

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

ANGIE BARAJAS
Appellant

vs.

No. 89-MCA-2006

STATE OF TEXAS,
Appellee

OPINION

Appellant appeals her conviction in Municipal Court for a violation of Section 9.24.010 of the City Code of El Paso for allowing a collection of water on her premises in which mosquitoes are likely to breed.

Appellant raises a number of points of error, but this Court will only address the sufficiency of the evidence as it relates to the proof of the essential elements of this offense.

In reviewing a contention that the evidence is insufficient, the relevant question is whether, after viewing the evidence in the light most favorable to the verdict, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Butler vs. State, 769 SW2d 234 (Tex. Cr. App. -1989), Chozet vs. State, 89-MCA-2005 (Mun. Ct. App. - 1989).

The State is obligated to prove each of the essential elements of the offense beyond a reasonable doubt in order

to sustain their burden of proof, and in this case, allowing a collection of water on the premises "in which mosquitoes are likely to breed" is required.

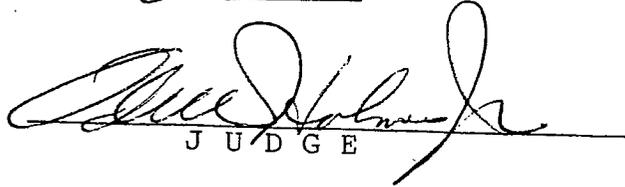
A review of the Statement of Facts in this case clearly shows that no evidence was presented to support the fact that mosquitoes were likely to breed in this swimming pool on July 5, 1989, the date of the alleged offense. First of all, evidence was introduced pictorially as to the condition of the swimming pool but on dates other than that alleged in the complaint. Although the evidence supports the contention that the condition of the water in the swimming pool on July 5, 1989, was about the same or even worse than shown in the photos taken on other occasions, there was no direct testimony from the State's witnesses that the condition of the water was such that mosquitoes were likely to breed in it. Although the State's evidence clearly showed that the water was dirty, green, and evidently had not been properly maintained, the witness did not profess any special knowledge about whether the condition of the water was such that mosquitoes were likely to breed in it. In fact, when asked if she had seen any mosquito larva or anything breeding in the water, she indicated that she did not, nor did she test it, but that she notified Vector Control. Whether any subsequent inspections by Vector Control were made or their findings were not introduced in evidence by the State.

This Court cannot infer from the testimony presented or speculate as to whether or not the condition of the water in

this swimming pool was such that mosquitoes were likely to breed in it. The State wants this Court to conclude that since the water was dirty and green, that ipso facto, it proved its case. The State was required to prove by direct or circumstantial evidence its allegations that mosquitoes were likely to breed in this water, and they failed to do so.

Having found the evidence insufficient to sustain the conviction, the judgment of the Trial Court is reversed and rendered in Appellant's favor.

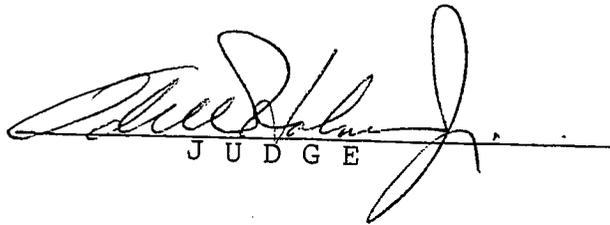
Signed this 15 day of Dec, 1989.


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 rendered in Appellant's favor, and judgment of acquittal be entered in her behalf.

Signed this 15 day of Dec., 1989.


J U D G E