

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
May 12, 2026 Session

FILED

07/28/2026

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. SPENCER BAUCOM, JR.

**Appeal by Permission from the Circuit Court for Rutherford County
No. 79477 Barry R. Tidwell, Judge**

No. M2025-01881-CCA-R9-CD

The Defendant, Spencer Baucom, Jr., sought an interlocutory appeal under Tennessee Rule of Appellate Procedure 9 and asked this court to review the trial court's order denying him access to the audio recordings created by the court reporter during his rape trial. This court granted the Rule 9 application to address three questions. After a thorough review of the record, we reverse the trial court's order in part and remand for further proceedings consistent with this opinion.

**Tenn. R. App. P. 9 Interlocutory Appeal;
Judgment of the Circuit Court Reversed in Part;
Case Remanded**

STEVEN W. SWORD, J., delivered the opinion of the court, in which ROBERT L. HOLLOWAY, JR., J., joined. TIMOTHY L. EASTER, J., concurring in results only.

Jessica F. Butler, Assistant Public Defender – Appellate Division (on appeal); Gerald L. Melton, District Public Defender; and Drew Perkins, Assistant Public Defender (at motion hearing), for the appellant, Spencer Baucom, Jr.

Jonathan Skrmetti, Attorney General and Reporter; William C. Lundy, Assistant Attorney General; Jennings H. Jones, District Attorney General; and Stephen Andrew Perkins, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. FACTUAL AND PROCEDURAL HISTORY

In January 2022, the Defendant was tried by jury on two counts of rape. He was convicted of one count and acquitted of the other. After a subsequent sentencing hearing,

the trial court imposed a sentence of eighteen years' incarceration. The trial court entered a judgment of conviction on May 19, 2022. The Defendant filed a timely motion for a new trial. The trial court permitted counsel to withdraw and, on August 11, 2022, appointed the District Public Defender's Office to represent the Defendant on his motion for a new trial and in any subsequent appeal.

On November 17, 2023, the Defendant filed a pro se petition under the Tennessee Public Records Act in the Rutherford County Chancery Court. He requested several documents, including a copy of the audio recording of a pretrial hearing held on May 3, 2021. On April 27, 2024, the chancery court denied the Defendant's request for a copy of the audio recording via written order. The chancery court stated that it had reviewed the circuit court clerk's file for the Defendant's case and found no audio recording or written transcript of the May 3, 2021 hearing. The chancery court then stated that the Defendant could request a copy of the transcript of that hearing and that the recording "may not be in the court file yet because the written transcript from this hearing has not yet been created." The chancery court further surmised that the recording may be filed with the circuit court clerk once the transcript has been produced.

On March 7, 2025, counsel for the Defendant filed a motion in the trial court requesting a copy of the audio recordings of his trial, which remained absent from the court file. In the motion, counsel explained that he did not represent the Defendant at trial and that the Defendant had informed him that "he believes that the trial transcript is altered, amended, or transcribed in error." Counsel further explained that he believed the court reporter possessed the audio recordings and that he had unsuccessfully requested that the court reporter provide the recordings. The trial court held a hearing on the Defendant's motion on May 22, 2025, and entered an order granting the motion on June 16, 2025. Two days later, on June 18, the trial court filed an order staying its prior order pending a second hearing on the Defendant's motion.

The trial court held the second hearing on the Defendant's motion on August 7, 2025. At this hearing, the trial court reviewed the procedural history of the case and heard arguments from counsel. The trial court noted that the parties referenced two cases, *Waggoner v. State*, 666 S.W.3d 384 (Tenn. 2022), and *State ex rel. Wilson v. Gentry*, No. M2019-02201-COA-R3-CV, 2020 WL 5240388 (Tenn. Ct. App. Sept. 2, 2020), *perm. app. denied* (Tenn. Dec. 2, 2020), to support their arguments. The trial court expressed concern that "everything that is said [in the courtroom] is ultimately recorded, including conversations at the State's table . . . as well as conversations at defense counsel table . . . and also conversations that the [c]ourt has[.]" The trial court opined that these recordings were "confidential" and "not open for inspection by members of the public" because they were "ultimately created as part of the [c]ourt's judicial and/or administrative deliberative process."

