

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

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Appellate Courts

STATE OF TENNESSEE v. SPENCER BAUCOM, JR.

Circuit Court for Rutherford County
No. 79477

No. M2025-01881-CCA-R9-PC

ORDER

This matter is before the Court upon application of the Defendant, Spencer Baucom, Jr., for permission to pursue an interlocutory appeal. Tenn. R. App. P. 9. The State has filed a response in opposition. The Defendant seeks review of the trial court's order denying his motion to obtain a copy of the audio record of the trial in this case. Upon consideration, the application is granted for the reasons stated below.

Rule of Appellate Procedure 9

Rule 9 outlines the procedure for obtaining interlocutory appellate review of a trial court order. Both the trial and appellate courts must approve the appeal. To that end, a party must first file a motion in the trial court requesting the appeal within thirty days of the order being appealed. Tenn. R. App. P. 9(b). If the trial court determines the interlocutory appeal shall be allowed to proceed, the party must then file an application for permission to appeal in this Court within ten days of the trial court's order granting the appeal. Tenn. R. App. P. 9(c). The application must be accompanied by copies of the trial court order from which appellate review is being sought, the trial court's statement of reasons for granting the appeal, and the other parts of the record necessary for consideration of the application. Tenn. R. App. P. 9(d). Thus, and because there is generally no record already on file when a party seeks a Rule 9 appeal, it is that party's responsibility to provide this Court with an *ad hoc* record of the proceeding below. The Defendant's application is timely and sufficient for this Court's review.

This Court's review of an application for an interlocutory appeal must begin with the supreme court's caution: "[I]nterlocutory appeals to review pretrial orders or rulings, i.e., those entered before a final judgment, are 'disfavored,' *particularly in criminal cases.*"

State v. Gilley, 173 S.W.3d 1, 5 (Tenn. 2005) (emphasis added). Again, Rule 9 requires permission from both the trial court and this Court to pursue an interlocutory appeal. Tenn. R. App. P. 9(a). To that end, Rule 9(a) sets forth the “character of reasons” the courts should consider when ruling on a request for an interlocutory appeal. “[W]hile neither controlling nor fully measuring the courts’ discretion,” an interlocutory appeal may be granted if both the trial and appellate court determine:

(1) the need to prevent irreparable injury, giving consideration to the severity of the potential injury, the probability of its occurrence, and the probability that review upon entry of final judgment will be ineffective; (2) the need to prevent needless, expensive, and protracted litigation, giving consideration to whether the challenged order would be a basis for reversal upon entry of a final judgment, the probability of reversal, and whether an interlocutory appeal will result in a net reduction in the duration and expense of the litigation if the challenged order is reversed; and (3) the need to develop a uniform body of law, giving consideration to the existence of inconsistent orders of other courts and whether the question presented by the challenged order will not otherwise be reviewable upon entry of final judgment.

Tenn. R. App. P. 9(a).

Rule 9(b) requires a trial court to “specify: (1) the legal criteria making the order appealable, as provided in subdivision (a) of this rule; (2) the factors leading the trial court to the opinion those criteria are satisfied; and (3) any other factors leading the trial court to exercise its discretion in favor of permitting an appeal.” Tenn. R. App. P. 9(b). The rule also requires a trial court to also “state in writing the specific issue or issues the court is certifying for appeal and the reasons for its opinion.” *Id.*

Background

In January 2022, the Defendant was tried on two counts of rape. Tenn. Code Ann. § 39-13-503 (Class B felonies). The jury convicted the Defendant on one of the two counts and acquitted him of the other. The trial court sentenced the Defendant to eighteen years’ incarceration. Judgment was entered on May 19, 2022. The Defendant filed a motion for new trial on June 13, 2022. Thereafter, the trial court granted trial counsel’s motion to withdraw and, on August 11, 2022, appointed the Office of the Public Defender to represent the Defendant on the motion for new trial and any subsequent appeal. The motion for new trial is still pending.

On November 17, 2023, the Defendant filed a *pro se* petition in the chancery court for a copy of, among other items, the audio recording of a pretrial hearing held on May 3,

2021. On April 27, 2024, the chancery court denied the request for a copy of that recording because the trial court clerk was not then in possession of the recording. The court stated, though, that the Defendant could request a copy of the transcript of that hearing for use in his criminal case.

