Criminal Law–Procedure–Trial Without a Warrant Before a Justice of the Peace Held Void

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CRIMINAL LAW—PROCEDURE—TRIAL WITHOUT A WARRANT BEFORE A JUSTICE OF THE PEACE HELD VOID.—Petitioner was twice arrested, without a warrant, for the offense of operating a motor vehicle while under the influence of intoxicating liquor. In each of the two subsequent trials, before a justice of the peace and a municipal court judge, respectively, he was convicted, fined and his operator’s license revoked for six months. No warrant charging the petitioner with the offenses was issued in either of the proceedings. Because of two such convictions within five years, the commissioner of motor vehicles revoked petitioner’s license for ten years. In original proceedings in mandamus in the Supreme Court of Appeals, to compel the reinstatement of the license, petitioner made collateral attack on these judgments. Held, that the judgments, rendered on convictions for offenses in a criminal proceeding not based on a warrant, and not committed in the presence of the justice or a constable or municipal court judge, are void. State v. Arthur, 98 S.E.2d 418 (W. Va. 1957).

That a person may be arrested, under the proper circumstances, without a warrant, is settled. State v. Stockton, 97 W. Va. 46, 124 S.E. 509 (1924); State v. Lutz, 85 W. Va. 330, 101 S.E. 434 (1919). But, even so, the accused still has the right to be fully and plainly informed of the character and the cause of the accusation in all trials of crimes and misdemeanors, as secured by the constitution. W. Va. Const. art. III, § 14. The purpose of this constitutional provision is to protect accused persons from prejudice by the capricious actions of public officials and from surprise at trial by being called on to defend against a charge of which they were not informed. See State v. Mangus, 120 W. Va. 415, 429, 198 S.E. 872, 874 (1938).

The procedure in the justice of the peace court, in criminal trials, although not always followed, as the principal case points out, has been specifically spelled out by the legislature. “Proceedings before a justice shall be by warrant of arrest in the name of the State, except that when an offense of which the justice has jurisdiction is committed in his presence, or in that of a constable, either of them may forthwith apprehend the offender or cause him to be apprehended, and in such case the offender may be tried before the justice and dealt with according to law, without such warrant.” W. Va. Code c. 50, art. 18, § 2 (Michie 1955). Thus, when the offense is not committed in the presence of the justice or of a constable, a warrant is a prerequisite to trial and conviction by such justice. Austin v. Knight, 124 W. Va. 189, 20 S.E.2d 897 (1942).
All the sections of the code, relating to the procedure in criminal cases before a justice are construed to constitute the exclusive rule of such procedure, and prescribe the mode of exercise thereof. See *Ex parte Gilbert*, 78 W. Va. 658, 660, 90 S.E. 111, 112 (1916). In all cases, civil or criminal, it is to be remembered that justices have statutory powers only. See *State v. McKain*, 56 W. Va. 128, 131, 49 S.E. 20, 21 (1904).

The same procedure applies to municipal court judges, in that they are ex officio justices of the peace and vested with the same power in the exercise of jurisdiction conferred by statute in the trial of criminal cases as are justices. W. VA. CODE c. 8, art. 4, § 3 (Michie 1955).

In *Austin v. Knight*, supra, cited and followed in the principal case, a typical example is found in the failure of the justice to follow the prescribed procedure. In that case it was only after the defendant was tried and convicted and committed to the county jail that the justice went to his office and there filled out the warrant. The court said, in holding the judgment to be void, "[A]lthough] the procedure of a justice of the peace is not attended with the usual formalities which prevail in the trial courts, . . . in the instant case a proper procedure, of necessity, had to stem from a valid warrant . . ." Not only must there be a warrant; it must also charge the offense with the same particularity as does a presentment or indictment since such warrant, for all practical matters, stands in the place of a presentment or indictment. *State v. Crummitt*, 129 W. Va. 366, 40 S.E.2d 852 (1946).

The West Virginia court has consistently declared void judgments which were rendered in cases because the warrant charged no offense. *State v. Knight*, 119 W. Va. 6, 191 S.E. 845 (1937); *Workman v. Shaffer*, 112 W. Va. 338, 164 S.E. 299 (1932); *State v. Kindelberger*, 88 W. Va. 131, 106 S.E. 434 (1921).

It is submitted that more careful attention should be paid to proceedings before justices of the peace, to see that these justices, under the guise of self-assumed authority, do not exceed their statutory jurisdiction and proceed in obvious disregard of the rights of a defendant. It is believed that if these inferior courts were required to be more exacting in the legal formalities in the proceedings before them, greater respect would come from the general public, not only for such courts, but also for the law they administer.

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