

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR 10-36

ANDREW LOVETT

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered September 29, 2010

APPEAL FROM THE UNION
COUNTY CIRCUIT COURT
[NO. CR-08-373-4]

HONORABLE HARVEY YATES,
JUDGE

REBRIEFING ORDERED

COURTNEY HUDSON HENRY, Judge

A jury in Union County found appellant Andrew Lovett guilty of second-degree murder, found that he used a firearm in committing the offense for sentence enhancement purposes, and found that he was also guilty of being a felon in possession of a firearm. As an habitual offender, appellant received consecutive sentences totaling sixty-eight years in prison. For reversal, appellant contends that the circuit court erred in ruling that the State could cross-examine him about a prior manslaughter conviction and that the circuit court erred in allowing the State to introduce into evidence a photograph depicting the deceased's body. For the reasons discussed herein, we order rebriefing.

Rule 4-2(a)(5) provides that an appellant shall create an abstract of the material parts of all the transcripts in the record. Further, the rule states that information is considered

material if it is essential for the appellate court to decide the issues on appeal. By way of example, material information may be found in counsel's statements and arguments, as well as colloquies between court and counsel, and the court's rulings. Ark. Sup. Ct. R. 4-2(a)(5)(A).

In this appeal, appellant challenges two evidentiary rulings made by the circuit court, arguing in each instance that the prejudicial effect exceeded the probative value of the evidence. In his abstract, appellant has properly included the discussions between court and counsel and the court's rulings on appellant's objections. However, appellant has failed to abstract any of the testimony offered at trial. The testimony elicited from the witnesses is necessary to decide the issues raised on appeal because we cannot determine either the probative value or the prejudicial effect of the contested evidence without having a clear picture of the overall evidence presented at trial. Accordingly, we order rebriefing and direct counsel to file a substituted brief curing this deficiency within fifteen days of this opinion.

Rebriefing ordered.

GRUBER and BAKER, JJ., agree.