

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

EMIL E. KOKAVEC,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 22 MA 0135

Criminal Appeal from the
Mahoning County Court No. 4 of Mahoning County, Ohio
Case No. 2021 TR D 5559

BEFORE:

David A. D'Apolito, Cheryl L. Waite, Carol Ann Robb, Judges.

JUDGMENT:

Affirmed.

Atty. Gina DeGenova, Mahoning County Prosecutor, and *Atty. Edward A. Czopur*, Assistant Prosecuting Attorney, 21 West Boardman Street, 6th Floor, Youngstown, Ohio 44503, for Plaintiff-Appellee and

Atty. James S. Gentile and *Atty. Rhys B. Cartwright-Jones*, 42 North Phelps Street, Youngstown, Ohio 44503, for Defendant-Appellant.

Dated: August 18, 2023

D’Apolito, P.J.

{¶1} Appellant, Emil E. Kokavec, appeals from the November 14, 2022 judgment of the Mahoning County Court No. 4, convicting and sentencing him for driving under OVI suspension following a bench trial. On appeal, Appellant asserts the trial court erred in denying his Crim.R. 29 motion for acquittal. Appellant also takes issue with his sentence. Finding no reversible error, we affirm.

FACTS AND PROCEDURAL HISTORY

{¶2} On December 21, 2021, Appellant was cited for driving under OVI suspension, a misdemeanor of the first degree in violation of R.C. 4510.14(A). Appellant pled not guilty at his initial appearance and waived his right to a speedy trial.

{¶3} A bench trial was held on May 11, 2022.

{¶4} Patrolman Dan Burich, with the Austintown Police Department (“APD”), testified for Appellee, the State of Ohio, that he has been a patrol officer for ten years. (5/11/2022 Bench Trial Tr., p. 5). On December 21, 2021, at 9:51 a.m., Patrolman Burich was on duty running routine traffic control. (*Id.*) He noticed a cracked front windshield on a Ford F-150 and pulled the truck over for an R.C. 4513.02(A) unsafe vehicle violation.¹ (*Id.* at p. 6).

{¶5} Appellant, the driver of the truck, produced proof of insurance, registration, and his driver’s license. (*Id.*) Patrolman Burich looked up Appellant’s driver’s license through the Law Enforcement Automated Database System (“LEADS”), linked to the Ohio Bureau of Motor Vehicles (“BMV”), which revealed Appellant was under an administrative license suspension (“ALS”) for an OVI offense. (*Id.* at p. 6-7). Defense counsel placed a recurring objection on the record to Patrolman Burich’s testimony concerning the information in the LEADS report on the basis of hearsay. (*Id.* at p. 7).

{¶6} When Patrolman Burich returned to the station, dispatch pulled Appellant’s ALS suspension and printed it for the officer. (*Id.* at p. 8); (State’s Exhibit B). Defense counsel did not object when the LEADS report was offered as an exhibit to the trial court.

¹ Appellant does not challenge the traffic stop.

(*Id.* at p. 8-9). In addition to Exhibit B, the State introduced a certified copy of the BMV Form 2255 from the Girard Municipal Court Clerk of Court's Office revealing that at the time of this offense, Appellant was under an OVI suspension. (*Id.* at p. 10-11); (State's Exhibit A). Defense counsel objected to Exhibit A, which was overruled by the trial court. (*Id.* at p. 11-12). Defense counsel did not cross-examine Patrolman Burich.

{¶7} At the close of the State's case, defense counsel moved for an acquittal pursuant to Crim.R. 29, which was overruled by the trial court. (*Id.* at p. 13). Defense counsel called no witnesses and rested. (*Id.*)

{¶8} On May 11, 2022, the trial court sentenced Appellant to 30 days in jail, with 27 days suspended; fined him \$250 plus court costs; placed him on six months' probation; and suspended his driver's license for six months.²

{¶9} Appellant filed a notice of appeal, Case No. 22 MA 0069. This court dismissed that appeal for lack of a final appealable order because the trial court's judgment entry did not contain the fact of conviction pursuant to R.C. 2505.02 and Crim.R. 32(C).

{¶10} Following a status hearing, the trial court issued a judgment entry on July 20, 2022 correcting the foregoing omission and clarifying that Appellant had been found guilty for driving under OVI suspension following a bench trial.

{¶11} Appellant filed another notice of appeal, Case No. 22 MA 0094. This court dismissed that appeal for lack of a final appealable order because the trial court's judgment entry did not include a restatement of the remaining Crim.R. 32(C) elements: the sentence; the judge's signature; and a time stamp from the clerk of courts.

