

Stanley Mark VIRDEN v. STATE of Arkansas

CR 88-198

764 S.W.2d 43

Supreme Court of Arkansas
Opinion delivered January 30, 1989

CRIMINAL PROCEDURE — INFORMATION — STATE IS PROPER PLAINTIFF
— NO PREJUDICE TO LIST CITY AS PLAINTIFF. — While the proper procedure in filing an information against appellant under Ark. R. Crim. P. 1.5 would have been to designate the State of Arkansas as plaintiff, the error of listing the City of Russellville as the plaintiff did not strip either the municipal court or the circuit court of jurisdiction to try the case, and because the appellate court found no prejudice, the error does not constitute sufficient grounds for the appellate court to reverse.

Appeal from Pope Circuit Court; *John S. Patterson*, Judge; affirmed.

Robert E. Irwin, for appellant.

Steve Clark, Att'y Gen., by: *Tim Humphries*, Asst. Att'y Gen., for appellee.

JACK HOLT, JR., Chief Justice. Appellant Stanley M.

Virden was charged by information with two counts of indecent exposure. Ark. Code Ann. § 5-14-112 (1987). Virden was found guilty in municipal court and again on appeal in the Pope County Circuit Court. Before trial, Virden moved that the charges be dismissed because at each stage the prosecution had been brought in the name of the City of Russellville, contrary to A.R.Cr.P. Rule 1.5, which requires that all prosecutions for violations of the criminal laws of this state be brought in the name of the state. The motion was denied. We affirm.

On appeal, Virden does not challenge the jurisdiction of either the municipal court or that of the circuit court as concerns trial of this matter. Rather, he argues only that Rule 1.5 barred prosecution in the name of the City of Russellville.

[1] While the proper procedure under Rule 1.5 would have been to designate the State of Arkansas as plaintiff, the error was not such that it stripped either the municipal court or the circuit court of jurisdiction to try the case. *Urich v. State*, 293 Ark. 246, 737 S.W.2d 155 (1987); *Graham v. State*, 25 Ark. App. 234, 756 S.W.2d 921 (1988). Under the circumstances, and because we find no prejudice, the error complained of does not constitute sufficient grounds for this court to reverse. *Wheat v. State*, 295 Ark. 178, 747 S.W.2d 112 (1988).

Affirmed.

DUDLEY, J., dissents.
