IN THE MUNICIPAL COURT OF APPEALS

OF THE CITY OF EL PASO, TEXAS

LAURA BRODKA, Appellant

vs. NO. 83-MCA-1149

STATE OF TEXAS, Appellee

O P I N I O N

This Court previously rendered an opinion on May 15, 1984 addressing Appellant's points of error. Since that time, Appellant has contacted the Court and requested a rehearing in the matter and an opportunity to supplement the record. At this time, this Court is reviewing the record in this case with the benefit of a statement of facts which was in fact requested and prepared in this case, and without which this Court rendered an opinion previously.

The Appellant has handled this appeal on a pro se basis, and this Court has attempted to afford her every opportunity to present her points of error, and she has done so admirably. Appellant's principal point of error relates to the sufficiency of the evidence, and this Court will not reiterate the rules applicable to a review of such point of error as set out in its original opinion.

However, now that this Court has had an opportunity to review the statement of facts relating to the evidence presented in this case and applying the rules stated in the original opinion, this Court seriously questions whether the evidence was sufficient to establish that she was in fact speeding. Factually, the citation was issued to her as a result of a "pacing" of her car by the police officer's vehicle. However, on two occasions, when asked how long that pace was, the police officer did not respond, and finally, relied on his customary habits in that respect.

There was also testimony introduced that the officer was accelerating rapidly in order to catch Appellant's vehicle before the pace could even be commenced. Certainly, pacing of one vehicle by another in order to establish the speed must, of necessity, occur over some specific and given distance in order to justify the fact that the vehicles are travelling at the same speed over the same distance. The record in this particular case seems deficient in that particular respect.

Although not raised by Appellant, the statement of facts also reflects that the pacing of the vehicle occurred in the 6700 block of North Mesa while the complaint in this case alleges that the offense occurred in the 6500 block of North Mesa Street, and without regard to the sufficiency of the evidence presented, constitutes a fatal variance between the allegations of the complaint and proof.

The Judgment of the Trial Court is reversed and rendered in Appellant's favor.

Signed this 21 day of June, 1984.

JUDGE

JUDGMENT

This case came on to be heard, the same being considered, because it is the opinion of this Court that there was error in the Judgment, it is ORDERED, ADJUDGED and DECREED by the Court that the Judgment be in all things reversed and rendered in Appellant's favor, and judgment of acquittal be entered in his behalf.

Signed this 21 day of June, 1984.

JUDGE