

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs January 10, 2001

STATE OF TENNESSEE v. MILA LOVE

Direct Appeal from the Circuit Court for Fayette County
No. 4754 Jon Kerry Blackwood, Judge

No. W1999-01957-CCA-R3-CD - Filed August 17, 2001

The defendant appeals her convictions for first degree felony murder and alleges four errors for our review: (1) insufficient evidence; (2) failing to take judicial notice of the definition of the word “gank;” (3) failing to determine the order of the verdicts; and (4) failing to instruct on the lesser-included offenses of felony murder. After review, we hold that sufficient evidence exists to support the defendant’s convictions for first degree felony murder and that the trial court did not err in declining to take judicial notice of the definition of the word “gank.” We further hold that the trial court did not err in failing to determine the order of the verdicts and there was no implied acquittal of the felony murder convictions. Finally, we hold, pursuant to the recent Tennessee Supreme Court opinion of State v. Ely, ___ S.W.3d ___ (Tenn. 2001), that the offense of first degree felony murder does have lesser-included offenses of second degree murder, reckless homicide, criminally negligent homicide, and facilitation of felony murder. Therefore, because the trial court failed to instruct on the lesser-included offense of facilitation of felony murder, we reverse the defendant’s convictions and remand for a new trial.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Reversed and Remanded

JOHN EVERETT WILLIAMS, J., delivered the opinion of the court, in which DAVID G. HAYES and ALAN E. GLENN, JJ., joined.

Bill Anderson, Jr., Memphis, Tennessee (on appeal) and Michael W. Whitaker, Covington, Tennessee (at trial and on appeal), for the appellant, Mila Love.

Paul G. Summers, Attorney General and Reporter; Patricia C. Kussman, Assistant Attorney General; Elizabeth T. Rice, District Attorney General, for the appellee, State of Tennessee.