{¶12} Finally, on November 14, 2022, the trial court issued a judgment entry correcting "the scriveners error(s) in the entries filed on May 11, 2022 and July 20, 2022 as required under Crim.R. 32(C)."³ This judgment now constitutes a final appealable order as it contains all necessary elements for an order of conviction and sentence.

{¶13} Appellant filed the instant appeal, Case No. 22 MA 0135, and raises two assignments of error.

² Appellant's sentence was stayed pending appeal.

³ This judgment was issued without a hearing.

ASSIGNMENT OF ERROR NO. 1

THE TRIAL COURT ERRED IN DENYING A CRIM.R. 29 MOTION, GIVEN THAT THE ONLY EVIDENCE SUPPORTING A LICENSE SUSPENSION WAS A COPY OF A LEADS REPORT AND A BMV 2255.

{¶14} In his first assignment of error, Appellant argues the trial court erred in denying his Crim.R. 29 motion for acquittal because the LEADS report and the BMV Form 2255 were insufficient to establish his guilt for driving under OVI suspension.

“When a court reviews a record for sufficiency, ‘(t)he relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.’” *State v. Maxwell*, 139 Ohio St.3d 12, 2014-Ohio-1019, 9 N.E.3d 930, ¶ 146, quoting *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus; *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979).

State v. T.D.J., 7th Dist. Mahoning No. 16 MA 0104, 2018-Ohio-2766, ¶ 46.

{¶15} Appellant takes issue with the guilty finding for driving under OVI suspension, a misdemeanor of the first degree in violation of R.C. 4510.14(A), which states:

No person whose driver’s or commercial driver’s license or permit or nonresident operating privilege has been suspended under section 4511.19, 4511.191, or 4511.196 of the Revised Code or under section 4510.07 of the Revised Code for a conviction of a violation of a municipal OVI ordinance shall operate any motor vehicle upon the public roads or highways within this state during the period of the suspension.

R.C. 4510.14(A).

{¶16} As stated, Patrolman Burich noticed a cracked front windshield on Appellant's truck and pulled over the vehicle for the R.C. 4513.02(A) unsafe vehicle violation. (5/11/2022 Bench Trial Tr., p. 6). Patrolman Burich looked up Appellant's driver's license through the LEADS database, linked to the BMV, which revealed Appellant was under an ALS for an OVI offense. (*Id.* at p. 6-7). Defense counsel placed a recurring objection on the record to Patrolman Burich's testimony concerning the information in the LEADS report on the basis of hearsay. (*Id.* at p. 7).

{¶17} When Patrolman Burich returned to the station, dispatch pulled Appellant's ALS suspension and printed it for the officer. (*Id.* at p. 8); (State's Exhibit B). Defense counsel did not object when the LEADS report was offered as an exhibit to the trial court. (*Id.* at p. 8-9). In addition to Exhibit B, the State introduced a certified copy of the BMV Form 2255 from the Girard Municipal Court Clerk of Court's Office revealing that at the time of this offense, Appellant was under an OVI suspension. (*Id.* at p. 10-11); (State's Exhibit A). Defense counsel objected to Exhibit A, which was overruled by the trial court. (*Id.* at p. 11-12).

{¶18} Appellant claims the LEADS report was not properly admitted. The record reveals defense counsel objected to Patrolman Burich's testimony concerning the information in the LEADS report on the basis of hearsay. However, defense counsel did not object when the LEADS report was offered to the trial court as State's Exhibit B. Appellant has, therefore, waived this argument. *See generally Sullinger v. Reed*, 3rd Dist. Hardin No. 6-20-14, 2021-Ohio-2872, ¶ 18, quoting *Genesis Respiratory Services, Inc. v. Hall*, 99 Ohio App.3d 23, 30, 649 N.E.2d 1266 (4th Dist.1994) (Holding that while the appellant raised a hearsay objection to the testimony regarding the exhibit, the appellant failed to object to the admission of the exhibit itself and, thus, waived any error concerning the admission of the exhibit.)

{¶19} Notwithstanding waiver, Appellant fails to establish that the admittance of the LEADS report was plain error. *State v. Browning*, 7th Dist. Columbiana No. 21 CO 0026, 2023-Ohio-890, ¶ 40, quoting *State v. Jackson*, 7th Dist. Columbiana No. 19 CO 0050, 2021-Ohio-1157, ¶ 25 ("Under Crim.R. 52(B), plain error exists only where there is an obvious deviation from a legal rule that affected the outcome of the proceeding.") Here, Appellant fails to demonstrate that the admittance of the LEADS report constituted

an obvious deviation from a legal rule that affected the outcome of the bench trial. In fact, the LEADS report was properly admitted.

