

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE  
February 13, 2002 Session

**STATE OF TENNESSEE v. STEVEN DALTON**

**Direct Appeal from the Criminal Court for Hickman County  
No. 98-5093CR-I Donald P. Harris, Judge**

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**No. M2001-00756-CCA-R3-CD - Filed May 21, 2002**

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A Hickman County Criminal Court jury found the defendant, Steven Dalton, guilty of voluntary manslaughter for the killing of a fellow inmate. The trial court imposed a six-year sentence to be served consecutively to the defendant's existing life sentence. The defendant appeals his conviction, claiming: (1) the trial court erred in allowing the State to impeach him with his prior felony murder conviction and (2) the evidence was insufficient to support his conviction for voluntary manslaughter. We affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed**

ALAN E. GLENN, J., delivered the opinion of the court, in which JOSEPH M. TIPTON and JOHN EVERETT WILLIAMS, JJ., joined.

E. Covington Johnston, Franklin, Tennessee, and Mark C. Scruggs, Nashville, Tennessee, for the appellant, Steven Dalton.

Paul G. Summers, Attorney General and Reporter; Elizabeth T. Ryan, Assistant Attorney General; Ronald L. Davis, District Attorney General; Kenneth K. Crites, Assistant District Attorney General; and Jeffrey L. Long, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

On August 6, 1998, the defendant was indicted by a Hickman County Grand Jury for premeditated first degree murder and felony murder as to the victim, Gary Donald, two counts of attempted first degree murder, and two counts of aggravated assault. The State filed its Notice of Intent to Seek Imprisonment for Life Without Possibility of Parole on November 10, 1998. On March 2, 1999, the State filed a Notice of Intent to Seek Death Penalty. The State later filed a Notice of Intent to Seek Enhanced Punishment as a Multiple Offender and Notice of Impeachment by Conviction.

At the close of the State's case, the trial court entered a judgment of acquittal for the first degree murder charge and the other counts, leaving only second degree murder and all lesser-included offenses for the jury. At the conclusion of the trial, the jury found the defendant guilty of voluntary manslaughter, a Class C felony. He was sentenced as a Range I, standard offender to six years to be served consecutively to his existing sentence of life imprisonment. After the defendant's motion for a new trial was denied, he filed a timely notice of appeal.

### **FACTS**

Michael Riley, a correctional officer at Turney Center Prison, testified that on May 18, 1998, the day the victim, Gary Donald, was stabbed, there were approximately 200 inmates in the ballfield area of the prison where he was working. He heard a "code one," meaning that an officer needed assistance, and then saw an inmate covered with blood running across the field. As Officer Riley approached the ball shack, he saw the victim struggling to get away from the defendant:

A. I saw Dalton and Donald, they was coming around the back side of this building right here, the ball shack. And Dalton was all over Donald and Donald was, you know, moving and trying to get away from him, and the wall was, like, right here, and they's running up to the edge of it, and I met them right at the edge of it.

And then Donald, he – there was a mop, there was a mop rack on the back side, and he was trying, you know, to get away from him and knocked it over; he couldn't get away from him.

Q. Why couldn't he get away from him?

A. He was – Dalton was all over him, I mean, just – he couldn't get away. He couldn't get away from him. Then I seen Gary, Gary Donald, he had slumped over and I saw Dalton hit him twice. He had the knife in that hand, in his right hand. And I hollered out to Dalton, I said, "Dalton," because I knew him, and he stopped. He looked at me and stopped.

And then Gary jumped off the porch right here. I come up the steps and followed Dalton right up as you come off the porch right here, and the rest of them were there, and we backed them on up to right there, and that's when . . .

Q. When you say "the rest of them," who else are you referring to?

A. Let's see, there was Mayton – Mayton was the only one that didn't have a knife. At the time he had long hair, kind of scraggly-

looking. But the other two fellers (sic), they was – well, I think it was Powers, he was probably the one I remember the most besides Dalton, he was – had his head shaved and had a lot of tattoos, and he was – seemed like maybe he was the shorter one of the bunch.

Q. Can you describe how Dalton stabbed Donald? Describe how severe that was, if at all.

A. At one time, one of the blows, the first one, when Donald was bent over and he hit him, Donald's feet come up off the ground probably two inches. It picked him plumb up off the ground. I have never seen – that was my first killing, that's the first one I ever seen. And I'm telling you, he was all over him.

