IN THE MUNICIPAL COURT OF APPEALS

OF THE CITY OF EL PASO, TEXAS

GARLAND SCOTT, Appellant

vs. NO. 85-MCA-1290

STATE OF TEXAS, Appellee

O P I N I O N

Appellant appeals his conviction in Municipal Court for the offense of speeding.

Initially, Appellant attacks the complaint in this case alleging that it is fundamentally defective for the following reasons which this Court will address in turn.

Appellant's first contention is that the complaint is fundamentally defective because it fails to allege that he was operating a motor vehicle upon a public highway at a greater rate of speed than was reasonably prudent under the conditions then existing with regard to actual, potential, and special hazards. The complaint in this case only alleged that he was operating a motor vehicle at a greater rate than was reasonable and prudent under the circumstances then existing.

Appellant is correct that if a complaint is fundamentally defective, the question can be raised for the first time on appeal. American Plant Food Corp. v. State, 508 S.W.2d 598 (Tex.Cr.App. - 1974); Hamrah v. State, 83-MCA-279 (Mun.Ct.App. - 1984). By the same token, if the complaint is not fundamentally defective, and the Appellant only questions whether sufficient notice was given to him adequate to prepare his defense, a Motion to Quash is a prerequisite to raising such a complaint on appeal. American Plant Food Corp. and Hamrah, infra. In this case, no Motion to Quash was filed.

This Court has reviewed the complaint and the requirements of Article 6701D, Section 166(a) and finds that the

complaint in this case alleged sufficient facts to give jurisdiction to the Trial Court, and is not fundamentally defective by not alleging the additional allegations required under Section 166(b). The point of error is overruled.

Next, Appellant contends that the complaint is fatally defective because it does not conclude with the following: "against the peace and dignity of the State of Texas" as required by Article 1200ee-2 of the Tex. Rev. Civ. Stat. Ann. Both the Texas Constitution, and Article 1.23, Article 21.02, and Article 21.21 of the Code of Criminal Procedure provide that the charging document shall conclude with the language: "against the peace and dignity of the State". In this case, there is a conflict between those requirements and that of the Municipal Court of Records requirement, but this Court concludes that the additional language "of Texas" as required by the Municipal Courts of Record statute is immaterial to the complaint itself, and constitutes a matter of form rather than substance. The complaint is not fundamentally defective for such reason. Ex parte Cooper, 589 S.W.2d 130 (Tex.Cr.App. - 1979). Since the complaint conforms to the requirements of law, and the additional wording only constitutes a minor variation of such requirements, the point is overruled.

Appellant next contends that the complaint itself contained a statement showing that the offense charged is not barred by the statute of limitations. This Court has previously held that an affirmative statement respecting that matter is not required. Bayer v. State, 85-MCA-1237 (Mun. Ct.App. - 1985).

Appellant's last point of error challenges the sufficiency of the evidence, but no statement of facts was requested, and none appears of record. In such case, this Court cannot review such point of error, and nothing is presented for review.

Although Appellant's able counsel, in a well-prepared brief, has outlined the evidence and attached photographs supporting Appellant's evidentiary position. This Court finds the argument advanced persuasive, but nonetheless cannot substitute its judgment for that of the Trial Court in judging the credibility of the witnesses and the weight to be given to their testimony. Irvin v. State, 84-MCA-1162, (Mun.Ct.App. - 1984).

Therefore, finding no reversible error, the Judgment of the Trial Court is affirmed.

Signed this 8 day of July, 1985.

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 8 day of July, 1985.

JUDGE