

Aaron Michael HODGE *v.* STATE of Arkansas

CR 97-406

945 S.W.2d 384

Supreme Court of Arkansas
Opinion delivered June 9, 1997

1. APPEAL & ERROR — WHEN EXHIBITS NEED NOT BE ABSTRACTED. — Rule 4-2(a)(6) of the Rules of the Supreme Court provides that exhibits need not be abstracted where it is impractical to do so and where the appellate court waives the requirement on motion.
2. APPEAL & ERROR — ABSTRACTING — WHAT SHOULD BE ABSTRACTED. — The supreme court directed that what could be abstracted of the audiotape in question should be abstracted, assuming that the tape was played to the jury and that the statement was a point on appeal; only if the statement was completely incomprehensible should abstracting be deferred.
3. APPEAL & ERROR — ABSTRACTING — FAILURE TO ABSTRACT PREJUDICIAL PARTS PRECLUDES CONSIDERATION OF VIDEOTAPE ON APPEAL — MOTION FOR LEAVE NOT TO ABSTRACT DENIED. — The supreme court declared that a description of what was on the videotape at issue and how it was irrelevant, unconstitutional, and prejudicial must be included in the abstract; the failure to abstract the prejudicial parts of a videotape precludes consideration of the videotape on appeal; appellant's motion for leave not to abstract the videotape and audiotape exhibits was denied.

Motion for Leave of the Court To Not Abstract Videotape Exhibit and Audiotape Exhibit; denied.

David Copelin, for appellant.

Winston Bryant, Att'y Gen., by: *Brad Newman*, Asst. Att'y Gen., for appellee.

PER CURIAM. [1] Appellant Aaron Michael Hodge moves the court for leave not to abstract an audiotape and videotape exhibit. Rule 4-2(a)(6) of the Supreme Court Rules provides that exhibits need not be abstracted where it is impractical to do so and where this court waives the requirement on motion.

[2] With respect to abstracting the audiotape, Hodge maintains its quality is poor. Despite the questionable quality,

what can be abstracted of the audiotape should be abstracted, assuming the tape was played to the jury and the statement is a point on appeal. Only if the statement is completely incomprehensible should abstracting be deferred.

[3] With respect to the videotape, a description of what is on the videotape and how it is irrelevant, unconstitutional, and prejudicial must be included in the abstract. We recently have stated that the failure to abstract the prejudicial parts of a videotape precludes our consideration of the videotape on appeal. *Evans v. State*, 326 Ark. 279, 931 S.W.2d 136 (1996); *Donihoo v. State*, 325 Ark. 483, 931 S.W.2d 69 (1996).

Denied.
