IN THE MUNICIPAL COURT OF APPEALS

OF THE CITY OF EL PASO, TEXAS

HEINZ STEINMEIER, Appellant

vs. NO. 85-MCA-1563

STATE OF TEXAS, Appellee

O P I N I O N

Appellant appeals his conviction from Municipal Court for a speeding violation.

Appellant did not request a statement of facts and none is contained in this record. However, in a pro se brief, Appellant attacks the sufficiency of the evidence. This Court is unable to review the Trial Judge's findings relating to the sufficiency or admissibility of evidence when no statement of facts is contained in the record. As stated before, the function of the Trial Court is to judge the credibility of the witnesses and the weight to be given to their testimony, and this Court cannot substitute its judgment for that of the Trial Court in that regard.

The Appellate Court decides only questions of law and it is the Trial Court's duty to resolve disputed questions of fact. There continues to be an apparent misconception about the function of an appeal under the applicable Courts of Record Statute that an appeal involves a complete rehearing of the case on what was known formerly as a "de novo" basis. Since the enactment of the Court of Records Statute, the Appellate Court concerns itself only with resolution of questions of law. Irvin v. State, 84-MCA-1162 (Mun.Ct.App.) and Paoli v. State, 83-MCA-98 (Mun.Ct.App.)

Although Appellant's main thrust relates to the sufficiency of the evidence, a broader interpretation of his position as presented during oral argument could be construed to question the reliability of radar in general. Appellant contends that any movement within the transmitting

range of the radar gun would result in inaccurate readings. For instance, Appellant contends that the police officer, who evidently was holding a hand-held radar device at the time, was moving as he was reading the radar device, and that such movement would affect the accuracy of the radar unit. Also, Appellant contends that even the movement of "leaves blowing in the wind" would adversely affect the accuracy of the radar unit. In short, he contends that the radar device is only reliable when used in a vacuum. Needless to say, such conditions never exist in the field.

Although the trial court must require that a proper predicate be laid for the admission of such evidence, and give due consideration to the credibility of the witnesses and the weight to be given to their testimony relating to the radar device, the scientific principles underlying the use of radar devices for measuring the speed of vehicular traffic are well established and have been judicially accepted in Texas. In Gano v. State, 466 S.W.2d 730 (Tex.Cr.App. - 1971) the Court upheld a speed clocking by the use of radar after the patrolman had calibrated his instrument and was familiar with and experienced in the operation of the apparatus. Also, in Cromer v. State, 374 S.W.2d 884 (Tex.Cr.App.), the Court held that the testimony of a patrolman as to the speed shown by a radar set was admissible when the patrolman testified that they were trained to operate and to test for the set's accuracy, and that they did operate and test it, finding it to be accurate, was sufficient to allow the admission in evidence of the reading obtained by the use of such device. See also, Masquelette v. State, 579 S.W.2d 478 (Tex.Cr.App. - 1979). Further, in Wilson v. State, 328 S.W.2d 311 (Tex.Cr.App. - 1959), the Court lined Texas up with the majority of jurisdictions which now have eliminated the requirement of proving by expert testimony the applicability

of the basic radar principles to law enforcement. However, as indicated above, the accuracy of the individual radar set remains a vital element which the prosecution must prove. Thus, this Court holds that the underlying scientific principles used in radar devices need not be established by the evidence, and that radar units are reliable to determine the speed of vehicular traffic when they have been shown by appropriate testing to be accurate and are operated by trained and competent officers.

Finding no reversible error, the Judgment of the Trial Court is affirmed.

Signed this 21 day of May, 1985.

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 21 day of May, 1985.

JUDGE