

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR 09-1371

JENNIFER MAE RAMSEY
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered September 15, 2010

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. CR-07-4624]

HONORABLE MARION
HUMPHREY, JUDGE

REBRIEFING ORDERED

COURTNEY HUDSON HENRY, Judge

A jury in Pulaski County found appellant Jennifer Ramsey guilty of aggravated robbery and theft of property. In an amended judgment and commitment order, the trial court sentenced appellant to concurrent terms totaling ten years in prison. For reversal, appellant argues that the evidence is not sufficient to support her convictions, and she contends that the trial court erred in denying her motion for a new trial. For the reasons discussed herein, we order rebriefing.

Our review discloses that appellant filed an untimely notice of appeal. However, the supreme court granted her motion to pursue a belated appeal. *Ramsey v. State*, 2010 Ark. 13. Our perusal of the notice of appeal reflects that it is flawed in one other respect. The notice does not state that appellant is appealing the denial of her motion for a new trial. A notice of appeal must identify the order appealed, and orders not mentioned in a notice of appeal are

not properly before the appellate court. *McDonald v. State*, 356 Ark. 106, 146 S.W.3d 883 (2004); *Rawe v. Rawe*, 100 Ark. App. 90, 264 S.W.3d 549 (2007); *Daniel v. State*, 64 Ark. App. 98, 983 S.W.2d 146 (1998). Because the notice of appeal did not reference the denial of the motion for a new trial, the notice was not sufficient to effect an appeal from the denial of the motion.

Even so, we are able to address the issues raised in the new-trial motion on appeal because they are nonetheless preserved for appeal. In the motion for a new trial, appellant asserted that the evidence was not sufficient to support the jury's verdicts and that the trial court erred in denying her motion for a continuance and her motion in limine to exclude certain evidence. All of these issues were raised and ruled upon at trial and are advanced in her argument for reversal in this appeal. While appellant has included in the abstract her motions for a directed verdict, which are necessary to preserve the issue of the sufficiency of the evidence, *see* Ark. R. Crim. P. 33.1, appellant failed to include in the abstract the arguments of counsel and the rulings made by the trial court with respect to the denial of her motion for a continuance and her motion in limine. These omissions require us to order rebriefing.

The record in this case was lodged on January 14, 2010; therefore, the abstracting requirements fall under the revised version of Rule 4-2 of the Rules of the Arkansas Supreme Court and Court of Appeals, which became effective on January 1, 2010. *See In re Arkansas Supreme Court and Court of Appeals Rules 4-1, 4-2, 4-3, 4-4, 4-7 and 6-9*, 2009 Ark. 534 (per

curiam). Rule 4-2(a)(5) provides that an appellant shall create an abstract of the material parts of the transcript. The rule further provides that material information includes counsel's statements and arguments, colloquies between court and counsel, and rulings. Rule 4-2(b)(3) allows parties who have filed a deficient abstract an opportunity to file a conforming brief. Therefore, we order rebriefing and give appellant fifteen days to cure the deficiencies in the abstract. In addition, as presently constituted, appellant's brief contains argument concerning the denial of the motion for a continuance and the denial of the motion in limine under one heading. Our rules require, however, arguments to be listed and argued separately. Ark. Sup. Ct. R. 4-2(a)(3) & (7). Thus, counsel is also directed to revise the statement of the points on appeal in his brief and the argument section of the brief to conform with the requirements of the rule.

Rebriefing ordered.

GRUBER and BAKER, JJ., agree.