

**IN THE COURT OF APPEALS  
ELEVENTH APPELLATE DISTRICT  
TRUMBULL COUNTY, OHIO**

STATE OF OHIO,	:	<b>OPINION</b>
Plaintiff-Appellee,	:	
- vs -	:	<b>CASE NO. 2010-T-0078</b>
SAUL KERBERT CUSTER,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 2010 CR 00083.

Judgment: Affirmed.

*Dennis Watkins*, Trumbull County Prosecutor, and *LuWayne Annos*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481-1092 (For Plaintiff-Appellee).

*Saul Kerbert Custer*, pro se, PID: A590-091, Lake Erie Correctional Institution, P.O. Box 8000, Conneaut, OH 44030-8000 (Defendant-Appellant).

TIMOTHY P. CANNON, P.J.

{¶1} Appellant, Saul Kerbert Custer, appeals the judgment of the Trumbull County Court of Common Pleas. For the following reasons, we affirm.

{¶2} Appellant was indicted on the following charges: grand theft, in violation of R.C. 2913.02(A)(1), a felony of the fourth degree; four counts of breaking and entering, in violation of R.C. 2911.13(A), felonies of the fifth degree; receiving stolen property, in violation of R.C. 2913.51(A), a felony of the fourth degree; and possessing criminal

tools, in violation of R.C. 2923.24(A), a felony of the fifth degree. A jury trial ensued. Appellant was found guilty of all charges in the indictment.

{¶3} Although appellant filed an appeal, appellant's brief fails to follow the requirements set forth in App.R. 16. For example, appellant has failed to set out separate assignments of error, a statement of the issues presented for our review, or a statement of the case for our review, as required by App.R. 16(A)(3), (4), & (5).

{¶4} Furthermore, a review of the record reveals that appellant has failed to file a transcript of the trial court proceedings. "Upon appeal of an adverse judgment, it is the duty of the appellant to ensure that the record, or whatever portions thereof are necessary for the determination of the appeal, are filed with the court in which he seeks review." *Rose Chevrolet, Inc. v. Adams* (1988), 36 Ohio St.3d 17, 19. (Citations omitted). Furthermore, the Supreme Court of Ohio stated: "[a]ny lack of diligence on the part of an appellant to secure a portion of the record necessary to his appeal should inure to appellant's disadvantage rather than to the disadvantage of appellee." *Id.*

{¶5} In *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199, the Supreme Court of Ohio held:

{¶6} "The duty to provide a transcript for appellate review falls upon the appellant. This is necessarily so because an appellant bears the burden of showing error by reference to matters in the record. \*\*\* When portions of the transcript necessary for resolution of assigned errors are omitted from the record, the reviewing court has nothing to pass upon and thus, as to those assigned errors, the court has no choice but to presume the validity of the lower court's proceedings, and affirm." (Citations omitted.)

{¶7} In a case such as this, appellee is left in the untenable position of having to formulate what it believes the assigned error to be and argue against it as perceived. Appellee should not have to speculate in this manner. As appellant has failed to set forth assignments of error for our review, as well as provide a transcript of the proceedings below, we affirm the judgment of the Trumbull County Court of Common Pleas.

DIANE V. GRENDELL, J.,

CYNTHIA WESTCOTT RICE, J.,

concur.