IN THE MUNICIPAL COURT OF APPEALS

OF THE CITY OF EL PASO, TEXAS

SEVERO BARRERA, Appellant

vs. NO. 83-MCA-1049

STATE OF TEXAS, Appellee

OPINION

This Court has reviewed the statement of facts filed in this case, the brief filed by both parties, and the oral argument presented to this Court.

Appellant's first two points of error address whether a proper predicate was laid before allowing the officer to testify concerning the speed of Appellant's vehicle as measured by a radar apparatus. The gist of Appellant's attack as set out in his brief and as urged on this Court at oral argument, is directed at whether the testifying officer was an expert since he was unable to testify as to the technical and scientific principles used in the operation of the radar. The record does reflect that the officer, by experience and training, knew how to operate and read the radar, and that it was working properly at the time, having been calibrated both before and after the stop.

The critical distinction that Appellant fails to make relates to the difference between how the radar operates and how to operate the radar. It is therefore not incumbent on the State to call an expert witness to testify as to the scientific principles upon which radar operates, but rather, only to show that the officer has the sufficient training experience which qualifies him to know how to operate the radar, test it for accuracy to determine if it is working properly, and to testify as to the reading reflected on such radar at the time.

The proper predicate for introduction of testimony has been held to be that the operator is trained to operate the set and to test it for accuracy, and such constitutes a sufficient predicate to support admission of radar evidence. Masquelette v. State, 579 SW2d 478 (Tx.Crim.App. - 1979); Cromer v. State, 374 SW2d 884 (Tex.Crim.App.) and Gano v. State, 466 SW2d 730 (Tex.Crim.App.).

This Court holds that the proper predicate for the admission of such evidence was made in this case, and there was no error in the Trial Court respecting same.

In his last point of error, Appellant suggests that the Court's response to Appellant's argument at the Trial Court that he would take into consideration Appellant's argument that the officer could not tell the principle on which the radar operated, was an indication that the Court was admitting that the State had not met its burden of proof, but instead of finding the Appellant not guilty, mitigated the fine. This Court has reviewed the statement of facts but does not believe the Court's statement indicates what Appellant seems to think it indicates. At best, it is ambiguous, and does not constitute error in the form presented. The point is overruled.

The Judgment of the Trial Court is affirmed.

Signed this 21 day of March 1984.

JUDGE

JUDGMENT

This case came on to be heard on the Transcript of the Record of the Court below, the same being considered, because it 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 that the Appellant pay all costs in this behalf expended, and that this decision be certified below for observance.

Signed this 21 day of [illegible], 1984.

JUDGE