

SUPREME COURT OF TENNESSEE

State of Tennessee v. Barry D. McCoy

459 S.W.3d 1 (Tenn. 2014) · No. M2013-00912-SC-R11-CD · Decided December 1, 2014

SUMMARY

The Tennessee Supreme Court held that Tennessee Code Annotated section 24-7-123 does not violate separation-of-powers principles and constitutes a valid legislative exception to the general rule against hearsay. The Court also concluded that a video-recorded forensic interview of a child may be admitted under the statute if its statutory requirements are satisfied and it is otherwise relevant and admissible. The trial court’s exclusion of the recording was reversed, and the case was remanded for trial.

CASE DETAILS

COURT	Supreme Court of Tennessee
WRITING FOR THE COURT	Gary R. Wade; Sharon G. Lee, C.J.; Janice M. Holder, J.; Cornelia A. Clark, J.; William C. Koch, Jr., J.
JURISDICTION	Tennessee
DECIDED	December 1, 2014
DOCKET	M2013-00912-SC-R11-CD
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The State sought permission to introduce a video-recorded forensic interview of the child victim in a prosecution for seven counts of rape of a child. After the trial court excluded the recording, the State pursued interlocutory review under Tennessee Rules of Appellate Procedure 9 and 11. The Tennessee Supreme Court granted permission to appeal.
STANDARD OF REVIEW	Questions concerning admissibility of evidence are reviewed for abuse of discretion; statutory and constitutional interpretation and confrontation issues are reviewed de novo without a presumption of correctness. Constitutional challenges begin with a presumption that the statute is constitutional.
PRECEDENTIAL VALUE	published precedential opinion of the Supreme Court of Tennessee
PARTIES	State of Tennessee v. Barry D. McCoy

TOPICS

hearsay

evidence

constitutional law

statutory interpretation

appellate procedure

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether Tennessee Code Annotated section 24-7-123 impermissibly intrudes on the judiciary's authority to regulate evidence and thereby violates separation-of-powers principles.
2. Whether a video-recorded forensic interview that otherwise satisfies section 24-7-123 is admissible as a legislative exception to the general rule against hearsay.
3. Whether admission of the testimonial video-recorded statement violates the defendant's rights under the Sixth Amendment to the United States Constitution or article I, section 9 of the Tennessee Constitution when the child authenticates the recording and is available for cross-examination at trial.

HOLDINGS

1. Tennessee Code Annotated section 24-7-123 does not unconstitutionally infringe on the judiciary's authority because it is a reasonable, limited evidentiary rule that supplements rather than frustrates or interferes with the courts' adjudicative function.
2. The child's video-recorded interview is hearsay but is admissible under Tennessee Code Annotated section 24-7-123 as a valid legislative exception to the general rule excluding hearsay, provided all statutory and evidentiary requirements are met.
3. Admission of a testimonial video-recorded statement under section 24-7-123 does not violate the federal or state confrontation provisions when the child authenticates the recording and appears at trial for cross-examination to defend or explain the prior statement.

KEY QUOTATIONS

“For all of these reasons, section 24-7-123 does not constitute an impermissible overreach by the legislature into the judiciary’s powers.” (at 10)

“Therefore, the recorded statement, although falling within the definition of hearsay, is admissible under section 24-7-123 as a valid legislative exception to the general rule of excluding hearsay evidence.” (at 12)

“In consequence, we hold that the only circumstance under which a child victim’s video-recorded statements may be admitted in a manner consistent with both section 24-7-123 and the right of confrontation is when the witness first authenticates the video recording and then appears for cross-examination at trial to defend or explain the prior recorded statements.” (at 16)

FACTUAL BACKGROUND

Barry McCoy was indicted for seven counts of rape of a child. The State sought to introduce a video-recorded interview in which the child described sexual contact with McCoy. At a pretrial evidentiary hearing, the child authenticated the recording and was available for cross-examination, and the trial court found that the statutory

requirements and particularized-guarantees-of-trustworthiness requirement of Tennessee Code Annotated section 24-7-123 were satisfied. The trial court nevertheless excluded the recording as an unconstitutional legislative intrusion, inadmissible hearsay, and a violation of confrontation rights.

