

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR10-263

DAVID WAYNE FIKES

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered September 15, 2010

APPEAL FROM THE WASHINGTON
COUNTY CIRCUIT COURT
[NO. CR-09-647-1]

HONORABLE WILLIAM A. STOREY,
JUDGE

REBRIEFING ORDERED

WAYMOND M. BROWN, Judge

Appellant David Fikes was convicted by a jury of computer child pornography and was sentenced to fifteen years' imprisonment. His sole argument on appeal is that the trial court erred by denying his motion for directed verdict because the circumstantial evidence does not prove he committed the illegal acts. We order rebriefing because Fikes has failed to abstract any testimony presented during his defense.

A motion for directed verdict is a challenge to the sufficiency of the evidence.¹ The test for determining the sufficiency of the evidence is whether substantial evidence, direct or circumstantial, supports the verdict.² Substantial evidence is evidence of sufficient certainty and precision to compel a conclusion one way or another and pass beyond mere suspicion or

¹*Ross v. State*, 346 Ark. 225, 57 S.W.3d 152 (2001).

²*Id.*

conjecture.³ On appeal, the evidence is reviewed in the light most favorable to the appellee and only the evidence supporting the verdict is considered.⁴ Guilt can be established without eyewitness testimony, and evidence of guilt is not less because it is circumstantial.⁵

Rule 4-2(a)(5) of the Arkansas Rules of the Supreme Court and Court of Appeals provides in pertinent part:

Abstract. The appellant shall create an abstract of the material parts of all the transcripts (stenographically reported material) in the record. Information in a transcript is material if the information is essential for the appellate court to confirm jurisdiction, to understand the case, and to decide the issues on appeal.

Fikes contends that the State's case-in-chief is the only evidence relevant to his appeal; however, he is mistaken. We view *the evidence* in the light most favorable to the appellee, not just the appellee's evidence. Because Fikes has failed to abstract all material parts of all transcripts as required by Ark. Sup. Ct. R. 4-2(a)(5), we order rebriefing. Fikes has fifteen days in which to file a substituted abstract, addendum, and brief to conform to Rule 4-2(a)(5).⁶ Failure to comply within the time prescribed may result in the judgment being affirmed for noncompliance.⁷

Rebriefing ordered.

ROBBINS and KINARD, JJ., agree.

³*Id.*

⁴*Id.*

⁵*Id.*

⁶Ark. Sup. Ct. R. 4-2(b)(3).

⁷*Id.*