IN THE MUNICIPAL COURT OF APPEALS

OF THE CITY OF EL PASO, TEXAS

YOLANDA N. BARRERAS, Appellant

vs. NO. 85-MCA-1646

STATE OF TEXAS, Appellee

# OPINION

Appellant appeals her conviction in Municipal Court for failing to identify as a witness as required by Article 38.02 of the Texas Penal Code.

Although Appellant does not raise the issue in her pro se brief filed with this Court, this Court notes that the Complaint is fundamentally defective, and accordingly reverses the judgment of the Trial Court.

A charging instrument such as the Complaint in this case which does not allege all of the essential elements of the offense is fundamentally defective. Ex parte Winton, 549 S.W. 2d 751 (Tex.Crim.App. - 1977), Goss v. State, 582 S.W. 2d 782 (Tex.Crim.App.), Ogle v. State, 83-MCA-921 (Mun.Ct.App. - 1985).

The elements of the offense are:

(1) A person,

(2) intentionally refuses to report or gives a false report of his name and residence address,

(3) to a peace officer,

(4) who has lawfully stopped him and requested the information,

(5) knowing that the person requesting the information is a peace officer.

In the instant case, the Complaint alleges the first four elements, but fails to allege the fifth requirement, that is, that the person knows that the person requesting the information is a peace officer. Ledesma v. State, 677 S.W. 2d 529 (Tex.Crim.App. - 1984).

Therefore, Appellant's conviction under the present Complaint is reversed, and ordered dismissed.

Signed this 13 day of Jan, 1986.

JUDGE

## JUDGMENT

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 the complaint be dismissed.

Signed this 13 day of Jan, 1986.

JUDGE