

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

SUE G ORTIZ

Appellant,

vs.

STATE OF TEXAS,

Appellee.

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No. 02-MCA-2797

OPINION

Appellant appeals her conviction in Municipal Court for failing to comply with a traffic control device, to wit: a do not enter sign.

This offense occurred in the area around the Camino Real Hotel, the El Paso Museum of Art and the El Paso Civic Center. Traffic and traffic directions in that area are confusing and have obviously been a source of some difficulty in regards to traffic enforcement.

Although no Statement of Facts is contained in the record before this court, Appellant in her Brief and at Oral Argument contends that she entered off of Santa Fe Street into a driveway area which exits back onto Santa Fe Street from 1 Arts Festival Plaza, but that she did not enter from the other entrance to that thoroughfare on the Camino Real Hotel side of the street. Appellant has provided this court with photographs showing the area where she indicated she entered and the direction in which she was traveling, but did not provide those photographs to the Trial Court. They were filed with my court after her conviction. Additionally, she claims her mother was with her, and although elderly, would testify as to Appellant's direction of travel and the fact that there are no signs indicating that it is prohibited from entering that area, but again, she did not have her mother testify before the Trial Court.

Additionally, because there is no Statement of Facts, this court is totally unable to determine what testimony the State offered in support of it's prosecution, but since there clearly are no "Do Not Enter" signs around the driveway prohibiting entry as indicated by Appellant, the only possible scenario is that

the police officer testified or believed that she had entered that she had entered that thoroughfare at the other end of it on the Camino Real Hotel side off of El Paso Street.

So, clearly, if this was simply a factual dispute, Appellant would not prevail, and this court would hold that the Trial Court, as a fact finder, would be the exclusive judge of the credibility of the witnesses and the weight to be given to their testimony, and that this court would have no authority to disturb the Trial Court's finding on appeal.

However, this court visited this particular area in a previous decision, Degroat v. State 01-MCA-2650, (Mun. Ct. App.), in which a similar offense was filed against the Appellant in that case alleging that she failed to comply with a "Do Not Enter" sign controlling traffic entering off of El Paso Street and going through I Arts Festival Plaza to exit onto Santa Fe Street. The problem with that, as held in Degroat, is that the only "Do Not Enter" sign does not control traffic on the public roadway but is posted to the entrance of the private driveway to the Camino Real and would not be sufficient to charge an offense not only because Appellant factually did not enter in violation of that signage but also it does not control traffic on I Arts Festival Plaza. The only sign that appears to prohibit general traffic through that thoroughfare is a sign indicating as follows: "No Through Traffic. Trolleys and Emergency Vehicles Only." So the only offense for failing to comply with a traffic control device would have to allege that the failure was in violation of the restriction imposed by that sign.

This court is authorized, and hereby does, take judicial notice that there are no traffic control devices indicating "Do Not Enter" either into the driveway where Appellant claims she entered or controlling traffic from the direction which the police officer must assume she came, and therefore there could be no offense for this particular violation.

Having so found, the judgment of the Trial Court is reversed and rendered in Appellant's favor.

SIGNED this 19 day of Nov., 2002.


JUDGE

JUDGMENT

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 19 day of Nov., 2002.


JUDGE