IN THE MUNICIPAL COURT OF APPEALS

OF THE CITY OF EL PASO, TEXAS

RICHARD A. LEDLOW, Appellant

vs. NO. 86-MCA-1531

STATE OF TEXAS, Appellee

OPINION

Appellant appeals his conviction in Municipal Court for disorderly conduct under Section 42.01 of the Texas Penal Code, for using abusive, indecent, profane and vulgar language in a public place which tended to incite an immediate breach of the peace.

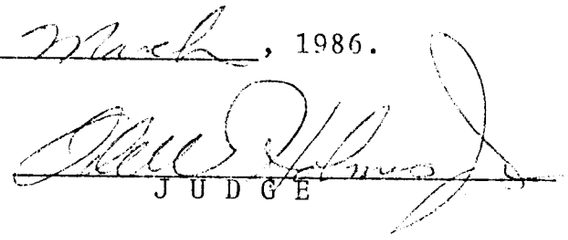
A review of the statement of facts in this case reflects that the Appellant was stopped for a traffic violation, and during the course of the issuance of that citation, called the police officer a vulgar name. The language used, as reflected in the statement of facts, met the standard of "fighting words" as required by Chaplinsky v. New Hampshire, 315 U.S. 568, 62 S.Ct. 766, 87 L.Ed. 1031 (1942).

However, Appellant contends that the evidence is insufficient to reflect that the use of the language in question tended to incite an immediate breach of the peace. Appellant relies on the evidence presented that because of the police officer's training, that such language would not provoke a breach of the peace. Appellant's reliance on that fact is misplaced. The more relevant inquiry is whether or not such language, when directed to an average person, would tend to incite an immediate breach of the peace. Estes v. State, 660 SW2d 873 (Tex.App. 2 Dist. 1983)

A review of the evidence presented in this case, and the language used by Appellant, clearly indicates to this Court that the language used, when directed to the average person, would tend to incite an immediate breach of the peace. Therefore the evidence was sufficient to sustain the conviction.

Therefore, the judgment of the Trial Court is affirmed.

Signed this 24 day of March, 1986.

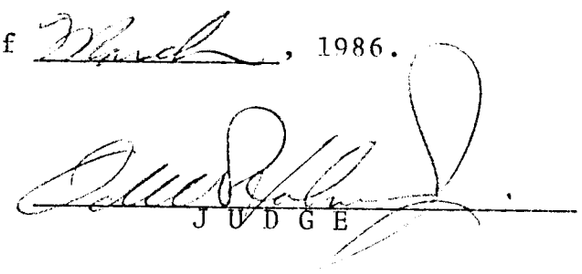


JUDGE

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 24 day of March, 1986.



JUDGE