

**Affirmed and Opinion filed April 19, 2001.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-99-01228-CR**  
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**DEBORAH HAMPTON JONES, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the County Criminal Court at Law No. 3  
Harris County, Texas  
Trial Court Cause No. 99-19008**

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**OPINION**

Appellant, Deborah Hampton Jones, entered a plea of not guilty to the misdemeanor offense of driving while intoxicated. She was subsequently convicted in a bench trial and assessed a punishment of 180 days confinement in the Harris County Jail and a \$600.00 fine. Such confinement was suspended, however, and appellant was placed under the terms and conditions of community supervision for one year. In four points of error, appellant challenges the trial court's decision to allow an officer's testimony about his interrogation of appellant and the trial court's decision to admit a videotape of appellant.

A Harris County Sheriff's Deputy stopped appellant after witnessing her run a red light in the early morning hours of May 4, 1999. Appellant had the odor of alcohol on her breath and the deputy asked her to perform several field sobriety examinations. Appellant agreed and was subsequently arrested for the offense of driving while intoxicated. Appellant was then taken to the Harris County Sheriff's Department Bear Creek Substation. Upon arrival at the substation, Deputy Tommy Shelton conducted a video recorded interrogation and another field sobriety examination in a room designed especially for the video recording of DWI suspects. At some point after the examination, Deputy Shelton discovered that the audio portion of the video recording was inaudible.

In her first two points of error, appellant avers that the trial court erred in admitting testimony of an officer who could not be fully cross-examined about a taped interview because the videotape lacked a soundtrack, in violation of appellant's right of confrontation under the United States Constitution and the Texas Constitution. The Confrontation Clause of the United States Constitution provides criminal defendants two types of protection: (1) the right to physically face those who testify against them; and (2) the right to cross examination. *Muttoni v. State*, 25 S.W.3d 300, 304 (Tex. App.—Austin 2000, no pet. h.). Deputy Shelton testified at appellant's trial. Appellant's counsel chose not to exercise appellant's right to cross-examine Deputy Shelton. Thus, appellant's federal constitutional right to confrontation was not abridged by the trial court's decision to allow Deputy Shelton to testify. Furthermore, appellant has failed to point out any meaningful distinctions between the confrontation clauses in the Federal and Texas Constitutions which merit our extension of broader confrontational capacity under Article I, Section 10 of the Texas Constitution. *See Lagrone v. State*, 942 S.W.2d 602, 614 (Tex. Crim. App. 1997). Appellant's first and second issues are overruled.

In her third and fourth points of error, appellant again alleges that the trial court violated her right to confrontation, guaranteed by the United States and Texas Constitutions, by allowing the admission of a videotape of appellant, created by the Sheriff's Department, which lacked an audio component. The admission of the visual portion of a videotape is an evidentiary matter. *See Burke v. State*, 930 S.W.2d 230, 235 (Tex. App.—Houston [14<sup>th</sup> Dist.] 1996, pet.

ref'd). We will not disturb a trial court's decision to admit the visual portion of a videotape absent an abuse of the trial court's discretion. *Id.* The visual portion of a videotape is admissible if the predicate for the introduction of a photograph is met. *Id.* Appellant's right to confrontation was not implicated by the trial court's decision to admit the visual portion of the videotape. Moreover, appellant made no objection raising these grounds at the trial. Thus, appellant failed to preserve the issue for review. *Stewart v. State*, 995 S.W.2d 251, 255 (Tex. App.—Houston[14<sup>th</sup> Dist.] 1999, no pet.). Furthermore, appellant cites no authority to support these propositions. Accordingly, these contentions are waived, and appellant's third and fourth points of error are overruled.

The judgment of the trial court is affirmed.

/s/ J. Harvey Hudson  
Justice

Judgment rendered and Opinion filed April 19, 2001.

Panel consists of Senior Chief Justice Murphy, Former Justice Amidei, and Justice Hudson.\*

Do Not Publish — TEX. R. APP. P. 47.3(b).

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\* Senior Chief Justice Paul C. Murphy and Former Justice Maurice Amidei sitting by assignment.