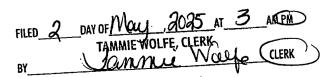
IN THE CIRCUIT COURT OF HARDIN COUNTY AT SAVANNAH, TENNESSEE

ZACHARY RYE ADAMS PETITIONER]	•
VS.] NO.	17-CR-10-PC
STATE OF TENNESSEE]	1

MOTION FOR SANCTIONS AND TO COMPEL THE STATE TO PROVIDE ALL "INVESTIGATORY SUBPOENAS"

Comes now the Petitioner, by and through Counsel, and moves the Court to sanction the State of Tennessee by all matters within its discretion for its handling of the exculpatory evidence of the ATM machine in this case. The Petitioner relies upon the contemporaneously filed Proposed Amendment for the facts asserted, which is briefly summarized:

- a. The State obtained the actual ATM machine and/or recording software within the same on May 12th, 2024, under powers authorized to the TBI to "investigate" crimes.
- b. Only when the State was advised that Counsel knew of this subpoena and machine, did it reveal it had this machine.
- c. Counsel tried to obtain this subpoena for months; both informally and through a formal motion to compel
- d. Only during the last week of April of 2025 did the State even provide this "investigatory" subpoena.
- 1. Petitioner submits that the State is unable to claim there is an "investigation" happening in this matter while also demanding that Mr. Adams' conviction not be disturbed. Pursuant to Lindsay v. Allen, 113 Tenn. 517, 82 S.W. 648 (1904) the "investigation" period of this case ended at the trial.



- 2. Further, this evidence was only exculpatory evidence and thus, the State's conduct should be scrutinized heavily in how they have handled this evidence.
- 3. Further, the State should be judicially estopped from litigating in this post conviction relief case that stakes a claim that the Petitioner's conviction should not be disturbed but then treats the case as if there is no conviction.
 - a. Sparingly granted in civil cases, judicial estoppel in criminal cases (if even available) is rarer still. See *United States v. Levasseur*, 846 F.2d 786, 795 (1st Cir. 1988) (leaving open the question of whether judicial estoppel "may ever be invoked against the government in a criminal case"); *United States v. Lehman*, 756 F.2d 725, 728 (9th Cir. 1985) (same). This is hardly surprising as the Sixth Circuit "ha[s] often remarked that judicial estoppel should be applied with caution to 'avoid impinging on the truth-seeking function of the court." *White v. Wyndham Vacation Ownership, Inc.*, 617 F.3d 472, 485 (6th Cir. 2010) (citation omitted, collecting cases).
 - b. Judicial estoppel "generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase." New Hampshire v. Maine, 532 U.S. 742, 749, 121 S. Ct. 1808, 149 L. Ed. 2d 968 (2001) (quoting *Pegram v. Herdrich*, 530 U.S. 211, 227, n. 8, 120 S. Ct. 2143, 147 L. Ed. 2d 164 (2000)). "[A]lthough there is 'no set formula for assessing when judicial estoppel should apply,' . . . it is well-established that at a minimum, 'a party's later position must be 'clearly inconsistent' with its earlier position[.]" *Lorillard Tobacco Co. v. Chester, Willcox & Saxbe*, 546 F.3d 752, 757 (6th Cir. 2008) (citations omitted). It is an "equitable doctrine that preserves

the [**7] integrity of the courts by preventing a party from abusing the judicial process through cynical gamesmanship, achieving success on one position, then arguing the opposite to suit an exigency of the moment." *Teledyne Indus., Inc. v. NLRB*, 911 F.2d 1214, 1218 (6th Cir. 1990).

- 4. The State provided no investigative reports in discovery to the Petitioner.
- 5. It is believed that the State is probably still relying on this 'investigatory subpoena' to subvert the narrow strictures of Tenn. Sup. Ct. R. 28 and Rule 16, which is, respectfully, acting in bad faith and against the Orders of this Court.

To address all of this, the Petitioner would request:

- To sanction the State on how they have handled the exculpatory evidence in the ATM machine. This includes all forms of relief including the granting of the post conviction relief claim.
- 2. To compel the state to provide all subpoenas of all kinds they have issued in this case and until proper examination and preserve the request to quash and destroy and/or preserve and provide to Dylan Adams and Zachary Adams the exculpatory evidence they are obtaining for the potentially forthcoming new jury trial on the merits.
- 3. For such further and general relief to which the Petitioner is authorized.

RESPECTFULLY SUBMITTED:

$\overline{\mathbf{p}}$	OUGLAS THOMPSO	N BATES, IV (#027089)	
ATTORNEY FOR ZACHARY RYE ADAMS			
	ATES & BATES LAW OF	i	
	06 W. PUBLIC SQ., 2 ND FLO		
	O. BOX 1		
	ENTERVILLE, TN 37033	•	
	EL: 931-729-4085	FAX: 931-729-9888	
E	MAIL: dtbates4@bates.law	1	
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•	,		
<u> </u>	CRYSTAL M. E	TUE / D. Dem DPB)	
C	RYSTAL M. ETUE (# 035999)	
CO-COUNSEL FOR ZACHARY RYE ADAMS			
	AW OFFICES OF CRYSTA	L ETUE, PĻLC	
	219 3 RD AVE NORTH		
	RANKLIN, TN 37069		
	EL: (615) 721-7983		
El	MAIL: crystal@etuelaw.com		
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NOTICE: I WILL PRESENT THIS MOTION AS DIRECTED BY THE COURT.			
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The undersigned certifies that he has or			
sent a true and correct copy of the following to	the person(s) listed belo	ow in compliance with the	
Tennessee Rules of Civil Procedure, Rules 5 and/or 5A, by the following indicated method(s):			
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Amy Weirich: apweirich@tndagc.org			
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DOUGLAS THOMPSON BATES, IV			
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