

**IN THE MUNICIPAL COURT OF APPEALS
OF THE CITY OF EL PASO, TEXAS**

EMILIA MAREZ

Appellant,

v.

STATE OF TEXAS

Appellee.

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**No. 15-MCA-3864
Ticket No. 44013341**

OPINION

Appellant appeals her conviction in Municipal Court for failing to obtain a permit contrary to Section 18.02.105.1 of the El Paso City Code, as amended. A fine of \$2,000.00 was assessed but Appellant was given the opportunity to pay a \$50.00 Special Expense Fee within ten (10) days or the Court's finding of guilt and the assessment of the \$2,000.00 fine would be imposed.

Unfortunately, Appellant failed to pay the Special Expense Fee in the time allotted and contends that she was under the impression that the \$50.00 fine would be billed to her and did not realize that she needed to pay it as ordered by the Court.

In her brief, Appellant admits that they had placed the shade at her home, but removed it immediately but evidently, not until after they had gone to court. This Court interprets that as an admission of the commission of the offense.

There is no Reporter's Record before this Court that shows what evidence was actually introduced. Suffice it to say, the Trial Judge is the fact-finder and must resolve conflicts in the evidence and it was for the Trial Judge, and not this Court, to make the crucial factual determination as to whether or not Appellant was an owner of this property and thus responsible for the zoning violation charged. Without a Reporter's Record, this Court has no way to determine the issue nor does it have legal authority to do so.

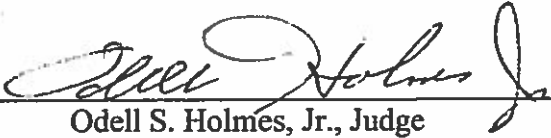
It was for the Trial Judge to make that determination and this Court cannot second-guess that judgment.

Despite the above, the more critical issue that faces this Court is Appellant's request that the fine be reconsidered because she and her husband, who incidently was also charged with the same offense and also fined the same way, are over sixty years of age, that she is 95% disabled and their combined monthly income is less than \$1,100.00. Clearly, Appellant has raised the issue of indigence and whether she is financially able to pay the fine assessed. This Court does not have the authority to address that issue on appeal, but how to handle their claim of indigence and to determine if Appellant is indigent is for the Trial Court to make. This Court is confident that the Trial Court is well aware of what options it can consider if it determines that Appellant is indigent including paying the fine in installments as provided by Article 45.041, Tx. Code Crim, Pro., performing community service pursuant to Article 45.049, Tx. Code Crim. Pro., or whether in this case it is appropriate to waive the payment of fine and cost for an indigent defendant pursuant to Article 45.0491 if it finds that the imposition of the fine and court costs would impose an undue hardship on Appellant. The point is, however, it is for the Trial Court to determine the issue of indigence and to determine what options it feels are available to it recognizing that fact.

Appellant is well advised to take a copy of this Court's Opinion to the Municipal Court Clerk's Office and request that an indigence hearing beheld before the Court so these matters can be addressed. This Court is also sending a copy of this Opinion to the presiding Judge of Municipal Courts so that he may be well aware of the issue of indigence that has been raised in this case, and to address it as he feels appropriate.

Subject to the Trial Court's determination of indigence, this Court affirms the decision of the Trial Court.

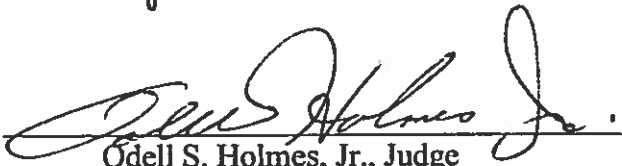
SIGNED this 24th day of February, 2016.


Odell S. Holmes, Jr., Judge
El Paso Municipal Court of Appeals

JUDGEMENT

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 case is affirmed.

SIGNED this 24th day of February, 2016.


Odell S. Holmes, Jr., Judge
El Paso Municipal Court of Appeals