

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

JEFFREY ROTH, Appellant

vs.

NO: 87-MCA-1792

STATE OF TEXAS, Appellee

O P I N I O N

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

Appellant was represented at the trial court by an attorney who advises this court that he did not waive the presence of a court reporter nor the preparation of a statement of facts in these proceedings. Since Appellant's attack is on the sufficiency of the evidence, before this court is authorized to review such point of error, a statement of facts is required for such a review.

However, this Court has held that an Appellant is entitled to a new trial if they are unable to obtain a statement facts through no fault of their own. Ibanez vs. State, 83-MCA-456 (MUN. CT. APP.), Feinberg vs. State, 85-MCA-1297 (MUN. CT. APP.).

Further, circumstances in cases in which statements of facts are not filed should be viewed from Appellant's standpoint and any reasonable doubt is resolved in favor of the Appellant Timmons vs. State 586 S.W. 2nd 509, 586 S.W. 2nd 509 (Tex. Cr. App. - 1979), Ellis vs. State 633 S.W. 2nd 340 (Tex. App. - 1982).

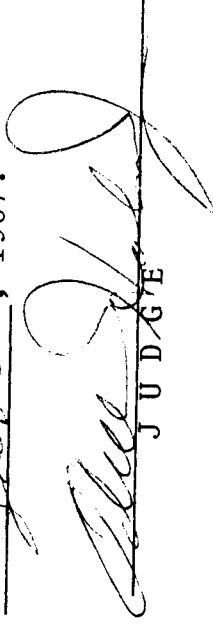
This Court also wants to take the opportunity afforded by this case to forewarn those involved in the trial of these cases to make every effort to insure that persons appearing before the municipal court are afforded the opportunity to request a court reporter and to have a court reporter available as may be necessary to insure the proper transcription of the record before the trial court.

Although this court has previously held that the burden is on the Appellant to request a court reporter and to insure that the statement of facts is prepared for any Appeal purposes, this particular problem continues to occur, and this court is closer to reassessing this situation in the future, unless the situation changes substantially. Present procedures do not seem to be adequate to apprise persons of their rights to have a court reporter present to take the testimony down, nor, to some extent, to advise persons of the consequences of their failure to request a court reporter if they anticipate any appeal from an adverse ruling in the trial court.

It is this court's suggestion that the trial judges and the prosecutors carefully review this area and determine if corrective measures can be implemented before this court has to mandate such changes by court ruling.

In this particular case, finding that the Appellant has been unable to obtain a statement of facts through no fault of his own, the judgment of the trial court is hereby reversed and remanded for re-trial.

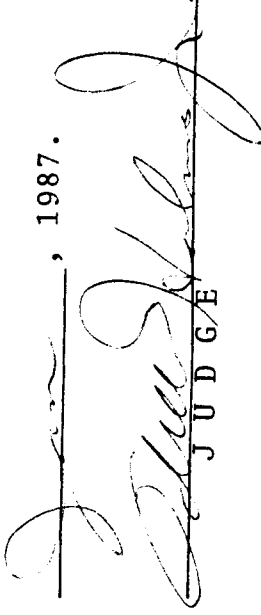
Signed this 29 day of June, 1987.


J U D G E

J U D G M E N T

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

Signed this 29 day of June, 1987.


J U D G E