

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR08-1408

COREY J. MOSLEY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered JUNE 24, 2009

APPEAL FROM THE MILLER
COUNTY CIRCUIT COURT,
[NO. CR-2007-595-3]

HONORABLE KIRK D. JOHNSON,
JUDGE

REBRIEFING ORDERED

ROBERT J. GLADWIN, Judge

Appellant Corey J. Mosley was convicted on August 12, 2008, in Miller County Circuit Court of cocaine possession and sentenced to sixty months' probation. On appeal, he contends that the trial court erred in denying his motion to suppress, arguing that the police officer who made the traffic stop, which ultimately resulted in police finding crack cocaine, had no reasonable suspicion to do so. We order rebriefing.

By criminal information filed October 10, 2007, in Miller County Circuit Court, appellant was charged with possession of a controlled substance, namely cocaine. Appellant filed a motion to suppress the cocaine from being introduced at trial arguing that it had been seized in violation of his constitutional right to be free from unreasonable searches and seizures under the Fourth and Fourteenth Amendments to the United States Constitution, article 2, section 15 of the Arkansas Constitution, and in violation of Arkansas Rules of

Criminal Procedure 3.1 and 4.1. At issue in the suppression hearing was the validity of the traffic stop, which resulted in appellant's arrest and ultimate charge of possession when police found crack cocaine in the patrol unit used to transport appellant to jail.

Appellant argued that the arresting officer did not have a reasonable suspicion to make the traffic stop. The trial court denied the motion to suppress, stating that the evidence of erratic driving, the time of day—2:00 a.m.—the streets and high-crime area involved, appellant's turning down a street with no exit, and appellant's attempts to hide his identity gave the officer articulable facts upon which to make a probable cause determination. After appellant was convicted, he filed a timely notice of appeal, and this appeal followed.

However, appellant's appellate brief does not comply with the Rules of the Arkansas Supreme Court and Court of Appeals, Rule 4-2(a)(5), in that the abstract does not summarize the testimony in a first-person narrative, but instead includes direct quotations from portions of the transcript of the suppression hearing. Further, included in the addendum is a complete transcript of the suppression hearing, which should have been summarized and made a part of the abstract. Under Rule 4-2(b)(3), "If the Court finds the abstract or Addendum to be deficient such that the Court cannot reach the merits of the case . . . the Court will notify the appellant that he or she will be afforded an opportunity to cure any deficiencies . . ." We consider the deficiency herein to be such that this court cannot reach the merits of the case pursuant to Rule 4-2(b)(3).

Accordingly, we order rebriefing in compliance with Rule 4-2(a)(5).

Rebriefing ordered.

VAUGHT, C.J., and PITTMAN, J., agree.