

Frederick JACOBS *v.* STATE of Arkansas

CR 95-808

922 S.W.2d 344

Supreme Court of Arkansas
Opinion delivered June 3, 1996

APPEAL & ERROR — MOTION FOR BELATED APPEAL GRANTED — TRIAL COURT DIRECTED TO ORDER TRANSCRIPTION OF TAPES IN ATTEMPT TO OBTAIN SUFFICIENT RECORD. — Where it did not appear that anyone had actually attempted to transcribe any of about twenty tapes produced during appellant's trial, and where it appeared from the court reporter's statements that some tapes could be transcribed, but all, or portions, could not be, the supreme court granted appellant's motion for belated appeal, directing that the trial court order a licensed court reporter to transcribe all tapes, and portions thereof, in an attempt to see if a sufficient record could be obtained, so that omitted portions could be reconstructed by the court and parties.

Motion for Belated Appeal; granted.

Haskins Law Firm, by: *Steven R. Davis*, for appellant.

No response.

PER CURIAM. Appellant Frederick Jacobs moves for a belated appeal, which is granted. However, this case involves another appeal where a transcript has been requested of the court reporter of the 10th Judicial Circuit, and she states her tapes, reflecting the trial record, cannot be reproduced. The court reporter, Val Dixon Sims, is apparently no longer employed by the court, but she testified at a January 30, 1996 hearing regarding the state of the record in this cause, and her testimony seems somewhat conflicting. Ms. Sims indicated she had about twenty tapes produced during the appellant's trial, but those tapes cannot be transcribed because "you can't hear what's on them."¹ She later said, "You can hear on some of the tapes some voices very, very faint." Then, Ms. Sims said, "I didn't count them, . . . but you can't pick out portions of a tape to transcribe and then later try and certify it as fully true and correct. So if you don't have it all in a trial, you don't have anything."

¹ It appears ten tapes were produced from Sims's steno mask and ten tapes were made on a separate (or backup) tape recorder.

From the testimony given at the January 30 hearing, it does not appear anyone has actually attempted to transcribe any of the tapes, and from Sims's statements, there are tapes that could or might be transcribed, but all, or portions could not be. We understand a set of the tapes may have been sent to the FBI for enhancement, if possible. However, we would also direct the trial court to order transcription of whatever can be heard on the tapes.

Recently, in another case seemingly comparable to the one here, a partial transcript was made of Ms. Sims's tapes, even though a suppression hearing and side-bar conference could not be transcribed. See *Hood v. State*, 324 Ark. 457, 920 S.W.2d 854 (1996). We remanded the *Hood* case for the purpose of settling the record under Ark. R. App. P. 6(d) and (e), since it seemed feasible that the omitted portions might be reconstructed in view of the transcript that had been provided.

[1] Accordingly, in addition to what the trial court has already ordered done in this matter, we direct that it order a licensed court reporter to transcribe all tapes, and portions thereof, in an attempt to see if a sufficient record can be obtained, so omitted portions can be reconstructed by the court and parties.

DUDLEY, J., not participating.
