IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

AUGUST 1999 SESSION

STATE OF TENNESSEE,	)	
	)	C.C.A. No. 03C01-9811-CR-00386
Appellee,	)	
	)	Unicoi County
v.	)	
	)	Honorable Lynn W. Brown, Judge
HAROLD TOLLEY,	)	
	)	(First Degree Murder)
Appellant.	)	

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OPINION FILED: _____

AFFIRMED

ALAN E. GLENN, JUDGE

O P I N I O N

The defendant, Harold Tolley, was convicted in Unicoi County of first degree murder in the March 1, 1997, shooting death of Lattie Franklin and was sentenced to life in prison. The defendant timely appealed, asserting the evidence presented was insufficient to support the jury's verdict and that the trial court erroneously ruled on an evidentiary question concerning a prior bad act of the defendant. Based upon our review of the record, we affirm the judgment of the trial court.

FACTS

The victim, Lattie Franklin, was 51 years old and the brother of the defendant's long-time girlfriend, Shirley Higgins. The relationship between the defendant and the victim had been rancorous since 1993, when the two men had argued over the installation of a heating and air-conditioning system. At that time, the victim allegedly pushed the defendant, who then pulled a gun and threatened to kill the victim. During the years that followed, the defendant allegedly told others that he would kill the victim if he ever had a chance and that he could kill the victim or anyone else and get away with it because he was crazy, had the papers to prove it, and was on Prozac. The relationship between the two men took a turn for the worse the night before the shooting when the victim's sisters gave the victim permission to graze his cattle on land formerly used by the defendant.

The following morning, March 1, 1997, the defendant crossed 740 yards of open pasture land, crawled between the strands of a four-strand barbed wire fence, and walked to where the victim was talking to Jerry and Cleon Price. Jerry Price testified, in response to questions from General Garland, as to what occurred after the defendant approached them:

> A. And, we was all like this. And, Lattie – Lattie said, that'll be fine. And, Lattie turned and pointed towards Janie and Danny's trailer, and he said, I'll have Shirley to show me where to put the corner posts in. And, when he turned back around Harold either come out from his [sic] behind his shirt belt, or his back pocket; and, he shot Lattie once in the left temple. And, Lattie was dead before he hit the ground. And, he got right down over top of Lattie and he emptied it, and it snapped three times. And, the brains went all over me. And, I'll have that to

live with the rest of my life. And, he never. . .

. Q. Now, when you say. . .

A. . . . he never said a word to me, or he never said a word to Daddy. He just give us a look as if, I ought to go ahead and do you; but, he'd done and shot all of his bullets. And, he put his gun back in his pocket, and turned and walked back through the field.

Q. Walked?

A. Walked right back through the field like he'd shot a dog.

Q. And said nothing to either of you?

A. No, sir. He never opened his mouth.

Q. Were there. . .

A. And, they – there was no struggle. There was no argument.

Q. No heated, angry words by either of them?

A. No. No. No, they was not. They wasn't.

Q. Was there any kind of gesture on the part of Lattie Franklin towards Harold Tolley as – as if he were coming at him, or . . .

A. No. Lattie didn't have a chance. When he turned around from pointing down the creek, when he turned back around Harold had him in his face point blank.

Cleon Price also described the shooting and how the defendant had suddenly produced the pistol:

> I don't know where he had in his hip pocket, or behind his belt, or where; but, anyway – emptied the gun. And, whenever he emptied it he snapped it probably three or four times, and turned around and walked off.

