

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

RONALD A COMEAU

Appellant,

vs.

STATE OF TEXAS,

Appellee.

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No. 99-MCA-2494

OPINION

Appellant appeals his conviction in Municipal Court for unlawfully permitting vehicles to be parked on the front or side yard of residential premises. A jury found Appellant guilty and assessed a fine of \$500.00.

On appeal Appellant complains that the complaint fails to allege a culpable mental state, and secondly, the Jury Charge was fundamentally defective because it dispensed with a mens rea requirement in the application paragraph.

Appellant relies on Aguirre vs. State, 978 S.W. 2nd 605, (Tex. App.-El Paso 1998) holding that a complaint alleging a violation of a El Paso's "adult entertainment ordinance" required the allegation of a culpable mental state. The rationale of that decision is founded in Sec. 6.02 (b) of the Texas Penal Code, providing as follows:

"If the definition of an offense does not prescribe a culpable mental state, a culpable mental state is nevertheless required unless the definition plainly dispenses with any mental element." The Court held that since the City Code did not provide otherwise, that Section 6.02 applied to the violations of the adult entertainment business, and therefore a culpable mental state must be alleged.

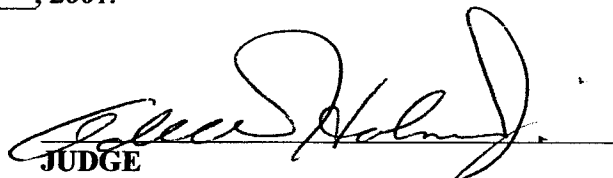
The City contends that the holding of Aguirre is no longer binding because that conviction occurred on March 30, 1989, and subsequent thereto, the City passed an Ordinance which globally dispenses with a requirement of a culpable mental state in Section 1.08.080 of the Municipal Code of the

City of El Paso. That ordinance was enacted August 22, 1989, and provides that "in accordance with Texas Penal Code Ann. Section 6.02(b) (Vernon 1974), a culpable mental state is not required for the commission of an offense under the El Paso City Code unless the provision defining the conduct expressly requires a culpable mental state."

Accordingly, under the express provisions of Section 6.02 of the Texas Penal Code, the City has plainly dispensed with any mental element for the commission of an offense under the El Paso City Code such as the instant one.

Therefore, no culpable mental state need be alleged nor proven, and the conviction of Appellant is hereby affirmed.

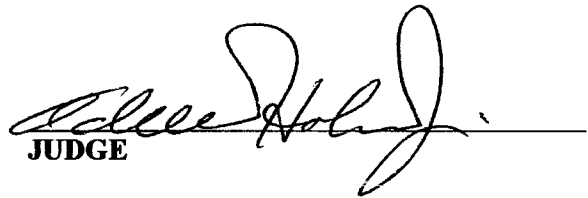
SIGNED this 16 day of Oct, 2001.


JUDGE

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 16 day of Oct, 2001.


JUDGE