IN THE SUPREME COURT OF TENNESSEE

AT JACKSON

STATE OF TENNESSEE	)	
	)	For Publication
Plaintiff-Appellee	)	
	)	
VS.	)	No. 02-S-01-9502-CV-00015
	)	
TRACIE REEVES	)	
	)	Carroll Circuit
Defendant-Appellant	)	

SEPARATE CONCURRING AND DISSENTING OPINION

I concur in the majority's statement of the rule to be applied in deciding whether a criminal attempt has occurred. I dissent, however, from their application of that rule to this case.

The applicable standard of review for this case is "[f]indings of guilt in criminal actions whether by the trial court or jury shall be set aside if the evidence is insufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt." Tenn. R. App. P. 13(e); see also Jackson v. Virginia, 443 U.S. 307, 319 (1979) ("[T]he relevant question [in reviewing the sufficiency of the evidence] is whether, after viewing 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."). Applying this standard of review, I would find that under the test adopted by the majority for determining whether a "substantial step" was taken, the evidence in this case is insufficient as a matter of law.

Tenn. Code Ann. § 39-12-101, the criminal attempt statute, states, in pertinent part:

> (a) A person commits criminal attempt who, acting with the kind of culpability otherwise required for the offense:
>
> . . .
>
> (3) Acts with intent to complete a course of action or cause a result that would constitute the offense, under the circumstances surrounding the conduct as the person believes them to be, and the conduct constitutes a substantial step toward the commission of the offense.
>
> (b) Conduct does not constitute a substantial step under subdivision (a)(3) unless the person's entire course of action is corroborative of the intent to commit the offense.

(Emphasis added). Based upon this record, I would find that the "entire course of action" of these two twelve-year-old girls was not "strongly corroborative" of intent to commit second-degree murder and that the evidence was insufficient as a matter of law. In looking at the "entire course of action," we should remember that these were twelve-year-old girls, not explosive-toting terrorists.

Accordingly, while I concur in the majority's abandonment of the rule stated in Dupuy v. State, 204 Tenn. 624, 325 S.W.2d 238 (1959), I dissent from the conclusion of the majority in this case.

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ADOLPHO A. BIRCH, JR., Justice