

STATE OF ARKANSAS *v.* ARCHIE STRINGFELLOW

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486 S.W. 2d 65

Opinion delivered October 30, 1972

1. CRIMINAL LAW—TRIAL—ADMISSIBILITY OF CONFESSION.—The fact accused was informed of the charge of assault with intent to kill when he gave his confession, rather than first degree murder with which he was charged after the victim died did not render his voluntary confession inadmissible.

Appeal from Pulaski Circuit Court, *Lowber Hendricks, Jr.*, Special Judge; Error Declared.

*Ray Thornton*, Atty. Gen., by: *Gene O'Daniel* Asst. Atty. Gen., for appellant.

*Carpenter, Finch & McArthur*, for appellee.

CONLEY BYRD, Justice. At a time when appellee Archie Stringfellow could only have been charged with assault with intent to kill, Ark. Stat. Ann. § 41-606 (Repl. 1964), he made a voluntary confession concerning the assault to kill. After the victim died and after the giving of the confession, he was charged with first degree murder pursuant to Ark. Stat. Ann. § 41-2205 (Repl. 1964). The trial court ruled the confession inadmissible because Stringfellow had not been warned of the first degree murder charge. The jury found Stringfellow guilty of involuntary manslaughter and assessed his fine at \$100.00. The State has appealed pursuant to Ark. Stat. Ann. § 43-2720 (Repl. 1964).

We agree with the State that the trial court erroneously held the confession inadmissible. *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 L. ed. 2d 694, 10 A.L.R. 3d 974 (1968), which deals only with the criterion for determining the voluntariness of a confession, contains nothing that would make this confession inadmissible.

Because of the double jeopardy provision of our constitution, we cannot reverse and remand for a new trial, but for the orderly administration of justice we do declare that error was committed.