IN THE MUNICIPAL COURT OF APPEALS

OF THE CITY OF EL PASO, TEXAS

MARIA HALL

vs. NO. 84-MCA-1180

STATE OF TEXAS, Appellee

O P I N I O N

Appellant attacks her conviction in Municipal Court on the basis that there is a fatal variance between the allegation in the complaint and the proof, as well as that the complaint does not identify the property allegedly stolen.

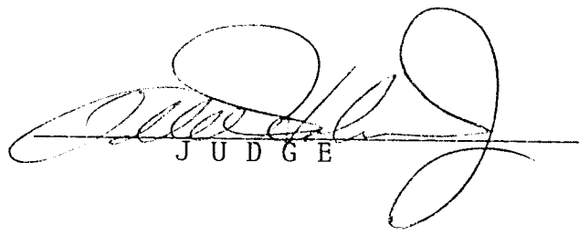
In connection with the first point of error, Appellant points out that the complaint alleges that the property taken has a value of not less than $0.01 nor more than $20.00, and that in the statement of facts, there is a statement that the property taken was $20.00. Appellant overlooks the fact that the statement of facts also itemized each of the items taken and their value, and that that was within the jurisdiction of the Court. The City's position in this respect is that the allegation in the complaint is merely one of jurisdiction, and that the proof supports that allegation.

This Court agrees with the City's contention, and Appellant's point of error relating to the jurisdictional issue is overruled.

Appellant rightfully contends that a complaint is fundamentally defective if it does not describe the property allegedly taken other than as "property" or "merchandise", Harris v. State, 587 S.W.2d 429 (Tex.Crim.App. - 1979). However, a review of the complaint in this case reflects that the items allegedly taken were specifically identified, and the point is overruled.

The Judgment of the Trial Court is affirmed.

Signed this 6 day of Nov., 1984.

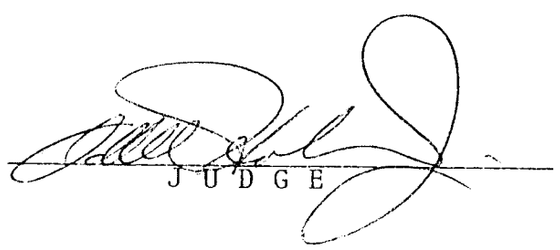


JUDGE

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 6 day of Nov., 1984.



JUDGE