CAUSE NO. E00-682828-01

STATE OF TEXAS	§	IN THE MUNICIPAL COURT
	§	
VS.	§	NUMBER EIGHT OF
	§	
IQBAL JIVANI	§	CITY OF DALLAS, TEXAS

ORDER ON DEFENDANT'S MOTION TO QUASH COMPLAINT

Before the Court is the Motion to Quash Complaint filed by Defendant Iqbal Jivani. The Defendant is represented by Mr. Gary Krupkin, Attorney at Law, and the State is represented by Ms. Samantha Jackson, Assistant City Attorney. The State has filed its Response to Defendant's Motion to Quash. The Defendant submitted a Response to the State's Reply. The parties advised the Court of their agreement for review by submission.

Background

The Defendant stands charged by way of complaint filed with this Court by the State of Texas on October 18, 2022, with the offense of manifesting the purpose of engaging in prostitution, an alleged violation of Dallas City Code § 31-27 (the "Ordinance"), which provides as follows:

(a) A person commits an offense if he loiters in a public place in a manner and under circumstances manifesting the purpose of inducing, enticing, soliciting, or procuring another to commit an act of prostitution. Among the circumstances which may be considered in determining whether such purpose is manifested: that such person is a known prostitute or panderer, repeatedly beckons to, stops or attempts to stop, or engages passers-by in conversation, or repeatedly stops or attempts to stop motor vehicle operators by hailing, waiving of arms, or any other bodily gesture. No arrest shall be made for a violation of this subsection unless the arresting officer first affords such person an opportunity to explain such conduct, and no one shall be convicted of violating this subsection if it appears at trial that the explanation given was true and disclosed a lawful purpose.

(b) For the purpose of this section, a "known prostitute or panderer" is a person who, within one year previous to the date of arrest for violation of this section, has within

the knowledge of the arresting officer been convicted of prostitution, promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution.

(c) The definition of prostitution in the Texas Penal Code shall apply to this section. (Ord. 15247)

The complaint states, in pertinent part, that the defendant "on or about the 23rd day of August, 2022, . . . did ... knowingly loiter in a public place in a manner and under circumstances manifesting the purpose of inducing another to commit an act of prostitution at the 11100 block of Shady Trl. a location within the territorial limits of the City of Dallas, Texas to wit: said actor was in a known prostitution area and stopped to engage passers-by in coversation [sic] . . . ." The defendant requests the Court to quash this complaint.[1] The Motion to Quash contains three grounds: (1) that there exists Fourth Amendment violations; (2) that the Ordinance is unconstitutionally vague on its face; and (3) that the Ordinance is unconstitutionally overbroad on its face.[2]

Discussion

Analyzing defendant's contention of Fourth Amendment violation.

The essence of the defendant's contention is that the complaint does not provide probable cause for the defendant's arrest, and that the arresting officers had no reasonable suspicion to stop the defendant. As to the first prong, the Court agrees that the complaint is totally conclusory and void of probable cause for an arrest.[3] However, the question

---

[1] The State filed a previous complaint on August 24, 2022. For purposes of addressing the Motion to Quash, the Court is of the opinion that the complaint dated October 18, 2022 supersedes the complaint of August 24. See *Cannon v. State*, 925 S.W.2d 126 (Tex.App.-Amarillo 1996, pet. ref'd).

[2] With respect to the defendant's constitutional challenges, the State in its Response to Defendant's Motion to Quash contends only "that each issue raised in the Motion is without merit and the Court should deny the Motion." The State does not address the constitutional issues further.

[3] The complaint contains factual conclusions, but there is no actual basis for those conclusions set out in the complaint. See *Gordon v. State*, 801 W.W.2d 899 (Tex.Crim.App. 1990). *See also Green v. State*, 615 S.W.2d 700 (Tex.CrimApp. 1981), *cert. denied*, 454 U.S. 952, 102 S.Ct. 490 (1981).

before the Court on a motion to quash is whether the complaint is a valid charging instrument for purposes of trial. While a given complaint filed in a municipal court may not contain probable cause for an arrest, such complaint may at the same time constitute a valid charging instrument for purposes of trial.