Counsel for the Defendant informed the trial court that the court reporter was instructed by the Administrative Office of the Courts to “speak to the [j]udge” if asked to turn over audio recordings, as the recordings capture everything that takes place in the courtroom. The trial court ultimately rescinded its June 16, 2025 order and denied the Defendant’s request for the audio recordings. The trial court entered a subsequent written order on August 8, 2025, which states, in relevant part:

The [c]ourt 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 [c]ourt may have with the [c]lerk or his staff. The [c]ourt 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 [c]ourt finds that the audio recordings were made as part of the [c]ourt’s judicial process and the disclosure of which would frustrate or interfere with the judicial function of the court. Therefore, the [c]ourt finds that non-disclosure is justified, and the Defendant is not entitled to the audio recordings.

The Defendant then sought an interlocutory appeal under Tennessee Rule of Appellate Procedure 9 in the trial court. At the hearing on this motion, counsel for the Defendant explained that the Defendant “takes umbrage with [the transcript] of Detective Abbott’s testimony” related to his discovery or non-discovery of a pubic hair and with a portion of the closing argument. The Defendant presented three issues in the motion for interlocutory appeal. The trial court granted permission to appeal and adopted the issues presented in the Defendant’s motion.

The Defendant filed an application to appeal in this court on November 25, 2025. In answer, the State argued that neither the trial court nor this court had subject matter jurisdiction under the Tennessee Public Records Act to consider the Defendant’s request for the audio recordings at issue. Instead, the State insisted that the Defendant had to seek access through a civil action initiated under the Public Records Act procedure set forth in Tennessee Code Annotated sections 10-7-503 and -505, and that any appeal from a denial of that request must be filed with the Court of Appeals rather than the Court of Criminal Appeals.

A panel of this court granted the Defendant’s Rule 9 application for interlocutory appeal over the State’s opposition. *State v. Baucom*, No. M2025-01881-CCA-R9-PC, 2026 WL 555361, at *7 (Tenn. Crim. App. Feb. 2, 2026). Three questions were designated by this court for consideration:

- 1) Whether the trial court wrongfully relied on *State ex rel. Wilson v. Gentry*, No. M2019-02201-COA-R3-CV, 2020 WL 5240388 (Tenn. Ct. App. Sept. 2, 2020) in denying the Defendant's March 7, 2025 Motion for Audio Recordings.
- 2) Whether the Defendant should have been allowed to have access to the court reporter's audio recordings based on the alleged inconsistencies in the trial transcript during the October 31, 2025 hearing.
- 3) Considering the seemingly contrary case law on the subject of public access to a court reporter's audio recordings, what is the appropriate standard?

Id. We now review the merits of the questions presented.

II. ANALYSIS

As stated above, there are three questions to resolve in this interlocutory appeal: 1) whether the trial court erred in relying on *Gentry* in denying the Defendant's March 7, 2025 motion; 2) whether the Defendant should be permitted access to the audio recordings of his trial; and 3) the "appropriate standard" on the public's access to such recordings. We also address the State's arguments regarding jurisdiction and justiciability. Our review is limited to "questions clearly within the scope of the issue certified for interlocutory appeal." *Fisher v. Hargett*, 604 S.W.3d 381, 393 (Tenn. 2020) (citing *Funk v. Scripps Media, Inc.*, 570 S.W.3d 205, 210 (Tenn. 2019)).

A. JURISDICTION AND JUSTICIABILITY

At the outset, we address the State's numerous requests to dismiss this appeal. The State argues in its responsive brief that this court lacks jurisdiction to consider this appeal. It asserts that 1) the Defendant's claim arises under the Public Records Act, 2) the circuit court lacked equity jurisdiction in the context of a criminal case to consider a claim under the Public Records Act, 3) this court lacks jurisdiction to consider an appeal under the Public Records Act, and 4) this court lacks jurisdiction to resolve a split of authority between different panels of the Court of Appeals. The State also contends that the appeal should be dismissed as non-justiciable. It argues that the dispute is not between the parties to the criminal case, that the State has no interest in the Defendant's Public Records Act dispute, and that the case is not ripe.

