

# *YES VIRGINIA*

*There is a state's right to appeal*  
Texas Municipal Courts Education Center  
2007-2008 Academic Year



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# To Be Judged By Your Peers

*Justice is not just for defendants anymore*



# Constitutional Right to Appeal

## TX CONST ART. V, § 26

- State Entitled to Appeal
- As Authorized by General Law

# Statutory Right to Appeal

- Code of Criminal Procedure
- C.C.P. 44.01
- Laundry List
- Subject to Time Limitations
- Hinges Primarily Upon
- Court Rulings

# CCP, ART. 44.01

## STATE MAY APPEAL

### Motion to

- Dismiss
- Quash
- Suppress Evidence

### Modification of Judgment

### New Trial



# CCP, ART. 44.01

- Sustain Claim of Former Jeopardy
  
- Illegal Sentence
  
- Defendant Appeals Conviction
  - Question of Law ( Court of Record )

# Time Frame

## When

- 20 Days from date of Order
  - ✓ Change from 15 days
  - HB 1801 ( effective 9/1/2007)

## Procedural Deadline

## Substantive Limitation

- No ability to extend

# Dismiss/Quash

❑ COMPLAINT

❑ WHEN IS IT APPROPRIATE

- PRETRIAL CONFERENCE

- ✓ Purely Legal Defect

- DIRECTED VERDICT

- ✓ State's Failure to Meet Essential Elements

- AFTER TRIAL

- ✓ Before finding of guilt or innocence

# State v. Stanley

*It is ORDERED ADJUDGED AND DECREED by the Court that all charges against the Defendant... are in all things dismissed, and the Defendant and her sureties are in all things discharged from further liability.”*

Signed this date by me

# After Trial

- Motion to Dismiss Granted
  - After trial on merits
  
- Challenge to Unconstitutionality of Ordinance
  
- No Adjudication of Guilt - Key

*State v. Stanley*

# Modification of Judgment

- Defendant Convicted by Jury
- County Court reverses
  - Orders acquittal
- Constitutes “reformation” or “modification
- State entitled to appeal

*State v. Morse*

# New Trial

- Defendant permitted to withdraw plea
- After sentencing
- Functional Equivalent
- New Trial

- *State v. Evans*

# Former Jeopardy

- ❑ A/K/A DOUBLE JEOPARDY
- ❑ When does it attach
  - Jury Impaneled
  - Hung Jury
  - Mistrial
  - Actual Finding of Guilt or Innocence

# Suppression Of Evidence

- LOSING PARTY
- ENTITLED
- TO REQUEST
- ESSENTIAL FINDINGS

*State v. Cullen*

# Findings of Fact

- Conclusion
- Trial Court
- From Facts
- Without Exercise
- Legal Judgment

# Conclusions of Law

- Statement by court
- Applicable Law
- On
- Basis of Facts

## **PREVAILING PARTY**

- **DRAFTS**

## **COMMENTS BY OPPOSING PARTY**

## **CONSIDER HEARING**

# Judicial Order

EDIT

ACCURATE REFLECTION

WILL BE THE SUBJECT OF  
APPELLATE REVIEW

# Illegal Sentences

- ❑ Duty Not To Convict
- ❑ See That Justice is Done
- ❑ Appeal
- ❑ That sentence is illegal
  - Not
    - Revocation of deferred disposition

# QUESTION OF LAW

- Municipal Court of Record
- If Defendant is Convicted
- Defendant Appeals
- State may appeal
- Court ruling on law

# Preferential Setting

- Court of Appeals
- Give Precedence on Docket
- State to pay all costs
- Other than Defendant's
- Attorneys' Fees

STATE

ENTITLED TO STAY

PROCEEDINGS

PENDING DISPOSITION

ON APPEAL

Texas Rules of Appellate Procedure

Apply

State's Petition

to Court of Criminal Appeal

Review

Court of Appeals

# PROSECUTING ATTORNEY

COUNTY ATTORNEY

DISTRICT ATTORNEY

CRIMINAL DISTRICT ATTORNEY

STATE'S RIGHT TO APPEAL

DOES NOT AFFECT

DEFENDANT'S

RIGHT TO APPEAL

