IN THE MUNICIPAL COURT OF APPEALS

OF THE CITY OF EL PASO, TEXAS

LAURE HILL, Appellant

v. 83-MCA-23

STATE OF TEXAS, Appellee

OPINION

Appellant was convicted in Municipal Court and appeals to this Court on the grounds addressed below.

The first point of error is that the enabling statute, Article 1200ee-1, V.A.T.C.S. is unconstitutional because it changes the rules of evidence for the City of El Paso and not for the County of El Paso. This Court holds that Article 1200ee-1, V.A.T.C.S. represents a valid exercise by the legislature of its lawmaking power as authorized by the Texas Constitution, Article V, Section 1, which provides, "The legislature may establish such other Courts as it may deem necessary and prescribe the jurisdiction and organization thereof". The Houston Municipal Courts of Record have been held to be constitutional, and the Court recognized that the legislature had plenary power in the creation of such inferior courts as may be necessary. Ex Parte Spring, 586 S.W.2d 484 (Tex.Crim.App., 1978). Assignment of Error Number One is overruled.

Next, Appellant contends that the enabling statute is unconstitutional because it provides that a City Attorney shall represent the State. This Court has held that as long as the County Attorney is not precluded from representing the City in prosecutions in Municipal Court, it is free to prosecute such cases as he elects, and there is no constitutional infirmity to such provision. Point of Error Number

Two is overruled. Favela v. State, 651 S.W.2d 936 (Tex.Civ.App. - El Paso 1983, Writ for Discretionary Review Pending). Muller v. State, 83-MCA-97 (Mun.Ct.App. - 1983) This point of error is particulary without merit since in the instant case, the prosecution is pursuant to a City Ordinance, and even despite the dicta in Favela, infra, that Court recognized there is no constitutional problem involved in the City Attorney representing the City in violations arising under city ordinance rather than state statute. Moseley v. State of Texas, 83-MCA-102 (Mun.Ct.App. - 1983). Rogers v. State of Texas, 83-MCA-264 (Mun.Ct.App. - 1983).

Appellant next contends that her right to a jury trial has been restricted because of the requirement that the Defendant be present at such jury trial. The record in this case reflects that Appellant waived a jury trial, and therefore has no standing to challenge the rules of procedures concerning jury trials in the Municipal Courts of El Paso, Texas. The constitutional attack may not be based on an apprehension of future injury. Bush v. Texas, 372 U.S. 586, 83 S.Ct. 922, 9 L.Ed.2d 958 (1963). Ex Parte Spring 586 S.W.2d 484 (Tx.Crim.App. - 1983).

However, despite this Court's finding that Appellant does not have standing to attack such procedure because of his waiver of a jury trial by counsel, this Court finds that the requirement of the Defendant's presence at trial is consistent with the rights accorded and accused generally under the Texas Code of Criminal Procedure, particularly Article 3304 providing that a Defendant may appear by counsel with the consent of the State's attorney. If such consent is not forthcoming, then the Court can require the Defendant to be present at his trial before a jury. Also, pursuant to Article 28.01 of the Texas Code of Criminal Procedure, the

Court, in setting pretrial hearings, can require the Defendant and his attorney to be present, and such is the practice in many of the Courts in this county. Appellant's point of error is overruled.

Lastly, Appellant complains that the Complaint does not commence with the constitutionally required salutation, but rather starts with "In the Municipal Court of El Paso, Texas". Reference to the complaint in this file indicates that such is not the case. To begin with, an Appellant's reliance on Jones v. State, 622 S.W.2d 109 (Tex.Crim.App. 1981), where there was a complete absence of the constitutionally required salutation is not controlling of the disposition of this matter. The point is overruled.

The Judgment of the Trial Court is affirmed.

Dated this 12 day of March, 1984.

JUDGE

JUDGMENT

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

Dated this 12 day of March, 1984.

JUDGE