Anna Franklin, the sister-in-law of Lattie Franklin, and a friend of the defendant, also witnessed the shooting. She testified that on the morning of the shooting, as she was getting ready to go to work, she heard a truck pull up and, looking outside, saw that it was the defendant's. She watched as the defendant approached Lattie Franklin, Cleon Price, and Jerry Price. She described what she saw after the defendant had approached the group and raised his arm:

> Like this. But, I had no idea what, you know, he was doing. I'd just the second on my mind I thought -- just as I thought what's he doing, then I heard the gun go off. And, Lattie began to fall. And, he fell to the ground and then Jerry dove for him. (Witness is crying) And, then I -- I just went ahead started going -- and I grabbed my -- I remember grabbing my head, and I started screaming, you know, oh, God, he shot him! And, I went -- I think it was like a squat position. And, I don't know how long I was down there, but, when I come up Harold was over Lattie. Then it was like he -- right as I looked up he was there, and then he turned and walked off. I didn't even hear none of the other shots.

The defendant described the shooting in a totally different fashion than did Cleon and Jerry Price and Anna Franklin. He testified that he shot the victim because the victim cursed him, hit him, and then knocked him to the ground. The defendant explained that it was customary for him to carry a pistol when he was around the cattle which he pastured on the land of Shirley Higgins. Her land was adjacent to that upon which the slaying occurred. The defendant described the shooting itself:

> I said, Lattie, I don't want no trouble. And, by the time I could get it out he – he – he cussed and he said, if you want trouble let's get it on. And, he hit me right in the jaw, knocked me down, and it spun me around a little bit, and – and – and, I reached in with my left hand, pulled the gun out to put it in this hand to – to keep him off of me. And – and, during that time the gun went off, and – and he – and, he fell. When – but, when the gun went off, I swear, I don't know what happened. There – there – there's no recollection in my mind to this day what happened. And, when I came to myself I had passed back where the garden was I'd fenced off for Shirley. I came to myself and I was walking back to my truck. And, when I walked back to my truck Ms. Franklin come out of – of Tommy – Tommy's yard and Anna was right behind her. And, she said, you're to pay for what you've done. And, Anna started hollering, Ms. Franklin, come back up here. And, they was – there was some people up there, and I didn't know what was happening, and I got in my truck, and I – I drove to my house.

Dr. William McCormick testified that the autopsy of the victim revealed the most reasonable scenario for the shooting was that the assailant shot the victim in the head while standing face-to-face, and that the other five wounds were consistent with the assailant's "walking toward the body, straddling the body, standing over the body, pointing the gun in a downward direction at the prong [sic] body, and firing those five shots into the

chest area." Dr. McCormick also testified the victim had no injuries on his hands consistent with the defendant's claim that the victim punched him in the jaw.

Dr. Thomas Schacht, a forensic psychologist, testified as a defense witness concerning the defendant's mental condition at the time of the shooting. Dr. Schacht stated that the defendant did not meet the criteria for an insanity defense, but his conduct was consistent with a person suffering from post-traumatic stress hallucination. According to Dr. Schacht, this condition was triggered by prior confrontations involving the victim and the defendant. Dr. Schacht postulated that at the time of the shooting the defendant was having a flashback to an earlier incident during which the victim assaulted the defendant. According to Dr. Schacht, this condition could explain inconsistencies between the defendant's description of the shooting and the descriptions of the witnesses.

DISCUSSION OF LAW

I. Sufficiency of the Evidence

The defendant has alleged that the evidence was insufficient to support a conviction of first degree murder. When a challenge is made to the sufficiency of the evidence, the standard for appellate review is whether, after considering the evidence in a light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. See Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979). The defendant's burden of showing insufficiency is heavy, since all conflicts in testimony are resolved in favor of the State, which is entitled to the strongest legitimate view of the evidence as well as all reasonable or legitimate inferences that may be drawn therefrom. See State v. Burns, 979 S.W.2d 276, 287 (Tenn. 1998).

To obtain a conviction for first degree murder, the State must prove a premeditated and intentional killing of another. See Tenn. Code Ann. § 39-13-202(a)(1) (1997). Premeditation "is an act done after the exercise of reflection and judgment. 'Premeditation' means that the intent to kill must have been formed prior to the act itself. It is not

necessary that the purpose to kill pre-exist in the mind of the accused for any definite period of time." Tenn. Code Ann. § 39-13-202(d) (1997). Intentional "refers to a person who acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result." Tenn. Code Ann. § 39-11-302(a) (1997).