Q. Now, I think you indicated maybe you had them back here, is that right?

A. Yes. I kept talking to Donald telling him – or Dalton, and telling him to drop his weapon, drop his weapon. Then they came up to right here and I said, "Come on, now, drop your weapon." "We ain't dropping shit until the ballfield's clear." All right. I get on the radio telling them, "I need you down here right now." Well, I'd done called for them, soon as I seen Donald – or Dalton sticking Donald, that's when I got on the radio and said, "Look, I need ya'll down here right now. We've got a sticking. It's bad."

Q. Did anyone out there ever advance on you and make any kind of threat?

A. Yes, sir.

Q. What happened in regard to that?

A. I was very consistent in asking Donald – Dalton to drop his knife, drop the weapon. And one time Dalton got really agitated, extremely agitated, and I's trying to calm him down and talk to him and try to calm him down, and he just went from being almost calmed down to fired back up again, I mean, (witness snapped his fingers), like that. And he said, "You want some of this, too, Red?" And he started coming towards me, and the other two fellers – seemed like the other one had a shaved head, too, but both of them stopped and held him back and said, "We ain't got no problem with the police. We ain't

got no problem with you, Red. We had our business and we took care of it.” And they stopped.

Officer Riley also testified about the inmates who had weapons when he arrived on the scene:

Q. [D]id you observe any other inmate with a weapon?

A. Powers had one and Trimble, I believe was the other one, and Dalton had one. But, now, Mayton, I never seen him with a knife. And when we backed them up to the fence right there and – you know, he never had a knife, never seen him with a knife, and when they stuck their knives in the ground, he didn’t have one then, either.

Q. Did it appear to you that Gary Donald had a knife?

A. I did not see Gary Donald with any weapon whatsoever.

During Officer Riley’s cross-examination, he explained that the knife recovered from the defendant was a “shank,” a homemade knife consisting of a long piece of metal with a sock on it for a handle. He also stated that he was unsure how the fight on the ballfield started:

Q. And when you get around to the other side of the shack, the first thing you see is Gary Donald and Steven Dalton going at it, basically?

A. I seen Dalton, you know, he was all over Donald.

Q. He was winning the fight?

A. Oh, yes.

Q. But you have no idea how it all started?

A. No, I have no idea.

Q. You have no idea how many times Mr. Donald may have been stabbed before he even got to that point, correct?

A. I don’t.

Q. And you don’t know how many people that had been involved in this previous fight could’ve possibly stabbed him, as well, do you?

A. No, sir.

Q. So you get all the way over to here, and then you see, as you said, Steven Dalton all over Mr. Donald.

A. Uh-huh (indicating yes by sound).

Q. Mr. Donald, doesn't he grab a mop and start flailing the mop at him?

A. At no time did I see him with any weapon.

Q. No mop?

A. No mop.

Q. You said something about a mop earlier.

A. I didn't see him with a mop, not a weapon. I never seen Mr. Donald with a weapon.

Q. Okay. Was there a mop nearby?

A. There was a mop rack, and he knocked that mop rack over.

Q. Okay.

A. But, now, he did not have a mop.

Q. Okay. Well, all you know, then, is what you saw when you went around there; you don't know if he had a mop prior to that, though, do you?

A. That's right.

Larry Wayne Harper, a correctional shift sergeant at Turney Center at the time of the incident, testified that he and Lieutenant Pugh also responded to the code one on the ballfield. As they headed toward the ballfield, they saw an inmate lying on the road outside the gate receiving first aid from Officer Brogden. Sergeant Harper later discovered that this was inmate Harvey Hester. Officer Michael Kilpatrick then joined Sergeant Harper, and they responded to a second call concerning a disturbance at the ball shack. At the gate of the ballfield, they met a second inmate, James Dubose, who was staggering with blood on him. Harper then saw the victim, Gary Donald,

lying on the concrete dock surrounding the ball shack. He saw some other inmates pick up Donald and carry him toward the medical personnel.

Sergeant Harper and Officer Kilpatrick then walked around the ball shack and saw Officer Riley facing four inmates who were lined up in front of a fence. Harper could see that three of the four inmates had homemade knives in their hands. He testified that as they were trying to disarm the inmates, one of the prison's outside mobile units pulled up close to the fence and aimed a weapon at the four inmates. He said that once the mobile unit arrived, the inmates stuck their knives into the ground and backed up. The officers then cleared the ballfield and handcuffed the four inmates before taking them to segregation. Harper identified the four inmates lined up against the fence as Mayton, Powers, Trimble, and the defendant.

