UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 0179 & 0180

September Term, 2015

CONSOLIDATED CASES

KATRINA RENEE BEN

v.

STATE OF MARYLAND

Berger,
Friedman,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Moylan, J.

Filed: September 21, 2016

The appellant, Katrina Renee Ben, was convicted in the Circuit Court for Montgomery County by a jury, presided over by Judge David A. Boynton, of first-degree murder and of the use of a firearm in the commission of a crime of violence. On appeal, she raises four contentions:

1. That the evidence was not legally sufficient to support the convictions;

2. That Judge Boynton erroneously ruled that the State had not violated the discovery rules;

3. That Judge Boynton erroneously failed to conduct an on-the-record inquiry into whether the appellant voluntarily waived her right to testify; and

4. That her sentence to life without the possibility of parole was constitutionally flawed.

Legal Sufficiency of the Evidence

The Supreme Court set the bar for the legal sufficiency of the evidence to support a conviction in a criminal case in Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L.Ed.2d 560 (1979). It is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." In denying the appellant's Motion for New Trial following her conviction, Judge Boynton said in that regard, "Not only was the evidence adequate; the evidence was overwhelming." We fully agree.

We fully agree with the appellant that the case against her consisted of circumstantial evidence. It was, however, a very strong web of circumstantial evidence.

The murder victim was Eric Somuah. He lived alone at the Veridian apartment complex in Silver Spring. The evidence permitted a finding that Somuah died in his apartment in his bed at sometime during the early morning hours of Tuesday, June 5, 2012. When police first entered the apartment on the afternoon of Wednesday, June 6, 2012, Somuah's body was lying in bed with the bed sheet covering his entire body except for his upper face and the top of his head. The cause of death was a single gun shot directly into the top of his head. Without the help of a drone, that would be a tough shot to get off if the victim were up and about.

The state of the apartment itself effectively eliminated the likelihood that there had been a burglary or even a violent struggle of any sort. When the police responded to the apartment, everything was secured. The apartment door had not been kicked in or damaged in any way. There was no sign of a fight or a struggle. There were, moreover, valuables out in the open, including money, credit cards and a laptop. There were also credit cards in some jeans in a closet. All signs pointed to the homicidal agent's not being an intruder but someone with access to the apartment. The motive was something other than larceny.

A. Cherchez la Femme.

That brings us to look at the appellant, who enjoyed just such access. The appellant had herself moved into the Veridian apartments on March 11, 2012. She met Somuah about two weeks later, when he asked her to join him in his apartment to watch a basketball game

on television. There then developed an active sexual relationship between the two, which generally consisted of watching a basketball game together at his apartment and then spending the night in bed together at his apartment. The sexual relationship, however, was by no means monogamous or exclusive, and that may well have been the source of trouble. At one point the police interviewed a Denise Harrington, who told them that she had been dating Somuah for over a year, although they were then in the process of breaking up. She believed that Somuah had been seeing other women, and she had once seen a text message from a woman named Ashley. There was also a Tiffany somewhere in his social life.

There was evidence, moreover, that Somuah's apparently profligate relationships with other women was a source of jealousy and anger on the part of the appellant. The appellant at one point acknowledged that she and Somuah had talked about their future together. She also pointed out that, before her relationship with Somuah, she had never before been "dumped." She admitted that she became angry, vindictive, and possessive whenever Somuah turned her down for a date or failed to show up for a date after having agreed to do so.

When Somuah did not show up on time to watch a basketball game with her on Thursday, May 31, five days before his murder, the appellant characterized herself as being "pissed." At 11:12 p.m. there was an angry exchange of text messages between the two, although they ultimately spent the night in bed together. On Sunday, June 3, the appellant

forbade him to go to a party because "we're watching OKC so you can't go tonight." Even on the last night of his life, Somuah did not return to the Veridian in time for the two of them to watch a game together as they had scheduled. When he did return, he paid scant attention to the appellant because of numerous distractions. In short, fissures were appearing in the relationship.

