

Affirmed and Memorandum Opinion filed January 26, 2010.



In The

Fourteenth Court of Appeals

NO. 14-09-00037-CR

TAYLOR BOYCE GORDON, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the County Court at Law No. 3
Montgomery County, Texas
Trial Court Cause No. 07-224979**

MEMORANDUM OPINION

After the trial court denied appellant Taylor Boyce Gordon's motion to suppress, he pleaded guilty to the offense of driving while intoxicated. In a single issue, appellant asserts that the trial court erred in denying his motion to suppress because the officer lacked probable cause to initiate the traffic stop that resulted in his arrest. We affirm.

Background

Appellant was charged by information with the offense of driving while intoxicated, second offense, alleged to have occurred on November 30, 2006. He filed a motion to suppress the evidence challenging the officer's probable cause for the initial

traffic stop. The trial court conducted a hearing on the motion in August 2008. The officer who arrested appellant, Texas Department of Public Safety Trooper Michael Franklin, was the only witness at the hearing, and his undisputed testimony established the following facts.

At around 2:00 a.m. on November 30, 2006, Trooper Franklin stopped appellant's vehicle because Franklin saw that appellant's license plate was partially obscured by a license plate frame. The frame partially obscured the word "Texas," fully obscured the nickname "Lone Star State," and obscured a depiction of a space shuttle in a nighttime sky. Franklin also believed that appellant had been speeding and racing with a motorcyclist, although he did not confirm appellant's speed by radar or "pacing."

After hearing Franklin's testimony and the argument of counsel, the trial court denied appellant's motion to suppress. Appellant subsequently pleaded guilty to the offense as charged. Pursuant to a plea agreement, the trial court sentenced appellant to one year confinement in the Montgomery County Jail, probated for one year. The trial court certified appellant's right to appeal from the denial of the motion to suppress and this appeal timely ensued.¹

Analysis

A. Standard of Review

We generally apply a bifurcated standard of review when considering a trial court's denial of a motion to suppress, affording almost total deference to the court's express or implied determination of historical facts, while reviewing the court's application of the law to the facts de novo. *See Wiede v. State*, 214 S.W.3d 17, 25 (Tex. Crim. App. 2007). But where, as here, we are presented with a question of law based on undisputed facts, we apply a de novo standard of review. *Oles v. State*, 993 S.W.2d 103,

¹ This case was transferred to this court from the Ninth Court of Appeals. In cases transferred by the Supreme Court from one court of appeals to another, the transferee court must decide the case in accord with the precedent of the transferor court if the transferee court's decision would have been inconsistent with the precedent of the transferor court. *See* TEX. R. APP. P. 41.3.

106 (Tex. Crim. App. 1999); *State v. LaRue*, 108 S.W.3d 431, 433 (Tex. App.—Beaumont 2003), *aff'd*, 152 S.W.3d 95 (Tex. Crim. App. 2005).

B. Law and Application

The statutory language in effect at the time of appellant’s traffic stop provided that a person committed an offense if he displayed a license plate with a covering that “obscures the letters or numbers on the plate, the color of the plate, or another original design feature of the plate.”² Appellant does not dispute that the features described by Trooper Franklin were obscured by his license plate frame. He argues instead that the trial court misinterpreted the law. We disagree.

The facts of this case are nearly identical to those in *State v. Johnson*; a driver was stopped by a police officer because the license plate on his car was partially obscured by a license plate frame. 219 S.W.3d 386, 387 (Tex. Crim. App. 2007). After the stop, the officer determined that the driver was intoxicated and arrested him for driving while intoxicated. *Id.* The driver moved to suppress the evidence resulting from the traffic stop on the ground that he had not violated the law and thus he should not have been stopped. *See id.* The Court of Criminal Appeals concluded, however, that “a motorist violate[s] the law when a license plate frame obscures or partially obscures some aspect of the original design of the license plate, such as the name of the issuing state, the state nickname, or a pictorial design[.]”³ *Id.* at 386–87.

Although the Legislature subsequently amended this statute,⁴ the statutory language in effect at the time of appellant’s arrest provided Trooper Franklin with

² Act of May 28, 2003, 78th Leg., R.S., ch. 837, § 2, 2003 Tex. Gen. Laws 2625, 2625 (amended 2007) (current version at TEX. TRANSP. CODE ANN. § 502.409(a)(7) (Vernon Supp. 2009)).

³ As in this case, the 2003 version of section 502.409 of the Texas Transportation Code was in effect at the time the traffic stop occurred in *Johnson*. *See id.*

⁴ *See* TEX. TRANSP. CODE ANN. § 502.409(a)(7).

probable cause to initiate the traffic stop.⁵ The trial court did not err in applying the law as it existed at the time of appellant's offense. We overrule appellant's sole issue on appeal.

Conclusion

The trial court did not err in denying appellant's motion to suppress. We affirm the trial court's judgment.

/s/ Tracy Christopher
Justice

Panel consists of Chief Justice Hedges and Justices Anderson and Christopher.

Do Not Publish — TEX. R. APP. P. 47.2(b).

⁵ See Act of May 28, 2003, 78th Leg., R.S., ch. 837, § 2, 2003 Tex. Gen. Laws 2625, 2625 (amended 2007); see also *Johnson*, 219 S.W.3d at 386–87.