The existence of premeditation is a question for the jury and may be inferred from the circumstances surrounding the killing. See State v. Gentry, 881 S.W.2d 1, 3 (Tenn. Crim. App. 1993), perm. app. denied (Tenn. 1994). Because the trier of fact cannot speculate as to what was in the defendant's mind, the existence of facts of premeditation must be determined from the defendant's conduct in light of the surrounding circumstances. See State v. Hall, 958 S.W.2d 679, 704 (Tenn. 1997). Several relevant circumstances have been held to provide the requisite indicia of premeditation:

(1) the use of a deadly weapon upon an unarmed victim;

(2) the particular cruelty of the killing;

(3) declarations by the defendant of an intent to kill;

(4) evidence of procurement of a weapon;

(5) preparations before the killing for concealment of the crime; and,

(6) calmness immediately after the killing.

State v. Pike, 978 S.W.2d 904, 914 (Tenn. 1998) (citing State v. Bland, 958 S.W.2d 651, 660 (Tenn. 1997); State v. Brown, 836 S.W.2d 530, 541-42 (Tenn. 1992); State v. West, 844 S.W.2d 144, 148 (Tenn. 1992)). Additionally, a jury may infer premeditation from:

(7) planning activities by the defendant prior to the killing;

(8) the defendant's prior relationship with the victim; and,

(9) the nature of the killing.

Gentry, 881 S.W.2d at 4-5.

There was substantial testimony at the trial regarding threats against the victim by

the defendant. Danny Casey, whose wife had been raised by the defendant, testified that any time the victim's name was mentioned, the defendant would "just get mad, go into a rage; and he would say that he would kill Mr. Franklin." Approximately one month before the killing, the defendant told Casey that if the defendant caught the victim on the particular parcel of land that the defendant wanted, "he would kill him. He'd blow his brains out." According to the defendant, the victim was interfering with the defendant's keeping cattle on land which was formerly available to the defendant.

William Casey, the uncle of Danny Casey, also testified as to threats made by the defendant:

> Well, he – he was all the time just saying he was going to kill [the victim] when he got the chance. Down there at the garage he'd – he'd say that a lot. Then one – one day he'd stopped while I was out at the edge of the road and he stopped and him and Miss Franklin had been into it over the fence, or the cows getting out, or something. And, he told me, he said, I wish that old bitch would have a heart attack and die. And, then he said he was going to kill Lattie and he was holding a gun.

The evidence presented was sufficient for the jury to find that the defendant's killing of the victim was premeditated. The relationship between the defendant and the victim had been acrimonious for several years. The defendant repeatedly threatened to kill the victim over a period of years. He killed the victim with a deadly weapon without provocation and when the victim was unarmed. After mortally wounding the victim, the defendant stood over him and shot him five more times in the chest and abdomen. After killing the victim, the defendant calmly walked away.

Additionally, we conclude that the jury could have found that the defendant's actions were intentional. The defendant concealed a gun, normally kept in his truck, in his back pocket. The defendant stood over the victim's body and continued to shoot even though the victim was already mortally wounded. The defendant failed to render assistance after shooting the victim. See State v. Kendricks, 947 S.W.2d 875, 880 (Tenn. Crim. App. 1996), perm. app. denied (Tenn. 1997) (listing factors necessary to establish intent).

Based upon our review, we conclude that the evidence was sufficient to support the jury's verdict of guilty of first degree murder.