On the affirmative side of the ledger, Somuah and the appellant spent the fourth night before the murder (Thursday-Friday) in bed together. They spent the night before the murder (Sunday-Monday) in bed together. Most significantly, they spent the night of the murder (Monday-Tuesday) in bed together. Although the appellant had slept with Somuah on Thursday, Sunday, and Monday nights, she claimed she had no idea of where or with whom he had he had been on Friday and Saturday night. The appellant told the police that, after spending their final night together, she got up at 5 a.m., earlier than usual because she had to get gas. She claimed that she gently kissed the appellant but then left quietly because he was still asleep. The surveillance video at the Veridian showed the appellant leaving the garage at approximately 6:34 a.m. but then returning at 7:05 a.m. On returning, the appellant parked in front of the building, got out and walked through the lobby, and then returned to her car five minutes later.

In her statement to the police, to be sure, the appellant sought to establish that a William Woodfork, from whom Somuah ostensibly purchased marijuana, had inexplicably

been in the apartment with her and Somuah during the early morning hours of Tuesday, June 5, sitting in the living room as she and Somuah slept in the bedroom. Her statement was that Woodfork was still there when she left that morning. He was her candidate for being the likely killer. Police evidence ultimately established, however, that Woodfork was not at the Veridian on the night of the murder. A gun ultimately recovered from Woodfork's home, moreover, was absolutely excluded as the possible murder weapon. The appellant's story about Woodfork's sitting inexplicably in the living room, inherently incredible in its own right, completely collapsed.

B. "Foul deeds will rise, though all the earth o'erwhelm them, to men's eyes."

What turned this from a cold case into a hot one was the bizarre odyssey of the murder weapon and the steadfast determination of the lead investigator, Detective Dimitry Ruvin, not to let the case remain "unsolved." No murder weapon had been found at the crime scene, nor so much as a shell casing. When the police executed a search warrant on the appellant's new apartment in Baltimore on June 19, 2012, they found no weapon. Indeed, the appellant informed them on that occasion that she had never owned a gun and had no idea how to operate one.

In an incident that had no apparent connection to this case, a Bradley Shoemaker was driving his car on the Capital Beltway on June 7, 2012, two days after the murder in this case. Near the area where Sligo Creek Parkway crosses Interstate 495, he, while stopped for

traffic, saw pieces of a semi-automatic pistol lying on the side of the highway. He gathered up the pieces and took them to the police station on Sligo Avenue. The dismantled pieces consisted only of the gun's lower half. Significantly, the barrel was missing. The police ran a serial number check through NCIS and learned that from June 2004 through June 9, 2012, the gun had not been reported as lost or stolen. The gun was then placed in a secured evidence area and essentially forgotten.

It was just over a year later, on June 11, 2013, that the gun came to the attention of Detective Ruvin, the dogged investigator who did not let this case stay cold. It was a month earlier, in May of 2013, that Detective Ruvin had contacted the United States Alcohol, Tax and Firearm Agency, and asked for a report of all of "the .380's recovered in Montgomery County" from the date of Somuah's murder until that date. The gun recovered by Bradley Shoemaker from the side of the Beltway had been a .380. A trace on the gun showed it listed to a person in a Mississippi town which was within about ten miles of the appellant's home town in Mississippi, a fact which Detective Ruvin remembered. This coincidence peaked his interest for he had been looking for a link between the appellant and the murder. Further investigation in Mississippi revealed that the appellant had, indeed, purchased the Lorcin .380 in question from a pawn shop in Mississippi in June 2004.

The spot where the gun was found on the side of the Beltway was within two to three miles of the Veridian apartment. Detective Ruvin estimated that the round-trip driving time

from the apartment to the gun's location would have been 30 to 40 minutes. The surveillance tapes at the Veridian showed that the appellant had left the Veridian at 6:34 a.m. on the morning of Tuesday, June 5, and returned at 7:05 a.m., 31 minutes later.

To the police, the appellant had earlier explained that she had left for work early that morning but, 15 minutes outbound, had remembered that she had left her cell phone at Somuah's apartment and had to return to get it. The retrieval of a cell phone may, indeed, have been the reason for the appellant's 7:05 a.m. return to the Veridian apartment, but it may not have been her cell phone that was retrieved. Somuah, who was reported to be a frequent cell phone user, made his last recorded call on his cell phone at 1:38 a.m. He was alive until that hour. When the police made a thorough search of the apartment, however, no cell phone could be found. Someone removed Somuah's cell phone from the apartment, just as someone removed the murder weapon from the apartment.

