

IN THE CRIMINAL COURT FOR PUTNAM COUNTY, TENNESSEE

STATE OF TENNESSEE)
)
vs.)
)
ZACHARY BIRDWELL)
_____)

No. 02-0253

Filed 4-25-02
Time 3:00 P M
Lewis Coomer, Clerk
By [Signature] D.C.

MOTION TO QUASH

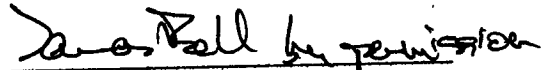
COMES the Defendant, Zachary Birdwell, by and through counsel, and respectfully requests this Court to quash the subpoena issued to Kimberly Fansler to appear for an interview with a TBI agent on April 26th, 2002. The Defendant would additionally request an immediate hearing in this matter or in the alternative, a stay of the TBI interview with Kimberly Fansler pending a hearing in the above captioned matter. In support of this motion the Defendant would show as follows:

1. Tenn. Code Ann. § 38-6-102 requires the criminal investigative division of the TBI to subpoena witnesses only upon request by the attorney general of any judicial district. However, the statute allows for an investigation without request by a district attorney in certain limited instances, one instance being "any other offense involving ... misconduct by a public official." Tenn. Code Ann. § 38-6-102(b)(1)(B).
2. The district attorney general pro tem has not requested any investigation by the TBI in the above captioned matter. Furthermore, although the Defendant is a public official, the crime he is charged with does not involve misconduct by a public official, but instead involves aggravated assault. See indictment; Tenn. Code Ann. § 39-13-102.
3. Therefore, because the TBI is not authorized to investigate the above-captioned matter, the subpoena of Ms. Fansler is not authorized and should therefore be quashed.
4. Additionally, the subpoena issued violates the Defendant's due process rights as applied to the States under the 14th Amendment to which Defendant is entitled to during the post-indictment period. A subpoena of the witness for purposes of

interview by the State gives an unfair advantage to the State for purposes of trial preparation and therefore violates Defendant's due process rights.

For the reasons set forth above, the Defendant respectfully requests that this Court set forth an Order quashing the subpoena issued for Kimberly Fansler and provide for an immediate hearing or in the alternative, a stay pending a hearing in the above-captioned matter.

THIS THE 25th day of April, 2002.



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Attorneys for Defendant

CERTIFICATE OF SERVICE

I, E. J. Mackie, Attorney for Defendant, hereby certify that a true and exact copy of the foregoing pleading has been forwarded to the District Attorney's Office for Putnam County, Tennessee.

This the 25 day of April, 2002.



E. J. MACKIE
Attorney at Law