

STATE of Arkansas *v.* Lloyd HOLCOMB

CR 80-206

609 S.W. 2d 78

Supreme Court of Arkansas
Opinion delivered December 22, 1980

CRIMINAL LAW – WARRANTLESS ARREST, CONSEQUENCES OF. – The trial court dismissed all charges against appellee, who was arrested at his home without a warrant for the rape of a neighbor, finding that appellee could not be prosecuted because the warrantless arrest violated his Fourth and Fourteenth Amendment rights. *Held:* An illegal arrest of a defendant does not, per se, preclude his prosecution, thus the case is reversed and remanded.

Appeal from Garland Circuit Court, *Henry M. Britt*, Judge; reversed and remanded.

Steve Clark, Atty. Gen., by: *Jack W. Dickerson*, Asst. Atty. Gen., for appellant.

R. A. Schneider, for appellee.

RICHARD L. MAYS, Justice. On August 21, 1980 three Garland County Deputy Sheriffs went to the home of Lloyd Holcomb, without an arrest warrant, and arrested him for the rape of his neighbor, Mrs. Carolyn Magby. A jury subsequently found him guilty and sentenced him to 5 years imprisonment. On appeal, this court reversed his conviction, finding that certain polygraph evidence had been improperly admitted at trial. *Holcomb v. State*, 268 Ark. 138, 594 S.W. 2d 22 (1980).

On remand, Holcomb filed a pretrial motion to dismiss, claiming that he could not be prosecuted because his warrantless arrest violated his Fourth and Fourteenth Amendment rights. After a hearing, the court agreed with Holcomb and dismissed all charges against him. On appeal, the state argues that an illegal arrest of a defendant does not, per se, preclude his prosecution. We agree and have recently so held in *State v. Block*, 270 Ark. 671, 606 S.W. 2d 362 (1980).

In *State v. Block*, the trial court dismissed the criminal charges against Charles Block because a police officer entered his home without an arrest warrant and arrested him. In reversing the trial court, we stated:

It is unthinkable that a person who has committed murder, for example, should go scot free just because an officer enters his home without an invitation and arrests him without a warrant.

We perceive no justification for deviating from that holding today.

Reversed and remanded.

PURTLE, J., not participating.