

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

RODOLFO MORALES

v.

STATE OF TEXAS

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No. 08-MCA-3291

OPINION

Appellant appeals his conviction in Municipal Court for passing an authorized emergency vehicle as prohibited by Article 545.157 of the Texas Transportation Code.

Appellant contends, and the record before this Court reflects, that he appeared before the Trial Judge initially on an offense charging him with failure to yield right of way to an emergency vehicle, the charge which was identified on his citation, and which is controlled by Section 545.156 of the Texas Transportation Code.

The Court certificate shows that that offense was dismissed evidently because the wrong complaint had been filed. Subsequently, Appellant again appeared before the Trial Court, and despite the identification of the offense on the citation as having failed to yield right of way to emergency vehicle, he was then charged, with illegal passing of an authorized emergency vehicle as alleged in a new complaint. A violation of Article 545.157 of the Texas Transportation Code. A fine of \$75.00 was assessed.

It is not clear to this Court why a complaint was created charging the instant offense of illegal passing when a citation issued by the officer clearly contemplated a different offense altogether. It seems to this Court that if he had been charged with failure to yield right of way to emergency vehicle, a complaint charging that offense should have been the basis of the prosecution.

These are two separate and distinct offenses, and Appellant was entitled to be tried on the offense for which he was cited, i.e. failure to yield right of way to an emergency vehicle. Because the Trial Court is best suited to sort this issue out, this case is hereby remanded to the Trial Court for further consideration, and to determine what the correct charge should be and to proceed accordingly.

SIGNED this 25th day of Feb, 2009.


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 25th day of Feb, 2009.


JUDGE