

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

FEBRUARY 1997 SESSION

FILED
March 4, 1997
Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)
)
 Appellee,)
)
 VS)
)
 JAMES RANDALL TUBBS,)
)
 Appellant.)

C.C.A. NO. 02CO1-9609-CC-00315
BENTON COUNTY
HON. JULIAN P. GUINN,
JUDGE
(Vandalism over \$1,000)

FOR THE APPELLANT:

FOR THE APPELLEE:

CHARLES N. GRIFFITH
415 West Main Street
P. O. Box 456
Waverly, TN 37185

CHARLES W. BURSON
Attorney General and Reporter

ELIZABETH T. RYAN
Assistant Attorney General
450 James Robertson Parkway
Nashville, TN 37243-0686

G. ROBERT RADFORD
District Attorney General
111 Church St., P. O. Box 686
Huntingdon, TN 38344-0686

OPINION FILED: _____

AFFIRMED - RULE 20 ORDER

JOE G. RILEY,
JUDGE

ORDER

The appellant, James Randall Tubbs, appeals his felony conviction of vandalism over \$1,000. The sole issue is whether the jury verdict was a conviction of vandalism under \$500 or vandalism over \$1,000. We affirm pursuant to Rule 20 of the Tennessee Court of Criminal Appeals.

The record indicates that the jury reported on a special verdict form that they found the defendant guilty of vandalism. The form then asked the jury to fix the value and fine, if any. Three (3) separate categories were set forth on the form: \$1,000 to \$10,000 carrying a maximum possible fine of \$5,000; \$500 to \$1,000 carrying a maximum possible fine of \$3,000; and \$500 or less carrying a maximum possible fine of \$2,500. The jury wrote in a fine in the amount of \$500 in the blank beside the value of \$1,000 to \$10,000.

After the jury was excused, the trial judge opined that the jury had convicted the defendant of a misdemeanor since it had written in the amount of \$500. While sentencing the defendant for the misdemeanor offense, the trial judge noticed that he had misread the verdict in that the jury had set the amount of the fine at \$500 in the blank beside the value of \$1,000 to \$10,000. The trial judge, therefore, ordered a pre-sentence report and later sentenced the defendant to the Class D felony of vandalism over \$1,000.

Defendant contends the jury was confused, intended to convict the defendant of a misdemeanor only, and he was not allowed to call members of the jury to explain their verdict. The only record before this Court is the colloquy that occurred upon receiving the jury verdict. The trial testimony, jury charge, and motion for new trial hearing are not a part of the record. We can only conclude the defendant was properly found guilty of vandalism over \$1,000.

The judgment of the trial court is affirmed pursuant to Rule 20 of the Tennessee Court of Criminal Appeals.

JOE G. RILEY, JUDGE

CONCUR:

JOE B. JONES, PRESIDING JUDGE

JOHN H. PEAY, JUDGE