

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

ROY E. KOHN

Appellant,

vs.

STATE OF TEXAS,

Appellee.

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No. 01-MCA-2647

OPINION

The State has perfected this appeal pursuant to, Tex. Code Crim. Pro., Article 44.01 (a) (1), from an Order of the Trial Court dismissing the Complaint on Motion by the Defendant. Appellee's Motion to Dismiss contended that Appellee had no obligation to stop because he was on a separate roadway. The roadway in question is marked by double yellow lines in a median like configuration which he contends clearly separated the roadway. Appellee was cited for passing a school bus and was traveling in the opposite direction on the other side of the roadway from the school bus when the incident occurred.

The alleged offense occurred on McCombs in El Paso which is a major thoroughfare with two (2) lanes, running north and south bound. The roadway is seperated by an area the width of a full vehicle lane, and denoted by a double set of double yellow lines, and providing, at intervals, for lanes denoted solely for the purpose of allowing left turns. It's contours mirror those of a median although no physical median is present.

Section 545.066 of the Texas Transportation Code indicates that an operator on a highway having "separate roadways" is not required to stop for a school bus that is on a different roadway. Section 545.066 (f) (1) provides that a highway is considered to have separate roadways only if the highway has roadways separated by an intervening space in which operations of vehicles is not permitted, a physical barrier, or a clearly indicated dividing section constructed to impede vehicular traffic.

Neither party cites any case law, and this Court has been unable to find any, defining what a "separate roadway" is. However, the street markings in effect on McCombs, if obeyed by the driver of a vehicle, do restrict traffic between the sections of the roadway. This Court concurs with the Trial Court that such street markings do fall within the statutory meaning of separate roadways either because it is a roadway separated by an intervening space in which operations of vehicles are not permitted or the double yellow lines and their "median-like" configuration constitute a clearly indicated dividing section constructed to impede vehicular traffic.

Therefore, the Trial Court did not error in granting Appellee's Motion to Dismiss the Complaint.

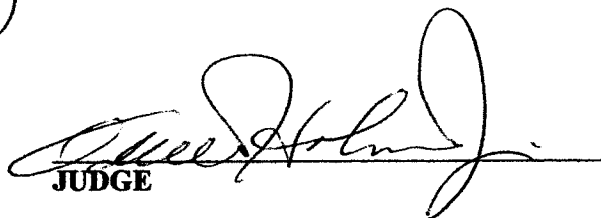
SIGNED this 20 day of July, 2001.


JUDGE

J U D G M E N T

The case came on to be heard, and the Court hereby affirms the Trial Court's decision in dismissing the Complaint.

SIGNED this 20 day of July, 2001.


JUDGE