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

ANIS BALES

Appellant,

vs.

STATE OF TEXAS,

Appellee.

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No. 02-MCA-2745

OPINION

Appellant appeals his conviction in Municipal Court for a zoning violation relating to the open storage of wrecked vehicles or parts which were not a permitted use or permitted accessory use in that zone. A fine of \$2,000.00 was assessed.

On appeal, both in it's Brief and at Oral Argument, able counsel for Appellant attacks, for the first time on appeal, the validity of the complaint. Appellant was not represented by an attorney at the Trial of this proceeding, and did not object to any defect, error, or irregularity in the form or substance of the complaint before the trial commenced.

Clearly, the complaint in this case was not particularly artfully drafted, and quite frankly, it is this court's opinion that it would have been subject to a Motion to Quash because it alleges violations of the City Code of El Paso that are not relevant to the offense charged. However, since no objection was made before trial commenced, pursuant to Article 45.019 (f), Tex. Code Crim. Proc., Appellant has waived his right to object to any defect, error or irregularity in the complaint on appeal.


The above article was passed by the Texas legislature in response to and in the wake of Huynh v. State, 901 S.W. 2nd 480 (Tex. Crim. App. 1995) which allowed one to complain, after trial and for the first time on appeal, of a defect in a complaint. It was this "laying behind the log" strategy, that was foreclosed by the passage of Article 1.14 Tex. Code Crim. Proc. which provided that a defendant waived any defects in an information or indictment if he failed to object to such defect before the date on which

which trial commenced. This court, as others, believed that that provision was also applicable to complaints, until we were enlightened by the Huynh decision. However, since September of 1999, Article 45.019 (f), any defect in a complaint must be brought to the attention of the Trial Court before trial or it is waived, and cannot be raised for the first time on appeal.

Other issues raised by the parties, particularly by the City, suggesting that the complaint in this case is valid, and that the essence of the allegations contained therein, even though admittedly having some errors, was sufficient to give the defendant reasonable notice of the charge against him, need not be addressed in view of this court's holding that any defects in the complaint were waived. See Vallejo v. State 408 S.W. 2d 119 (TX. Crim. App.)

Therefore, having found no reversible error, the judgment of the Trial Court is hereby affirmed.

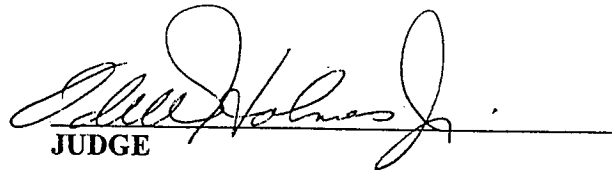
SIGNED this 15 day of Nov., 2002.


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 15 day of Nov., 2002.


JUDGE