

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

**MACK RANDALL MASSEY**

Appellant,

v.

**STATE OF TEXAS**

Appellee.

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**No. 11-MCA-3444  
Ticket #: T0217656**

**OPINION**

Appellant appeals his conviction in Municipal Court for a speeding violation. A fine of \$50.00 was assessed.

The Officer who issued the citation identified the location of the offense as being the 800 block of South Mesa Hills Drive in El Paso, Texas. Incorporating that information in the Complaint, the State alleged that Appellant was speeding at or near 800 South Mesa Hill Drive and that the prima facie lawful speed limit at that location was 30 miles per hour as designated by appropriate signs giving notice thereof and in violation in contrary to Title 12 Chapter 12.28, Section 12.28.010 (a) and Schedule XIV, Section 12.88.150 of the Code of the City of El Paso. As pointed out by Appellant's Attorney before the Trial Court, as well as in this Court, the above referenced Schedule does not identify the above location as a 30 mile per hour zone as alleged in the Complaint. In fact, the 800 block of South Mesa Hills Drive is a posted 35 mile per hour speed zone.

The Reporter's Record provided to this Court reflects that initially the Officer testified that the violation occurred in the 900 block of Sunland Park, but then corrected himself and identified the street as being Mesa Hills. He then identified the 900 and 1000

block of Mesa Hills as the location where the offense actually occurred. Although the 900 to 1000 block of South Mesa Hills is a posted 30 mile per hour zone, neither the Officer's citation nor the Complaint identifies that as the location where the offense occurred. Therefore, there was no evidence offered by the State to support its allegation that Appellant was exceeding the posted speed limit of 35 miles per hour in the 800 block of South Mesa Hills Drive. Its evidence, on the contrary, only supports the conclusion that the offense occurred at a different location and in a different posted speed limit zone. At a minimum, the evidence offered was legally insufficient to sustain the conviction.

Additionally, based on those facts, this Court holds that the evidence is also legally insufficient because there is a material fatal variance between the allegation of where the alleged offense occurred and the evidence presented in support thereof. Gollihar v. State, 46 SW 3d 243 (Tex. Crim. App. 2001)

Having found the evidence legally insufficient to sustain the conviction, the judgment of the Trial Court is hereby reversed and rendered in Appellant's favor.

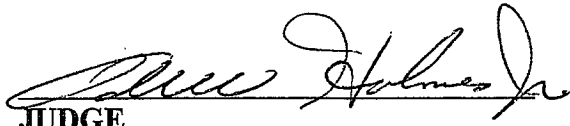
SIGNED this 15<sup>th</sup> day of September, 2011.

  
JUDGE

**JUDGMENT**

This case came on to be heard, the same being considered, because it is the opinion of this Court that there was error in the Judgment, it is ORDERED, ADJUDGED and DECREED by the Court that the Judgment in cause number 11-MCA-3444 be in all things reversed and rendered in Appellant's favor, and judgment of acquittal be entered in his behalf.

SIGNED this 15<sup>th</sup> day of September, 2011.

  
**JUDGE**