

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs June 23, 2026 at Knoxville

STATE OF TENNESSEE v. ROBERT JAMES TIPLER

Appeal from the Circuit Court for Madison County
No. 19-968 Kyle C. Atkins, Judge

No. W2024-01727-CCA-R3-CD

Robert James Tipler, Defendant, was indicted by the Madison County Grand Jury for first degree murder, unlawful possession of a firearm by a convicted felon, and unlawful possession of a handgun by a convicted felon after an incident that resulted in the death of Ronnie Hines, the victim. Prior to trial, Defendant moved to dismiss the indictment because the State allegedly committed a *Ferguson*¹ violation by failing to preserve police body camera footage and moved for recusal of the District Attorney General based on an allegation that the State influenced the medical examiner. The trial court denied the motions. At trial, Defendant sought to dismiss the case based on improper conduct by the State. The trial court denied the motion. A jury convicted Defendant as charged. As a result, Defendant was sentenced to life for the first degree murder conviction. The trial court merged the firearms convictions into a single count of unlawful possession of a firearm by a convicted felon and sentenced Defendant to ten years at thirty percent, to be served concurrently with the life sentence. Defendant filed an untimely notice of appeal 251 days after the denial of a motion for new trial. Because the interests of justice do not support the waiver of the timeliness of the notice of appeal, the appeal is dismissed.

Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed

TIMOTHY L. EASTER, J., delivered the opinion of the court, in which ROBERT H. MONTGOMERY, JR., and STEVEN W. SWORD, JJ., joined.

Joshua L. Phillips (on appeal), Lexington, Tennessee; and David W. Camp (at trial) Jackson, Tennessee, for the appellant, Robert Tipler.

¹ *State v. Ferguson*, 2 S.W.3d 912, 915-16 (Tenn. 1999)

FILED

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Clerk of the
Appellate Courts

Jonathan Skrmetti, Attorney General and Reporter; William C. Lundy, Assistant Attorney General; Jody S. Pickens, District Attorney General; and Brad Champine, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Defendant was indicted in December of 2019 for first degree premeditated murder, unlawful possession of a firearm by a convicted felon, and unlawful possession of a handgun by a convicted felon. The indictment arose after an incident that took place at a trailer park in Madison County in February of 2019, during which Defendant shot the victim eleven times.

In July of 2022, Defendant sought to dismiss the indictment based on a *Ferguson* violation. He argued that the State failed to preserve police body camera footage from the scene. The trial court held several hearings on the motion and an amended motion and ultimately denied relief. There are no transcripts of these hearings in the record on appeal. Defendant sought an interlocutory appeal based on the denial of the *Ferguson* motion. The trial court denied the request for interlocutory appeal.

In March of 2023, Defendant filed a motion to recuse the District Attorney General. Defendant argued that the State “attempted to ingratiate itself with the medical examiner by making it appear that the State was being helpful to the medical examiner regarding scheduling, while the defense attorney was blocking its efforts to provide help.” The trial court denied the motion. Again, there is no transcript from this hearing in the record on appeal.

The matter went to trial in the spring of 2023. During trial, Defendant moved to dismiss the case based on alleged misconduct by the State. The trial court denied the motion.

At the conclusion of the trial, after both Defendant and the State rested, Defendant asked the trial court for an instruction on the defense of necessity. The trial court denied the request.

Defendant was convicted as charged in the indictment. The trial court sentenced Defendant to life in prison for the first degree murder conviction. The court merged the two firearms convictions into a single count of unlawful possession of a firearm by a convicted felon and sentenced Defendant to ten years at thirty percent to be served concurrently with the life sentence.

Through trial counsel, Defendant filed a timely motion for new trial and an amended motion for new trial. Trial counsel also filed a motion to withdraw at the same time as the amended motion for new trial, stating that he had not been retained for appellate representation and sought to withdraw after the trial court's ruling on the motion for new trial. Defendant's motions raised the following issues: (1) whether the evidence was sufficient to support the convictions; (2) whether the trial court erred in denying the *Ferguson* motion; (3) whether the trial court erred in denying the motion to recuse the prosecutor and/or the motion for a mistrial; and (4) whether the trial court erred when it denied the jury instruction on necessity.² The trial court denied the motion for new trial on February 12, 2024. Two days later, Defendant filed a motion asking the trial court to set aside the order denying the motion for new trial. There is no order addressing this motion in the record on appeal.

On May 30, 2024, trial counsel was permitted to withdraw. Appellate counsel was appointed on October 18, 2024. A notice of appeal was filed on November 18, 2024.

Analysis

In this appeal, Defendant challenges his convictions, the trial court's denial of several motions, the trial court's decision to admit photographs of the victim into evidence, and the trial court's refusal to grant a jury instruction based on necessity. However, before we make any determination on the merits, we must address the timeliness of Defendant's appeal of the original convictions. *See* Tenn. R. App. P. 13(b). "It is no secret that under Tennessee Rule of Appellate Procedure 4(a), the notice of appeal must be filed 'within 30 days after the date of entry of the judgment appealed from.'" *State v. James*, No. E2021-00559-CCA-R3-CD, 2022 WL 633540, at *1 (Tenn. Crim. App. Mar. 4, 2022), *no perm. app. filed*. This time period may be extended if the defendant files a timely, written motion for a new trial. Tenn. R. App. P. 4(c). In that circumstance, "the time for appeal for all parties shall run from entry of the order denying a new trial." *Id.*; *State v. Byington*, 284 S.W.3d 220, 225 (Tenn. 2009).

