

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR 08-1250

KENNETH RILEY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered May 13, 2009

APPEAL FROM THE MILLER
COUNTY CIRCUIT COURT,
[NO. CR-2007-715-2]

HONORABLE JIM HUDSON, JUDGE

REBRIEFING ORDERED

COURTNEY HUDSON HENRY, Judge

A jury in Miller County found appellant Kenneth Riley guilty of two counts of aggravated robbery, resulting in a cumulative sentence of eighty years in prison. For reversal, appellant first argues that the trial court erred by overruling his *Batson* objection to the State's use of a peremptory challenge to exclude an African-American juror. As his second point, appellant contends that the trial court erred by denying his motion for a directed verdict because the State did not introduce sufficient evidence to corroborate the accomplices' testimony. Deficiencies in appellant's abstract prevent us from reaching the merits of appellant's issues. Therefore, we order rebriefing.

Rule 4-2(a) of the Arkansas Rules of the Supreme Court and Court of Appeals provides in pertinent part:

(5) *Abstract*. The appellant's abstract or abridgment of the transcript should consist of an impartial condensation, without comment or emphasis, of only such material parts of the testimony of the witnesses and colloquies between court and

counsel and other parties as are necessary to an understanding of all questions presented to the Court for decision.

If an abstract is so deficient that we cannot reach the merits of the appeal, we afford the appellant an opportunity to file a substituted brief to cure the abstracting deficiencies. Ark. Sup. Ct. R. 4-2(b)(3).

In this appeal, appellant first challenges the State's use of a peremptory challenge to exclude an African American from the jury. However, the abstract does not include the State's questions asked of this juror during voir dire or the juror's responses to those questions. The abstract also fails to adequately set forth the colloquies between court and counsel pertinent to this issue. In his second argument, appellant challenges the sufficiency of the evidence, but the abstract does not contain any of the testimony presented in this rather lengthy trial. As constituted, the abstract leaves us without the ability to conduct a review of the questions raised on appeal.

In *Bryan v. City of Cotter*, ___ Ark. ___, ___ S.W.3d ___ (Apr. 2, 2009), the supreme court recently articulated a bright-line rule requiring an appellant to submit a substituted brief when an abstract does not contain materials essential to an understanding of an appeal. In light of this precedent, we direct appellant to file a substituted brief within fifteen days from the date of this opinion. The State shall have an opportunity to revise or supplement its brief within the time prescribed by the clerk.

Rebriefing ordered.

GLOVER and BROWN, JJ., agree.