IN THE MUNICIPAL COURT OF APPEALS

OF THE CITY OF EL PASO, TEXAS

JOHN BUTTERWORTH, Appellant

vs. NO. 83-MCA-868

STATE OF TEXAS, Appellee

OPINION

Appellant appeals his conviction in Municipal Court for the offense of speeding.

Appellant attacks the sufficiency of the evidence relating to the proof of the accuracy of the radar unit used to calibrate his speed. Although a statement of facts was not requested nor included in the record, the Appellant and the City entered into a stipulated statement of facts which basically indicates that the police officer who issued the citation in question was not the same police officer who had control of the radar unit itself and tested it for accuracy. In view of such stipulation, the conviction of the Appellant cannot stand since the evidence is insufficient to establish the necessary predicate for the introduction of the evidence concerning the radar readout. Although the State is not required to call an expert witness to establish the accuracy of radar itself in a speeding prosecution, it is incumbent on the State to prove that the officer in question is trained to operate the radar set and to test it for accuracy is required as a predicate to support the admission of radar evidence. Masquelette v. State, 579 SW2d 478 (Tex.Cr.App. - 1979); Cromer v. State, 372 SW2d 884 (Tex.Cr.App.); Gano v. State, 466 SW2d 730 (Tex.Cr.App.).

Without laying the proper predicate for the admission of such evidence, and under the stipulated facts as contained in this record, the only way to establish that the radar unit had been tested for accuracy would be based on hearsay, from the testimony of the officer who in fact tested the machine, but who did not testify at trial.

Having found the evidence to be insufficient, this Court reverses the Judgment of the Trial Court, and orders that a Judgment of Acquittal be entered in Appellant's behalf.

Signed this 23 day of May, 1985.

JUDGE

JUDGMENT

This case came on to be heard, the same being considered, because it is the opinion of this Court that there was error in the Judgment, it is ORDERED, ADJUDGED and DECREED by the Court that the Judgment be in all things reversed and rendered in Appellant's favor, and judgment of acquittal be entered in his behalf.

Signed this 23 day of May, 1985.

JUDGE