

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR12-332

DEREK VAN MULLINS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered October 24, 2012

APPEAL FROM THE GRANT
COUNTY CIRCUIT COURT
[No. CR-2011-56-1]

HONORABLE CHRIS E WILLIAMS,
JUDGE

REBRIEFING ORDERED

LARRY D. VAUGHT, Chief Judge

Derek Van Mullins was convicted by a Grant County jury of breaking or entering and theft of property. Mullins appeals his convictions arguing that the trial court erred in refusing to instruct the jury on criminal trespass—a lesser included offense of breaking or entering. We cannot reach the merits of Mullins’s argument because his addendum is deficient.

Arkansas Supreme Court Rule 4-2(a)(8)(A)(i) (2012) provides that the addendum must include, among other things, the jury’s verdict forms. Our rules also require that “[i]f 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) (2012). In this case, Mullins failed to include the jury-verdict forms in the addendum as required by our rules, and he failed to file a motion for waiver of the addendum obligation.

Based upon the deficiency in the addendum, we hereby order rebriefing and direct Mullins to file a substituted brief that complies with our rules. Ark. Sup. Ct. R. 4-2(b)(3) (2012)



Cite as 2012 Ark. App. 579

(allowing parties who file a deficient brief an opportunity to file a 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 Mullins'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 the rule. *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.

WYNNE and BROWN, JJ., agree.

David R. Cannon, for appellant.

Dustin McDaniel, Att'y Gen., by: *Lauren Elizabeth Heil*, Ass't Att'y Gen., for appellee.