

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE  
December 18, 2007 Session

**STATE OF TENNESSEE v. JAMELLE M. FELTS**

**Appeal from the Circuit Court for Robertson County  
No. 06-0426A Michael R. Jones, Judge**

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**No. M2007-00945-CCA-R3-CD - June 24, 2008**

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A Robertson County Circuit Court jury convicted the defendant, Jamelle M. Felts, of one count of reckless endangerment and one count of especially aggravated kidnapping. The trial court imposed an effective sentence of 15 years to be served at 100 percent. *See* T.C.A. § 40-35-501(i)(2)(C) (2006) (setting 100 percent release eligibility for especially aggravated kidnapping). In this appeal, the defendant contends that the evidence is insufficient to support his conviction for aggravated kidnapping and that the trial court erred by defining certain terms in answer to a question posed by the jury. Discerning no error, we affirm the judgments of the trial court.

**Tenn. R. App. P. 3; Judgments of the Circuit Court Affirmed**

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which ALAN E. GLENN and D. KELLY THOMAS, JR., JJ., joined.

Mattie Bhela, Springfield, Tennessee (at trial), and James O. Martin, Nashville, Tennessee (on appeal), for the appellant, Jamelle M. Felts.

Robert E. Cooper, Jr., Attorney General and Reporter; Benjamin A. Ball, Assistant Attorney General; and Jason White, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

The convictions in this case are the result of events that took place on June 14, 2006, at the Southfield Apartments in Springfield, Tennessee. Jessica Elmore, a resident of the apartment complex, testified that she was at her home when Nathan Holden arrived and told her to summon the victim, her ex-boyfriend Bryan England, to the apartment. Ms. Elmore went to her sister's apartment, where the victim was playing cards with Michael "Chubby" Babb, and told the victim that Mr. Holden wanted to see him. The two then walked to Ms. Elmore's apartment together. Because the door was locked, Ms. Elmore knocked and requested entry. As they waited to go inside, two men, whom she identified as the defendant and Antonio "Doonie" Bigbee, "came . . . [f]rom the parking lot area" armed with an "SK" assault rifle and took the victim "around the corner." At that

point, Ms. Elmore “took off back to [her] sister’s house” and alerted Mr. Babb, who ran into the parking lot. She then ran back to her own apartment, briefly seeing the victim in the passenger seat of his car. Once inside, she heard tires squealing and a single gunshot.

Ms. Elmore initially lied to police regarding the events of June 14 and refused to disclose the names of the perpetrators. Eventually, however, she agreed to cooperate with police and helped Detective Rickie Morris locate the defendant’s “MySpace” internet page, which contained a picture of the defendant holding an SKS assault rifle. Ms. Elmore stated that the rifle appeared to be the same one used during the offenses.

The victim testified that he was playing cards with Mr. Babb and two women when Ms. Elmore summoned him to meet with Mr. Holden at her apartment. The victim explained that the summons concerned him because “I mean [Mr. Holden and I] didn’t talk.” He recalled that when they reached Ms. Elmore’s door, “two guys came from each corner of the breeze way, from each side and then they had me at gunpoint.” The men, one of whom was armed with an SKS assault rifle, forced the victim to his car and ordered him to get inside and slide to the middle of the front seat. As the victim complied with the request, Mr. Babb came outside and said, “I know who ya’ll are.” While the perpetrators were distracted by Mr. Babb, the victim drove away. A single gunshot fired at the victim’s car went through the rear window, grazed his shoulder, and exited through the windshield. The victim stated that he drove straight home and telephoned Mr. Babb. The police arrived shortly thereafter, and a friend drove the victim to the hospital. He was released later that same evening.

Michael “Chubby” Babb recalled that on the day of the offenses he was playing cards with the victim and two women when Ms. Elmore arrived and told the victim that “some dude” wanted to speak with him. Mr. Babb stated that he warned the victim not to go, but the victim went anyway. Shortly thereafter, a girl told him that two men were holding the victim at gunpoint in the parking lot. Mr. Babb went to the parking lot and saw the victim sitting in the middle of the front seat of his car with the engine running. Mr. Babb recognized the defendant, whom he knew as “Scooter,” as the gunman and Antonio “Doonie” Bigbee as his accomplice. Mr. Babb yelled, “I know who ya’ll is,” and when the men turned around, the victim drove away. The defendant then fired a single shot at the car.

