IN THE MUNICIPAL COURT OF APPEALS

OF THE CITY OF EL PASO, TEXAS

JESUS OCHOA Appellant, vs. STATE OF TEXAS, Appellee.	§ § § § § § § § § §	**No. 03-MCA-2898, 2899, 2900**

OPINION

Appellant appeals his conviction in Municipal Court for not wearing a seatbelt, and not securing a child who is at least five (5) years of age but younger than seventeen (17) years of age with a safety belt. A fine of $35.00 for his failure to wear a seatbelt was assessed and he was fined $150.00 each on the other two charges.

Before the Trial Court, Appellant filed a Motion to Suppress the evidence alleging that there was no probable cause to stop him because he was driving a 1973 Dodge Pickup and such a vehicle, because of its age, is exempt from having safety belts. Appellant contends that he was driving a 1973 Dodge Pickup Truck, and it wasn't until 1975 that vehicles were required to have shoulder harnesses. He contends because of its age, his car was exempt from being equipped with shoulder harnesses, and therefore the officer, who initially stopped them for not seeing shoulder harnesses was unjustified in his detention and lacked probable cause therefore.

Appellant cites rationale of the dissenting opinion in the case of **Thomas v. Dickle, 231 F. 3d. 1023 (8th Circuit 2000).** However, Appellant ignores the holding of the majority opinion that recognized that it was common knowledge that most shoulder harnesses are visible from behind when deployed, and the absence of a visible shoulder harness pulled down and across a person in a vehicle provides the police with a reasonable suspicion to stop the vehicle. That court also observed that it is

unreasonable to expect police officers to be aware of all of the idiosyncratic designs of vehicle seatbelt systems, and that many, if not most, automobiles now have shoulder harnesses.

In this case, the officer testified that he did not observe any of the occupants with shoulder harnesses strapped on, and in fact confirmed that fact after he stopped the vehicle because the vehicle was not equipped with them. But he also observed that the occupants were not using the seatbelts which the vehicle was equipped with, and therefore justified the issuance of the citations, and provided sufficient evidence for the Trial Court to find Appellant guilty of the offense charged.

Appellant also relies on the case of **Garcia v. State, 43 SW 3d 527 (Tex. Crim. App. 2001)**. In Garcia, the court held that the mere observation by a police officer that a child looked back several times was not sufficient to give rise to a reasonable suspicion that the child was not wearing a seatbelt. However, the court did recognize certain out of state cases that it found persuasive in dealing with whether an officer possessed reasonable suspicion to stop a vehicle where the officer had a clear and unobstructed view of the Defendant not wearing a seatbelt, or where there was an apparent absence of a shoulder harness being used even if it was possible that the particular model of car was exempt from shoulder harness requirements or that an unusual configuration of the shoulder harness in a particular car hides it from rear view. The facts in Garcia are not controlling in this particular case.

Therefore, this court holds that the officer, not seeing shoulder harnesses, was justified in making his initial stop. Once the vehicle stopped, the officer then was able to determine the year of the vehicle, and although he determined that it was exempt from having shoulder harnesses, he observed that the lap belts were not being used at the time. Appellant contends in his Brief and presented evidence at trial, that the vehicle was equipped with lap belts but they had been stolen on a recent trip to Mexico. That evidence was contradicted by the police officer, who testified that he saw the lap belts, but they were not being used by the children.

Clearly, there was a conflict in the evidence, and the Trial Court is the exclusive judge of the credibility of the witnesses and the weight to be given to their testimony, and this court must defer to its finding in respect thereto.

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

SIGNED this 12 day of Nov, 2004.

JUDGE

JUDGMENT

These cases, 03-MCA-2898, 03-MCA-2899, and 03-MCA-2900 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 12 day of Nov., 2004.

JUDGE