

**STATE OF LOUISIANA IN
THE INTEREST OF D.H.**

*** NO. 2001-C-2284
* COURT OF APPEAL
* FOURTH CIRCUIT
* STATE OF LOUISIANA**

*** * * * ***

**ON SUPERVISORY WRIT DIRECTED TO
JUVENILE COURT ORLEANS PARISH
NO. 01-309-02-QF, DIVISION "F"
HONORABLE MARK DOHERTY, JUDGE**

*** * * * ***

JOAN BERNARD ARMSTRONG

JUDGE

*** * * * ***

(Court composed of Judge Joan Bernard Armstrong, Judge Steven R. Plotkin and Judge Charles R. Jones)

JONES, J. DISSENTS WITH REASONS

DERWYN D. BUNTON
JUVENILE JUSTICE PROJECT OF LOUISIANA
1600 ORETHA CASTLE HALEY BLVD
NEW ORLEANS, LA 70113

COUNSEL FOR RELATOR

HARRY F. CONNICK, DISTRICT ATTORNEY
MICHAEL MORALES, ASSISTANT DISTRICT ATTORNEY
421 LOYOLA AVENUE
NEW ORLEANS, LA 70112

COUNSEL FOR RESPONDENT

WRIT

GRANTED;
AFFIRMED.

We grant the relator's application for supervisory writs to consider the correctness of a trial court ruling granting the State's motion to reconsider the order releasing the relator and to increase bail. In granting the motion, the trial judge reinstated the original bond. For the following reasons, we affirm the ruling of the trial court.

On November 3, 2001, the relator, D.H., was arrested for illegal possession of a dangerous weapon, a violation of La. R.S. 14:95. On November 5th, the State filed a petition charging D.H. with illegal possession of a handgun by a juvenile, a violation of La. R.S. 14:95.8. The petition was assigned docket number 01-309-02-QF. On the same date that the petition was filed, the relator appeared for a continued custody hearing at which time through counsel he stipulated to probable cause for his arrest. The presiding duty judge, the Honorable C. Hearn Taylor, set a bond of \$85,000. On November 9, 2001 the relator appeared before the judge to whom his case was allotted, the Honorable Mark Doherty, and entered a not guilty plea. On November 27, 2001 a motion to suppress hearing was held just before the scheduled trial. The court granted the motion, finding that the

gun was seized illegally. The State objected and gave notice of intent to seek writs; the State was given a return date of December 11th. The court ordered the defendant released pursuant to La. Ch.C. art. 877(A).

On November 30, 2001, the State filed a motion to reconsider the order releasing the relator and to increase bail. The State requested a contradictory hearing, which was set for December 7, 2001. On that date, after hearing argument and reviewing the State's motion and the relator's opposition, the court granted the motion to reinstate bail. The original bond of \$85,000 was reinstated. The court denied the request by the defense counsel that the effect of that order be stayed pending a writ application, and D.H. was taken into custody.

The counsel for D.H. filed this writ application on December 7, 2001, styling it as an emergency. However, the child was already in custody, and thus the case technically did not constitute an emergency. Instead, the expedited review was requested only to result in a speedier release of the juvenile.

The response by the State has been received.

The underlying facts of this case are not known. As to facts given to the court at the motion to reinstate bond hearing, both parties reference a September 24, 2001 arrest of D.H. for negligent injury, a violation of La.

R.S. 14:39, illegal use of a handgun, a violation of La. R.S. 14:94, and illegal possession of a handgun by a juvenile, a violation of La. R.S. 14:95.8; all three charges were assigned case number 01-268-04-QB, which is still pending. The relator was released on a total bond of \$15,000 in that case on October 26, 2001. The arrest for the instant offense occurred on November 3rd, while the relator was out on bond. This information was presented to the trial court as was the fact that, on December 4, 2001 after being released in the instant matter, D.H. was arrested for a curfew violation.

The sole issue in this matter is whether the trial judge correctly reinstated the bond obligation from which he had released D.H. after granting the motion to suppress evidence on November 27, 2001. The relator argues that the court had lost jurisdiction and authority to reinstate the bond because the court found no reasonable suspicion for the stop and frisk which led to the seizure of the weapon. He contends that the State can continue custody only if it has shown there is “probable cause that the child has committed a delinquent act or has violated a condition of his probation or release.” La. Ch.C. Art. 820. If the State has not demonstrated probable cause, the child must be released. La. Ch.C. Art. 821.

In its response to this writ application, the State notes that D.H. through counsel stipulated to the probable cause necessary to continue

custody at the hearing which was held within three days of his arrest as required by La. Ch.C. Art. 819, and that the ruling on the motion to suppress evidence in no way eviscerates a finding of probable cause to believe that D.H. committed the offense of possessing the handgun. The trial court's written reasons for judgment show that it agreed with the State's position, noting that the ruling on the motion to suppress evidence "concerned only the issue of the State's use of the weapons seized in this matter, and not the probable cause for the arrest."

The purpose of a motion to suppress evidence is to determine if evidence should be admitted at trial. State v. Goodman, 99-2352 (La. App. 4 Cir. 10/13/99), 746 So. 2d 693. The State is not prevented from proceeding to trial without a piece of evidence which has been excluded on the grounds that it was seized unconstitutionally, although obviously the chances of a verdict of guilty may be nil depending on the evidence suppressed and the nature of the charge.

The relator has based his writ on the allegation that, because the court found that evidence was unlawfully seized, "there is no probable cause to suspect [D.H.] committed a delinquent act." However, he has confused probable cause to believe that he possessed a weapon with the State's ability to prove it at an adjudication hearing. The trial court correctly realized that

the issues are totally separate. Furthermore, because the relator has not argued that the amount of the reinstated bond is inappropriate given his multiple arrests, including committing the instant offense while out on bond from an earlier weapons charge, there is no basis to reduce it. Accordingly, we grant the application for supervisory writs, and affirm the ruling of the trial court.

**WRIT
GRANTED;
AFFIRMED**