

# ARKANSAS COURT OF APPEALS

DIVISION IV  
No. CACR12-743

WALTER POWELL, III

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** February 27, 2013

APPEAL FROM THE BENTON COUNTY  
CIRCUIT COURT  
[NO. CR-11-393-1]

HONORABLE ROBIN F. GREEN, JUDGE

REMANDED FOR SUPPLEMENTATION  
OF ADDENDUM

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**WAYMOND M. BROWN, Judge**

Appellant was convicted, as a habitual offender, of possession with intent to deliver a controlled substance and possession of drug paraphernalia. Because Appellant has submitted a brief without a proper addendum in violation of Arkansas Supreme Court Rule 4-2(a)(8),<sup>1</sup> we order a supplemental addendum.

On March 7, 2011, while driving his vehicle, appellant changed lanes twice without signaling until after he had already begun to change lanes. He was pulled over by an officer of the Rogers Police Department, who identified himself and requested appellant's license and registration which appellant provided. A search of his driver's license revealed no warrants, but showed a prior narcotics arrest. The officer returned to the car and requested that appellant exit his vehicle which he did. The officer asked appellant if he possessed

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<sup>1</sup>(2012).



anything illegal. Appellant answered no. The officer also asked if he could search his vehicle. Appellant avoided the question. When asked a second time if he possessed anything illegal, appellant admitted possessing K2 which is synthetic marijuana. The officer's questioning continued, and appellant eventually admitted to having scales in the car.<sup>2</sup> The officer asked if he could retrieve the scales and was told by appellant that they were underneath the seat. When the officer searched that area, he found only a bag of cocaine, for which he promptly arrested appellant. Further search of the vehicle after appellant's arrest revealed the scales.

A criminal information was filed on April 6, 2011, charging appellant with possession with intent to deliver a controlled substance (cocaine).<sup>3</sup> The trial court conducted a suppression hearing after appellant filed a motion to suppress evidence. The court denied appellant's motion to suppress. In doing so, it specifically referenced the video of the traffic stop stating:

As I mentioned earlier, I did review and observe the video of the traffic stop. It was not a – not a long video by any means[.]

.....

I find that the length of the traffic stop was reasonable. In observing the video, I noted that within two minutes of questioning by Corporal Warren that the defendant admitted to having K2 in his vehicle and approximately two minutes later he also admitted to the possession of the scales[.]

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<sup>2</sup>Scales are commonly used in drug trafficking which the court stated in its decision of appellant's motion to suppress. In fact, appellant told the officer that his previous narcotics arrest involved possession of a set of scales that were used for marijuana.

<sup>3</sup>On January 9, 2012, the state filed an amended criminal information charging appellant as a habitual offender with possession of a drug paraphernalia, in addition to possession with intent to deliver a controlled substance (cocaine).



Appellant's arguments on appeal involve the court's findings on his motion to suppress. Despite this, appellant failed to include the video in its brief. Accordingly, we are unable to reach the merits of appellant's arguments because his brief is not in compliance with Ark. Sup. Ct. R. 4-2(a)(8).

Rule 4-2(a)(8)(A)(i) requires the addendum to include all items that are essential for the appellate court to understand the case and decide the issues on appeal including exhibits such as DVDs.

The procedure to be followed when an appellant has submitted an insufficient abstract or addendum is set forth in Arkansas Supreme Court Rule 4-2(b)(4):

If the appellate court determines that deficiencies or omission in the abstract or addendum need to be corrected, but complete rebriefing is not needed, then the court will order the appellant to file a supplemental abstract or addendum within seven calendar days to provide the additional materials from the record to the members of the appellate court.

Appellant's addendum is deficient because it lacks the video of the stop which, having been relied on by the court below in making its determination, is essential to an understanding of the case.

Accordingly, we order appellant to file a supplemental addendum as necessary to fully comply with Rule 4-2, within seven calendar days from the date this opinion is entered.<sup>4</sup>

Remanded for supplementation of addendum.

WALMSLEY and GLOVER, JJ., agree.

*John C. Bassett*, for appellant.

*Dustin McDaniel*, Att'y Gen., by: *Rebecca B. Kane*, Ass't Att'y Gen., for appellee.

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<sup>4</sup>See *Lewis v. State*, 2012 Ark. App. 540.