Both the United States Constitution and the Texas Constitution guarantee an accused the right "to be informed of the nature and cause of the accusation against him."[4] Further, "the charging instrument must convey sufficient notice to allow the accused to prepare a defense."[5] The statutory requirements of a complaint are found in Texas Code of Criminal Procedure, Art. 45.019.[6] Additionally, the complaint must allege all of the elements of an offense. *Honeycutt v. State*, 627 S.W.2d 417 (Tex.Crim.App. 1981). While the purpose of a complaint is to apprise the accused of the facts surrounding the offense with which he is charged so that he may prepare a defense, the particularity of pleading required for an indictment or information is not required of a complaint. *Kindley v. State*, 879 S.W2d 261 (Tex.App.-Houston [14th Dist.] 1994, no pet.). The defendant does not contend a violation of any of the above requirements for a complaint exists.

As to the second prong, whether there was or was not reasonable suspicion to stop the defendant or probable cause to issue the citation is not pertinent for a review of a motion to quash a complaint. There is no motion to suppress before the Court, and further the

---

[4] U.S. Const., Amend. VI; Texas Const., Art.1, §10.

[5] State v. Mays, 967 S.W.2d 404, 406 (Tex.Crim.App. 1998).

[6] The complaint must be in writing. It must commence with "In the name and by the authority of the State of Texas." It must state the name of the accused, if known. It must state the accused has committed an offense. It must state the date of the offense as definitely as possible. It must be signed by the affiant. It must allege the offense was committed in the territorial limits of the municipality. It must conclude with "against the peace and dignity of the State" or "contrary to the said ordinance." And it must be sworn to.

defendant does not even allege any evidence obtained resulting from the stop that should be suppressed.[7]

Therefore, the Fourth Amendment challenge is respectfully overruled.

The vagueness challenge.

The Court begins its analysis by presuming the subject ordinance is valid and that the Dallas City Council did not act arbitrarily or unreasonably in enacting this ordinance. *Meisner v. State of Texas*, 907 S.W. 2d 664, 667 (Tex.App-Waco 1995, no pet.). This Court must uphold the ordinance if a reasonable construction can be determined that will render the ordinance constitutional. *Id.* Further, the burden rests upon the Defendant to prove the unconstitutionality of the ordinance. *Id.*

The first inquiry is whether an individual of ordinary intelligence would receive sufficient information from the Ordinance that his or her conduct is prohibited by law. *Meisner*, at 667. The second inquiry must examine whether the ordinance provides sufficient notice to law enforcement personnel to prevent arbitrary and erratic enforcement of the ordinance. *Id.* And given first amendment rights are involved in the defendant's vagueness challenge,[8] this court must consider the ordinance's inhibitory effects upon any

---

[7] A defendant "is not himself a suppressible 'fruit' and the illegality of his detention cannot deprive the Government of the opportunity to prove his guilt through introduction of evidence wholly untainted by the police misconduct." *U.S. v. Crews*, 100 S.Ct. 1244 (1980).

[8] The Motion to Quash before this Court presents a *facial* challenge to the constitutionality of the Ordinance. Thus, this Court shall consider the Ordinance only as it is written, rather than how it operates in practice. *See State ex. rel. Lykos v. Fine*, 330 S.W.3d 904, 908-09 (Tex.Crim.App. 2011). *See also State v. Rousseau*, 398 S.W.3d 769, 779 (Tex.App.—San Antonio 2011), *aff'd*, 396 S.W.3d 550 (TexCrim.App. 2013), (holding "It follows that a pretrial motion to quash an indictment may be used only for a facial challenge to the constitutionality of a statute.") "[W]hat is the difference between a facial challenge and an 'as applied' challenge to the constitutionality of a penal statute? Evidence. A facial challenge is based solely upon the face of the penal statute and the charging instrument, while an applied challenge depends upon the evidence adduced at a trial or hearing. A facial challenge to the constitutional validity of a statute considers only the text of the measure itself, and not its application to the particular circumstances of an individual. A party asserting a facial challenge to a statute seeks to vindicate not only his own rights, but also those of others who may also be adversely impacted by the statute in question." *Karenev v. State*, 281 S.W.3d 428, 435

individual's first amendment rights under possible applications of the ordinance, as opposed to focusing upon potential invalidity of the ordinance as applied specifically to the defendant's conduct. *NAACP v. Bruton*, 371 U.S. 415, 433 (1963).

