IN THE MUNICIPAL COURT OF APPEALS

OF THE CITY OF EL PASO, TEXAS

CHARLES MARQUEZ, Appellant

v. 84-MCA-1186

STATE OF TEXAS, Appellee

OPINION

Appellant appeals on a pro se basis his conviction in Municipal Court for failure to comply with the railroad crossing signals. He contends that he was taking medicine to his grandmother, and admits in his letter brief to this Court that he did in fact commit the offense, but only under emergency circumstances and in a careful manner. He also contends that he is a careful driver and that is his very first offense.

Regrettably, none of Appellant's contentions are recognized defenses in this type of case, nor is there any statement of facts requested or in the record supporting those contentions. This Court construes Appellant's contentions as attacking the sufficiency of the evidence to support the conviction, but without a statement of facts, nothing is presented for review.

In passing, this Court continues to observe that particularly in pro se appeals, that there is a misconception about the present appellate process, particularly on the part of laymen. The purpose of an appeal under present law is to determine whether or not there has been some error of law committed by the Trial Court in rendering its decision, and is not an opportunity to have the case reheard at the appellate level. The Appellate Court does not rehear the evidence, and cannot substitute its judgment for the Trial Court even though it might be inclined to do so in any given case.

The test for reviewing challenges based on the sufficiency of the evidence requires the Appellate Court to consider the evidence in a light most favorable to the jury's or Judge's verdict. Thomas v. State, 605 S.W.2d, 290 (Ct.Crim.App. - 1980). That test was applicable whether the case is one of direct or circumstancial evidence. Vaughn v. State, 607 S.W.2d 914 (Ct.Crim.App. - 1980). The Appellate Court, although sometimes tempted to do so, cannot substitute its judgment for that of the Trial Judge.

As a trier of fact, the Judge or jury judges the credibility of the witnesses and the weight to be given to their testimony and each is free to accept or reject the testimony of any witness. Limuel v. State, 568 SW2d 309 (Ct.Crim.App.).

If a record is not requested as required by the law, Article 1200ee-2, Section 2.07(b), the law is clear that this Court cannot review the sufficiency of the evidence in any particular case. Just as in this case, there is no way for this Court to evaluate the evidence presented on behalf of the State, and must presume that the Trial Court performed its function in judging the credibility of the witnesses, and weighing the evidence as a fact finder, and therefore upholds its decision in this case.

Although this Court is aware of the risks of self-representation, and has made every effort to accomodate persons in perfecting their appeal, this Court is still bound to follow the law in rendering its decision.

The Judgment of the Trial Court is affirmed.

Signed this 1st day of Nov, 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 12th day of [illegible], 1984.

JUDGE