

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

JUNE 1996 SESSION

**FILED**  
**October 30, 1996**  
**Cecil Crowson, Jr.**  
Appellate Court Clerk

STATE OF TENNESSEE, )  
 )  
 APPELLEE, )  
 )  
 )  
 v. )  
 )  
 )  
 ANTHONY WAYNE BERNDT, )  
 )  
 APPELLANT. )

No. 03-C-01-9509-CR-00291  
Knox County  
Ray L. Jenkins, Judge  
(Rape of a Child)

FOR THE APPELLANT:

David Gall  
Assistant Public Defender  
1209 Euclid Avenue  
Knoxville, TN 37921

OF COUNSEL:

Mark E. Stephens  
District Public Defender  
1209 Euclid Avenue  
Knoxville, TN 37921

FOR THE APPELLEE:

Charles W. Burson  
Attorney General & Reporter  
500 Charlotte Avenue  
Nashville, TN 37243-0497

Timothy F. Behan  
Assistant Attorney General  
450 James Robertson Parkway  
Nashville, TN 37243-0493

Randall E. Nichols  
District Attorney General  
400 Main Street  
Knoxville, TN 37901-1468

Charne P. Johnson  
Assistant District Attorney General  
400 Main Street  
Knoxville, TN 37901-1468

OPINION FILED: \_\_\_\_\_

AFFIRMED PURSUANT TO RULE 20

Joe B. Jones, Presiding Judge

**OPINION**

The appellant, Anthony Wayne Berndt, was convicted of rape of a child, a Class A felony, by a jury of his peers. The trial court found that the appellant was a standard offender and imposed a Range I sentence consisting of confinement for seventeen (17) years in the Department of Correction. One issue is presented for review. He contends that the “trial court erred in overruling [his] request to charge the jury as to the lesser included offense of aggravated sexual battery.” After a thorough review of the record, the briefs submitted by the parties, and the authorities which govern the issue presented by the appellant, it is the opinion of this Court that the judgment of the trial court should be affirmed pursuant to Rule 20, Tennessee Court of Criminal Appeals.

The evidence contained in the record establishes that the appellant digitally penetrated the victim who was four years of age. The appellant admitted this to the police and the medical proof confirmed that the child had been penetrated. The record does not support an instruction on the lesser included offense of aggravated sexual battery.

---

JOE B. JONES, PRESIDING JUDGE

CONCUR:

---

GARY R. WADE, JUDGE

---

PAUL G. SUMMERS, JUDGE