

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

RICHARD FLORES, JR.	§	
	§	
Appellant	§	
	§	
vs.	§	90-MCA-2074
	§	
STATE OF TEXAS,	§	
	§	
Appellee	§	

OPINION

Appellant appeals his conviction in Municipal Court for a speeding offense.

On appeal, Appellant contends that he was not allowed to testify as an expert regarding the use of radar involved in his case.

Rule 702, Tex. Rules of Crim. Evid. provides that an expert may testify if scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue. Although generally, opinion testimony which is not based on personal knowledge is hearsay and inadmissible, if because of special knowledge, skill, experience, training, or education, a person can be qualified as an expert and their testimony admitted. The practical test for receiving such opinion is: On the subject in issue can the trier of fact receive any appreciable aid from the testimony of the person

offered? Holloway vs. State, 613 S.W.2d 497 (Tex.Cr.App. - 1981).

The special knowledge which qualifies a witness to give an expert opinion may be derived entirely from a study of technical works, or specialized education, or practical experience, or varying combinations thereof. Holloway, supra.

Whether a witness offered as an expert possesses the required qualifications is an issue that rests largely within the discretion of the Trial Court, and the decision to admit or exclude the proposed opinion testimony will not be disturbed on appeal unless a clear abuse of discretion is shown. Steve vs. State, 614 S.W.2d 137, (Tex.Crim.App. - 1981), Cantu vs. State, 135 S.W.2d 705 (Tex.Crim.App. - 1940).

Appellant contends that he has a BS Degree in Electrical Engineering, has completed all his course work for his MSEE, and has been employed at White Sands Missile Range for over ten (10) years working with radar. He also submitted a rather authoritative article to this Court which he was not allowed to introduce before the Trial Court regarding the use and the possible errors inherent in radar systems used in traffic cases.

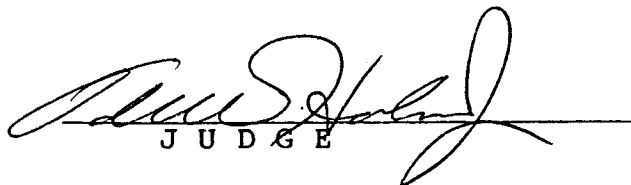
It appears that the Trial Court did not allow the Appellant to attempt to further qualify himself as an expert, when an objection by the prosecutor was sustained, and the Court admonished Appellant not to pursue the matter further. Although this Court is inclined to believe that Appellant would, in fact,

qualify as an expert witness based on the information presented to the Trial Court, it appears that he was not allowed to even attempt to further qualify himself as an expert, and therefore the Trial Court committed error in so doing.

The State's contention that the sufficiency of the evidence is the issue on appeal, misses the point presented as to whether Appellant was an expert witness, or as indicated above, whether Appellant should have been given further opportunity to qualify himself as an expert in this particular area. A person need not be a police officer, or certified in the operation of traffic radar to be qualified as an expert in the use of radar in traffic cases. In this case, the Court, at a minimum, should have allowed Appellant the opportunity to establish his qualifications based on his knowledge, training or experience to qualify as an expert.

Having found that the Trial Court committed error, the Judgment of the Trial Court is reversed, and this cause is hereby remanded for retrial.

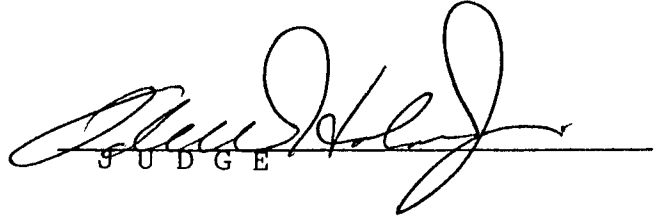
SIGNED this 26 day of Nov, 1990.


J U D G E

J U D G M E N T

The Judgment of The Trial Court is hereby reversed and the case is remanded for new trial.

SIGNED this 26 day of Nov., 1990.


J U D G E

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