

IN THE CIRCUIT COURT OF HARDIN COUNTY
AT SAVANNAH, TENNESSEE

ZACHARY RYE ADAMS
PETITIONER

VS.

STATE OF TENNESSEE

NO. 17-CR-10-PC

PETITIONER's MOTION TO QUASH DR. KATIE SPIRKO SUBPOENA

Comes now the Petitioner, by and through Counsel, and moves this Court to quash the subpoena served on Dr. Spirko for at least all portions of the work performed while Dr. Spirko was Counsel's agent and further for all work while Dr. Spirko has been an agent of Zachary Adams. For cause, Counsel would show unto the Court:

I.

Dr. Spirko is Not a Witness and his Discovery is Not Allowed

1. First and foremost, the subpoena to Dr. Spirko is not truly for her to be a witness at trial. In fact, she has the privilege to be exempt from trial and demand a deposition with cost taxed to the State of Tennessee^[1]. She was not listed on the State's witness list provided in discovery. Nor could she be—what information does she have that she observed in 2011 through July of 2023 before she had ever heard of Zachary Rye Adams? T.C.A. §40-30-109(b) makes clear:

^[1] 24-9-101. Deponents exempt from subpoena to trial but subject to subpoena to deposition — Award of fees and expenses if court grants motion to quash.

(a) Deponents exempt from subpoena to trial but subject to subpoena to a deposition are:

...

(6) A practicing physician, physician assistant, advanced practice registered nurse, psychologist, senior psychological examiner, chiropractor, dentist or attorney;

(b) If the court grants a motion to quash a subpoena issued pursuant to subsection (a), the court may award the party subpoenaed its reasonable attorney's fees and expenses incurred in defending against the subpoena.

FILED 7 DAY OF March, 2025 AT 8:30 AM PM

TAMMIE WOLFE, CLERK

BY

Tammie Wolfe

CLERK

(b) Discovery is not available in a proceeding under this section except as provided under Rule 16 of the Tennessee Rules of Criminal Procedure.

Furthermore, Dr. Spirko is not going to be called as a witness by the State unless, they state as officers of the Court, they are asking her to be an expert in this case to discuss all matters from a neuro-psychological perspective as to her opinion on whether Mr. Adams is innocent and/or had his constitutional due process rights violated by this Court's 2017 trial. It is difficult to contemplate the State seeking such evidence at trial. The State's anticipated "we don't know what we don't know" is not grounds to subpoena a witness who had absolutely no factual involvement in this case when it happened from 2011 through 2017—2020 when Mr. Adams's Motion for New Trial was Denied.

2. There are three umbrellas that are grounds to quash Dr. Spirko's testimony *even if she were under subpoena to be a factual witness for things she observed in 2011-2020 or an expert/agent potential witness/non-testifying agent for the Defense:*

First Umbrella: It is without dispute based on the *State's own pleadings in April of 2024* that Dr. Spirko worked as Counsel's agent investigating the constitutional violations and post conviction relief matters soon after Counsel's appointment by this Court.

Second Umbrella: Proof can be submitted regarding Dr. Spirko's continued work as Zachary Adams' agent from February 2024 until the present.

Third Umbrella: while perhaps lacking standing, it is helpful for the Court to recognize that in the State's April 2024 motion, the State wrote that that "Kaie [Dr.] Spirko may well have the right to her own personal investigation, as media groups, entertainment programs such as 20/20, and podcasters do." This issue is yielded to Dr. Spirko's lawyer and the Court as Petitioner's Counsel maintains strict neutrality on any issue of publicity and will follow applicable ethical guidelines and any orders the Court deems necessary to address pre trial publicity of this bench trial.

II.

Standing

3. The Defendant submits he has standing to sit under the protection of two of the three umbrellas Dr. Spirko's work employs: first as Dr. Spirko was his Attorney's Agent from the late Summer/Fall of 2023 when work began on this Counsel with Counsel's appointment and then from April 2024 until the present while Dr. Spirko has worked as Zach and Dylan Adam's agent to help them establish their innocence claims using her experience, training, education and real world experience.

Under *State v. Harris*, 270 S.W.3d 21, 28-29 (Tenn. 2008):

The categorical holding in *Sheets v. Hathcock* that a person cannot challenge a subpoena issued to a third party is incorrect because it fails to recognize that the objecting party may have a recognized, legally protectable interest with regard to materials in the hands of a third party. A person who does not have a legally protectable interest in subpoenaed materials has no standing to challenge either the form [**12] of a subpoena issued to a third party or the manner in which the subpoena was issued. However, the prevailing rule today is that a person who has a personal right, privilege, or proprietary interest in [*29] materials subject to a third-party subpoena has standing to challenge the subpoena. *Gravel v. United States*, 408 U.S. 606, 628-29, 92 S. Ct. 2614, 33 L. Ed. 2d 583 (1972) (implicitly recognizing a United States Senator's standing by permitting him to move to quash a subpoena issued to an assistant); *United States v. Raineri*, 670 F.2d 702, 712 (7th Cir. 1982); *Washington v. Thurgood Marshall Acad.*, 230

F.R.D. 18, 21 (D.D.C. 2005); *United States v. Nachamie*, 91 F. Supp. 2d 552, 558-61 (S.D.N.Y. 2000); *Windsor v. Martindale*, 175 F.R.D. 665, 668 (D. Colo. 1997) (recognizing privilege and privacy as conferring standing); *Oman v. State*, 737 N.E.2d 1131, 1135 (Ind. 2000); Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2459, at 435-36 (3d ed. 2008).