“The admission or exclusion of evidence is within the trial court’s broad discretion and this court will not reverse its decision absent an abuse of that discretion. *State v. Mays*, 108 Ohio App.3d 598, 617, 671 N.E.2d 553 (1996). Abuse of discretion connotes more than an error of law or judgment; it implies that the trial court’s judgment was unreasonable, arbitrary, or unconscionable. *State v. Adams*, 62 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980).” *State v. Bauman*, 7th Dist. Columbiana No. 17 CO 0016, 2018-Ohio-4913, ¶ 52.

State v. Hickey, 7th Dist. Harrison No. 18 HA 0003, 2019-Ohio-2640, ¶ 46.

{¶20} Evid.R. 803(8), the public records exception to the rule against hearsay, states:

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

* * *

(8) Public Records and Reports. Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (a) the activities of the office or agency, or (b) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel, unless offered by defendant, unless the sources of information or other circumstances indicate lack of trustworthiness.

Evid.R. 803(8).

{¶21} This court and our sister courts have held that “LEADS printouts are admissible under Evid.R. 803(8).” *State v. Lett*, 7th Dist. Mahoning No. 08 MA 194, 2009-

Ohio-5268, ¶ 22; see also *State v. Papusha*, 12th Dist. Preble No. CA2006-11-025, 2007-Ohio-3966, ¶ 13; *City of Middleburg Hts. v. D’Ettorre*, 138 Ohio App.3d 700, 707-708, 742 N.E.2d 196 (8th Dist.2000).

{¶22} Evid.R. 901 requires that prior to admitting evidence sufficient to support a finding that the matter in question is what its proponent claims, the proponent must authenticate or identify the evidence. Two examples of authentication or identification that conform to the requirements of the rule include: (1) testimony of a witness with knowledge that a matter is what it is claimed to be; and (2) evidence that a writing authorized by law filed in a public office is from such office where items of that nature are kept. Evid.R. 901(B)(1) and (7). A police officer’s testimony is sufficient to show authenticity of a LEADS printout under Evid.R. 901. See *Papusha, supra*, at ¶ 14; *State v. Schentur*, 8th Dist. Cuyahoga No. 108448, 2020-Ohio-1603, ¶ 32.

{¶23} In the instant matter, Patrolman Burich testified to the following: he obtained Appellant’s driver’s license; checked the license on his in-car computer through LEADS; learned that Appellant was under an OVI suspension; detailed that the LEADS database pulls records from the BMV; explained that staff at the APD also ran a copy of Appellant’s LEADS printout and provided it to him; confirmed the printout was the same one that he saw which was pulled by staff at the APD; the LEADS printout confirmed Appellant was under suspension; it was the record for Appellant; the name on the printout matched the name on Appellant’s driver’s license; the photo on the printout matched Appellant’s license and his appearance; and the printout contained the same identifying information as Appellant’s license, including address, date of birth, etc. (5/11/2022 Bench Trial Tr., p. 6-10).

{¶24} Thus, in addition to being properly admitted, the LEADS report was also properly authenticated through Patrolman Burich’s sufficient testimony at the bench trial, establishing Appellant was under an OVI suspension.

{¶25} Assuming *arguendo* that the LEADS report was not properly admitted, Appellant also claims that the BMV Form 2255 is not sufficient to show suspension.

{¶26} At the bench trial, the State introduced a certified copy of the BMV Form 2255 from the Girard Municipal Court Clerk of Court’s Office revealing that at the time of this offense, Appellant was under an OVI suspension. (*Id.* at p. 10-11); (State’s Exhibit

A). The BMV Form 2255 submitted in this case is a public record, self-authenticating, and was properly admitted and sufficient to show suspension. See *Schentur, supra*, at ¶ 33 (“Ohio Bureau of Motor Vehicles records constitute public records under Evid.R. 803(8)”; *Lett, supra*, at ¶ 23 (“Extrinsic evidence of authenticity is not required for certain domestic public documents and for certified copies of public records as these are self-authenticating. Evid.R. 902(1), (2), and (4)”); *State v. James*, 5th Dist. Licking No. 18-CA-51, 2018-Ohio-4989, ¶ 12-13 (Holding that the appellant’s driving record from the BMV was entered into evidence at his trial as Plaintiff’s Exhibit 1; that a reasonable person could have found beyond a reasonable doubt that the appellant was driving under an OVI suspension; and there was sufficient evidence to support his conviction); *City of Warrensville Heights v. Wulu*, 8th Dist. Cuyahoga No. 57783, 1989 WL 156563, *1 (Dec. 28, 1989) (A police officer may authenticate a BMV printout).

