IN THE SUPREME COURT OF TEXAS

NO. 03-0914

HYUNDAI MOTOR CO. AND HYUNDAI MOTOR AMERICA, INC., PETITIONERS,

v.

VICTOR MANUEL VASQUEZ AND BRENDA SUAREZ VASQUEZ, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF ALYSSA AMBER VASQUEZ, RESPONDENTS

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE FOURTH DISTRICT OF TEXAS

Argued February 15, 2006 and January 6, 2005

JUSTICE WAINWRIGHT, joined by JUSTICE JOHNSON, dissenting.

I join JUSTICE MEDINA's dissent[1] and write to emphasize two points.

The Court identifies the issue in this case as whether the trial court abused its discretion in refusing to allow one question during voir dire. The Court identifies "the question" in the following exchange at the trial court:

> THE COURT: What is the type of question you need to ask other than what has already been asked about their own individual use of seat belts or not seat belts?
>
> [PLAINTIFFS' COUNSEL]: Your Honor, I need to know whether or not they would be predisposed regardless of the evidence to -- Their preconceived notion is that if there is no seat belt in use, no matter what else the evidence is, that they could not be fair and impartial.

[1] However, I express no opinion on whether I agree with the result reached by the majority or the dissent in *Standefer v. State*, 59 S.W.3d 177 (Tex. Crim. App. 2001).

THE COURT: And that's the type of question you are asking to ask?

[PLAINTIFFS' COUNSEL]: That's the kind of question I need to ask . . . .

By so framing the issue, the Court makes a hard case easier. Certainly there is no entitlement to ask a specific question during voir dire. Even if a proper question to a jury panel is barred by a trial court, counsel can often rephrase the question to probe the relevant subject. I agree with JUSTICE MEDINA; the central issue in this case should not be the propriety of asking this one question. The key issue is the trial court's barring counsel from inquiring about an entire and admittedly relevant subject during voir dire. This does not mean that voir dire should be lengthy, only that properly limited voir dire should be allowed on the important issues in a case.

After going through two jury panels and trying to seat a jury during the third, the trial judge, understandably frustrated, precluded not just one question but any further questioning on seat belts. This ruling was an about-face from the procedure she had established for the questioning of the third panel. Following the dismissal of the second panel, the trial court held a hearing and outlined a procedure for the third voir dire: the court and counsel could conduct the initial questioning, absent case-specific facts, about venire panel members' attitudes toward seat belt usage; subsequent specific questioning by counsel regarding seat belt usage would be permitted only during the individual questioning of panel members at the bench. During general questioning of the third voir dire panel, plaintiffs' counsel approached the bench seeking clarification of the seat belt usage questions he could ask.[2] The court allowed questions about the panelists' personal seat belt habits, but not about

[2] Plaintiffs' counsel stated:

[PLAINTIFFS' COUNSEL]: It is my understanding that the Court has instructed me not to ask the

panelists' attitudes towards the seat belt usage of others or their personal attitudes concerning the seat-belting of minors. The court reserved for individual questioning at the bench after general voir dire any questions concerning seat-belting children and seat belt usage of other persons. In accord with the court's ruling, plaintiffs' counsel only asked questions about the venire members' personal seat belt usage. After general questioning, plaintiffs' counsel reminded the trial judge that, per her instructions, he had reserved questioning of venire members' attitudes about seat belt usage of others, including minors, until individual questioning of panelists at the bench. The trial judge refused to allow the questioning, instructing "we are not going any further into seat belts." The Court concludes that counsel's objections and statements and the context of the discussion with the court do not preserve plaintiffs' objection. I disagree.

By the third voir dire, the parties knew that asking questions specifically about Amber was too emotionally sensitive and was barred. Despite plaintiffs' less-than-perfect single statement on which the Court's opinion turns, the rest of the bench discussions in the record reveal the trial court and the attorneys were discussing a category of questions regarding seat belt usage and not just "a

---

> question about the child being not belted and I think I know how to make that distinction, although for the record I do object that the Court instructed me not to go into that area of inquiry. I think that objection is already on the record.
>
> It is my understanding that I want to ask them questions – – What I want to do is ask them general questions about their general attitudes about belting such as – –
>
> THE COURT: Their own personal habits.
>
> [PLAINTIFFS' COUNSEL]: Their own personal habits such as how many of you belt before you start the car.

After hearing arguments from both parties, the court ruled, "I'm going to let you ask general questions about belting. Not about children, but about their attitudes about putting seat belts on themselves."

question." The trial court's ruling precluded an entire category of questions that were not only clearly relevant but were central to the case for all parties, and the objection to the trial court's ruling preserved error on plaintiffs' complaint that it did not have an opportunity to ask about individual jurors' seat belt attitudes, especially toward seat-belting minors. Whether the questions would have revealed disqualifying bias or not, the answers would have assisted in the intelligent exercise of peremptory challenges.[3] This is the harder issue which the Court concludes was not preserved.

