IN THE MUNICIPAL COURT OF APPEALS

OF THE CITY OF EL PASO, TEXAS

DAVID J. HUNT, Appellant

vs. No. 88-MCA-1923

STATE OF TEXAS, Appellee

OPINION

Appellant appeals his conviction in Municipal Court for failing to wear his safety belt as required by Article 6701d, Section 107C (b).

The above section requires a person to wear a safety belt if he is at least 15 years of age, and riding in the front seat of a passenger car equipped with one. The term "safety belt" is not specifically defined under law. Therefore, it is Appellant's contention that the law is vague, indefinite, and unenforceable.

Appellant is correct that the term "safety belt" is not defined specifically in the law, however, it is a rule of statutory construction that words of common usage need not be defined, and are to be accorded their commonly understood meaning when not statutorily defined. Cotton v. State, 686 SW2d 140 (Tex. Crim. App. 1985).

Appellant contends that the safety belts which were in his vehicle at the time were separate and could be worn

separately, and that he, in fact, had his lap belt fastened, but admits that he did not have the shoulder harness portion of the safety belt fastened. Art. 6701d, Section 107C(b) requires the person to use the safety belt with which the vehicle was equipped and therefore imposes an obligation on Appellant to use both the lap and harness portions of the safety belt when occupying a seat which is equipped accordingly.

In Richards v. State, 743 SW2d 747, (Tex. App. - Houston 1st Dis. 1987), the primary issue involved the constitutionality of the Texas Seat Belt Law. The court held that the law was constitutional, and that it was not the function of the courts to decide whether the law is desireable or necessary. The Court held that the issue is "not what the legislature should do, but what the legislature can do." Interestingly, the Texas Court of Criminal Appeals refused to grant the petition for discretionary review filed by the Appellant in that case which prompted a strong dissenting opinion to such refusal by Justice Teague. Richards v. State, 757 SW2d 723, (Tex. Crim. App. - 1988). Justice Teague in a powerful dissent expressed many legitimate concerns about this type of legislation, and the involvement of governmental intrusion into the lives of individuals and the dangers of paternalistic legislation which seeks to protect us from ourselves. Nonetheless, the law as announced by the appellate Court upholding the constitutionality of the

seat belt law remained undisturbed by the refusal to grant the petition for discretionary review. Although, the Texas Court of Criminal Appeals has on many occasions held that a refusal to grant a petition for discretionary review has no precedential value, nevertheless, this court must defer to the higher appellate Courts when the constitutionality of a statute is questioned. Coleman v. State, 711 SW2d 660 (Tex. Crim. App. 1986), Sheffield v. State, 650 SW2d 813 (Tex. Crim. App. 1983).

In this case, Appellant also attempts to draw an analogy between the safety belt law and not requiring motorcycle riders to wear a helmet to protect their lives. In fact, the Texas courts have upheld such a statute requiring a motorcyclist to wear protective head gear, stating "it is clearly within the State's police power to regulate.....in the interest of public safety and welfare." Ex parte Smith 441 SW2d 544 (Tex. Cr. App. -1969).

Appellant's case was tried to a jury, which found him guilty and assessed a $25.00 fine. Appellant requested a court reporter who recorded the trial proceedings, but no statement of facts was filed with this Court even though Appellant asserted his indigency to obtain a statement of facts for purposes of this appeal. This Court has not made further inquiry as to the indigency of Appellant, nor ordered that a statement of facts be prepared based on that status because this Court has determined that Appellant's

points of error can be adequately considered without the necessity of reviewing a statement of facts. Appellant's primary attack on this conviction is based on the fact that the law is vague, ambiguous, and therefore unconstitutional as to its application to him, and secondarily, that the State is not authorized to enact legislation addressing the issue concerning the use of safety belts. Both of such contentions have been considered and determined to be without merit, and do not require this Court to review the statement of facts to determine their merit.

This Court, therefore, holds that the Texas Safety Belt Law is constitutional, and that there is no ambiguity concerning its requirements in using the safety belts equipped with a particular vehicle.

Therefore the decision of the Trial Court is being affirmed.

Signed this 14 day of Dec, 1988.

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 14 day of Dec., 1988.

JUDGE