

AFFIRM; and Opinion Filed June 26, 2018.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-17-00908-CR

**CURTIS BROADWAY, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the 282nd Judicial District Court
Dallas County, Texas
Trial Court Cause No. F-1630320-S**

MEMORANDUM OPINION

Before Justices Lang-Miers, Evans, and Schenck
Opinion by Justice Lang-Miers

Appellant Curtis Broadway was charged by indictment with possession of cocaine in an amount less than one gram.¹ Prior to trial, appellant filed a pre-trial motion to suppress what he claimed was illegally obtained evidence. After conducting a hearing, and taking under advisement the arguments made and the authorities relied on by the parties, the trial court denied the motion to suppress. Appellant entered a plea of guilty, waived a jury, and judicially confessed to the offense. Pursuant to a plea-bargain agreement, the trial court deferred a finding of guilt, placed

¹ See TEX. HEALTH & SAFETY CODE § 481.115(b).

appellant on two years' deferred-adjudication community supervision, and assessed a probated fine of \$1500.00. The trial court certified appellant's right to appeal the adverse ruling on the motion to suppress.

Evidence at the Hearing on the Motion to Suppress

On June 14, 2016, at approximately 10:00 p.m., Grand Prairie Police Officer Luke Reed was traveling eastbound in the 200 block of West Jefferson in Grand Prairie when he observed a red Ford Explorer with an obscured temporary license plate. The license plate, which was covered with plastic, was unreadable because moisture and plastic on the covering obscured the numbers and letters to the point where Reed, who was driving directly behind the Explorer, could not read them. Reed changed lanes, to be to the left of the driver, in an attempt to get closer to the Explorer but was still unable to read the license plate. He tried to report the license plate to his dispatcher, but got the information on the plate "completely wrong."

Reed, who had been following the Explorer for only a short distance, believed he had observed an on-the-site violation of the Transportation Code. He initiated a traffic stop based on the unreadable license plate. Both Reed and the Explorer pulled into a gas station; when he got out of his vehicle, Reed was able to read the license plate. Reed, who otherwise has 20/20 vision, explained why he thought he could read the plate at the gas station but not on the road: "I believe the fact that we were stationary in a very well-lit gas station parking lot" allowed him to be "able to read it." As far as Reed could tell, the license plate was valid and nothing had been done to intentionally obscure the plate.

Reed approached the vehicle and asked the driver for identification and insurance documentation. The driver, who was alone in the Explorer, identified himself as Curtis Broadway, appellant. Reed noticed that appellant was behaving abnormally:

I noticed he was very nervous. He was shaking. He was fidgeting. Um, when I asked for, you know, identification and insurance, typically people reach for identification and insurance. He – he kind of patted around. He wasn't sure where to grab. Uh, you could visually see he was nervous. Something else was going on besides just a routine traffic stop.

While speaking to appellant, Reed observed an open alcoholic container in the center console. Reed could not recall the brand, but testified that it was a commercial product and readily recognizable as an alcoholic beverage container. When questioned, appellant admitted it was an open alcoholic container, *i.e.*, a beer. Reed had appellant get out of the Explorer, and placed appellant with a backup officer who had arrived, so that Reed could remove the container.

When Reed reached into the vehicle to retrieve the alcohol container, he observed, in plain view, a small piece of a white rock-like substance near the emergency brake handle. The emergency brake was directly in front of the cup holder and Reed could see this rock-like substance without manipulating the emergency brake. Based on his experience and training as a police officer, Reed believed this substance was crack cocaine.

Reed seized the cocaine and again talked to appellant, this time as part of a narcotics investigation: "Again, he seemed very nervous. Very hesitant. The look on his face was like he wanted to tell me something. He just was really, really nervous. Uh, and he eventually stated, yes, he had crack cocaine in the vehicle and he dropped some under his seat." Reed went back to the Explorer, moved the driver's seat forward, checked under the seat, and found evidence of crack cocaine and a glass crack pipe.

Appellant was arrested and charged with possession of cocaine.

Findings of Fact and Conclusions of Law

The trial court made the following written findings of fact and conclusions of law:

The Court, having considered defendant's motion to suppress, the evidence presented at the hearing on defendant's motion, and the arguments of counsel, now makes the following Findings of Fact:

On June 14, 2016, at approximately 10:00 p.m., Officer Luke Reed of the Grand Prairie, Texas Police Department observed a vehicle being driven by the defendant, Curtis Broadway, in the 200 block of West Jefferson in Grand Prairie.

