

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

GEORGE RANCICH,

Appellant,

vs.

STATE OF TEXAS,

Appellee.

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No. 06-MCA-3083

OPINION

Appellant appeals his conviction in Municipal Court for a speeding offense. A fine of \$150.00 was assessed.

On appeal, through Appellant's able counsel, he raises the sufficiency of the evidence to sustain the conviction. A record of the proceedings was taken and appears in the record before this Court. The record is very brief. Summarizing, the officer testified that he "chased the vehicle for over a mile and determined the speed was 92 miles per hour in a 60 mile per hour zone." However, he did not testify how that determination was made. His testimony is conclusory at best. After identifying Appellant as the driver of the vehicle and that the offense occurred in the City and County of El Paso, the City rested without further questioning of the officer. Appellant did not testify, which, of course, he is not required to do.

Clearly, there could have been substantially more evidence introduced by the State to establish that the vehicle was legally clocked either by pacing it at a given speed over a given period of time or distance, but that was not done. This Court held in Magaw v. State, 83-MCA-229 (Mun. Ct. App. 1984) that the evidence was insufficient to support a conviction for speeding where Appellant was not clocked nor his speed determined by any other means, other than the witness testified that it appeared that he was going faster than the posted speed limit at the time. This Court also held in Brodka v. State, 83-MCA-1149 (Mun. Ct. App. 1984) that accelerating rapidly in order to catch Appellant's vehicle before clocking

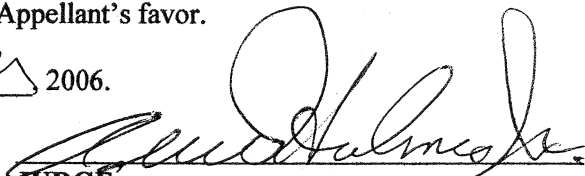
or pacing it was insufficient to establish a speeding offense. This Court, in that case, recognized that either pacing or clocking a vehicle in order to prove a speeding offense requires evidence that the pacing or clocking occur over some specific and given distance in order to justify the fact that the vehicles are traveling at the same speed over the same distance.

Further, "chasing" the vehicle may include speeds which involve the police officer catching up with the other vehicle in order to pace it or otherwise clock it that would not be attributable to the Defendant. Additionally, there could have been evidence introduced that the speed at which Appellant was driving was unreasonable under the circumstances then existing and exceeded the posted speed limit which was alleged in the Complaint, but such evidence was not introduced either. Nor was evidence introduced that Appellant was driving at a "high rate of speed" and was exceeding the speed limit. Such evidence was held sufficient, when no objection was made, in Ochoa v. State, 994 S.W.2d, 283 (Tex. App. -El Paso).

This Court knows that it is not the fact that additional evidence could have been offered that determines whether the evidence is legally or factually sufficient to support a conviction, but this Court is also mindful of the legal requirements of both legal and factual sufficiency points of error necessary to sustain the Trial Court's Judgment as stated in Clewis v. State, 92 S.W. 2d 126 (Tx. Crim. App. 1996). See also Stewart v. State, 08-04-00272 (Tx. App.-El Paso 2006), Ash v. State, 08-04-00046 (Tx. App.-El Paso 2006) and Bennett v. State, 831 S.W. 2d 20 (Tx. App.-El Paso 1992).

This Court believes that the evidence is both legally and factually insufficient to support this conviction, the case is hereby reversed and rendered in Appellant's favor.

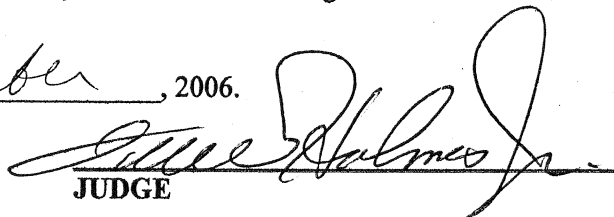
SIGNED this 15 day of December 2006.

  
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 Judgment in 06-MCA-3083 be in all things reversed and rendered.

SIGNED this 15 day of December, 2006.

  
A handwritten signature in black ink, appearing to read "Steve Halmes Jr.", is written over a horizontal line. The signature is cursive and stylized.

**JUDGE**