



IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

ROBERT SPURLOCK

APPELLANT

FILED

V.

AUG 20 2010

NO. 2009-KA-1728-COA

**OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS**

STATE OF MISSISSIPPI

APPELLEE

REPLY BRIEF OF THE APPELLANT

ORAL ARGUMENT NOT REQUESTED

MISSISSIPPI OFFICE OF INDIGENT APPEALS

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REPLY ARGUMENT

**THE RECORD IS SUFFICIENT TO SUPPORT SPURLOCKS' ASSIGNMENT OF ERROR
AND THEREFORE HIS ISSUE IS NOT BARRED ON APPEAL**

Although the suppression hearing's transcript was not included in the appellate record, Spurlock is not procedurally barred for arguing that the police unlawfully seized him. The State correctly asserts that the appellant is responsible for presenting "a record of trial proceedings sufficient to undergird his assignments of error." *Winters v. State*, 473 So. 2d 452, 457 (Miss. 1985). Spurlock's appellate record is sufficient to support his assignment of error.

The appellate record contains Spurlock's motion to suppress, as well as the trial court's order denying that motion. [R.E. 5, 14] The trial court's order includes a detailed statement of his findings of fact that this Court should review. Spurlock's assignment of error attacks the trial court's findings and this information was designated as a part of the record.

The State cites *Juarez v. State*, 965 So. 2d 1061, 1065 (¶12) (Miss. 2007), as supporting authority that failure to include the motion hearing transcript bars this argument on appeal. This case is not applicable to Spurlock's case. In *Juarez*, the Court determined that Juarez was procedurally


CONCLUSION

Based on the foregoing, as well as the issue and argument raised in his initial brief, the Appellant, Robert Spurlock, prays that this Court reverse and render the trial court's decision.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY:


ERIN E. PRIDGEN
COUNSEL FOR APPELLANT

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CERTIFICATE OF SERVICE

I, Erin E. Pridgen, Counsel for Robert Spurlock, do hereby certify that I have this day caused to be mailed via United States Postal Service, First Class postage prepaid, a true and correct copy of the above and foregoing **REPLY BRIEF OF THE APPELLANT** to the following:

Honorable David H. Strong
Circuit Court Judge
McComb, MS 39649

Honorable Dewitt (Dee) T. Bates, Jr.
District Attorney, District 14
284 East Bay Street
Magnolia, MS 39652

Honorable Jim Hood
Attorney General
Post Office Box 220
Jackson, MS 39205-0220

This the 20th day of August, 2010.


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