

REVERSE and REMAND; and Opinion Filed January 13, 2016.



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

**No. 05-15-00279-CR
No. 05-15-00280-CR
No. 05-15-00281-CR
No. 05-15-00282-CR
No. 05-15-00283-CR
No. 05-15-00284-CR
No. 05-15-00285-CR
No. 05-15-00286-CR
No. 05-15-00287-CR
No. 05-15-00288-CR
No. 05-15-00289-CR
No. 05-15-00290-CR
No. 05-15-00291-CR
No. 05-15-00292-CR
No. 05-15-00293-CR
No. 05-15-00294-CR
No. 05-15-00295-CR
No. 05-15-00296-CR
No. 05-15-00297-CR
No. 05-15-00298-CR
No. 05-15-00299-CR
No. 05-15-00300-CR
No. 05-15-00301-CR
No. 05-15-00302-CR
No. 05-15-00303-CR
No. 05-15-00304-CR
No. 05-15-00305-CR
No. 05-15-00306-CR
No. 05-15-00307-CR
No. 05-15-00308-CR
No. 05-15-00309-CR
No. 05-15-00310-CR
No. 05-15-00311-CR
No. 05-15-00312-CR
No. 05-15-00313-CR
No. 05-15-00314-CR
No. 05-15-00315-CR**

No. 05-15-00316-CR
No. 05-15-00317-CR
No. 05-15-00318-CR
No. 05-15-00319-CR
No. 05-15-00320-CR
No. 05-15-00321-CR
No. 05-15-00322-CR
No. 05-15-00323-CR
No. 05-15-00324-CR
No. 05-15-00325-CR
No. 05-15-00326-CR
No. 05-15-00327-CR
No. 05-15-00328-CR
No. 05-15-00329-CR
No. 05-15-00330-CR
No. 05-15-00331-CR

THE STATE OF TEXAS, Appellant
V.
FARHAD NAYEB, Appellee

On Appeal from the County Court at Law No. 2
Collin County, Texas

Trial Court Cause Nos. 002-82535-2013, 002-82536-2013, 002-082537-2013, 002-82538-2013, 002-82539-2013, 002-82540-2013, 002-82541-2013, 002-82545-2013, 002-82546-2013, 002-82551-2013, 002-82553-2013, 002-82554-2013, 002-82555-2013, 002-82557-2013, 002-82560-2013, 002-82563-2013, 002-82564-2013, 002-82565-2013, 002-84704-2013, 002-84810-2013, 002-84811-2013, 002-84812-2013, 002-84813-2013, 002-84814-2013, 002-84815-2013, 002-84823-2013, 002-84824-2013, 002-84825-2013, 002-84826-2013, 002-84827-2013, 002-84828-2013, 002-84829-2013, 002-84830-2013, 002-84831-2013, 002-84832-2013, 002-84833-2013, 002-84834-2013, 002-84835-2013, 002-84836-2013, 002-84837-2013, 002-84838-2013, 002-84839-2013, 002-84840-2013, 002-84841-2013, 002-84842-2013, 002-84843-2013, 002-84844-2013, 002-84845-2013, 002-84846-2013, 002-84847-2013, 002-84848-2013, 002-84849-2013, & 002-84850-2013

MEMORANDUM OPINION

Before Justices Fillmore, Stoddart, and O’Neill¹
Opinion by Justice Fillmore

After purchasing Kim’s Korner, a convenience store located in the City of Melissa, Texas (the City), Farhad Nayeb constructed a booth with bullet-proof glass inside the store and began cashing checks and transferring money for customers and buying gold from customers. The City

¹ The Hon. Michael J. O’Neill, Justice, Assigned.

issued fifty-three citations to Nayeb based on alleged violations of the City's code of ordinances: nine for construction without a permit, nine for illegally operating a check cashing business, and thirty-five for illegally operating a money transmission business. The municipal court found Nayeb guilty of the alleged violations, and Nayeb appealed to the county court for trial de novo.

In the county court, Nayeb filed a motion asserting the City's Comprehensive Zoning Ordinance No. 92-08, incorporated in the City's code of ordinances as article 12.300 (the Ordinance), was unconstitutionally vague and violated his right to equal protection under the law. The county court found the Ordinance was unconstitutionally vague and dismissed the complaints against Nayeb.

In two issues, the State contends the county court failed to follow established rules of statutory construction and erred by determining the Ordinance is unconstitutionally vague. In a third issue, the State asserts Nayeb has accepted the benefits of the Ordinance and, therefore, does not have standing to challenge the Ordinance as unconstitutional. In his brief, Nayeb argues this appeal is moot because the Ordinance has been amended, the complaints have been dismissed, and there is no live controversy between the parties. For the reasons set out below, we conclude this appeal is not moot, Nayeb has standing to challenge the constitutionality of the Ordinance, the county court erred by dismissing the complaints based on citations issued for construction without a permit because those citations were not based on alleged violations of the Ordinance, and the county court erred by determining the Ordinance was unconstitutionally vague and dismissing the complaints based on citations issued for alleged violations of the Ordinance. We reverse the county court's order dismissing the complaints against Nayeb and remand these cases for further proceedings.

