

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

JESSICA ZARATE

Appellant,

V.

STATE OF TEXAS

Appellee.

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NO. 12-MCA-3538  
TICKET NO.: T0329129

OPINION

Appellant appeals her conviction in Municipal Court for unlawfully operating a motor vehicle while using a wireless communication device which is prohibited by Title 12, Chapter 12.22, Section 12.22.020 of the Municipal Code of the City of El Paso, Texas. A fine of \$50.00 was assessed.

The citation for this offense was issued on October 8, 2011, at 7:30 a.m.

Appellant contends that she was not using her cell phone at the time, but using her compact mirror while stopped at a red light. The Court commented that may be equally distracting as using the cell phone while driving, but as Appellant correctly stated, that is not against the law.

Appellant contends that she tried to show that she was not using her cell phone at the time but that it was not taken into consideration by the Trial Court. She has presented to this Court her telephone bill showing times and dates of her phone usage. Since there is no Record of the trial proceedings before this Court, this Court is unable to determine if those phone records, which she has now submitted to this Court, were introduced before the Trial Court.

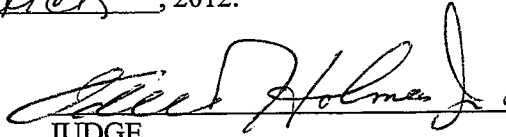
However, those phone records reflect that there was no phone usage at or about the time indicated on the citation that the cell phone was being used.

Clearly, had there only been a factual dispute between the Officer's testimony that Appellant was using her cell phone and Appellant's testimony that she was holding a mirror, the Trial Judge would have been faced with a disputed factual issue which only the Trial Court can resolve as the fact finder. However, there is documentary evidence that supports Appellant's contentions as to the time of her usage of her cell phone which would weigh heavily in the Trial Court's decision. The problem for this Court is that there is no Record showing that such documentary evidence was introduced or considered by the Trial Court. Appellant does not even contend that she attempted to introduce that exhibit in evidence but only that she "tried" to show that she was not using her cell phone, and there is no way, for this Court to determine if that effort included introduction, or an attempted introduction, of her phone records.

Therefore, this Court has no choice but to affirm the Trial Court's decision and uphold its determination based on the Record before this Court presently.

Therefore, the judgment of the Trial Court is affirmed.

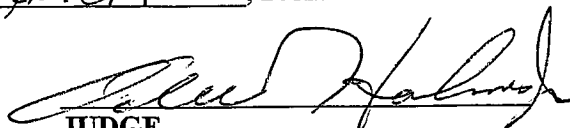
SIGNED this 15<sup>th</sup> day of March, 2012.

  
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 this case be affirmed.

SIGNED this 15<sup>th</sup> day of March, 2012.

  
JUDGE