

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 08CA009462

Appellee

v.

MINDY MCCAULEY

APPEAL FROM JUDGMENT
ENTERED IN THE
OBERLIN MUNICIPAL COURT
COUNTY OF LORAIN, OHIO
CASE Nos. 07TRC05259-A, B, C, D
 07CRB01148-A, B

Appellant

DECISION AND JOURNAL ENTRY

Dated: May 26, 2009

MOORE, Presiding Judge.

{¶1} Appellant, Mindy McCauley, appeals from the decision of the Oberlin Municipal Court. This Court affirms.

I.

{¶2} In early November of 2007, Appellant, Mindy McCauley (“McCauley”) was issued a traffic citation for operating a vehicle while under the influence of alcohol and/or drugs (“OVI”), in violation of R.C. 4511.19(A)(1)(a), operating a motor vehicle with a blood alcohol content of over .08 grams (“BAC”), in violation of R.C. 4511.19(A)(1)(d), driving a weaving course, in violation of Amherst Codified Ordinance section 331.34, and drug abuse, in violation of Amherst Codified Ordinance section 513.12. McCauley pled not guilty to the charges.

{¶3} McCauley filed a motion to suppress the evidence. On April 17, 2008, the trial court held a hearing on her motion. On May 5, 2008, the trial court denied her motion to suppress. On July 7, 2008, McCauley waived her right to a jury trial and pled no contest to the OVI charge, the BAC charge, the possession of drug paraphernalia charge and the possession of drugs charge. The remaining charges were dismissed. On July 31, 2008, the trial court found her guilty of the charges, sentenced her to 30 days of incarceration, and suspended her license for three years. McCauley timely appealed her convictions, and has raised one assignment of error for our review.

II.

ASSIGNMENT OF ERROR

“THE TRIAL COURT ERRED TO THE PREJUDICE OF [MCCAULEY], IN VIOLATION OF THE FOURTH AMENDMENT, AND THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE 1, SECTION 10 OF THE OHIO CONSTITUTION, WHEN THE COURT DENIED [MCCAULEY’S] MOTION TO SUPPRESS AND ENTERED A JUDGMENT OF CONVICTION.”

{¶4} In her sole assignment of error, McCauley contends that the trial court erred when it denied her motion to suppress and entered a judgment of conviction. We do not agree.

{¶5} “In this case, the record on appeal consists of the docket and journal entries from the trial court and a videotape of the [motion to suppress hearing]. This Court finds, however, that the videotape is insufficient to satisfy [McCauley’s] burden of establishing error.” *State v. Kearns*, 9th Dist. No. 06CA0020-M, 2006-Ohio-5811, at ¶13, citing *State v. Komadina*, 9th Dist. No. 02CA008104, 2003-Ohio-1800, at ¶25.

{¶6} App.R. 9(A) provides, in relevant part:

“[w]hen the transcript of proceedings is in the videotape medium, counsel shall type or print those portions of such transcript necessary for the court to determine

the questions presented, certify their accuracy, and append such copy of the portion of the transcripts to their briefs.”

{¶7} It appears that McCauley attempted to order a transcript from the official court reporter; however, the municipal court noted that it did not have an official court reporter to transcribe the video pursuant to App.R. 9(B).

{¶8} We recognize that App.R. 9(A) states, “a videotape recording of the proceedings constitutes the transcripts of proceedings other than hereinafter provided, and, *for purposes of filing*, need not be transcribed into written form.” Therefore, by filing the videotape, McCauley has satisfied her burden *to file* the transcript for purposes of filing, but she has failed to satisfy her burden to provide this Court with the written or typed portions of the transcript necessary for us to determine her assignment of error. App.R. 9(A). We find this imperative to our review because without a written transcript, McCauley cannot point to the parts of the record upon which her argument relies. App.R. 16(A)(7). To this end, we note that although McCauley discusses specifics of the hearing and quotes specific testimony, she cannot point this Court to the portion of the transcript where this testimony took place. App.R. 16(A)(7), App.R. 12(A)(2). Therefore, we may disregard this assigned error. App.R. 12(A)(2).

{¶9} “Accordingly, this Court finds that appellant has failed to comply with the mandates of App.R. 9. Without the portions of the trial [transcript], ‘the reviewing court has nothing to pass upon and *** has no choice but to presume the validity of the lower court’s proceedings and affirm.’ As [McCauley] has failed to provide this Court with the necessary portions of the record for review of her assignment[] of error, this Court will presume the regularity of the trial court’s proceedings.” *Kearns*, supra, at ¶14, quoting *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199.

{¶10} Accordingly, McCauley’s assignment of error is overruled.

III.

{¶11} McCauley's assignment of error is overruled. The judgment of the Oberlin Municipal Court is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Oberlin Municipal Court, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

CARLA MOORE
FOR THE COURT

WHITMORE, J.
CARR, J.
CONCUR

APPEARANCES:

ROBERT CABRERA, Attorney at Law, for Appellant.

FRANK CARLSON, Attorney at Law, for Appellee.