

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

JANUARY 1996 SESSION

<p>FILED</p> <p>April 30, 1996</p> <p>Cecil W. Crowson Appellate Court Clerk</p>

STATE OF TENNESSEE,)	
)	
Appellee,)	No. 01C01-9307-CC-00218
)	
)	Cheatham County
v.)	
)	Hon. Allen W. Wallace, Judge
)	
JAMES BLANTON,)	(First Degree Murder, Grand Larceny,
)	and First Degree Burglary)
Appellant.)	

CONCURRING OPINION

I concur in the results reached in the majority opinion and I only disagree with its view of the nature of the prosecution's comments relative to the jury's sentencing responsibility in this capital case. As that opinion quotes from Caldwell v. Mississippi, 472 U.S. 320, 328-29, 105 S. Ct. 2633, 2639, 86 L.Ed.2d 231 (1985), "it is constitutionally impermissible to rest a death sentence on a determination made by a sentencer who has been led to believe that the responsibility for determining the appropriateness of the defendant's death rests elsewhere."

In this respect, I do not believe that the prosecution comments in issue can be interpreted as anything other than an attempt to have the jury minimize its own sense of responsibility for deciding if the appellant should be put to death. Also, the fact that some of the comments are couched in terms of the appellant being the author of his own fate does not lessen the potential harm, when, in context, the purpose of such comments is shown to be that of having the jury think that the capital sentencing responsibility lies elsewhere.

The Tennessee death penalty statutes cast totally upon the jury the burden of considering the evidence, finding the dispositive facts, determining the existence of and weighing aggravating and mitigating circumstances, and ultimately deciding whether or not a defendant should be put to death. Simply put, the responsibility for deciding if the death penalty should be imposed is upon the jury. In this sense, such comments by the prosecutor as that it was not the jury sending the appellant to the electric chair, because he sent himself, and that the jury was to “lay it on [the] shoulders” of the prosecutors who “will be responsible” can be intended for only one purpose -- to give the jury a lessened sense of personal responsibility for the capital sentencing decision. We should not condone this type of argument.

However, I agree with the majority opinion’s conclusion that the argument was rendered harmless given all of the circumstances recounted in that opinion.

Joseph M. Tipton, Judge