II. Prior Bad Act of Defendant

The defendant argues the trial court erred in permitting questions regarding an incident that occurred two years before the homicide, in which the defendant allegedly fired a pistol behind the head of Danny Casey. The defendant alleges: (1) the testimony was not relevant; (2) the testimony was unduly prejudicial; (3) the testimony was inadmissible under Tenn. R. Evid. 404(b); and (4) the State showed bad faith when it did not follow up on the defendant's denial of the incident by calling Casey to the witness stand during rebuttal.

The issue regarding the prior bad act of the defendant arose following the cross-examination of Cleon Price, when defense counsel had asked Price:

> Q. Okay. In fact, were it not for this incident [the shooting of Lattie Franklin] you would say that Harold Tolley enjoyed the reputation of being a peaceful man wouldn't you?
>
> A. As far as I know speaking personally.

Later in the trial, during a hearing out of the presence of the jury, Danny Casey testified in response to a question from the State regarding previous problems he had had with the defendant:

> A. At one time we – me and Mr. Tolley was at my house. We was teasing each other, aggravating each other, you know, about different things, just joking and carrying on. And, I thought, you know, we was – we was just joking. I had walked out and was working on a car, had bent over, the next thing I knowed (slang) I felt something touching me in the head and the gun when [sic] off. And, he had shot just above my head, and I turned and looked, and I mean, he was just – he was just laughing. He said, you could have been dead, and walked – got in his truck and left.

The defense objected to the state's use of this evidence. Following arguments of counsel on the issue, the trial court applied Rule 404, Tenn. R. Evid., and advised the State:

> You can ask him [Danny Casey] if Mr. Tolley has a reputation for being peaceful or violent, that's at issue. But, part 2 of the rule is – is not met. The objection [of the defendant] is sustained.

Subsequently, during the direct examination of Danny Casey in the presence of the jury, the prosecutor asked not about the specific incident but about the defendant's reputation:

> Q. So, with your – with your acquaintance and knowledge of – of the defendant did he enjoy a reputation for peacefulness in the community, or a reputation for violence?
>
> A. Well, if everything was going his way it was peaceful. If it wasn't it was violence.

During the defense proof, after denying that he had made the threats regarding the victim, as testified to by William Casey and Danny Casey, or exhibited the pistol, as William Casey testified, the defendant was asked by the prosecutor:

> Q. And - but, yet, your relationship with Danny Casey was one where at one point in time with this gun behind his head you fired it?
>
> A. No, sir, I did not.
>
> Q. You did not do that?
>
> A. No, sir. If God takes my breath right now I did not do that.

The defendant's specific objections to this exchange are that the trial court should not have allowed the prosecutor to question him about the Danny Casey incident and that the State failed to recall Casey, himself, to testify about the incident.

A defendant in a criminal case can introduce evidence of pertinent character traits such as that for peacefulness. Such evidence can be introduced during cross-examination of a prosecution witness, as occurred here when Cleon Price was asked for his opinion as to the reputation of the defendant as "a peaceful man." By introducing such evidence, the defense has then opened the door for the State to introduce evidence of specific acts which would tend to rebut the defendant's evidence of peacefulness:

> One important exception to the general rule barring character evidence is provided by Rule 404(a)(1), identical in substance to Federal Rule 404(a)(1), which permits the accused in a criminal case to "open the door" by introducing evidence of his or her own "pertinent" character trait. Obviously, this proof will stress positive facets of the defendant's character. Until the defendant takes this step, the government is barred from introducing evidence of the defendant's bad character to prove the defendant acted in conformity with that character. The underlying theory behind the rule is that negative character evidence is too prejudicial to be used routinely by the prosecution. However, the theory continues, if the defendant wants to have the trier of fact consider the defendant's character in determining whether the defendant did a certain act, courts should permit this in order to allow the defense to put on its best case. Once the accused puts his or her character in issue by presenting this evidence, the prosecution is free to offer relevant character evidence to rebut the accused's proof. If the prosecution were denied the right to counter the defendant's character evidence, the trier of fact would be given a one-sided view of the offender's character.

