IN THE MUNICIPAL COURT OF APPEALS

OF THE CITY OF EL PASO, TEXAS

ALICIA MANCINAS, Appellant

vs. NO. 84-MCA-1156

STATE OF TEXAS, Appellee

OPINION

Appellant appeals her conviction from Municipal Court for failure to maintain financial responsibility as required by law. The parties filed briefs in this case, the Court has heard oral argument, and a statement of facts is contained in this record.

The record reflects that the police officer in this case did not have an independent recollection of the incident, and was unable to refresh his memory after viewing the ticket, and the ticket itself was not introduced in evidence as a memorandum of past recollection recorded.

The City's position in this case is that because Appellant did not timely object to the offering of the evidence in the case, nor take the witness on voir doire, that the error was not properly preserved.

If a witness cannot remember the facts surrounding the issuance of a citation after viewing his memorandum in respect thereto, which he has a right to do, then there is no evidence to sustain a conviction in the record unless the prosecutor avails himself of the rules of evidence applicable to the introduction of the memorandum as past recollection recorded. Failure to do that leaves the record void of any evidence to sustain a conviction. In this case, neither was done, and the Trial Court erred in not granting Appellant's Motion to Dismiss on such basis.

Further, the fact that the Appellant did not develop the deficiencies in the police officer's testimony until cross-

examination in no waives his right to question the qualifications and competency of the witness to testify or his ability to recollect the events surrounding the issuance of the citation. Such is the exact purpose of cross-examination, and once it became evident that the officer could not recall or refresh his memory from his ticket, Appellant moved to have the matter dismissed. Such motion was timely and directed the Court's attention to the deficiency in the record properly. See Texas Practice, Law of Evidence, Ray, Chapter 10, Section 531 et seq.

The Judgment of the Trial Court is reversed and rendered.

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