

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
June 4, 2013 Session

STATE OF TENNESSEE v. FREDERICK HERRON

Appeal from the Criminal Court for Shelby County
No. 11-04122 Carolyn Wade Blackett, Judge

No. W2012-01195-CCA-R3-CD - Filed January 17, 2014

JAMES CURWOOD WITT, JR., J., dissenting.

As the majority says, this appeal presents a close case. After much consideration, I respectfully conclude that one error requires a reversal and a new trial.

The error is the Rule 609 issue. The majority concludes that the defendant loses on this issue because he did not proffer his testimony. Actually, I thought the majority presented a solid case for holding that a proffer was unnecessary. In a case presenting strong overtones of a “he said, she said” controversy, the trial court’s improper influencing the defendant to avoid testifying was especially egregious. As such, I conclude that the error requires reversal and a new trial.

JAMES CURWOOD WITT, JR., JUDGE