Background

Kim's Korner, a convenience store which has conducted business in the City since sometime in the 1980s, is located in an area zoned under the Ordinance as C-2 (General Commercial). Section 20 of the Ordinance states:

Land and buildings in each of the following classified districts may be used for any of the following listed uses but no land shall hereinafter be used and no building or structure shall hereinafter be occupied, used, erected, altered, removed, placed, demolished or converted which is arranged or designed to be used for other than those uses specified for the district in which it is located as set forth by the following schedule of uses [.]

Section 20 of the Ordinance then contains a grid which lists various uses and the corresponding zoning districts in which each use might operate or be constructed. For each zoning district, a listed use is shown to be "permitted," "prohibited," or "permitted with specific approval" by the City. A "convenience store" is not a listed use in the grid in section 20 of the Ordinance. However, permitted uses in the C-2 zoning district include the sale of alcoholic beverages, bakery, bank or financial institution, grocery store, meat market, restaurant or café, and service station. It is undisputed that Kim's Korner sold gasoline, beer and wine, and food products, and had a deli counter and a "fudge factory."

According to Harold Watkins, who has code enforcement oversight for the City, a certificate of occupancy states the "uses" allowed at a location. Nayeb purchased Kim's Korner in the summer of 2012 and contacted the City about obtaining a new certificate of occupancy.² Nayeb was told that, if he was not making "any changes to the business," he did not need a new certificate of occupancy. Nayeb indicated there would be painting of the building as well as some stucco work on the outside of the building, but there would not be any construction work and no uses would be changed or added. Watkins testified Nayeb subsequently made structural

² Nayeb's counsel stated in argument that a corporation, rather than Nayeb, purchased the convenience store. However, Nayeb offered no evidence about the corporation's purchase of the store and there was testimony Nayeb owned the property.

changes to the building by reorganizing the layout of the kitchen, adding a dedicated check-cashing booth with Kevlar glass and a service window, and adding a wall to dedicate an area of the building as a restaurant. Nayeb also made changes to the electrical wiring in the building.

At the time Nayeb purchased the store, Kim's Korner did not offer check cashing as a business.³ After the booth was constructed in the store, Watkins observed an employee of the store cashing checks for customers from the booth. Kim's Korner also began offering money transfer services. The City sent a letter to Kim's Korner, as well as to other businesses, requesting they cease offering check cashing and money transfer services. After Kim's Korner failed to comply with the request, Watkins wrote nine citations to Nayeb based on violations of articles 3.201 and 105.1 of the City's code of ordinances, which required a property owner to apply for and receive a permit prior to any construction on the property or any alteration of any electrical, gas, mechanical, or plumbing system on the property. Watkins also wrote forty-four citations to Nayeb for violations of section 20 of the Ordinance: nine for operating a check cashing business and thirty-five for operating a money transfer business. Neither "check cashing" nor "money transfer" are listed in section 20 of the Ordinance as a permitted use in a C-2 zoning district.

The municipal court found Nayeb guilty of all fifty-three alleged code violations. Nayeb appealed to the county court for trial de novo and filed a motion challenging the constitutionality of the Ordinance. Nayeb argued the Ordinance failed to define most of the uses listed in the grid in section 20 and that, although the Ordinance allowed for an accessory use on property, it failed to set out which accessory uses were permitted or prohibited and failed to provide any standards by which a code enforcement officer could determine whether an accessory use was permitted. Nayeb argued the Ordinance violated due process under the United States Constitution and due

³ Watkins distinguished between cashing a "payroll check" and allowing a customer to write a check for some amount over the price of the items the customer was purchasing from the store.

course of law under the Texas Constitution because it was unconstitutionally vague and gave the City unfettered discretion to claim that any unlisted use was illegal. He also argued the Ordinance violated his right to equal protection under both the United States and Texas Constitutions because the owners of other, similarly situated convenience stores, had not been cited even though those stores offered similar services.

After considering Watkins's testimony and counsels' arguments, the county court determined the Ordinance was unconstitutionally vague and found Nayeb not guilty of each offense.⁴ The State moved for reconsideration and filed a notice that the judgments of acquittals were void because there had not been a trial of the allegations. The county court set aside the judgments of acquittal as void, but made a finding that:

The City of Melissa Zoning Ordinance No. 92-08 is unconstitutionally vague because it does not give fair notice to citizens accused of violating the ordinance by cashing checks and/or transmitting money allegedly contrary to the permitted uses of a premises covered by the ordinance.

