

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

DANIEL LOPEZ, Appellant

NO. 83-MCA-101

Appeal from El Paso  
Municipal Court

STATE OF TEXAS, Appellee

O P I N I O N

Appellant's first point of error indicates that the complaint in this case was improperly filed since it was not filed both by the City Attorney and by the Court Clerk. Section 10 of Article 1200ee-1 does not require that both parties file the complaint, and Appellant's point of error is overruled.

Many of Appellant's points of error attack the constitutionality of 1200ee-1, which the County Courts at Law have addressed in numerous decisions prior to this Court assuming responsibility therefor, and in each instance, have upheld the constitutionality of the act. This Court is not inclined to do otherwise, and all of Appellant's points of error relating to the unconstitutionality of the statute or the Municipal Court Rules of Procedure implementing such act are overruled.

The record reflects that the complaint in this case was properly filed and endorsed by the City Clerk, and there was no defect in the filing of the complaint. Further, the lack of an endorsement by the City Clerk would not be fatal to the ministerial duty of filing the complaint, since the endorsement only represents some evidence that the complaint was filed. Delivery to the Clerk constitutes a filing under the law. Brogdon vs. State, 140 SW 352 (1911). Compton vs. Morton County, 247 SW2d 585 (Tex.Civ.App. - El Paso, 1952) Ex Parte Leifeste 77 SW2d 675 (1934) and Duiches v. Ellis, 199 SW2d 694 (Tex.Civ.App. - Austin, 1947). Appellant's

point of error that the complaint was not properly filed is overruled.

In a prosecution in Municipal Court, no information need be filed, but only a complaint. Ex Parte Greenwood, 307 SW2d 586 (1957) Article 1200ee-1, V.A.T.S.

Appellant also raises the authority of the City Attorney to represent the State in a prosecution in this case. There is no question that the City Attorney can prosecute a case in Municipal Courts of the City of El Paso involving a violation of any city ordinance which the instant case involves and such assignment of error is overruled. Favela vs. State, (No. 08-82-00170-CR, El Paso Court of Appeals).

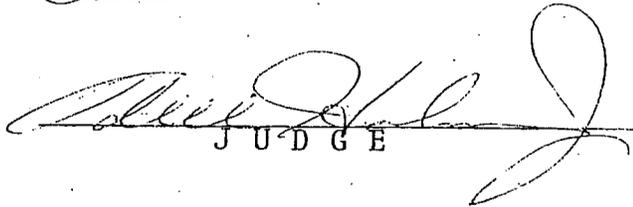
Additionally, in spite of the dicta in Favela relating to the authority of the City Attorney to represent the State in offenses in Municipal Court other than city ordinances, and perhaps to the same extent that Favela is dicta, on such point, this Court believes that the City Attorney is authorized to prosecute any offenses, whether state law or city ordinance, that fall within the jurisdictional limits of the Municipal Court, since nothing in the legislative scheme of things prohibits the County Attorney from representing the state in such cases involving state penal laws in which the County Attorney may wish to participate, and therefore no constitutional conflict arises.

Jordan v. Crudgington, 231 SW2d, 641 (Tex.Sup.Ct. 1950), Ex Parte Spring, 568 SW2d, 487 (Tex.Crim.App. 1978).

Appellant also raises the insufficiency of the evidence to support the conviction, but no statement of facts is presented to this Court, and without the statement of facts, this Court cannot address such assignment of error, and presumes that the Trial Court's judgment is supported by sufficient evidence.

The judgment of the Trial Court is affirmed.

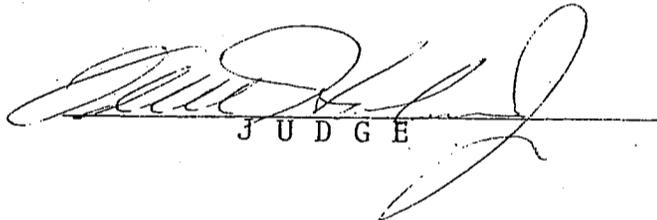
Dated this 12 day of Dec, 1983.

  
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, 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 this behalf expended, and that this decision be certified below for observance.

Dated this 12 day of Dec, 1983.

  
J U D G E