Officer Reed observed that the numbers and letters on the temporary license plate tag on the vehicle were obscured to the point that the officer was unable to read them due to moisture and a plastic cover on the tag.

Officer Reed changed lanes in his vehicle to get closer to the defendant's vehicle and was still unable to read the numbers and letters on the license plate.

Officer Reed then initiated a traffic stop due to the obscured license plate.

Officer Reed was unable to accurately read the numbers and letters on the license plate on the defendant's vehicle until Officer Reed exited his vehicle and approached the defendant's vehicle.

Officer Reed approached the defendant's vehicle and asked the driver for identification and insurance.

The driver of the vehicle identified himself as Curtis Broadway.

Officer Reed observed an open container of alcohol in plain view in the center console cup holder which the defendant admitted was alcohol.

The alcohol was in a container readily recognizable as an alcoholic beverage container.

Officer Reed then had the defendant exit the defendant's vehicle in order for Officer Reed to retrieve the open container.

When Officer Reed reached in the vehicle to retrieve the open container he observed a small rock substance in plain view which in the officer's training and experience he believed to be crack cocaine.

Officer Reed then asked the defendant if there was anything in the vehicle that the officer needed to know about and the defendant responded that there was crack cocaine in the vehicle and that he dropped some under the driver's seat.

Officer Reed went back to the vehicle, moved the driver's seat, and found a crack pipe and evidence of crack cocaine.

The defendant was then placed under arrest.

The Court finds Officer Reed's testimony to be credible.

The Court concludes that Officer Reed had reasonable suspicion to stop the defendant's vehicle due to the obscured license plate, a violation of Texas Transportation Code Section 504.945, a Class C misdemeanor.

The Court concludes that when Officer Reed observed the open container of alcohol in plain view, a violation of Penal Code Section 49.031, the officer was justified in removing the defendant from the vehicle so the officer could safely retrieve the evidence.

The Court finds that a violation of Penal Code Section 49.031 is a Class C misdemeanor which, pursuant to Penal Code Section 49.031 (e), requires the officer to issue a citation and notice to appear rather than arresting the person.

The Court concludes that the defendant was not under arrest at the time Officer Reed asked the defendant whether the open container was alcohol or when Officer Reed asked the defendant whether there was anything in the vehicle the officer needed to know about.

The Court concludes that at the time the defendant made the admissions concerning the alcoholic beverage and the crack cocaine the defendant was merely the subject of a traffic stop detention and not in custody for the purposes of Miranda.

Viewing the totality of the circumstances, the detention had not turned into a full custodial arrest until after the crack cocaine and crack pipe were found under the driver's seat.

The Court finds that the combination of factors observed by Officer Reed gave Officer Reed, based on the officer's training and experience, reasonable suspicion to stop and temporarily detain the defendant, and probable cause to arrest the defendant after the crack pipe and cocaine were found under the car seat.

The Court therefore concludes that the initial stop of the defendant was lawful, and all evidence seized and statements made as a result thereof are admissible.

Appellant's Allegations and State's Response

Appellant claims that his detention was unreasonable because there was no valid basis for the stop. As appellant argues to this Court: "[t]he fact that Officer Reed was able to view the license plate once he exited his vehicle from a few feet away means that the license plate was not obscured.

Proceeding to further investigate was a violation” of appellant’s Fourth Amendment rights.² Appellant also argues that the relevant portion of the Transportation Code, TEX. TRANSP. CODE § 504.945, does not refer to temporary license plates and cannot support the traffic stop. Appellant does not challenge the seizure of the cocaine on any basis independent of the legality of the traffic stop.

The State responds that Reed had reasonable suspicion to stop appellant’s vehicle based on the obscured license plate. Consequently, his ensuing discovery and seizure of the cocaine, which was in plain view, was reasonable and the trial court did not abuse its discretion in denying appellant’s motion to suppress.

Standard of Review

We review a trial court’s ruling on a motion to suppress for an abuse of discretion, using a bifurcated standard. *See Valtierra v. State*, 310 S.W.3d 442, 447 (Tex. Crim. App. 2010); *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997). We give almost total deference to a trial court’s determination of historical facts, and review de novo the trial court’s application of the law. *Maxwell v. State*, 73 S.W.3d 278, 281 (Tex. Crim. App. 2002); *Guzman*, 955 S.W.2d at 88–89.