The State made similar arguments in its answer to the Defendant's Rule 9 application. This court considered and implicitly rejected these claims when it granted the application. *Baucom*, 2026 WL 555361, at *5. Under the "law of the case doctrine," these issues have been settled. The "law of the case doctrine" holds that legal issues previously decided in prior appeals of the same case are precluded from reconsideration. *State v. Hall*, 461 S.W.3d 469, 500 (Tenn. 2015). "The doctrine applies to issues that were actually before the appellate court in the first appeal and to issues that were necessarily decided by implication." *Memphis Publ'g. Co. v. Tenn. Petroleum Underground Storage Tank Bd.*, 975 S.W.2d 303, 306 (Tenn. 1998) (citing *Ladd v. Honda Motor Co., Ltd.*, 939 S.W.2d 83, 90 (Tenn. Ct. App. 1996)). During the application phase of this case, the State argued that the Defendant's claim arose under the Public Records Act, that the circuit court did not have equity jurisdiction to consider the Defendant's claim, that this court lacked jurisdiction to consider the Defendant's claim, and that this court lacked jurisdiction to resolve a split of authority between different panels of the Court of Appeals. This court considered and rejected the State's claims when it granted the Defendant's application for permission to appeal. See *Baucom*, 2026 WL 555361, at *5-7. As stated by our supreme court, the law of the case doctrine "promotes the finality and efficiency of the judicial process, avoids indefinite relitigation of the same issue, fosters consistent results in the same litigation, and assures the obedience of lower courts to the decisions of appellate courts." *Memphis Publ'g. Co.*, 975 S.W.2d at 306. In consideration of these interests, we need not revisit the State's claims.

Furthermore, we note that the trial court order before us now on interlocutory appeal did not involve an action under the Public Records Act. Although the trial court discussed two cases from the Tennessee Court of Appeals that arose from disputes involving the Public Records Act, *Waggoner* and *Gentry*, as will we, the Defendant's motion did not rely upon the Public Records Act for relief, nor did the trial court base its denial of the motion on the Public Records Act. The Defendant chose not to appeal his November 17, 2023 *pro se* Public Records Act action in the Rutherford County Chancery Court. Had he chosen to do so, the appropriate forum would have been the Court of Appeals. Rather, the Defendant abandoned his Public Records Act claim for the pretrial motion hearing and, in his March 7, 2025 motion before the trial court, sought access to the trial recordings. This was a reasonable choice, given the court reporter's apparent refusal to tender the recordings to the Defendant or to place them in the custody of the court clerk. It is the denial of this motion that we must now consider, separate and apart from the Public Records Act.

Additionally, this case is justiciable and ripe for determination. The order in question was filed in the criminal prosecution of which the State is a party. Again, this is not a Public Records Act proceeding. Ripeness involves a two-prong analysis, considering 1) the fitness of the issues for judicial decision and 2) whether withholding adjudication will impose any meaningful hardship on the parties. *State v. Price*, 579 S.W.3d 332, 338

(Tenn. 2019) (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 149 (1967)). “An issue is not fit for judicial decision if it is based ‘on hypothetical and contingent future events that may never occur.’” *Price*, 579 S.W.3d at 338 (quoting *Abbott Labs*, 387 U.S. at 149). In other words, the issue must be an actual existing legal controversy. *Price*, 579 S.W.3d at 338. In the present case, the issue is neither hypothetical nor based on contingent future events. The verbatim recordings in question have been withheld from the court file for over four years. Nothing suggests that this status will change, particularly in light of the trial court’s order now before us. Finally, withholding adjudication will cause meaningful hardship to the Defendant because he has no other means to review the accuracy of the transcript submitted in support of his appeal.

B. *GENTRY*

The Defendant argues that the trial court erred in relying on *Gentry* to deny access to the audio recordings. He contends that the trial court improperly concluded that the recordings should not be disclosed because they likely contain sensitive material, were made to aid the court reporter in preparing the transcript, and were part of the judicial process in a manner that disclosure would frustrate or interfere with the court’s function. The State counters that the Defendant failed to meet the prerequisites of a Public Records Act request by failing to request the records from the records custodian and that the records custodian has not denied the request.

To resolve this question, we first examine the nature and legal status of the audio recordings used to create verbatim records of criminal proceedings. The trial court held that the audio recordings of the Defendant’s trial “were made to aid the court reporter in generating the official transcript” and “were made as part of the Court’s judicial process.” The trial court appears to have adopted this language directly from *Gentry*. See *Gentry*, 2020 WL 5240388, at *4 (“We . . . believe that the recordings at issue were made to aid the court reporter in generating the transcript and that the recordings constitute electronic records created as part of the court’s judicial process.”). To the extent that the trial court relied upon this holding in *Gentry* to deny the Defendant access to any portion of the recordings, we conclude that the trial court erred.

