

IN THE SUPREME COURT OF TENNESSEE  
AT JACKSON  
November 9, 2005 Session

**STATE OF TENNESSEE v. DAVID IVY**

**Automatic Appeal from the Court of Criminal Appeals  
Criminal Court for Shelby County  
No. 01-12388 Joseph B. Dailey, Judge**

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**No. W2003-00786-SC-DDT-DD - Filed February 28, 2006**

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ADOLPHO A. BIRCH, JR., J., concurring in part and dissenting in part.

I concur in the conclusion of the majority that Ivy's convictions should be affirmed. As to the sentence of death, however, I respectfully dissent. I continue to adhere to my view that the comparative proportionality review protocol currently embraced by the majority is inadequate to shield defendants from the arbitrary and disproportionate imposition of the death penalty. See State v. Reid, 164 S.W.3d 286, 323-325 (Tenn. 2005)(Birch, J., concurring and dissenting), and cases cited therein. Accordingly, I respectfully dissent from that portion of the majority opinion affirming the imposition of the death penalty in this case.

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ADOLPHO A. BIRCH, JR.