

ARKANSAS COURT OF APPEALSDIVISION II
No. CACR 11-829

TIMOTHY ALLEN WELLS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered May 16, 2012

APPEAL FROM THE HOT SPRING
COUNTY CIRCUIT COURT
[NO. CR-10-41-2]HONORABLE PHILLIP SHIRRON,
JUDGE

REBRIEFING ORDERED

DOUG MARTIN, Judge

A Hot Spring County jury found appellant Timothy Wells guilty of criminal attempt to commit first-degree murder and two counts of committing a terroristic act. Wells was sentenced to forty-five years' imprisonment for attempted first-degree murder and twenty-five years' imprisonment for the commission of each terroristic act. Wells also received a twelve-year sentence enhancement on each conviction for using a firearm while committing the felonies. The trial court ordered that the sentences run consecutively. Wells makes several arguments on appeal; however, we cannot reach the merits of his arguments due to repeated deficiencies in his abstract. Accordingly, we order rebriefing.

We previously ordered rebriefing in this case due to deficiencies in Wells's abstract and addendum. *See Wells v. State*, 2012 Ark. App. 151. The case is before this court again, yet we still cannot reach the merits of Wells's arguments because Wells failed to abstract his directed-verdict motions, which we note were included in his first brief. Since Wells

challenges the sufficiency of the evidence supporting his convictions, this omitted material is essential for our review.

Arkansas Supreme Court Rule 4-2(a)(5) (2012) requires that an appellant create an abstract of the material parts of the transcript in the record. Information is material if it is essential for the appellate court to confirm its jurisdiction, to understand the case, and to decide the issues on appeal. Ark. Sup. Ct. R. 4-2(a)(5) (2011). The directed-verdict motions and renewed motions are required to preserve a challenge to the sufficiency of the evidence. Ark. R. Crim. P. 33.1(c) (2011). When an appellant fails to abstract a directed-verdict motion and response thereto, the brief on appeal is not in compliance with Rule 4-2(a)(5). *Schubert v. Target Stores, Inc.*, 2009 Ark. 89, 302 S.W.3d 33.

Pursuant to Arkansas Supreme Court Rule 4-2(b)(3), we order Wells to file a substituted brief curing this deficiency within fifteen days from the entry of this order. After service of the substituted brief, the State will have the opportunity to file a responsive brief, or it may choose to rely on the brief previously filed in this appeal.

We strongly advise Wells's counsel to examine our rules closely to ensure that no additional deficiencies are present and to submit a compliant brief within the prescribed time because any subsequent rebriefing order in this criminal matter will be referred to the Committee on Professional Conduct. *See, e.g., Lee v. State*, 375 Ark. 421, 291 S.W.3d 188 (2009) (per curiam).

Rebriefing ordered.

VAUGHT, C.J., and BROWN, J., agree.