The recovered gun was fitted out with appropriate interchangeable parts and test fired. When it was compared with the bullet removed from Somuah's brain, the Lorcin .380 could not be eliminated or excluded as the source of the bullet.

The police arrested the appellant in Lawrence County, Mississippi on June 31, 2013. She was interviewed about the gun and the interview was recorded and played for the jury. When asked if she owned a firearm, she, on this occasion, acknowledged that she did. When

asked what kind of a firearm it was, she responded, "a .380." When asked by Detective Ruvin why she had, a year earlier, denied having ever owned a gun, she responded:

> "Because you never asked. I didn't kill anyone so there would be no need for me to say I have a gun. I mean you never asked. You asked me have you ever held a gun, have you ever fired a gun. I've been stalked, followed home and grabbed. (unintelligible) in Jackson and that gun is so old. I haven't had to pull it out."

When Detective Ruvin asked her where the gun then was, she answered, "I don't know. I'm sure it's someplace." She stated that the last time she had seen the gun was in Atlanta in 2010, but that she had not needed it since then. Detective Ruvin then informed her that her gun had been recovered and that it had been used to kill Somuah. She denied any role in the murder and hypothesized that her gun must have been stolen. She offered the further suggestion that Somuah himself may have stolen the gun form her when he helped her move to Baltimore two weeks before the murder and that that was why the gun would have been available in his apartment on the night of his murder.

This eight-year odyssey of that Lorcin .380 from a pawn shop in rural Mississippi to the shoulder of the Capital Beltway is worthy of detective fiction. "But Brutus tells us that the weapon must have been stolen, and Brutus is an honorable man."

When the body of the murder victim is found lying, supine and unclothed, in his bed in an undisturbed apartment and the appellant has spent the night with him in that bed; and when the murder weapon, after a year's investigative search, is traced back to her ownership,

the ostensibly circumstantial evidence begins to take on more and more the coloration of direct evidence. This is only a gratuitous observation on our part, however, for the evidence has precisely the same probative force, however it is categorized.

C. "Oh, what a tangled web we weave, when first we practice to deceive."

It is perhaps a case of carrying coals to Newcastle to add to this inculpatory chronicle several acts of deliberate deceit on the appellant's part in the hours and days immediately following the murder. The acts of deceit do not ipso facto prove the appellant's guilt. They do nonetheless add interpretive color to the body of other evidence that was just then taking on critical mass.

We have already made mention of the appellant's deliberate lying about her ownership of a gun. When the police interviewed the appellant on June 29, 2012, they did not know if she had ever owned a gun. That was the occasion when they came to her new apartment in Baltimore, searched it, and found no weapon of any sort. She expressly denied ever having owned, handled, or shot a gun. She had never, moreover, ever reported to the police that her gun had been stolen.

When, a year later, Detective Ruvin questioned the appellant in Mississippi, however, she admitted to having owned a gun. She attributing her earlier denial of ownership when interviewed in Baltimore to the fact she was never asked that question directly but was only asked about handling or shooting a gun. That earlier conversation in Baltimore had been

recorded, however. To Detective Ruvin's specific question, "Did you own a gun? Have you ever fired a gun?" the appellant responded, "No." She then added, "I probably should have one." To Detective Ruvin's specific question, "Do you have a gun in your apartment?" the appellant responded, "Are you kidding?" A short time later, Detective Ruvin returned to the subject with, "You don't have any guns? You know how to work the gun? Hold the gun?" the appellant again responded, "No."

In Mississippi it was only after Detective Ruvin informed the appellant that they had located her gun and that it was the murder weapon that the appellant acknowledged purchasing it in 2004 "because she had been stalked by eleven different stalkers in different cities where she had worked." Although she was "pretty sure" that she had bought the gun to Maryland, she had not seen it since 2010 in Atlanta. She offered no theory as to why it had not turned up in the search of her apartment except to surmise that Somuah might have stolen it when he helped her pack for her move to Baltimore two weeks before his murder. The appellant's apparent indifference to her gun and her random inconsistencies in talking about it were less than reassuring.

D. An Exemplar of Nonchalance

When it came to the subject of Somuah's murder in his bed on the night or in the early morning that she had slept with him in that bed, the appellant was a model of nonchalance. The police first approached her at the Veridian four days after the murder. When informed

by the police that they wanted to talk to her about "Eric," she casually responded, "Eric who?" Only then did she add, "Why, what happened?"

