

SUPREME COURT OF ARKANSAS

Conte v. State

2014 Ark. 381 (2014) · No. CR-13-721 · Decided September 18, 2014

SUMMARY

The Arkansas Supreme Court declined to reach the merits of Richard Ralph Conte's criminal appeal because his brief and addendum did not comply with Arkansas Supreme Court Rule 4-2. The court held that a DVD recording introduced at trial was essential to the appeal and remanded for the record to be settled and supplemented with a verbatim transcription of the audio material. The court ordered rebriefing after the supplemental record was filed.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Arkansas
DECIDED	September 18, 2014
DOCKET	CR-13-721
DISPOSITION	remanded
PROCEDURAL POSTURE	Direct appeal from convictions for two counts of capital murder and firearm enhancements. The Arkansas Supreme Court did not reach the merits because the appellant's brief and addendum failed to comply with Arkansas Supreme Court Rule 4-2(a)(8).
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion
PARTIES	Richard Ralph Conte v. State of Arkansas

TOPICS

- appellate procedure
- criminal procedure
- evidence
- preservation of error

PRACTICE AREAS

- appellate procedure
- criminal procedure
- evidence

QUESTIONS PRESENTED

1. Whether the appeal should proceed when the appellant's addendum omitted a DVD recording essential to the court's understanding of the case and resolution of the issues.
2. Whether the record should be remanded for settlement and supplementation with a verbatim transcription of audio material played at trial when no waiver of the verbatim-record requirement appears.

HOLDINGS

1. An addendum that omits a DVD essential to the Supreme Court's understanding of the case and ability to decide the merits does not comply with Arkansas Supreme Court Rule 4-2(a)(8)(A)(i); the record must be supplemented before the appeal can be decided.
2. When no waiver is shown, the circuit court must require a verbatim record of proceedings involving a contested matter, and the record must be supplemented with a transcript of audio material played at trial.

KEY QUOTATIONS

"The DVD is essential to the understanding of this case and to this court's ability to make a decision on the merits." (2014 Ark. 381, at 2)

"Therefore, we remand this case to the circuit court to settle the record by requiring that a verbatim transcription be made of any audio recording that was played at trial." (2014 Ark. 381, at 2)

FACTUAL BACKGROUND

Conte was convicted of two counts of capital murder and received two life sentences with firearm enhancements. In connection with a motion to dismiss and the State's case-in-chief, the parties introduced and played a June 26, 2002, recorded statement in DVD format. Conte's appellate addendum omitted the DVD, and the record did not show that the parties had waived the requirement of a verbatim record for contested proceedings involving the audio recording.

PROCEDURAL HISTORY

Conte was convicted in the Faulkner County Circuit Court on January 22, 2013, and sentenced to two life sentences, along with firearm enhancements. On appeal, he raised issues concerning precharge delay, the sufficiency of the evidence, the exclusion of defense evidence, Rule 404(b) evidence, and evidentiary prejudice. The Supreme Court remanded to settle and supplement the record and ordered rebriefing rather than deciding the merits.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The circuit court must settle the record by requiring a verbatim transcription of any audio recording played at trial. The supplemental record containing the transcript must be filed within thirty days of the opinion. Conte

must then file a substituted brief containing an abstract of the transcribed audio recordings within fifteen days after the supplemental record is filed. The State may revise or substitute its brief within fifteen days after Conte files the substituted brief, or may rely on its previously filed brief.

OPINION

PER CURIAM.

Cite as 2014 Ark. 381 SUPREME COURT OF ARKANSAS No. CR-13-721 RICHARD RALPH CONTE Opinion Delivered September 18, 2014 APPELLANT APPEAL FROM THE FAULKNER V. COUNTY CIRCUIT COURT [NO. CR-11-1028] STATE OF ARKANSAS HONORABLE CHARLES E. APPELLEE CLAWSON, JR., JUDGE REMANDED TO SETTLE AND SUPPLEMENT THE RECORD; REBRIEFING ORDERED. PER CURIAM On January 22, 2013, appellant, Richard Ralph Conte, was convicted of two counts of capital murder as well as firearm enhancements and sentenced to two life sentences.

On appeal, Conte presents the following points (1) the circuit court erred in denying Conte's motion to dismiss when it found that the State had a "satisfactory reason" for the nine-year delay before filing charges; (2) the circuit court erred in not granting Conte's motion for directed verdict; (3) the circuit court's grant of the State's motion in limine was a violation of Conte's right to present a "complete defense" under both federal and state constitutional guarantees of due process, confrontation, and compulsory process; (4) the circuit court abused its discretion in finding that a kidnapping committed by Conte was relevant under Rule 404(b) of the Arkansas Rules of Evidence; and (5) the circuit court abused its discretion when it overruled numerous objections, including objections that the introduction of the evidence Cite as 2014 Ark.

381 was more prejudicial than probative. We do not reach the merits of Conte's arguments, however, because his brief does not comply with Arkansas Supreme Court Rule 4-2(a)(8)(2014). Rule 4-2(a)(8)(A)(i) of the Rules of the Supreme Court of Arkansas provides that the addendum shall contain true and legible copies of the non-transcript documents in the record on appeal that are essential for this court to confirm its jurisdiction, to understand the case, and to decide the issues on appeal, including exhibits such as CDs and DVDs.

In his first point on appeal, Conte contends that the circuit court erred in denying his motion to dismiss. At the pretrial hearing regarding his motion to dismiss, Conte introduced a June 26, 2002, recorded statement of Conte in DVD format in support of his motion.

The State also introduced the same recorded statement on DVD in its case-in-chief and played the DVD for the jury. However, Conte's addendum does not include the DVD. Rule 4-2(a)(8)(A)(i) requires that the addendum contain the DVDs if they are essential to our understanding of the case.

The DVD is essential to the understanding of this case and to this court's ability to make a decision on the merits. Further, in the absence of a proper waiver, Administrative Order No. 4(a) imposes a duty on the circuit court to require that a verbatim record be made of all proceedings pertaining to any contested matter before the court or the jury. Ark. Sup.

Ct. Admin. Order No. 4(a) (2013). Here, there is no evidence of a waiver. Therefore, we remand this case to the circuit court to settle the record by requiring that a verbatim transcription be made of any audio recording that was played at trial.

The record on appeal must be supplemented with the transcript of the audio material within thirty days of this opinion's date. Conte must then 2 Cite as 2014 Ark. 381 include, in his substituted brief, an abstract of the transcribed audio recordings.

Before filing a substituted brief, we strongly encourage Conte to review our rules to ensure that no additional deficiencies are present. After the record is settled and the supplemental record has been filed in this court, Conte will have fifteen days to file a substituted brief. Ark. Sup. Ct. R. 4-2(b) (3).

The State may revise or substitute its brief within fifteen days of the filing of Conte's substituted brief, or it may rely on its previously filed brief. Remanded to settle and supplement the record; rebriefing ordered. Benca & Benca, by: Patrick J. Benca, for appellant. Dustin McDaniel, Att'y Gen., by: Brad Newman, Ass't Att'y Gen., for appellee. 3