IN THE MUNICIPAL COURT OF APPEALS

OF THE CITY OF EL PASO, TEXAS

SEVERO BARRERAS,	§	
	§	
Appellant	§	
	§	
vs.	§	90-MCA-2049
	§	
STATE OF TEXAS,	§	
	§	
Appellee	§	

OPINION

Appellant appeals his conviction in Municipal Court for a speeding offense.

Appellant contends that the evidence is insufficient because it fails to identify the Appellant as the person who committed the offense. Appellant correctly states that the burden of proof is on the State to make an in-court identification of the person cited as being the same person who committed the offense, and that identification of the defendant is an essential element of the State's case. Sanchez vs. State, 83 MCA 1118 (Mun.Ct.App.)

This Court is further aware that the standard for review of the sufficiency of the evidence is whether, viewing the evidence in the light most favorable to the judgment of the Court, any rational Trier of Fact could have found the essential elements of the crime charged beyond a reasonable doubt. Austin vs. State,

794 SW 2d 408 (Tex.App. - Austin - 1990); Jackson vs. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); Sharp vs. State, 707 SW 2d 611 (Tex.Cr.App. - 1986).

Applying that standard of review to this particular case, this Court holds that there was sufficient evidence identifying the Appellant as the driver of the vehicle. Not only did the officer testify that the Appellant was identified as the driver by reference to his Texas driver's license, but also, the Appellant testified that he was the person who received the citation, and was the person driving the vehicle stopped on the occasion in question. Appellant's first point of error is overruled.

Secondly, Appellant contends that the evidence is insufficient to show that Appellant was driving at a speed that was greater than reasonable and prudent under the circumstances then existing. Appellant was cited for traveling at 68 miles per hour in a 55 miles per hour zone on Interstate 10 here in El Paso. The officer testified that he believed the speed was greater than what was reasonable and prudent under the circumstances, that there was other traffic in the area, that coupled with the fact that the speed itself was in excess of the posted speed limit, all provide enough credible testimony to support the conviction. Reconciliation of conflicts and inconsistent testimony is for the Trier of Fact, and conflicts in the testimony do not call for a reversal if there is enough credible testimony presented to support the conviction. Jackson vs. State, 672 SW 2d 801 (Tex.Cr.App.

- 1984); Bowden vs. State, 628 SW 2d 782 (Tex.Cr.App. - 1982); Austin vs. State, supra. Appellant's second point of error is overruled.

Next, Appellant contends that the Trial Court commented on the weight of the evidence because there were instances where the Trial Court referred to the fact that the defendant was traveling in the "fast lane". This case was not tried to a jury, but was a bench trial, and this Court presumes that the Trial Court did not consider any inadmissible evidence, nor was prejudicially influenced by the Court's characterization of the lane in which the Appellant was driving as being the "fast lane". The prohibition that the Trial Judge shall not comment on the weight of the evidence is only applicable to jury trials. Vernon's Ann. CCP, Article 38.05. Additionally, even if there were some error, no objection was made by the Appellant, and therefore, any complaint on Appeal in that respect would be waived. Hovila vs. State, 562 SW 2d 243 (Tex.Cr.App. - 1978); Minor vs. State, 469 SW 2d 579 (Tex.Cr.App. - 1971); Jenkins vs. State, 488 SW 130 (Tex.Cr.App. - 1972).

Having found no reversible error, the judgment of the Trial Court is affirmed.

SIGNED this 27 day of Nov., 1990.

JUDGE

J U D G M E N T

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 Nov, 1990.

JUDGE

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