In *Gentry*, the Tennessee Court of Appeals reviewed an order from the Davidson County Chancery Court regarding audio recordings of a criminal defendant’s post-conviction hearing. *Id.* at *1. The petitioner in *Gentry* originally requested the audio recordings from the criminal court clerk, who stated that the recordings were not in the clerk’s possession. *Id.* The criminal court judge then denied the request, stating that the audio recordings were created to aid the court reporter in preparing the official transcript, were not official records, included conversations outside the proceedings, and were protected from disclosure by local rule. *Id.* Unlike here, the petitioner in *Gentry* sought

access to the audio recordings under the Public Records Act. *Id.* The chancery court found that the recordings were exempt from disclosure, and the Tennessee Court of Appeals affirmed. *Id.*

The chancery court adopted the criminal court's findings and denied the petitioner access to the audio recordings. It concluded that audio-visual recordings of trials were not official records of what occurred but were "made for the purpose of aiding the court reporter in generating the transcript"; included records of conversations at counsel tables for the State and the defendant, as well as the trial judge and court staff; were prohibited from disclosure by a local court rule; and were "generated solely for the court's use and generally protected." *Id.*

In affirming the chancery court, the Court of Appeals cited Tennessee Supreme Court Rule 34, which prohibits disclosure of otherwise public records. Rule 34 states, in relevant part:

The following Court Records are not public records and shall be treated as confidential and shall not be open for inspection by members of the public:

. . . .

(v) Written or electronic conference records, notes, memoranda, reports, or other documents of a similar nature prepared by a judge, judicial staff, or Administrative Office of the Courts on behalf of, or at the direction of, a court or judge. This includes written or electronic records, notes, memoranda, reports, or other documents of a similar nature created or received as part of a court's judicial or administrative deliberative process unless intentionally filed as part of the Case Record;

. . . .

(ix) Any other written or electronic record the disclosure of which would frustrate or interfere with the judicial function of the courts or potentially undermine the inherent constitutional powers granted the court, in addition to the powers recognized in Tennessee Code Annotated sections 16-3-501 through 16-3-504.

Tenn. Sup. Ct. Rule 34(2)(C)(v), (ix).¹ Notably absent from the *Gentry* decision is any discussion of the statutory requirements regarding the creation of the audio recordings in the first place.

Verbatim recordings of criminal proceedings are required by statute; they are neither optional nor made at the direction of any trial court. Tennessee Code Annotated, section 40-14-307 states, in relevant part,

A designated reporter shall attend every stage of each criminal case before the court and shall record verbatim, by a method prescribed or approved by the administrative director, all proceedings had in open court and other proceedings as the judge may direct. The reporter shall attach the reporter's official certificate to the records so taken and promptly file them with the clerk of the court, who shall preserve them as a part of the records of the trial.

Tenn. Code Ann. § 40-14-307(a). This statute requires the creation of verbatim recordings at each stage of a criminal case. However, it leaves it to the administrative director of the courts² to prescribe or approve the specific methods for creating such verbatim records. Code section 40-14-306 further provides that “[t]he administrative director shall prescribe or approve methods for the taking of verbatim records of proceedings under this part. Any such method shall be of a nature that an accurate written transcript can be prepared from that method.” *Id.* § 40-14-306.

In compliance with these statutes, the Tennessee Administrative Office of the Courts has issued the Court Reporter Handbook (Handbook). The Handbook states, “While each court reporter may have specific methods by which they prepare the transcript, we suggest that all court reporters adopt the best practices recommended by the professional organizations for the court reporting profession[.]” Tennessee Administrative Office of the Courts, Court Reporter Handbook, at 7 (2025). The Handbook then cites to Code section 40-14-307 and sets forth the following procedures for digital recording of criminal court proceedings:

- All proceedings shall be saved (burned) to the recording file on the hard drive of the computer and also to a CD-R or DVD-R. This CD-R or DVD-R shall be considered the original recording.

¹ Rule 34 was amended effective May 18, 2026. The language relied upon by the Court of Appeals is present in the current version of the rule. However, the subsections have changed. Subsection (vii) in the previous version is now subsection (ix).

² “‘Administrative director’ means the administrative director of the courts[.]” Tenn. Code Ann. § 40-14-301(1).

- At the end of each day's proceedings, the reporter shall verify that the saving/burning of the proceedings has been successful by initiating playback of the audio recording and the CD-R or DVD-R.
- A new CD-R or DVD-R should be used each day, regardless of whether or not the previous CD-R or DVD-R used was completely filled. Additional CD's or other AOC-approved storage media may be utilized for transcription purposes.

Id. These procedures indicate that court reporters are directed to use audio recording to create the verbatim record.