During Sergeant Harper's cross-examination, he said that he did not witness the fight and did not know who had weapons when it started. He conceded that weapons often change hands during a typical prison fight. During redirect, Harper stated that he did not see any blood or any injuries on Mayton, Powers, Trimble, or the defendant.

Michael Kilpatrick, a correctional officer at the Turney Center, testified that he and Sergeant Harper saw inmate James Dubose as they approached the ballfield. Dubose had a significant amount of blood on his upper body but appeared to be "in pretty good shape." He remembered Dubose holding a mop or a broom and lying down next to inmate Hester. Officer Kilpatrick described the scene when he and the other officers arrived at the ball shack:

Q. Did you recognize those inmates?

A. I knew two of them.

Q. And which two did you know?

A. Dalton and Mayton.

Q. Okay. Did Dalton make any statement to you?

A. (Pause) – Yeah, he made the statement that, "You see who's still standing," and "these punks," or something to that nature, "You see who's standing and who's laying, who's down there."

Q. Describe his manner.

A. He's real hyped up, mad. The other inmates didn't appear to be too – not as mad as – you know, as himself, really psyched out, you know, he was, I guess, you know, after the altercation, I don't – I don't know.

On cross-examination, Officer Kilpatrick admitted that all the fighting had ended by the time he arrived at the scene. Kilpatrick stated that the approximately 250 inmates on the ballfield were never searched for weapons and that there was no general search of the prison. The mop or broomstick in Dubose's hand did not have a shank taped to the end of it, and it was not collected as evidence. Kilpatrick said that he recovered two black-handled knives from Trimble and Powers and "probably a quarter of an ounce" of marijuana from Hester.

Randolph E. Hicks, a corporal at the Turney Center, testified, much of his testimony duplicating that given by Harper and Kilpatrick. However, during cross-examination, Officer Hicks recalled telling Gilbert Mathis, an investigator for internal affairs for the Tennessee Department of Correction, that the defendant said he, Mayton, and Powers had come to the ballfield to fight Dubose, Hester, the victim, and a gang of black inmates to defend Powers who was "one of their real good friends." Hicks said he did not see anything that indicated Dubose, Hester, or the victim actually started the fight.

Inmates James Dubose, Jeffrey Osborne, and Harvey Hester were called as witnesses by the State but refused to testify.

Dr. Charles Warren Harlan, the assistant county medical examiner for Hickman County, testified that he performed the autopsy on the victim's body. There were fifteen stab wounds to the victim's body, eight on the front and seven on the back. He stated three of the fifteen wounds were fatal and that a person would live for only five to ten minutes after receiving such wounds. Dr. Harlan testified that the victim's wounds were inflicted with a weapon that had one square end and one sharp-edged end, such as a knife. Tests revealed that the victim had a blood-alcohol level of .07% and tested positive for marijuana.

The State then rested. Defense counsel made a motion for a judgment of acquittal on all counts of the indictment, and the court granted the motion as to counts two through six. As to count one, the trial court concluded that the jury would have to speculate in order to find premeditation, entering a judgment of acquittal for the first degree murder charge, but leaving second degree murder and all lesser-included offenses for the jury's consideration.

The first defense witness was Bryon Pickett, an inmate housed at the Riverbend Maximum Security Complex at the time of trial. He said that he had been confined at Turney Center previously, and on May 16, 1998, a group of inmates who, with the victim, "r[a]n in a crowd like a pack of wolves," attacked the defendant. He and the defendant fought the other inmates, all of whom were armed with knives. As a result of the fight, Pickett was confined in the segregation unit when, two days later, the victim was killed. He said that the fight was "about some food." Pickett then testified about the victim and his associates:

A. Yeah, J.D. [Dubose] was Gary's punk, you know, and Carl Evans, you know, what I'm saying, that was his boys, they kept on snitching

on them – on everybody else getting busted with drugs and stuff so they can get their cut.

Q. What about reputation for violence? Did you have any knowledge about Gary Donald's and James Dubose's and Harvey Hester's reputation for violence?

