

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs October 5, 2004

STATE OF TENNESSEE v. CORNELIUS BOALES

Appeal from the Circuit Court for Henderson County

No. 03005-2 Donald H. Allen, Judge

No. W2003-02724-CCA-R3-CD

JOSEPH M. TIPTON, J., concurring.

I concur in the results reached and most of the reasoning used in the majority opinion. Although another panel of this court has concluded under Blakely v. Washington, 542 U.S. ____, 124 S. Ct. 2531 (2004), that juvenile adjudications may not be used by the trial judge, see State v. Recardo Dale, W2003-02391-CCA-R3-CD, Shelby County (Tenn. Crim. App. Jan. 10, 2005), I agree with the majority opinion's conclusion that Blakely is not implicated. As for the trial court's use of enhancement factor (9) in violation of Blakely, I conclude that it was harmless beyond a reasonable doubt given the evidence supporting it.

JOSEPH M. TIPTON, JUDGE