This conclusion is further supported in the “Frequently Asked Questions” section of the Handbook. Question 7 asks, “What are the approved methods for recording criminal proceedings?” In response, the Tennessee Administrative Office of the Courts states, “Each criminal court is equipped with a digital recording system[,] and every criminal proceeding is required to be recorded. The court reporter[']s methods are: steno[graphic], voice writing, and shorthand/pen and digital as approved for taking down the record to go along with the recording.” *Id.* at 11. The phrase “to go along with the recording” indicates that a court reporter may use any approved method to create the verbatim record, but may not substitute those methods for the required audio recording. Thus, the required verbatim recordings, as outlined in Code section 40-14-307 and the Handbook, include audio recordings, such as those at issue in this case.

Significantly, these recordings must be promptly filed with the court clerk, who shall preserve them as part of the case records. Tenn. Code Ann. § 40-14-307(a). Thus, the verbatim recordings created by court reporters are part of the record. The Administrative Office of the Courts has directed court reporters to use audio recording in all criminal proceedings. The audio recordings may be used to aid in preparing transcripts, but they are nonetheless records themselves.

Two years after the unpublished opinion in *Gentry*, the Court of Appeals examined the statutory requirements for audio recordings of criminal proceedings in *Waggoner v. State*, 666 S.W.3d 384 (Tenn. Ct. App. 2022). The factual and procedural background leading to the Public Records Act action in *Waggoner* is similar to this case. The defendant in *Waggoner* was convicted of second degree murder. *State v. Waggoner*, No. E2018-01065-CCA-R3-CD, 2019 WL 4635589, at *1 (Tenn. Crim. App. Sep. 24, 2019), *perm. app. denied* (Tenn. Feb. 19, 2020). After filing his motion for a new trial, the defendant filed a motion requesting a copy of the audio recording of his trial, maintaining that the transcript of his trial contained errors. *Id.* at *25. The trial court denied the defendant's

motion requesting a copy of the audio recording of the trial on the grounds that the recordings “were only backups.” *Id.* On direct appeal, this court determined that it could “not conclude that the [d]efendant ha[d] been denied ‘a record of sufficient completeness’ for purposes of appeal or that the denial of access to the recording of the trial otherwise resulted in prejudice.” *Id.* However, this court did not address whether the audio recordings were part of the record of the case. The defendant then sought access to the audio recordings in the Davidson County Chancery Court pursuant to the Public Records Act. *Waggoner*, 666 S.W.3d at 389. The chancery court denied the petition, finding that the audio recordings were not part of the official trial record and were excepted from disclosure under Rule 34. *Id.*

The Court of Appeals reversed, holding that, pursuant to Code section 40-14-307, “when a ‘court reporter utilizes audio recording devices or stenography to make verbatim recording[s] of a proceeding in a criminal case, the reporter must file the resulting recordings or stenographic notes with the court clerk, who shall preserve them as part of the records of the trial.’” *Id.* at 396 (quoting Tenn. Op. Atty. Gen. No. 08-190, 2008 WL 5427512, at *1). The Court of Appeals then examined *Gentry*’s reliance on Rule 34 to exempt the audio recordings from disclosure. The *Waggoner* Court stated that the audio recordings were not “created by or at the behest of the trial judge,” but were mandated by statute, and that it had never been explained how the audio recordings were part of the trial judge’s deliberative process. *Id.* at 399. The court further found that, because Code section 40-14-307 requires that verbatim recordings be filed with the court clerk, they are not excluded from disclosure under Rule 34, which does not exempt documents “intentionally filed as part of the Case Record.” *Id.* at 400 (citing Tenn. R. Sup. Ct. 34(2)(C)(v)).

In the present case, the trial court failed to consider the requirements of Code section 40-14-307, the reasoning behind the Court of Appeals’ decision in *Waggoner*, or Rule 34’s inapplicability to documents intentionally filed as part of the court record. To the extent the trial court relied on *Gentry* to prohibit access to any portion of the audio recordings of the Defendant’s trial, it erred.

