

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-08-00259-CR

The State of Texas, Appellant

v.

John Francis Curran III, Appellee

**FROM THE COUNTY COURT AT LAW NO. 1 OF TRAVIS COUNTY
NO. C-1-CR-05-713701, HONORABLE J. DAVID PHILLIPS, JUDGE PRESIDING**

MEMORANDUM OPINION

By complaint filed in the City of Austin municipal court, the State charged John Francis Curran III with violating a city ordinance that bans solicitation between pedestrians and occupants of motor vehicles. Curran filed a motion to quash the complaint on grounds that, among others, the ordinance violated the First Amendment to the U.S. Constitution; Article 1, Section 8 of the Texas Constitution; and the Equal Protection and Due Process Clauses of the Fourteenth Amendment. The municipal court granted the motion to quash and dismissed the cause, holding that “the ordinance at issue is overly broad and not narrowly tailored and is therefore unconstitutional.” The State appealed the judgment to the county court-at-law, which issued an opinion and judgment affirming the municipal court’s judgment. The State appealed the county court-at-law’s judgment to this Court.

After this Court set the appeal for oral argument, Curran filed an unopposed motion for “leave to withdraw appellee’s motion to quash filed below and to dismiss this appeal.” Curran represents that “the parties have reached an agreement in order to resolve the dispute now on appeal.” He “requests leave to authorize him to withdraw his motion to quash filed in the municipal court which ultimately led to this appeal and then requests this Court dismiss this appeal as moot.”

We grant Curran’s motion for “leave to withdraw appellee’s motion to quash filed below” and abate this appeal to permit proceedings below to effectuate the parties’ agreement. The parties shall advise the Court when the motion to quash is withdrawn. If the motion to quash is not withdrawn by February 9, 2009, the parties shall file a status report with this Court. We overrule Curran’s motion to dismiss at this time.

Bob Pemberton, Justice

Before Chief Justice Law, Justices Puryear and Pemberton

Abated

Filed: December 9, 2008

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