The City sought relief from the county court's ruling by petition for writ of mandamus. We denied the petition because the State had an adequate remedy by appeal. *See In re State*, No. 05-14-00572-CV, 2014 WL 2049545, at *1 (Tex. App.—Dallas May 15, 2014, orig. proceeding) (mem. op.). The county court dismissed the complaints in all fifty-three cases based on its determination the Ordinance is unconstitutionally vague, and the State filed these appeals.

Jurisdiction

In its third issue, the State contends Nayeb does not have standing to challenge the constitutionality of the Ordinance while, in his brief, Nayeb asserts this appeal is moot. Both of these arguments challenge our jurisdiction over this appeal. *See Fuller v. State*, 829 S.W.2d 191, 201 (Tex. Crim. App. 1992) ("In general, standing is a constituent requirement of justiciability,

⁴ Prior to the county court's ruling, the City amended the Ordinance to, among other things, specifically include convenience stores in the list of uses in the grid in section 20 and to provide definitions of most of the listed uses as well as for "check-cashing services" and "money transmission."

the basic posture in which a controversy must appear to be cognizable by the courts. Other features of justiciability include the rule against litigation of moot questions.”), *abrogated on other grounds as recognized by Castillo v. State*, 913 S.W.2d 529, 534 n.2 (Tex. Crim. App. 1995). Whether a court has subject matter jurisdiction is a question of law subject to de novo review. *Dixon v. State*, 455 S.W.3d 669, 674–75 (Tex. App.—Houston [1st Dist.] 2014, pet. ref’d). A challenge to subject matter jurisdiction may be raised for the first time on appeal. *See Kothe v. State*, 152 S.W.3d 54, 60 (Tex. Crim. App. 2004) (standing as element of Fourth Amendment claim may be raised for first time on appeal).

Standing

In its third issue, the State contends Nayeb does not have standing to challenge the constitutionality of the Ordinance because he accepted the benefits of a certificate of occupancy issued under the Ordinance. A person has standing to challenge the constitutionality of a statute if he demonstrates an adverse impact on his rights. *Cnty. Court of Ulster Cnty. v. Allen*, 442 U.S. 140, 154–55 (1979); *Santikos v. State*, 836 S.W.2d 631, 633 (Tex. Crim. App. 1992). In this case, Nayeb demonstrated such an adverse impact as a result of being charged with forty-four violations of the Ordinance, *see Bryant v. State*, 47 S.W.3d 80, 85 (Tex. App.—Waco 2001, pet. ref’d); *see also Karenev v. State*, 281 S.W.3d 428, 435 (Tex. Crim. App. 2009) (Cochran, J., concurring) (“The defendants did not need any evidence other than the fact of their prosecution to give them standing to challenge the constitutionality of the penal statute under which they were convicted.”), and therefore has standing to challenge the constitutionality of the Ordinance.

The State argues Nayeb lacks standing because he operated Kim’s Korner under a certificate of occupancy issued under the Ordinance. In doing so, the State relies on the doctrine that a court “will not pass upon the constitutionality of a statute at the instance of one who has availed himself of its benefits.” *Fahey v. Mallonee*, 332 U.S. 245, 255 (1947) (quoting *Ashwander v. Tenn. Valley Auth.*, 297 U.S. 288, 348 (1936) (Brandeis, J., concurring)); *Fort*

Worth Indep. Sch. Dist. v. City of Fort Worth, 22 S.W.3d 831, 844 (Tex. 2000).⁵ This doctrine precludes a person who affirmatively seeks and retains the benefits of a statute from challenging the statute’s constitutionality after the person becomes dissatisfied with the result. *See United Fuel Gas Co. v. R.R. Comm’n of Ky.*, 278 U.S. 300, 307–08 (1929). Further, a person contractually waives his constitutional or statutory rights by intelligently, voluntarily, and knowingly relinquishing a known right or acting inconsistently with claiming that right. *Fort Worth Indep. Sch. Dist.*, 22 S.W.3d at 844.

The State’s argument is essentially that Nayeb is estopped from, or waived his right to, challenge the constitutionality of the Ordinance. *See Ex parte Heilman*, 456 S.W.3d 159, 167 (Tex. Crim. App. 2015) (defendant who accepts benefits of plea agreement is generally estopped from challenging its validity); *Rhodes v. State*, 240 S.W.3d 882, 891 (Tex. Crim. App. 2007) (estoppel by contract means that “a party who accepts benefits under a contract is estopped from questioning the contract’s existence, validity, or effect.”). However, the record establishes only that Kim’s Korner was operated pursuant to a certificate of occupancy issued by the City. The certificate of occupancy is not in the record, and there is no evidence of whether specific uses for the convenience store are listed in the certificate of occupancy. Further, there is no evidence the certificate of occupancy provides that, by operating Kim’s Korner pursuant to the certificate of occupancy, Nayeb waived his right to challenge the constitutionality of the Ordinance. On this record, we cannot conclude the language in the certificate of occupancy either estops Nayeb from challenging the constitutionality of the Ordinance or results in a waiver of Nayeb’s right to make such a challenge. We resolve the State’s third issue against it.

