

[Cite as *Zanesville v. Robinson*, 2010-Ohio-4843.]

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

CITY OF ZANESVILLE	:	JUDGES:
	:	
	:	Hon. Julie A. Edwards, P.J.
Plaintiff-Appellee	:	Hon. John W. Wise, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 09-CA-39
CARL ROBINSON	:	
	:	
	:	
Defendant-Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING: Appeal from the Zanesville Municipal Court
Case No. 09CRB00646

JUDGMENT: DISMISSED

DATE OF JUDGMENT ENTRY: September 23, 2010

APPEARANCES:

For Plaintiff-Appellee:

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Zanesville Law Director's Office
825 Adair Ave.
Zanesville, Ohio 43701

For Defendant-Appellant:

CARL ROBINSON, pro se
817 Maple Ave.
Zanesville, Ohio 43701

Delaney, J.

{¶1} Defendant-Appellant, Carl Robinson, appeals from his conviction in the Zanesville Municipal Court of one count of Disturbing a Lawful Meeting in violation of Zanesville City Ordinance 509.04. The City of Zanesville is Plaintiff-Appellee.

{¶2} The following facts are gleaned from the trial court's file in the court record, as no transcript of the proceedings has been filed:

{¶3} On May 26, 2009, Appellant appeared at the Zanesville City Council Meeting and asked to speak. Subsequently, he was arrested for Disturbing a Lawful Meeting, a violation of Zanesville City Ordinance 509.04, a misdemeanor of the fourth degree. He was also charged with one count of resisting arrest, a violation of Zanesville City Ordinance 525.09, a misdemeanor of the second degree.

{¶4} During the pendency of Appellant's case, in the discovery process, Appellant produced as "evidence", an audio tape of a Zanesville City Council meeting that was held in 2008. He provided a description of the contents of the tape, claiming that the tape "where Defendant Mr. Robinson is explaining assault of April 14th 2008 to city council and declaring a coverup. Also on same cassette is Defendant Mr. Robinson speaking to Mayor Howard (Butch) Zwelling about code enforcement moratorium, meeting was conducted in mayors [sic] office on November 5th 2008. Mayor could clearly be heard saying 'I want to do that' 'but I don't want to cripple the guys upstairs', essentially saying he was for the moratorium. But yet he prepared a memo for city council stating that he did not want the moratorium and ask city council to support him on his decision. Memo was to be presented to council by clerk Joan Ziemer while mayor was on vacation." (Record 18-19).

{¶5} The prosecutor filed a motion to suppress this evidence, and the trial court granted the motion to suppress.

{¶6} Appellant filed various motions for discovery, motions for addresses of witnesses that the prosecution would seek to introduce at trial, motions for a change of venue, and motions for supplemental discovery, asserting that there were various cameras in the building that would show the events as they happened the night of May 26, 2009.

{¶7} On July 31, 2009, the parties entered into a stipulation that a video of the May 26, 2009, City Council meeting was a true and accurate copy of the original video which recorded the events of the evening.

{¶8} On August 4, 2009, a jury trial commenced wherein multiple witnesses were called by both parties. On August 6, 2009, the trial court journalized Appellant's conviction, wherein the jury found him not guilty of the charge of Resisting Arrest, but guilty of the charge of Disturbing a Lawful Meeting. Appellant was ordered to pay a fine of \$250.00 and the court imposed a thirty day jail sentence. Twenty-five days of Appellant's sentence was suspended on the condition that "there are no offenses of similar nature for two years and that Defendant refrain from addressing Zanesville City Council for two years."

{¶9} Appellant takes issue with the outcome of his case filed a document, presumably raising the following as assignments of error, though they were not designated as such in Appellant's filing:

{¶10} "I. THE TRIAL COURT HAS ALLOWED THE PROSECUTING ATTORNEY'S OFFICE OF ZANESVILLE TO PROCEED TO TRIAL, IN A CASE THAT

FROM THE ONSET, WAS A DIRECT VIOLATION OF THE DEFENDANT'S FIRST AMENDMENT RIGHT UNDER THE U.S. CONSTITUTION (TO PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES). THIS WAS BROUGHT TO THE COURT'S ATTENTION IN PRETRIAL, UNFORTUNATELY THE APPELLANT HAS BEEN UNABLE TO OBTAIN A COPY OF THE TRANSCRIPT.

{¶11} "II. THE TRIAL COURT DIRECTLY VIOLATED THE APPELLANT'S FIFTH AMENDMENT RIGHT UNDER THE U.S. CONSTITUTION, BY ATTEMPTING TO COMPEL THE DEFENDANT TO WITNESS AGAINST HIMSELF. THIS IS REFLECTED IN THE CD-ROM PROVIDED BY THE APPELLANT APPROXIMATELY 5HRS. 9 MINUTES AND 30 SECONDS [SIC] INTO THE CD-ROM. AGAIN THE APPELLANT HAS BEEN UNABLE TO OBTAIN A COPY OF THE TRANSCRIPT.