A. Yeah, J.D. [Dubose] and Gary, you know what I'm saying, when we's in Unit 5 together up on close, you know, what I'm saying, they jumped on a check-in and stuff, you know what I'm saying, a bunch of – you know, just people that couldn't defend theirself (sic), like bullies.

On cross-examination, Pickett said that the victim, himself, was not involved in the incident on May 16.

The defendant's mother, Margaret Galego, was the next witness for the defense. She said that she had visited the defendant at the Turney Center on Sunday, May 17, 1998, because "[h]e had been threatened and he just wanted us to come up there because he felt it would be the last time he would see us. That's how scared he was of dying."

The defendant testified that he knew the victim had been convicted of first degree murder for the stabbing of a woman in 1979. He was aware that the victim had been involved in the murder of an inmate while at another prison. He said he started having problems with the victim at the Turney Center because the victim told other inmates that the defendant had "used some friends of his names" in order to be put in protective custody, which is seen by both inmates and guards as an act of cowardice.

The defendant stated that he met James Dubose when the defendant moved to the close security housing unit in 1997 at the Turney Center. He testified that Dubose was apparently in prison for killing a baby. He also said that the victim and Dubose were close friends and were rumored to have a homosexual relationship.

The defendant stated that he met Harvey Hester when Hester came to the Turney Center in 1997 and they became cell mates. Hester told him that he was in prison for killing two men and seriously injuring a woman when he ran their car off the road.

The defendant also described the "hustle" that existed at the Turney Center. He said he worked in the kitchen and often swapped food for cigarettes and marijuana. He commonly traded with a gang called the Crips, with whom Hester, Powell, Dubose, and the victim were associated. The defendant stated that he had had several disputes with this group before the victim was killed because they claimed he was not giving them enough food. Often members of the group would flash knives at the defendant. The defendant said that he had tried to end this dispute before the victim



was killed. He also claimed that on May 16, 1998, he tried to get one member of the gang to fight without weapons in order to put an end to this dispute. The fight erupted into a large brawl, and the defendant claimed that another inmate saved his life. On May 17, 1998, in the chow hall, the defendant talked to Dubose, Hester, Powell, and “four or five black guys there standing up with them at a table” and believed that any disputes between them were resolved because they all shook hands.

The defendant said that on May 18, 1998, he was playing in a softball game on the ballfield when he noticed the victim, Dubose, and Hester “huddle” at the entryway of the ballfield. The defendant left the game to speak with Dubose and Hester, asking them, “We still got that understanding from last night, right?” to which they replied, “Yeah. Oh, yeah. Yeah.” All of the men then walked to the area around the weight pile where Mike Mayton joined them. The defendant said the victim was “just standing there, he ain’t really saying nothing, he’s just – him and James Dubose is looking back and forth at one another as I’m speaking with them, speaking with Mr. Hester.” Believing that the dispute was still resolved because he again shook hands with Dubose and Hester, the defendant and Mayton started walking away toward the track on the ballfield. Powers and Trimble joined them and asked if everything was all right. The defendant told them, “Yeah, everything’s fine,” and he and Mayton walked away toward the gate. Hester suddenly “came up at [the defendant] . . . with his hand with something in it.” The defendant quickly pried a knife out of Hester’s hand and then realized that the victim and Dubose were standing behind Hester. An “all-out brawl” and “total chaos” erupted. Hester ran away, and the defendant saw the victim coming at him with a broom with something tied to the end of it. He said, at that point, “total fear went through [his] whole entire body.” The defendant also testified that he did not remember stabbing the victim, although he remembered struggling with him over the broom and the two of them swinging at each other. The next thing the defendant remembered was Officer Riley screaming at him to stop. At that point, the defendant stated that he, Mayton, Trimble, and Powers started walking toward the fence. The defendant stated that he did not recall telling any officer, “We took care of business.” The defendant also claimed that there was no way to avoid fighting for his life with Hester and the victim.

On cross-examination, the defendant denied that he, Mayton, Trimble, or Powers had attacked the victim. He said the victim “had something of some nature like a knife attached to his mop handle” and admitted that he had the knife that he had taken away from Hester. The defendant said he did not know who had stabbed the victim, but it was “obvious that more than likely that I may’ve been the one that might have stabbed him.” When asked if he inflicted all fifteen of the stab wounds to the victim, the defendant replied, “I would hope I didn’t. . . . And I honestly don’t think I did. But I honestly can’t tell you if I did; I honestly can’t tell you who did.”

