

ARKANSAS COURT OF APPEALS

DIVISION II
No. CR-13-313

ANTWAN LAVAN FOWLER
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered April 30, 2014

APPEAL FROM THE FAULKNER
COUNTY CIRCUIT COURT
[NO. CR-2011-500]

HONORABLE DAVID L.
REYNOLDS, JUDGE

REBRIEFING ORDERED

BRANDON J. HARRISON, Judge

A jury found Antwan Fowler guilty of possession of a firearm by certain persons. He now appeals his conviction, arguing that the circuit court erred in denying his motions to suppress his statement to the police and evidence seized from his vehicle. Because Fowler's brief does not comply with Arkansas Supreme Court Rule 4-2(a)(5) and (8) (2013), we order rebriefing.

On 16 April 2011, Conway police responded to a call that Antwan Fowler had pointed a gun at someone on Oak Street and then left in a black Ford Taurus. Officer Andrew Birmingham approached a black Ford Taurus that was parked at a gas station nearby and ran the license plate; records indicated that the vehicle belonged to Antwan Fowler. Birmingham spoke to a man, later identified as Fowler, who was standing near the vehicle, and asked if they could talk. In response, Fowler lifted his shirt to show his waist band, and Birmingham asked Fowler to turn around so that he (Birmingham) could verify that Fowler did not have

a weapon on his person. Birmingham asked Fowler if he had any weapons, and Fowler told him that there was a gun in his car, prompting Birmingham to place Fowler in handcuffs. At that point, Birmingham read Fowler his *Miranda* rights and activated his audio/video recorder. After admitting that he was a felon in possession of a firearm, Fowler was arrested.

Fowler was charged with possession of a firearm by certain persons and aggravated assault.¹ He filed motions to suppress both the statement he gave to the police and evidence seized from his vehicle. After a hearing on the matter, the motions were denied, and a jury trial was held in September 2012. The jury found Fowler guilty of possession of a firearm by certain persons and recommended a sentence of eighteen years' imprisonment, which the court imposed in a sentencing order entered 14 September 2012. Fowler timely appealed this order.

When reviewing a circuit court's denial of a motion to suppress, we make an independent determination based on the totality of the circumstances. *Gilbert v. State*, 2010 Ark. App. 857, 379 S.W.3d 774. We defer to the circuit court's credibility and weight-of-the-evidence determinations, and we reverse only if the court's decision is clearly against the preponderance of the evidence. *Id.*

On appeal, Fowler argues that the circuit court erred in denying his motions to suppress his statement to the police and evidence seized from his vehicle. Before we can address the merits of Fowler's appeal, however, there are deficiencies in his brief that require us to order rebriefing. First, Fowler has failed to abstract counsels' arguments or the circuit

¹The aggravated-assault charge was later nolle prossed.

court's ruling at the suppression hearing. Second, an audio recording of Officer Birmingham's interaction with Fowler, along with a transcript, was played for the court and entered into evidence. But, Fowler has neither included this audio recording in the addendum, nor has he abstracted the transcript.

Rule 4-2(a)(5) requires an appellant to create an abstract of the material parts of all the transcripts in the record. Information is material if it is essential for the appellate court to confirm its jurisdiction, to understand the case, and to decide the issues on appeal, and includes such material as counsels' arguments and the ruling of the court. *See* Rule 4-2(a)(5)(A). In addition, 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 to decide the issues on appeal, including exhibits such as CDs and DVDs.

Fowler's abstract and addendum are inadequate. Accordingly, we order Fowler to file within fifteen days of this opinion a substituted abstract, brief, and addendum that complies with our rules. *See* Ark. Sup. Ct. R. 4-2(b)(3). We remind counsel that the examples we have noted are not to be taken as an exhaustive list of deficiencies. Counsel should carefully review the rules to ensure that no other deficiencies exist.

Rebriefing ordered.

PITTMAN and GRUBER, JJ., agree.

Teresa Bloodman, for appellant.

Dustin McDaniel, Att'y Gen., by: *Vada Berger*, Ass't Att'y Gen., for appellee.