

CHARLES PERRYMAN *v.* STATE

5234

414 S. W. 2d 91

Opinion delivered May 1, 1967

1. OBSCENITY—INDECENT EXPOSURE—WEIGHT & SUFFICIENCY OF EVIDENCE.—Testimony of prosecutrix and another high school student who was present when the incident occurred held sufficient to support the verdict finding accused guilty of indecent exposure. [Ark. Stat. Ann. § 41-1127 and -1129.]
2. CRIMINAL LAW—WITNESSES, COMPETENCY OF MINORS AS—DISCRETION OF TRIAL COURT.—In criminal cases trial judge is given wide discretion in determining competency of a minor as witness and no abuse of discretion was shown in allowing 15-year-old prosecutrix to testify where record suggested no basis for questioning her competency.
3. CRIMINAL LAW—COURSE & CONDUCT OF TRIAL—RECEPTION OF EVIDENCE.—Trial court's refusal to permit defense counsel to delay his opening statement to jury until State had rested its case was not error.

Appeal from Washington Circuit Court, *Maupin Cummings*, Judge; affirmed.

No brief for appellant.

*Joe Purcell*, Attorney General; *Don Langston*, Asst. Atty. General, for appellee.

GEORGE ROSE SMITH, Justice. The appellant was convicted of having indecently exposed himself to a girl under the age of sixteen. Ark. Stat. Ann. §§ 41-1127 and -1129 (Repl. 1964). The jury fixed his punishment at imprisonment for six months. The testimony of the prosecuting witness and of another high school student who was present when the incident occurred was amply sufficient to support the verdict.

The court did not err in allowing the fifteen-year-old prosecutrix to testify. In criminal cases the trial judge is given wide discretion in determining the competency of a minor as a witness. *Harris v. State*, 238 Ark. 780, 384 S. W. 2d 477 (1964). There was no abuse of discretion here. Quite the opposite, the record suggests no basis for

questioning the competency of this witness. Nor did the court err in refusing to permit defense counsel to delay his opening statement to the jury until the State had rested its case. That exact point was decided in *McDaniels v. State*, 187 Ark. 1163 (mem.), 63 S. W. 2d 335 (1933).

Affirmed.

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