IN THE MUNICIPAL COURT OF APPEALS

OF THE CITY OF EL PASO, TEXAS

RICHARD TELLES, Appellant

vs. NO: 86-MCA-1759

STATE OF TEXAS, Appellee

## OPINION

Appellant appeals his conviction in Municipal Court for a violation of Section 305.3 of the Standard Housing Code.

Appellant's initial contention on appeal is that the complaint is fundamentally defective for failing to allege a culpable mental state. Appellant's point is raised for the first time on appeal since no timely Motion to Quash was filed in the trial court. However, if required, the allegation of a culpable mental state is an element of the offense, and a failure to allege same has traditionally been considered fundamental error. 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), Barreras v. State, 85-MCA-1646 (Mun.Ct.App. - 1986), and Brune v. State, 83-MCA-259 (Mun.Ct.App. - 1984).

The constitutional amendment passed by the people of Texas on November 5, 1985 to Article 5, Section 12 of the Texas Constitution and the implementing legislation contained in Article 1.14 of the Code of Criminal Procedure have eliminated the doctrine of fundamental error in Texas. Those provisions provide that a "failure to object to a defect... of form or substance in an indictment or information before... the trial... commences, waives the right to object to such defect... on appeal or any other post-conviction proceedings."

Therefore, even if an allegation of a culpable mental state would be required in the instant offense, a failure to timely object to such defect would waive any error pursuant to the above provisions.

However, this Court further holds that no culpable mental state need be alleged nor proven in the instant offense. Garber v. State, 83-MCA-1142 (Mun.Ct.App. - 1984). Therefore, the point is overruled.

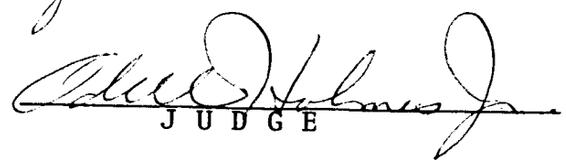
Secondly, Appellant contests the sufficiency of the evidence to show that Appellant owned or controlled the property in question.

This Court is obligated to review the record when the sufficiency of the evidence is contested in the light most favorable to the Judge's finding. Thomas v. State, 605 S.W.2d 290 (Tex.Crim.App. - 1980), Paoli v. State, 83-MCA-98 (Mun.Ct.App. - 1984).

The record reflects that the City Inspector had known the Appellant for over 17 years, and although without stating his basis in fact, testified that he knew that the Appellant owned and operated the property in question. The Appellant, himself, testified that he went to the City and applied for monies to repair the building (SF10-11). Later, however, Appellant claimed that he did not own the properties but only had contracted and represented County Properties Construction Company to do the repair work. (SF13 and SF17). Appellant introduced three exhibits relating to the subject property, all of which show he had sufficient interest in the property to be notified concerning its dilapidated condition as well as reflecting his personal efforts to attempt to obtain financing to correct those defects. Even in the face of Appellant's denial, the Trial Court had sufficient evidence to establish Appellant's responsibility for the maintenance of the building, and therefore the point is overruled.

Having found no reversible error, the Judgment of the Trial Court is affirmed.

Signed this 6 day of Jan, 1987.



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 Jan, 1987.

JUDGE