

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR11-415

EDWARD ANTHONY LIGGINS
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered October 3, 2012

APPEAL FROM THE CRAIGHEAD
COUNTY CIRCUIT COURT,
WESTERN DISTRICT,
[NO. CR-09-1147]

HONORABLE CINDY THYER,
JUDGE

REMANDED TO SUPPLEMENT THE
RECORD; REBRIEFING ORDERED

WAYMOND M. BROWN, Judge

A Craighead County jury found appellant Edward Anthony Liggins guilty of first-degree murder and first-degree battery. He was sentenced to forty years' imprisonment for first-degree murder; however, his sentence was enhanced by fifteen years and ten years, respectively, for employing a firearm and for committing the crime in the presence of a child.¹ The sentence plus the enhancements were to run consecutively, for an aggregate sentence of sixty-five years' imprisonment. He was sentenced to twenty-years' imprisonment for first-degree battery. This sentence was to run concurrently to the sixty-five year sentence.²

¹Ark. Code Ann. § 16-90-120 and Ark. Code Ann. § 5-4-702 (Supp. 2011).

²His probation on an underlying offense was also revoked and he was sentenced to thirty-years' imprisonment to run concurrently to the above convictions. However, the revocation is not an issue in this appeal.



Liggins subsequently filed a motion for a new trial. His motion was denied. He timely filed his notice of appeal.

Liggins argues on appeal that (1) the trial court erred by not ordering a mistrial when, during the penalty phase, a victim-impact witness improperly recommended to the jury that he receive a sentence of life without parole; (2) the trial court abused its discretion by not correcting the actions of trial counsel and the prosecutor when they read jury instructions during voir dire; (3) Liggins was denied counsel of his choice when the trial court refused to grant a continuance to allow Liggins's appellate counsel the opportunity to enter her appearance and prepare for trial; (4) the trial court committed reversible error when it insisted that Liggins continue to be represented by his trial counsel after Liggins clearly and unequivocally asserted his constitutional right to represent himself, thereby denying him his right to self-representation; (5) the trial court abused its discretion by denying Liggins's motion for new trial because his trial counsel's performance was deficient in that he abdicated his duty as counsel as guaranteed by the Sixth Amendment; (6) the trial court erred in denying Liggins's motion for directed verdict, because there was insufficient evidence to support his first-degree murder conviction; (7) the trial court erred by imposing an illegal sentence when it did not sentence Liggins in accordance with Ark. Code Ann. §§ 5-1-103(A) and 5-4-104(a)³; (8) the trial court erred in denying Liggins's motion to suppress statements made while he was in police custody; and (9) the trial court erred by imposing an illegal sentence when it ran the forty-year jury verdict, the fifteen-year firearm enhancement, and the ten-year

³(Repl. 2006).



committing a felony in the presence of a child enhancement consecutively. We do not reach the merits of Liggins’s arguments due to deficiencies in the record and brief.

During Liggins’s jury trial, CDs of 911 calls were played for the jury. However, they were not transcribed in the record. Likewise, during Liggins’s hearing on his motion for a new trial, a taped interview of a potential witness was played. There is also no transcript of this interview found in the record. Unless waived on the record by the parties, it is the duty of the circuit court “to require that a verbatim record be made of all proceedings . . . pertaining to any contested matter before the court or the jury.”⁴ This court can sua sponte direct that omissions be corrected by filing a certified, supplemental record. Accordingly, we remand the case to the circuit court to correct and supplement the record. Liggins has thirty days from today to file a supplemental record.

Arkansas Supreme Court Rule 4-2(a)(5)(A)⁵ provides that all material parts of a transcript must be abstracted. “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.”⁶ Here, it is evident that Liggins has not abstracted all material portions of the trial. Rather, he has identified those portions most helpful to his case and displayed them in the light most favorable to his position. We cannot review this case without a brief that outlines all of the evidence considered by the jury and court, including

⁴*Wright v. State*, 2011 Ark. App. 729 (citing Ark. Sup. Ct. Admin. Order No. 4(a) (2011)).

⁵(2011).

⁶*Id.*



the evidence adverse to Liggins.⁷ Although as one of his points on appeal Liggins argues that the court erred in denying his motion to suppress a statement made while he was in police custody, he has failed to abstract the material portions of the pretrial motions' hearing. Additionally, Liggins has omitted abstracting portions of the transcript, stating that those portions relate to pleadings filed and are not relevant to the appeal. On close examination, however, some of the omitted pages consist of material testimony that should have been abstracted. We also note that Liggins's abstract is missing some pages.⁸

Arkansas Supreme Court Rule 4-2(a)(5)(B) states that the abstract shall be an impartial condensation, without comment or emphasis, of the transcript (stenographically reported material). Liggins has, throughout his abstract, placed certain portions of the testimony in bold print. This is contrary to the rules and should be corrected.

Arkansas Supreme Court Rule 4-2(a)(8) requires that an appellant's brief include an addendum consisting of all documents essential to this court's resolution of the issues on appeal. Here, items missing from Liggins's addendum, include, but are not limited to the following: (1) the report of the medical examiner, (2) Liggins's motion to sever one count of the information from the two charges he was convicted of, (3) Liggins's *Miranda* form, (4) Liggins's first motion to suppress, (5) the order of protection against Liggins, (6) the victim/witness statement, (7) the text messages between Liggins and the victim, (8) the crime

⁷Once the record is supplemented to include the missing transcripts, if they are material to a point on appeal, they too, will need to be abstracted.

⁸Supp. Ab. pages 2-7, 44-45, and 132-33; Ab. pages 106-21.



lab report, (9) the client-attorney jail visitor log, and (10) Liggins's guilty plea statement from another case.

Due to numerous deficiencies in Liggins's abstract and addendum, we order him to file a substituted brief that complies with our rules.⁹ The substituted brief, abstract, and addendum shall be due fifteen days after the record is supplemented.¹⁰ We remind counsel that the examples we have noted are not to be taken as an exhaustive list of deficiencies. Counsel should carefully review the rules to ensure that no other deficiencies exist. Failure to file a compliant brief within fifteen days could result in the trial court's decision being summarily affirmed for noncompliance with our rules.¹¹

Remanded to supplement the record; rebriefing ordered.

ABRAMSON and HOOFFMAN, JJ., agree.

Teresa Bloodman, for appellant.

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

⁹Ark. Sup. Ct. R. 4-2(b)(3).

¹⁰*Id.*

¹¹Ark. Sup. Ct. R. 4-2(c)(2).