

IN THE MUNICIPAL COURT OF APPEALS  
OF THE CITY OF EL PASO, TEXAS

BERNARDO ALVIDREZ, Appellant

vs.

NO. 84-MCA-1204

STATE OF TEXAS, Appellee

O P I N I O N

Appellant appeals his conviction in Municipal Court for fleeing and attempting to elude a police vehicle as proscribed by Article 6701D, Section 186(a) V.A.T.C.S.

Appellant's contention is that the complaint is fatally defective because it fails to allege the appropriate state of mental culpability as required by Texas law. Although the complaint alleges that the Appellant "unlawfully and willfully" attempted to elude a police vehicle, it does not allege any of the states of mental culpability required by the Texas Penal Code, those being, intentionally, knowingly, recklessly or with criminal negligence.

A reading of Article 6.02 and 6.03 and the practice commentary incident to both of those sections of the Texas Penal Code reflects the Legislature's intent to limit and reduce the various mental states that were applicable under previous law, and in doing so, reduced those to the mental states listed above.

The City in this case concedes that some type of mental culpability is obviously required to be alleged in the charging document, and of course, proven at trial in order to sustain the conviction. However, the City urges this Court to hold that the term "willfully" is either synonymous with the other states of mental culpability outlined in the penal code, or is somehow inclusive within them. This Court declines to do so.

This Court holds that a complaint alleging an offense for fleeing or attempting to elude a police officer or his vehicle requires the allegation of a culpable mental state. Bocanegra v. State, 552 SW2d 130 (Tex.Cr.App.). Goss v. State, 582 SW2d 782 (Tex.Cr.App.).

Of course, since a culpable mental state, if required, constitutes an element of the offense, failure to allege this element renders the charging document fundamentally defective. Ex parte Winton, 549 SW2d 751 (Tex.Cr.App. - 1977). Therefore, the Judgment of the Trial Court in this case is reversed and the complaint is hereby ordered dismissed.

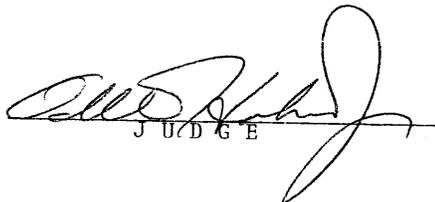
SIGNED this 19 day of Feb, 1985.

  
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 the complaint be dismissed.

Signed this 19 day of Feb, 1985.

  
J U D G E