

REESE *v.* STATE.

Opinion delivered December 3, 1904.

FORMER CONVICTION—SUFFICIENCY OF PLEA.—A plea of former conviction in a misdemeanor case before a justice of the peace which alleges that the pleader was formerly convicted of the same offense and on the same testimony before a mayor acting as *ex-officio* justice of the peace, and appealed to the circuit court, where on his motion the cause was dismissed for want of jurisdiction because no affidavit or information was filed before the mayor, is insufficient.

Appeal from Howard Circuit Court.

JAMES S. STEEL, Judge.

Affirmed.

*W. C. Rogers*, for appellant.

*George W. Murphy*, Attorney General, for appellee.

MCCULLOCH, J. The appellant, Reese, appeals from a judgment of conviction for the unlawful sale of intoxicating liquor. The case originated before a justice of the peace, where the defendant was convicted, and he appealed to the circuit court. His only defense is a plea of former conviction, which he supports by a record showing that he was formerly convicted of the same offense and on the same testimony before the mayor of the town of Nashville, as an *ex-officio* justice of the peace, and appealed to the circuit court, where, on his motion, the cause was dismissed for want of jurisdiction because no affidavit or information had been filed before the mayor. In the former case, the

cause was before the circuit court for trial *de novo*, and when it was dismissed without a trial, no jeopardy attached, and therefore the judgment is no bar to a conviction in another prosecution for the same offense.

Affirmed.

---