

Review of Recent Juvenile Cases (2007)

by
The Honorable Pat Garza
Associate Judge
386th District Court
San Antonio, Texas

The State is not authorized to appeal an adverse ruling in a motion to suppress, other than one for habitual or violent juvenile offenders.[In the Matter of F.G.](07-3-8)

The Tex.Fam.Cod Ann. §§53.045, 56.03(b) expressly authorizes the State to appeal an order of a court in a juvenile case that grants a motion to suppress evidence in cases involving violent or habitual juvenile offenders only.

¶ 07-3-8. **In the Matter of F.G.**, MEMORANDUM, No. 13-06-216-CV, 2007 Tex.App.Lexis 4887 (Tex.App.—Corpus Christi, 6/21/07).

Facts: On October 24, 2005, the State filed a "PETITION ALLEGING DELINQUENT CONDUCT" against F.G. asserting that on or about August 26, 2005, F.G. "did then and there, intentionally or knowingly possess a useable quantity of marihuana, in an amount of two ounces or less and Respondent did then and there possess said marihuana in, on and within 1,000 feet of the premises of a school, namely, the Lockhart Junior High School. . . ." On December 1, 2005, F.G. filed a motion to suppress the marihuana obtained from the search contending that her detention and subsequent search violated *Amendments IV, V, VI, and XVI of the United States Constitution, Article 1, Sections 9, 10, and 19 of the Texas Constitution, and articles 1.04, 1.05, 38.22, and 38.23* of the Texas Code of Criminal Procedure.

The trial court heard the motion to suppress, and at the conclusion of the hearing, the trial court took the matter under advisement. On February, 24, 2006, the trial court granted the motion to suppress. By four issues, the State challenges the trial court's decision to grant the motion to suppress.

Held: Dismiss for want of jurisdiction

Memorandum Opinion: F.G. complains in her appellate brief that we do not have jurisdiction over this appeal. *Article 44.01(a)(5) of the Texas Code of Criminal Procedure* gives the State the right to appeal certain orders in criminal cases, including a trial court's grant of a motion to suppress evidence. *See TEX. CODE CRIM. PROC. ANN. art. 44.01(a)(5)* (Vernon 2006). However, juvenile cases, although quasi-criminal in nature, are civil proceedings that are governed by the Texas Family Code and not the Texas Code of Criminal Procedure. *In re F.C., 108 S.W.3d 384, 385 (Tex. App.--Tyler 2003, no pet.). Section 56.01 of the Texas Family Code* provides that the right to appeal in a juvenile case rests solely with the child, leaving the State without any statutory or common-law authority to appeal from an adverse ruling in such a case. *See TEX. FAM. CODE ANN. § 56.01* (Vernon 2002); *see also C.L.B. v. State, 567 S.W.2d 795, 796 (Tex. 1978); In re S.N., 95 S.W.3d 535, 537 (Tex. App.--Houston [1st Dist.] 2003, pet. denied).*

In 2003, our Legislature expressly authorized the State to appeal an order of a court in a juvenile case that grants a motion to suppress evidence. *TEX. FAM. CODE ANN. § 56.03(b)(5)* (Vernon Supp. 2006). However,

section 56.03 only applies to State's appeals in cases involving violent or habitual juvenile offenders. *See TEX. FAM. CODE ANN. §§ 53.045, 56.03(b)* (Vernon Supp. 2006). Because this case does not involve an habitual or a violent juvenile offender, *section 56.03* does not authorize the State to appeal from the trial court's order granting the motion to suppress. *See Id.*

Conclusion: We dismiss this attempted appeal for want of jurisdiction.