

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR 11-829

TIMOTHY ALLEN WELLS
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered February 15, 2012

APPEAL FROM THE HOT SPRING
COUNTY CIRCUIT COURT,
[NO. CR-10-41-2]

HONORABLE PHILLIP H.
SHIRRON, JUDGE

REBRIEFING ORDERED

DOUG MARTIN, Judge

A Hot Spring County jury found appellant Timothy Wells guilty of criminal attempt to commit first-degree murder and two counts of committing a terroristic act. Wells was sentenced to forty-five years' imprisonment for attempted first-degree murder and twenty-five years' imprisonment for the commission of each terroristic act. Wells also received a twelve-year sentence enhancement on each conviction for using a firearm while committing the felonies. The trial court ordered that the sentences run consecutively. Wells makes several arguments on appeal: (1) the trial court erred in denying his motions for directed verdict; (2) the trial court erred in denying his motion to suppress his custodial statement; (3) the trial court erred in admitting evidence of his involvement with a subsequent murder; and (4) the trial court erred in admitting hearsay. We cannot reach the merits of Wells's arguments at this time due to deficiencies in his abstract and addendum. Accordingly, we remand for rebriefing.



Arkansas Supreme Court Rule 4-2(a)(8) (2010) requires an appellant to submit a brief including an addendum that contains “true and legible copies of the non-transcript documents in the record on appeal that are essential for the appellate court to confirm its jurisdiction, to understand the case, and to decide the issues on appeal.”

Robin Halbert, the 911 Director for Hot Spring County, testified that he recorded a call to the dispatch center made by the victim, Gustavo Cervantes Rodriguez. The audio recording of the 911 call was played in open court. The exhibit in Wells’s addendum, however, is merely a photocopy of a compact disc. 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). Wells filed no such motion seeking a waiver with regard to the 911 recording. At trial, a certified interpreter assisted Rodriguez with his testimony because Rodriguez did not speak fluent English. The 911 audio recording was not transcribed into the record, and a transcript was not made available. Wells is directed to include a compact disc containing the 911 recording in his addendum and provide a transcript of the 911 recording, as translated by a certified interpreter, in order to promote this court’s understanding of the issues on appeal.

If an exhibit referred to in the abstract is in the addendum, then the abstract shall include a reference to the addendum page where the exhibit appears. Ark. Sup. Ct. R. 4-2(a)(5)(A). Wells failed to comply with this requirement. For example, Senior Special Agent Shannon Sheppard and Sergeant Mark Davis testified with respect to a *Miranda*-rights form signed by Wells; however, no reference to the addendum page corresponding to that exhibit



appears in the abstracted testimony. Wells's failure to include such references is not limited to this one example, and we direct Wells to correct all such deficiencies.

Wells specifically argues that the trial court erred in admitting hearsay, yet Wells failed to include in the abstract his objection to Corporal Dan Ussery's testimony, along with the trial court's ruling on the objection. It is well-settled law that the record on appeal is confined to that which is abstracted, and failure to abstract a critical matter precludes this court from considering the issue on appeal. *Edwards v. State*, 321 Ark. 610, 906 S.W.2d 310 (1995). We direct Wells to include in the abstract his objection and the trial court's ruling in order to aid this court's review of his argument with respect to hearsay.

When an appellant submits an insufficient abstract or addendum such that the court cannot reach the merits of the case, the appellate court will notify the appellant that he will be afforded fifteen days in which to cure the deficiencies and file a substituted abstract, brief, and addendum at his own expense. Ark. Sup. Ct. R. 4-2(b)(3). Upon the filing of such a substituted brief by the appellant, the State will be afforded an opportunity to revise or supplement its brief in the time prescribed by the clerk. *Id.* We encourage Wells's counsel, prior to filing a substituted brief, to examine Rules 4-2 and 4-3 to ensure that he has complied with our rules and that no additional deficiencies are present. *Scamardo v. State*, 2011 Ark. App. 578. If, after the opportunity to cure the deficiencies, Wells fails to file a complying abstract, brief, and addendum within the prescribed time, the judgment may be affirmed for noncompliance with the rules. *Id.*

Rebriefing ordered.

GRUBER and BROWN, JJ., agree.



Cite as 2012 Ark. App. 151

Gregory Crain, for appellant.

Dustin McDaniel, Att’y Gen., by: *Rebecca B. Kane*, Ass’t Att’y Gen., for appellee.