IN THE MUNICIPAL COURT OF APPEALS

OF THE CITY OF EL PASO, TEXAS

PATRICIA A. HALL	§	
	§	
Appellant,	§	
	§	
vs.	§	**No. 03-MCA-2896**
	§	
STATE OF TEXAS,	§	
	§	
Appellee.	§	

OPINION

Appellant appeals her conviction in Municipal Court for failing to yield the right of way. A fine of $75.00 was assessed.

Appellant first contends that she stopped at the intersection, and because of the location of two (2) fire engines parked parallel to the curb, she had to proceed cautiously before she could make her turn. She claims she drove slowly into the intersection until she could see past the fire engines that were blocking her view, but when she proceeded, she was almost hit by a police car, and the police officer issued the instant citation. The law requires a person in her position to yield to oncoming traffic which is in close proximity to her, and the trial judge is better able to make the factual determination in this case rather than this court. The trial judge must decide the disputed fact issues based on the evidence that is presented, and this court cannot second guess that judgment.

Appellant next contends that she evidently made three (3) court appearances at which time she requested a court reporter, but when she went to trial, no court reporter was present and the trial judge proceeded to trial and found her guilty.

This court has reviewed the docket sheet in respect to each of those court appearances and it appears to reflect the following:

1. On April 16, 2003, Appellant appeared before the arraignment court, and the docket sheet indicates that she did not waive that a record be taken, conversely, she

requested that a record be taken, and pled not guilty. As required by law, the arraignment court referred her to a regular municipal court for trial.

2. On October 22, 2003, she evidently appeared for trial, and the case was reset because she requested a court reporter again but evidently one was not present at that time.

3. Then, when the case was reset on October 22, 2003, the docket does not reflect whether she requested or did not request a court reporter on that date, but clearly she had done so on two (2) previous occasions. On October 22, 2003, a court reporter was available, but Appellant evidently did not request that the court reporter record the testimony.

El Paso's court of record statute requires Appellant to request the court reporter and to ensure that the court reporter records the testimony, and the record reflects that on two (2) previous court settings, she did in fact request a court reporter, and it is this court's opinion that the system and the judge should have accommodated that request and ensured that the court reporter that was on duty on October 22, 2003 be called to record the testimony.

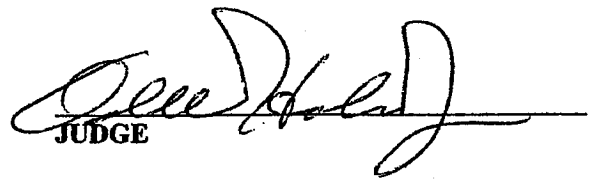
Although the court's docket does not reflect that Appellant either requested or waived a court reporter at her trial, clearly, the case was set on a court reporter date and the court should have ensured that the court reporter took down the testimony either on its own motion or making additional inquiry of Appellant as to her desires in respect to that matter.

Unfortunately, the docket sheet for the trial that was scheduled for October 22, 2003 did not indicate in any way the history of Appellant's two (2) previous appearances and the fact that she had twice previously requested a court reporter. This court views that more of a failure of the system than Appellant, and hereby reverses and remands this case for retrial so that Appellant can have her case set on a court reporter date, and directs the judge to ensure that the court reporter present on that date records the testimony.

This court has always attempted to protective of a person's right to have a record made of their testimony, and the trial courts likewise should make every effort to ensure that a record is made in those cases where a person has requested a court reporter. This is such a case.

In the event, that Appellant is again convicted of this offense, and if she decides to appeal the case, it will then be her obligation to ensure that the court reporter's notes are transcribed and presented to this court for review at her expense.

SIGNED this 19 day of Nov, 2004.

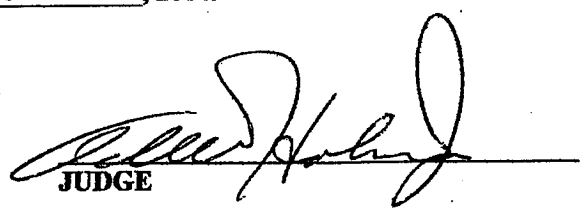


JUDGE

JUDGMENT

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 these cases be reversed and remanded to the Trial Court for re-trial.

SIGNED this 19 day of Nov, 2004.



JUDGE