

STATE OF ARKANSAS *v.* WILLIAM COSENTINO

5690

477 S.W. 2d 460

Opinion delivered March 13, 1972

1. CRIMINAL LAW—UNLAWFUL POSSESSION OF MARIHUANA—STATUTORY CONSTRUCTION.—The unlawful possession of marihuana is a misdemeanor in view of construction of the penalty provisions

- of the Uniform Controlled Substances Act of 1971.
2. CRIMINAL LAW—APPEAL FROM INTERLOCUTORY ORDERS IN MISDEMEANOR CASES—REVIEW.—In a case involving unlawful possession of marihuana, State's appeal from an order sustaining a demurrer dismissed for in a misdemeanor case the State cannot appeal from an interlocutory order.

Appeal from Pulaski Circuit Court, Fourth Division, *Richara B. Adkisson*, Judge; appeal dismissed.

*Ray Thornton*, Atty. Gen., by *John D. Bridgeforth*, Asst. Atty. Gen., for appellant.

*Paul Johnson* and *Louis Art Dodrill*, for appellee.

GEORGE ROSE SMITH, Justice. The appellee was charged by information with the unlawful possession of marihuana, an offense described in the information as a felony. The appellee demurred to the information, on the ground that the asserted offense is only a misdemeanor under Article IV, § 1, of Act 590 of 1971, the Uniform Controlled Substances Act. Ark. Stat. Ann. § 82-2617 (Supp. 1971). This appeal is from an order sustaining the demurrer.

The trial court correctly held the offense to be a misdemeanor for the reasons stated in *Bennett v. State*, also decided today. 252 Ark. 128, 477 S.W. 2d 497. That holding, however, requires that the present appeal be dismissed, for in a misdemeanor case the State cannot appeal from an interlocutory order, such as the one sustaining a demurrer. *State v. Langstaff*, 231 Ark. 736, 332 S.W. 2d 614 (1960). Without deciding the point, we call attention to the possibility that the State's privilege of appealing from interlocutory orders in felony cases, under Ark. Stat. Ann. § 43-2706 (Repl. 1964), may have been abrogated by §§ 13 and 14 of Act 333 of 1971. See Ark. Stat. Ann. §§ 43-2706 and -2720.1 (Supp. 1971).

Appeal dismissed.

FOGLEMAN, J., concurs:

JOHN A. FOGLEMAN, Justice, concurring. I agree that the appeal should be dismissed.<sup>1</sup> I do not agree that the offense charged was only a misdemeanor for the reasons stated in my opinion in *Bennett v. State*, 252 Ark. 128 477 S.W. 2d 597.

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