

#152

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

CHRISTOPHER PARKS,)	
)	
Appellant,)	
vs.)	No. 95-MCA-2330
)	
STATE OF TEXAS,)	
)	
Appellee.)	

OPINION

Appellant appeals his conviction in Municipal Court.

Appellant contends that his conviction was barred by Double Jeopardy based on the fact that the Court dismissed his case when it was originally called for Trial because no witnesses were available to testify at that time. No Motion for Continuance was filed by the City in the first case, and no objection to the Court's dismissal was made by the City. After the dismissal, the City refiled the charge, and despite Appellant's Double Jeopardy plea, found him guilty of the offense charged.

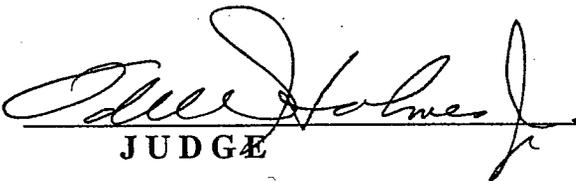
However, the question presented is whether the Trial Court has authority to dismiss a criminal prosecution without the State's consent. The law presently holds that a Trial Court does not have the general authority to dismiss a case unless requested by a prosecutor absent specific authorization. *State v. Johnson*, 821 SW2d 609 (Tex.Crim.App. 1991); *State v. Telles*, 890 SW2d 561 (Tex.App. - El Paso 1994).

These cases clearly hold that the Trial Court has no inherent authority to dismiss a case without the prosecutor's consent. Therefore, the Court's dismissal of the first case was void and a nullity which did not bar the retrial of Appellant. However, they also recognize that a Trial Court does have the authority to call the case for trial, and if no witnesses are presented, to enter a judgment of acquittal, rather than dismissing the charges.

Our Municipal Court Judges would be well advised when witnesses do not appear for trial, and no Motion to Dismiss is made by the City, to then call the case for trial, render a judgment of acquittal in the case and enter a finding of not guilty.

Having determined that the Trial Court lacked authority to dismiss Appellant's first case, the Judgment in the subsequent proceedings were not precluded by Double Jeopardy, and the Judgment of the Trial Court is hereby affirmed.

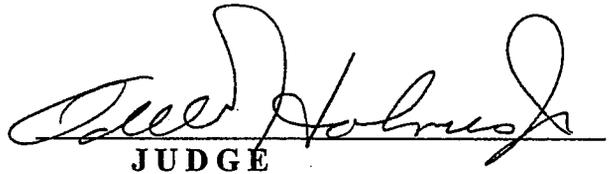
SIGNED this 22 day of August, 1995.


JUDGE

JUDGMENT

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 22 day of August, 1995.


JUDGE

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