Cohen, Sheppeard, & Paine, Tennessee Law of Evidence, § 404.3, at 163-64 (3d ed. 1995).

Thus, when the State's witness, Cleon Price, testified during cross-examination as to the peacefulness of the defendant, the door was opened for the State to then put on proof to rebut this assertion. The trial court properly had a jury-out hearing, as mandated by Rules 404 and 405, Tenn. R. Evid., in which Danny Casey testified as to the incident approximately two years earlier when the defendant allegedly fired a pistol just behind Casey's head and then said that Casey could have been dead. The trial court ruled that Casey could not repeat this testimony to the jury but that he could only testify, as he did, that the defendant did not have a reputation for peacefulness. Obviously, the defense did not object as to this limitation upon the State's presentation of proof.

The situation in which character evidence first became relevant during this trial is quite similar to that considered in State v. Nesbit, 978 S.W.2d 872 (Tenn. 1998), in which the defendant, Clarence Nesbit, was ultimately convicted of premeditated first degree murder in the shooting death of Miriam Cannon. In that case, a prosecution witness also was questioned during cross-examination as to the defendant's reputation for peace and quietude:

> Here, the alleged error arose during the guilt phase of the trial when defense counsel, at the end of his cross-examination of James Shaw, a witness for the State, asked Shaw if he was familiar with the defendant's reputation in the community for peacefulness and violence. Shaw, who had dated the defendant's aunt and known the defendant for twelve years, responded, "Yeah. He didn't bother nobody. You know, he'd help you if he could, but he never did -- he never did bother nobody. He seemed like to me he always tried to stay away from, you know, trouble."

978 S.W.2d at 883.

Following this statement by the witness regarding Nesbit's character, the prosecutor asked for a bench conference and told the court that, to test Shaw's knowledge, the State wanted to inquire whether Shaw had heard "that the defendant claimed he worshiped Satan and had to kill two people to get power." Id. The defense then requested a jury-out hearing so that Shaw's knowledge of these allegations could be explored. Following that hearing, and with the jury back in the courtroom, the State was permitted to ask additional questions to Mr. Shaw, which included the following:

> Prosecutor: In forming your opinion of his reputation in the community in which he works and lives for peacefulness and quietude, had you heard that the defendant had told others that he worshiped Satan and needed to kill two people in order to get some power?
>
> Shaw: No, I had not heard that.

Id. at 884.

The court in Nesbit then applied Rule 405(a), Tenn. R. Evid.,[1] to analyze whether

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[1] Rule 405(a) provides as follows:

> In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. After application to the court, inquiry on cross-examination is allowable into relevant specific instances of conduct. The conditions which must be satisfied before allowing inquiry on cross-examination about specific instances of conduct are:
>
> (1) The court upon request must hold a hearing outside the jury's presence,
>
> (2) The court must determine that a reasonable factual basis exists for the inquiry, and

(continued...)

the witness who had opined as to the defendant's character was then properly questioned as to his knowledge of the alleged satanic beliefs and practices of the defendant. The court explained why such a witness could be asked about specific acts:

> Pursuant to Rule 405 (a), Tenn. R. Evid., a witness offering testimony about the defendant's character may be impeached by questions which test the character witness's knowledge of "relevant specific instances of conduct." The purposes served by such inquiries has been explained as follows:
>
> > Specific instances of conduct are permissible on cross-examination for several reasons. First, they test the credibility of the character witness by providing information on the underlying data upon which the opinion or reputation was formed. If an opinion witness, who testifies that the defendant was an honest person at the critical time, did not know that the defendant had a prior embezzlement conviction, the opinion may have been formed on the basis of inadequate information or a careless (and therefore suspect) approach to assessing a person's reputation. Second, the specific acts help the trier of fact assess the standards used by the character witnesses. For example, if a witness who gave the opinion that the defendant is an honest person also knew that the defendant had ten shoplifting convictions, the trier of fact may choose to discount the opinion evidence because of the character witness's low standards for measuring honesty.

