

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

GUS MASSEY, JR.	§	
Appellant,	§	No. 23-MCA-4046
v.	§	Court No. T4638454
STATE OF TEXAS	§	
Appellee.	§	

OPINION

Appellant was cited on December 2, 2020, for speeding on a roadway. All issues were submitted to the trial court and a record was requested that is part of the clerk's record. Appellant was found guilty and assessed a fine of \$101.00, court costs of \$134.00 and a \$5.00 arrest.<sup>1</sup>

SOLE ISSUE

The case was heard on September 20, 2022. The sole issue before this Court is whether the evidence is legally and factually sufficient to support the trial court finding Appellant guilty of speeding on a roadway. For the stated reasons herein, this Court affirms the trial court's judgment.

STANDARD OF REVIEW

This Court reviews legal and factual sufficiency challenges using the same standard of review. *Ervin v. State*, 331 S.W.3d 49, 54 (Tex. App.-Houston [1st Dist.] 2010, pet. ref'd). Under this standard, evidence is insufficient to support a conviction if, considering all the record evidence in the light most favorable to the verdict, no rational factfinder could have found that each essential element of the charged offense was proven beyond a reasonable doubt. "Viewed in the light most

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<sup>1</sup> Even though this appeal was filed after ten (10) days, this Court considers this appeal pursuant to Section 30.00147(d) of the Texas Government Code as it was filed only 6 days late.

element of the charged offense was proven beyond a reasonable doubt. "Viewed in the light most favorable to the verdict, the evidence is insufficient under this standard in two circumstances: (1) the record contains no evidence, or merely a "modicum" of evidence, probative of an element of the offense; or (2) the evidence conclusively establishes a reasonable doubt." *Kiffe v. State*, 361 S.W.3d 104, 107 (Tex. App. 2012) "Additionally, the evidence is insufficient as a matter of law if the acts alleged do not constitute the criminal offense charged." *Id.*, at 108.

An appellate court gives great deference to the fact-finder and resolves any conflicting inferences in favor of the verdict. An appellate court also defers to the factfinder's evaluation of the credibility and weight of the evidence. *Id.*, at 108.

A person is guilty of speeding on a roadway "if the person unlawfully operates a vehicle at a speed greater than reasonable and prudent under the conditions: to wit at a speed of 45 miles per hour in a 30 mile per hour zone. Texas Transportation Code § 545.351(1).

#### ANALYSIS

The question before this Court is whether, after considering the evidence in the light most favorable to the verdict, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Nguyen v. State*, NO. 01-16-00941-CR (Tex. App. Dec 21, 2017). *See also Young v. State*, 14 S.W.3d 748, 753 (Tex.Crim.App.2000); *McQueen v. State*, 329 S.W.3d 255 (Tex. App. 2010).

Two witnesses testified at the bench trial—the police officer and Appellant.<sup>2</sup>

The police officer testified he has been a police officer for 22 years with the El Paso Police Department and on December 2, 2022, was patrolling central El Paso. On that day, the police officer encountered a gray Honda Civic around Edgemere street traveling westbound at a high rate

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<sup>2</sup> The city did not file a brief in support of the judgment or object to any items in the Clerk's Record that includes a audio recording of the proceedings.

of speed--approximately 45 miles per hour in a 30 mile per hour zone. Using a hand-held radar, the police officer confirmed the speed of 45 miles per hour. The police officer has been trained in the use of the hand-held radar that was working properly as it was tested before he used it. The police officer identified Appellant as the person driving the vehicle traveling a high rate of speed. The posted speed limit was 30 mph. Appellant did not cross-examine the police officer during the trial.

Appellant testified a vehicle was in front of Appellant's vehicle was traveling at the high rate of speed and believes the radar detected this vehicle and not Appellants. Appellant was not traveling close to 45 miles per hour. The other vehicle traveling in front of Appellant made a u-turn before Appellant's vehicle was stopped by the officer.

The officer's testimony is sufficient to support proof beyond a reasonable doubt. Further, at trial, Appellant did not contravene the officer's testimony, nor the reliability of the hand-held radar. Instead, Appellant argued another vehicle was the actual vehicle traveling at 45 miles per hour as Appellant was not traveling "close to that speed." The trial court is the sole judge of the credibility of the witnesses and the weight to be given the evidence and a rational trier of fact could find Appellant guilty of the offense of speeding beyond a reasonable doubt.

On appeal, Appellant complains the trial court committed four errors: 1) a court reporter was not present; 2) the city prosecutor committed prosecutorial misconduct as before the proceeding began, the city prosecutor asked the police officer if he recalled the incident after the police officer looked at a document Appellant had no access to; 3) the testimony of the police officer was insufficient to support a conviction; and 4) the police officer could not have recalled this particular case as it was over two (2) years old.

Notwithstanding Appellant's failure to object during the trial, the proceedings may be recorded by a good quality electronic recording device, asking a witness whether he recalls the offense does not constitute prosecutorial misconduct as Appellant was in a similar position to question the police officer and he failed to do so. Likewise, Appellant failed to argue to the trial court that the officer could not have remembered the offense as it occurred two years ago. Again, this Court is bound to give deference to the factfinder—the trial court. *State v. Sanchez*, 135 S.W.3d. 698 (Tex.App.2003).

After reviewing the evidence in the record in the light most favorable to the verdict and having considered Appellant's brief, the evidence is legally and factually sufficient to prove each element of the offense beyond a reasonable doubt.

#### CONCLUSION

Having found no error of law and the evidence legally and factually sufficient, the trial court's judgment is affirmed.

SIGNED this 1 day of October, 2023.



MARIA B. RAMIREZ, Judge  
El Paso Municipal Court of Appeals

#### J U D G M E N T

The same being considered, is the opinion of this Court that there was no error in the Judgment, it is ORDERED, ADJUDGED and DECREED by the Court that the Judgment be in all things affirmed, and Appellant pay all costs in his behalf expended, and this decision be certified below for observance.



MARIA B. RAMIREZ, Judge  
El Paso Municipal Court of Appeals