

Kenneth Ray NOVAK *v.* STATE of Arkansas

CA CR 95-1109

918 S.W.2d 218

Court of Appeals of Arkansas
En Banc
Opinion delivered April 3, 1996

APPEAL & ERROR — WAIVER OF ABSTRACTING REQUIREMENT PROVIDED FOR IN RULES — MOTION FOR WAIVER GRANTED. — Rule 4-2(a)(6) of the Arkansas Supreme Court and Court of Appeals provides that whenever an exhibit that cannot be abstracted in words must be examined for a clear understanding of the testimony, the appellant shall reproduce the exhibit by a suitable process and attach it to the abstract; however, the rule also permits the appellate court to waive this requirement where it would be impractical; where appellee asserted in its motion that it would be impractical to abstract the tape, and there was no opposition from the appellant, the appellate court granted appellee's motion to waive the abstracting requirement.

Motion to Waive Abstracting Requirement; granted.

Appellant, no response.

Winston Bryant, Att'y Gen., by: *Sandy Moll*, Asst. Att'y Gen., for appellee.

JAMES R. COOPER, Judge. The appellee has moved to waive the abstracting requirement regarding the contents of a 911 tape that was introduced into evidence at trial. The appellee notes that no transcription of the tape was introduced at trial, and asserts that although the appellant failed to abstract the tape, the contents of the tape itself are necessary for a determination of the issues at hand.

[1] Rule 4-2(a)(6) of the Arkansas Supreme Court and Court of Appeals provides that, whenever an exhibit which cannot be abstracted in words must be examined for a clear understanding of the testimony, the appellant shall reproduce the exhibit by a suitable process and attach it to the abstract. However, the Rule also permits the appellate court to waive this requirement where it would be impractical. The appellee asserts in its motion that it would be impractical to abstract the tape and, in the absence of any opposition from the appellant, we grant the appellee's motion.

Motion to waive abstracting requirement granted.

JENNINGS, C.J., and MAYFIELD, ROGERS, and NEAL, JJ., agree.

ROBBINS, STROUD, and GRIFFEN, JJ., would remand.

PITTMAN, J., dissents and would deny the motion on the ground that the State has failed to allege any facts that would show, as required by Ark. R. Sup. Ct. 4-2(a)(6), either that the contents of the audiotape cannot be abstracted in words or that it would be impractical to reproduce the exhibit and attach copies to each copy of the abstract.