Id. at 881 (quoting Cohen, Sheppeard, & Paine, Tennessee Law of Evidence, § 405.3, at 195 (3d ed. 1995 & Supp. 1997) (footnote omitted)).

Applying this analysis in Nesbit, our supreme court concluded that the trial court had acted in accord with Rule 405(a) in allowing the cross-examination question regarding the defendant's alleged satanic beliefs and practices:

> In our view, the record in this case indicated that the requirements of Rule 405 were satisfied. The prosecutor sought the trial court's permission before questioning the character witness about the defendant's alleged satanic worship. At defense counsel's request, the trial court held a hearing outside the jury's presence to consider the issue. The specific instance of conduct about which inquiry was proposed was relevant to the issue about which the witness had testified -- the defendant's reputation in the community for peacefulness and quietude. A reasonable factual basis was established. The prosecutor identified the source and origin of the specific instance of conduct on the record at the jury-out

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[1](...continued)

(3) The court must determine that the probative value of a specific instance of conduct on the character witness's credibility outweighs its prejudicial effect on substantive issues.

> hearing. Though the character witness said he had not heard the allegations of satanic worship until after the murder, the prosecutor's statement identifying the victim of the murder as the source of the report obviously is some proof that the incident had been reported before the murder occurred. A review of the record does not demonstrate that the prejudicial effect of the specific instance of conduct on the substantive issues outweighed its probative impeachment value. The inquiry was directly relevant to the character traits of peacefulness and quietude about which the witness had testified. Immediately following the inquiry and again in its final charge, the trial court properly instructed the jury as to the permissible limited use of the evidence. The jury is presumed to have followed those instructions. State v. Walker, 910 S.W.2d 381, 397 (Tenn. 1995); State v. Lawson, 695 S.W.2d 202, 204 (Tenn. Crim. App. 1985). The defendant's claim that the trial court erred in allowing the inquiry is without merit.

978 S.W.2d at 884-85.

Thus, based upon the holding in Nesbit, the trial court could have allowed the State to question Cleon Price as to his knowledge of the alleged incident in which the defendant fired a pistol behind the head of Danny Casey. However, Price was not asked about this incident. Instead, the State sought to present testimony regarding it through the subsequent direct testimony of Danny Casey. While the trial court did not allow Casey to relate the incident to the jury, it did allow the State briefly to cross-examine the defendant about it. It is this cross-examination of the defendant about which he complains. The specific exchange between the defendant and the State, to which the defendant objects, consists of his being asked whether "at one point in time with this gun behind [Casey's] head you fired it." The defendant denied that this had occurred and, upon being asked again if he had done it, stated, "[i]f God takes my breath right now I did not do that." Prior to being asked this question, the defendant had testified on cross-examination that he was "on good speaking terms" with Danny Casey and that they had had a "falling out, but it – it would – it would – it was nothing bad." Following the State's question about "confrontations" between the defendant and Casey, the defense objected, prompting a jury-out hearing. The defense argued that the State was attempting to question the defendant about a collateral matter. The trial court ruled that the matter of the alleged confrontation was "relevant based upon Mr. Casey's testimony for bias or interest" and allowed the defendant to be questioned about the incident.

The situation which then occurred, where the State was allowed to question the defendant during cross-examination regarding the Casey incident, was similar to that reviewed by our supreme court in State v. Patton, 593 S.W.2d 913 (Tenn. 1979), reh'g denied (1980). In Patton, as in the instant case, the defendant had made certain statements during direct examination which the State sought to contradict by questioning the defendant as to specific bad acts:

