

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR 08-693

JOSHUA LEALLEN LOFTON
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered February 18, 2009

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
[NO. CR 07-3693]

HONORABLE WILLARD PROCTOR,
JR., JUDGE

REBRIEFING ORDERED

COURTNEY HUDSON HENRY, Judge

On September 14, 2007, the Pulaski County Prosecuting Attorney filed a felony information charging appellant, Joshua Leallen Lofton, with the offenses of capital murder, a class Y felony, and aggravated robbery, also a class Y felony. The information also sought a sentence enhancement for employing a firearm when committing these offenses. Appellant filed a petition to transfer the charges to the juvenile division of circuit court because he was only seventeen years old when he allegedly committed these crimes. The trial court denied the motion, and appellant now appeals, arguing that the court's decision is contrary to the evidence. We must order rebriefing.

The events giving rise to the charges in this case occurred on July 22, 2007, in the parking lot of Wal-Mart on McCain Boulevard in North Little Rock. Appellant stands accused of striking Linda Garner on the head with a handgun, stealing her purse, and in flight from this offense, using the gun to shoot and kill Dean Warden. A video camera atop Wal-Mart recorded



the incident. At the transfer hearing, the trial court admitted into evidence a compact disc containing the footage from Wal-Mart, and the court viewed the images on the disc.

Rule 4-2(a)(5) of the Rules of the Supreme Court and Court of Appeals requires an abstract to consist of an impartial condensation of the material parts of the testimony as is necessary for a full understanding of the issues on appeal. This subsection of the rule also provides that, whenever a photograph or other similar exhibit must be examined for a clear understanding of the testimony, the appellant shall reproduce the exhibit by photography or other process and include it in the addendum.

The trial court in this case relied on the images portrayed on the compact disc in making its decision. By this appeal, we are being called upon to determine whether the evidence supports the trial court's decision. Consequently, the disc is a material part of the record, and it is necessary for us to examine the exhibit in order to have a full understanding of the testimony along with the trial court's ruling. Thus, Rule 4-2(a)(5) requires appellant to include reproductions of the disc in the addenda of the briefs filed with this court. Because appellant failed to do so, we order rebriefing within fifteen days of this opinion.

We make one final observation. After numerous attempts using the most current media-player applications, we were unable to access the contents of the compact disc contained in the record. Appellant is directed to provide this court with operable copies of the exhibit.

Rebriefing ordered.

HART and GLOVER, JJ., agree.