The trial court’s order effectively placed the recordings under seal and prevented the Defendant from reviewing portions of the trial necessary to ensure a record of sufficient completeness. Our supreme court recently reviewed the procedure for placing judicial records under seal in the context of motions for disqualification of the trial judge. *State v. Johnson*, ---S.W.3d---, 2026 WL 1433940 (Tenn. 2026). The court stated that “the presumption of openness extends not only to court proceedings, but also to judicial records.” *Id.* at *3 (citation omitted). However, the presumption of openness is qualified and subject to the courts’ inherent powers to seal records when legally justified. *Id.* at *4. The *Johnson* Court then clarified that “to seal judicial records protected by the First

Amendment right of access³, the interest at stake must be compelling.” *Id.* at *5. “To be ‘compelling,’ there must be ‘only one possible resolution.’” *Id.* (citing *Compel*, Black’s Law Dictionary (12th ed. 2024)). “Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning will not satisfy this standard,” and “[m]ere conclusory allegations are insufficient.” *Id.* (citations and internal quotation marks omitted). Furthermore, any sealing order must be narrowly tailored. *Id.* at *6. Once a court has sealed judicial records, “[t]he court must then provide instructions to the clerk that narrowly tailors any restriction to seal only what is necessary to protect the identified interests.” *Id.* (citing *State v. Drake*, 701 S.W.2d 604, 607-608 (Tenn. 1985)). Here, the trial court denied access to the entire recording solely on the basis of its conclusory statement that “the audio recordings likely contain sensitive material.” It made no specific findings to justify that broad restriction.

Accordingly, the trial court erred in relying on *Gentry* to prohibit the Defendant from accessing a portion of the verbatim recording of his trial. We now consider the Defendant’s second question.

C. ACCESS TO THE RECORDINGS

The Defendant also argues that the trial court erred in denying him access to the audio recordings in light of the alleged inconsistencies between the recordings and the trial transcript. The Tennessee Rules of Appellate Procedure require an appellant to have prepared a transcript of the proceedings relevant to the issues raised on appeal if a contemporaneously recorded, substantially verbatim recital of the proceedings is available. Tenn. R. App. P. 24(b); *State v. Draper*, 800 S.W.2d 489, 492 (Tenn. Crim. App. 1990). Failure to include a fair, accurate, and complete transcript or statement of what transpired in the trial court will preclude the appellate court from considering an issue. *Draper*, 800 S.W.2d at 493. Furthermore, an indigent criminal defendant is entitled to “a record of sufficient completeness to permit proper consideration of the issues the defendant will present for review.” *Draper*, 800 S.W.2d at 493 (footnote and quotation marks omitted). This right is rooted in both the United States Constitution and the Tennessee Constitution. See U.S. Const. amend. XIV; Tenn. Const. art. I, § 9; *Griffin v. Illinois*, 351 U.S. 12, 19 (1956); *Draper*, 800 S.W.2d at 493. As stated above, the General Assembly has also protected this right via statute, mandating that a court reporter “record verbatim . . . all proceedings had in open court and other proceedings as the judge may direct.” Tenn. Code Ann. § 40-14-307(a). Code section 40-14-317 similarly provides

³ The issue of whether the verbatim recordings are subject to the First Amendment right of access, the Open Courts provision of the Tennessee Constitution, or the common law is not before this court and we need not address it here. We simply cite to *Johnson* for the principle of the presumption of openness.

Notwithstanding the Tennessee Supreme Court Rules, Rule 26 or any other law to the contrary, a defendant in a criminal case, as defined by § 40-14-301, is entitled to have a court reporter pursuant to § 40-14-302, or a licensed court reporter pursuant to title 20, chapter 9, part 6 to record verbatim all proceedings that occur in open court and such other proceedings as the judge may direct.

Id. § 40-14-317.

However, “[a] record of sufficient completeness is not without its limits[,] as it does not translate automatically into a complete verbatim transcript.” *Waggoner*, 2019 WL 4635589, at *25 (quoting *Mayer v. City of Chicago*, 404 U.S. 189, 194 (1971)) (internal quotation marks omitted). The crux of the right to a record of sufficient completeness is that the criminal defendant be provided with a record of the proceedings which is sufficient to “place before the appellate court an equivalent report of the events at trial from which the appellant’s contentions arise.” *Draper v. Washington*, 372 U.S. 487, 495 (1963).

The right to a record of sufficient completeness in a criminal case is limited to “all proceedings had in open court and other proceedings as the judge may direct.” Tenn. Code Ann. § 40-14-307(a); *see also id.* § 40-14-317. There are two crucial phrases in subsections -307 and -317, “all proceedings” and “had in open court.” Only statements made during a proceeding in open court must be recorded verbatim and filed as part of the record of the case. We will briefly review each of these phrases.

As relevant here, Black’s Law Dictionary defines a “proceeding” as follows:

1. The regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment.
2. Any procedural means for seeking redress from a tribunal or agency.
3. An act or step that is part of a larger action.
4. The business conducted by a court or other official body; a hearing.

