

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

JUNE SESSION, 1998

F I L E D
July 8, 1998
Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)
)
 Appellee,)
)
)
 V S .)
)
 MICHAEL W. SIMMONS,)
)
 Appellant.)
 Kidnapping,)

C.C.A. NO. 02C01-9710-CC-00401
MADISON COUNTY
HON. FRANKLIN MURCHISON
JUDGE
(Especially Aggravated
Aggravated Kidnapping)

ON APPEAL FROM THE JUDGMENT OF THE
CIRCUIT COURT OF MADISON COUNTY

FOR THE APPELLANT:

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O P I N I O N F I L E D -----

A F F I R M E D P U R S U A N T T O R U L E 2 0

D A V I D H . W E L L E S , J U D G E

O R D E R

The Defendant was convicted on a jury verdict of one count of especially aggravated kidnapping and one count of aggravated kidnapping. He was sentenced to concurrent terms of 21 years and 9 years, to be served in the Department of Correction as a 100 percent violent offender. He appeals from his convictions and his sentences. We find no merit to the Defendant's appeal, and we affirm the judgment of the trial court.

The evidence presented by the State at trial was quite strong, and the Defendant does not challenge its sufficiency. Simply stated, the proofs showed that the Defendant, while armed with a 9-mm semi-automatic pistol, "detained" the Defendant's former girlfriend and her father in their own home. During part of the time, the two victims were handcuffed together. The Defendant was apparently despondent over his relationship with his former girlfriend, who was pregnant; and he brought the gun for "precautionary measures" and to assure that he would be able to talk to his former girlfriend's father. He also brought a large

knife, a "Tazer" (described by a witness as "like a cattle prod"), some handcuffs, and other items. Although the victims testified they were very frightened, both were eventually released unharmed.

The Defendant was indicted for two counts of especially aggravated kidnapping and one count of carrying a firearm for the purpose of going armed. The jury returned guilty verdicts of especially aggravated kidnapping for the offense against the former girlfriend's father, aggravated kidnapping for the offense against the former girlfriend, and carrying a firearm for the purpose of going armed. The trial judge determined that the conviction for carrying a firearm for the purpose of going armed should be merged with the conviction for especially aggravated kidnapping, and thus the firearms charge was dismissed.

On appeal, the Defendant argues that the trial judge erred by not dismissing the firearms charge prior to the trial and that the judge's failure to do so violated the Defendant's rights to be free from double jeopardy and to due process of law. He argues that because of this error, his convictions for especially

aggravated kidnapping and aggravated kidnapping should be reversed and those charges remanded for a new trial. He also argues that the sentences imposed by the trial judge are excessive.

We conclude that the evidence presented is sufficient to support the finding by the trier of fact of guilt beyond a reasonable doubt. We further conclude that no error of law requiring a reversal of the judgment is apparent on the record. Based upon a thorough reading of the record, the thorough briefs of the parties, and the law governing the issues presented for review, the judgment of the trial court is affirmed in accordance with Rule 20 of the Court of Criminal Appeals of Tennessee.

D A V I D H . W E L L E S , J U D G E

C O N C U R :

P A U L G . S U M M E R S , J U D G E

J O E G . R I L E Y , J U D G E