IN THE MUNICIPAL COURT OF APPEALS

OF THE CITY OF EL PASO, TEXAS

CARLOS SANCHEZ, Appellant

v. 84-MCA-1203

STATE OF TEXAS, Appellee

O P I N I O N

Appellant appeals his conviction in Municipal Court for disorderly conduct under Article 42.02(a)(12), Texas Penal Code, for exposing himself to the complaining witness in the case.

Appellant's brief and oral argument directed this Court's attention to whether or not this offense occurred in a public place as required by the above Section.

The statement of facts in this case reflects that the conduct complained of occurred in a private office building here in El Paso, Texas, not generally accessible to the public, and therefore does not constitute a public place.

Although, the conduct complained of may have constituted some other offense not requiring proof of an offense occurring in a public place, the immediate charge does so, and the failure of the State to so prove is fatal to the prosecution.

The evidence is insufficient to sustain a conviction under this particular Article, and therefore the Judgment of the Trial Court is reversed, and the Defendant is entitled to have an acquittal entered in his behalf. Burks v. United States, 437 U.S.1, 98 S.Ct. 2141, 57 LE2d 1 (1978), and Greene v. Massey, 437 U.S.19, 98 S.Ct. 2151, 57 LE2d 15 (1978), Johnson v. State, 673 SW2d 190 (Tex.Cr.App. - 1984).

Signed this 11 day of Feb, 1985.

J U D G E

J U D G M E N T

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 his behalf.

Signed this 11 day of Feb, 1985.

J U D G E