⁵ *See also Cheatum v. Tex. Workers’ Comp. Comm’n*, No. 05-98-00846-CV, 2001 WL 100194, at *2 (Tex. App.—Dallas Feb. 7, 2001, no pet.) (not designated for publication); *City of Garland, Tex. v. Kaliney*, No. 05-95-00199-CV, 1996 WL 98728, at *4 (Tex. App.—Dallas Mar. 5, 1996, writ denied) (not designated for publication).

Mootness

In one paragraph of his brief, Nayeb asserts this appeal is moot because (1) the complaints have been dismissed and the statute of limitations for misdemeanors is two years, leaving no live controversy between the parties; and (2) the Ordinance has been amended and any decision on the validity of the Ordinance as it existed at the time the citations were issued would be advisory. We question whether Nayeb has adequately briefed this argument. *See* TEX. R. APP. P. 38.1(i). However, because we are required to take notice of any circumstances that would deprive this Court of jurisdiction, *see State v. Roberts*, 940 S.W.2d 655, 657 (Tex. Crim. App. 1996), *overruled on other grounds by State v. Medrano*, 67 S.W.3d 892, 894 (Tex. Crim. App. 2002), *Solis v. State*, 890 S.W.2d 518, 520 (Tex. App.—Dallas 1994, no pet.), we will address the argument this appeal is moot.

Generally, an appeal is moot when the court's action on the merits cannot affect the rights of the parties. *Smith v. State*, 848 S.W.2d 891, 893 (Tex. App.—Houston [14th Dist.] 1993, pet. ref'd). A case on appeal is moot if it presents no actual controversy and an opinion on the issue by the appellate court would be purely advisory. *See Armstrong v. State*, 805 S.W.2d 791, 794 (Tex. Crim. App. 1991); *Fouke v. State*, 529 S.W.2d 772, 773 (Tex. Crim. App. 1975) (dismissing appeal as moot because defendant voluntarily paid fine and costs complained of in appeal); *Laney v. State*, 223 S.W.3d 656, 659 (Tex. App.—Tyler 2007, no pet.) (stating generally that appeals presenting no actual controversy are dismissed as moot).⁶

Nayeb was charged with forty-four violations of the Ordinance and is potentially subject to a fine if found guilty on any alleged violation. If the county court's determination the Ordinance is unconstitutional is reversed, the prosecutions based on the alleged violations of the Ordinance will proceed. *See State v. Miles*, 101 S.W.3d 180, 185 (Tex. App.—Dallas 2003, no

⁶ *See also Gordy v. State*, No. 12-14-00062-CR, 2015 WL 858919, at *2 (Tex. App.—Tyler Feb. 27, 2015, no pet.) (mem. op., not designated for publication).

pet.) (reversing trial court's order dismissing case and remanding for further proceedings); *State v. Ford*, 410 S.W.3d 341, 349 (Tex. App.—Houston [14th Dist.] 2013 pet. ref'd) (reversing trial court's dismissal of case and remanding for further proceedings). Further, the county court's dismissal of the complaints is not final and does not have any impact on whether the statute of limitations has run on the charges. *See* TEX. CODE CRIM. PROC. ANN. art. 12.05(b) (West 2015) (time during which complaint pending not computed in period of limitations); *see also Lundgren v. State*, 434 S.W.3d 594, 598 (Tex. Crim. App. 2014) (judgment of conviction not final during pendency of appeal). Finally, the fact the Ordinance has been amended would not affect the determination of whether Nayeb violated the Ordinance as it existed at the time of his conduct. Accordingly, this Court's action on the merits of this appeal could affect the rights of the parties and this case is not moot.

We conclude we have jurisdiction over this appeal.

Violations of Articles 3.201 and 105.1 of Code of Ordinances

We first address the nine complaints alleging Nayeb violated articles 3.201 and 105.1 of the City's code of ordinances by failing to obtain a permit before altering the structure and the electrical system of the building. Nayeb did not challenge the constitutionality of either article 3.201 or article 105.1 of the City's code of ordinances. Further, Nayeb requested in his motion that the county court "find that the City of Melissa Revised Zoning Ordinance No. 92-08 is unconstitutional as set forth above and that the [county court] dismiss charges against [him] for illegal operation of a [sic] 'check cashing' and 'money transmission' businesses as set forth in the complaints." The county court erred by dismissing complaints not based on a violation of the Ordinance and not encompassed in the relief sought by Nayeb. *See Banks v. State*, 158 S.W.3d 649, 650 n.1 (Tex. App.—Houston [14th Dist.] 2005, pet. ref'd) (appellate court cannot grant more relief than requested). Accordingly, we reverse the county court's order dismissing the

complaints in appeal case numbers 05-15-00279-CR through 05-15-00287-CR and remand those cases to the trial court for further proceedings.

