IN THE MUNICIPAL COURT OF APPEALS

OF THE CITY OF EL PASO, TEXAS

DANIEL DILLON

vs. NO. 84-MCA-1155

STATE OF TEXAS, Appellee

O P I N I O N

Most of Appellant's points of error have been addressed by this Court and overruled. Hill v. State, 83-MCA-23.

However, at oral argument, Appellant primarily relied on the fact that Appellant had been previously convicted of driving while intoxicated, and thus, double jeopardy attached which precluded prosecution on the other citations issued at the same time and growing out of the same transaction. Those citations were for causing an accident and leaving the scene of an accident.

Appellant creatively utilizes recent cases involving the Speedy Trial Act as the foundation of his argument, and that is pursuant to Article 32A.02 of the Code of the Criminal Procedure which is known as the Speedy Trial Act. The provisions of that act provide that if a criminal charge is dismissed because of the State's failure to comply with the Speedy Trial Act, that all other charges "arising out of the same transaction" are also barred. Although the Speedy Trial Act is not involved in this particular prosecution, Appellant attempts to use reverse psychology in applying the above law to his fact situation, and thus hopes that the prosecutions for the other offenses are barred. See Kalish v. State, 652 SW2d 595 (Ct.Cr.App. - 1983).

Such bar to further prosecution is found in Article in 28.061 which provides for a discharge for delay, and specifically provides that if a Motion to Set Aside . . . a complaint for failure to provide a speedy trial . . . is

sustained, the Court shall discharge the Defendant. A discharge . . . is a bar to any further prosecution for the offense discharged or for any other offense arising out of the same transaction.

Since none of the offenses for which Appellant was cited and arrested were dismissed for lack of a speedy trial, the above provisions are inapplicable.

Also, Appellant's double jeopardy argument falls because the elements of the offenses for which he was convicted in Municipal Court are different than those necessary to sustain a conviction for D.W.I., and therefore do not constitute the same offense. The courts continue to recognize that an offense which requires different proof does not constitute the "same case" even though they arise from the "same transaction". Kalish, supra; Roseburv v. State, 659 SW2d 655 (Tex.Cr.App. - 1983).

The offenses in this case are not identical offenses, but are rather separate and distinct, and a conviction for driving while intoxicated does not bar prosecution for the other related offenses even though they occurred contemporaneously with the other offense. Gehrke v. State, 507 SW2d 551 (Tex.Cr.App. - 1974); McMillan v. State, 468 SW2d 444 (Tex.Cr.App. - 1971).

The judgment of the Trial Court is affirmed.

Signed this 23 day of July, 1984.

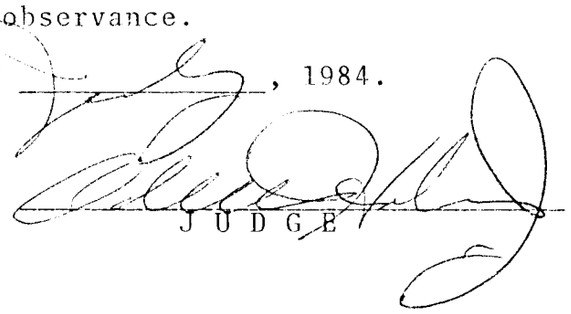
JUDGE

JUDGMENT

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 23 day of _____, 1984.



JUDGE