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SUPREME COURT OF ARKANSAS

No. CR10-1146

Opinion Delivered May 12, 2011

RODNEY TYRONE WEBB,
APPELLANT,

VS.

STATE OF ARKANSAS,
APPELLEE,

APPEAL FROM THE DREW COUNTY CIRCUIT COURT,
NO. CR-2009-92-3,
HON. ROBERT BYNUM GIBSON, JR., JUDGE,

REBRIEFING ORDERED.

PER CURIAM

In April 2010, appellant was convicted of possession of cocaine and sentenced to twenty-two years' imprisonment. Appellant filed a timely notice of appeal, arguing that the circuit court erred in denying his motion to suppress the contraband that was found on his person. We are unable to consider appellant's appeal at this time, however, because his brief is not in compliance with Arkansas Supreme Court Rule 4-2(a)(5) (2010).

A pretrial hearing on the motion to suppress was held on January 25, 2010. Most of the discussions between the court and counsel that occurred at this hearing, as well as the court's questioning of appellant's probation officer, are described in the abstract in a third-person format. On pages 13–15 of the abstract, the format switches to what appears to be a verbatim account of the colloquy between court and counsel, but it is, in fact, not verbatim. At the conclusion of the hearing, which had included only the State's presentation of evidence, the court ordered briefing and took the motion under advisement. On February

5, 2010, the court entered a two-sentence order denying the motion to suppress without any findings of fact or conclusions of law.

Despite this order, on February 25, 2010, the court "continued" the suppression hearing, and after allowing appellant to testify, orally denied the motion to suppress. This ruling is partially abstracted and partially repeated verbatim on pages 18–20 of the abstract. After the jury trial, the jury was unable to reach an agreement on sentencing, and the jury members were released. An in-chambers discussion then took place, during which counsel requested additional findings on the denial of the motion to suppress. The court proceeded to clarify its ruling, accounting for approximately three pages in the record. These findings are not abstracted at all but are simply referred to in a third-person paragraph that provides a cite to pages 321–324 of the record.

Especially because there is no written order that contains the court's findings of fact and conclusions of law on this issue, we conclude that the court's rulings from the bench are essential for this court to understand the case and decide the issue on appeal. In addition, our abstracting rule provides that no more than one page of a transcript shall be abstracted without giving a record page reference and that the first-person rather than the third-person shall be used. *See* Ark. Sup. Ct. R. 4-2(a)(5)(B). For these reasons, we order appellant to file a substituted brief, curing the deficiencies in the abstract, within fifteen days from the date of entry of this order. After service of the substituted brief, the appellee shall have the opportunity to file a responsive brief in the time prescribed by the supreme court clerk, or

appellee may choose to rely on the brief previously filed in this appeal. While we have noted the above-mentioned deficiency, we encourage appellant's counsel to review Rules 4-2, 4-3, and the entire record to ensure that no additional deficiencies are present, as any subsequent rebriefing order in this criminal matter may result in referral to our Committee on Professional Conduct. *See, e.g.*, *Lee v. State*, 375 Ark. 421, 291 S.W.3d 188 (2009) (per curiam).

Rebriefing ordered.