

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

IGNACIO PADILLA

Appellant,
v.

STATE OF TEXAS

Appellee.

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**No. 11-MCA-3466
Ticket #: T0271757**

OPINION

Appellant appeals his conviction in Municipal Court for speeding in a school zone. A fine of \$200.00 was assessed.

The complaint filed alleges Appellant was traveling at 34 miles per hour in a 15 mile per hour school zone. The bottom line of Appellant's contention is that there were construction signs and other equipment in the area which prevented him from seeing the school zone sign, and therefore, he was unaware he was in a school zone.

No Reporter's Record was requested by Appellant before the Trial Court and none appears before this Court which would show what evidence was introduced by the State in support of the allegations of the complaint. Appellant's principal contention as to the school sign being obscured presents a classic factual dispute that must be resolved by the Trial Judge, and not this Court. The Trial Judge is the exclusive Judge of the credibility of the witnesses and the weight to be given to their testimony, and this Court does not have the legal authority to second guess that judgment.

Section 12.28.020 of the Mun. Code of the City of El Paso authorizes the City Traffic Engineer to determine the particular safety precautions for the safety of school children, and is

empowered to mark such locations as school crossing zones. If he does so, those zones shall be appropriately marked by traffic control signs or devices, indicating that school is in session, and the prima facie speed limit within the school crossing zone. Those zones become effective 45 minutes before the opening of the first class and shall cease to be effective 30 minutes after the end of the last school class. The Texas Manual on Uniform Traffic Control Devices, Part 7, addresses the considerations to be used in establishing school crossing zone and the appropriate size, color and location of signage for those zones.

Appellant contends that the four construction signs that were stationed in this area distracted him from noticing the school zone sign indicating that the posted speed limit was 15 miles per hour, and effective Monday through Friday, from 8 a.m. to 4 p.m. Although other types of signage are permitted, it is up to the discretion of the Traffic Engineer after studying the area to decide what signs should be posted. The fact that the sign was not a flashing school zone sign or a middle of the street school sign does not diminish the fact that this was a marked school zone.

Additionally, Appellant contends there were other construction signs that were in front of end of the school zone sign, which added to the distraction, and there was no way he could know that he was in a school zone. It does seem that the signs that were posted before he entered the school zone as to the appropriate speed are more relevant to the sign that he claims he could not see indicating that he was at the end of the school zone. It seems by the time he would have seen that sign, the infraction alleged would have already occurred.

Appellant also contends that the average person would not suspect this is a school zone because the closest public schools are two and a half and one and a half miles away respectively. This Court recently held and recognized that in many instances school zones are situated on

streets that are somewhat remote from the school itself, but are located where children cross the street on the way to and from the school. A school zone does not need to be adjacent to or in close proximity to the school itself but may well be within the school route and established school crossings. See Texas Manual on Uniform Traffic Control Devices, Section 7A.02; Leffler v. State 10-MCA-3424 (Mun. Ct. App. 2011).

Appellant's contention that the City is not responsible for private schools is unfounded. This Court has found no authority supporting that contention, and Appellant cites none. Both the Texas Statutes and the City Ordinances addressing school zones make no distinction between public and private schools.

Appellant contends that a white line that defines the start of the 15 mile per hour zone had been tarred black which further made it impossible for him to determine he was in a school zone. This Court's review of markings as identified in the Texas Manual on Uniform Traffic Control Devices does not identify any white line as defining the start of a school crossing zone, but addresses cross walk markings and stop and yield markings. Appellant does not cite this Court to anything to the contrary. The signage would be more significant in identifying the existence and regulations applicable to the school zone rather than any white line whether visible or not.

Although Appellant contends that nothing on the sign indicated when school was in session, Appellant identifies himself as a teacher and a coach who would not violate school rules and regulations. Quite frankly, that would probably make him more aware of school schedules than the ordinary citizen. However, the time frame applicable in this particular school zone, as admitted in Appellant's Brief was from 8 a.m. to 4 p.m., and the citation reflects Appellant was cited at 11:03 a.m., within that time frame.

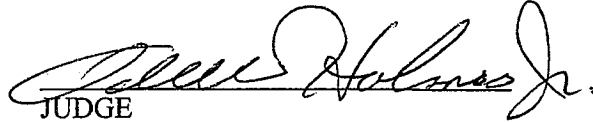
Appellant, to his credit, monitored that school zone and conducted a traffic census. He observed an average of 93 cars went through that school zone while he was observing it. The results of that traffic survey conducted by Appellant reflected that 53 drivers did not slow down at all, 23 drivers slowed down in the middle of the school zone area, and the remaining 17 drivers only realized they were in the school zone when they saw the end of school zone sign. This survey does not reflect that any of the cars he observed complied with the speed limit restriction in that school zone, an observation that is somewhat hard to believe. Additionally, he claims that because of the location of the school zone which is near a four-way stop and close to a traffic light intersection, that the students do not use this school crossing zone, and he only witnessed two students using the cross walk in the school zone in the four days he was observing that area.

Although Appellant is commended by this Court on the effort that he has undertaken in the presentation of his Brief as well as his traffic survey, the fact that other persons violated the Law is of no legal help to Appellant nor does it provide him a legal defense to the violation charged. It is axiomatic that because others violate the Law, you can too.

Appellant ends his Brief with a cautionary note that he believes because this school zone does not have blinking lights on the school zone signs that it is a very dangerous school zone for El Paso students and needs to be fixed now. Because Appellant's issues do raise legitimate concerns, this Court would suggest that Appellant take up his concerns with the City Traffic Engineer to whom a copy of this Court's Opinion will be delivered to make them aware of Appellant's concern and invite them to revisit this particular school zone to determine if it needs to be changed.

Having found no error in the Trial Court's judgment, it is hereby affirmed.

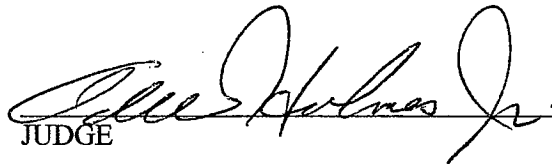
SIGNED this 1st day of September, 2011.


JUDGE

JUDGMENT

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 case be affirmed.

SIGNED this 1st day of September, 2011.


JUDGE