## ANALYSIS

### **I. Impeachment of Defendant with Prior Felony Murder Conviction**

The defendant, prior to his direct examination but out of the presence of the jury, testified about his 1983 felony murder conviction for which he was still incarcerated so that the trial court

could determine whether he could be questioned about it. He asserts that the trial court erred in allowing him to be impeached with this conviction, arguing that because of the fact that the conviction and the case being tried were both homicides, the prejudicial effect outweighed the probative value.

Impeachment by a prior conviction is governed by Tennessee Rule of Evidence 609(a), which provides as follows:

**Impeachment by evidence of conviction of crime.**

(a) General Rule. – For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime may be admitted if the following procedures and conditions are satisfied:

(1) The witness must be asked about the conviction on cross-examination. If the witness denies having been convicted, the conviction may be established by public record. If the witness denies being the person named in the public record, identity may be established by other evidence.

(2) The crime must be punishable by death or imprisonment in excess of one year under the law under which the witness was convicted or, if not so punishable, the crime must have involved dishonesty or false statement.

(3) If the witness to be impeached is the accused in a criminal prosecution, the State must give the accused reasonable written notice of the impeaching conviction before trial, and the court upon request must determine that the conviction's probative value on credibility outweighs its unfair prejudicial effect on the substantive issues. The court may rule on the admissibility of such proof prior to the trial but in any event shall rule prior to the testimony of the accused. If the court makes a final determination that such proof is admissible for impeachment purposes, the accused need not actually testify at the trial to later challenge the propriety of the determination.

Tenn. R. Evid. 609(a).

Two factors should be considered when deciding whether the probative value of a prior conviction outweighs its unfair prejudicial effect on the substantive issues of a case. State v. Mixon, 983 S.W.2d 661, 674 (Tenn. 1999). First, “[a] trial court should . . . analyze the relevance the impeaching conviction has to the issue of credibility.” Id. (citing Neil P. Cohen et al., Tennessee Law of Evidence § 609.9 at 376 (3d ed. 1995)). Second, if the trial court finds that the prior

conviction is probative of the defendant's credibility, then the court should "assess the similarity between the crime on trial and the crime underlying the impeaching conviction." *Id.* (quoting Neil P. Cohen, Tennessee Law of Evidence § 609.9 at 376 (3d ed. 1995)). The second criterion is particularly important because in cases where "an impeaching conviction is substantially similar to the crime for which the defendant is being tried, there is a danger that jurors will erroneously utilize the impeaching conviction as propensity evidence of guilt and conclude that since the defendant committed a similar offense, he or she is probably guilty of the offense charged." *Id.* (citing State v. Barnard, 899 S.W.2d 617, 622 (Tenn. Crim. App. 1994); State v. Farmer, 841 S.W.2d 837, 839-40 (Tenn. Crim. App. 1992); Long v. State, 607 S.W.2d 482, 486 (Tenn. Crim. App. 1980)). The more similar the impeaching conviction is to the trial offense, the greater the risk of a prejudicial effect to the defendant. *Id.* However, the fact that a prior conviction involved the same or similar crime as the one for which the defendant is being tried does not automatically prevent its use to impeach the defendant's credibility. State v. Walker, 29 S.W.3d 885, 889 (Tenn. Crim. App. 1999) (citing State v. Miller, 737 S.W.2d 556, 560 (Tenn. Crim. App. 1987)), perm. to appeal denied (Tenn. 2000).

While the connection between a defendant's prior crime of dishonesty and his credibility is apparent, the connection between a defendant's prior violent crime and his credibility proves more tenuous. This court has previously held that violent felonies "reflect on the moral character of a witness" and that "this evidence is not usually without probative value." State v. Blanton, 926 S.W.2d 953, 960 (Tenn. Crim. App. 1996) (quoting State v. Daniel Strong, No. 88-82-III, 1989 Tenn. Crim. App. LEXIS 284, at \*5 (Tenn. Crim. App. Apr. 12, 1989)). However, we have recognized also that violent crimes may result from "other causes generally having little or no direct bearing on honesty or veracity" such as "a short temper, a combative nature, [or] extreme provocation." Long v. State, 607 S.W.2d 482, 485-86 (Tenn. Crim. App. 1980) (citing Gordon v. United States, 383 F.2d 936, 940 (D.C. Cir. 1967)).

