

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

MAY SESSION, 1996

FILED

September 5, 1996

Cecil Cowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)

C.C.A. NO. 03C01-95110R-0005P

Appellee,)

HAMILTON COUNTY

VS.)

HON. RUSSELL C. HINSON,

CHARLES EDWARD)

JUDGE BY DESIGNATION

JACKSON,)

Appellant.)

(Attempted First-Degree Murder)

CONCURRING OPINION

I concur fully in the holding of the Court that the defendant's conviction and sentence for attempted first degree murder must be affirmed. I write separately only to express my views on the defense of renunciation under the circumstances presented by cases such as the one sub judice.

The theory behind the defense of renunciation may be found in the Sentencing Commission comments to Tennessee Code Annotated Section 39-12-104. The availability of this defense is to "provide an incentive for offenders to abandon their criminal purpose before they accomplish their criminal goal." Id. This is, however, a laudable goal only if the defendant abandons his or her criminal purpose before

any actual physical or pecuniary harm befalls the victim of the criminal activities. To allow an individual such as the defendant in this case to use renunciation to avoid punishment altogether for a serious aggravated assault simply because he ultimately abandoned his attempt to kill the victim would be unconscionable.¹

I would limit the availability of renunciation to those situations where the inchoate crimes for which it is a defense are abandoned before any harm befalls the victim. However, once actual harm has resulted from the defendant's actions, his or her incentive to abandon the criminal enterprise must come from the fact that the completed crime will carry far more serious penalties than attempt, solicitation, or conspiracy.

JERRY L. SMITH, JUDGE

¹The real problem in this case is that following the indictment for attempted murder, the Tennessee Supreme Court decided the case of State v. Trusty, 919 S.W.2d 305 (1996). Under the holding of Trusty, aggravated assault is not a lesser included offense, nor a lesser grade of attempted murder. Thus, since aggravated assault is not charged in the indictment either explicitly or by necessity, if the defense of renunciation is applicable in this case, the defendant would escape any accountability for his attack on the victim.