot consider those points of error, and assumes that the Trial Court properly performed its function as a fact finder in judging the credibility of the witnesses and weighing the testimony before it. Therefore, Appellant's contentions addressed to evidentiary matters are overruled.

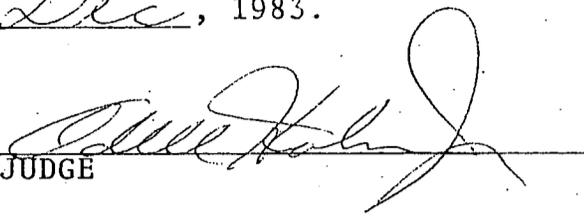
Appellant also raises two issues addressed to the traffic citation itself, but since once the complaint is filed, the traffic ticket and its contents become immaterial, and the complaint controls the prosecution, Appellant's points are overruled. This Court has reviewed the complaint and its contents and finds them to be sufficient in law.

Appellant's last point relates to his inability to obtain the name of a witness who supposedly was a prisoner in the police car at the time. There is no showing that the potential witness observed the offense, particularly since Appellant's own statement indicates that the officer

observed this particular infraction through his rearview mirror, and therefore the point is overruled.

The judgment of the Trial Court is affirmed.

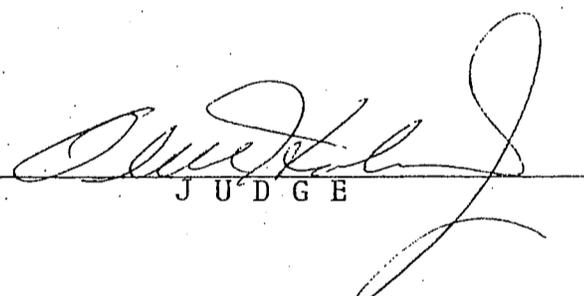
Dated this 16 day of Dec, 1983.

  
\_\_\_\_\_  
JUDGE

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, because it is the opinion of this Court that there was no error in the Judgment, 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 his behalf expended, and that this decision be certified below for observance.

Dated this 16 day of Dec, 1983

  
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