

**ARKANSAS COURT OF APPEALS**

No. CR-18-74

ROBERT GLENN BROWN  
APPELLANT

V.

STATE OF ARKANSAS  
APPELLEE

**Opinion Delivered:** May 16, 2018

APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT,  
SEVENTH DIVISION  
[NO. 60CR-17-837]

HONORABLE BARRY A. SIMS,  
JUDGE

MOTION TO SUBSTITUTE  
COUNSEL REMANDED WITH  
INSTRUCTIONS

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**PER CURIAM**

On March 1, 2018, appellant Robert Glenn Brown moved to substitute counsel on appeal, stating that he remained indigent on appeal but that his wife had retained John Wesley Hall to handle the appeal. On March 29, 2018, our court remanded the case to circuit court pursuant to *Brewer v. State*, 64 Ark. App. 372, 984 S.W.2d 65 (1998). The circuit court held a hearing on April 9, 2018, and determined that the appellant is still indigent, but based on the record before us, the very brief proceeding answered none of the questions the *Brewer* court established for such cases. We note this instance is of particular importance because the person paying for the appeal is appellant's wife, Jayme Brown.

In *Brewer*, our court expressed its concern about indigent convicted felons obtaining transcripts of the trial proceedings at state expense, then hiring private counsel on appeal without reimbursing the state for the cost of the transcripts. We have held, in *Brewer* and its

progeny, that appellants in this situation are entitled to employ substitute private counsel without reimbursing the state for transcript expenses when third parties, who have no obligation to the state, bear the costs of fees charged by private counsel.<sup>1</sup>

Here, on remand, the circuit court did not make sufficient inquiries to determine whether marital assets were used to pay private counsel. The circuit court on this second remand is instructed to make the findings necessary for our court to “intelligently decide whether it would be just to give appellant a taxpayer-paid trial transcript on one hand while allowing him to dump his taxpayer-paid lawyer in favor of one hired with private funds on the other.” *Brewer*, 64 Ark. App. at 375, 984 S.W.2d at 66. To that end, the circuit court should, at the minimum, ascertain the answers to the five important questions set out in *Brewer*. When did appellant obtain funds to hire private counsel and from what source? How much was obtained to procure the private attorney? Are there any valid reasons why the appellant cannot be directed to reimburse the state for the cost of the transcript? Has the state demanded reimbursement? If so, when was the demand made and why wasn't it honored? *Id.* Other questions may well arise in order for the circuit court to make an appropriate finding.

Therefore, we remand this case for a second time and urge counsel and the circuit court to review the *Brewer* case prior to the next hearing.

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<sup>1</sup>See also *Brewer v. State*, 66 Ark. App. 324, 992 S.W.2d 140 (1999); *Hill v. State*, 305 Ark. 193, 805 S.W.2d 651 (1991); *Hill v. State*, 304 Ark. 348, 802 S.W.2d 144 (1991).