On March 7, 2025, the Defendant, by and through current counsel, filed a motion in the trial court to obtain a copy of the audio recording of his trial. In support thereof, counsel stated he was not present at trial but that the Defendant informed counsel “he believes that the Trial transcript is altered, amended, or transcribed in error.” Counsel stated he was “requesting the audio recordings of Defendant’s Trial[] so that he can confirm the written transcripts accuracy or lack thereof.” On June 16, 2025, the trial court filed an order granting that motion. Then, two days later on June 18, 2025, the court filed an order staying its prior order pending a hearing on counsel’s motion. That hearing occurred on August 7, 2025. The Defendant did not include with his current application the transcript of that hearing, but counsel states the “alleged discrepancies in the official transcript regarding the testimony of a detective specifically related to the presence or non-presence of a pubic hair” and that there are alleged “discrepancies in the transcription of the State’s closing arguments.” Following the hearing, the trial court filed an order on August 8, 2025, rescinding its June 16th order and denying the Defendant’s motion for copies of the audio recordings. The court held:

The Court finds that the audio recordings likely contain sensitive material such as conversations occurring at counsel’s table for both the State and the Defendant, as well as conversations the Court may have with the Clerk or his staff. The Court finds that the audio recordings were made to aid the court reporter in generating the official transcript and that the Defendant was provided with a copy of the official transcript which is considered the official record of the Defendant’s trial proceedings. Additionally, the Court finds that the audio recordings were made as part of the Court’s judicial process and the disclosure of which would frustrate or interfere with the judicial function of the court. Therefore, the Court finds that nondisclosure is justified, and the Defendant is not entitled to the audio recordings.

The Defendant then moved the trial court for an interlocutory appeal. Therein, he asserted the appeal is necessary to “prevent the irreparable harm to the Defendant’s Motion for New Trial,” to “prevent needless, expensive and protracted litigation in that if the point of the [D]efendant is well taken, it will allow him to move forward in arguing his Motion for New Trial” and to “establish a uniform body of law on the issues raised by the motion.” Following a hearing on that motion, the trial court granted permission to appeal. Again, the Defendant did not include with his application before this Court the transcript of that

hearing. In its written order, the trial court “recognize[d] the Defendant’s right to a clear and correct transcript in order to pursue his direct appeal as well as other remedies, including post-conviction review.” As to the need to prevent irreparable injury to the Defendant, the trial court stated:

The Court is persuaded that the potential for irreparable injury is genuine, and that post-judgment review would fail to provide an adequate or effective remedy.

...

... the Defendant’s motion for interlocutory appeal to gain access to a court reporter’s audio recordings is not a routine, conventional pre-trial motion that has the option of a direct appeal. As a non-dismissive order, the only appellate avenues for the trial court order denying access would be pursuant to either Rule 9 or Rule 10, as these are the only procedures available for the party to seek review of an interlocutory trial court order which does not have the substantial effect of dismissing the charges.

As to the need to prevent needless, expensive and protracted litigation, the trial court stated as follows:

Given the length of the litigation this single issue has caused already, an interlocutory appeal would reduce the net duration for the parties involved, including the Defendant, [S]tate, and trial court. To require the Defendant to pursue alternative and potentially duplicative avenues of relief would only serve to prolong resolution of the underlying matter.

Furthermore, although not an issue of first impression, there does appear to be some tension caused by the precedent set out in the last few years regarding whether a court reporter’s audio recordings of criminal proceedings are subject to public access or not. The fact that this issue and the subsequent access to such has not yet been taken up by our Supreme Court risks uncertainty and potential inefficiency in future litigation. Should this Court or another appellate court ultimately find review warranted, the present delay would prove to have an unnecessary exercise in futility, contrary to the efficiency interests that Rule 9 seeks to promote.

Finally, as to the need to develop a uniform body of law, the trial court offered the following reason:

In this case, the Defendant has brought up two controlling cases for this issue, *State [ex rel. Wilson] v. Gentry*, No. M2019-02201-COA-R3-CV, 2020 WL 5240388 (Tenn. Ct. App. Sept. 2, 2020) and *Waggoner v. State*, 666 S.W.3d 384 (Tenn. Ct. App. 2022), and the uncertainty created by both. The Defendant maintains that this issue requires the need to be properly addressed in order to move forward with his motion for new trial. This Court reviewed both cases in detail in order to properly make a determination regarding factor three.

