

# ARKANSAS COURT OF APPEALS

DIVISION III  
No. CR-15-707

ELLIS BRISHER

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered February 17, 2016

APPEAL FROM THE CRAWFORD  
COUNTY CIRCUIT COURT  
[NOS. 17CR-14-17, 17CR-14-39,  
17CR-14-211]

HONORABLE MICHAEL MEDLOCK,  
JUDGE

REMANDED TO SETTLE AND  
SUPPLEMENT THE RECORD;  
REBRIEFING ORDERED

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## CLIFF HOOFFMAN, Judge

Ellis Brisher appeals after his suspended imposition of sentence was revoked by the Crawford County Circuit Court and he was sentenced to serve seventy-two months' imprisonment in case number 17CR-14-17. On appeal, appellant's sole contention is that the circuit court violated the Confrontation Clause by allowing the police officers' testimony that the confidential informant had told them that appellant delivered oxycodone. However, we cannot address the merits at this time because we must remand for the record to be supplemented and for appellant to file a brief that complies with our rules regarding the contents of a brief.

During the revocation hearing, the State introduced an audio recording of a controlled buy between a confidential informant and the appellant. Although the recording was



admitted into evidence and played for the court at the revocation hearing, there is no transcript of the recording. Moreover, appellant failed to abstract the recording in his brief.

Arkansas Supreme Court Administrative Order No. 4(a) imposes upon the trial court a duty to require that a verbatim record be made of all proceedings pertaining to any contested matter before the court or the jury unless the parties waive that requirement on the record. *See Chantharath v. State*, 2015 Ark. App. 442. We have not been directed to such a waiver in the record to explain the failure to provide a transcript. In previous cases where there was no official transcription in the record of a statement or other recording that was played at trial, this court has remanded the case to the circuit court to settle the record by requiring that a verbatim transcription be made and that the record be supplemented with this transcription. *Id.* Although appellant does not specifically challenge the sufficiency of the evidence supporting his revocation, the contents of the recording are potentially relevant to his evidentiary argument and to any harmless-error analysis on appeal.

We therefore remand this case to the circuit court for it to settle the record by requiring that a verbatim transcription be made of the audio recording that was played for the court at the revocation hearing and to supplement the record with the addition of this transcription within thirty days of this court's opinion. *Id.* We further direct appellant to file a substituted abstract, brief, and addendum incorporating this transcript in compliance with Arkansas Supreme Court Rule 4-2 (2015) within fifteen days after the supplemental record has been filed with this court. Upon the filing of such a substituted brief, the appellee will be afforded an opportunity to revise or supplement its brief in the time prescribed by the



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clerk. *Id.* The deficiencies we have noted are not to be taken as an exhaustive list, and we encourage counsel for the appellant to review our rules to ensure that no other deficiencies are present. *Wells v. State*, 2012 Ark. App. 151.

Remanded to settle and supplement the record; rebriefing ordered.

VAUGHT and BROWN, JJ., agree.

*Lisa-Marie Norris*, for appellant.

*Leslie Rutledge*, Att'y Gen., by: *Brooke Jackson*, Ass't Att'y Gen., for appellee.