Detective Rickie Morris of the Springfield Police Department investigated the offenses, which were originally reported as “shots fired” at the Southfield Apartments. He found a single spent shell casing from “an assault type weapon” in the parking lot. He stated that the shell casing found in the parking lot was of the type fired by the weapon featured on the defendant’s MySpace page. He was unable to locate the weapon.

The defendant presented no proof.

At the conclusion of the trial, the jury convicted the defendant of especially aggravated kidnapping and reckless endangerment. After a sentencing hearing, the trial court

imposed an effective 15-year sentence to be served at 100 percent. In this appeal, the defendant contends that the evidence is insufficient and that the trial court erred in its answer to questions posed by the jury.

### *I. Sufficiency of the Evidence*

The defendant asserts that the evidence is insufficient to support his conviction for especially aggravated kidnapping. When an accused challenges the sufficiency of the evidence, an appellate court's standard of review is whether, after considering the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Tenn. R. App. P. 13(e); *Jackson v. Virginia*, 443 U.S. 307, 324, 99 S. Ct. 2781, 2791-92 (1979); *State v. Winters*, 137 S.W.3d 641, 654 (Tenn. Crim. App. 2003). The rule applies to findings of guilt based upon direct evidence, circumstantial evidence, or a combination of direct and circumstantial evidence. *Winters*, 137 S.W.3d at 654.

In determining the sufficiency of the evidence, this court should neither re-weigh the evidence nor substitute its inferences for those drawn by the trier of fact. *Id.* at 655. Questions concerning the credibility of the witnesses, the weight and value of the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact. *State v. Cabbage*, 571 S.W.2d 832, 835 (Tenn. 1978). Significantly, this court must afford the State of Tennessee the strongest legitimate view of the evidence contained in the record as well as all reasonable and legitimate inferences which may be drawn from the evidence. *Id.*

Especially aggravated kidnapping is defined, in relevant part, as false imprisonment accomplished "with a deadly weapon or by display of any article used or fashioned to lead the victim to reasonably believe it to be a deadly weapon." T.C.A. § 39-13-305(a)(1) (2003). "A person commits the offense of false imprisonment who knowingly removes or confines another unlawfully so as to interfere substantially with the other's liberty." *Id.* § 39-13-302(a).

In this case, the proof at trial established that the defendant and Mr. Bigbee, one of whom was armed with an assault rifle, grabbed the victim and forced him to his car. Once at the car, the victim was ordered inside. When Mr. Babb distracted the men, the victim was able to drive away. As the victim drove away, the defendant fired a single shot at his car, striking the victim in the shoulder. The victim's wound resulted in treatment at the hospital. Although the witnesses offered conflicting testimony as to whether the defendant or Mr. Bigbee actually held the gun during the offenses, the proof is clear that an assault rifle was used to interrupt the victim's freedom of movement. As such, the proof sufficiently established that the kidnapping was accomplished by the use of a deadly weapon. The evidence was, therefore, sufficient to support the defendant's conviction either as a result of his use of the assault rifle or his criminal responsibility for Mr. Bigbee's use of the weapon.

## *II. Jury Instructions*

The defendant next contends that the trial court erred by providing a dictionary definition of the term “accomplish” in answer to a question posed by the jury. He asserts that the answer provided by the trial court placed too much emphasis on the especially aggravated kidnapping charge and confused the jury as to the difference between aggravated kidnapping and especially aggravated kidnapping. The State submits that the trial court did not err in answering the jury’s question in the manner that it did and that the instruction was not erroneous.

The record establishes that shortly after retiring to deliberate, the jury passed two handwritten questions to the trial court:

To be found guilty of count 3 - Especially Aggravated Kidnapping - would the defend[a]nt need to have possession of the deadly weapon?

For clarification, what is the difference between “especially aggravated kidnapping” and “aggravated kidnapping”?

