

Cite as 2010 Ark. App. 166

ARKANSAS COURT OF APPEALS

DIVISION II

No. CACR 08-1344

SHELTON WORMLEY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered February 17, 2010APPEAL FROM THE DREW
COUNTY CIRCUIT COURT
[NO. CR-2007-0184-1A]

HONORABLE SAM POPE, JUDGE

REBRIEFING ORDERED

COURTNEY HUDSON HENRY, Judge

A jury in Drew County found appellant Shelton Wormley guilty of manufacturing marijuana, possession of marijuana with intent to deliver, and possession of drug paraphernalia. As a consequence, appellant received cumulative sentences totaling forty years in prison. For reversal, appellant argues that the trial court erred in denying his motion to suppress and his motion for a continuance. We order rebriefing because appellant's abstract is deficient with regard to the issue of whether the trial court erred in denying the motion for a continuance.

Rule 4-2(a)(5) of the Arkansas Rules of the Supreme Court and Court of Appeals provides in pertinent part:

Abstract. The appellant's abstract or abridgement of the transcript should consist of an impartial condensation, without comment or emphasis, of only such material parts of the testimony and colloquies between the court and

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counsel and other parties as are necessary to an understanding of all questions presented to the Court for decision.

The rule further provides that, if the appellate court determines that the abstract is deficient, the court will afford the appellant an opportunity to cure the deficiencies by filing a substituted brief that conforms with the requirements of the rule. Ark. Sup. Ct. R. 4-2(b)(3).

A motion for a continuance is addressed to the sound discretion of the trial court, and its ruling will not be reversed on appeal in the absence of a clear abuse of that discretion. *Jackson v. State*, 2009 Ark. 336, ___ S.W.3d ___. The burden of establishing an abuse of discretion falls squarely on the shoulders of the appellant. *Brown v. State*, 374 Ark. 341, 288 S.W.3d 226 (2008). An appellant must not only demonstrate that the trial court abused its discretion by denying a motion for a continuance, but he must also show prejudice that amounts to a denial of justice. *Smith v. State*, 352 Ark. 92, 98 S.W.3d 433 (2003).

In this case, appellant moved for a continuance on the ground that his appointed counsel was not prepared for trial. On appeal, appellant maintains that the trial court abused its discretion by denying the motion. In its brief, the State contends that appellant has not shown any prejudice flowing from the trial court's ruling, asserting that appellant's counsel ably defended him at trial. We, however, are not able to determine whether appellant did or did not suffer prejudice because appellant has not abstracted the record of trial. We also note that appellant failed to abstract the entire discussion between court and counsel on the continuance issue.

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For these reasons, we find appellant's abstract to be flagrantly deficient. Accordingly, we order appellant's counsel to file a substituted brief curing the deficiencies in the abstract within fifteen days from the date of this opinion. After service of the substituted brief, the State shall have the opportunity to file a responsive brief, or it may choose to rely on the brief previously filed in this appeal.

Rebriefing ordered.

PITTMAN and BAKER, JJ., agree.