

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

DELLA A. COLEMAN, Appellant

vs.

No. 88-MCA-1946

STATE OF TEXAS, Appellee

OPINION

Appellant appeals her conviction in Municipal Court for the offense of theft. Appellant represented herself at the Trial Court level and also on appeal, and primarily attacks the sufficiency of the evidence. However, no statement of facts was requested by the Appellant at the Trial Court level and none is included in the record before this court, and therefore, the questions relating to the sufficiency of the evidence cannot be reviewed on appeal. Paoli vs. State, 83-MCA-98 (Mun. Ct. App. -1987).

Appellant additionally contends that there were other eyewitnesses who could have supported her defense, and that she was advised by persons unknown that they would be called as witnesses at the trial, and therefore she did not need to subpoena them. Whether such is a fact or not, it is not supported in the record, and whether or not the other unnamed witnesses would have been helpful to the Appellant is also unknown. Of course, the State presented a witness who made the arrest, and presumably presented sufficient

evidence to prove the States case.

Appellant also contends that the arresting security officer replaced certain used items in her purse with items which were allegedly taken from the store in order to cover the arresting officer's mistake in arresting her in the first instance. Obviously, those are serious allegations, and Appellant contends that these were presented to the Trial Court, and of course, denied by the arresting officer. The function of the Trial Judge is to judge the credibility of the witnesses and the weight to be given to their testimony, and nothing before this court reflects that the trial judge did not perform that function. This Court is not in a position to substitute its judgment for the Trial Court in that respect, and finds no error.

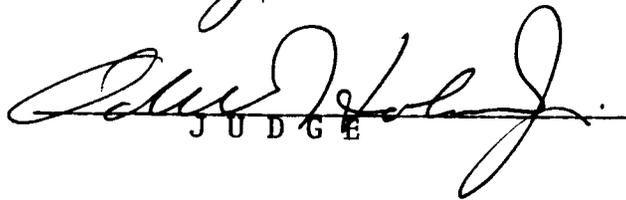
Although not raised by Appellant in her brief, at oral argument, Appellant indirectly raised the contention that the items allegedly stolen were not the ones which she had in her purse because of the misconduct of the security officer. Although a description of the items taken constitutes a element of theft, P.C. 31.03(a), the actual items alleged to have been stolen need not be introduced into evidence and an oral description of such items or a photograph of them is sufficient. Sendejo vs. State, 676 SW2d 454 (Tex. App. - Ft. Worth) see also 38.34(b) Code of Criminal Procedure. Whether an oral description of the items taken was introduced into evidence or photographs supporting same

cannot be addressed since no statement of facts appears in the record, and therefore, this Court presumes that the evidence was sufficient to support such allegation.

Lastly Appellant has made it known to this court in her brief and at oral argument of the serious consequences that this conviction may have on her employment. Although this court is sympathetic to such a fact, the serious consequences which may arise out of sustaining this conviction cannot be a part of this court's consideration in addressing the legal issues presented.

Having found no reversible error, the judgment of the trial court is affirmed.

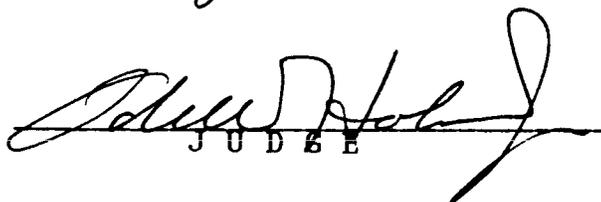
Signed this 1 day of May, 1989.


J U D G E

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 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 1 day of May, 1989.


J U D G E