Thus we [Tennessee Supreme Court] adopt this view regarding standing to challenge third-party subpoenas and incorporate it into the law of Tennessee. A person has standing to challenge a subpoena issued to a third party, as long as that person asserts a personal right, privilege, or proprietary interest in the materials being sought by the subpoena. We expressly overrule *Sheets v. Hathcock* and its progeny to the extent that they conflict with this holding. However, the primary focus of a standing inquiry is on the party, not on the likelihood that the party will succeed on the merits of its claim. *Am. Civil Liberties Union of Tenn. v. Darnell*, 195 S.W.3d 612, 620 (Tenn. 2006); *Metro. Air Research Testing Auth., Inc. v. Metro. Gov't of Nashville and Davidson County*, 842 S.W.2d 611, 615 (Tenn. Ct. App. 1992). Thus, concluding that a person has standing to challenge a subpoena issued to a third party does not mean that the party's challenge will ultimately be successful. That decision will ultimately be made based on the substantive merits of the challenge to the subpoena.

III.

Rule 16

4. **Assuming *arguendo*** that Dr. Spirko could be a witness called by the State, then none of her materials are subject to disclosure under Rule 16(b)(2) of the Tenn. R. Crim. P., which states:

“Except as to scientific or medical reports, this subdivision does not authorize the discovery or inspection of :

(A) reports, memoranda, or other internal defense documents made by the defendant or the defendant's attorney or agents in connection with the investigation or defense of the case; or

(B) a statement made by the defendant to the defendant's agents or attorneys or statements by actual or prospective state or defense witness made to the defendant or the defendant's agents or attorneys."

The State has this impossible barrier to these documents and any subpoena request thereof.

IV.

Privilege

5. Assume further the State eviscerates the deponent exemption, Post Conviction Relief Act §40-30-101,-109; Rule 28 of the Rules of Supreme Court and finally Rule 16 of the Rules of Criminal Procedure—*then* finally standing in the State's way are the recognized privileges cited by Dr. Spirko and one of her attorneys: TCA §24-1-209 and §24-1-208.

V.

What is Going On?

6. Petitioner's Counsel would be remiss if it did not comment on the elephant in the room—Dr. Spirko has drawn the intense ire of the State of Tennessee for her work in this case.

The State had a pending "Motion to Issue Protective Order" against Dr. Spirko that on April 17th, 2024, it voluntarily did not move forward on. The State said it was moot because the video had been released to 20/20 by Dr. Spirko already—which the State misunderstood the connection between a protective order that could have been placed on the *defendant's produced discovery* and matters subject to freedom of information act and sealed by the Court (which the video was kept from mandatory


disclosure from FOIA requests by media sources). But reading this motion anew, the Court should consider the following questions as it navigates what is really going on in this case:

1. Why did the State cite cases in which Dr. Spirko was involved in with negative connotations if the sole issue was a reporter/agent's ability to disseminate pre trial evidence?
2. Why on the current subpoena was Dr. Spirko's home address and not office address listed like other subpoenas were?
4. Why did the State say in a zoom conference it "might need to subpoena Dana McClendon" after an apparent "podcast" was revealed?

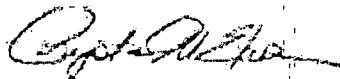
It appears to Counsel for the Petitioner that all of this use of the subpoena power, limited by Rule 28, is best understood as something more than legitimate Rule 28 and Rule 16 discovery to bring witnesses to the post conviction relief for their factual knowledge or expert assistance of matters that took place between 2011 and 2020. Whatever the answer is, it is a distraction on the fact finding on the issues that took place from 2011 to 2020.

For the foregoing reasons, Petitioner asks the Court to quash the subpoena or in the alternative, for measures put in place to insure that no privileged information is disseminated and further no matters outside Rule 16 are provided and only provided when the State complies with Rule 16's requirements.

RESPECTFULLY SUBMITTED:



DOUGLAS THOMPSON BATES, IV (#027089)
ATTORNEY FOR ZACHARY RYE ADAMS
BATES & BATES LAW OFFICE
406 W. PUBLIC SQ., 2ND FLOOR, BATES BUILDING
P.O. BOX 1
CENTERVILLE, TN 37033
TEL: 931-729-4085 FAX: 931-729-9888
EMAIL: dtbates4@bates.law



CRYSTAL M. ETUE (# 035999)
CO-COUNSEL FOR ZACHARY RYE ADAMS
LAW OFFICES OF CRYSTAL ETUE, PLLC
2219 3RD AVE NORTH
FRANKLIN, TN 37069
TEL: (615) 721-7983
EMAIL: crystal@etuelaw.com

NOTICE

**THIS MOTION IS SET TO BE HEARD ON MARCH 21ST, 2025 AT 9:00 AM IN THE
CIRCUIT COURT MOTION DOCKET HEARD AT THE HARDIN COUNTY
COURTHOUSE IN SAVANNAH, TENNESSEE.**

CERTIFICATE OF SERVICE

The undersigned certifies that he has on the 6 day of MARCH 2025,
sent a true and correct copy of the following to the person(s) listed below in compliance with the
Tennessee Rules of Civil Procedure, Rules 5 and/or 5A, by the following indicated method(s):

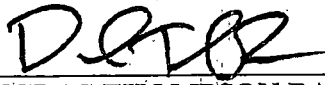
Amy Weirich: apweirich@tndagc.org

Cayley Turrin turrincayley@gmail.com

Christopher Boiano: cvboiano@tndagc.org

Dana McClendon dana@danamclendonlaw.com

- ☐ U.S.P.S., first-class postage pre-paid
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- ☒ Via Email
- ☐ Hand-delivery by:
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DOUGLAS THOMPSON BATES, IV