

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-09-00290-CR

BILLY RAY ROBINSON, SR., Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the County Court
Jasper County, Texas
Trial Cause No. JC 28805**

MEMORANDUM OPINION

Billy Ray Robinson, Sr. appeals his conviction for speeding. *See* Tex. Transp. Code Ann. §§ 545.351 (West 1999), 545.352 (West Supp. 2010). In issues one and two, Robinson argues the trial court erred by admitting the state trooper’s testimony regarding his truck’s speed which had been measured using a “Dual Stalker D.S.R.” radar. In issue three, Robinson argues the trial court erred by entering a judgment on the jury’s finding that his speed was not reasonable or prudent. Issue four, which is not accompanied by any citations to the record or citations to authorities, asserts the trial court erred by

denying Robinson's motion for discovery. We overrule Robinson's issues and affirm the trial court's judgment.

Background

In March 2008, Texas Department of Public Safety Trooper Kevin Brewster stopped Robinson for speeding and cited him for "speeding 76 miles per hour in a posted 60-mile-per-hour zone." The stop occurred in an area of U.S. Highway 96 containing four lanes. Trooper Brewster testified that he used radar equipment to check Robinson's speed before stopping him. According to Trooper Brewster, he made a visual determination that Robinson was speeding, observed that Robinson's vehicle, which was passing another vehicle, was the faster vehicle, and then used radar to confirm his observation. The radar, which picks up the faster vehicle's speed, indicated that Robinson was traveling "at 76 miles an hour." At the point where he checked Robinson's speed, Robinson was close to a quarter of a mile past the 60 mile per hour sign; according to Trooper Brewster, the area is generally heavily traveled making it potentially dangerous to speed there.

Trooper Brewster had been trained and certified to use radar. He explained the department policies on maintaining the radar in his car. Trooper Brewster indicated that on the morning of his shift he tuned his radar, and after he had stopped Robinson, he conducted an internal calibration. The radar passed the internal calibration, which indicates that the radar had worked properly. Although Robinson tried to convince the jury that Trooper Brewster's radar's measurement represented the other vehicle's speed,

Trooper Brewster explained that he “didn’t make a mistake that morning with those two vehicles, Mr. Robinson [was] traveling 76. That was not a mistake.”

Analysis

In his first two issues, Robinson asserts the trial court erred in admitting Trooper Brewster’s testimony about the radar evidence because the State failed to prove the reliability and relevance of Trooper Brewster’s testimony as it relates to the measurement of a speeding vehicle. However, Robinson did not object at trial to the reliability of radar to accurately measure a vehicle’s speed, to Trooper Brewster’s qualifications to testify about the radar unit, or to Trooper Brewster’s testimony about Robinson’s speed.

To preserve an issue for appeal, the Rules of Appellate Procedure require a party to bring complaints to the trial court’s attention by filing a timely request, objection or motion and by obtaining the trial court’s ruling. Tex. R. App. P. 33.1(a).¹ Robinson’s complaints concerning Trooper Brewster’s testimony are raised for the first time on appeal. Robinson failed to bring his complaints to the trial court’s attention by making a timely request, objection, or motion. Because Robinson did not comply with Rule 33.1 of the Texas Rules of Appellate Procedure, his complaints regarding Trooper Brewster’s

¹ Rule 33.1 provides, in pertinent part:

(a) *In General*. As a prerequisite to presenting a complaint for appellate review, the record must show that:

(1) the complaint was made to the trial court by a timely request, objection, or motion that:

(A) stated the grounds for the ruling that the complaining party sought from the trial court with sufficient specificity to make the trial court aware of the complaint, unless the specific grounds were apparent from the context[.]

testimony have not been preserved for appellate review. *See id.*; *see also Masquelette v. State*, 579 S.W.2d 478, 482 (Tex. Crim. App. 1979). We overrule Robinson’s first two issues.

In issue three, Robinson contends that because the State failed to offer any evidence to show that his speed was unreasonable or not prudent, the trial court erred in entering a judgment on the jury’s verdict. We construe this issue as a challenge to the legal sufficiency of the evidence to support the jury’s verdict. In *Brooks v. State*, the Texas Court of Criminal Appeals held that the *Jackson v. Virginia* standard is “the only standard that a reviewing court should apply in determining whether the evidence is sufficient to support each element of a criminal offense that the State is required to prove beyond a reasonable doubt.” 323 S.W.3d 893, 895 (Tex. Crim. App. 2010); *see also Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). Therefore, in addressing Robinson’s issue under the *Jackson v. Virginia* standard, we review all the evidence in the light most favorable to the prosecution to determine whether any rational jury could have found the essential elements of the offense beyond a reasonable doubt. *Jackson*, 443 U.S. at 319.

The Texas Transportation Code provides that a vehicle’s driver “may not drive at a speed greater than is reasonable and prudent under the circumstances then existing.” Tex. Transp. Code Ann. § 545.351(a). The next section of the Transportation Code then provides that “[a] speed in excess of the limits . . . is prima facie evidence that the speed

is not reasonable and prudent and that the speed is unlawful.” *Id.* § 545.352(a). Trooper Brewster stopped Robinson on U.S. Highway 96, a four-lane highway, the posted speed limit in the area was sixty miles per hour, and according to Trooper Brewster, Robinson was speeding in excess of the posted limit. Additionally, Trooper Brewster described the traffic conditions generally existing in the area which the jury could also consider in deciding Robinson’s guilt. The jury, resolving whether Robinson was guilty of speeding, found him guilty.

Viewing the evidence in the light most favorable to the jury’s verdict, we conclude the evidence is sufficient to support the jury’s finding that Robinson was guilty of speeding. We overrule issue three.

In issue four, Robinson asserts the trial court erred when it denied his motion for discovery. Rule 38.1(i) of the Texas Rules of Appellate Procedure requires an appellant to provide the appeals court with appropriate citations to authorities and the record. *See* Tex. R. App. P. 38.1(i) (“The brief must contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record.”). With respect to issue four, Robinson’s brief contains no record references, nor does Robinson’s argument with respect to this issue contain citations to any authorities. We conclude that Robinson failed to comply with Rule 38.1, and we overrule issue four.

Having overruled all of Robinson's issues, we affirm the trial court's judgment.

AFFIRMED.

HOLLIS HORTON
Justice

Submitted on January 5, 2011
Opinion Delivered February 9, 2011
Do Not Publish

Before McKeithen, C.J., Gaultney and Horton, JJ.