Proceeding, Black’s Law Dictionary (12th ed. 2024). More pertinent to this case, Black’s Law Dictionary defines a “criminal proceeding” as “[a] judicial hearing, session, or prosecution in which a court adjudicates whether a person has committed a crime or, having already fixed guilt, decides on an offender’s punishment; a criminal hearing or trial.” *Criminal Proceeding*, Black’s Law Dictionary (12th ed. 2024). Tennessee Supreme Court Rule 30, addressing media guidelines, defines “proceeding” as “any trial, hearing, motion, argument on appeal, or other matter held in open court that the public is entitled to attend.” Tenn. R. S. Ct. 30.

The concept of “open court” is rooted in our constitution. “That all courts shall be open; and every man, for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial, or delay.” Tenn. Const. art. I, § 17. Black’s Law Dictionary defines “open court” as

[a] court that is in session, presided over by a judge, attended by the parties and their attorneys, and engaged in judicial business. Open court usually refers to a proceeding in which formal entries are made on the record. The term is distinguished from a court that is hearing evidence in camera or from a judge that is exercising merely magisterial powers.

Open Court, Black’s Law Dictionary (12th ed. 2024). Thus, the presumption of openness in a judicial proceeding entails any matter intended to be part of the record of the proceedings.

Plainly, our statutes and precedent protect a criminal defendant’s right to a record of sufficient completeness of the proceedings in his or her case. Tenn. Const. art. I, § 9; Tenn. Code Ann. § 40-14-307(a), -317; *Draper*, 800 S.W.2d at 493. That right must include the information a defendant needs to present an issue for appellate review. *Draper*, 372 U.S. at 495. However, the right does not include a preservation of information which is privileged or otherwise irrelevant to a defendant’s criminal proceedings. *See United States v. MacCollom*, 426 U.S. 317, 330 (1976) (Blackmun, J., concurring) (“Clearly, there is no constitutional requirement that the United States provide an indigent with a transcript when that transcript is not necessary in order for him to prove his claim, or when his claim is frivolous on its face.”). In other words, statements inadvertently captured by a microphone that were not intended to be part of the record do not constitute proceedings held in open court.

The trial court’s concern about releasing the audio recordings, which mirrors the concerns noted in *Gentry* and *Waggoner*, rests on valid considerations. During the August 7, 2025 hearing, the trial court expressed its concern that

everything that is said is ultimately recorded, including conversations at the State’s table when the State’s attorneys may discuss – whether it’s strategy or what – what the next question is or the next witness as well as conversations at defense counsel table that may relate to certainly privileged comments that a defendant and his lawyer have a right to make without anyone hearing, and also conversations that the [c]ourt has with – whether it’s the clerk or with the [c]ourt’s staff.

Similar fears were expressed by the trial courts in *Gentry* and *Waggoner*. See *Waggoner*, 666 S.W.3d at 388; *Gentry*, 2020 WL 5240388, at *1.

Indeed, many aspects of a court's business may be inadvertently captured on an audio recording and are not relevant to a defendant's criminal proceeding. In other words, the audio recording may capture the relevant criminal proceedings, which must become part of the record, but it may also capture extraneous material that may be either privileged or completely irrelevant to the criminal proceedings.

For example, an audio recording may capture privileged attorney-client conversations, to which a co-defendant or the State may have no right. See Tenn. Code Ann. § 23-3-105 (codifying the attorney-client privilege); *Bryan v. State*, 848 S.W.2d 72, 79 (Tenn. Crim. App. 1992) ("The courts should be solicitous in guarding against disclosure of privileged communications between client and counsel."). An audio recording may also capture a judge's confidential conversations with staff regarding his or her judicial deliberative process. Cf. Tenn. Sup. Ct. R. 34(2)(C)(v) (excluding from the public record and treating as confidential the "written or electronic records, notes, memoranda, reports, or other documents of a similar nature created or received as part of a court's judicial or administrative deliberative process unless intentionally filed as part of the Case Record,"⁴ including similar recordings prepared by staff on behalf or on the direction of a judge). It may also capture records of conversations or discussions wholly irrelevant to the defendant's criminal proceeding, such as conversations among members of the court staff about other cases on the docket or their plans for the weekend, conversations among members of the public during trial breaks, or statements made by a witness who neglects to remove his or her lavalier microphone after testifying and being dismissed. There are countless ways in which an audio recording might capture irrelevant or privileged statements. Regardless of those possibilities, a criminal defendant's right to a record of sufficient completeness extends only to the material necessary to "place before the appellate court an equivalent report of the events at trial from which the appellant's contentions arise." *Draper*, 372 U.S. at 495.