{¶27} Pursuant to *Jenks, supra*, there is sufficient evidence upon which the trier of fact could reasonably conclude beyond a reasonable doubt that the elements of driving under OVI suspension were proven. Thus, the trial court did not err in overruling Appellant’s Crim.R. 29 motion.

{¶28} Appellant’s first assignment of error is without merit.

ASSIGNMENT OF ERROR NO. 2

THE TRIAL COURT ERRED IN SENTENCING THE DEFENDANT IN HIS ABSENCE WITHOUT THE DEFENDANT HAVING WAIVED HIS PRESENCE.

{¶29} In his second assignment of error, Appellant alleges the trial court erred in sentencing him because he was not present at the “final” sentencing hearing.⁴

{¶30} A criminal defendant has a fundamental right to be present at all critical stages of his criminal trial, including the right to be physically present during the imposition of sentence. *State v. Toney*, 7th Dist. Mahoning No. 18 MA 0081, 2020-Ohio-5044, ¶ 10, citing Section 10, Article I of the Ohio Constitution; *State v. Hale*, 119 Ohio St.3d 118, 2008-Ohio-3426, 892 N.E.2d 864, ¶ 100; Crim.R. 43(A). Pursuant to Crim.R. 43(A), the

⁴ This court notes there was only one sentencing hearing.

right of a defendant to be physically present also applies where one sentence is vacated and a new sentence imposed. *City of Columbus v. Rowland*, 2 Ohio App.3d 144, 145, 440 N.E.2d 1365, 1367 (10th Dist.1981).

{¶31} In the case at bar, the record reveals Appellant was sentenced on the day of the bench trial, May 11, 2022. Appellant was present in open court and was represented by counsel. (5/11/2022 Bench Trial/Sentencing Tr.). During that time, the trial court found Appellant guilty and announced his sentence: 30 days in jail, with 27 days suspended; \$250 fine plus court costs; six months' probation; and a six-month driver's license suspension. (*Id.* at p. 14). The trial court stayed Appellant's sentence pending appeal. (*Id.* at p. 15).

{¶32} Appellant's first appeal, Case No. 22 MA 0069, was dismissed by this court for lack of a final appealable order because the trial court's judgment entry did not contain the fact of conviction pursuant to R.C. 2505.02 and Crim.R. 32(C). This did not amount to a vacatur of Appellant's sentence.

{¶33} The parties were present at a status hearing, which resulted in the trial court issuing a judgment entry on July 20, 2022 correcting the foregoing omission and clarifying that Appellant had been found guilty for driving under OVI suspension following a bench trial. No changes to Appellant's sentence were made at that hearing.

{¶34} Appellant's second appeal, Case No. 22 MA 0094, was dismissed by this court for lack of a final appealable order because the trial court's judgment entry did not include a restatement of the remaining Crim.R. 32(C) elements: the sentence; the judge's signature; and a time stamp from the clerk of courts.

{¶35} Finally, on November 14, 2022, the trial court issued a judgment entry correcting "the scriveners error(s) in the entries filed on May 11, 2022 and July 20, 2022 as required under Crim.R. 32(C)." This judgment was issued without a hearing. This judgment now constitutes a final appealable order as it contains all necessary elements for an order of conviction and sentence. Just like the prior judgments, this judgment did not modify or vacate Appellant's sentence. Rather, this judgment was issued in response to this court's dismissal of Appellant's second appeal.

{¶36} Thus, the record reveals Appellant was physically present when his sentence was announced on May 11, 2022 and was represented by counsel. Appellant's

sentence has not changed since and has remained stayed pending appeal. The trial court committed no reversible error regarding Appellant's sentence.

{¶37} Appellant's second assignment of error is without merit.

CONCLUSION

{¶38} For the foregoing reasons, Appellant's assignments of error are not well-taken. The November 14, 2022 judgment of the Mahoning County Court No. 4, convicting and sentencing Appellant for driving under OVI suspension following a bench trial is affirmed.

Waite, J., concurs.

Robb, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Mahoning County Court No. 4 of Mahoning County, Ohio, is affirmed. Costs to be taxed against the Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.