

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.

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.