When the trial court makes explicit findings of fact, as it did in this case, we determine whether the evidence, when viewed in the light most favorable to the trial court’s ruling, supports those findings. *State v. Kelly*, 204 S.W.3d 808, 818 (Tex. Crim. App. 2006). The trial court’s legal conclusions are reviewed de novo unless its explicit fact findings supported by the record are also dispositive of the legal ruling. *Id.*

² U.S. CONST. amends IV, XIV.

We will uphold a trial court’s ruling on a motion to suppress if it is correct under any theory of law applicable to the case, even if the trial court did not rely on that theory in making its ruling. *State v. Copeland*, 501 S.W.3d 610, 612–13 (Tex. Crim. App. 2016).

Traffic Stop

A law enforcement officer may lawfully stop and reasonably detain a person for a traffic violation. *Garcia v. State*, 827 S.W.2d 937, 944 (Tex. Crim. App. 1992); *State v. Gammill*, 442 S.W.3d 538, 540 (Tex. App.—Dallas 2014, pet. ref’d); *see also Whren v. United States*, 517 U.S. 806, 810 (1996). A traffic stop is justified if the officer has specific articulable facts that, when combined with rational inferences from those facts, would give the officer a reasonable suspicion that the driver has engaged in criminal activity. *Garcia v. State*, 43 S.W.3d 527, 530 (Tex. Crim. App. 2001). This standard is objective; so long as there is an objective basis for the stop, the subjective intent of the officer conducting the stop is irrelevant. *Id.* The reasonable suspicion standard requires the State to demonstrate in the hearing only “some minimal level of objective justification” to justify the initial stop. *Hamal v. State*, 390 S.W.3d 302, 306 (Tex. Crim. App. 2012).

Transportation Code Violations

The illegal activity relied on by the State to support the traffic stop was the violation of TEX. TRANSP. CODE § 504.945 which provides, in relevant part, as follows:

(a) A person commits an offense if the person attaches to or displays on a motor vehicle a license plate that:

*

(5) has blurring or reflective matter that significantly impairs the readability of the name of the state in which the vehicle is registered or the letters or numbers of the license plate number at any time;

(6) has an attached illuminated device or sticker, decal, emblem, or other insignia that is not authorized by law and that interferes with the readability

of the letters or numbers of the license plate number or the name of the state in which the vehicle is registered; or

(7) has a coating, covering, protective substance, or other material that:

(A) distorts angular visibility or detectability;

(B) alters or obscures one-half or more of the name of the state in which the vehicle is registered; or

(C) alters or obscures the letters or numbers of the license plate number or the color of the plate.

(b) Except as provided by Subsection (e), an offense under Subsection (a) is a misdemeanor punishable by a fine of not more than \$200, unless it is shown at the trial of the offense that the owner knowingly altered or made illegible the letters, numbers, and other identification marks, in which case the offense is a Class B misdemeanor.

To determine whether Reed's stop of appellant was reasonable under Section 504.945, the evidence at the motion to suppress hearing must have established sufficient facts to show that a reasonable officer would have developed suspicion that the license plate on the car violated the obscured-plate statute. *Martinez v. State*, 500 S.W.3d 456, 466 (Tex. App.—Beaumont 2016, pet. ref'd) (citing *Martinez v. State*, 348 S.W.3d 919, 923 (Tex. Crim. App. 2011)).

In its findings of fact and conclusions of law, the trial court found that Reed could not read appellant's license plate "due to moisture and a plastic cover on the tag." The trial court found that Reed attempted to gain a better view of the letters and numbers on appellant's license plate by changing lanes, but was unable to do so until after he stopped appellant's vehicle, exited his patrol car, and approached appellant's vehicle. The trial court found Reed's testimony to be credible and concluded that Reed had reasonable suspicion to stop appellant's vehicle because his license plate was obscured in violation of Section 504.945 of the Transportation Code. The record supports the trial court's factual findings.

