

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

ROGELIO ALEJANDRO MARQUEZ

Appellant,

v.

STATE OF TEXAS

Appellee.

§
§
§
§
§
§
§

No. 09-MCA-3316

Ticket #: 0129463

OPINION

Appellant appeals his conviction in Municipal Court for a stop sign violation. A fine of \$85.00 was assessed.

Section 544.010, Tex. Trans. Code, requires an operator to stop before entering a crosswalk on the near side of the intersection, but if there is no crosswalk, the operator shall stop at a clearly marked stop line. In the absence of a stop line, the operator shall stop at a place nearest the intersecting roadway where the operator has a view of approaching traffic on the intersecting roadway.

In this case, the State alleged that there was no crosswalk, but that the Appellant failed to stop at a clearly marked stop line where there was such a stop line.

A Reporter's Record of the evidence introduced before the Trial Court is part of the Record before this Court. The Police Officer who issued the citation was the only witness who testified.

On appeal, Appellant contends that the evidence is legally insufficient to support the conviction.

In determining whether the evidence presented is legally sufficient to support the conviction, Appellate Courts consider all of the evidence submitted, Hall v. State 86 S.W. 3^d 235 (Tex. App.-Austin 2002, Pet. Ref'd.) and view the evidence in the light most

favorable to the verdict. Jackson v. Virginia 443 U.S. 307 (1979). After reviewing the evidence, the Court must decide whether any rational finder of fact could have found the essential elements of the crime beyond a reasonable doubt. Proper convictions require proof beyond a reasonable doubt, and if after reviewing all the evidence, the Appellate Court concludes that a “rational” Trial of fact “would necessarily entertain a reasonable doubt of the Defendant’s guilt” due process requires the Court to reverse and order a judgment of acquittal. Swearingten v. State 101 S.W. 3^d 89, 95 (Tex. Crim. App. 2003)

Further, it is axiomatic that the State must prove what it alleges in the complaint. In this case, the State elected to prove that Appellant failed to stop at a clearly marked stop line rather than the other options provided by Section 544.010.

The Officer testified that he was at the intersection of Lomita and Yermoland, Appellant was traveling eastbound on Yermoland, and that he had a clear view of Appellant’s vehicle. There is a four-way stop at that intersection. Then he testified that Appellant failed to stop at the stop sign, not the stop line as alleged.

On cross examination, the Officer again indicated that Appellant had not stopped at the stop sign, but when pressed as to whether Appellant’s tires stopped completely, he testified that Appellant rolled through the stop line (Pg. 8, Reporter’s Record). The balance of the cross examination and argument centered on whether the stop line was clearly marked or not.

Reviewing the evidence as a whole, the Officer testified twice that Appellant had failed to stop at the stop sign, and only on cross suggested that Appellant had rolled through the stop line. Clearly, the State’s evidence could have been bolstered by the Officer testifying that there were stop lines at that intersection, and that Appellant failed

to stop at the stop line rather than at the stop sign. If there is no crosswalk, and no stop line, the law requires that the operator of the vehicle stop at the place nearest the intersecting roadway where the operator has a view of approaching traffic on the intersecting roadway. Evidence that the operator of the vehicle failed to stop at the stop sign, not the stop line as alleged, was insufficient to prove a violation.

Therefore, this Court must decide whether any rational Trial of Fact could have found the essential elements of the crime beyond a reasonable doubt and if the Court concludes that a rational Trial of Fact would necessarily entertain a reasonable doubt as to the Defendant's guilt, it is required to reverse and order a judgment of acquittal. Had there have been no cross examination of the Officer, clearly the evidence would have been legally insufficient to support a conviction, and the one reference to the stop line on cross examination, in this Court's opinion, fails to satisfy the requirement that a proper conviction can only be had on proof beyond a reasonable doubt.

Having so found, the judgment of the Trial Court is hereby reversed and rendered in Appellant's favor.

SIGNED this 5th day of November, 2009.


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 in cause number 09-MCA-3316 be in all things reversed and rendered in Appellant's favor, and judgment of acquittal be entered in his behalf.

SIGNED this 5th day of November, 2009.


JUDGE