

IN THE UTAH COURT OF APPEALS

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| Bountiful City, |) | MEMORANDUM DECISION |
| |) | (Not For Official Publication) |
| Plaintiff and Appellee, |) | |
| |) | Case No. 20060047-CA |
| v. |) | |
| |) | F I L E D |
| Walter Noel Stewart, |) | (December 7, 2006) |
| |) | |
| Defendant and Appellant. |) | 2006 UT App 483 |

Second District, Bountiful Department, 055801909
The Honorable Rodney S. Page

Attorneys: Walter Noel Stewart, Provo, Appellant Pro Se
 Russell L. Mahan and John C. Ynchausti, Bountiful,
 for Appellee

Before Judges Greenwood, Davis, and Orme.

PER CURIAM:

Walter Noel Stewart appeals from his convictions on charges of speeding and failure to yield to an emergency vehicle. We affirm.

"When reviewing a bench trial for sufficiency of evidence, we must sustain the trial court's judgment unless it is against the clear weight of the evidence or if the appellate court otherwise reaches a definite and firm conviction that a mistake has been made." State v. Larsen, 2000 UT App 106, ¶10, 999 P.2d 1252 (quotations and citation omitted). When challenging the sufficiency of the evidence, a defendant "must marshal all of the evidence in support" of the trial court's findings and then establish that the evidence, including all reasonable inferences, is insufficient to support the findings. Id. at ¶11. Where an appellant fails to marshal the evidence, this court need not consider that challenge to the sufficiency of the evidence in support of the findings. See Tanner v. Carter, 2001 UT 18, ¶17, 20 P.3d 332. Rather, this court will assume that the record supports the findings of the trial court. See State v. Larsen, 828 P.2d 487, 490 (Utah Ct. App. 1992).

Here, Stewart has failed to marshal the evidence in support of his convictions. Instead he recites only facts favorable to

his case and frequently misstates the record below. He argues his position, but he does not set forth the evidence against him and show that, even with the evidence presented, there was insufficient evidence to convict. Because he fails to carry his burden to marshal the evidence, this court need not consider Stewart's arguments that the evidence was insufficient.¹

Accordingly, Stewart's convictions are affirmed.

Pamela T. Greenwood,
Associate Presiding Judge

James Z. Davis, Judge

ORME, Judge (concurring):

I concur in the court's decision. In doing so, I wish to point out that this court reviews the propriety of the district court's ruling on the evidence before it. We do not review the wisdom of an individual police officer's decision to issue a citation nor the prudence of the prosecuting authority in taking a case to trial. Although I question whether a citation would or should ordinarily be issued to a driver in Stewart's circumstances, review of the record shows there certainly is sufficient evidence on which to sustain the convictions.

Gregory K. Orme, Judge

¹Additionally, a review of the record shows there was, indeed, sufficient evidence to convict Stewart of speeding and failing to yield to an emergency vehicle.