The Ordinance appears to prohibit various activities, such as a "known prostitute" loitering on a street corner; an individual repeatedly engaging passers-by in conversation; and any person repeatedly attempting to stop vehicles by waving their arms. Thus, in this case, just as in *Johnson v. Carson*, 569 F. Supp. 974 (M.D. Fla. 1983) wherein the Federal District Court analyzed an ordinance nearly identical to the Ordinance, "the protected freedom involved is the first amendment guarantee of freedom of association. The rights of locomotion, freedom of movement, to go where one pleases, and to use the public streets in a way that does not interfere with the personal liberty of others are implicit in the first and fourteenth amendments." *Id.*, at 976. And just as in *Johnson*, the defendant has challenged the facial validity of the ordinance on first amendment grounds, so it is irrelevant whether his conduct, which subjected him to arrest, could constitutionally be prohibited." *See Broadrick v. Oklahoma*, 413 U.S. 601, 611-612 (1973).

The vagueness doctrine has been used to invalidate ordinances that do not clearly delineate what is prohibited. In *Grayned v. City of Rockford*, 408 U.S. 104 (1972), the Supreme Court discussed the reasons to hold a law void for vagueness:

> Vague laws offend several important values. First because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad*

(Tex.Crim.App. 2009) (Cochran, J., concurring). A facial attack upon a penal statute is solely a question of law. *Id.*

> *hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application. Third, but related, where a vague statute abut[s] upon sensitive areas of basic First Amendment freedoms, it operates to inhibit the exercise of [those] freedoms." Uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone . . . than if the boundaries of the forbidden areas were clearly marked. *Id.*, at 108-109.

Just as the ordinance in *Johnson*, the Ordinance includes two main elements – (1) loitering and (2) manifesting a purpose related to prostitution. The Ordinance goes on to set out what conduct satisfies the second element. It is arguable that the Ordinance is specific in what it prohibits. But can it be said with certainty that a person convicted in any state within the past year of a prostitution-related offense would know that he or she could be arrested under Dallas City Code § 31-27 for merely wandering aimlessly? *See Johnson*, at 980. "Would a political candidate, a motorist in distress, or a member of a religious group realize that repeatedly waving to cars passing by could subject him or her to arrest?" *Id.*

The right to explain to a police officer provision is troublesome to this Court, just as it was to the court in *Johnson*. "The ordinance does not give police officers any standards by which to evaluate the explanation. Nor does it specify what kind of explanation is acceptable. A known prostitute standing on a street corner waiting for a bus could be required, at the unfettered discretion of a police officer, to explain her conduct to the officer's satisfaction at the risk of being arrested." *Id.*, at 980. In *Ricks v. District of Columbia*, 414 F.2d 1097 (D.C. Cir. 1968), the Court held "We discern no significant difference from a constitutional standpoint between a law licensing one's presence on a public street upon a police officer's favorable judgment and one conditioning it upon the

officer's satisfaction with the explanation as to why the person is there." *Id.*, at 1105. "Both such laws would be unconstitutional according to the *Ricks* court." *Johnson*, at 981.

Based upon the foregoing discussion and because the Ordinance fails to give one of ordinary intelligence fair notice of what conduct is forbidden, and further fails to give police specific standards to consider before citing or arresting an individual, the Ordinance is unconstitutionally vague.

The overbreadth challenge.

"A statute is impermissibly overbroad if, in addition to proscribing activity which may be forbidden constitutionally, it sweeps within its coverage a substantial amount of expressive activity which is protected by the free speech guarantee of the First Amendment." *Morehead v. State*, 807 S.W.2d 577, 580 (Tex.Crim.App. 1991).

The first element of the offense of manifesting the purpose of engaging in prostitution is loitering. If loitering in a public place was the only element of the offense, the Ordinance would be unconstitutional. *See Johnson*, at 978, citing *Papachristou, v. City of Jacksonville*, 405 U.S. 156 (1972). However, the Ordinance contains a second element – the person loitering must manifest the purpose of prostitution. "Prostitution and prostitution-related activities are not constitutionally protected. The difficulty with the ordinance arises in the manner in which the police officer and the court can find that the person has such a purpose. As noted . . . the manifestation of the purpose of prostitution may be found, according to the ordinance, when the person loitering 'is a known prostitute' . . . . Likewise, the purpose is manifested when the loitering individual 'repeatedly beckons to, stops or attempts to stop or engages passersby in conversation' or 'repeatedly stops or attempts to stop motor vehicle operators by hailing, waiving of arms or any bodily gesture.'