A mountain of circumstantial evidence indicated that she had every reason to know that Somuah was dead, even as she feigned ignorance. If she were learning about the murder for the first time, however, her sang-froid would have been inscrutable. When the detectives informed her that Somuah had been murdered, she said nothing. Her mood remained unconcernedly casual. She never inquired as to where he had been murdered, when he had been murdered, or how he had been murdered. At the very least, it was a ghoulishly glacial reaction to being first informed of the murder of the man she had been intimately involved with a mere 72 hours earlier. Had such knowledge suddenly hit her in the face, her insouciance would have been heroic. The normal response would have been to be ravenous for every shred of detail.

E. An Insignificant Dollop of Additional Deceit

There was one additional act of deception on the appellant's part that we will deliberately refrain from adding to this overwhelming totality of guilt. Even had evidence of deceit been admitted erroneously, that would not prevent it from being considered when assessing the sufficiency of the evidence. Lockhart v. Nelson, 488 U.S. 33, 109 S. Ct. 285, 102 L.Ed.2d 265 (1988). In this case, however, it is completely unnecessary even to consider it and, therefore, we won't. We deliberately omit to include it in our assessment of the legal

sufficiency of the evidence to make the point that the presence or absence of this small dollop of additional evidence would not have made any conceivable difference to the jury's verdict in this case. This will appear as our alternative holding in disposing of the next contention.

Discovery

The appellant contends that the State failed to reveal by way of discovery that it would be using a detective to testify about the appellant's Facebook activity shortly after the murder. Involved is Maryland Rule of Procedure 4-263(d)(8), which requires the State to reveal certain material with respect to expert testimony. That subsection provides:

> "(8) Reports or Statements of Experts. As to each expert consulted by the State's Attorney in connection with the action:
>
> "(A) the expert's name and address, the subject matter of the consultation, the substance of the expert's findings and opinions, and a summary of the grounds for each opinion,
>
> "(B) the opportunity to inspect and copy all written reports or statements made in connection with the action by the expert, including the results of any physical or mental examination, scientific test, experiment, or comparison; and
>
> "(C) the substance of any oral report and conclusion by the expert[.]"

On June 19, 2012, the State seized the appellant's computer. Through its expert, it extracted from the computer and introduced into evidence the fact that the appellant had visited Somuah's Facebook page and would have learned from it that Somuah was dead at

a time when she was still feigning ignorance of his death. The evidence did not show her involvement in the murder. It was evidence, however, of one instance of deceit by her in pretending not to know of his death.

We see no discovery violation. Several months in advance of trial, the State informed the defense that it intended to call Detective Michael Yu as an expert witness to testify about digital evidence recovered from the appellant's laptop computer. The defense was notified that Detective Yu would be an expert witness to "testify to the seizure, recovery, preservation, analysis and interpretation of digital evidence recovered from Eric Somuah's Apple computer and [the appellant's] Apple Macbook computer." The State also turned over to the defense a computer disc that contained all of the data in the computer. The defense then had the same repository of data that the State had and which Detective Yu would himself be examining.

From his analysis, Detective Yu prepared a chart graphically showing several of the visits the appellant made to Somuah's Facebook page. At trial, the defense was given a copy of the chart. The appellant now claims that the State's failure to turn over the chart earlier was a discovery violation. Judge Boynton ruled that there was no discovery violation. We affirm that ruling. The appellant complains that the disc was "metadata" and was not in English. The defense, on the other hand, had precisely the same material before it that

Detective Yu had before him and defense experts were able to examine what was before them exactly as the State's expert could examine what was before him.

With respect to the chart, that was a work product simply prepared to present the State's case in a persuasive forensic form. The defense was no more entitled to it than it would have been entitled to an advance transcript of the prosecutor's closing argument to the jury. The chart, moreover, was disclosed to the defense very shortly after it was created. It was disclosed sufficiently in advance of Detective Yu's testimony for the defense to review it and to prepare for cross-examination. The defense never requested additional time to review the exhibit.

