Cite as 2018 Ark. App. 299

ARKANSAS COURT OF APPEALS

DIVISION II
No. CR-17-934

Opinion Delivered May 9, 2018

JARMALL KELLEY APPELLANT	APPEAL FROM THE JEFFERSON COUNTY CIRCUIT COURT [NO. 35CR-15-246]
V.	HONORABLE BERLIN C. JONES, JUDGE
STATE OF ARKANSAS APPELLEE	REBRIEFING ORDERED

LARRY D. VAUGHT, Judge

Appellant Jarmall Kelley appeals his conviction by a Jefferson County jury of residential burglary, aggravated assault, theft by receiving, and interference with custody. On appeal, Kelley argues that the circuit court erred in denying his motions for directed verdict because the State failed to present sufficient evidence to support his conviction for aggravated assault.

We cannot reach the merits of Kelley's appeal because his abstract is flagrantly deficient. Arkansas Supreme Court Rule 4-2(a)(5) (2017) requires an appellant to "create an abstract of the material parts of all the transcripts (stenographically reported material) in the record." The rule also provides that the abstract "shall be an impartial condensation" of the transcript, and "[n]o more than one page of a transcript shall be abstracted without giving a record page reference." Ark. Sup. Ct. R. 4-2(a)(5)(B); *McDaniel v. McDaniel*, 2018 Ark. App.

269, at 1, __ S.W.3d __, __. It is the duty of the appellant in a criminal case to abstract such parts of the record that are material to the points argued in appellant's brief. *Manning v. State*, 318 Ark. 1, 883 S.W.2d 455 (1994).

This case stems from an altercation between Kelley and Ariel Crompton, the mother of his child, in which Kelley entered Ariel's apartment and forcefully took the child against Ariel's will. Ariel's father, Clifton Crompton, testified at trial that when he approached Kelley outside the apartment, Kelley pulled out a gun, waved it around while holding his child, and told Clifton that he would shoot him if Clifton tried to stop Kelley from taking the child. Clifton testified that Kelley's threats caused Clifton to stop trying to retrieve the child because to do so would "put everybody else in danger."

Clifton's testimony that Kelley had threatened to shoot him appears on page 313 of the record but is not abstracted. This abstracting deficiency appears to be intentional because Kelley then argues that "there was no evidence that he pointed the gun at or verbally threatened any individual . . . ." The State argues in response that Kelley verbally threatened Clifton, but the State failed to provide this testimony in a supplemental abstract including this testimony.

Our review indicates that Kelley's abstract does not offer an impartial condensation of the record. We must therefore order rebriefing. Kelley has thirty days from the date of this opinion to file a substituted brief, abstract, and addendum that comply with our rules. The State may revise or supplement its brief within fifteen days of the filing of Kelley's substituted brief or may rely on its previously filed brief. Ark. Sup. Ct. R. 4-2(b)(3). The deficiencies we have noted are not to be taken as an exhaustive list. We strongly encourage

Kelley to review the rules and ensure that no other deficiencies exist beyond those identified here.

Rebriefing ordered.

GLOVER and BROWN, JJ., agree.

Potts Law Office, by: *Gary W. Potts*, for appellant.

Leslie Rutledge, Att'y Gen., by: *Jacob H. Jones*, Ass't Att'y Gen., for appellee.