

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

ALFREDO GONZALEZ

Appellant,

vs.

STATE OF TEXAS,

Appellee.

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No. 03-MCA-2849

OPINION

Appellant appeals his conviction in Municipal Court for a speeding offense. A fine of \$90.00 was assessed.

No Statement of Facts is contained the record before this court. Section 30.0010(b) provides that a court reporter is not required to take or record testimony in a case in which neither the Defendant, the Prosecutor, nor the Judge demands it. In this case, no one demanded a Court Reporter, and it was incumbent upon Appellant to demand a court reporter and to provide this court with a Statement of Facts in order for this court to address the issues that he has raised on appeal relating to the sufficiency and admissibility of the evidence.

This court has repeatedly held that without a Statement of Facts questions concerning the sufficiency or admissibility of evidence cannot be addressed Paoli v. State 83-MCA-98 (Mun. Ct. App. 1983).

Since the Trial Judge is the exclusive Judge of the facts proved, the credibility of the witnesses, and the weight to be given to their testimony, this court has no legal authority to substitute it's judgment for that of the Trial Court in resolving factual disputes even when there is conflicting evidence as was obviously the case in this particular matter.

Appellant further complains about the radar, whether it was properly used, or whether it was calibrated, and cites this court to a Wisconsin case which evidently held that the use of stationary radar

was questionable and therefore, as Appellant states, "was thrown out by the judge." Clearly, the requirements of Kelly v. State, 824 S.W.2d 568, are applicable to the use of radar in order to establish a proper predicate for it's admission. The Texas Court of Criminal Appeals, before Kelly v. State, in Musquette, 579 S.W. 2d 478, held the state was not required to offer expert testimony about the underlying scientific basis of radar so long as the officer testified he was trained both to operate the radar and test it for accuracy. In Maysonet v. State, 06-01-00024-CR, the Texarkana Court of Appeals recognized that society's widespread use of radar devices and considering other court's acceptance of radar, the underlying scientific principals of radar are indisputable and valid as a matter of law. That being said, Kelly still requires the State to establish that the officers applied a valid technique and that it was correctly applied on a particular occasion in question. Again, since there is no Statement of Facts, this court is unable to review whether that proper predicate was laid, and must assume that the trier of fact properly admitted the evidence. See also Ochoa v. State, 994 S. W. 2d. 283 (Tex. App. El Paso 1999)

Having found no reversible error, the judgment of the Trial Court is affirmed.

SIGNED this 5 day of June, 2003.


JUDGE

J U D G M E N T

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 Judgment be in all things affirmed, and that the Appellant pay all costs in this behalf expended, and that this decision be certified below for observance.

SIGNED this 5 day of June, 2003.


JUDGE