In any event, what ultimately came out of Detective Yu's investigation of the computer was, relatively speaking, inconsequential. As we have already indicated in our concluding remarks with respect to the legal insufficiency contention, even if we, arguendo, were to find a discovery error, we would nonetheless be persuaded, beyond a reasonable doubt, that such error was harmless. On this contention, both sides have been firing back and forth salvo after salvo of highly sophisticated technical jargon over a modest piece of circumstantial evidence. It is an occasion for appreciating that the harmless error alternative can sometimes be a very welcome godsend to appellate judges.

Forgoing The Right To Testify

The appellant's third contention is creative but unavailing. Although she called a number of defense witnesses, she elected not to take the stand in her own defense. (It would seem to have been a tactically wise decision). Citing Rock v. Arkansas, 483 U.S. 44, 107 S. Ct. 2704, 97 L.Ed.2d 37 (1987), however, she points out that the right of a defendant to testify is a fundamental constitutional right. Thus far, we agree. The next link in her chain of argument is that such a fundamental constitutional right may only be waived (to wit, not exercised) following a voluntary and knowing waiver hearing in front of the judge and on the record.[1] We decline to go that far with the appellant.

Without engaging in a lengthy philosophical disputation, it is enough to point out that the authoritative Maryland law is Stevens v. State, 232 Md. 33, 39, 192 A.2d 73 (1963).

> "Where the accused has counsel, it is to be presumed that the accused has been informed of his rights and that when he voluntarily takes the stand he waives the protection of the constitutional and statutory provisions."

The appellant disdains reliance on Stevens by observing that it "is more than fifty years old" and that it "did not involve a great deal of analysis." Whatever Stevens might appear to be in a vacuum, however, Stevens has a progeny, much of which is far less than

[1]It raises an interesting problem as to what the judge should do if he found that the waiver was not truly knowledgeable, for instance. Order the defendant to take the stand and testify?

50 years old. In Gilliam v. State, 320 Md. 637, 655-56, 579 A.2d 744 (1990), the Court of Appeals reaffirmed Stevens and stated unequivocally:

> "We assume during the discussions alluded to in the on-the-record litany between Gilliam and his defense counsel, in the absence of any indication to the contrary, that defense counsel correctly informed Gilliam about the significance of his election not to testify both at trial and at sentencing. The record does not support the highly unlikely inference that either Gilliam or his attorney actually believed that an election to remain silent at trial mandated acquittal, or that an election to remain silent at sentencing meant either that the court had not yet made a final determination as to his guilt or that the court could not consider the fact of his guilt when imposing sentence. The trial court was, therefore, not required to advise Gilliam of his right to remain silent at trial or at sentencing."

See also, Morales v. State, 325 Md. 330, 336, 600 A.2d 851 (1992) ("Defendants represented by counsel are presumed to have been informed of their constitutional rights by their attorneys. Therefore, the trial court is not required to advise represented defendants of their right to remain silent or testify." (Emphasis supplied).).

In Oken v. State, 327 Md. 628, 639, 612 A.2d 258 (1992), the Court surveyed the caselaw generally and announced:

> "[T]here is no requirement that a represented defendant be advised in open court, by either the trial judge or counsel, on the issue of whether to testify or to remain silent. Instead, we held that there is a rebuttable 'presumption' that a represented defendant has been fully informed regarding his right to testify, and that, absent some 'clear' indication in the record to the contrary, appellate courts will presume that whatever course of action the defendant ultimately takes at trial was in fact a voluntary decision made after a complete, but not necessarily on-the-record, consultation with defense counsel."

(Emphasis supplied).

With respect to the right to testify specifically, Chief Judge Robert Murphy wrote for the Court of Appeals in Thanos v. State, 330 Md. 77, 91, 622 A.2d 727 (1993):

> "Thus, trial judges have no affirmative duty to inform represented defendants of their right to testify except 'where it becomes clear to the trial court that the defendant does not understand the significant of his election not to testify or the inferences to be drawn therefrom....'"

(Emphasis supplied; citation omitted).

The Court of Appeals most recently addressed the subject generally and the then 51-year-old case of Stevens specifically in Savoy v. State, 218 Md. 130, 148, 96 A.3d 842 (2014):

> "In Maryland, when a defendant is represented by counsel, there is no obligation on the part of the court to advise the defendant of the right to testify."

(Emphasis supplied).