The trial court did not abuse its discretion by finding that Reed had an objectively reasonable basis to believe that appellant's license plate was obscured. *See Czerwinski v. State*, No. 13-16-00472-CR, 2018 WL 1959992, at *3 (Tex. App.—Corpus Christi April 26, 2018, no pet. h.) (not designated for publication) (holding that testimony from the officer that the license plate frame on the defendant's vehicle obscured the word "Texas" supported the trial court's implicit finding that a reasonable police officer would have suspected that the license plate violated Section 504.945(A)(7)(B) and justified the stop of the defendant's vehicle); *Walden v. State*, Nos. 11-13-00284-CR & 11-13-00285-CR, 2015 WL 3799225, at *3 (Tex. App.—Eastland June 18, 2015, pet. ref'd) (not designated for publication) (holding that when an officer could not read the first digit on a license plate because it was bent, he had probable cause to stop and detain driver for a traffic violation, even if he could fully read the license plate after the vehicle was stopped); *Perez v. State*, No. 10-05-00364-CR, 2006 WL 2507343, at *2 (Tex. App.—Waco August 30, 2006, no pet.) (not designated for publication) (holding that the officer had probable cause to stop and detain the defendant because he saw the defendant driving with an apparently defective license plate light which did not illuminate and obscured license plate); *see also Martinez*, 500 S.W.3d at 467–68 (finding that an officer's mistake in interpreting the Transportation Code did not affect the validity of officer's stop of the defendant because the defendant not charged with violating the Transportation Code and thus the stop was valid based on the officer's testimony justifying the stop).

Appellant also argues that the provisions of Section 504.945 do not apply to temporary license plates. While Section 504.945 does not specifically mention temporary license plates, neither does it exclude those types of plates from its regulations. And other provisions of the Transportation Code do regulate temporary license plates. The Code requires that temporary license plates be displayed in accordance with the rules of the Texas Department of Motor

Vehicles. TEX. TRANSP. CODE § 503.069(a). Criminal penalties may be imposed for violating these regulations. TEX. TRANSP. CODE § 503.094.

The Texas Administrative Code also provides regulations regarding temporary plates. All printed information on a temporary plate must be visible, legible, and unobstructed. 43 TEX. ADMIN. CODE § 215.151. A temporary plate must either be composed of plastic or other durable, weather-resistant material, or sealed in a clear bag. 43 TEX. ADMIN. CODE § 215.153. The plate must be secured to the vehicle so that “the entire plate is visible and legible.” 43 TEX. ADMIN. CODE § 215.151(a).

An illegible temporary plate may provide reasonable suspicion that the driver of the vehicle is displaying a plate that does “not comply with commission rules in violation of Texas Transportation Code section 503.069.” *Pabst v. State*, 466 S.W.3d 902, 906 (Tex. App.—Houston [14th Dist.] 2015, no pet.). In *Pabst*, the officer initiated a traffic stop on the defendant’s vehicle because she could not read the defendant’s temporary plate through a plastic cover. *Id.* The Fourteenth Court of Appeals held that because the officer testified that the defendant’s temporary plate was illegible in violation of Texas law, the trial court did not err by finding that the officer had reasonable suspicion to conduct a traffic stop. *Id.*

Similarly, in *Aguilar v. State*, No. 05-15-00535-CR, 2016 WL 1725481, at *2 (Tex. App.—Dallas April 27, 2016, pet ref’d) (not designated for publication), this Court held that an officer was justified in conducting a traffic stop of a vehicle where the temporary license plate was not visible because it was not secured to the vehicle in a manner so that the entire tag was visible and legible. In *Aguilar*, a narcotics investigator was working highway interdiction when he observed the defendant’s vehicle with an unsecured rear paper license plate that “was flapping in the air;” he could not read any numbers or letters or the state of origin on the temporary plate. *Aguilar*, 2016 WL 1725481, at *2. The investigator conducted a traffic stop because he believed appellant was

violating Section 504.945. *Id.* After obtaining appellant's consent, officers searched the vehicle and found a large quantity of methamphetamine. *Id.* Relying on the same law as the Fourteenth Court of Appeals did in *Pabst*, we rejected Aguilar's argument that the investigator did not have reasonable suspicion to stop the vehicle. *Id.*

Here, Reed testified that the temporary license plate on appellant's vehicle was illegible and unreadable. Because a temporary license plate must be visible and legible, the trial court did not err in concluding that Reed was justified in stopping appellant for a violation of those requirements, even though the trial court relied solely on Section 504.945.

In summary, we agree with the trial court's findings and conclusions that the traffic stop of appellant's vehicle was justified based upon Reed's perception that he was observing a violation of the Transportation Code due to the unreadable license plate. Consequently, we conclude that the trial court did not abuse its discretion by denying appellant's motion to suppress.

Conclusion

We affirm the trial court's judgment.

/Elizabeth Lang-Miers/
ELIZABETH LANG-MIERS
JUSTICE

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

CURTIS BROADWAY, Appellant

No. 05-17-00908-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 282nd Judicial District
Court, Dallas County, Texas

Trial Court Cause No. F-1630320-S.

Opinion delivered by Justice Lang-Miers.

Justices Evans and Schenck participating.

Based on the Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

Judgment entered this 26th day of June, 2018.