

ARKANSAS COURT OF APPEALS

DIVISION I

No. CACR10-1144

JOSEPH ANTHONY SCAMARDO, JR.
APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered October 5, 2011

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT, FORT
SMITH DISTRICT
[No. CR-08-1443]

HONORABLE STEPHEN TABOR,
JUDGE

REBRIEFING ORDERED

LARRY D. VAUGHT, Chief Judge

Joseph Scamardo, Jr., was found guilty by a Sebastian County Circuit Court jury of second-degree sexual assault. On appeal, he raises two evidentiary issues, arguing that the trial court abused its discretion in (1) excluding extrinsic evidence of a prior inconsistent statement by the alleged victim and (2) permitting the alleged victim's father to testify about what the victim told him about the incident. We cannot reach the merits of Scamardo's appeal because of deficiencies in the abstract and addendum.

Arkansas Supreme Court Rule 4-2(a)(5) (2011) provides in pertinent part:

(5) Abstract. The appellant shall create an abstract of the material parts of all the transcripts (stenographically reported material) in the record. Information in a transcript is material if the information is essential for the appellate court to confirm its jurisdiction, to understand the case, and to decide the issues on appeal.

Accordingly, Scamardo is required to submit an abstract that provides this court the information essential "to understand the case." The jury-trial transcript in this case is 372



pages. Scamardo’s abstract is eight pages. While fourteen witnesses testified at trial, the abstract includes only three pages of witness testimony—those three pages do not include any of the victim’s allegations of sexual assault. The remaining five pages of the abstract consist of argument to the trial court concerning the two evidentiary objections made by Scamardo’s counsel. However, because there is scant testimony abstracted before or after the objections, the objections are without context and essentially meaningless for purposes of appellate review.¹

Additionally, Scamardo’s addendum is deficient. Arkansas Supreme Court Rule 4-2(a)(8)(A)(i) (2011) provides that the addendum must include, among other things, the jury’s verdict forms. Our rules also require that “if an exhibit or other item in the record cannot be reproduced in the addendum, then the party making the addendum must file a motion seeking a waiver of the addendum obligation.” Ark. Sup. Ct. R. 4-2(a)(8)(A)(ii) (2011). In this case, Scamardo failed to include the jury-verdict form in the addendum as required by our rules. Further, he failed to file a motion for waiver of the addendum obligation.

Based upon the deficiencies in the abstract and addendum, we hereby order rebriefing and direct Scamardo to file a substituted brief that complies with our rules. Ark. Sup. Ct. R. 4-2(b)(3) (2011) (allowing parties who file a deficient brief an opportunity to file a

¹ For instance, in his first point, Scamardo argues that he should be able to impeach the victim with extrinsic evidence because this is a “she said, he said” case, and his guilt turns solely on the victim’s credibility. However, we cannot determine what “she said” because Scamardo did not abstract any of the victim’s testimony about the alleged assault. Regarding his second point, we cannot determine if the trial court’s admission of the victim’s father’s testimony about what his daughter told him was an abuse of discretion because Scamardo’s abstract is deficient.



Cite as 2011 Ark. App. 578

conforming brief). The substituted brief, abstract, and addendum shall be due fifteen days from the date of this order. After service of the substituted brief, abstract, and addendum, the State shall have an opportunity to revise or supplement its brief in the time prescribed by the court or it may choose to rely on the brief previously filed in this appeal. While we have noted the above-mentioned deficiencies, we encourage Scamardo's counsel to review Rule 4-2 in its entirety as it relates to the abstract and addendum, as well as the entire record, to ensure that no additional deficiencies are present, as any subsequent rebriefing order may result in affirmance of the order or judgment due to noncompliance with Rule 4-2. *Carter v. Cline*, 2011 Ark. 266, at 2 (citing Ark. Sup. Ct. R. 4-2(b)(3); *Kirkland v. Sandlin*, 2011 Ark. 106 (per curiam)).

Rebriefing ordered.

HOOFFMAN and BROWN, JJ., agree.

John R. VanWinkle, for appellant.

Dustin McDaniel, Att'y Gen., by: *Nicana C. Sherman*, Ass't Att'y Gen., for appellee.