

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

ROSA S. URRENGA, Appellant

vs.

NO. 85-MCA-1348

STATE OF TEXAS, Appellee

O P I N I O N

Appellant appeals her conviction in Municipal Court for selling spray paint to a person under the age of 17 years, contrary to Section 15-20 of Chapter 15 of the Code of the City of El Paso.

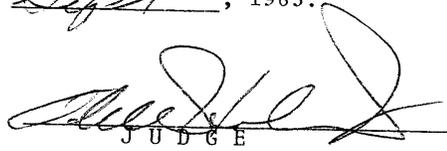
Appellant's first contention is that the complaint fails to allege a culpable mental state, and therefore is fatally defective. Certainly, if a culpable mental state is required, it constitutes an essential element of the offense, pursuant to Section 6.02 of the Texas Penal Code. The ordinance in question is silent as to any culpable mental state. However, it certainly would indicate that a person could not be guilty of such an offense unless he knew that the person to whom he was selling the spray paint was a minor. Therefore, at least, a knowing violation of the ordinance would be required in order to sustain the conviction. This Court has addressed the requirement of culpable mental state in numerous cases, and has reviewed those requirements recently in Garbar v. State, 85-MCA-1276, et al (appeal to the Court of Appeals, 8th Supreme Judicial District, pending).

Failure to allege an essential element renders a complaint fundamentally defective. Ex parte Winton, 549 SW2d 751 (Tex.Cr.App. - 1977). Delgado v. State, 83-MCA-1121 (Mun.Ct.App. - 1984). Garbar v. State, supra.

This Court holds that a violation of this particular City ordinance requires the allegation of a culpable mental state, and failure to do so constitutes fundamental error.

The Judgment of the Trial Court is reversed, and the complaint is ordered dismissed.

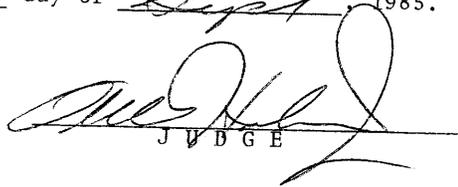
Signed this 13 day of Sept, 1985.


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 13 day of Sept, 1985.


J U D G E