

[Cite as *State v. Ballinger*, 2004-Ohio-4984.]

IN THE COURT OF APPEALS  
TWELFTH APPELLATE DISTRICT OF OHIO  
WARREN COUNTY

STATE OF OHIO, :  
 :  
 Plaintiff-Appellee, : CASE NO. CA2003-07-069  
 :  
 -vs- : O P I N I O N  
 : 9/20/2004  
 :  
 JAMES W. BALLINGER, :  
 :  
 Defendant-Appellant. :

CRIMINAL APPEAL FROM LEBANON MUNICIPAL COURT  
Case No. CR0300120

Andrea N. Hicks, City of Lebanon Prosecuting Attorney, 50 S.  
Broadway Street, Lebanon, OH 45036, for plaintiff-appellee

James Ballinger, 308 E. Warren Street, Lebanon, OH 45036, pro  
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**POWELL, P.J.**

{¶1} Defendant-appellant, James Ballinger, appeals a decision of the Lebanon Municipal Court finding him guilty for failure to file city tax returns. We affirm the trial court's decision.

{¶2} In February 2003, a criminal complaint was filed against appellant for failure to file city tax returns for a twelve-year period, from 1990 to 2001, in violation of Lebanon Codified Ordinances 151.05(A). In June 2003, the trial court

found appellant guilty of the offense. He was fined \$500 and sentenced to six months of jail time, which was stayed for 60 days to file the tax returns.

{¶3} Appellant now appeals the trial court's decision and raises two assignments of error in the judgment against him for failure to file city tax returns.

{¶4} Assignment of Error No. 1:

{¶5} "THE TRIAL COURT CORRECTLY FOUND FACTS BUT CAME TO THE WRONG CONCLUSIONS."

{¶6} Appellant's first assignment of error will be construed by this court as a challenge to the manifest weight of the evidence in support of the trial court's entry of conviction. In determining whether a conviction is against the manifest weight of the evidence, a court of appeals, reviewing the entire record, "weighs the evidence and all reasonable inferences, considers the credibility of the witnesses and determines whether in resolving conflicts, the [trier of fact] clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." State v. Thompkins, 78 Ohio St.3d 380, 387, 1997-Ohio-52, quoting State v. Martin (1983), 20 Ohio App.3d 172, 175. The discretionary power to grant a new trial should be exercised only in the exceptional case where the evidence weighs heavily against conviction. Id.

{¶7} However, in this case, the appellant has not provided the court with a transcript of the trial proceedings for

review. The duty to provide a transcript for appellate purposes falls upon the appellant. See Knapp v. Edwards Laboratories (1980), 61 Ohio St.2d 197, 199. Absent such record, an appellate court must presume the regularity of the proceedings below. See Hartt v. Munobe (1993), 67 Ohio St.3d 3, 7; Knapp, supra.

{¶8} Without an adequate record, an appellate court cannot determine whether the record supports the conviction. On the contrary, the presumption of regularity requires the determination that the trial court properly weighed the available evidence. The original trier of fact is in the best position to judge the credibility of the witnesses and the weight to be given to the evidence presented. Appellant's first assignment of error is overruled.

{¶9} Assignment of Error No. 2:

{¶10} "CITY OF LEBANON'S TAX LAWS ARE UNCONSTITUTIONAL."

{¶11} Appellant's second assignment of error questions the constitutionality of the city's tax laws. However, he does not provide any arguments which challenge the ordinances' validity.

{¶12} App.R. 16(A)(7) requires appellant's brief to include:

{¶13} "An argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions."

{¶14} Absence of specific arguments notwithstanding, the court will briefly address the constitutionality of the city's

tax provisions. In construing a statute, general rules of construction dictate that a court will presume the intent of the law to be in compliance with the constitutions of the state and of the United States. R.C. 1.47. Under the Ohio Constitution, municipalities have the right to exercise all powers of local self-government that are not in conflict with the general law.

Sections 3 and 7, Article XVIII, Ohio Constitution. The power of taxation is included within this grant of authority. See Thompson v. City of Cincinnati (1965), 2 Ohio St.2d 292, 294. Appellant's second assignment of error is overruled.

{¶15} Judgment affirmed.

WALSH and VALEN, JJ., concur.