

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-06-00104-CR

Billy Moore, Appellant

v.

The State of Texas, Appellee

**FROM THE COUNTY COURT AT LAW NO. 7 OF TRAVIS COUNTY
NO. 679565, HONORABLE ELISABETH ASHLEA EARLE, JUDGE PRESIDING**

MEMORANDUM OPINION

In March 2005, a county court at law jury convicted Billy Moore for driving while intoxicated. Moore's trial counsel timely filed both a motion for new trial and a notice of appeal. Counsel was then permitted to withdraw and a new attorney was appointed for the appeal.

Fifty-two days after sentence was imposed, Moore's new attorney filed an amended motion for new trial together with a motion for leave to amend. One week later, counsel filed a second amended motion for new trial and a second motion for leave to amend. The trial court granted the second motion for leave and following a hearing on June 3, 2005, granted the second amended motion for new trial. On June 17, the State filed its notice of appeal from the order granting Moore a new trial.

The clerk's records in both Moore's appeal and the State's appeal were filed in this Court on July 5, 2005. This Court did not notice at that time that the two appeals arose from the same cause and were interrelated. On July 13, 2005, unaware of the arguments the State would make

regarding the validity of the order granting the new trial, the Court dismissed Moore's appeal because his motion for new trial had been granted. *Moore v. State*, No. 03-05-00268-CR (Tex. App.—Austin July 13, 2005, no pet.) (not designated for publication).

The State's appeal remained on the docket and was subsequently submitted for decision. In January 2006, the Court agreed with the State's contention that the trial court was not authorized to grant Moore's second amended motion for new trial and reversed the order. *State v. Moore*, No. 03-05-00395-CR (Tex. App.—Austin Jan. 19, 2006, pet. granted) (not designated for publication). Moore petitioned the court of criminal appeals for discretionary review of this judgment, and the petition was granted on May 24, 2006. It is now pending in that court as cause number PD-0359-06.

In February 2006, after this Court had reversed the order granting the new trial but before Moore's petition for discretionary review was filed, Moore's counsel filed with the county clerk what he styled a notice of appeal, citing this Court's judgment in cause number 03-05-00395-CR and stating that Moore still desired to appeal his conviction. The clerk prepared a new record, which was filed in this Court on March 6, 2006, as cause number 03-06-00104-CR. This appeal is abated pending the court of criminal appeals' final disposition in its cause number PD-0359-CR.

G. Alan Waldrop, Justice

Before Justices B. A. Smith, Puryear and Waldrop

Filed: July 11, 2006

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