In addition to evaluating the probative value versus the unfair prejudicial effect, a trial court should make findings on the record when deciding whether to admit a prior conviction for the purposes of impeachment:

Tennessee case authority strongly urges judges to explicitly state, on the record, their reasons for allowing or disallowing a criminal conviction to be used for impeachment under Rule 609. The trial court should carefully explain any balancing of factors. Without this record, it will be difficult for appellate courts to determine whether the balancing test was properly applied.

Neil P. Cohen et al., Tennessee Law of Evidence § 609.9[14][b] (4th ed. 2000) (footnotes omitted). The trial court's decision to admit prior convictions for impeachment purposes will not be reversed on appeal unless it appears from the record that the trial court abused its discretion. Blanton, 926 S.W.2d at 960.

During the hearing on the admissibility of the defendant's prior felony murder conviction, the court heard arguments from both sides concerning its admissibility:

MR. SCRUGGS: All right. It's State versus Mixon 983 S.W.2d 661. I've got it underlined there. I think there are a number of factors that the Court has to look at, one of which is, obviously, the probative value of the conviction on the issue of credibility and then, also, you have the similarity between the prior conviction and the crime that he's charged with. And the weighing process when the defendant is testifying is slanted much more in favor of the defendant than it is just a normal witness. I think probably the value has to substantially outweigh the prejudicial effect, I believe that's what it is.

THE COURT: General, do you want to be heard on this issue?

GENERAL CRITES: Your Honor, I think it's admissible. It travels to motive, identity, credibility. It's a crime that involves – it's not a manslaughter or – it's a crime that involves moral turpitude, it's a robbery and theft with murder attached to it, and the murder, itself, goes to the identity of the way it was done, it's very similar.

THE COURT: Well, the question has to be, "Do you have a prior conviction?" And the answer is yes, the felony murder.

MR. SCRUGGS: Right.

THE COURT: (To the assistant district attorney general:) And you can't go into the circumstances of that. (To defense counsel:) You can if you want to. I think, in this case, first of all, you know, the jury knows that he's been there a long time, that's already been introduced into evidence, and so they know that he's in there for something, and probably what they can imagine he's in there for is no worse than what he is in there for.

But it also seems to me that in this case – and I wish the rule didn't say probative of credibility, because it is probative of credibility, but I think in this case it's uniquely probative of the situation between the parties, because everybody knows everybody's records and they deal with each other, as Mr. Dalton suggested, based on what they're there for, and so it's really part of the facts of this case. So I would say it's probative of not only credibility, but of the interaction between the parties in this case, and I would admit it on that basis.

Now, do you want him to testify?

MR. SCRUGGS: Yes, sir.

THE COURT: Okay.

Although the court concluded that the defendant's felony murder conviction was probative of his credibility, it did not give any reasons for making this determination and did not explicitly compare the defendant's prior conviction for felony murder to the offense for which he was on trial. Concluding that the defendant's prior conviction was not unfairly prejudicial, the trial court stated that the jury already knew the defendant had been imprisoned for "a long time" and "probably what they can imagine he's in there for is no worse than what he is in there for."

We note that the jurors learned much of the backgrounds of the trial witnesses and participants in the incident which resulted in the trial. Byron Pickett, the first witness for the defense, testified on direct examination that he was imprisoned because of a conviction for aggravated robbery. The defendant testified on direct examination that Gary Donald, whom he had first met in 1989 when both were inmates, was imprisoned for "first degree murder for the stabbing death of, I believe, a female." He also said that Donald had told of his involvement in "a killing that he was involved in and several other inmates were involved in at Fort Pillow in Henning, Tennessee." He said he had heard from other inmates that Donald was responsible for "a man by the name of Gene Moore being killed, being murdered in the shower." Thus, during the direct testimony of the defendant, the jury was told that the victim's incarceration resulted from his stabbing a woman to death and, while in prison, the victim was involved in the killing of two other inmates. Further, he testified that James Dubose was rumored to have killed a sixteen-month-old baby. Harvey Hester told the defendant that he "had run some people off the road and killed two men, and one of the men's daughter was in the car, that she got seriously injured." Further, the defendant testified that Hester, Dubose, and the victim "ran with all the time" a prison gang known as the Crips.

