

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-02-00059-CR

State of Texas, Appellant

v.

Aaron Lagunas, Appellee

**FROM THE COUNTY COURT AT LAW OF COMAL COUNTY
NO. 2001CR1734, HONORABLE BRENDA CHAPMAN, JUDGE PRESIDING**

The State seeks to appeal an order by the county court at law granting appellee Aaron Lagunas’s motion to suppress evidence. *See* Tex. Code Crim. Proc. Ann. art. 44.01(a)(5) (West Supp. 2002). We will dismiss the appeal for noncompliance with article 44.01.

The elected prosecuting attorney—not an assistant—must personally supervise and authorize appeals pursuant to article 44.01. *State v. Muller*, 829 S.W.2d 805, 810 (Tex. Crim. App. 1992). To comply with the statute, the elected prosecuting attorney must either physically sign the notice of appeal or personally instruct and authorize a subordinate to do so. *Id.* The notice of appeal in this cause was signed by the assistant criminal district attorney. The statement in the notice of appeal that the State is acting “by and through its Criminal District Attorney of Comal County” is not adequate to fulfill the statutory requirement. *Id.* at 811.

In an appeal from an order granting a motion to suppress, the elected prosecuting attorney must also certify that the appeal is not taken for the purpose of delay and that the evidence

in question is of substantial importance to the State. Art. 44.01(a)(5). In this cause, the certification is signed by the assistant criminal district attorney and therefore does not satisfy this additional statutory requirement. *Muller*, 829 S.W.2d at 809; *State v. Brown*, 843 S.W.2d 267, 268 (Tex. App.—Austin 1992, no pet.).

The State did not properly perfect its appeal within the fifteen days in which it is allowed to “make an appeal.” Art. 44.01(d); *see Muller*, 829 S.W.2d at 812; *State v. Demaret*, 764 S.W.2d 857, 858 (Tex. App.—Austin 1989, no pet.). This defect cannot be cured by later amendment. *State v. Riewe*, 13 S.W.3d 408, 412-14 (Tex. Crim. App. 2000). Accordingly, the appeal is dismissed.

Bea Ann Smith, Justice

Before Chief Justice Aboussie, Justices B. A. Smith and Yeakel

Dismissed for Want of Jurisdiction

Filed: April 11, 2002

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