The Court says that counsel did not sufficiently apprise the trial judge of "additional inquiries" that he wanted to ask. __ S.W.3d __, __. This contradicts the information in the record. The trial court's discussions with counsel at the bench, particularly during the general questioning of the third voir dire, demonstrate the court was well aware plaintiffs' counsel sought to ask questions concerning juror attitudes for seat belt usage of others, particularly of minors.[4] In addition to objecting to being precluded from "exploring the jurors' attitudes" on this topic, plaintiffs' counsel explained that he wanted to ask the questions he asked during the first voir dire, describing them as "attitude questions about belting, seat belting, and seat belting habits much akin to what [he] did the

---

[3] Presumably, the trial court also would have precluded defendants from asking about panelists' general attitudes toward airbags, which is also a central issue in this case.

[4] At the bench conference during the third voir dire's general questioning, plaintiffs' counsel asked for additional clarification to determine what he could ask during general questioning rather than reserve for individual questioning.

> [PLAINTIFFS' COUNSEL]: The Court is permitting questioning about general attitudes and personal practice. It's not clear to me if that personal practice would include those of you who have children, do you ensure that all of your children are belted before you start the car.
>
> THE COURT: We will do that on individual if, in fact, you have gotten something that you need. We are not doing children on this one.

The court indicated that it was aware plaintiffs' counsel wanted to ask questions about children and seat belts.

last time [he] did general voir dire."[5] If the prior voir dire questioning had occurred weeks or months ago, perhaps memories would have been hazy about what inquiries had been made, but that was not the case. All three voir dires occurred within a five-day period—over three consecutive weekdays. This objection by counsel, the trial court's instruction on the types of questions to reserve for individual questioning, and the counsel's reference to the questions he had asked in the earlier voir dire identify the questions and types of questions at issue and clearly brought them to the trial judge's attention. Finally, during reargument of this case, Hyundai's counsel acknowledged the trial court knew which types of questions plaintiffs' counsel wanted to pursue: "In all honesty she had to know,

---

[5] The trial court precluded counsel from asking a number of unobjectionable questions that he had asked during the first voir dire, including (quoted as in the record):

> [PLAINTIFFS' COUNSEL]: How many of you require your passengers to [put their seat belt on] before you move the car?
>
> . . .
>
> Those of you with children that you still drive around, okay, how many of you have been known to have to turn around and tell your child, Put your seat belt on before I stop this car and do something to you? Okay. So those of you that raised your hand that said you require your passengers to put the belt on before it moves, if your child is the passenger, sometimes they don't do that until you prod them or make them do it. Is that everyone's experience? Is that not the experience of any of you?
>
> [PROSPECTIVE JUROR]: I have grandchildren that ride.
>
> [PLAINTIFFS' COUNSEL]: Children or grandchildren. Thank you.
>
> [PROSPECTIVE JUROR]: I tell them first thing to put them on, but sometimes they don't listen and I repeat myself.
>
> [PLAINTIFFS' COUNSEL]: Okay. I imagine if you are leaving from your residence, you sort of going through a stage of, you know, you pull out of your driveway and you are approaching that right turn or left turn onto the major street that you are going to travel on, and the whole trip from your driveway to the first turn to get you on the trip is where you are telling everybody, Do you have your belts on. Anyone have a remarkably different experience than that with children? All your kids always put their belt on immediately and always obey you?

and she had to know because of the questions that had gone on previously. . . ." Nevertheless, the Court concludes otherwise.

The Court holds that counsel's objection during the third voir dire and request to ask a group of questions regarding the belting of minors "much akin to what" he asked during the first voir dire does not preserve error. *See supra* note 5. During the third voir dire, the trial judge acknowledged that she knew counsel wanted to ask these types of questions about practices for seat-belting children. *See supra* note 4. Because counsel's reference to the group of questions asked in the first voir dire essentially provided the trial court with a list of questions dictated in the record only a few days earlier, it is unclear what the Court requires to preserve error for restricting voir dire questioning. Compare the Court's reliance on *Babcock v. N.W. Memorial Hospital*, 767 S.W.2d 705, 707-08 (Tex. 1989), holding litigants need not present a list of each intended voir dire question, with the Court's conclusion that the Vasquezes "did not frame additional inquiries" to preserve their complaint after the trial court revisited its discussion of questions related to seat-belting practices. __ S.W.3d at __. Perhaps the safest approach would be to provide the trial court with a list of questions, in writing or on the record, every time the trial court discusses the preclusion of a category of questions.

Because the Court sidesteps the harder issue posed by this case and fails to recognize the asserted error was preserved (as the record shows and the trial court and Hyundai acknowledge), I respectfully dissent.

J. Dale Wainwright
Justice

OPINION DELIVERED: March 10, 2006