

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR10-224

SHAWN MASSEY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered October 20, 2010

APPEAL FROM THE FAULKNER
COUNTY CIRCUIT COURT
[NO. CR-09-146]

HONORABLE DAVID L.
REYNOLDS, JUDGE

REBRIEFING ORDERED

JOSEPHINE LINKER HART, Judge

Appellant, Shawn Massey, argues on appeal that the “circuit court committed reversible error by finding [him] guilty of battery in the second degree.” Ark. Code Ann. § 5-13-202 (Supp. 2009). In his addendum, appellant has included an information showing that he was charged with second-degree battery and a judgment and disposition order showing that he was found guilty of second-degree battery. The State, however, alludes to an amended information, which was not included in appellant’s addendum, showing that appellant was charged with third-degree domestic battering. Ark. Code Ann. § 5-26-305(a)(1) (Supp. 2009). The State also refers to the circuit court’s findings at the end of trial, which were not included in appellant’s abstract, indicating that the circuit court found appellant guilty of third-degree domestic battering. The State further notes that the crime

was a Class D felony because appellant also had been found guilty of third-degree domestic battering within the past five years. Ark. Code Ann. § 5-26-305(b)(2)(B)(iii) (Supp. 2009). The sentencing exhibits also were not included in appellant's addendum. The State asserts that the judgment and disposition order is incorrect and appries this court that the "clerical error on the judgment-and-disposition order has been brought to the attention of the prosecuting attorney, who, at the time this brief is being filed, is seeking to file a corrected judgment-and-disposition order showing the proper crime."

In essence, the State explains that the judgment and disposition order contains a clerical error and appellant was actually found guilty of third-degree domestic battering. The State then goes on to argue that there was substantial evidence to support this charge. Even so, appellant challenges on appeal the sufficiency of the evidence to support the charge of second-degree battery. Appellant does not assert that the judgment and disposition order was correct or incorrect.

Given the apparent disconnect between the State's and appellant's arguments on appeal, and given the absence of the materials described above in appellant's abstract and addendum, we remand for rebriefing. Appellant must provide in his abstract and addendum those materials necessary for this court to understand the case. Ark. Sup. Ct. R. 4-2(a)(5)(A), (a)(8)(A). Abstracting the court's findings at trial, and including in the addendum the amended information and sentencing exhibits, would have enhanced this court's understanding of the case.

Further, we note that Arkansas Supreme Court has stated that, when necessary, the circuit court can enter an order nunc pro tunc at any time to correct clerical errors in a judgment or order. *State v. Rowe*, 374 Ark. 19, 285 S.W.3d 614 (2008). Given the apparent discrepancies in this case—that a judgment and disposition order shows that appellant was found guilty of second-degree battery—the parties may deem it advisable, on motion, to seek remand to settle and supplement the record with an amended order.

Rebriefing ordered.

ROBBINS and GRUBER, JJ., agree.