In *State v. Gentry*, the Petitioner sought access to the audio recordings of his post-conviction hearing before a criminal court in the 20th Judicial District. The trial court denied the request by order, explaining that the recordings were created solely to assist the court reporter producing the official transcript and contained private discussions at counsel's table and communications between judge and court staff. Citing Davidson County Local Rules, the trial court held that access to such recordings was restricted to "Judges, Chancellors, and full time court staff" as they were generated exclusively "for the Court's internal use and are generally protected."

The Petitioner then sought a writ of mandamus in the Chancery Court, which was denied and dismissed.

On appeal, the Tennessee Court of Appeals affirmed the ruling, holding that the recordings - created solely to aid in the transcript preparation - constituted internal judicial records (electronic records part of the judicial process) not subject to public disclosure. The Court examined the Tennessee Public Records Act, which generally mandates access to public records "unless otherwise provided by state law", and determined that Tennessee Supreme Court Rule 34(2)(C) expressly classified certain judicial records as confidential. Relying on that understanding, the Court concluded that disclosure would "frustrate or interfere with the judicial function," and therefore, upheld denial of access.

Approximately two years later, the Tennessee Court of Appeals confronted a nearly identical issue in *Waggoner v. State*. The Petitioner filed an appeal after being denied his petition in the Chancery Court for Davidson County pursuant Tennessee Public Records Act. On appeal, a dispositive issue was "[w]hether the trial court correctly concluded that the audio recordings in this case were exempt from disclosure under the Act pursuant to Tennessee Supreme Court Rule 34".

The Court first determined that the complete trial audio recordings “should have been part of the file maintained by the criminal court clerk”, answering that question affirmatively. Interpreting Tenn. Code Ann. 40-14-307 in light of legislative intent and statutory context, the Court held that “court reporters in criminal cases [are required] to file their verbatim record[ing]s with the appropriate clerk.”

The Court then reaffirmed that the Public Records Act must be liberally construed to advance governmental transparency and accountability. Additionally, the audio recordings were statutorily mandated to be filed and maintained by the criminal court clerk as they qualified as “public records” under Tenn. Code Ann. 10-7-503(a)(1)(A)(i), (a)(2)(A), and 40-14-307. Accordingly, the Court began with a presumption of disclosure.

Turning to Rule 34 exemptions, the Court rejected the contention that the recordings constituted “conference records.” It reasoned that the recordings were produced pursuant to statutory mandate, not at the direction of a judge, and thus fell outside the purview of Rule 34’s intended scope. Moreover, Rule 34(2)(C)(v) expressly exempts from nondisclosure materials intentionally filed as part of the case record. Because verbatim recordings must be filed with the clerk, they could not be excluded from disclosure. The Court further held that the burden rested on the Appellees to justify nondisclosure, which it failed to do; no evidence was offered to suggest that release would impair the judiciary’s constitutional functions.

Finally, the Court distinguished *Gentry*, finding it non-dispositive. In *Gentry*, the denial rested on a local rule expressly designating these recordings as confidential, and the record included potentially sensitive conversations. No comparable rule or concern was presented in *Waggoner*. Accordingly, the Court concluded that the audio recordings were subject to disclosure “unless the relevant government entity established justification for nondisclosure by a preponderance of the evidence.”

...

Upon review of the relevant Tennessee jurisprudence and the evident tension therein, this Court finds a compelling need for a uniform body of law. The divergence between the public policy underlying the exemptions set forth in Rule 34 and the presumption of openness embodied in the Tennessee Public Records Act has produced substantial uncertainty. The prior decisions differing rationales and inconsistent outcomes underscore the necessity of

appellate clarification.

Accordingly, this Court concludes that interlocutory review is warranted to resolve the scope of the presumption of disclosure and to define the governing standard and procedure for potential access to court reporters' audio recordings, if any.

(Internal citations in trial court order omitted).