Even if we accept the defendant's argument that he was prejudiced by the trial court's allowing that he be cross-examined about his prior felony murder conviction, we cannot conclude that harm resulted. Given the nature of the offense, and the violent histories of the victim and his supporters, coupled with the fact that the defendant, himself, had been imprisoned for at least eleven years prior to the trial, it seems unlikely that the jurors, if the defendant's conviction had remained unspoken, would have assumed that, for instance, it was for a white-collar crime. Rather, as the trial court observed, the jurors would have known that "he's in there for something," and the imagined offense "is no worse than what he is in there for." Further, we note it seems unlikely that the jurors punished the defendant for his past sins since they convicted him of the lesser-included offense of voluntary manslaughter, an offense which the evidence easily supports. Accordingly, we conclude that even if the trial court did err in this evidentiary ruling, the error was harmless.

## II. Sufficiency of the Evidence

The defendant also argues that the evidence adduced at trial was insufficient as a matter of law to convict him of voluntary manslaughter. In considering this issue, we apply the rule that where the sufficiency of the convicting evidence is challenged, the relevant question of the reviewing court 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.” Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789, 61 L. Ed. 2d 560, 573 (1979). See also State v. Evans, 838 S.W.2d 185, 190-92 (Tenn. 1992); State v. Anderson, 835 S.W.2d 600, 604 (Tenn. Crim. App. 1992); Tenn. R. App. P. 13(e) (“Findings of guilt in criminal actions whether by the trial court or jury shall be set aside if the evidence is insufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt.”). All questions involving the credibility of witnesses, the weight and value to be given the evidence, and all factual issues are resolved by the trier of fact. See State v. Pappas, 754 S.W.2d 620, 623 (Tenn. Crim. App. 1987). “A guilty verdict by the jury, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the theory of the State.” State v. Grace, 493 S.W.2d 474, 476 (Tenn. 1973). Our supreme court stated the rationale for this rule:

This well-settled rule rests on a sound foundation. The trial judge and the jury see the witnesses face to face, hear their testimony and observe their demeanor on the stand. Thus the trial judge and jury are the primary instrumentality of justice to determine the weight and credibility to be given to the testimony of witnesses. In the trial forum alone is there human atmosphere and the totality of the evidence cannot be reproduced with a written record in this Court.

Bolin v. State, 219 Tenn. 4, 11, 405 S.W.2d 768, 771 (1966) (citing Carroll v. State, 212 Tenn. 464, 370 S.W.2d 523 (1963)). A jury conviction removes the presumption of innocence with which a defendant is initially cloaked and replaces it with one of guilt, so that on appeal, a convicted defendant has the burden of demonstrating that the evidence is insufficient. See State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982). When the credibility of the witnesses was resolved by the jury in favor of the State, the appellate court “may not reconsider the jury’s credibility assessments.” State v. Carruthers, 35 S.W.3d 516, 558 (Tenn. 2000), cert. denied, 533 U.S. 953, 121 S. Ct. 2600 (2001).

According to the record, the defendant does not dispute his involvement in the victim’s death. He does claim, however, that the death was the result of self-defense. The defendant buttresses this self-defense theory by claiming that none of the State’s testifying witnesses saw how the fight between the victim and the defendant started. At the conclusion of the trial, the jury had to compare the defendant’s version of what happened to what the correctional officers said they observed when they arrived at the scene of the fight. We have already noted that “questions concerning the credibility of witnesses, the weight and value to be given the evidence as well as all factual issues raised by the evidence are resolved by the trier of fact, not this Court.” State v. Pappas, 754 S.W.2d 620, 623 (Tenn. Crim. App. 1987) (citations omitted). The jury had the opportunity to carefully

observe each witness's testimony at the defendant's trial. After considering all the evidence and hearing all the witnesses testify, the jury convicted the defendant of voluntary manslaughter, thereby discounting the defendant's claim of self-defense. Since we may not question a jury's credibility determinations, we conclude that the defendant did not satisfy his burden of showing insufficiency of the evidence. Thus, viewing the evidence in a light most favorable to the State, we conclude that there was sufficient evidence to validate the jury's verdict.

### **CONCLUSION**

Based on the foregoing reasoning and authorities, we affirm the defendant's conviction for voluntary manslaughter.

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ALAN E. GLENN, JUDGE