

Of course, the next higher category of offense would be a Class B Misdemeanor over which the Municipal Courts do not have jurisdiction.

In order for the offense to be enhanced, it must be shown 1) that the offense occurred at a time that the actor was a public servant, and 2) that the property appropriated came into the actor's custody, possession and control by virtue of his status as a public servant.

Admittedly, by definition, Appellant was a public servant, but the legal question presented is whether or not he meets the dual criteria of the above section.

Not every criminal offense committed by a public servant is within the ambit of the above statute. The criminal act must be inextricably a function of the official duty of the public servant before the enhancement of punishment provisions apply. *Hall v. State*, 736 SW 2d 8818 (Tex.Cr.App. - Houston [14th Dist.] 1987). It is a violation of the public trust by a public servant that justifies the increased penalty, but unless the offense is committed by virtue of his status as a public servant, there is no distinction between an offense committed by a public servant and an ordinary citizen.

In this particular case, the record reflects that the Appellant's job duties involved the cleaning out and mopping of buses, and those were his job responsibilities on the night that he was apprehended. His job duties had nothing to do with collecting the money in the fare boxes, or in any way handling or tampering with the fare boxes, and thus the money he appropriated did not come into his possession or control by virtue of his status as a public servant. The fare boxes were accessible to him because of his status as an employee, but his job had nothing to do with collecting or accounting for the money in the fare boxes.

Otherwise stated, the commission of theft under these circumstances was in no way related to the duties which Appellant was assigned to perform, and are therefore outside the coverage of Article 31.03(f), Texas Penal Code.

Therefore, this Court concludes that Appellant was properly charged under the theft provisions of Article 31.03(e)(1), and thus, the Municipal Court has jurisdiction of the offense, and therefore, the judgment of the Trial Court is hereby affirmed.

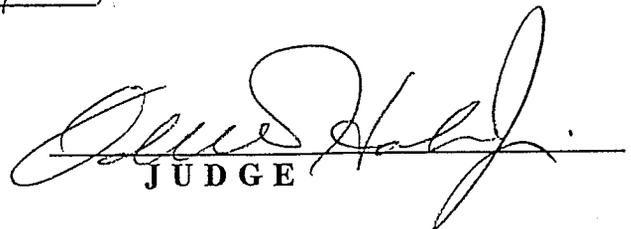
SIGNED this 2 day of Oct, 1992.


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 Judgment is 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 2 day of Oct, 1992.


JUDGE

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