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

PRISCILLA D. RAMIREZ	§	
Appellant,	§	**No. 10-MCA-3386**
v.	§	**Ticket #: 33361115**
STATE OF TEXAS	§	
Appellee.	§	

OPINION

The City of El Paso appeals the decision of the Trial Court finding Appellant not guilty of the offense of operating a motor vehicle with a detectable amount of alcohol and being under the age of 21 years as proscribed by Section 106.041 (a), Alcoholic Beverage Code. The Court, sua sponte, determined that the prosecution was barred by double jeopardy and entered a "not guilty" finding.

The State is entitled to Appeal an Order of a Court in a criminal case if the Order dismisses a complaint based on a claim of former jeopardy. Article 44.01 (4), Tex. Crim. Proc.

The file reflects that on March 8, 2010, the Court found the Defendant not guilty on the basis of double jeopardy. The basis of that finding was previously, on January 27, 2010, the case had been called for Trial. The Court's Docket Sheet for that date reflects that certain entries which suggest that Appellant had been found not guilty were scratched out. Also what appears to have been the initials of the presiding Judge in that Trial were also scratched out. Further, a notation that the case was to be reset appears on that Docket Sheet. However, a computer printout from the Municipal Court Clerk's Office shows that on that date, the Appellant was found not guilty in Court. No judgment

was entered by the Court relating to the proceedings that occurred before it on January 27, 2010. The computer printout is not a judicial determination of what occurred.

The City contends that the Docket Sheet, in absence of a judgment, clearly reflects that the case did not proceed to Trial on the merits and therefore double jeopardy did not attach, and that the proceedings that were held on March 8, 2010, represented a resetting of the original case.

The Texas Constitution, Article 1, Section 14 which is incorporated in Article 1.10, Code of Criminal Procedure, provides that no person, for the same offense shall be twice put in jeopardy of life or liberty, the so called, Double Jeopardy Clause. That right attaches when a person pleads not guilty to the charging instrument in a nonjury trial. State v. Torres, 805 S.W. 2nd 418, (Tex. Crim. App., 1991). State v. Johnson, 794 S.W. 2nd 557, (Tex. App., Dallas, 1990).

From the case law cited above, it is clear that if a plea of not guilty had been entered before the Trial Judge, then Appellant's rights under the Double Jeopardy Clause would have attached, and any subsequent effort, as reflected on the Docket Sheet to reset the case, would not prevent that right from attaching, and the prosecution would be barred. By the same token, had no plea been entered before those attempts at obliteration were made, then the case can proceed to trial. Because this Court cannot determine the sequence of those events, this case is hereby reversed and remanded for further consideration.

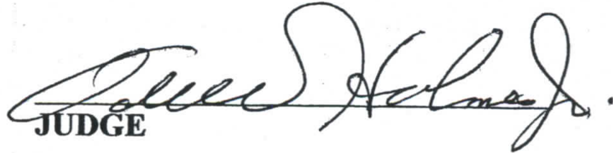
SIGNED this 16th day of September, 2010.

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 case be reversed and remanded to the Trial Court for re-trial.

SIGNED this 16th day of September, 2010.



JUDGE