

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

NOVEMBER 1996 SESSION

STATE OF TENNESSEE,	*	C.C.A. # 02C01-9510-CC-00318
Appellee,	*	FAYETTE COUNTY
VS.	*	Hon. Jon Kerry Blackwood, Judge
WENDELL T. MAYO,	*	(Letting Dogs Run at Large)
Appellant.	*	

For Appellant:

Wendell T. Mayo, Pro Se  
545 Lynn Road  
Eads, TN 38028

For Appellee:

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OPINION FILED: \_\_\_\_\_

AFFIRMED

GARY R. WADE, JUDGE

## OPINION

The defendant, Wendell T. Mayo, was convicted in general sessions court for allowing dogs to run at large, a Class C misdemeanor. Tenn. Code Ann. §§ 44-8-408, -409. He was sentenced to thirty days in the county jail and ordered to pay \$1,050 in restitution. His pro se appeal (the defendant waived counsel) to the Circuit Court was unsuccessful. The jury returned a guilty verdict. See Tenn. R. Crim. P. 5, 23 (providing the right to appeal the general sessions verdict to Circuit Court and to demand a jury trial in all cases except small offenses). The circuit judge sentenced the defendant to thirty days in jail; the sentence was to be suspended upon the payment of restitution of \$1,000 within thirty days.<sup>1</sup>

In this pro se appeal, the defendant contends that photos presented at trial did not establish that he committed the offense; that police reports did not confirm any damage; and that the testimony of witness Paul Anthony was "outrageous" and "fraudulent." In short, the defendant complains that the "verdict should be overturned." The state has interpreted these arguments as a challenge to the sufficiency of the evidence.

On appeal, the state is entitled to the strongest legitimate view of the evidence and all reasonable inferences which might be drawn therefrom. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). The credibility of the

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<sup>1</sup>Orders of restitution are governed by Tenn. Code Ann. § 40-35-304; the statute requires the sentencing court to consider the defendant's ability to pay and includes provisions for modification upon a showing of good cause.

witnesses, the weight to be given their testimony, and the reconciliation of conflicts in the proof are matters entrusted to the jury as triers of fact. Byrge v. State, 575 S.W.2d 292, 295 (Tenn. Crim. App. 1978). When the sufficiency of the evidence is challenged, the relevant question is whether, after reviewing the evidence in the light most favorable to the state, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Williams, 657 S.W.2d 405, 410 (Tenn. 1983); Tenn. R. App. P. 13(e).

Unfortunately, this court is unable to determine whether the evidence is sufficient. The record on appeal does not contain the transcript of the trial or any type of statement of the evidence. Statements in a brief are not evidence. State v. Bennett, 798 S.W.2d 783, 789 (Tenn. Crim. App. 1990). The petitioner chose to waive the appointment of counsel. That does not, however, suspend the application of well-established guidelines for review. It is the burden of the appellant to prepare a record on appeal that presents a complete and accurate account of what transpired in the trial court with respect to the issues on appeal. Tenn. R. App. P. 24(b). The failure to do so results in a waiver of such issues and a presumption that the ruling of the trial court was correct. See e.g., State v. Oody, 823 S.W.2d 554, 559 (Tenn. Crim. App. 1991); State v. Draper, 800 S.W.2d 489, 493 (Tenn. Crim. App. 1990).

This court must presume that the evidence was sufficient to support the verdict. Thus, the judgment is affirmed.

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Gary R. Wade, Judge

CONCUR:

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David G. Hayes, Judge

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William M. Barker, Judge