IN THE MUNICIPAL COURT OF APPEALS

OF THE CITY OF EL PASO, TEXAS

HELGA OGLE, Appellant

vs. NO. 83-MCA-921

STATE OF TEXAS, Appellee

OPINION

Appellant appeals her conviction in Municipal Court for failing to obey a lawful order of a police officer, under Section 20-13, Chapter 20 of the Code of the City of El Paso.

Appellant contends that the complaint is defective for failing to allege culpable mental state.

A review of the ordinance indicates that the conduct condemned therein must be "willfully" done, and therefore clearly demonstrates that some type of culpable mental state is required in order to constitute an offense. However, the Texas Penal Code only defines four culpable mental states, none of which include the term "willfully". See Article 6.02, Texas Penal Code.

Article 6.02 provides for the allegation of culpable mental state and defines those accordingly. It also provides that if a definition of a defense does not prescribe a culpable mental state, one is nevertheless required unless the definition plainly dispenses with any mental element. This Court has held that in certain offenses which are traditionally "strict liability offenses", whether created by the Legislature or by City Ordinance, do not require the allegation of a culpable mental state. This Court has relied on the language of Article 6.02 which states that a culpable mental state is required even if the definition of the offense in question is silent as to such "unless the definition plainly dispenses with any mental element". This Court has also

relied on the content of the practice commentary respecting the so-called strict liability offenses, and the legislative and judicial recognition of the existence of such offenses.

Therefore, this Court has looked to the offense itself in attempting to determine whether or not a culpable mental state is required. In this case, of course, as stated above, the ordinance itself required that the conduct be committed "willfully". The definition of the offense does not dispense with the mental element, but requires a mental element which is not recognized under the law. Neither the legislature nor a city government has the authority to expand the states of mental culpability outlined in 6.02. Honeycutt v. State, 627 S.W.2d 417 (Tex.Cr.App. - 1982). The practice commentary to that article reflects that the intent of that section was to clearly define the states of mental culpability, and to prevent the proliferation of the many differing and confusing states of mind which occurred under the previous penal code.

Therefore, this Court holds that the instant offense requires both an allegation of and proof of a culpable mental state, and "willfully" is not sufficient.

Under the Penal Code, a culpable mental state is an essential element of the offense which must be alleged and proven, and if not alleged, the charging instrument is fundamentally defective. Ex parte Winton, 549 S.W.2d 751 (Tex.Cr.App. - 1977). Goss v. State, 582 S.W.2d 782 (Tex.Cr.App.)

Accordingly, having held the complaint to be void, the Judgment is reversed and the complaint is ordered dismissed.

Signed this 13 day of June, 1985.

JUDGE