IN THE MUNICIPAL COURT OF APPEALS

OF THE CITY OF EL PASO, TEXAS

ALFRED C. HABLEMAN,	§	
	§	
Appellant,	§	
V.	§	NO. 90-MCA-2087
	§	
THE STATE OF TEXAS	§	
	§	
Appellee.	§	

OPINION

Appellant appeals his conviction in Municipal Court for passing in a school zone.

Initially, Appellant contends that he was not speeding nor did he change lanes, and therefore could not haved "passed" another vehicle within the confines of a school zone as prohibited by law. Appellant cites this court to the Texas Drivers Handbook to support his contention that he did not pass another vehicle as illustrated in that book. "Passing" as reflected in that handbook and evidently the definition which Appellant has adopted, would require a vehicle to actually change lanes and go around a preceding vehicle, including crossing a mid-stripe in a roadway if there was one.

The law under which Appellant was convicted prohibits a vehicle from passing any other vehicle proceding in the same direction in a school crossing zone. Although the term "pass" is not defined under the City Code, State Law or The Texas Driver's

Handbook, the commonly understood meaning of that word should be applied in this particular case. Webster's Dictionary defines "pass" in a number of ways including to go or move forward; to go by, beyond, or to move or proceed in a particular direction. Applying that definition to the term as used in this particular case, would include any part of one vehicle, proceeding by, moving in front of, or going past another vehicle proceeding in the same direction within the confines of a school zone.

To adopt Appellant's interpretation of the term "passing" would thwart the legislative purpose in providing safety to pedestrians within the confines of a school zone as this court recognized in Cobos V. State 89-MCA-2001 (Mun.Ct.App. 1989).

The trial judge is the exclusive judge of the credibility of the witnesses and the weight to be given to their testimony, and this Court must presume that the Trial Court heard sufficient evidence to justify its decision, particularly when no Statement of Facts is included in the record before this Court as in this case. Therefore, Appellant's first point of error is hereby overruled.

Secondly, Appellant contends that he was entrapped into a violation of the law by the police officer's slowing down, changing speeds and lanes when this particular infraction occurred. Without deciding whether the defense of entrapment is even available in a case of this nature, entrapment is not available when one denies commission of the offense, but did so only because of

the misconduct of the police officer. This is because denial of the commission of the offense is inconsistent with entrapment, as this defense assumes that the offense was committed. Appellant's denial of committing the offense precludes his use of the defense in this particular case. Stephens v. State, 522 SW2d 924 (Tex. Cr.App.); Norman v. State, 588 SW2d 340 (Tex.Cr.App. 1979).

Appellant also contends that his constitutional rights have been violated, principally, because he was denied his right to confront the accuser because the city ordinance which he supposedly violated was not produced in court. Appellant was confronted by the police officer who issued the citation, and had a full opportunity to confront his accuser and cross examine him, and the law does not require that the city ordinance itself be introduced in evidence.

Lastly, this court has received a motion for re-hearing filed by Appellant prior to this court rendering this opinion presumably because Appellant thought that the response brief filed by the city was this courts opinion. This court has considered the content of that motion as part of Appellant's brief, and finds no additional merit in that document to reflect that error was committed by the trial court. Appellant's distinctions between God's law and man's law, and his assertion that the Army is moving its personnel to Fort Hood because of the situation in El Paso relating to traffic enforcement are also without legal merit and are overruled.

Having found no reversible error, the judgment of the Trial Court is affirmed.

SIGNED this 4 day of March 1991.

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 4 day of March, 1991.

JUDGE

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