Over the objections of the defendant, the trial court instructed the jury as follows:

Ladies and Gentlemen, you have two questions and I am going to attempt to answer those two. . . . You are not to place undue emphasis on this supplemental instruction. This instruction should be carefully considered with all previous instructions in light of and in harmony with the others. The jury has submitted to the Court, the following question,

“To be found guilty of Count Three, especially aggravated kidnapping, would the Defendant need to have possession of the deadly weapon?”

The Court’s response is as follows:

“Unless you find beyond a reasonable doubt that the Defendant was criminally responsible for the conduct of another, the State must have proven beyond a reasonable doubt that the Defendant accomplished the removal or confinement with a deadly weapon. Criminal responsibility for the conduct of another is defined in the original charge.”

You have a question number two, the jury has submitted to the Court the following question,

“For clarification, what is the difference between especially aggravated kidnapping and aggravated kidnapping?”

And the Court’s response is as follows:

“The Court has defined especially aggravated kidnapping and aggravated kidnapping in the jury charge. Element two of each is the difference. The word ‘accomplish’ means to bring about the removal or confinement and possession is given its ordinary meaning.”

The trial court has a duty “to give a complete charge of the law applicable to the facts of a case.” *State v. Harbison*, 704 S.W.2d 314, 319 (Tenn. 1986); *see* Tenn. R. Crim. P. 30. “[I]n determining whether jury instructions are erroneous, this [c]ourt must review the charge in its entirety” and invalidate the charge only if, when read as a whole, “it fails to fairly submit the legal issues or . . . misleads the jury as to the applicable law.” *State v. Vann*, 976 S.W.2d 93, 101 (Tenn. 1998). “The trial court has the authority to respond to jury questions with a supplemental instruction.” *State v. Forbes*, 918 S.W.2d 431, 451 (Tenn. Crim. App. 1995) (citing *State v. Moore*, 751 S.W.2d 464, 467 (Tenn. Crim. App. 1988)). When faced with a question from the jury regarding the definition of legal terms, the proper procedure is for the trial court, after consultation with counsel, to provide the jury with supplemental instructions. *See United States v. Griffith*, 756 F.2d 1244, 1251 (6th Cir. 1985) (“Questions or disputes as to the meaning of terms which arise during jury deliberations should be settled by the court after consultation with counsel, in supplemental instructions.”) (quoting *United States v. Birges*, 723 F.2d 666, 670-71 (9th Cir.), *cert. denied*, 466 U.S. 943, 104 S. Ct. 1926 (1984)); *see also State v. Terrance D. Nichols*, No. W2003-01043-CCA-R3-CD, slip op. at 4 (Tenn. Crim. App., Jackson, Mar. 8, 2005); *State v. Pamela Sue King*, No. M2000-00148-CCA-R3-CD, slip op. at 7 (Tenn. Crim. App., Nashville, Nov. 9, 2001); *State v. Allen Bowers, Jr.*, No. E1999-00882-CCA-R3-CD (Tenn. Crim. App., Knoxville, Aug. 30, 2001) (“It is well settled that a trial court may provide supplemental instructions in response to jury questions.”) (citing *Forbes*, 918 S.W.2d at 451).

“Where words and terms are in common use and are such as can be understood by persons of ordinary intelligence, it is not necessary, in the absence of anything in the charge to obscure their meaning, for the court to define or explain them.” *State v. Summers*, 692 S.W.2d 439, 445 (Tenn. Crim. App. 1985). Although a trial court is not required to define or explain words or terms in common use which are understood by persons of ordinary intelligence, it is not per se prohibited from doing so. So long as the definition provided does not mislead the jury as to the applicable law, the supplemental instruction will not be deemed erroneous.

The defendant does not contend that the definition provided by the trial court misled the jury, only that the trial court should not have given it. As indicated, although the trial court was not required to provide the definition, it was not legally barred from doing so. Further, the definition did not mislead the jury as to the applicable law or fail to fairly submit the legal issues. Moreover,

the trial court specifically instructed the jury not to place undue emphasis on the supplemental instruction, and juries are presumed to follow the instructions of the trial court. *See State v. Smith*, 893 S.W.2d 908, 914 (Tenn. 1994). Under these circumstances, the defendant is not entitled to relief on this issue.

Accordingly, the judgments of the trial court are affirmed.

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JAMES CURWOOD WITT, JR., JUDGE