

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

DAVID J. STRASSER

v.

STATE OF TEXAS

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No. 09-MCA-3307
Ticket # T18156102

OPINION

Appellant appeals his conviction in Municipal Court for a speeding offense. A fine of \$75.00 was assessed.

A Reporter's Record showing the evidence that was introduced before the Trial Court is before this Court, and this Court has reviewed it in light of Appellant's contentions.

First of all, Appellant suggests that the Officer scratched out a portion of the citation, and when the Officer was asked why he had done that, he indicated that he had placed Appellant's name in the wrong spot. Appellant then next contends that he had the color of the vehicle incorrect, and those errors in the citation carry over into how the Officer may have perceived the infraction or the operation of his radar unit. Neither of those matters are elements of the offense as alleged in the complaint and are contradicted by the direct testimony of the Police Officer that he visually observed Appellant exceeding the speed limit and confirmed that with his radar unit, which he had properly tested at the beginning of his shift and at the end of his shift.

Appellant seems to suggest that the Officer must test the proper functioning of his radar unit immediately before issuance of the citation and immediately thereafter, but cites this Court to no authority holding that to be the case, and this Court has not found any cases supporting that argument. Clearly, the cases have held that when evidence based on a scientific theory, is introduced, to be reliable and admissible, the evidence derived from such scientific theory must satisfy the following three criteria:

1. The underlying scientific theory must be valid;
2. The technique applying the theory must be valid;
3. The technique must have been properly applied on the occasion in question. Tex. R. of Evid. 702, Kelly v. State 824 S.W. 2d 568 (Tex. Crim. App. 1992), Gonzalez v. State of Texas 03-MCA-2890 (Mun. Ct. App. 2004)

This Court believes, in light of society's widespread use of radar devices, to measuring the speed of a fast ball to the speed of a missile, and considering generally the Court's acceptance of radar, the underlying scientific principles of radar are indisputable and valid as a matter of law. So that, the first two criteria of Kelly need no longer be proved, and the Court would be justified in taking judicial notice of the reliability and relevance of radar evidence. However, the State must still establish that the Officer applied a valid technique and that it was correctly applied on the particular occasion in question. The Record before this Court, convinces it that such was accomplished, and that the radar unit was properly tested and was working properly at the time that this citation was issued.

In addition, the Officer testified that he had 15 years of experience as a traffic officer, and visually estimated Appellant's speed at 45 mph which he confirmed with the radar unit. There are a myriad of cases where, regardless of the use of a radar device, the Officer's visual observation that a vehicle was exceeding the speed limit was sufficient evidence to support the conviction. Ochoa v. State 994 S.W. 2d 283 (Tex. App. – El Paso – 1999), Icke v. State 36 S.W. 3d 913 (Tex. App. – Houston – 2001, Pet. Ref'd.), Perales v. State 117 S.W. 3d 434 (Tex. App. – Corpus Christi – 2003, Pet. Ref'd.), Chavez v. State 206 Tex. App. Lexis 7909 (unpublished opinion).

Lastly, Appellant contends that the tuning forks that the Officer used to test the calibration of the radar unit should also have been calibrated and that the Officer should have been certified in tuning fork calibration. Again, no authority is cited for that proposition and this

Court found none. The Officer testified that unless the tuning forks were damaged, that they would be used to calibrate the radar unit, and in this case they were not damaged in any way.

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

Signed this 5th day of November, 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 affirmed.

SIGNED this 5th day of November, 2009.


JUDGE