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

VALERIE PHILLIPS	§	
	§	
Appellant,	§	**No. 11-MCA-3470**
v.	§	**Ticket #: 18355074**
	§	
STATE OF TEXAS	§	
	§	
Appellee.	§	

OPINION

Appellant appeals her conviction in Municipal Court for speeding. Appellant initially was placed on deferred disposition on the condition that she receive no other violations, pay Court costs, and take a Driver's Safety Course pursuant to Article 45.051, (Tex. Crim. Proc.) The Record is silent if Appellant successfully completed her period of deferred disposition. On October 4, 2011, the Judge accepted a Motion for Entry of Guilt filed by her Attorney, and found Appellant guilty of the offense, and this appeal ensued.

The Reporter's Record before this Court reflects that the Police Officer who issued this citation testified that she was traveling on I-10 East when a blue Honda Accord passed her and caught her attention. The Officer caught up with the vehicle and proceeded to pace it, clocking Appellant going 70 miles per hour for approximately a mile.

Appellant's first point of error questions whether Appellant's speed, while pacing with her speedometer, was insufficient to prove the offense since there was no evidence her speedometer was calibrated. Appellant's contentions are based on his cross examination of the Police Officer. The Officer testified that she had no personal knowledge if her speedometer had been calibrated or not, or whether her speedometer was accurate or not. No

objection was made to the admission of such testimony of the Police Officer. Additionally, in the closing statements to the Court, Appellant's Attorney did not raise the issue as to any requirements that the speedometer be calibrated or that calibration of the Police Officer's speedometer is required by law.

It is axiomatic that the law in Texas is well-settled that to preserve a complaint for appellate review, a party must make a timely, specific objection to the Trial Court. See Granviel v. State, 552 S.W. 2d 107 (Tex. Crim. App. 1976) The purpose of the "specific objection" rule is to (1) let the Trial Judge know what relief the party is seeking and why he is entitled to such relief, and (2) make the objection "clearly enough for the Judge to understand what the party is asking for at a time when the Trial Court is in a proper position to do something about it." See Lankston v. State, 827 S.W. 2d 907 (Tex. Crim. App. 1992) Failure to make the timely, specific objection waives any error on appeal. See Garcia v. State, 887 S. W. 2d 846 (Tex. Crim. App. 1994), Burks v. State, 876 S.W. 2d 877 (Tex. Crim. App. 1994)

Additionally, Appellant's brief does not cite this Court to any authority supporting his position that the speedometer must be calibrated to show that it is accurate nor does she present any argument supporting that theory either. Appellant's brief only presents her bare contention that such is required. When a party has raised a point of error but has failed to cite authority or develop an argument in support of that point, nothing is presented for appellate review. See Coble v. State, 871 S.W. 2d 192 (Tex. Crim. App. 1993), State v. Gonzalez, 855 S.W. 2d 692 (Tex. Crim. App. 1993), Keith v. State, 782 S.W. 2d 861 (Tex. Crim. App. 1989) By failing to comply with Rule 74(f), (Tex.. R. App. Rule 74(f) Appellant has waived appellate review of her assigned error.

This Court further believes, even if Appellant had not waived her point of error as outlined above, the issue raised by Appellant goes to the weight of the evidence and not its admissibility.

Appellant's first point of error is therefore overruled.

Appellant's second point of error contends that the evidence is insufficient because the evidence fails to prove the location where the speeding offense occurred or what the posted speed limit at that location was. In reviewing Appellant's claim of legally insufficient evidence, this Court must determine whether the evidence is sufficient to support each and every essential element of the criminal offense beyond a reasonable doubt. See Brooks v. State, 323 S.W. 3d, 893 (Tex. Crim. App. 2010)

The complaint alleged the speeding offense occurred at or near I-10 East, MP 22, at a speed of 70 miles per hour, which was in excess of the legally posted speed of 60 miles per hour, which was greater than was reasonable and prudent under the circumstances then existing. The citation also identified the location of the violation as I-10 East, MP 22. Thus, the State was relying on Section 545.352, Tex. Trans. Code, which provides that a speed in excess of the posted speed limit is prima facie evidence that the speed is not reasonable and prudent and that the speed is unlawful.

Again reviewing the Reporter's Record, the evidence indicates that the Officer testified that she first observed Appellant's vehicle going East on I-10, and that she, likewise, was traveling in that same direction. Again the Prosecutor asked the Officer this, "What is the speed on I-10?" The Officer answered, "It was 60 miles an hour." without delineating the exact location on I-10 where the pacing occurred.

Nowhere in the Record is there any evidence that this offense occurred near Mile Post 22 as alleged nor that the posted speed limit in that location was 60 miles per hour.

It was incumbent on the State to prove the exact location of the offense or that it was in an area that encompassed a 60 mile per hour zone in order to rely on the presumption created by Section 545.352, (Tex. Trans. Code), to establish that Appellant's conduct was unlawful. See Parsons v. State, 449 S.W. 2d, 75 (Tex. Crim. App. 1970) The Court in Parson's held that the evidence in that case failed to establish the prima facie speed limit as alleged in the complaint, and therefore found the evidence to be insufficient to support the conviction proving the location of the offense is required when you are charging a speeding offense as in this case.

This Court, in Massey v. State, 11-MCA-3444 (Mun. Ct. App. 2011), held the evidence to be legally insufficient where the complaint alleged the offense occurred at a different location and in a different posted speed limit than what was alleged in the complaint.

Appellant's point of error number two is sustained.

Therefore, the judgment of the Trial Court is hereby reversed and rendered in Appellant's favor.

SIGNED this 30th day of November, 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-3470 be in all things reversed and rendered in Appellant's favor, and judgment of acquittal be entered in her behalf.

SIGNED this 30th day of November, 2011.

JUDGE