

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

PHILIP R. WORKMAN v. STATE OF TENNESSEE

**Criminal Court for Shelby County
No. B81209**

No. W2001-00881-CCA-R9-PD

ORDER/OPINION

Petitioner, Philip R. Workman, pursuant to Rules 9 and 10 of the Tennessee Rules of Appellate Procedure, seeks permission to appeal orders entered by the Shelby County Criminal Court, Division III. On April 11, 2001, the trial court entered an order granting an interlocutory appeal to resolve three questions:

1. Whether the trial court has jurisdiction to enter orders in this case, prior to the filing of the mandate from the Tennessee Supreme Court with the trial court clerk;
2. Whether the trial court erred by entering an order on April 9, 2001, setting a hearing date for Monday, April 23, 2001; and
3. Whether the trial court has authority to order production of witness statements twenty-four hours prior to such witness' testimony, notwithstanding Rule 26.2 of the Tennessee Rules of Criminal Procedure.

On April 17, 2001, this Court entered an order staying proceedings in the trial court pending disposition of the Petitioner's application for interlocutory appeal. Upon consideration of the issues presented in the application and the State's response, we grant the Petitioner's application for Rule 9 review.

The Petitioner contends that the trial court was without jurisdiction to enter orders relating to the *coram nobis* proceeding prior to the filing of the mandate from the Tennessee Supreme Court. We agree. Tenn. R. App. P. 43(c) states that when "the appellate court remands the case for a new trial or hearing *and the mandate is filed in the trial court*, the case shall be reinstated therein and the subsequent proceedings conducted after at least 10 days notice to the parties." (Emphasis added). The supreme court's opinion was filed on March 30, 2001. On April 9, 2001, before the trial court received the mandate and without ten days notice to the parties, the trial court held a conference to resolve preliminary matters and schedule a hearing on the Petitioner's application for *writ of error*

coram nobis. During this conference, the trial court entered an order setting an April 23, 2001, date for an evidentiary hearing and entered an order requiring the Petitioner to provide the State with previous statements of witness Harold Davis prior to the April 23 hearing. The supreme court's mandate did not issue until April 12, 2001, and was not filed in the Shelby County Criminal Court until April 17, 2001. At the time the trial court entered its orders on April 9, 2001, it had no jurisdiction to act. See generally State v. Cash, 867 S.W.2d 741, 747 (Tenn. Crim. App. 1993). In consequence, the April 9, 2001, orders were premature and, therefore, a nullity. Id. Accordingly, all orders entered by the Shelby County Criminal Court after the filing of the notice of appeal on March 29, 2001, and prior to the date the mandate was filed by the clerk are vacated. This renders moot the Petitioner's remaining issues.

Notwithstanding our holding that the trial court was without authority to enter orders prior to the filing of the mandate, for instructional purposes, we choose to address the Petitioner's challenge to the production of witness statements under Tenn. R. Crim. P. 26.2 (Issue 3). Under Tennessee Rules of Criminal Procedure 26.2, opposing counsel must be provided any prior statements of a testifying witness to permit an effective cross-examination of that witness and to thereby test his credibility. The rule provides that the information is to be provided only after the witness has given testimony on direct examination. See Tenn. R. Crim. P. 26.2(a). See also State v. Caughron, 855 S.W.2d 526, 534 (Tenn.), cert. denied, 510 U.S. 979, 114 S. Ct. 475 (1993); State v. Taylor, 771 S.W.2d 387, 394 (Tenn.1989), cert. denied, 497 U.S. 1031, 110 S. Ct. 3291 (1990). Rule 26.2 provides neither the defendant nor the State with a general right to pretrial discovery. The rule clearly provides for the production of witness statements only "after" the witness testifies. Thus, the State is not entitled to early production of these statements.

It appearing that the trial court now has jurisdiction to proceed, IT IS ORDERED that the stay entered April 17, 2001, is hereby dissolved. IT IS FURTHER ORDERED that all orders entered in this matter by the Shelby County Criminal Court, Division III, after the filing of the notice of appeal on March 29, 2001, and prior to the filing of the mandate on April 17, 2001, are vacated. IT IS FURTHER ORDERED, pursuant to our authority under Tenn. R. App. P. 42(a), that the mandate issue immediately upon the filing of this order in this court.

Per Curiam

David G. Hayes, Judge
Joe G. Riley, Judge
John Everett Williams, Judge