IN THE MUNICIPAL COURT OF APPEALS

OF THE CITY OF EL PASO, TEXAS

JENNIFER M. MAXEY, Appellant

vs. NO: 86-MCA-1782

STATE OF TEXAS, Appellee

O P I N I O N

ON MOTION FOR REHEARING

This court previously affirmed Appellant's conviction in Municipal Court for a red light violation on January 23, 1987. The primary basis of that affirmance was the fact that the Appellant attacked the sufficiency of the evidence, but no statement of facts appeared in the record before the court, and therefore, the question could not be addressed.

In an effectively worded motion for rehearing, Appellant complains of the fact that the present system of informing persons who appear in Municipal Court of the rights relating to obtaining a statement of facts and the consequences of failure to do so is unfair. Appellant goes further in making some reasonable suggestions for improving that system, and because of their merit, a copy of the Motion for Rehearing is attached to this Opinion for review by the trial judges. This court is not suggesting that all or any of those suggestions be implemented, but basically, to make the trial judges aware of the continued inequity that is inherent in the system at the present time. As this court recently held in Roth vs. State, 87-MCA-1792 (Mun. Ct. App. - 1987) this court will be inclined to grant new trials where it believes a person is prejudiced to their detriment by not being fully informed about their rights relating to our court of records system and the consequences on appeal of not having a statement of facts included in the record when their legal rights are adversely affected by such omission.

This court has been apprised of the fact that some trial judges have begun to include in their introductory remarks adequate warnings and advice concerning this area of procedural requirements applicable to the trial of their cases, and such emphasis on this subject matter should be further encouraged. Those judges who do not address this issue should consider doing so. Perhaps the material docket entry which is included in the Appellant record, a separate certificate of some type, or the judgment itself should reflect that this information was disseminated to those appearing before Municipal Court. Of course, the availability of a court reporter at all sessions of Municipal Court is preferable to the present situation of scheduling different court reporter days depending on an initial request made by a defendant at the time of setting his ticket for trial, which, coincidently, is when he has no information available to him to make an intelligent choice about the need for a court reporter at his trial. Some type of advisory notice should be given to every person who requests a setting of their traffic ticket concerning their rights to have a court reporter present and the consequences of their failure to do so, if an appeal ensues. In such notice, the requirements of the Municipal Court of Records Act and the law relating to the persons obligation to request a court reporter and to obtain a transcription of the court reporter's notes at their own expense, unless indigent, should also be fully explained to them. Further, the fact that a statement of facts does not necessarily mean that an appeal will be successful, but rather only, if the question on appeal relates to the sufficiency of the evidence, that the Appellate court can give due consideration to such point of error. The present situation that merely has a notice posted at the court clerk's arrangement window is proving to be unsatisfactory. Again this court encourages the trial judges to review this

particular area and implement such changes as they deem necessary and appropriate to improve the system and insure persons who appear before their court can exercise their rights intelligently, and eventually, receive a meaningful appeal.

Believing that the ends of justice will best be served by remanding this case for retrial, it is so ordered.

Signed this 18 day of July, 1987.

JUDGE

JUDGMENT

The Judgment of The Trial Court is hereby reversed and the case is remanded for new trial.

Signed this 18 day of July, 1987.

JUDGE

APPLICATION FOR

MOTION FOR REHEARING

FOR

JENNIFER MCDONALD MAXEY

FOR THE

MUNICIPAL COURT OF APPEALS

CASE NUMBER 86-MCA-1782

OF THE

CITY OF EL PASO, TEXAS

ORIGINALLY APPEALED FROM

TRAFFIC TRIAL COURT

CASE NUMBER 10-886-736

RECEIVED

FEB 4 1987

City of El Paso
City Clerk's Office

Traffic Court is designed for defendants to represent themselves. In the majority of cases, it is not cost-effective to hire a lawyer. The Municipal Court System realizes this fact by not providing gratis counsel for indigent defendants. With this in mind, the accused offender is expected to defend himself/herself without prior education or knowledge of court proceedings.

In the traffic court setting, lay persons are at a distinct and definite disadvantage. I can appreciate that a judge must remain impartial and cannot be an advocate for either side. And, as previously stated, Traffic Court is an unique situation. Providing vital procedural information should not be considered a biased act. When it is withheld in this setting, it is at the defendant's expense. The Judge automatically and immediately becomes partial with the more knowledgeable prosecution. This is not a fair trial.

On November 18, 1986, during my first appearance in Traffic Court for the alleged violation of failure to stop at a red light, I was not fully advised of my rights. The Trial Court Judge stated that defendants had the option of requesting transcripts, yet, neglected to inform me that I would need a transcript for any appeal I might choose to pursue.

Based on these facts, I respectfully request a motion for rehearing. Thank you for your consideration.

Jennifer McDonald Maxey

Jennifer McDonald Maxey

The following are suggestions for making the traffic court situation fair and just for accused offenders representing themselves.

1) Include, with the case setting notice, an information sheet on the elementary points of traffic court proceedings. i.e. transcript requests, defensive driving options, witnesses, courtroom etiquette, etc.

2) Have the court reporter transcribe all cases introduced.

3) In the Judge's opening statement, inform defendants fully of their rights, options, and court proceedings.