

#108
Also #117

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

APRIL AMBER SMITH, Appellant

vs.

No. 88-MCA-1905

STATE OF TEXAS, Appellee

OPINION

Appellant appeals her conviction in Municipal Court for failing to comply with a lawful direction of a police officer.

The charging instrument in this case alleged that the Appellant willfully failed to comply with such a lawful direction, and clearly requires proof of a culpable mental state. However, willfully is not among the culpable mental states provided under the Texas Penal Code. Honeycutt v. State, 627 SW2d 417 (Tex. Cv. App. 1981).

This Court held in Alvidrez v. State, 84-MCA-1204 (Mun. Ct. App.) that the term willfully was not synonymous with knowingly, and therefore held that the complaint was fundamentally defective.

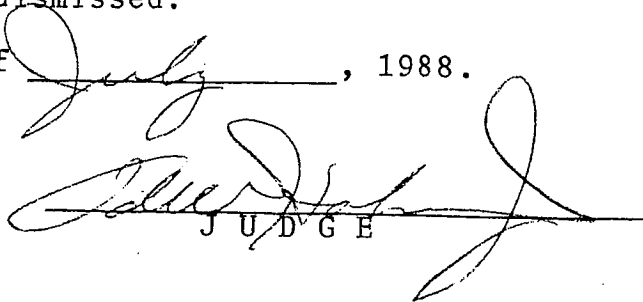
The disposition of this case is controlled by the rationale of that decision, and the City prosecutor recognizes such fact in its brief.

A challenge to the validity of a charging document for

failure to allege all of the essential elements of the offense maybe raised for the first time on appeal. Burrell v. State, 526 SW2d 799 (Tex. Cr. App.-1975); Gengnagel v. State, 748 SW2d 227 (Tex. Cr. App.-1988).

Therefore, the judgment of the Trial Court is reversed and the complaint ordered dismissed.

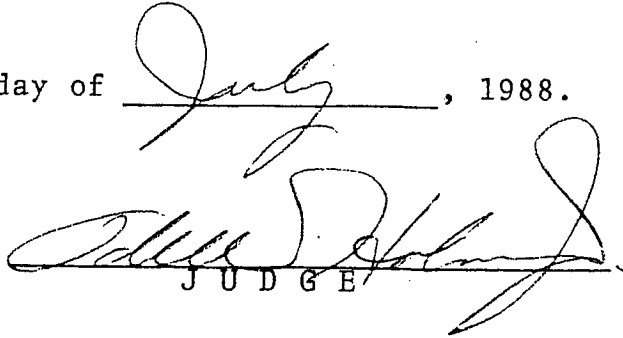
Signed this 15 day of July, 1988.


J U D G E

J U D G M E N T

This case came on to be heard, the same being considered, because it is the opinion of this Court that there was error in the Judgment, it is ORDERED, ADJUDGED and DECREED by the Court that the Judgment be in all things reversed and the complaint be dismissed.

Signed this 15 day of July, 1988.


J U D G E