

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

DECEMBER 1996 SESSION

STATE OF TENNESSEE,)	
)	
APPELLEE,)	
)	No. 02-C-01-9607-CC-00212
)	
v.)	Dyer County
)	
)	J. Steven Stafford, Judge
)	
JOHN S. TURNER,)	(Aggravated Kidnapping)
)	
APPELLANT.)	

FOR THE APPELLANT:

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OPINION FILED: _____

AFFIRMED

Joe B. Jones, Presiding Judge

OPINION

The appellant, John S. Turner, was convicted of aggravated kidnapping, a Class B felony, by a jury of his peers.¹ The trial court determined the appellant was a standard offender and imposed a Range I sentence consisting of confinement for eight (8) years in the Department of Correction. The appellant raises the following issue for review:

Whether the trial Court, acting as the thirteenth juror, erred in his ruling on defendant-appellant's Motion for New Trial by sustaining the verdict of the jury under Count I of the Indictment for aggravated kidnapping and the sentence imposed for such conviction.

After a thorough review of the record, the briefs submitted by the parties, and the law governing the issue presented for review, it is the opinion of this Court the judgment of the trial court should be sustained.

The trial court, as the thirteenth juror, views the evidence to determine where the preponderance of the evidence lies. Consequently, this Court cannot review the decision of the trial court when acting as the thirteenth juror. State v. Burlison, 868 S.W.2d 713, 719 (Tenn. Crim. App. 1993). Nevertheless, this Court has reviewed the record to determine whether the evidence was sufficient to support the verdict of the jury. It is the opinion of this Court the evidence is sufficient to support a finding by a rational trier of fact that the appellant was guilty of aggravated kidnapping beyond a reasonable doubt. Tenn. R. App. P. 13(e).

JOE B. JONES, PRESIDING JUDGE

¹The appellant was also convicted of aggravated rape. The trial court concluded the evidence was insufficient, as a matter of law, to support the conviction. Therefore, the trial court entered a post-trial judgment of acquittal. The State of Tennessee does not challenge the judgment of the trial court regarding this judgment.

CONCUR:

JOSEPH M. TIPTON, JUDGE

JERRY L. SMITH, JUDGE