

ARKANSAS COURT OF APPEALS

DIVISION IV  
No. CACR08-350

MONTGOMERY DWIGHT  
HEATHMAN

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered December 3, 2008

APPEAL FROM THE MADISON  
COUNTY CIRCUIT COURT,  
[NO. CR 2007-82]

HONORABLE WILLIAM A. STOREY,  
JUDGE

REBRIEFING ORDERED

JOSEPHINE LINKER HART, Judge

A Madison County jury convicted Montgomery Dwight Heathman of third-offense driving while intoxicated, driving on a suspended license, and speeding. He received an aggregate sentence of 100 days' imprisonment in the Madison County Jail and a fine of \$6100. On appeal, Heathman argues that the trial court erred in 1) refusing to strike a portion of a police videotape on which he makes incriminating statements without having first been advised of his rights as set forth in *Miranda v. Arizona*; 2) allowing the State to present "inadmissible evidence" concerning a portable breath test; and 3) denying his motion for a directed verdict. Heathman, however, has failed to abstract or include in his addendum the videotape that is the subject of his first point and in large part would help determine the resolution of his third point. He has also failed to abstract the opening statement, which is material to this appeal because the trial judge found that during his opening statement, Heathman "opened the door" to introducing what Heathman argues in his second point is "inadmissible evidence." We therefore order rebriefing.

Because the above-referenced material was omitted from Heathman’s abstract and addendum, his brief is not in compliance with Rule 4-2 of the Rules of the Arkansas Supreme Court and the Arkansas Court of Appeals. Rule 4-2(a)(5) requires that an appellant place in his abstract all material parts of the trial that are necessary for “an understanding of all questions presented to the Court for decision,” and Rule 4-2(a)(8) requires that an appellant’s addendum contain all “relevant pleadings, documents, or exhibits essential to the understanding of the case.” The opening statement must be abstracted for us to consider his second point on appeal. Regarding the video tape, it must either be copied and placed in the addendum or abstracted. *See Hodge v. State*, 329 Ark. 57, 945 S.W.2d 384 (1997). We direct appellant to cure the deficiency by filing a substituted abstract, addendum, and brief within fifteen days from the date of the entry of this order. *See* Rule 4-2(b)(3).

Rebriefing ordered.

PITTMAN, C.J., and GRIFFEN, J., agree.