

INDIANA SUPREME COURT

Flanagan v. State

192 Ind. 662 (1922) · Decided November 24, 1922

SUMMARY

The Indiana Supreme Court affirmed a conviction for running a gaming house. The court held that the record did not properly present the juror voir dire or trial evidence because no bill of exceptions was timely incorporated into the record, and no time beyond the term had been granted for filing it.

CASE DETAILS

COURT	Indiana Supreme Court
WRITING FOR THE COURT	Townsend, J.
JURISDICTION	Indiana
DECIDED	November 24, 1922
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a criminal conviction for running a gaming house.
PRECEDENTIAL VALUE	published
PARTIES	Flanagan v. State

TOPICS

- appellate procedure
- preservation of error
- criminal procedure
- gambling

PRACTICE AREAS

- criminal procedure
- appellate procedure
- gaming law

QUESTIONS PRESENTED

- Whether the appellate court could consider a bill of exceptions containing the evidence when the record did not show that the trial court granted time beyond the term to file it.
- Whether the alleged errors concerning a juror challenge and questions to witnesses could be reviewed when the voir dire and trial evidence were not included in the record.

HOLDINGS

1. When the record does not show that time beyond the term was granted to file a bill of exceptions, the bill is not part of the record, even if the bill recites that it was presented within the time allowed.
2. The alleged errors could not be reviewed because the record contained neither the challenged voir dire proceedings nor the trial evidence; consequently, no error was presented.

KEY QUOTATIONS

“Where the record fails to show that time beyond the term was given to file a bill of exceptions, such bill is not in the record, even though it recites that it was presented within the time allowed.” (663)

“Time beyond the term must appear from the record. The recital in the bill of exceptions is of no avail.” (663)

FACTUAL BACKGROUND

Flanagan was convicted of running a gaming house. On appeal, he challenged the refusal to sustain a juror challenge for cause and the admission of certain witness testimony. The record contained neither the voir dire questions and answers nor the trial evidence because the relevant bill of exceptions was not timely made part of the record.

PROCEDURAL HISTORY

Appellant was convicted of running a gaming house. The trial court overruled the motion for a new trial and entered judgment on the verdict at the July term; appellant later presented a bill of exceptions containing the evidence at the January term without obtaining an order allowing additional time beyond the July term. The Indiana Supreme Court found that no reversible error was presented and affirmed.

DISPOSITION

affirmed

CASES CITED

- Bray v. McLaughlin, 191 Ind. 190, 131 N.E. 518 (1921)
- Hancher v. Stephenson, 147 Ind. 498, 500, 46 N.E. 916 (1897)
- Utterback v. State, 153 Ind. 545, 549, 50 N.E. 420 (1899)
- Carskaddon v. Pine, 154 Ind. 410, 412, 56 N.E. 844 (1900)
- Taylor v. Canaday, Rec., 155 Ind. 671, 677, 57 N.E. 524, 59 N.E. 20 (1900)
- Malott v. Central Trust Co.; Admr., 168 Ind. 428, 431, 74 N.E. 369, 11 Ann. Cas. 604 (1906)
- Bass v. State, 188 Ind. 21, 24, 120 N.E. 657 (1918)

OPINION

TOWNSEND, J.

Townsend, J. Appellant was convicted of running a gaming house. He seeks to reverse the judgment because of: (1) The refusal of the court to sustain a challenge for cause based upon

the voir dire of a juror; and (2) The failure of the court to sustain objection to certain questions propounded to witnesses upon the trial of the cause. There is no bill of exceptions bringing into the record the questions propounded to the juror on his voir dire and the answers made thereto; nor is there any bill of exceptions bringing into the record the evidence in the cause.

The motion for new trial was overruled and judgment on the verdict rendered at the July term. No time was asked in which to file a bill of exceptions. Appellant did not present a bill of exceptions containing the evidence until the January term. Where the record fails to show that time beyond the term was given to file a bill of exceptions, such bill is not in the record, even though it recites that it was presented within the time allowed.

Time beyond the term must appear from the record. The recital in the bill of exceptions is of no avail. *Bray v. McLaughlin* (1921), 191 Ind. 190, 131 N. E. 518; *Hancher v. Stephenson* (1897), 147 Ind. 498, 500, 46 N. E. 916, and cases there cited; *Utterback v. State* (1899), 153 Ind. 545, 549, 50 N. E. 420, and cases there cited; *Carskaddon v. Pine* (1900), 154 Ind. 410, 412, 56 N. E. 844, and cases there cited; *Taylor v. Canaday*, Rec.

(1900), 155 Ind. 671, 677, 57 N. E. 524, 59 N. E. 20, and cases there cited; *Malott v. Central Trust Co.*; *Admr.* (1906), 168 Ind. 428, 431, 74 N. E. 369, 11 Ann. Cas. 604, and cases there cited; *Bass v. State* (1918), 188 Ind. 21, 24, 120 N. E. 657. No error being presented, the judgment of the trial court is affirmed.