

FILED

December 15, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

IN THE SUPREME COURT OF TENNESSEE

AT KNOXVILLE

10 STATE OF TENNESSEE, (

11 (

12 Appellee, (

13 (Hamilton County

14 (

15 (Hon. Stephen M. Bevil,

16 v. (Judge

17 (

18 (

19 (

20 LEROY HALL, (

21 (Supreme Court No.

22 Appellant. (03S01-9701-CR-00010

23

24

25

26

CONCURRING OPINION

31 I concur in affirming the verdict of guilty of

32 premeditated murder and the sentence of death.

33

34 Four issues are before the Court - jury instructions

35 regarding nonstatutory mitigating circumstances, the

36 admissibility of expert testimony, the validity of arson as an

37 aggravating circumstance, and the comparative proportionality

38 review.¹

39

40 Any error with regard to mitigating circumstances was

41 not prejudicial.

¹No issue is made regarding the sufficiency of the evidence to support the aggravating circumstances or the finding that the aggravating circumstances outweigh the mitigating circumstances. Tenn. Code Ann. § 39-13-204(g)(1) (Supp. 1996).

1 As discussed in the lead opinion, the testimony of
2 Dr. Roger Meyer as an expert witness was not excluded by the
3 court. When the court advised counsel that any evidence "going
4 towards state of mind that would create a defense or an excuse
5 for this killing" would be allowed, counsel, without explanation,
6 did not call Dr. Meyer as a witness. The error, if any, was not
7 a legal error committed by the court.

8
9 I also agree that arson is a valid aggravating
10 circumstance in this case, in which the defendant was convicted
11 of premeditated murder. I would argue that the principle on
12 which Middlebrooks is based would preclude the establishment of
13 more than one aggravating circumstance with the same evidence,²
14 but that is not the situation in this case. Here, the facts that
15 established arson of the vehicle were relevant and admissible
16 evidence concerning the offense, not proof of another aggravating
17 circumstance or an element of premeditated murder.

18
19 Although I think the procedure for conducting
20 comparative proportionality review set forth in State v. Bland
21 can be further developed, State v. Bland, _____ S.W.2d _____
22 (Tenn. 1997) (Reid, J., dissenting), application of that
23 procedure to the circumstances of the crime and the character of
24 the defendant does not show the sentence of death to be
25 disproportionate. Some of the cases in which the sentence of
26 death was affirmed relied upon in the lead opinion are similar to

²State v. Middlebrooks, 840 S.W.2d 317, 352 (Tenn. 1992) ("the constitutional deficiency is that the aggravating circumstance does not narrow the class, not that it duplicates the elements of the offense").

1 this case. The absence of similar cases in which the defendant
2 was sentenced to life imprisonment may be explained by the
3 egregious means whereby the murder was accomplished in this case.

4

5 Consequently, I concur.

6

7

8 Reid, J.

9

10