

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

JESUS SERGIO BARRERA

v.

STATE OF TEXAS

No. 08-MCA-3234

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OPINION

Appellant appeals his conviction in Municipal Court for illegal window tinting contrary to Section 547.613 Tex. Trans. Code. A fine of \$45.00 was assessed.

The complaint filed in this case alleges that Appellant violated the law because he had a material attached to his windshield or side or rear window of said vehicle that altered the color or reduced the light transmission as required by the above cited section. The citation issued to Appellant does not identify which window was evidently in violation of the law but only that the window tinting was red. Appellant has provided this Court with pictures of his vehicle. It is not clear whether he presented those pictures to the Trial Judge but they show that there was red tinting on all the windows except the windshield which is not against the law.

This Court recently held in Hernandez v. State 07MCA3196, because the complaint failed to identify which window fails to meet the requirements of the law, this Court was unable to determine what offense Appellant allegedly committed. As Appellant aptly stated in his brief, “the law has separate guidelines for the windshield, side windows and rear windows”. There are different restrictions depending on what window is involved, Clearly, red tinting on the windshield is against the law, but not if it is on the side or rear windows.

The function of the complaint should be specific enough to focus the attention of both the Trial Court and this Court on what offense is actually alleged and whether the evidence supports such allegations.

As this Court did in the Hernandez case, the matter is remanded to the Trial Court, and if re-tried, the prosecution should allege what specific offense it is alleging and attempting to prove, and failing that, the prosecution consider filing a motion to dismiss as may be appropriate.

SIGNED this 17th day of June, 2008.


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 case be reversed and remanded to the Trial Court for re-trial.

SIGNED this 17th day of June, 2008.


JUDGE