In this case, Defendant filed a timely motion for new trial. The trial court entered an order denying the motion for new trial on February 12, 2024. Therefore, Defendant had until March 13, 2024 to file a notice of appeal.³ Defendant's notice of appeal was filed on November 18, 2024, making it 251 days late.

² There was no argument to support the jury instruction issue in the motion for new trial and there was no discussion of the jury instruction at the hearing on the motion for new trial.

³ We take notice that 2024 was a leap year. *See* Tenn. R. Evid. 201(b).

Rule 4(a) of the Tennessee Rules of Appellate Procedure provides that “in all criminal cases the ‘notice of appeal’ document is not jurisdictional and the timely filing of such document may be waived in the interest of justice.” Tenn. R. App. P. 4(a). A defendant bears the responsibility to properly perfect his appeal or to demonstrate that the “interests of justice” merit waiver of an untimely filed notice of appeal. *State v. Jones*, No. M2011-00878-CCA-R3-CD, 2011 WL 5573579, at *1 (Tenn. Crim. App. Nov. 15, 2011) (citing Tenn. R. App. P. 4(a)), *perm. app. denied* (Tenn. Apr. 11, 2012).

In determining whether waiver is appropriate, this Court will consider the nature of the issues presented for review, the reasons for and the length of the delay in seeking relief, and any other relevant factors presented in the particular case. *State v. Rockwell*, 280 S.W.3d 212, 214 (Tenn. Crim. App. 2007) (citation modified) (quoting *State v. Broyld*, No. M2005-00299-CCA-R3-CO, 2005 WL 3543415, at *1 (Tenn. Crim. App. Dec. 27, 2005), *no perm. app. filed*). “Waiver is not automatic and should only occur when ‘the interest of justice’ mandates waiver. If this Court were to summarily grant a waiver whenever confronted with untimely notices, the thirty-day requirement of Tennessee Rule of Appellate Procedure 4(a) would be rendered a legal fiction.” *Id.* (citing *Hill v. State*, No. 01C01-9506-CC-00175, 1996 WL 63950, at *1 (Tenn. Crim. App. Feb. 13, 1996), *perm. app. denied* (Tenn. May 28, 1996)).

Here, there is no question that the notice of appeal was untimely. Therefore, we must look to see if the interest of justice mandates a reason for us to waive the timely filing of the notice of appeal.

A review of the record indicates that Defendant has not requested a waiver, nor has he offered any type of explanation as to why we should excuse him from the timeliness requirement, even after the State filed a brief urging this Court to dismiss the appeal based on the untimely notice of appeal. Defendant could have filed a reply brief addressing the timeliness of the notice of appeal and did not do so.

Moreover, the interest of justice do not mandate or support the waiver of the timeliness requirement. First, we note that the argument section of Defendant’s brief fails to cite to the record. The rules of appellate procedure require a brief to “contain” an “argument . . . with citations to the authorities and appropriate references to the record . . . relied on.” Tenn. R. App. P. 27(a)(7)(A). Issues “which are not supported by . . . appropriate references to the record will be treated as waived in this [C]ourt.” Tenn. R. Ct. Crim. App. 10(b); *see e.g., State v. Moore*, No. M2015-00663-CCA-R3-CD, 2016 WL 3610438, at *8 (Tenn. Crim. App. June 28, 2016) (waiving all issues including sufficiency of the evidence for failing to cite to the record in the argument section of the brief), *perm. app. denied* (Tenn. Nov. 17, 2016). The record in this case consists of eleven volumes of transcript and two volumes of technical record as well as a multitude of exhibits. While

we “strive to conduct a comprehensive review of the record in each case review, it is not the duty of this [C]ourt to scour the record in search of the facts supporting a defendant’s argument,” especially in a case where the record spans over 1400 pages. *Moore*, 2016 WL 3610438, at *8.

Further, the record does not contain transcripts of the hearings at which the trial court denied the *Ferguson* motion. “It is the duty of the appellant to prepare ‘a transcript of such part of the evidence or proceedings as is necessary to convey a fair, accurate and complete account of what transpired with respect to those issues that are the bases of appeal.’” Tenn. R. App. P. 24. Lastly, Defendant did not even present the issue about photographs to the trial court in the motion for new trial, failed to present any argument or authority about the jury instruction issue at the hearing on the motion for new trial, and has not asked this Court to review either of these issues for plain error.

Conclusion

Defendant did “not request that we waive a late-filed notice of appeal, [so this Court] will be reluctant to intervene otherwise.” *State v. Stowder*, 2025 WL 659273, at *4. Consequently, the appeal is dismissed.

/s/Timothy L. Easter

TIMOTHY L. EASTER, JUDGE