

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

CESAR HOLGUIN

Appellant,

vs.

STATE OF TEXAS,

Appellee.

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No. 02-MCA-2756, 2757

**OPINION**

Appellant appeals his convictions in Municipal Court for zoning violations. A jury found him guilty of two (2) zoning violations and assessed a fine of \$2,000.00 in each case.

Appellant is also the co-defendant of Ana Hernandez, who was also charged and found guilty of the same offenses and assessed similar fines by the same jury, they having been tried together.

Interesting enough, the two complaints arise out of one piece of property that has two (2) zoning designations, one, an R-4 residential district, and the other a C-4 commercial district.

The testimony of the building inspector indicates that there are properties in El Paso that have these divided zoning designations.

In any event, Appellant was charged with and convicted of using the property as an "automobile wrecking yard" which is a use that is not permitted under either zoning designation.

A review of the Statement of Facts which is contained in this record reflects that the city building inspector who conducted inspections on these premises found wrecked vehicles on the premises, but no evidence that there was any type of body repair shop which may have been a permitted use under these zoning designations. Additionally, photographs which were introduced as exhibits show a number of vehicles on the property that were obviously in wrecked condition.

Appellant's first point of error is that he was not provided a copy of the amended charging instrument pursuant to Article 27.11, Tex. Code Crim. Pro. That particular section addresses the

Defendant's time frame in which to file written pleadings but is not controlling as to his right to receive a copy of the complaint. That is controlled by Article 45.015, Tex. Code Crim. Pro. and provides that a Defendant is entitled to notice of a complaint not later than the day before the date of any proceeding, but that the Defendant may waive the right to such notice. There is nothing in the record before this court, in the Statement of Facts, or the transcript before this court that indicates that any such request was timely made, and therefore it was waived. Appellant cannot raise such issue for the first time on appeal.

Appellant next contends that the Trial Court erred by not granting a directed verdict because the evidence does not show that the vehicles were on the premises for a period exceeding ten (10) days. Appellant seems to contend that since an automobile repair shop is a permitted use under a C-4 commercial district, that in order to complete the repairs, a reasonable period of time should be permitted. However, there is ample evidence negating the fact that this was being operated as an automobile repair shop in the first instance, and secondly, there is no requirement for any minimum number of days for a violation to have occurred. Therefore the point is overruled.

Appellant's last point of error complains that he should not have been found guilty and assessed multiple punishments since he only operated a single business. Unfortunately, because the property is divided into two (2) separate zoning classifications, and violations occurred on each, Appellant is subject to separate charges for which separate punishments could have been assessed. No error is shown.

Therefore, the judgments of the Trial Court are hereby affirmed.

SIGNED this 12 day of March, 2003.

  
JUDGE

**J U D G M E N T**

These cases, 02-MCA-2756 & 02-SMCA-2757, 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 12 day of March, 2003.

  
**JUDGE**