

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
September 19, 2000 Session

STATE OF TENNESSEE v. BOBBIE JOE ROLLINS

**Appeal from the Criminal Court for Marshall County
No. 13789 Charles Lee, Judge**

No. M1999-02457-CCA-R3-CD - Filed October 20, 2000

The defendant was convicted by a Marshall County jury of reckless aggravated assault and sentenced by the trial court to ten years imprisonment as a Range III offender. In this appeal as a matter of right, the defendant claims the conflict between the trial court's erroneous written jury instruction requiring proof of venue in "Lincoln County," and the oral instruction requiring proof of venue in "Marshall County," requires reversal. After a through review of the record, we conclude that the issue has been waived. Furthermore, regardless of waiver, any error in the written jury instruction was clearly harmless. Therefore, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

JOE G. RILEY, J., delivered the opinion of the court, in which DAVID H. WELLES and NORMA MCGEE OGLE, JJ., joined.

Donna Leigh Hargrove, District Public Defender; Andrew Jackson Dearing, III, Assistant District Public Defender, Fayetteville, Tennessee (at trial); and John E. Herbison, Nashville, Tennessee (on appeal), for the appellant, Bobby Joe Rollins.

Paul G. Summers, Attorney General and Reporter; Marvin E. Clements, Jr., Assistant Attorney General; William Michael McCown, District Attorney General; and Weakley E. Barnard, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

The defendant was convicted of reckless aggravated assault and sentenced to ten years incarceration as a Range III offender. Defendant contends that the trial court committed reversible error when it submitted an erroneous written jury instruction on venue that was different from the oral jury instruction. Upon review of the record, we affirm the judgment of the trial court.

I. FACTS

The defendant was married to the victim, Connie Sue Adams, from April of 1998, to November of 1998. They divorced five days prior to this incident. On November 11, 1998, the defendant, without provocation, stabbed the victim.

II. ANALYSIS

On appeal, defendant contends that the trial court's written jury instruction containing a reference to "Lincoln County" was prejudicial error. The instruction read, "[t]he state must prove beyond a reasonable doubt . . . that the crime, if in fact committed, was committed by this defendant in Lincoln County, Tennessee." However, the defendant failed to include this issue in the motion for new trial. Therefore, this issue is waived. Tenn. R. App. P. 3(e); *see State v. Spadafina*, 952 S.W.2d 444, 451 (Tenn. Crim. App. 1996).

Regardless of waiver, the erroneous jury instruction was clearly harmless. A jury charge is prejudicially erroneous if it fails to fairly submit the legal issues or misleads the jury. *State v. Vann*, 976 S.W.2d 93, 101 (Tenn. 1998). Contradictory statements in a jury charge are subject to a harmless error analysis. *See State v. Dulsworth*, 781 S.W.2d 277, 285 (Tenn. Crim. App. 1989) (finding contradictory instructions as to whether a witness was an accomplice to be harmless error). This crime occurred in Marshall County; all evidence presented at trial concerned Marshall County; the case was tried in Marshall County; and the oral jury instruction properly instructed that the state must prove that the crime occurred in Marshall County. In fact, the only reference to Lincoln County was within the particular written jury instruction now at issue. There is no indication that the jury was misled by the clerical error contained in the written charge. Thus, we conclude the error was harmless. *See* Tenn. R. App. P. 36(b).

Accordingly, the judgment of the trial court is affirmed.

JOE G. RILEY, JUDGE

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JUDGMENT

Came the appellant, BOBBIE JOE ROLLINS, by counsel, and the state, by the Attorney General, and this case was heard on the record on appeal from the Criminal Court of Marshall County; and upon consideration thereof, this Court is of the opinion that there is no reversible error in the judgment of the trial court.

It is, therefore, ordered and adjudged by this Court that the judgment of the trial court is affirmed, and the case is remanded to the Criminal Court of Marshall County for execution of the judgment of that court and for collection of costs accrued below.

It appears that appellant is indigent. Costs of appeal will be paid by the State of Tennessee.

Per Curiam

Joe G. Riley, Judge
David H. Welles, Judge
Norma McGee Ogle, Judge