

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

KIMBERLY HOLMES*

Appellant

vs.

No. 89-MCA-2028

STATE OF TEXAS,

Appellee

OPINION

Appellant appeals her conviction in Municipal Court for speeding in a school zone.

Although Appellant in her pro se brief does not raise this issue, this Court takes cognizance of a fundamental error concerning the allegations of the complaint. A charging document which fails to allege an offense is fundamentally defective, and this Court is obligated to take note of such defect. Because it is a jurisdictional defect, it can be raised on appeal for the first time. Ex parte Elliott, 746 SW2d 762 (Tex. Cr. App. - 1988). Thompson vs. State, 697 SW2d 413 (Tex. Cr. App. - 1985), Beets vs. State, 767 SW2d 711 (Tex. Cr. App. - 1987).

In this case, the State alleged in their complaint that the Appellant was speeding in a school zone at an

*Appellant and the Judge who rendered this decision are in no way related.

"estimated" speed of 20 miles per hour when the posted speed limit was 15 miles per hour.

This Court is unaware of any authority which would allow the charging of an offense based on estimation as was done in this case. Clearly, if the issue presented to this Court was the insufficiency of the evidence, and the best that the State could produce was testimony from the police officer that he estimated a person's speed or guessed at it, this Court would quickly hold the evidence to be insufficient. Therefore, if the evidence would be insufficient in such a situation, certainly the charging documents which would support such allegation must also be more definite.

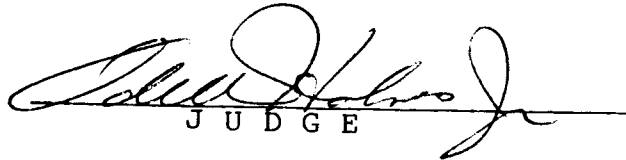
The law must provide explicit standards for those who apply them to prevent their arbitrary and discriminatory enforcement. It is not sufficient to leave enforcement to the sound discretion of the police, trusting them to invoke the law only in appropriate cases. Cotton vs. State, 686 SW2d 140 (Tex. Cr. App. - 1985), O'Brien vs. State, 86 MCA 1697 (Mun. Ct. App. - 1986).

The use of estimations or guesswork in charging an offense or attempting to prove them encourages arbitrary and erradict arrest and convictions, and is to be condemned. Additionally, the language used fails to provide any objective criteria by which a person's conduct can be measured, and encourages purely subjective judgments totally within

the discretion of the police officer, leaving the risk of capricious application to be borne by the alleged offender. Cotton and O'Brien, supra.

Consequently, this Court holds that the complaint in this case is fundamentally defective for failing to charge an offense, and therefore, the Trial Court was without jurisdiction, and hereby orders the Trial Court's judgment reversed and the complaint dismissed.

SIGNED this 15 day of Feb, 1990.


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 15 day of Feb, 1990.


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