

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

RAUL ORTIZ,
Appellant,

vs.

STATE OF TEXAS,
Appellee.

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No. 07-MCA-3145

OPINION

Appellant appeals his conviction in Municipal Court for making an illegal U-turn contrary to Sec. 12.24.040 of the Code of the City of El Paso. A fine of \$46.00 was assessed.

Appellant contends that although he did make a U-turn, that it was not illegal because 1) it was outside of any no U-turn zone, 2) there is only a double yellow line at the point where he made the turn but that does not prohibit crossing unless you are passing another vehicle, and 3) the citation issued clearly indicates that his offense was for an "illegal U-turn-double yellow lines.

Appellant attached to his brief a statement from the officer who issued the citation which supports his contentions, as well as providing to this Court an aerial photograph of the area and photographs supporting his position also.

There is no reporter's record, so this Court is unable to determine whether any of that information was presented to the Trial Court, but clearly, those defensive matters should have been raised by Appellant, before the Trial Court and given it an opportunity to address them. Had he done so, the Trial Court may well have accepted his evidence, and decided this case differently.

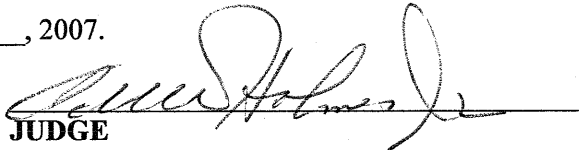
Under Sec. 545.055 of the Tex. Trans. Code, Sec. (b), an operator may not drive on the left side of the roadway in a no passing zone or on the left side of any pavement striping designed to mark a no passing zone, i.e., double-yellow line stripes. This Section addresses only no passing zones, and not making a U-turn, and allows the crossing of the double-yellow line to make a left turn into or out of an

alley or private road or driveway. In Sec. (d), the above Section authorizes local authority, when it has determined a portion of a highway where passing or driving to the left of the roadway would be especially hazardous, to post signs at the beginning and end of that area to prohibit passing, and presumably, driving to the left of the roadway. That, ostensibly, is where you find signs posted prohibiting a U-turn, and in fact, near where Appellant was evidently cited, there were signs prohibiting a U-turn.

However, Appellant was not charged with making a U-turn in a posted area, but was charged for making a U-turn across double-yellow lines, an offense which does not exist. Instead, Appellant was charged under a Municipal Ordinance, Sec. 12.24.040 that prohibits a person from turning a vehicle in the opposite direction when such movement could not be made in safety or without interfering with traffic. The citation however, does not suggest that Appellant was charged with that offense. At a minimum, there seems to be a fatal variance between the charge identified on the citation, and the charge alleged in the Complaint. This Court believes, that this information should be presented to the Trial Court, and the Trial Court be given an opportunity to reconsider this case which the Appellant has presented on appeal, including the officer's e-mail who issued this citation which supports Appellant's position as well as this Court's Opinion in this matter.

Therefore, this case is reversed and remanded to the Trial Court for reconsideration.

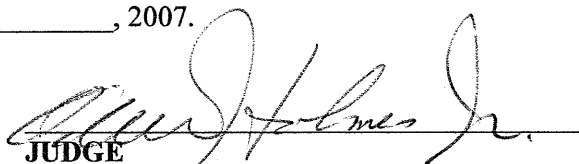
SIGNED this 24 day of May, 2007.


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 24 day of May, 2007.


JUDGE