

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
September 10, 2002 Session

STATE OF TENNESSEE v. JODY LANE ORR

**Appeal from the Circuit Court for Carroll County
No. 01cr-1636 C. Creed McGinley, Judge**

No. W2001-02075-CCA-R3-CD - Filed November 27, 2002

JOSEPH M. TIPTON, J., concurring.

I concur with most of the majority opinion. I respectfully disagree with its conclusion that enhancement factor (5), regarding exceptional cruelty, does not apply. I believe that being duct taped, blindfolded, tied up, and made to wear a New Year's party hat reflect mental abuse and degradation that goes above and beyond that inherently necessary for any aggravated rape. Although I do not believe that the weight of the two enhancement factors applied by the majority opinion should result in a maximum sentence of twenty-five years, I conclude that the sentence is appropriate because of the application of enhancement factor (5), as well.

JOSEPH M. TIPTON, JUDGE