IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

SEPTEMBER 1995 SESSION

FILED

November 16, 1995

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,	*	C.C.A. #03C01-9502-CR-00046
APPELLEE,	*	BRADLEY COUNTY
VS.	*	Hon. R. Steven Bebb, Judge
LARRY D. SWAFFORD,	*	(Evading and Resisting Arrest)
APPELLANT.	*	

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OPINION FILED:__________

AFFIRMED

William M. Barker, Judge

OPINION

The appellant, Larry D. Swafford, was convicted of evading arrest, a class A misdemeanor, and resisting arrest, a class B misdemeanor. He was sentenced to eleven months and twenty-nine days, a $250 fine, and thirty days of community service for the former offense, and to six months and a $250 fine for the latter offense. All but ten days of the sentences were suspended, and they are be served concurrently in the Bradley County Jail.

The appellant contends: (a) that the trial court erred in failing to provide a copy of the transcript, (b) that the state failed to prove venue, (c) that the verdicts were "inconsistent," "contrary to law," and "against the weight of the evidence, and (d) that the sentence was disproportionate. We affirm the judgments of the trial court.

The record on appeal does not include a transcript or a statement of the State's evidence. It does include a transcript of the defense evidence, the jury charge, closing arguments, sentencing, and the motion for new trial hearing. The first page of the transcript reads:

> In accordance with T.C.A. 40-14-307, and the definition of a "criminal case" as defined in 40-14-301, misdemeanor cases are not recorded in this Court unless the party retains the Official Court Reporter or another court reporter to preserve the record. Mr. Raulston, the defense attorney in this case from Hamilton County, apparently was not aware the proceedings were not being recorded, and once he became aware of this, requested the court reporter to record the rest of the proceedings....

In the motion for a new trial hearing, counsel said: "It was not until the second half of the trial after the State testified [sic] that I was informed that we would have to...make provisions for a transcript to be taken, though the court reporter was present and did record the second half of the trial."

On appeal, the appellant relies on Tennessee Code Annotated section 40-14-307(a), which reads: "A designated reporter shall attend every stage of each criminal case before the court and shall record verbatim...all proceedings had in open court or such other proceedings as the judge may direct." He also relies upon Tennessee Rule of Criminal Procedure 11(g), which provides that a "verbatim record of the proceedings shall be made" whenever a defendant enters a plea.

The State correctly points out, however, that "criminal case," as used in the above statute, means "the trial of any criminal offense which is punishable by confinement in the state penitentiary and any proceeding for the writ of habeas corpus wherein the unlawful confinement is alleged to be in a state, county or municipal institution." Tenn. Code Ann. §40-14-301(2). The State argues that since the appellant was tried for three misdemeanor offenses,[1] none of which were punishable by greater than eleven months and twenty-nine days in the county jail or workhouse, he could not have been punished by confinement in the state penitentiary. See Tenn. Code Ann. § 40-20-103 & §40-35-111. Thus, he had no right under the statute to a verbatim transcription of the proceedings. See, e.g., State v. Doyle Baugus, No. 03C01-9103-CR-00085 (Tenn. Crim. App., Knoxville, Sept. 17, 1991).

The burden is on the appellant to prepare a record of the proceedings for appellate review. State v. Ballard, 855 S.W.2d 557, 560-61 (Tenn. 1993). An appellate court is precluded from considering an issue when the record does not contain a complete transcript or statement of what transpired in the trial court with respect to the issue raised. State v. Draper, 800 S.W.2d 489, 493 (Tenn. Crim. App. 1989). In such cases, we must presume that the trial court's rulings were supported by sufficient

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[1] In addition to the two convictions, the appellant was tried for and acquitted of assault, a class A misdemeanor.

evidence. State v. Oody, 823 S.W.2d 554, 559 (Tenn. Crim. App. 1991).

We are unable to consider issues with respect to venue, the sufficiency of the convicting evidence, or sentencing without a full transcript of the proceedings. As noted, the definition of "criminal case" for purposes of §40-14-307(a) does not include misdemeanor cases. The appellant could have requested the trial court to provide a court reporter prior to trial, but he did not bring the matter to the trial court's attention until mid-way through the proceedings. The appellant was also free to arrange for his own record of the proceedings to be prepared. See Tenn. Code Ann. §40-14-307(b). But perhaps most simply, the appellant could have prepared a statement of the evidence pursuant to Tennessee Rule of Appellate Procedure 24(c):

> Statement of the Evidence When No Report, Recital, or Transcript is Available--If no stenographic report, substantially verbatim recital or transcript of the evidence or proceedings is available, the appellant shall prepare a statement of the evidence or proceedings from the best available means, including his recollection. The statement should convey a fair, accurate and complete account of what transpired with respect to those issues that are the bases of appeal. ....

See State v. Draper, 800 S.W.2d at 492. The appellant failed to take any such action. Accordingly, given the deficient record on appeal, we must presume that the rulings of the trial court with respect to all of the issues were correct.

William M. Barker, Judge

John K. Byers, Senior Judge

F. Lee Russell, Special Judge