This Court as well has not been silent on the subject. In Tilghman v. State, 117 Md. App. 542, 555, 701 A.2d 847 (1997), we stated clearly:

> "[T]he trial court is entitled to assume that counsel has properly advised the defendant about that right and the correlative right to remain silent and, if the defendant does not testify, that he has effectively waived his right to do so."

(Emphasis supplied; footnote omitted). See also, Gregory v. State, 189 Md. App. 20, 33-34, 983 A.2d 542 (2009). 232 Md. 350

Even if we were so inclined (we are not), we must decline the appellant's request for us to overturn so venerable a body of caselaw.

The Sentence of Life Without Parole

The appellant's final contention will not detain us long. She challenges her sentence of life imprisonment without possibility of parole on two grounds. The first of those is based upon her assertion that she was entitled to sentencing by a jury when the ultimate sentence is one of life without parole. This very issue was decided by this Court in Bellard v. State, Slip Op. 1281, Sept. 2015 Term (Filed August 31, 2016). Judge Nazarian's opinion for this Court well set out the contention there, which is precisely the contention raised by the appellant here:

> "Mr. Bellard argues first that he was entitled to elect to be sentenced by a jury, and that the circuit court erred when it struck his notice to that effect and imposed life sentences without the possibility of parole. He recognizes, as he must, that non-capital murder defendants in Maryland had not historically been entitled to sentencing by jury, as capital murder defendants were. And he does not contend that the United States or Maryland Constitutions compel sentencing by jury in cases involving life without parole."

Id. at 9.

After rejecting any argument that there was a constitutional entitlement to jury sentencing as a prerequisite for the imposition of such a sentence, the opinion of this Court thoroughly examined the statutory background of the sentencing scheme. Again, it found no basis there for requiring a jury to pass sentence:

> "This theory falls apart, though, because life imprisonment without parole is not outside the statutory maximum for first-degree murder – it is the statutory maximum. See, [Md. Code, Criminal Law Article] § 2-201. Indeed, Apprendi [v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L.Ed.2d 435

> (2000)] sought to 'be clear that nothing in this history suggests that it is permissible for judges to exercise discretion – taking into consideration various factors relating both to offense and offender – in imposing a judgment within the range prescribed by statute.' 530 U.S. at 481 (emphasis in original). In that case, the sentence was illegal because it required proof of a fact, that is an element of the crime, to increase the penalty, and that fact should have been submitted to a jury and proven beyond a reasonable doubt. *Id.* at 490. But the State was not required to prove any particular fact or element to justify a sentence of life without parole rather than life – after October 1, 2013, life imprisonment without the possibility of parole is the maximum sentence for first-degree murder. Ultimately, we see no basis on which to distinguish this case from Woods, and thus no basis on which to find the sentencing procedures at issue unconstitutionally vague."

Id. at 21.

In her second sub-contention, the appellant claims that the statutory procedures are inadequate to justify such a penalty. Woods v. State, 315 Md. 591, 600-01, 556 A.2d 236 (1989) had upheld the constitutionality of the Maryland sentencing scheme. The appellant here rejects the authority of Woods in this regard because "it was decided before Apprendi v. New Jersey" and "the validity of its reasoning is now suspect."

The Bellard opinion expressly addresses this issue and points out that Woods v. State is not in any way adversely affected by the Supreme Court's Apprendi case.

> "Mr. Bellard contends that the sentencing procedures in first-degree murder cases are void for vagueness because they provide no guidelines for the imposition of a sentence of life without the possibility of parole. The State counters that this same issue was previously addressed by the Court of Appeals in Woods v. State, 315 Md. 591 (1989). In that case, the defendant argued that when 'a life sentence without parole is imposed without following the procedures required for a sentence of death, it is unconstitutionally void for vagueness as offending due process of law.' Id. at 602-603 (footnote omitted). He argued as well that without guideline such as those that are in

> place for death penalty cases, he would have to 'guess at the sentencing procedure if he was convicted of the crime of first degree murder.' Id. at 603. The Court of Appeals rejected these arguments and held that a sentence of life imprisonment without the possibility of parole could be imposed without a separate sentencing proceeding before a jury."

Id. at 20. (Footnote omitted).

The appellant's sentence of life without parole was not in any sense flawed.

JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANT.