2022 VT 47

No. 21-AP-250

In re E.S., Juvenile

Supreme Court

On Appeal from
Superior Court, Rutland Unit,
Family Division

May Term, 2022

Howard A. Kalfus, J.

Travis W. Weaver, Rutland County Deputy State's Attorney, Rutland, for Appellant State.

Michael Rose, St. Albans, for Appellee Juvenile.

PRESENT: Reiber, C.J., Eaton, Carroll, Cohen and Waples, JJ.

¶ 1. **COHEN, J.** The State appeals from the family division's order granting juvenile E.S.'s motion to suppress a statement given to law enforcement in this delinquency proceeding. The State asserts that the court used the wrong standard to determine whether E.S. was in custody during the interview. E.S. argues that 13 V.S.A. § 7403(c) does not provide a right for the State to appeal from an order granting a motion to suppress in a juvenile delinquency proceeding. We agree and dismiss this appeal accordingly.

¶ 2. In July 2021, the state's attorney filed a delinquency petition in the family division alleging E.S. engaged in behavior designated as the crime of lewd or lascivious conduct with a child pursuant to 13 V.S.A. § 2602. See 33 V.S.A. § 5102(9) (defining "[d]elinquent act" as "an act designated a crime"); see also In re S.D., 2022 VT 44, ¶ 20, __ Vt. __, __A.3d __

(differentiating between delinquent act and associated crime). E.S. subsequently filed a motion to suppress statements he made during an interview with law enforcement, arguing that he was in custody during the interview and therefore should have been provided with Miranda warnings and the ability to consult with an independent interested adult. The State opposed the motion. The family division granted E.S.'s motion, concluding that he was in custody during the interview because a reasonable juvenile in his circumstances would not have felt free to terminate the interview and leave. The State appealed.

¶ 3. As noted above, E.S. asserts that, because a delinquency proceeding is not a felony prosecution, the State does not have a statutory right to appeal under 13 V.S.A. § 7403(c). Section 7403(c) allows the State to appeal an order granting a motion to suppress evidence "[i]n a prosecution for a felony." The State responds that this appeal is appropriate under § 7403(c) because the crime associated with E.S.'s alleged delinquent act is lewd or lascivious conduct, 13 V.S.A. § 2602, which meets the definition of a felony under 13 V.S.A. § 1.

¶ 4. Whether § 7403(c) gives the State the right to appeal a decision granting a motion to suppress in a delinquency proceeding initially presented a novel question of statutory interpretation for this Court. However, while this appeal was pending, we decided In re S.D., which we conclude is dispositive of the issue before us. 2022 VT 44, ¶ 30.

¶ 5. In S.D., we held that neither 13 V.S.A. § 7403(b) nor any other source of law permits the State to appeal from the dismissal of a delinquency proceeding. Id. The State charged S.D., a juvenile, in the criminal division with three felonies allegedly committed when he was between the ages of eighteen and nineteen. While these charges were pending, the "Raise the Age" law went into effect, and S.D. reached the age of twenty years and six months. See 2017, No. 201 (Adj. Sess.). As a result of the law's new automatic-transfer requirement, see 33 V.S.A. § 5203(a), the criminal division transferred the matters to the family division, and S.D. was subsequently considered a child accused of committing a delinquent act rather than a criminal defendant accused

of committing a felony. See id. § 5102(2)(C), (9), (10). S.D. then moved to dismiss the delinquency petitions for lack of subject-matter jurisdiction because he had reached the age of twenty years and six months. The family division granted the motion because it had exclusive jurisdiction over delinquency proceedings that involve juveniles who are accused of committing offenses after the age of eighteen but who have not yet reached the age of twenty years and six months during the pendency of the proceedings, and S.D. had aged out of that category. See id. § 5103(c)(2)(A)(ii).

¶ 6. The State appealed to this Court, arguing that the dismissals were improper. On appeal, S.D. opposed the State's arguments and additionally asserted that the State did not have the right to appeal from the dismissal of a delinquency petition. The State contended that 13 V.S.A. § 7403(b) provided the requisite right to appeal because the statute permits the State to appeal a decision dismissing an indictment or information "[i]n a prosecution for a felony." We rejected the State's argument and dismissed the appeal. We concluded that a delinquency proceeding is not a felony prosecution under § 7403(b), even when an adult accused of the same behavior could have been charged with a felony. S.D., 2022 VT 44, ¶ 30. Our decision relied on the legislative intent behind the juvenile-proceedings chapters. We explained that the Legislature created an entirely separate system for dealing with offenses committed by minors. Id. It gave jurisdiction over delinquency proceedings to the family division instead of the criminal division, and it created an adjudicative process that intentionally differs from a criminal prosecution in numerous and significant ways. Id. ¶¶ 19-22. The explicit purpose of this distinct system is "to remove from children committing delinquent acts the taint of criminality and the consequences of criminal behavior." 33 V.S.A. § 5101(a); see S.D., 2022 VT 44, ¶ 18.

¶ 7. Ultimately, we determined that the language of § 7403(b) and the delinquency statutes indicated that the Legislature intended for delinquency proceedings not to be treated as criminal prosecutions for purposes of the State's right to appeal, and that to hold otherwise would

be contrary to the remedial purpose of the delinquency statutes. S.D., 2022 VT 44, ¶ 30. We identified no other basis in statute or common law for the State to appeal from the dismissal of a delinquency petition. Id. ¶ 30. As a result, we dismissed the State's appeal as a matter of law. Id.

¶ 8. Our reasoning in S.D. equally applies to the State's attempt to appeal a suppression decision in a juvenile delinquency proceeding under 13 V.S.A. § 7403(c) in the present case. Since a delinquency proceeding is not a felony prosecution, even if the juvenile is charged with committing a delinquent act associated with a crime that would be a felony if committed by an adult, S.D., 2022 VT 44, ¶ 30, the State does not have the right to appeal from the family division's order granting E.S.'s motion to suppress under § 7403(c). The State does not identify any other source of law giving it the right to appeal such an order.[1] Because the State's right to appeal is statutorily granted, the Legislature, not the judiciary, has the authority to expand this right under § 7403 to include delinquency proceedings if it so chooses.

¶ 9. We therefore dismiss the appeal.[2] As in S.D., "[b]ecause we dismiss this appeal as a matter of law, we need not reach the merits of the parties' . . . arguments." 2022 VT 44, ¶ 30 n4.

Dismissed.

FOR THE COURT:

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Associate Justice

[1] Because the issue is not before us, we take no position in this appeal as to whether the State may file an interlocutory appeal or seek extraordinary relief in the context of a juvenile delinquency proceeding.

[2] E.S. filed a motion to dismiss this appeal after this Court issued its opinion in S.D. The motion is denied as moot in light of this opinion's mandate.