

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
July 23, 2002 Session

STATE OF TENNESSEE v. RAYMOND WRITER

**Direct Appeal from the Criminal Court for Sullivan County
No. S42,614 Phyllis H. Miller, Judge**

**No. E2001-01062-CCA-R3-CD
June 10, 2003**

DAVID H. WELLES, J., CONCURRING.

I agree with Judge Smith's conclusion that the Defendant's conviction should be affirmed. I write separately only because I disagree with his conclusion that the trial court should not have allowed admission of the victim's statement to Dr. DeMoss identifying the Defendant. Pursuant to State v. Livingston, 907 SW 2d 392 (Tenn. 1995), and for the same reason Dr. Heise's testimony was deemed admissible, I believe the trial court properly admitted the statements made by the victim to Dr. DeMoss identifying the Defendant. In all other respects, I fully join in Judge Smith's opinion. Because Judge Smith found the trial court's error to be harmless, I fully concur in the result which he reaches. I am authorized to say that Judge Joe G. Riley joins this concurring opinion.

DAVID H. WELLES, JUDGE