IN THE MUNICIPAL COURT OF APPEALS

OF THE CITY OF EL PASO, TEXAS

DANIEL HOLGUIN GONZALEZ

Appellant

vs.

No. 89-MCA-2024
89-MCA-2025

STATE OF TEXAS,

Appellee

OPINION

Appellant appeals his conviction in Municipal Court for the offenses of assault and disorderly conduct.

A review of the Statement of Facts in this case reveals that Appellant and his wife were returning from Juarez, after the wife had become very ill. In fact, Appellant approached the bridge where the custom officers involved were working, honking his horn and at a fast rate of speed, passing other vehicles that were in line because of the emergency nature of the situation. Emergency medical personnel were called to assist the wife, but regrettably, in the meantime Appellant's conduct, whether justified or not under these circumstances, resulted in the present charges being filed against him. Appellant does not contend on appeal that these circumstances justify his conduct or otherwise raise any defense as to them.

When they reached the bridge, the evidence before the Trial Court supported the State's position that Appellant

exited his vehicle, pushed the customs officer on at least one, but probably two different occasions, resulting in the assault charge, and subsequently called another customs officer a "pendejo" which was translated as calling one an idiot, jack ass, or son-of-a-bitch, but clearly used in a vulgar and profane context.

Appellant contends that the evidence is insufficient to sustain a conviction for disorderly conduct because there was no evidence that the word or language used tended to incite an immediate breach of peace as required by Section 42.01(a)(1) of the Texas Penal Code. Clearly, the term "breach of the peace" requires that the act or conduct complained of incite one to violence or tend to provoke or excite others to violence, and that the language used must constitute what has been defined as "fighting words". Estes vs. State, 660 SW2d 873 (Tex. App. - Ft. Worth - 1983), Chaplinsky vs. New Hampshire, 315 U.S. 568, 62 S.Ct. 766, 86 L.Ed. 1031 (1942). Actual or threatened violence is an essential element of a breach of the peace. Woods vs. State, 213 SW2d 685 (1948).

This Court considers the use of such language, even under those trying circumstances to be sufficient to establish the offense of disorderly conduct. Such language when directed to an average person would tend to incite an immediate breach of the peace, and the record before this Court clearly reflects that the person to whom such language was directed was clearly upset by it. See also Ledlow vs.

State, 86-MCA-1531 (Mun. Ct. App. - 1986). Appellant's first point of error is overruled.

Appellant next contends that the evidence is insufficient because the State failed to prove that Appellant had the necessary intent and knowledge to commit these offenses as alleged in the complaints. Obviously, proof of the mental culpability required to commit these offenses is essential to sustain the convictions. However, it is difficult, if not impossible, to prove such subjective elements, and the law has recognized that difficulty, and allows that those elements be proved inferentially by the words, acts, and conduct of the person involved. Gutierrez v. State, 672 SW2d 633 (Tex. App. 1984). Clearly, the evidence before the Trial Court, and this Court as contained in the Statement of Facts, supports the State's contention that their burden of proof in that respect was adequately met.

Additionally, without citation of any authority, Appellant contends that the evidence is insufficient to show that the Appellant intentionally and knowingly committed these offenses. (Emphasis supplied)

As held above, this Court is of the opinion that the State's evidence satisfied their burden of proof conjunctively as well as disjunctively under the facts in this case. In Mendez vs. State, 716 SW2d 712 (Tex. App. - Corpus Christi 1986) the Court held that a ground of error similarly stated as Appellant's was meritless since it was proper for the charging document to allege the offense com-

mitted conjuctively, and yet, be submitted to the fact finder disjunctively. See also Garrett vs. State, 682 SW2d 301 (Tex. Crim. App. 1984).

Appellant, supported by his wife's testimony, denied the allegations made against him, so the Trial Court was confronted with divergent versions of this particular occurrence. As the trier of fact, the Trial Judge is the sole judge of the credibility of the witnesses and the weight to be given to their testimony, and of course, his findings on appeal will not be disturbed if supported by suffienct evidence. Hernandez vs. State, 538 SW2d 127 (Tex. Crim. App. 1976).

Lastly, Appellant contends that the complaints are defective because they do not have the Court's seal as provided for by Article 45.02 of the Code of Criminal Procedure.

The controlling requirements for a complaint are actually now contained in Section 30.043 of the Government Code, and this Court has previously held that the absence of a seal does not affect the validity of a complaint. Chavira vs. State, 83-MCA-79 (Mun. Ct. App.).

Having found no reversible error, the judgments of the Trial Court are affirmed.

Signed this 5 day of July, 1990.

JUDGE

J U D G M E N T

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 Judgments 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 5 day of Feb, 1990.

JUDGE