> However, on review of the testimony, we find that there is no material basis for the assumption that petitioner's reputation for peace and tranquility was not properly in issue. To the contrary, as pointed out by the state, *"during the direct examination of the defendant*, he was asked several questions about his relationship with the deceased, his wife. He responded that they had had normal marital difficulties, but admitted that she had had him arrested on a warrant alleging assault and battery." This testimony in our opinion opened the way for the state to explore what petitioner considered "normal marital difficulties," and to show that it included violence by petitioner toward his wife. But if this were not sufficient to permit the examination of petitioner and other witnesses relative to "prior bad acts or specific instances of misconduct," the testimony of Dr. White that petitioner's amnesia was due to his inability to remember things which made no sense to him and which were foreign to his nature gave the state the right to show that acts of violence -- especially those directed at Shirley Patton -- were not foreign to petitioner's nature. Such evidence was relevant and certainly had probative value on the material issue of sanity.

Id. at 917 (emphasis in original).

In the instant case, the door had been opened as to the defendant's character by Cleon Price's assertion that the defendant had a reputation for peacefulness. This testimony, on behalf of the defendant, made an issue of his "peacefulness," see State v. West, 844 S.W.2d 144, 149 (Tenn. 1992), so that alleged acts inconsistent with it became relevant. See Tenn. R. Evid. 401. At that point, Rules 404(b) and 405, Tenn. R. Evid., became applicable to ascertain whether the State was entitled to ask questions specifically about the alleged incident with Danny Casey. Although Rule 404, rather than 405, was referred to during discussions in the jury-out hearing, the trial court, in fact, held the hearing was required by Rule 405 and heard testimony from Danny Casey regarding the incident. The court again dealt with the matter when the State sought to cross-examine the defendant about it. The court held that the matter was relevant "based upon Mr. Casey's testimony for bias or interest" and apparently because the defendant had disputed during

his direct examination some of Casey's testimony and testified that he had a good relationship with Casey. Implicit in the trial court's ruling that the defendant could be questioned about this alleged incident was the holding that the probative value of the defendant's alleged conduct outweighed its prejudicial effect.

Although the State argued that the defendant could be cross-examined about the Casey incident because he characterized his relationship with Casey as good, this response could not be the basis for allowing questions about specific bad acts. See West, 844 S.W.2d at 149. However, since the defendant's peacefulness had become an issue, the State was entitled to cross-examine the defendant about the incident alleged by Danny Casey. See State v. Nichols, 877 S.W.2d 722, 732 (Tenn. 1994) (trial court properly admitted evidence of rape convictions to rebut defense argument that they were "sudden deviations from [the defendant's] normally placid behavior"). Thus, it was proper for the State to question the defendant about the alleged Casey incident. Even if the trial court had been incorrect in allowing the brief questioning of the defendant in this regard, such error would have been harmless in view of the strength of the State's case against the defendant. See West, 844 S.W.2d at 150; Tenn. R. Crim. P. 52; Tenn. R. App. P. 36(b).

Additionally, the defendant argues that the State exhibited bad faith in not calling Danny Casey as a rebuttal witness to testify about the incident, presumably so that he could then be cross-examined by defense counsel. However, when the State sought to call Casey as a rebuttal witness, the defendant objected; and the trial court properly sustained the objection. Although it was proper for the defendant to be asked about the incident, the State was not entitled to present extrinsic evidence, here the testimony of Casey, regarding it:

> Although questions on specific acts are permitted, extrinsic evidence of specific acts is barred. The cross-examiner must accept the answer that is given. This rule is designed to prevent undue emphasis on a tangential matter and to save court time by precluding extensive testimony from countless new witnesses, each subject to full impeachment.

Cohen, Sheppeard, & Paine, Tennessee Law of Evidence, § 405.3, at 196 (3d ed. 1995).

Thus, this assignment is without merit.

CONCLUSION

Based upon the foregoing authorities and analysis, the judgment of the trial court is affirmed.

_____
ALAN E. GLENN, JUDGE

CONCUR:

_____
JOSEPH M. TIPTON, JUDGE

_____
JOHN EVERETT WILLIAMS, JUDGE