Constitutionality of the Ordinance

In its first and second issues, the State argues the county court failed to follow established rules of statutory construction and erred by determining the Ordinance is unconstitutionally vague.⁷

Standard of Review

The constitutionality of a statute is a question of law that we review de novo. *Salinas v. State*, 464 S.W.3d 363, 366 (Tex. Crim. App. 2015). We presume the statute is valid and the legislature has not acted unreasonably or arbitrarily in enacting it. *Peraza v. State*, 467 S.W.3d 508, 514 (Tex. Crim. App. 2015), *petition for cert. filed*, (U.S. Dec. 11, 2015) (No. 15-7367). We make every reasonable presumption in favor of the statute's constitutionality, unless the contrary is clearly shown. *Id.*; *Ex parte Granviel*, 561 S.W.2d 503, 511 (Tex. Crim. App. 1978). We must uphold the statute if we can determine a reasonable construction that renders it constitutional. *Peraza*, 467 S.W.3d at 514; *Ex parte Granviel*, 561 S.W.2d at 511. We apply the same rules of statutory construction to an ordinance as we apply to statutes. *See Taylor v. State*, 117 S.W.3d 848, 850 (Tex. Crim. App. 2003).

Type of Challenge Brought

A party may challenge a statute as being either facially unconstitutional or unconstitutional as applied to him. *Gore v. State*, 451 S.W.3d 182, 188 (Tex. App.—Houston [1st Dist.] 2014, pet. filed) (citing *Karenev*, 281 S.W.3d at 435 (Cochran, J., concurring)). A facial challenge attacks the statute itself and seeks to establish the statute is unconstitutional in all possible circumstances. *Peraza*, 467 S.W.3d at 514. By contrast, an as-applied challenge

⁷ In the county court and on appeal, Nayeb also argues the enforcement of the Ordinance violates his right to equal protection under the United States and Texas Constitutions. However, the county court did not find a violation of Nayeb's right to equal protection, and we will not address this argument on appeal.

“concedes the general constitutionality of the statute, but asserts that the statute is unconstitutional as applied to [the defendant’s] particular facts and circumstances.” *State ex rel. Lykos v. Fine*, 330 S.W.3d 904, 910 (Tex. Crim. App. 2011) (orig. proceeding). An “‘as applied’ challenge is brought during or after a trial on the merits, for it is only then that the trial judge and reviewing courts have the particular facts and circumstances of the case needed to determine whether the statute or law has been applied in an unconstitutional manner.” *Id.* “‘Since [a contention that a statute is unconstitutional as applied] requires a recourse to evidence, it cannot be properly raised by a pretrial motion to quash the charging instrument.’” *Id.* (quoting *Gillenwaters v. State*, 205 S.W.3d 534, 536 n.4 (Tex. Crim. App. 2006)).

The State asserts Nayeb brought a facial challenge to the Ordinance. Nayeb argues in his brief the Ordinance is also unconstitutional as applied to him. However, as relevant to this appeal, Nayeb brought a pretrial motion asserting the Ordinance was unconstitutionally vague because it did not provide sufficient direction to a property owner or to law enforcement officials as to what uses of property located in a C-2 zoning district were permitted. This argument was not directed toward Nayeb’s conduct, but toward the language of the Ordinance. The county court determined the Ordinance was unconstitutionally vague “because it does not give fair notice to citizens accused of violating the ordinance by cashing checks and/or transmitting money allegedly contrary to the permitted uses of a premises covered by the ordinance,” a ruling that is not specific as to how the Ordinance was applied to Nayeb. We conclude Nayeb brought, and the county court ruled on, a challenge that the Ordinance is facially unconstitutional.

