

## Review of Recent Juvenile Cases (2008)

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

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### **The strict prohibition against amendment of pleadings in criminal cases is not applicable in juvenile proceedings.[In the Matter of T.A.](08-4-3)**

**On September 4, 2008, the Eastland Court of Appeals held that allowing the State to amend the pleading to correct the misspelling of the victim's name did not prejudice appellant and was not unfair to appellant.**

¶ 08-4-3. **In the Matter of T.A.**, MEMORANDUM, No. 11-06-00342-CV, 2008 WL 4072394 (Tex.App.-Eastland, 9/4/08)

**Facts:** In his first issue on appeal, appellant argues that the trial court "committed structural error by showing clear bias towards the State by alerting the prosecution to a necessary trial amendment." The petition alleged six separate offenses of unauthorized use of a motor vehicle. One of the offenses alleged that appellant operated a "Blue Oldsmobile Cutlass, without the effective consent of Raul Villafranco III., the owner thereof." At trial, Paul Villafranco III testified that his blue Oldsmobile Cutlass was stolen from the parking lot of the store where he worked. Villafranco testified that the police department misspelled his name. The trial court stated, "You may want to amend. You have it alleged as Raul." The State moved to strike the first name from the allegation. Appellant objected that the State should not be allowed to amend the pleading during trial. The trial court found that the Texas Rules of Civil Procedure allowed the amendment. Appellant contends that the trial court's comment was a clear bias toward the State.

**Held:** Affirmed

**Memorandum Opinion:** Appellant argues that [Tex.Code Crim. Proc. Ann. art. 28.10\(b\)](#) (Vernon 2006) does not allow a trial amendment to the charging instrument after the trial commences when the defense objects. However, [Tex. Fam.Code Ann. § 51.17](#) (Vernon Supp.2007) states that the Texas Rules of Civil Procedure govern juvenile proceedings unless otherwise provided. [Tex.R. Civ. P. 66](#) states that during trial:

[T]he court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the allowance of such amendment would prejudice him in maintaining his ... defense upon the merits.

The strict prohibition against amendment of pleadings in criminal cases is not applicable in juvenile proceedings. See [Carrillo v. State, 480 S.W.2d 612, 615 \(Tex.1972\)](#); [In re G.A.T., 16 S.W.3d 818, 823](#) (Tex.App.-Houston [14th Dist.] 2000, pet. den'd). The State may only amend its petition at "such time, and under such circumstances, as to be basically fair to the minor." [Carrillo, 480 S.W.2d at 615](#); [In re G.A.T., 16 S.W.3d at 823](#). Allowing the State to amend the pleading to correct the misspelling of the victim's name did not prejudice appellant and was not unfair to appellant.

Parties have a right to a fair and impartial trial. [Markowitz v. Markowitz, 118 S.W.3d 82, 86](#) (Tex.App.-Houston [14th Dist.] 2003, pet. den'd); [Metzger v. Sebek, 892 S.W.2d 20, 37](#) (Tex. App.-Houston [1st Dist.] 1994, writ [denied](#)). One of the fundamental components of a fair trial is a neutral and detached judge. [Ward v. Village of Monroeville, 409 U.S. 57, 62 \(1972\)](#); [Markowitz, 118 S.W.3d at 86](#). A judge should act as neither an advocate nor as an adversary for any party. [Markowitz, 118 S.W.3d at 86](#). "To reverse a judgment on the ground of improper conduct or comments of the judge, we must find (1) that judicial impropriety was in fact committed and (2) probable prejudice to the complaining party." *Id.*

**Conclusion:** The trial court noted a typographical error in the pleadings and allowed the State to amend the pleadings as permitted by [Rule 66](#). Appellant has not shown that the trial court was biased toward the State. Appellant's first issue on appeal is overruled.