

## MOORE v. STATE.

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213 S. W. 2d 619

Opinion delivered October 4, 1948.

1. CRIMINAL LAW—CONTINUANCES.—The granting or refusal of a motion for continuance is a matter within the sound discretion of the court.
2. CRIMINAL LAW.—There being no bill of exceptions, the appellate court cannot say that the trial court abused its discretion in denying appellant's motion for a continuance.
3. CRIMINAL LAW—PRESUMPTION IN ABSENCE OF BILL OF EXCEPTIONS.—In the absence of a bill of exceptions, it will be presumed that the evidence was sufficient to warrant the verdict of guilty.

Appeal from Lafayette Circuit Court; *Dexter Bush*, Judge; affirmed.

*Guy E. Williams*, Attorney General, and *Oscar E. Ellis*, Assistant Attorney General, for appellee.

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ROBINS, J. Appellant has prosecuted this appeal from the judgment of the lower court based upon a jury verdict, by which he was found guilty of the offense of uttering a forged instrument and his punishment fixed at imprisonment in the State Penitentiary for two years. No brief has been filed on his behalf.

The motion for new trial reflects that the correctness of the verdict was challenged on the ground that appellant's motion for a continuance was not granted and on the further ground that the verdict was contrary to the evidence. An examination of the transcript discloses that no bill of exceptions has ever been filed in this case.

The granting or refusal of a motion for continuance is a matter within the sound discretion of the trial court, and from the record before us we are unable to say that there was any abuse of discretion on the part of the lower court in this regard.

Since there is no bill of exceptions in this case, we must presume that the evidence was sufficient to warrant the verdict. *Earl v. State*, 155 Ark. 286, 244 S. W. 333;

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*State v. Moore*, 166 Ark. 499, 266 S. W. 460; *French v. State*, 205 Ark. 386, 168 S. W. 2d 829.

The judgment appealed from is therefore affirmed.

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