Applicable Law

The party challenging the constitutionality of a statute normally bears the burden to establish it is unconstitutional. *Ex parte Lo*, 424 S.W.3d 10, 15 (Tex. Crim. App. 2013). “A facial challenge is an attack on a statute itself as opposed to a particular application.” *City of Los Angeles v. Patel*, 135 S. Ct. 2443, 2449, 192 L.Ed.2d 435 (2015); *see also Peraza*, 467 S.W.3d at

514. Ordinarily, to mount a successful facial challenge, the challenger must establish that no set of circumstances exists under which the statute would be valid. *Peraza*, 467 S.W.3d at 514; *see also United States v. Stevens*, 559 U.S. 460, 472 (2010).⁸ However, in assessing whether a statute meets this standard, we consider only those applications of the statute in which it actually authorizes or prohibits conduct. *Patel*, 135 S. Ct. at 2451; *Peraza*, 467 S.W.3d at 514; *see also Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 894 (1992) (The “[l]egislation is measured for consistency with the Constitution by its impact on those whose conduct it affects. . . . The proper focus of the constitutional inquiry is the group for whom the law is a restriction, not the group for whom the law is irrelevant.”). Further, we consider the statute as it is written, rather than how it operates in practice. *Salinas*, 464 S.W.3d at 367; *State ex rel. Lykos*, 330 S.W.3d at 908. “[A] facial challenge to a statute is extremely difficult to prove as all courts presume that the Legislature enacted a constitutional law and all courts must seek to uphold the facial constitutionality of legislative enactments.” *State ex rel. Lykos*, 330 S.W.3d at 909.

A statute may be challenged as unconstitutionally vague if it does not give a person of ordinary intelligence a reasonable opportunity to know what is prohibited and does not establish explicit standards to govern law enforcement. *Watson v. State*, 369 S.W.3d 865, 870 (Tex. Crim. App. 2012); *see also State v. Edmond*, 933 S.W.2d 120, 125 (Tex. Crim. App. 1996). “Without such guidance, a penal statute might be susceptible to arbitrary and discriminatory enforcement.” *Edmond*, 933 S.W.2d at 125. A statute is not necessarily unconstitutionally vague simply because a word or phrase is not specifically defined. *Watson*, 369 S.W.3d at 870; *see also State v. Holcombe*, 187 S.W.3d 496, 499 (Tex. Crim. App. 2006); *Ex parte Wheeler*, No. 01-14-

⁸ In the case of a statute that encroaches upon activity protected by the First Amendment, the challenger may also bring a “substantial overbreadth” challenge. *Stevens*, 559 U.S. at 473. Under such a facial challenge, a statute may be invalidated as overbroad if “a substantial number of its applications are unconstitutional, judged in relation to the statute’s plainly legitimate sweep.” *Id.*; *see also Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 255 (2002) (overbreadth doctrine prohibits government from banning unprotected speech if substantial amount of protected speech prohibited or chilled in process). This type of facial challenge may be made when a statute restricts or punishes speech based upon its content. *Ex parte Lo*, 424 S.W.3d at 15. “Content-based regulations (those laws that distinguish favored from disfavored speech based on the ideas expressed are presumptively invalid, and the government bears the burden to rebut that presumption.” *Id.*

00868-CR, 2015 WL 5770850, at *4 (Tex. App.—Houston [1st Dist.] Sept. 29, 2015, pet. filed). Undefined terms are typically given their plain meaning unless the language is ambiguous or the plain language leads to absurd results the legislature could not have possibly intended. *See Wilson v. State*, 448 S.W.3d 418, 423 (Tex. Crim. App. 2014), *petition for cert. filed*, 84 U.S.L.W. 3348 (U.S. Dec. 11, 2015) (No. 15-766). Further, statutory words should be read in context and construed according to the rules of grammar and common usage. *See* TEX. GOV'T CODE ANN. § 311.011(a) (West 2013). When a statute “does not substantially implicate constitutionally protected conduct or speech, it is valid unless it is impermissibly vague in all applications.” *Watson*, 369 S.W.3d at 870 (quoting *Holcombe*, 187 S.W.3d at 499).

Analysis

As relevant to this appeal, in the county court Nayeb argued the Ordinance is fatally vague because it fails to distinguish between the “particular accessory uses which are permitted and which are prohibited, or otherwise give any standards by which the code enforcement officer is to determine whether an accessory use is permitted,” and all his uses of the property fell within an “accessory use” as defined by the Ordinance. Nayeb also argued the Ordinance failed “to define approximately 105 of the 117 specific commercial uses listed,” and “a person of common intelligence could assume that a business offering ‘check cashing’ and/or ‘money transmission’ services” would fall under “banks and other financial institutions,” a permitted use under section 20 of the Ordinance.

We first note that, as requested by Nayeb, the county court found the Ordinance unconstitutional in its entirety. The Ordinance is a comprehensive zoning ordinance for the City and addresses zoning districts other than C-2 (General Commercial) and uses other than check cashing or money transfer services. Nayeb failed to establish, or even argue, that no set of circumstances exists under which the Ordinance would be valid. *See Peraza*, 467 S.W.3d at 514.

Accordingly, the trial court erred by determining the Ordinance, in its entirety, was facially unconstitutional.