{¶12} "III. THE TRIAL COURT DIRECTLY VIOLATED THE APPELLANT'S SIXTH AMENDMENT RIGHT UNDER THE U.S. CONSTITUTION, BY DEPRIVING THE APPELLANT OPPORTUNITY TO PROPERLY ARGUE THE EVIDENCE BEFORE THE COURT. THIS IS REFLECTED IN THE CD-ROM PROVIDED BY THE APPELLANT APPROXIMATELY 5HRS. 9 MINUTES AND 30 SECONDS [SIC] INTO THE CD-ROM. AGAIN THE APPELLANT HAS BEEN UNABLE TO OBTAIN A COPY OF THE TRANSCRIPT.

{¶13} "IV. THE TRIAL COURT HAS DIRECTLY AND AGAIN VIOLATED APPELLANT'S FIRST AMENDMENT RIGHT UNDER THE U.S. CONSTITUTION, THIS IS REFLECTED IN THE JUDGEMENT [SIC] ENTRY OF JUDGE THOMAS BOPELEY ACTING JUDGE. [SIC]."

I, II, III, IV

{¶14} Upon review of the filings in this matter, we find Appellant's brief not to be in compliance with the Appellate Rules.

{¶15} App. R. 16 states:

{¶16} "(A) Brief of the appellant

{¶17} "The appellant shall include in its brief, under the headings and in the order indicated, all of the following:

{¶18} "(1) A table of contents, with page references.

{¶19} "(2) A table of cases alphabetically arranged, statutes, and other authorities cited, with references to the pages of the brief where cited.

{¶20} "(3) A statement of the assignments of error presented for review, with reference to the place in the record where each error is reflected.

{¶21} "(4) A statement of the issues presented for review, with references to the assignments of error to which each issue relates.

{¶22} "(5) A statement of the case briefly describing the nature of the case, the course of proceedings, and the disposition in the court below.

{¶23} "(6) A statement of facts relevant to the assignments of error presented for review, with appropriate references to the record in accordance with division (D) of this rule.

{¶24} "(7) 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, with citations to the authorities, statutes, and parts of the record on which appellant relies. The argument may be preceded by a summary.

{¶25} “(8) A conclusion briefly stating the precise relief sought.”

{¶26} Compliance with the above-stated rule is mandatory. Also, an appellate court may rely upon App.R. 12(A) in overruling or disregarding an assignment of error because of “the lack of briefing” on the assignment of error. *Henry v. Gastaldo*, 5th Dist. No.2005-AP-03-0022, 2005-Ohio-4109, citing *Hawley v. Ritley* (1988), 35 Ohio St.3d 157, 159, 519 N.E.2d 390, 392-393; *State v. Watson* (1998), 126 Ohio App.3d, 316, 710 N.E.2d 340, discretionary appeal disallowed in (1998), 82 Ohio St.3d 1413, 694 N.E.2d 75.

{¶27} Appellant's filing captioned “Amended Appellants Brief”, fails to separately set forth a table of contents as required by App. R. 16(A)(1). Appellant fails to set forth a table of authorities, as set forth in App. R. 16(A)(2); moreover, Appellant’s filing fails to set forth assignment(s) of error as required by App. R. 16(A)(3). Additionally, Appellant fails to set forth a single legal authority to support his contention that the trial court erred in the proceedings below. Thus, Appellant clearly did not follow the requirements of App.R. 16(A)(7). Essentially, Appellant's merit brief is a summary of testimony and argument as to Appellant's understanding of the law.

{¶28} Appellant moreover fails to cite to any specific place in the record, as is required by App. R. 16(A)(6) and App. R. 16(D), where his alleged errors occurred.

{¶29} Additionally, Appellant has failed to cite any case law or authority supporting any claims that he makes in his “brief.”

{¶30} Recently, this Court observed in *Musleve v. Musleve*, 5th Dist. No.2007CA00314, 2008-Ohio-3961, ¶ 21 (citation omitted), “It is not the function of this

court to construct a foundation for [an appellant's] claims; failure to comply with the rules governing practice in the appellate court is a tactic which is ordinarily fatal.”¹

{¶31} Appellant's appeal is hereby dismissed.

By: Delaney, J.

Edwards, P.J. and

Wise, J. concur.

HON. PATRICIA A. DELANEY

HON. JULIE A. EDWARDS

HON. JOHN W. WISE

¹ Even if Appellant had complied with App. R. 16, we would still be required to affirm the lower court's decision, as Appellant failed to file a transcript in compliance with App. R. 9(B). Therefore, this court is required to presume regularity in the record. *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 400 N.E.2d 384.

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Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
CARL ROBINSON	:	
	:	
Defendant-Appellant	:	Case No. 09-CA-39
	:	

For the reasons stated in our accompanying Memorandum-Opinion on file, this appeal is dismissed. Costs assessed to Appellant.

HON. PATRICIA A. DELANEY

HON. JULIE A. EDWARDS

HON. JOHN W. WISE