

2013 IL App (1st) 112034-U

SECOND DIVISION
December 10, 2013

No. 1-11-2034

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE VILLAGE OF SCHAUMBURG,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. YT 438 684
)	
OSMAN KURTER,)	The Honorable
)	James P. Etchingham,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court.
Justices Harris and Simon concurred in the judgment.

ORDER

- ¶ 1 *Held:* Because we presume, in the absence of a complete record, that the judgment entered by the trial court was in conformity with the law and had a sufficient factual basis we affirm the trial court's judgment that defendant was using a cell phone in a school zone while operating a vehicle.
- ¶ 2 Following a bench trial, defendant Osman Kurter was convicted of using a cell phone in a school zone while operating a vehicle in violation of section 12-610.1(e) of the Illinois Vehicle

Code (Code) (625 ILCS 5/12-610.1(e) (West 2010)). The trial court found defendant guilty and assessed a fine of \$100 and court costs. He now appeals *pro se*. We affirm.

¶ 3 Defendant contends that on May 3, 2011, a Schaumburg police officer pulled him over and issued a citation for using his cell phone in a school zone although he was not using his phone at the time and school was not in session. He also includes, in his brief's appendix, a copy of his cell phone records and argues it is evidence that he was not using his phone prior to the traffic stop.

¶ 4 Although the record on appeal is limited, the following facts can be gleaned from the common law record. On May 3, 2011, defendant was issued a traffic citation alleging "cell phone use in a school zone." Defendant pled not guilty. On June 20, 2011, the trial court found defendant guilty and assessed a fine of \$100 and court costs. Defendant timely appealed.

¶ 5 Initially we note, the appellee, the Village of Schaumburg, has not filed a brief in response to defendant's contentions. However, we have the authority to decide the merits of this appeal because the record is simple and the claimed errors are such that we can decide them without the assistance of an appellee's brief. *People v. Cosby*, 231 Ill. 2d 262, 285 (2008) citing *First Capital Mortgage Corp. v. Talandis Consstruction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 6 This court has recognized that "an appellant has the burden to present a sufficiently complete record of proceedings *** to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *People v. Banks*, 378 Ill. App. 3d 856, 872-73 (2007) citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984).

¶ 7 We will not consider the phone records attached to defendant's brief because attaching a document as an appendix to a brief is not the proper method of supplementing the record. See *Pikovsky v. 8440-8460 N. Skokie Blvd. Cond. Ass'n, Inc.*, 2011 IL App (1st) 103743, ¶ 16.

¶ 8 We affirm the lower court's judgment that defendant was using a cell phone in a school zone while operating a vehicle. In this case, although defendant properly submitted an appellant's brief, he has not included a transcript of the trial or an appropriate substitute. See S. Ct. R. 323 (eff. Dec. 13, 2005). Although a copy of the trial court's judgment is contained in the limited record defendant presents before this court, it does not include the court's reasoning, indicate what issues were raised at trial, or what evidence formed the basis of the court's decision. Therefore, we must presume that the court's ruling has a sufficient factual basis and was in conformity with the law. *Banks*, 378 Ill. App. 3d at 873.

¶ 9 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 10 Affirmed.