Discussion

In his application, the Defendant adopts the trial court's reasoning for granting an interlocutory appeal. He also cites to an Order issued by this Court in another appeal. *State v. Tipton*, No. W2023-00551-CCA-R3-CD (Tenn. Crim. App. Apr. 18, 2024) (Order). Therein, the appellant filed a motion during the pendency of the appeal for an extension of time to file his appellate brief "as well as a request for this Court to order production of the audio recordings of certain trial court proceedings." *Id.* In support of the motion, counsel for the appellant "describe[d] the difficulties she [] encountered in obtaining audio recordings necessary to diligently investigate her client's claims that the filed transcripts [were] inaccurate or incomplete." Although this Court granted the extension request, it did not expressly grant counsel's request to order production of the audio recordings. Instead, the Court stated:

We remind the trial court that although "the written transcript is the official record of the trial proceedings as designated for purposes of appeal," the audio or other verbatim recordings of trial proceedings are to "be held on file with the clerk of the court and available if necessary." *Waggoner v. State*, 666 S.W.3d 384, 395-96 (Tenn. Ct. App. 2022); *see also* T.C.A. § 40-14-307(a). These audio recordings are public records presumptively subject to disclosure pursuant to the Public Records Act. *Waggoner*, 666 S.W.3d at 400.

Id.

In response to the instant application, the State contends neither the trial court nor this Court have subject matter jurisdiction under the Public Records Act to consider the Defendant's request for the audio recordings at issue. According to the State's position, the Defendant must pursue the requested relief, *i.e.*, access to the audio recordings of his trial, in a civil action initiated through the procedure set forth by statute. Tenn. Code Ann. §§ 10-7-503, -505. Further, the State asserts that any appeal from the denial of the public records request must be taken to the Court of Appeals, as the parties did in *Gentry* and

Waggoner, supra. Thus, the State advocates for denial of the instant application.

As discussed above, both the trial court and this Court must grant permission to appeal under Rule 9. Upon review, this Court agrees with, and hereby adopts, the trial court's assessment of the reasons supporting an interlocutory appeal in this instance.

The trial court was "persuaded that the potential for irreparable injury is genuine, and that post-judgment review would fail to provide an adequate or effective remedy." The court explained:

During the hearing, Defendant identified two alleged discrepancies in the official transcript: (1) the attesting detective's testimony regarding the presence or non-presence of pubic hair at the scene and (2) various issues with the states closing argument. The Court recognizes the Defendant's right to a clear and correct transcript in order to pursue his direct appeal as well as other remedies, including any post-conviction review.

The Court has considered relevant precedent addressing the scope of interlocutory appeals in criminal proceedings. In *State v. Gilley*, the Tennessee Supreme Court found that an interlocutory appeal was granted in error regarding a request for interlocutory review of the trial court's rulings under Rule 404(b), as the defendant had other avenues to challenge the ruling, including an appeal if convicted. *State v. Gilley*, 173 S.W.3d 1, 6 (Tenn. 2005). In addition, the Supreme Court further emphasized that Rule 9 did not permit an interlocutory appeal of the court's ruling on the admissibility of evidence of the prior acts of physical abuse committed by the defendant against the victim under Rule 404(b) because the trial had yet to begin, rendering the appeal largely advisory in nature. *Id.*

Similarly in *Gilley*, Defendant's ruling is reviewable by other means. However, there exist key factual differences. In *Gilley*, the motion to suppress was a common pretrial motion which would have been afforded great deference on direct appeal. *Id.* In contrast, the Defendant's motion for interlocutory appeal to gain access to a court reporter's audio recordings is not a routine, conventional pre-trial motion that has the option of a direct appeal. As a non-dismissive order, the only appellate avenues for the trial court order denying access would be pursuant to either Rule 9 or Rule 10, as these are the only procedures available for the party to seek review of an interlocutory trial court order which does not have the substantial effect of dismissing the charges. *See State v. Collins*, 35 S.W.3d 582 (Tenn. Crim. App. 2000). Furthermore, unlike *Gilley*, the underlying criminal proceedings

here have already resulted in a trial and conviction. Consequently, the danger of piecemeal appellate litigation that might hinder a trial court's flexibility in its rulings depending on the evidence presented at trial - identified by the *Gilley* court as a justification for appellate restraint - is removed. *Gilley*, 173 S.W.3d at 6-7. The trial court's discretion is not endangered by premature review, as the evidentiary phase has concluded and the trial record is closed.

