

INFORMATIONS AND INDICTMENTS: It is necessary for the prosecuting witness to endorse his name on an indictment but not necessary that it be endorsed by him on an information.

February 9, 1940

Honorable F. Hiram McLaughlin
Prosecuting Attorney
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Springfield, Missouri

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Dear Sir:

We are in receipt of your letter of February 5, 1940, containing a request for an opinion based on a letter enclosed written by the firm of Neale, Newman, Neale and Freeman. Without setting the request out in full, your question is briefly as follows:

The prosecuting witness in a misdemeanor prosecution failed to personally endorse the information. The point was properly raised by the defense in a motion to quash, which was overruled by the court. Your question is whether or not the court erred in failing to quash the information, and whether or not a new trial should be granted for that reason.

Section 3542, R. S. Mo. 1929, provides that any indictment returned for trespass against the person or property of another, or any indictment for libel or slander must bear the name of the prosecutor endorsed thereon. Section 3543, R. S. Mo. 1929, provides that the prosecutor shall endorse his own name on any such indictment. These sections are under Article 7 styled "Grand Juries And Their Proceedings", and cannot, therefore, refer to informations.

The statute bearing immediately on the question is Section 3510, R. S. Mo. 1929, which is as follows:

"When the information is based on an affidavit filed with the clerk or delivered to the prosecuting attorney, as provided for in section 3505, the person who made such

affidavit shall be deemed the prosecuting witness, and in all cases in which by law an indictment is required to be indorsed by a prosecutor, the person who makes the affidavit upon which the information is based, or who verifies the information, shall be deemed the prosecutor; and in case the prosecution shall fail from any cause, or the defendant shall be acquitted, such prosecuting witness or prosecutor shall be liable for the costs in the case not otherwise adjudged by the court, but the prosecuting attorney shall not be liable for costs in any case."

A close examination of this section fails to reveal that the prosecuting witness must endorse his own name thereon, and it has the further provision that such prosecuting witness shall be liable for the costs in case the defendant be acquitted or the prosecution fail. It provides that "the person who made such affidavit shall be deemed the prosecuting witness, and in all cases in which by law an indictment is required to be indorsed by a prosecutor, the person who makes the affidavit * * * shall be deemed the prosecutor".

In the case of State of Missouri v. Nettie Flick et al., 167 Mo. App., page 6, several complainants filed affidavits with the prosecuting attorney charging the defendants with keeping a bawdy house. In that case, although the court held the offense was not one under what is now Section 3542, R. S. Mo. 1929, there was no mention that the complainants had endorsed their names on the information, the court apparently interpreting the statute as we have above.

Section 3504, R. S. Mo. 1929, is as follows:

"Informations may be filed by the prosecuting attorney as informant during term time, or with the clerk in vacation, of the court having

jurisdiction of the offense specified therein. All informations shall be signed by the prosecuting attorney and be verified by his oath or by the oath of some person competent to testify as a witness in the case, or be supported by the affidavit of such person, which shall be filed with the information; the verification by the prosecuting attorney may be upon information and belief. The names of the witnesses for the prosecution must be indorsed on the information, in like manner and subject to the same restrictions as required in case of indictments."

There is nothing in this section which requires the name of the prosecuting witness to be endorsed by himself on the information. The final sentence requires that witnesses for the prosecution must be endorsed in like manner * * * as required in the case of indictments. This, undoubtedly, refers to Section 3544, R. S. Mo. 1929, which provides that names of all the material witnesses must be endorsed upon the indictment, the wording being the same in both instances except for the use of "information" in one and the word "indictment" in the other.

It is therefore the opinion of this department that, while it is necessary for the prosecuting witness on an indictment to endorse thereon his name in the particular instances set out herein, apparently for the purpose of identifying him as such, it is not necessary for the prosecuting witness under an information to endorse thereon his own name, his identity being fixed by his affidavit or complaint with the prosecuting attorney or magistrate before whom the prosecution is brought or complaint made.

Respectfully submitted,

ROBERT L. HYDER
Assistant Attorney General

APPROVED:

W. J. BURKE
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RLH:VC