

---

Chancellor vs. The State.

---

CHANCELLOR V. THE STATE.

CRIMINAL PROCEEDINGS: *Presenting indictment.*

Where the record does not show that the indictment was brought into court, this court will reverse a judgment of conviction. The indorsement by the clerk upon the indictment, "filed in open court," is not sufficient.

APPEAL from *Benton* Circuit Court.

Hon. J. M. PITTMAN, Circuit Judge.

*Gregg*, for appellant.

*Henderson*, Attorney-General, *contra*.

EAKIN, J.:

There was, in this case, a trial and conviction, for manslaughter. There is nothing in the record to show that the indictment was brought into court by the grand jury. The indorsement of the clerk, "filed in open court," is not sufficient. *McKensie v. State*, 24 Ark., 636.

Inasmuch as the supposed crime may be yet the subject of a proper judicial investigation, we forbear any comment upon the testimony, further than to say, in explanation of the course now pursued in declining to send down a *certiorari* of our own motion, that we think the jury must certainly have acted under a misapprehension of the law as given by instructions, or were influenced by their knowledge of facts not appearing in the record. We cannot find any proof, sufficient to sustain a verdict that the killing was by design, or done in the commission

of an unlawful act, or under any such circumstances as to make the defendant amenable to a judgment so terrible in its disgrace.

Let the judgment be reversed, and the cause remanded, with the usual instructions in such cases adopted by this court as to its practice. See *McKensie v. State, supra*; *Green v. State*, 19 Ark., 178; *Holcomb v. State*, 31 Ark., 427.

---