

IN THE SUPERIOR COURT OF FORSYTH COUNTY

MAY 26 2006

STATE OF GEORGIA

Douglas Bonello
CLERK SUPERIOR COURT

THE STATE OF GEORGIA

*

*

vs.

*

Indictment 04CR-0417

*

JULIA LYNN WOMACK TURNER

*

STATE'S BRIEF IN OPPOSITION TO DEFENDANT'S
"AMENDED ... SPECIAL DEMURRER
TO ALL COUNTS OF THE INDICTMENT"
(Motion No. 114A)

COMES NOW THE STATE OF GEORGIA, by the District Attorney and submits the following in response to defendant's motion above styled:

1.

Defendant's motion must fail. Defendant seeks to have the indictment and notice to seek the death penalty dismissed, for failure of the State to include the 'Statutory Aggravating Circumstances' within the body of the indictment. Defendant relies upon *Blakely v. Washington*, 124 S.Ct. 2531 [159 L.Ed. 2d 403; 2004 U.S. LEXIS 4573, 6/24/04]. The prosecution was well-aware of the *Blakely* decision prior to the present indictment, and considered the merits thereof as applied to this case.

2.

The premise of defendant's motion is in error. Citing *Blakely, supra*, defendant suggests that the State is somehow constitutionally required to allege the statutory aggravating factors which would allow for the imposition of the death penalty in the indictment. However, this premise is not the holding of *Blakely*, and defendant's underlying claim was decided adversely to her in *Terrell v. State*, 276 Ga. 34 (2002)[572 SE2d 595], and again **after the decision in *Blakely***, by the Georgia Supreme Court in *Riley v. The State*, 278 Ga. 677, 680 (2) with a full court concurring and denying reconsideration on November 22, 2004, reaffirming *Terrell*. [cert. den. in *Terrell v. Ga.*, 2003 U.S. LEXIS 6226 (U.S., Oct 6, 2003)].

In an attempt to justify its position defendant relies upon *Blakely* and misquotes a reference from the Supreme Court's holding in *Apprendi*. Defendant's motion states:

The Courts opinion in *Blakely* follows the rule expressed by the Supreme Court in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), that "other than the fact of a prior conviction, any fact that increased the penalty of a crime beyond the prescribed statutory maximum must be submitted to a jury *in the indictment* and proved beyond a reasonable doubt. (emphasis added).

However, the phrase "in the indictment" was added by defendant and was not in the language of the Court's ruling in *Apprendi* on that issue.

Defendant goes on to say that *Blakely* overrules the Georgia Supreme Court's holding in *Terrell*. However, *Terrell* followed by *Riley* sets forth the existing law in Georgia on this issue.

Under Georgia law, the State is not required to allege the statutory Aggravating Circumstances in the indictment, and it may provide a Defendant notice of the statutory aggravators through other means, such as the written notice of intent to seek the death penalty that was filed in this case. Therefore, the question becomes whether the federal constitution, as interpreted by the Supreme Court in its recent *Apprendi* decision, renders unconstitutional the Georgia procedure of listing the statutory aggravators that support a death penalty through means other than the indictment. We conclude that it does not

The holding in the two cases involving state criminal sentences (*Apprendi* and *Ring*) are summed up by the following language from *Ring*: "If a State makes an increase in a defendant's authorized punishment contingent on the finding of a fact, that fact – no matter how the state labels it – must be found by a jury beyond a reasonable doubt." Both *Apprendi* and *Ring* focused on the role of the jury. Neither *Apprendi* nor *Ring* addressed whether notice of a fact that would be used to support a sentence had to be conveyed to the defendant through an indictment versus some other means ...

To the extent *Terrell* is arguing that the language from *Apprendi* regarding charging in an indictment requires a grand jury to consider the statutory aggravators, we find that contention also is with out merit. The federal constitution's grand jury presentment clause does not apply to the states, and *Apprendi* and *Ring* did not analyze whether the federal constitution requires a state grand jury to consider the statutory aggravating factors that support a sentence of death ...

Finally, the most important point, insofar as *Apprendi* or *Ring* are concerned, is that a jury found beyond a reasonable doubt the existence of all three statutory aggravators that were in the State's notice of intention to seek the death penalty. That same jury recommended that Terrell be sentenced to death, and consistent with the jury's findings and recommendation, the trial court sentenced Terrell to death. Under these circumstances, we find there was no violation of Terrell's constitutional rights that are described in *Apprendi* and *Ring*, and the State was not under a constitutional obligation to place the statutory aggravators in the indictment.

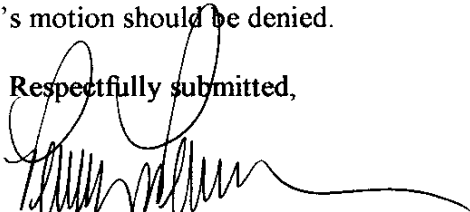
Terrell, at 40-42(5)(footnotes omitted).

4.

Upon review of *Blakely*, *Apprendi* and *Terrell*, it is clear that in order to satisfy the Constitutional Due Process requirements, the State must (1) provide notice to the defendant of aggravating factors of punishment, (2) present evidence of aggravating factors to the petit jury, and (3) obtain a finding of proof beyond a reasonable doubt of the existence of the aggravating factor(s) used in punishment. As Georgia's death penalty framework requires each of these to be found in order to allow imposition of the death penalty, it sufficiently protects defendant's right to due process under the Georgia and United States Constitutions. The State has complied with the first step toward this requirement by serving Notice of Intent to seek the Death Penalty upon defendant.

For the foregoing reasons, defendant's motion should be denied.

Respectfully submitted,



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c/d "motion 114A"