

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

PATRICK STEPHEN MIAL, Appellant

vs.

No. 88-MCA-1943

STATE OF TEXAS, Appellee

OPINION

Appellant appeals his conviction in Municipal Court for hindering a police officer in the official discharge of his duties.

Neither the city ordinance under which this prosecution proceeded nor the complaint in this case allege a culpable mental state. Although silent as to such requirement, nonetheless, a culpable mental state is required unless the definition plainly dispenses with one. Section 6.02 Tex. Penal Code.

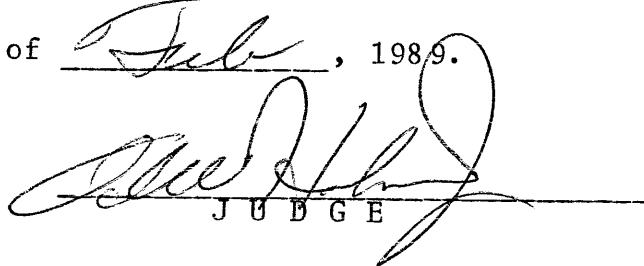
The instant offense, and those involved in this Court's previous holdings requiring the allegation of a culpable mental state in the complaint are indistinguishable, and the prosecution so recognizes in its brief. Ogle vs. State 83-MCA-1921 (Mun.Ct. App. -1985) (Failure to obey a police officer), Alvidrez vs. State 84-MCA-1204 (Mun. Ct. App. -1985) (Eluding a police officer); Smith vs. State 88-MCA-1905 (Mun. Ct. App. -1988) (Failure to obey police

officer). Likewise, the following cases support this Court's holding that a culpable mental state must be alleged in the instant offense. Bocanegra vs. State 552 SW2d 130 (Tex. Cr. App. -1977) (Welfare fraud); Goss vs. State 582 SW2d 782, (Tex. Cr. App. -1977) (Failure to stop and render aid); Rodriquez vs. State 737 SW2d 120 (Tex. App. SAT. -1987) (evading arrest); Jackson vs. State, 718 SW2d 724, (Tex. Crim. App. - 1986) (Evading arrest); Ledemsa vs. State 677 SW2d 529, (Tex.Cr.App. -1984) (Failure to Identify as a witness); Dinh vs. State 695 SW2d 797 (Tex.App. 1 Dist.-1985) (Selling alcohol to minor).

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. Crim. App. - 1977).

Having failed to allege an essential element of the offense, the conviction cannot stand, therefore, the judgment of the Trial Court in this case is reversed and the complaint is hereby ordered dismissed.

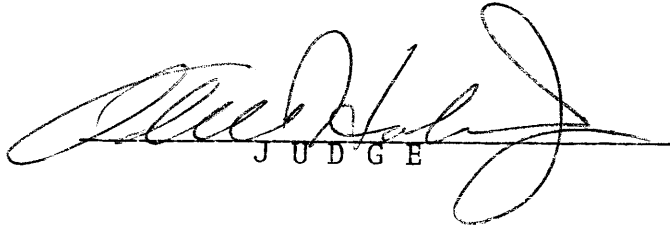
Signed this 3 day of Feb, 1989.

  
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 3 day of Feb, 1989.

  
J U D G E