This Court agrees. In its opinion in the direct appeal Mr. Waggoner sought in his criminal case, this Court reaffirmed the universal maxim that an indigent defendant in a criminal case involving a felony is entitled to a transcript of the relevant trial court proceedings. *State v. Waggoner*, No. E2018-01065-CCA-R3-CD, 2019 WL 4635589 at *25 (Tenn. Crim. App. Sep. 24, 2019), *perm. app. denied* (Tenn. Feb. 19, 2020); *see* Tenn. Code Ann. §§ 40-14-307, -312, -317. The Rules of Appellate Procedure also contemplate the inclusion of a transcript of the relevant evidence in appellate records. Tenn. R. App. P. 24(b). That transcript shall “convey a fair, accurate and complete account of what transpired with respect to those issues that are the bases of appeal.” *Id.* To that end, the trial court is tasked with approving the transcript that is prepared by the court reporter. Tenn. R. App. P. 24(f). The Rules further provide that “[a]ny differences regarding whether the record accurately discloses what occurred in the trial court shall be submitted to and settled by the trial court.” Tenn. R. App. P. 24(e). The transcript of the trial evidence in this case has already been prepared. The issue at hand is whether the trial court properly denied the Defendant's request to compare that transcript with the audio recording of the trial in preparation of his motion for new trial. Further review of that issue upon the trial court's ruling on the motion for new trial will likely be ineffective because the trial court has already affirmed the accuracy of the transcript.

As discussed above, this case has been pending in the trial court for quite some time. However, the trial court opined an interlocutory appeal would serve to reduce the net duration of the litigation because it would alleviate the Defendant from having to pursue alternative and potentially duplicative avenues of relief. This Court agrees with the State that the Public Records Act provides a means for the Defendant to obtain a copy of the audio recording of his trial. Tenn. Code Ann. §§ 10-7-503, -505. This Court recognized as much in its opinion in *Waggoner*. 2019 WL 4635589 at *25. Here, the Defendant did, in fact, pursue that course of action, albeit somewhat unartfully and on his own while he was represented by counsel at the time. Nevertheless, in the context of a criminal proceeding, this Court recognized a defendant also has a constitutional right to a “record of sufficient completeness” in order to “permit proper consideration of the issues the defendant will present for review.” *Id.* at *25 (citations omitted). Mr. Waggoner did not avail himself of the Public Records Act. As to his contention that the trial court erred in denying him access to the audio recording of his trial in order to correct the trial transcript, this Court held:

We cannot conclude that the Defendant has been denied “a record of sufficient completeness” for purposes of appeal or that the denial of access of the recording of the trial otherwise resulted in prejudice. While the Defendant makes a general allegation that the trial transcript omits certain material, he fails to specify what that material might be or how it relates to the issues he raises on appeal.

Id. This Court agreed with the State’s argument that the Defendant failed to establish what the recording might have revealed that differed from the trial transcript. *Id.* However, the Defendant in the case at hand does allege specific discrepancies, as highlighted above and recognized by the trial court. Again, the trial court, who is in the better position to gauge the matter at hand, opined an interlocutory appeal will result in a net reduction in the continued duration of the case. To that end, this Court will set deadlines below to expedite review of this issue.

Finally, this Court agrees with the trial court that there is a need to develop a uniform body of law on this issue to define the governing standard and procedure for potential access to court reporters’ audio recordings in the context of criminal cases.

Conclusion

Upon review, and for the reasons stated above, this Court hereby grants the Defendant’s application for permission to appeal on the issues stated in the trial court’s order. Pursuant to Rule of Appellate Procedure 2, this appeal shall proceed under the following deadlines, which will not be extended absent the showing of extenuating circumstances. Within twenty days, the trial court clerk shall assemble and transmit a record on appeal. The Defendant shall ensure that record is adequate for review of the issue presented. Upon the filing of the record, the Defendant shall have fifteen days to file his brief. The State shall then have fifteen days to file its responsive brief. Thereafter, Defendant may file a reply brief within seven days. Upon completion of briefing, the Clerk shall set this appeal on the next available docket.

Wedemeyer, P.J., Holloway, J., Ayers, J.