We conclude that the trial court erred in denying access to the portions of the audio recordings that captured the criminal proceedings relevant to the Defendant's claimed transcript inconsistencies and were necessary to provide a record of sufficient completeness. However, the trial court did not err in withholding portions of the recordings that captured statements unrelated to the Defendant's criminal proceedings, that were not

⁴ When the verbatim recordings are filed with the court clerk pursuant to Code section 40-14-307, it is illogical to conclude that the trial court "intentionally filed" as part of the record this extraneous material not part of the criminal proceedings.

made in open court, that were privileged, or that reflected the court's judicial or administrative deliberative process.

D. APPROPRIATE STANDARD

The Defendant also asks this court to determine the “appropriate standard” for public access to a court reporter's audio recordings in light of the “seemingly contrary case law.” We note that the issue in this case concerns the Defendant's right to access a portion of the record of his trial, not the public's access to the verbatim recordings. Furthermore, it is not clear to this court what the Defendant means by “the appropriate standard.” To the extent this question seeks an advisory opinion, we decline to rule on issues not before us. It is “the province of a court . . . to decide, not advise, and to settle rights, not to give abstract opinions.” *Norma Faye Pyles Lynch Family Purpose LLC v. Putnam Cnty.*, 301 S.W.3d 196, 203 (Tenn. 2009) (quoting *State v. Wilson*, 70 Tenn. 204, 210 (1879)). However, the Defendant in this case was convicted on January 26, 2022, and sentenced on May 19, 2022. Four years later, the Defendant's motion for a new trial still has not been heard. In an effort to avoid additional delays, we answer this third question as follows.

On March 7, 2025, counsel for the Defendant filed a motion seeking the audio recordings of the trial “for the purpose of preparing for the argument on the motion for new trial and potentially for an appeal.” In the motion, counsel claimed that the Defendant “believes the [official] transcript is altered, amended, or transcribed in error” and that because counsel did not represent the Defendant at trial, counsel cannot “confirm the transcript's accuracy or lack thereof for purposes of the Motion for New Trial.” At the October 31, 2025 hearing on the motion, counsel argued that Defendant “[took] umbrage” with testimony from Detective Abbott found in the official transcript about a pubic hair being found. The Defendant argued that the official transcript stated that Detective Abbott said, “I do not recall a hair being found” but that Detective Abbott actually testified that no hair was found. Defendant admitted, however, that the Tennessee Bureau of Investigation report showed that there was a hair. The Defendant also claimed that the State “referred to the bath salts multiple, multiple times, and while there is mention of that in the official transcript, [the Defendant] believes that [the prosecutor] mentioned it more” during trial.

“If any matter properly includable is omitted from the record, is improperly included, or is misstated therein, the record may be corrected or modified to conform to the truth.” Tenn. R. App. P. 24(e) (2025). Any question as to the accuracy of a transcript is to be submitted to and settled by the trial court, whose determination is conclusive absent extraordinary circumstances.⁵ *Id.* The trial judge has the inherent power and duty to

⁵ Extraordinary circumstances, as used in Rule 24(e), only apply after determination of the accuracy of the official transcript. In this case, the trial court has not made such a determination.

resolve any disputes concerning the accuracy of the transcript. Tenn. R. App. P. 24(b) (2025). In resolving such disputes, the trial court should use the available resources, including any contemporaneous recording made by the stenographic reporter to prepare the transcript. See *Hall v. Hall*, 772 S.W.2d 432, 435 (Tenn. Ct. App. 1989) (in resolving disputes concerning a statement of evidence, the trial court can use the memory of the trial judge, any memoranda of the trial judge, and an evidentiary hearing to establish what evidence was presented during the trial).

Here, the trial court has inherent authority to review the court reporter's verbatim recording that was used to prepare the official transcript to fulfill its responsibility to approve a transcript that conforms to the truth. See Tenn. R. App. P. 24(e), (f). The court may review the audio recording in camera or review in the presence of the parties. On remand, the trial judge should take whatever action it deems necessary to resolve the dispute concerning the transcript's accuracy and to approve a record that conforms to the truth.

III. CONCLUSION

After reviewing the record and considering the foregoing analysis, we reverse the trial court's order denying the Defendant access to those portions of the audio recordings that captured the verbatim criminal proceedings of his trial. We remand the case for further proceedings consistent with this opinion.

s/ *STEVEN W. SWORD*

STEVEN W. SWORD, JUDGE