



# IN THE COURT OF CRIMINAL APPEALS OF TEXAS

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NO. PD-0265-18

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THE STATE OF TEXAS

v.

MARC DAVENPORT, Appellee

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ON APPELLEE'S PETITION FOR DISCRETIONARY REVIEW  
FROM THE NINTH COURT OF APPEALS  
MONTGOMERY COUNTY

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**KELLER, P.J., delivered the opinion of the Court in which KEASLER, HERVEY, RICHARDSON, KEEL, WALKER and SLAUGHTER, JJ., joined. YEARY, J., filed a dissenting opinion. NEWELL, J., dissented.**

In 2016, Appellee was indicted as a party to violating § 551.143 of the Texas Open Meetings Act.<sup>1</sup> One of the primary actors that he was alleged to have aided was County Judge Craig Doyal. Doyal filed a motion to dismiss on the basis that § 551.143 was overbroad in violation of the First Amendment and was unconstitutionally vague, and Appellee subsequently joined that motion. The trial court granted the motion and dismissed Appellee's indictment. Relying on its earlier decision

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<sup>1</sup> TEX. GOV'T CODE § 551.143(a).

in *State v. Doyal*,<sup>2</sup> the court of appeals reversed the trial court's order dismissing the indictment and remanded the case for further proceedings.<sup>3</sup> We subsequently reversed the court of appeals's decision in *Doyal* on the basis that § 551.143 was facially unconstitutional.<sup>4</sup> Our decision in *Doyal* controls the outcome of this case. We reverse the judgment of the court of appeals and affirm the judgment of the trial court.

Delivered: June 19, 2019

Do not publish

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<sup>2</sup> 541 S.W.3d 395 (Tex. App.—Beaumont 2018), *rev'd*, \_\_\_ S.W.3d \_\_\_, No. PD-0254-18, 2019 Tex. Crim. App. LEXIS 161 (Tex. Crim. App. February 27, 2019).

<sup>3</sup> *State v. Davenport*, No. 09-17-00125-CR, 2018 Tex. App. LEXIS 1044 (Tex. App.—Beaumont February 7, 2018)(not designated for publication).

<sup>4</sup> *State v. Doyal*, \_\_\_ S.W.3d \_\_\_, No. PD-0254-18, 2019 Tex. Crim. App. LEXIS 161 (Tex. Crim. App. February 27, 2019).