

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

ALLAN LAMB

Appellant,

vs.

STATE OF TEXAS,

Appellee.

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No. 05-MCA-3038

OPINION

Appellant appeals his conviction in Municipal Court for a speeding offense. A fine of \$100.00 was assessed.

Appellant contends that his citation was for a violation of what he terms as a "presumed speed limit". Although he was cited for going 70 miles per hour in a 60 mile per hour zone, he contends that in order for him to be found guilty, the state was required to prove that he was driving not only above the speed limit but also that his driving was unsafe for the conditions as they existed at the time.

Appellant contends, among other things that he was cited early in the morning when traffic was very light, it was daylight, the weather was clear, the roads dry, and other matters that would suggest that his driving above the speed limit was not unsafe.

Since there is no Statement of Facts contained in the record before this court, this court is unable to determine what evidence was actually presented to the trial court, but assumes there was evidence that Appellant was exceeding the posted speed limit. That determination would be for the trial court to make based on the evidence presented, and this court is unable to second guess that decision in the absence of a Statement of Facts.

Contrary to Appellant's argument, Texas speeding laws establish a "prima facie speed limit", and driving in excess of that speed limit is evidence that the speed is not reasonable and prudent, and is unlawful. TX. Trans. Code Section 545.352. See Zheng v. State 2005 Tex. App. Lexis 1318.

Therefore, the judgment of the trial court is affirmed.

SIGNED this 27 day of January 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 be in all things affirmed, and that the Appellant pay all costs in this behalf expended, and that this decision be certified below for observance.

SIGNED this 27 day of January, 2006.



JUDGE