Even if we restrict the county court's ruling to section 20 of the Ordinance, we cannot conclude it is unconstitutionally vague. In *Baird v. City of Melissa*, 170 S.W.3d 921 (Tex. App.—Dallas 2005, pet. denied), we construed section 20 of the Ordinance as it pertained to uses permitted in the C-1 (Restricted Commercial) zoning district. The property owner argued "RV park" was not listed in section 20 of the Ordinance as a prohibited land use and, therefore, was not prohibited on her property. We concluded the language of the Ordinance "plainly states that no land shall be used for uses other than those specified for the district in which the land is located," and that an "RV park" was not specified as a permitted land use. *Id.* at 925. Accordingly, the property owner's use of her property as an "RV Park" was not permitted. Similarly, because section 20 of the Ordinance does not list "check cashing" or "money transferring" services as permitted uses in the C-2 zoning district, these uses are "plainly" not permitted. *Id.*

Nayeb argues that, although check cashing and money transfer services are not listed uses in the Ordinance, they fall within the definition of "accessory use," and section 20 of the Ordinance is fatally vague because "it fails to distinguish between the particular accessory uses which are permitted and which are prohibited." Section 31.2(2) of the Ordinance defines an "accessory use" as a "subordinate use which is incidental to the main or primary use." "Accessory use" is included in the definitions of "farm,"⁹ "orchard,"¹⁰ and "school"¹¹ in the Ordinance, but is used nowhere else in the Ordinance.

⁹ Section 31.2(37) of the Ordinance defines a "farm" as:

An area of five (5) acres or more which is used for growing of usual farm products (vegetables, grain, etc.) and for the raising thereon of the usual farm poultry and farm animals such as horses, cattle and sheep and including the necessary accessory uses for raising, treating and storing products raised on the premises, not including the commercial feeding of offal or garbage to swine or other animals and not including any type of agriculture or husbandry specifically prohibited by ordinance or law.

¹⁰ Section 31.2(68) of the Ordinance defines an "orchard" as:

Statutory construction is a question of law that we review de novo. *Cortez v. State*, 469 S.W.3d 593, 598 (Tex. Crim. App. 2015). We presume the legislature used every word or phrase in a statute for a purpose. *Liverman v. State*, 470 S.W.3d 831, 836 (Tex. Crim. App. 2015). We also presume that if the legislature did not use certain words in a statute, it excluded those words for a reason. *Timmons v. State*, 952 S.W.2d 891, 892 (Tex. App.—Dallas 1997, no pet.); *Uribe v. State*, 7 S.W.3d 294, 296 (Tex. App.—Austin 1999, pet. ref'd). These principles of statutory construction apply to construction of an ordinance. *Taylor*, 117 S.W.3d at 850.

In enacting the Ordinance, the City Council allowed only those uses of property in the C-2 zoning district that are set out in section 20 of the Ordinance. Any use of the property not allowed by section 20 of the Ordinance is prohibited. See *Baird*, 170 S.W.3d at 925. Section 20 of the Ordinance does not state that an “accessory use” is permitted for all listed uses of property. Although the City Council could have stated an “accessory use” is permitted for all listed uses, it chose to permit an “accessory use” only for farms, orchards, and schools.¹² Because an “accessory use” is not permitted when property is used for something other than a farm, an orchard, or a school, it does not impact a person of ordinary intelligence’s ability to know what uses are prohibited by section 20 of the Ordinance and does not provide unfettered discretion to a law enforcement official enforcing the Ordinance.

Nayeb finally asserts section 20 of the Ordinance is fatally vague because, although “bank or financial institution” is a permitted use in the C-2 zoning district, the Ordinance fails to define what constitutes a bank of financial institution. Nayeb asserts a person of ordinary

An area of land at least five (5) acres or more in size which is used for growing of fruit and nut trees and including the necessary accessory uses for growing, treating and storing the fruit and nut products raised on the premises.

¹¹ Section 31.2(82) of the Ordinance defines a “school, public or parochial” as:

A school and customary accessory uses under the sponsorship of a public or religious denomination having a curriculum generally equivalent to public, elementary or secondary schools, but not including private, trade or commercial schools.

¹² Although schools are a permitted use in the C-2 zoning district, farms and orchards are allowed only in the A (Agricultural) zoning district.

intelligence could determine that “check cashing” and “money transferring” are services offered by a bank or other financial institution and, therefore, a permitted use at a convenience store located in a C-2 zoning district.

