

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
July 24, 2012 Session

STATE OF TENNESSEE v. DAVID EARL SCOTT

**Appeal from the Criminal Court for Knox County
No. 92765 Mary Beth Leibowitz, Judge**

No. E2011-00707-CCA-R3-CD - Filed November 14, 2012

ROBERT W. WEDEMEYER, J., dissenting.

I respectfully disagree with the conclusion by the majority that the evidence of serious bodily injury to the victim was insufficient to support the conviction for especially aggravated kidnapping. After considering the evidence of serious bodily injury in the light most favorable to the prosecution, it is my view that a rational trier of fact could have found that the victim suffered serious bodily injury at the hands of the Defendant, and therefore I would affirm the especially aggravated kidnapping conviction.

Specifically, the evidence is sufficient for a rational trier of fact to have determined, beyond a reasonable doubt, that the Defendant caused the victim to suffer “extreme physical pain.” T.C.A. § 39-11-106 (34). The victim testified that during this incident, the Defendant slammed her hard to the floor, causing her to hit her tail bone and the back of her head on the floor. The Defendant physically struck her several times, at some point causing her to lose consciousness. The victim testified that the Defendant choked her until she felt that the front of her throat was hitting the back of her neck. She further testified that the conduct of the Defendant caused swelling, bruising, eating difficulties for two weeks, and “horrible” tail bone pain later when she was walking. In my view, a rational jury could have determined that the victim suffered extreme physical pain, which is sufficient evidence of serious bodily injury to support the conviction for especially aggravated kidnapping.

Accordingly, I would affirm the conviction and sentence for especially aggravated kidnapping. I concur with the opinion of the majority in all other respects.

ROBERT W. WEDEMEYER, JUDGE