

VERMONT SUPREME COURT
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Case No. 26-AP-259

ENTRY ORDER

AUGUST TERM, 2026

State of Vermont v. Tate Rheume*	}	APPEALED FROM:
	}	Superior Court, Rutland Superior Court ,
	}	Criminal Division
	}	CASE NO. 23-CR-06504

In the above-entitled cause, the Clerk will enter:

Defendant seeks permission to take an interlocutory appeal of the trial court's order denying his motion to admit evidence of the Rutland City Police Department's police pursuit policy in his trial for aggravated murder and other charges. For the following reasons, we deny defendant's motion.

Defendant is charged with aggravated murder and several other felonies based on events that occurred on July 7, 2023. The State alleges that defendant broke into his ex-girlfriend's house to try to gain access to his children. The ex-girlfriend saw defendant on her security camera and contacted police. An officer arrived and tried to speak to defendant. Defendant fled the scene in his truck and the officer pursued him, flashing his blue lights and using his siren. Defendant did not stop. During the resulting pursuit, defendant crossed the center line of the highway and drove head-on into another police cruiser, killing Officer Jessica Ebbighausen and injuring two other officers.

In April 2026, defendant filed a motion in limine to admit evidence that the officers involved in the pursuit violated the police department's pursuit policy by initiating a pursuit for a nonserious offense, continuing the pursuit without supervisor authorization, failing to terminate the pursuit in a dangerous environment, and allowing Officer Ebbighausen, an unauthorized trainee, to drive during the pursuit. Defendant argued that the alleged policy violations were evidence of intervening conduct that broke the chain of causation in the death of Officer Ebbighausen, evidence of contributory negligence, and should be permissible for impeachment purposes.

The trial court concluded that even if the officers' actions violated departmental policies, they did not constitute an efficient intervening cause that broke the chain of causation of the original negligent actor, defendant. It further concluded that contributory negligence was not a defense in a criminal case. It therefore denied the motion to admit the evidence for those purposes. The court deferred ruling on whether the policy could be used for impeachment purposes, as it could not determine that issue without trial testimony.

Defendant moved for permission to take an interlocutory appeal under Vermont Rule of Appellate Procedure 5(b), arguing that the decision presented the following controlling question of law: “Whether a criminal defendant is denied his rights to present a defense and a jury trial under the Sixth Amendment and to due process under the Fourteenth Amendment and Article 10 of the Vermont Constitution when the trial court denies the admission of exculpatory evidence supporting a key defense after making its own fact-findings and assessment of the weight of the evidence to determine it insufficient to counter the State’s theory of its case for causation.” Defendant asserted that it would be judicially efficient to decide this issue prior to final judgment. Defendant alternatively argued that the decision met the criteria for a collateral final judgment under Vermont Rule of Appellate Procedure 5.1.

The court denied the motion. It concluded that there was no substantial ground for difference of opinion about the admissibility of the police pursuit policy, citing several out-of-state cases excluding such policies in similar circumstances. It further concluded that an appeal would not materially advance the termination of the litigation because a trial would still take place regardless of how this Court ruled on that issue. The court also concluded that the decision was not reviewable under Rule 5.1 because it did not conclusively determine whether the evidence was admissible and would be reviewable on appeal.

Defendant now seeks permission from this Court to take an appeal, essentially repeating the arguments he made in his motion below.

Vermont Rule of Appellate Procedure 5(b) permits an interlocutory appeal when “the order or ruling involves a controlling question of law about which there exists substantial ground for difference of opinion” and “an immediate appeal may materially advance the termination of the litigation.” V.R.A.P. 5(b)(1). “[T]he trial court has discretion in granting or denying interlocutory appeal, and this Court reviews for an abuse of that discretion.” State v. Haynes, 2019 VT 44, ¶ 33, 210 Vt. 417. The court acted within its discretion in denying the motion under Rule 5(b). An immediate appeal of the trial court’s decision denying admission of the police pursuit policy will not materially advance the termination of the litigation. An appeal could delay the criminal proceeding for months or even years, and a ruling from this Court on the admissibility of the evidence will not conclusively resolve any of the charges against defendant. Further, as the trial court explained, the ruling did not completely foreclose admission of the evidence for impeachment purposes. Whether the evidence comes in is dependent on what happens at trial. An appeal at this stage is therefore inappropriate under Rule 5(b). See In re Pyramid Co. of Burlington, 141 Vt. 294, 304 (1982) (“If factual distinctions could control the legal result, the issue is not an appropriate subject for interlocutory appeal.”); see also State v. Dubois, 150 Vt. 600, 602 (1988) (explaining that discretionary denial of motion in limine is inappropriate for interlocutory appeal).

Likewise, the court acted within its discretion in denying permission to appeal under Vermont Rule of Appellate Procedure 5.1(a). That rule provides that the trial court has discretion to grant permission to appeal from an interlocutory order “if the court finds that the order: (A) conclusively determines a disputed question; (B) resolves an important issue completely separate from the merits of the action; and (C) will be effectively unreviewable on appeal from a final judgment.” See In re J.G., 160 Vt. 250, 252 (1993) (holding trial court has discretion in deciding whether to allow an appeal from collateral order). As explained above, the order denying the motion in limine did not conclusively determine the admissibility of the

evidence. Moreover, the admissibility of the evidence is closely related to the merits of the action, and evidentiary decisions are reviewable on appeal from a final judgment.

Defendant's motion for permission to take an interlocutory appeal is therefore denied.

BY THE COURT:

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Nancy J. Waples, Associate Justice

Christina E. Nolan, Associate Justice

Michael P. Drescher, Associate Justice