

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

LOUIS CEPEDA, JR.

Appellant,

v.

STATE OF TEXAS

Appellee.

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**No. 14-MCA-3814
Ticket No. 33419488**

OPINION

Appellant appeals to this Court under unusual circumstances.

Appellant was cited for not having his animal micro-chipped in violation of Animal Regulations under the El Paso Municipal Code. Appellant has provided to this Court a document from an animal clinic indicating that the dog in question had been micro-chipped on June 25, 2012. He claims he attempted to present that information to the judge, but he indicates he did not seem interested and he did not review it.

Nonetheless, the Judge did not find Appellant guilty, but the Docket Sheet and the judgment of the Court indicates that the case was dismissed with a \$60.00 Special Expense Fee and a requirement to pay an OMNI FEE.

Since there was no conviction, there is question of whether or not this Court has jurisdiction to entertain this appeal. Clearly, if the case had just been dismissed pursuant to the Court's order and no conviction had ensued, this Court would be without jurisdiction to consider an appeal.

However, a more interesting question is did the Court have authority to dismiss the citation but impose the Special Expense Fee. This Court invited the City Prosecutor's Office to file a response brief addressing that issue, but it has not done so formally.

Under Section 2.44.080, El Paso Municipal Code, the imposition of a Special Expense Fee is authorized as a result of the issuance and service of a warrant of arrest for an offence under Section 38.10, Tx. Penal Code or Section 543.009, Tx. Trans. Code. Section 38.10 of the Texas Penal Code involves an offense for either bail jumping or failure to appear, neither of which is involved in this particular case. Section 543.009, Tx. Trans. Code, addresses offenses for failure to appear, and again is inapplicable to the present case.

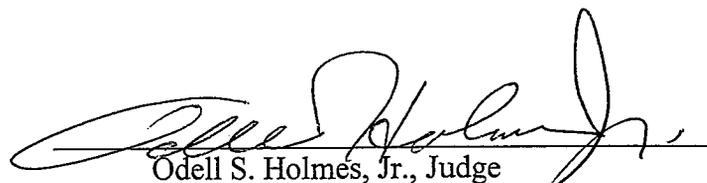
The only other provision that this Court is aware of is under Article 45.051 of the Texas Code of Criminal Procedure which authorizes a judge to impose a Special Expense Fee if the Court grants deferred disposition under that article.

Since this Court has been unable to find any specific legal authority for the imposition of the Special Expense Fee in this case, this Court questions whether the Special Expense Fee was authorized and can be collected. However, Appellant does not raise that issue before this Court, only that he had proof that his animal was microchipped before he was cited.

Since Appellant was not convicted and the case was dismissed, this Court is without jurisdiction to hear his appeal, but the efficacy of imposing a Special Expense Fee when not authorized remains unanswered.

Therefore, this case is dismissed for want of jurisdiction.

SIGNED this 30th day of September, 2015.


Odell S. Holmes, Jr., Judge
El Paso Municipal Court of Appeals