PROCEDURAL HISTORY

The Montgomery County Circuit Court initially excluded the video-recorded statement on separation-of-powers, hearsay, and confrontation grounds. The Court of Criminal Appeals first remanded for the trial court to determine whether the statute applied and later denied a second interlocutory appeal. The Tennessee Supreme Court granted the State's Rule 11 application, reversed the trial court's exclusionary ruling, and remanded for trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded for trial. The State may offer the video-recorded statement if it is relevant and otherwise complies with Tennessee Code Annotated section 24-7-123 and the Tennessee Rules of Evidence. The child must authenticate the recording and appear for cross-examination at trial to defend or explain the prior statement.

CASES CITED

- State v. DuBose, 953 S.W.2d 649, 652 (Tenn. 1997)
- State v. Van Tran, 864 S.W.2d 465, 477 (Tenn. 1993)
- State v. Mangrum, 403 S.W.3d 152, 166 (Tenn. 2013)
- Lee Medical, Inc. v. Beecher, 312 S.W.3d 515, 524 (Tenn. 2010)
- Waters v. Farr, 291 S.W.3d 873, 882 (Tenn. 2009)
- State v. Pickett, 211 S.W.3d 696, 700 (Tenn. 2007)
- Gallaher v. Elam, 104 S.W.3d 455, 459 (Tenn. 2003)
- Davis-Kidd Booksellers, Inc. v. McWherter, 866 S.W.2d 520, 529 (Tenn. 1993)
- Underwood v. State, 529 S.W.2d 45, 47 (Tenn. 1975)
- Richardson v. Young, 125 S.W. 664, 668 (Tenn. 1910)
- State v. Mallard, 40 S.W.3d 473, 480-81, 485 (Tenn. 2001)
- Haynes v. McKenzie Memorial Hospital, 667 S.W.2d 497, 498 (Tenn. Ct. App. 1984)
- Barger v. Brock, 535 S.W.2d 337, 341 (Tenn. 1976)
- State v. Reid, 981 S.W.2d 166, 170 (Tenn. 1998)
- State v. Robinson, 735 P.2d 801, 806, 808 (Ariz. 1987)
- Cogburn v. State, 732 S.W.2d 807, 809-13 (Ark. 1987)
- Hall v. State, 539 So. 2d 1338, 1342-44, 1346 (Miss. 1989)
- State v. Furlough, 797 S.W.2d 631, 647 (Tenn. Crim. App. 1990)

- State v. Laird, 565 S.W.2d 38, 41 (Tenn. 1978)
- State v. Barajar, 2005 WL 176493, at *6 (Tenn. Crim. App. Jan. 27, 2005)
- State v. Dishman, 915 S.W.2d 458, 461 (Tenn. Crim. App. 1995)
- State v. Williams, 913 S.W.2d 462, 465 (Tenn. 1996)
- State v. Middlebrooks, 840 S.W.2d 317, 332 (Tenn. 1992)
- Pennsylvania v. Ritchie, 480 U.S. 39, 51 (1987)
- State v. Stephenson, 195 S.W.3d 574, 591 (Tenn. 2006)
- State v. Deuter, 839 S.W.2d 391, 392-96 (Tenn. 1992)
- Maryland v. Craig, 497 U.S. 836, 840-45 (1990)
- State v. Dotson, 2014 WL 4825169, at *50-52 (Tenn. Sept. 30, 2014)
- State v. Lewis, 235 S.W.3d 136, 141-48 (Tenn. 2007)
- Ohio v. Roberts, 448 U.S. 56, 66, 72-73 (1980)
- Davis v. Washington, 547 U.S. 813, 821-22, 826 (2006)
- Michigan v. Bryant, 562 U.S. 344, 358, 363 (2011)
- United States v. Owens, 484 U.S. 554, 559 (1988)
- Kentucky v. Stincer, 482 U.S. 730, 739 (1987)
- State v. Pilkey, 776 S.W.2d 943, 943-48 (Tenn. 1989)
- State v. Watkins, 362 S.W.3d 530 (Tenn. 2012)
- State v. Hawkins, 78 So. 3d 293, 299 (La. Ct. App. 2011), writ denied, 85 So. 3d 1246 (La. 2012)
- State v. James, 703 N.W.2d 727, 733 (Wis. Ct. App. 2005)