[Cite as *Metro Parks, Summit Cty. v. Kinnett*, 2010-Ohio-881.]

STATE OF OHIO))ss: COUNTY OF SUMMIT)	IN THE COURT OF APPEALS NINTH JUDICIAL DISTRICT
METRO PARKS, SUMMIT COUNTY Appellee v. JOSHUA J. KINNETT Appellant	C.A. No. 24875 APPEAL FROM JUDGMENT ENTERED IN THE STOW MUNICIPAL COURT COUNTY OF SUMMIT, OHIO CASE No. 2009CRB00960

DECISION AND JOURNAL ENTRY

Dated: March 10, 2010

DICKINSON, Presiding Judge.

INTRODUCTION

{¶1} A park ranger ticketed Joshua Kinnett for improper handling of a firearm in a motor vehicle and drug paraphernalia. A municipal court judge found him guilty of the offenses. Mr. Kinnett has appealed, arguing that his convictions are "an injustice" and that "[t]he arresting [park ranger] did not have probable cause, improper arrest procedure, harassment, and unlawful entry into the vehicle." This Court affirms because Mr. Kinnett did not move to suppress the State's evidence and failed to submit a statement under Rules 9(C) or (D) of the Ohio Rules of Appellate Procedure.

IMPROPER SEARCH

{¶2} To the extent Mr. Kinnett has argued that the park ranger "did not have probable cause, improper arrest procedure, harassment, and unlawful entry into the vehicle[,]" he appears to be challenging the legality of the search and seizure of his person and vehicle. Under Rule

12(C) of the Ohio Rules of Criminal Procedure, a "party may raise by motion any defense, objection, evidentiary issue, or request that is capable of determination without the trial of the general issue." Some issues "must be raised before trial," including "[m]otions to suppress evidence . . . on the ground that it was illegally obtained." Crim. R. 12(C)(3). If a defendant fails to raise a defense, objection, or request that "must be [raised] prior to trial," he has forfeited it. Crim. R. 12(H).

{¶3} Mr. Kinnett's argument that the park ranger did not have probable cause to search him or his vehicle or to arrest him is, essentially, an argument that the evidence against him was illegally obtained. Accordingly, it had to "be raised before trial." Crim. R. 12(C). Mr. Kinnett did not move to suppress the evidence that the park ranger found before trial. He, therefore, has forfeited his argument. Crim. R. 12(H). To the extent his assignment of error is that the park ranger did not have probable cause to search him or his vehicle, unlawfully entered his vehicle, and incorrectly arrested him, it is overruled.

INADEQUATE RECORD

{¶4} Mr. Kinnett has also argued that his convictions were "an injustice." It appears that Mr. Kinnett has attempted to argue that his convictions were against the manifest weight of the evidence. If a defendant argues that his convictions are against the manifest weight of the evidence, this Court "must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine whether, in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction[s] must be reversed and a new trial ordered." *State v. Otten*, 33 Ohio App. 3d 339, 340 (1986).

{¶5} This Court is unable to review the testimony from Mr. Kinnett's trial because there is no transcript of it in the appellate record. Mr. Kinnett was tried in Stow Municipal Court. According to Rule 25 of the Stow Municipal Court Rules, "[t]here is no official court reporter for the Stow Municipal Court." Instead, "[t]he responsibility of arranging for the attendance of a court reporter shall rest with the . . . party desiring the same. An audio record of all proceedings required by law and made by the court shall be available to any person so requesting and may be transcribed and if approved by the court, such transcription shall serve as the official record of the proceedings." *Id.*

{¶6} Under Rule 5(A)(2) of this Court's local rules, "[i]f the trial court does not have an official court reporter, regardless of the means by which the proceedings were recorded, the appellant shall proceed under App.R. 9(C) or 9(D)." Rule 9(C) provides that, "[i]f no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence . . . from the best available means, including the appellant's recollection. . . . The statement and any objections . . . shall be forthwith submitted to the trial court for settlement and approval." Under Rule 9(D), the parties, "[i]n lieu of the record on appeal . . . may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the trial court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented."

{¶7} As the appellant, Mr. Kinnett had the duty "to arrange for the timely transmission of the record, including any transcripts of proceedings, App. R. 9(C) statement, or App. R. 9(D) statement, as may be appropriate, and to ensure that the appellate court file actually contains all parts of the record that are necessary to the appeal." Loc. R. 5(A). The duty was his because he

has the burden of establishing error in the municipal court. *Knapp v. Edwards Labs.*, 61 Ohio St. 2d 197, 199 (1980). Mr. Kinnett, however, did not prepare a statement of the evidence under Appellate Rule 9(C) or a statement of the case under Rule 9(D).

{¶8} This Court's review is limited to the record provided to it under Rule 9 of the Ohio Rules of Appellate Procedure. App. R. 12(A)(1)(b); *In re T.C.*, 9th Dist. Nos. 07CA009248, 07CA009253, 2008-Ohio-2249, at ¶17. If the record is not sufficient to resolve an assignment of error, it "has no choice but to presume the validity of the lower court's proceedings, and affirm." *Knapp v. Edwards Labs.*, 61 Ohio St. 2d 197, 199 (1980). Accordingly, because Mr. Kinnett did not prepare a statement under Rules 9(C) or (D), this Court must presume that his convictions are not against the manifest weight of the evidence. To the extent that his assignment of error is that his convictions are "an injustice," it is overruled.

CONCLUSION

{¶9} Because Mr. Kinnett did not move to suppress the State's evidence, he forfeited his argument that the park ranger's search and seizure of his person and vehicle were illegal. Because the record is incomplete, this Court must presume that his convictions are not against the manifest weight of the evidence. The judgment of the Stow 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 Stow Municipal Court, County of Summit, 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.

CLAIR E. DICKINSON
FOR THE COURT

WHITMORE, J.
MOORE, J.
CONCUR

APPEARANCES:

JOSHUA KINNETT, pro se, appellant.

JOHN CHAPMAN, prosecuting attorney, for appellee.