

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs June 7, 2005

STATE OF TENNESSEE v. CURTIS PALMER

Appeal from the Criminal Court for Shelby County
No. 03-04188 James C. Beasley, Jr., Judge

No. W2004-01748-CCA-R3-CD - Filed December 9, 2005

JOSEPH M. TIPTON, J., concurring.

I concur in the results and most of the reasoning in the majority opinion. I respectfully disagree, though, with its conclusion that an oral request can suffice for the requirement in T.C.A. § 40-18-110(b), (c) that the jury instruction request must be in writing and specifically identify the lesser included offense for which instruction is sought. As I have previously concluded, though, the statute does not bar this court from considering the lack of an instruction on a lesser included offense as plain error. See State v. Roberto Vasques, et al., No. M2004-00166-CCA-R3-CD, Davidson County, slip op. at 24 (Tenn. Crim. App. Oct. 7, 2005). However, I agree with the majority opinion's conclusion that any error was harmless.

JOSEPH M. TIPTON, JUDGE