



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-59,823-07

EX PARTE JAMES DOUGLAS JONES, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NOS. 2003-197D IN THE 421ST DISTRICT COURT
FROM CALDWELL COUNTY**

YEARY, J., filed a concurring opinion.

CONCURRING OPINION

I have watched the dash-cam video. It is not as apparent to me as it is to the Court that “the reverse lights on Applicant’s car do not appear to come on.” Majority Opinion at 7. Nor is it as clear as the Court makes it out to be that there was insufficient time for Officer Reed to have exited his vehicle to the limited extent he reported that he did, *i.e.*, “one leg out of my patrol unit” when Applicant’s car began to back into his. *Id.* at 2 & 7. I am far less impressed, in short, with the exculpatory value of the dash-cam video than the Court is, and I wonder to what extent the Court is tacitly taking judicial notice of certain adjudicative facts

(such as where the reverse lights even appear on Applicant's particular make and model of car) that are not developed on the record before us. For these reasons, I cannot join Part II of the Court's opinion.

But I agree that the dash-cam video raises sufficient questions about whether Applicant committed the offense that he might reasonably have opted not to plead guilty, but would have insisted on proceeding to trial, had his attorney made him aware of its contents. The trial court has recommended that we conclude that Applicant would indeed have insisted on going to trial. We typically defer to such recommendations, and I see no particular reason to deviate here.

FILED: January 24, 2018
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