Thus . . . a person convicted of a prostitution related crime within the previous year can be arrested for merely loitering in a public place. Other activities that could lead to arrest . . . include a known prostitute window shopping, standing on a street corner waiting for a bus, or spending time idly. Also, anyone standing on the street corner repeatedly talking to passers-by, even if they are old friends, could be violating the ordinance. Even if the person does not say one word regarding solicitation, such a purpose can be found from the circumstances [in the ordinance]. Thus the circumstances enumerated in the Jacksonville ordinance which permit the finding that a loitering individual is manifesting the prohibited conduct forces persons to either curb their freedom of expression and association or face the risk of arrest." *Johnson*, at 978.

The safeguard set out in the Ordinance requires the arresting/citing officer to give the arrested/cited person an opportunity to explain his or her conduct. However, the officer is not required to accept the explanation or even to give it any weight. Once the person has been given an opportunity to explain, he or she may be a arrested or issued a citation. The person may or may not choose to talk to the police officer. "If an individual opts to say nothing, this silence cannot enhance the basis for arrest." *Johnson*, at 978, citing *Terry v. Ohio*, 392 U.S. 1 (1968).

The Ordinance also provides that a person shall be convicted of violating the Ordinance if it appears at trial that the explanation given to the police officer was truthful and disclosed a lawful purpose. However, "even if a person explains his or her conduct and the trial court ultimately believes the explanation and a lawful purpose is disclosed, the person's first amendment rights have, nonetheless, been chilled by the arrest. In *Papachristou*, the Jacksonville ordinance made it unlawful for certain types of persons to

wander or stroll 'around from place to place without any lawful purpose or object.' The Supreme Court stated that '[t]he qualification 'without any lawful purpose or object' may be a trap for innocent acts. 405 U.S. at 164. The Court went on to note that, '[i]t would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large. Similarly . . . the possibility of arrest deters the free exercise of first amendment rights. Thus, the right to explain provision in the ordinance is not an adequate safeguard to protect the first amendment rights involved." *Johnson*, at 979.

This Court realizes there are those that would argue the Ordinance is vital to serving the interest of the City of Dallas in preventing activities such as prostitution; individuals harassing others on the street; and interfering with the use of commercial establishments and enjoyment of citizens in their residences. However, just as in *Johnson*, the Ordinance is not "narrowly tailored to meet those interests." *Id.*, at 979. "It is . . .within the police power of a municipality to proscribe conduct that has its purpose the completed act, that is the actual solicitation. The answer to this argument can be found in a statement made by the court in *Farber v. Rochford*, 407 F.Supp. 529, 534 (N.D.Ill. 1975): 'A statute that penalizes actual solicitation for prostitution, . . . would not be unconstitutional on these grounds. But this type of ordinance seeks a shortcut, and shortcuts cannot trespass across constitutional rights . . . ." *Id.* A less intrusive alternative is already available in Texas in TEX. PENAL CODE § 43.02 (Prostitution). The rights of businesses, citizens in their residences, and those out for a walk can be protected by the enforcement of TEX. PENAL CODE § 42.01 (Disorderly Conduct); the rights of individuals driving can be protected by the enforcement of Texas Transportation Code § 552.006 (Pedestrian in a Roadway). Such

statutes provide "ways of reaching such *activities* without chilling the first amendment rights of persons engaged in essentially innocent activities." *Johnson*, at 980.

Based upon the foregoing discussion, the Ordinance is unconstitutionally overbroad.

Conclusion.

Dallas City Code § 31-27 is unconstitutional on its face because the Ordinance is both vague and overbroad in violation of the First Amendment to the United States Constitution. IT IS ORDERED AND ADJUDGED that the Defendant's Motion to Quash the Complaint is GRANTED.

SIGNED this 2nd day of December, 2022.

Presiding Judge