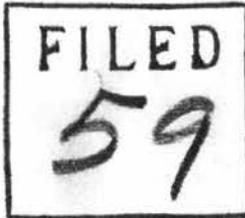


WITNESSES,
COMPLAINT,
PRELIMINARY EXAMINATION:

The names of witnesses need not be endorsed upon the complaint used as the basis of a preliminary examination in a felony case.



October 8, 1951

10-9-51

Mr. Roy W. McGhee, Jr.
Prosecuting Attorney
Wayne County
Greenville, Missouri

Dear Mr. McGhee:

We have given careful consideration to your request for an opinion, which request is as follows:

"I would appreciate very much having an opinion on the following question:

"Do Sections 545.240, 545.070, or 545.320, R.S. Mo. 1949, require the endorsement of witnesses' names upon the affidavit or complaint used as the basis of a preliminary examination in a felony case held under Section 544.250, R.S. Mo. 1949?

"The point was unofficially raised today in a preliminary examination on a rape case where I had purposely omitted placing the witnesses' names on the affidavit, deeming it unnecessary. I would appreciate being corrected on the matter if I am in error."

The laws pertaining to the question submitted in your letter are contained in Chapters 544 and 545, RSMo 1949.

Section 545.070 is as follows:

"When an indictment is found by the grand jury, the names of all the

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material witnesses must be endorsed upon the indictment; other witnesses may be subpoenaed or sworn by the state, but no continuance shall be granted to the state on account of the absence of any witness whose name is not thus endorsed on the indictment, unless upon the affidavit of the prosecuting attorney showing good cause for such continuance."

Section 545.240 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 endorsed on the information, in like manner and subject to the same restrictions as required in case of indictments."

Section 545.320 is as follows:

"No subpoena for a witness in any criminal case shall be issued on the part of the state, unless the name of such witness be endorsed on the indictment or information, or the prosecuting attorney shall order the same to be issued, in writing, or the prosecutor shall file an affidavit that other witnesses ordered by him are positively necessary for a complete adjudication

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of the case; and no subpoena shall issue for any witness unless the defendant is in custody or on bail, or the clerk or magistrate shall have good reason to believe that he will be apprehended. Subpoenas may be issued to different counties at the same time, but all the witnesses ordered at one time, and living in the same county, shall be included in one subpoena."

It is herein provided that the names of the witnesses must be endorsed upon the indictment or information, but no attempt is made to make either of these sections apply to the complaint or affidavit to be filed with a magistrate preceding a preliminary examination in a felony case.

Section 544.020 is as follows:

"Whenever complaint shall be made, in writing and upon oath, to any magistrate setting forth that a felony has been committed, and the name of the person accused thereof, it shall be the duty of such magistrate to issue a warrant reciting the accusation, and commanding the officer to whom it shall be directed forthwith to take the accused and bring him before such magistrate, to be dealt with according to law."

This is the statute which governs the requirements of the complaint used as the basis of a preliminary examination, and nothing herein contained indicates or as much as suggests that the names of the witnesses must be endorsed upon the complaint. We fail to find any such requirement anywhere in the laws of Missouri.

We hold that the sections quoted above cannot be construed to give any such meaning to our statutes. The appellate courts of this state have held that the plain wording of a statute must not be subjected to the rules of technical construction. In the case of *Grier v. Railway Company*, 286 Mo. 523, 1.c. 534, the Supreme Court said:

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"It is sometimes advantageous to recur to elementary principles. We deem it so now. The primary rule for the interpretation of statutes is that the legislative intention is to be ascertained by means of the words it has used. All other rules are incidental and mere aids to be invoked when the meaning is clouded. When the language is not only plain, but admits of but one meaning, these auxiliary rules have no office to fill. In such case there is no room for construction. * * *"

In the case of Dahlin v. Missouri Comm. for the Blind, 262 S.W. 420, l.c. 423, the Springfield Court of Appeals said:

"A statute that is clear in its terms, and leaves no room for construction must be enforced as written, but if it is not clear, and there is any room for construction, then the reason and sense of the statute will control in determining its meaning. * * *"

CONCLUSION

It is the opinion of this office that the names of the witnesses need not be endorsed upon the complaint or affidavit used as the basis of a preliminary examination in a felony case held under Section 544.250, RSMo 1949.

Respectfully submitted,

B. A. TAYLOR
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General