

# ARKANSAS COURT OF APPEALS

DIVISION I  
No. CACR11-536

MARCUS PATTON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered February 27, 2013

APPEAL FROM THE POPE COUNTY  
CIRCUIT COURT [NO. CR-2010-  
174]

HONORABLE WILLIAM M.  
PEARSON, JUDGE

REMANDED TO SETTLE AND  
SUPPLEMENT THE RECORD;  
REBRIEFING ORDERED

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## JOHN MAUZY PITTMAN, Judge

After a jury trial, appellant was found guilty of aggravated robbery and sentenced to imprisonment for a term of twenty-five years. On appeal, he argues that the evidence is insufficient to support his conviction; that the trial court was obligated to make an inquiry under *Batson v. Kentucky*, 476 U.S. 79 (1986), despite the lack of any objection by appellant's attorney; and that the trial court erred in failing to instruct the jury on a lesser-included offense despite the failure of appellant's attorney to request such an instruction. We remand for the record to be settled and supplemented, and we order rebriefing.

As stated, the sufficiency of the evidence is at issue in this appeal. Statements made by the accused regarding the crime with which he is charged are of utmost significance in analyzing the sufficiency of the evidence. Appellant, on two separate occasions, was Mirandized and made recorded statements to police officers regarding the robbery. These



statements—one a video recording and the other an audio recording—were admitted into evidence and played for the jury. The record contains no transcript of these statements, and the digital recordings, although attached to the record, were not included in appellant’s addendum.

We remand for the trial court to supply us with a transcript of appellant’s custodial statements. Unless waived on the record by the parties, Arkansas Supreme Court Administrative Order No. 4(a) imposes upon the circuit court the duty to require that a verbatim record be made of all proceedings pertaining to any contested matter before the court or the jury. Here, there is no indication that the parties waived on the record the making of an official transcription of these recorded statements. We consequently remand to the circuit court to settle the record by requiring that verbatim transcriptions of the recordings played at trial be made and that the record be supplemented by the addition of these transcriptions within thirty days of this opinion. *See Dillard v. State*, 2012 Ark. App. 503.

We direct appellant to file a substituted abstract, brief, and addendum incorporating both the transcripts of appellant’s custodial statements with which the record will be supplemented and the CDs or DVDs of those statements as is required by Arkansas Supreme Court Rule 4-2(a)(8)(A)(i), and to do so within fifteen days after the supplemental record is filed with this court.

We encourage appellant to review our rules prior to filing the above-mentioned substituted abstract, brief, and addendum and to rectify any deficiencies or inaccuracies other than those we have mentioned specifically. A party who files a deficient brief is afforded one



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opportunity to file a conforming brief pursuant to Ark. Sup. Ct. R. 4-2(b)(3). As just one example of a critical omission from the addendum, we point out that appellant has failed to include the charging instrument on which the prosecution was based. We also note that excessive abstracting is as violative of Rule 4-2 as are omissions of material matters. See *Schwarz v. Moody*, 55 Ark. App. 6, 928 S.W.2d 800 (1996). Appellant therefore should, before abstracting matters such as jury selection and arguments of counsel, be prepared to demonstrate that such inclusion is necessary for an understanding of non-frivolous arguments presented on appeal.

Remanded to settle and supplement the record; rebriefing ordered.

GRUBER and WHITEAKER, JJ., agree.

*Teresa Bloodman*, for appellant.

*Dustin McDaniel*, Att’y Gen., by: *Valerie Glover Fortner*, Ass’t Att’y Gen., for appellee.