

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

CLIFTON CLARK, Appellant

vs.

No. 89-MCA-1960

STATE OF TEXAS, Appellee

OPINION

Appellant appeals his conviction in Municipal Court for failure to control speed thereby causing an accident.

Although Appellant attacks the sufficiency of the evidence, no statement of facts was requested by the Appellant, and none appears in the record before this court. This court has repeatedly held that without a statement of facts, it is not in the position to review questions relating to the sufficiency of the evidence. Paoli vs. State, 83-MCA-98 (Mun. Ct. App.). Further, this court is required by law to review the findings of the Trial Court in the light most favorable to the verdict, and therefore, even had a statement of facts been included in the record, the result of this appeal may well have been the same.

Appellant also contends in his brief and at oral argument, that he was not given an opportunity to testify at trial other than to offer an exhibit, at which time, the Trial Court advised him that she would take the matter under advisement and let him know her decision. Although denying

a person the opportunity to fully testify before the Trial Court would be improper, and in this court's experience, highly irregular, nothing in the record before this court substantiates Appellant's claim, and therefore cannot be addressed.

A review of Appellant's brief and the information that is contained in the record before this court clearly reflects that this case was a very difficult one for decision by the Trial Court and that the Trial Court's decision represented a very close call at best under the circumstances. However, that is exactly the function of the Trial Court to weigh the evidence and judge the credibility of the witnesses who appear before her, and this court is not in a position to do so on Appeal, and certainly not, when the evidence presented to that Trial Court is not preserved in a statement of facts for appeal.

Appellant's evidentiary contention on appeal, that he did not strike the van door, but on the contrary, the van door struck his vehicle as he drove by it a reasonable rate of speed is persuasive, but this court cannot substitute its judgment for that of the Trial Court in such a case.

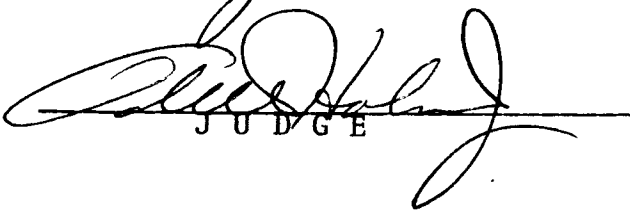
Additionally, Appellant contends that he was not speeding at the time of the accident. The instant charge does not require a finding that a person was speeding, but merely that under the circumstances then existing, that the person failed to control their speed adequately in order to

avoid a collision. Differing conditions of the roadway, congested traffic, or other similar factors may justify the issuance of a citation for failure to control speed, when excessive speed itself is not a factor.

Appellant's additional contention that the officer issued the citation based on hearsay information provided by other witnesses at the scene who did not testify at trial, likewise, cannot be considered without a statement of facts since questions relating to the admissibility of evidence cannot be considered on appeal without a statement of facts. Paoli, supra.

Having found no reversible error, the judgment of the trial court is affirmed.

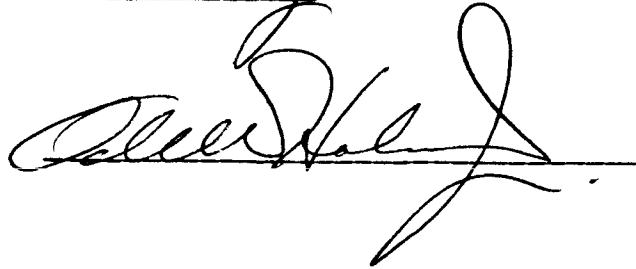
Signed this 22 day of May, 1989.


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 22 day of May, 1989.

A handwritten signature in cursive script, written over a horizontal line. The signature is highly stylized and appears to be the name of a judge.