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ARKANSAS COURT OF APPEALS

DIVISION III

No. CR-18-429

STEVEN SWANIGAN

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered: March 13, 2019

APPEAL FROM THE GARLAND
COUNTY CIRCUIT COURT
[NO. 26CR-14-378]

HONORABLE JOHN HOMER
WRIGHT, JUDGE

REBRIEFING ORDERED

RITA W. GRUBER, Chief Judge

Appellant Steven Swanigan was convicted by a Garland County Circuit Court jury of one count of first-degree murder and two counts of first-degree battery for entering an apartment in Hot Springs and firing multiple gunshots, killing Mayela Mata and injuring her twenty-month-old daughter and a friend, Antouin Bond. Appellant was sentenced to an aggregate term of 720 months' imprisonment. He raises six points for reversal; however, we do not address the merits of appellant's arguments because of deficiencies in the abstract and addendum, and we order rebriefing.

Arkansas Supreme Court Rule 4-2(a)(8) (2018) requires the appellant's brief to contain an addendum consisting of all documents in the record that are essential for the appellate court to confirm its jurisdiction, understand the case, and decide the issues on appeal. The rule specifically lists the following examples of required items: "docket sheets,

superseded pleadings, discovery related documents, proffers of documentary evidence, jury instructions given or proffered, and exhibits (such as maps, plats, photographs, computer disks, CDs, DVDs).” Ark. Sup. Ct. R. 4-2(a)(8)(A)(i). One of appellant’s points on appeal is a challenge to the sufficiency of the evidence identifying him as the perpetrator of the crimes. He also challenges the pretrial identification of him by a Sonic employee who testified that she saw him drive though the Sonic parking lot minutes before the crimes occurred at an apartment down the street from the restaurant. Included in the record as an exhibit was a DVD of the surveillance video from Sonic taken during that time. The record also included a DVD of the surveillance video from the apartment complex where the crimes occurred taken during the time of the incident. Although appellant’s addendum contains photocopies of photographs of the envelopes containing these DVDs, it does not include physical copies of the DVDs. We therefore order appellant to submit a supplemental addendum that includes a physical copy of these DVDs.

In addition, one of appellant’s points on appeal is that the circuit court abused its discretion by admitting evidence in the form of testimony and a video of a “fluid trail” of power-steering fluid from the Cadillac that appellant was driving at the time of the event. The trail extends from the home of the person from whom appellant borrowed the Cadillac to the scene of the crimes. Appellant failed to include a copy of the DVD of the “fluid trail” in the addendum. Because the DVD is essential for us to understand the case and decide the issues on appeal, we order him to include the DVD in his supplemental addendum. Further, appellant argues on appeal that the circuit court abused its discretion

in admitting rebuttal evidence of a three-way phone conversation between appellant, Scarlett Shurett, and Amy Botsick regarding Amy's proposed testimony at trial. Appellant did not include a copy of the CD audio recording of this conversation in the addendum. We order him to include a copy of this recording in his supplemental addendum.

Finally, pages 239–86 of appellant's abstract consists of direct reprints of the trial transcript. Arkansas Supreme Court Rule 4-2(a)(5)(A) requires all material information recorded in a transcript to be abstracted. A photocopy of the record is not an abstract.

(B) *Form*. The abstract shall be an impartial condensation, without comment or emphasis, of the transcript (stenographically reported material). The abstract must not reproduce the transcript verbatim. No more than one page of a transcript shall be abstracted without giving a record page reference. In abstracting testimony, the first person ("I") rather than the third person ("He or She") shall be used. The question-and-answer format shall not be used. In the extraordinary situations where a short exchange cannot be converted to a first-person narrative without losing important meaning, however, the abstract may include brief quotations from the transcript.

Ark. Sup. Ct. R. 4-2(a)(5)(B).

Appellant has fifteen days from the date of this opinion to file a substituted brief, abstract, and addendum that complies with our rules. Ark. Sup. Ct. R. 4-2(b)(3). We encourage counsel to review Rule 4-2 in its entirety as it relates to the abstract and addendum to ensure that no additional deficiencies are present. Finally, we are not authorizing appellant to modify his arguments.

After service of the substituted brief, abstract, and addendum, the State shall have an opportunity to revise or supplement its brief, due fifteen days from the date appellant

files his substituted brief. The State may choose to rely on the brief previously filed in this appeal.

Rebriefing ordered.

WHITEAKER and VAUGHT, JJ., agree.

James Law Firm, by: *Michael Kiel Kaiser* and *William O. “Bill” James, Jr.*, for appellant.

Leslie Rutledge, Att’y Gen., by: *Brad Newman, Ass’t Att’y Gen.*, for appellee.