Words, phrases, or terms not specifically defined are generally given their plain and ordinary meaning. *Watson*, 369 S.W.3d at 870; *see also Dobbs v. State*, 434 S.W.3d 166, 171 (Tex. Crim. App. 2014). Further, “[if] a word or a phrase has acquired a technical or particular meaning, we construe the word or phrase accordingly.” *Liverman*, 470 S.W.3d at 836; *see also Yazdchi v. State*, 428 S.W.3d 831, 837 (Tex. Crim. App. 2014), *cert. denied*, 135 S. Ct. 1158 (2015). Words defined in dictionaries and with meanings so well-known as to be understood by a person of ordinary intelligence are not to be considered vague and indefinite. *Watson*, 369 S.W.3d at 870. Although neither “bank” nor “financial institution” is defined in the Ordinance, the finance code defines “bank” as “a state or national bank,” TEX. FIN. CODE ANN. § 31.002(a)(2) (West Supp. 2015), and a “financial institution” as “a bank, savings association, or savings bank maintaining an office, branch, or agency office in this state.” *Id.* at § 31.002(a)(25). A “national bank” is a “banking association organized under 12 U.S.C. Section 21,” *id.* at § 31.002(a)(37), while a “state bank” is:

a banking association or limited banking association organized or reorganized under this subtitle, including an association organized under the laws of this state before September 1, 1995, with the express power to receive and accept deposits and possessing other rights and powers granted by this subtitle expressly or by implication. The term does not include a savings association, savings bank, or credit union. If the context requires, the term includes a bank as defined by Section 201.002(a)(4) that is organized under the laws of another state or country.

Id. at § 31.002(a)(50).¹³ We conclude that the terms “bank” and “financial institution” have meanings so well-known as to be understood by a person of ordinary intelligence. Accordingly,

¹³ Similarly, Webster’s Dictionary defines “bank” as “an establishment for the custody, loan, exchange or issue of money, for the extension of credit, and for facilitating the transmission of funds,” *Bank*, WEBSTER’S NEW INT’L DICTIONARY (3d ed. 1981), and “financial institution” as “an enterprise specializing in the handling and investment of funds (as a bank, trust company, insurance company, savings and loan association, or investment company.” *Financial Institution*, WEBSTER’S NEW INT’L DICTIONARY.

the Ordinance is not unconstitutionally vague because it fails to define “bank” or “financial institution.” *See Watson*, 369 S.W.3d at 870.

Conclusion

Applying the general standard for reviewing a challenge to the constitutionality of an ordinance—presuming the ordinance is valid and the legislative body has not acted unreasonably or arbitrarily—we conclude Nayeb has failed to meet his burden of establishing the Ordinance, in its entirety, is facially unconstitutional. Further, even if we limit Nayeb’s challenge to section 20 of the Ordinance, Nayeb failed to establish that section of the Ordinance is unconstitutionally vague. We resolve the State’s first two issues in its favor, reverse the trial court’s order dismissing the complaints in appeal case numbers 05-15-00288-CR through 05-15-00331-CR, and remand those cases to the county court for further proceedings

/Robert M. Fillmore/
ROBERT M. FILLMORE
JUSTICE

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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00279-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-82535-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00280-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-82536-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00281-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-82537-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00282-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-82538-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00283-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-82539-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00284-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-82540-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00285-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-82541-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00286-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-82545-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00287-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-82546-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00288-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-82551-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00289-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-82553-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00290-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-82554-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00291-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-82555-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00292-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-82557-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00293-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-82560-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00294-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-82563-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00295-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-82564-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00296-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law

No. 2, Collin County, Texas,

Trial Court Cause No. 002-82565-2013.

Opinion delivered by Justice Fillmore,

Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00297-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-84704-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00298-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-84810-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00299-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-84811-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00300-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-84812-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00301-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-84813-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00302-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-84814-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00303-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-84815-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00304-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-84823-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00305-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-84824-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00306-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-84825-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00307-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-84826-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00308-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-84827-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00309-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-84828-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00310-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-84829-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00311-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-84830-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00312-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-84831-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00313-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law

No. 2, Collin County, Texas,

Trial Court Cause No. 002-84832-2013.

Opinion delivered by Justice Fillmore,

Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00314-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-84833-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00315-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-84834-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00316-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-84835-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00317-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-84836-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00318-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law

No. 2, Collin County, Texas,

Trial Court Cause No. 002-84837-2013.

Opinion delivered by Justice Fillmore,

Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00319-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-84838-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00320-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-84839-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00321-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-84840-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00322-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-84841-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00323-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-84842-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00324-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-84843-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00325-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-84844-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00326-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-84845-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00327-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-84846-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00328-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-84847-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00329-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-84848-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00330-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-84849-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.



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

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-15-00331-CR V.

FARHAD NAYEB, Appellee

On Appeal from the County Court at Law
No. 2, Collin County, Texas,

Trial Court Cause No. 002-84850-2013.

Opinion delivered by Justice Fillmore,
Justices Stoddart and O'Neill participating.

Based on the Court's opinion of this date, the order of the trial court dismissing this case is **REVERSED** and the cause **REMANDED** for further proceedings consistent with this opinion.

Judgment entered this 13th day of January, 2016.