

IN THE CRIMINAL COURT FOR HAMILTON COUNTY, TENNESSEE

STATE OF TENNESSEE,

v.

No. 298396

FLOYD RODNEY BURNS

**MOTION TO DISQUALIFY HAMILTON COUNTY
DISTRICT ATTORNEY GENERAL'S OFFICE**

Comes the Defendant, Floyd Rodney Burns, through undersigned counsel, and files this Motion to Disqualify District Attorney General Neal Pinkston and his office from participating in the prosecution of the Defendant. General Pinkston is named in a claim currently pending before the Claims Commission alleging that he has defamed the Defendant in statements to the media. General Pinkston's involvement in this claim directly relates to the subject matter of this prosecution. Further, General Pinkston is an essential witness in this criminal case, as he was present and participated in the charging of Coach Andre Montgomery, Assistant Coach Karl Williams, and Athletic Director Allard Nayadley and the subsequent preliminary hearing in the Hamilton County Juvenile Court in which the Defendant gave the sworn testimony that is at issue in this prosecution. Additionally, General Pinkston has violated the Tennessee Rules of Professional Responsibility by his statements in the media about the Defendant.

Factual Background
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1. The Defendant is the lead detective in a juvenile delinquency case of aggravated rape, aggravated assault, and assault against three juveniles in Sevier County, Tennessee. The

BY _____ DC

juvenile cases involve members of the Ooltewah High School boys' basketball team, who were staying in Gatlinburg, Tennessee, for a basketball tournament. For purposes of clarity, the juvenile case will be referred to in this pleading as the "Ooltewah rape case."

2. The Ooltewah rape case garnered extensive media attention, especially in the Chattanooga media market.
3. General Pinkston was unable to participate in the prosecution of the Ooltewah rape case in Sevier County, which is outside of his jurisdiction.
4. General Pinkston's office nevertheless participated in the ongoing investigation dealing with hazing allegations related to the Ooltewah rape case in which representatives of his office, along with representatives of the Fourth Judicial District Attorney General's office, spoke with witnesses and victims of the Ooltewah rape case.
5. General Pinkston charged Coach Andre Montgomery, Assistant Coach Karl Williams, and Athletic Director Allard Nayadley, with violations of Tennessee Code Annotated § 37-1-403.
6. On February 15, 2016, the Juvenile Court for Hamilton County Court held a hearing regarding violations of Tennessee Code Annotated § 37-1-403 against Coach Andre Montgomery, Assistant Coach Karl Williams, and Athletic Director Allard Nayadley.
7. The Defendant was subpoenaed to testify in the hearing for the Defense. General Pinkston never contacted the Defendant regarding his testimony or discussed his testimony before or after the hearing. Had General Pinkston contacted the Defendant to discuss the subject matter of his testimony, he would have gladly spoken with him regarding this matter, as evidenced by a brief phone conversation the two had at the beginning of the investigation.

8. During the public hearing, the Defendant testified regarding his investigation into the Ooltewah rape case. General Pinkston cross-examined the Defendant regarding specifics of the Ooltewah rape case. The court proceedings were disseminated by live streaming feed for anyone to see.
9. On February 17, 2016, General Pinkston caused a press release to be distributed to news organizations alleging that the Defendant committed perjury. He again repeated these allegations in a statement to the press on February 18.
10. Based upon General Pinkston's allegations, the Defendant filed a Claim for Damages before the State of Tennessee Division of Claims administration alleging that General Pinkston's statements constituted libel. The Claim for Damages was received, according to FedEx records, on March 15, 2016. *See Exhibit 1.*
11. The Division of Claims Administration had 90 days to review the Defendant's claim, and the Division had the option of (1) honor the claim, (2) deny the claim and advise of right to file with the Claims Commission, or (3) take no action resulting in an automatic transfer to the Claims Commission. *See Tenn. Code Ann. § 9-8-402(c).* The Division of Claims Administration chose not to deny the claim but instead took no action resulting in docketing with the Claims Commission. *See Exhibit 2.*
12. Further, if the Claims Commission were to determine General Pinkston's acts or omissions were outside of his employment duties, the Defendant would be able to file suit against General Pinkston personally. *See Tenn. Code Ann. § 9-8-307(b).*
13. On May 12, 2016, General Pinkston sent a letter via facsimile to undersigned counsel's office stating, "I intend to present the matter to the Hamilton County Grand Jury for their consideration on Monday May 16, 2016 at the morning docket." *See Exhibit 3.*

14. On May 16, 2016, General Pinkston obtained an indictment against the Defendant for two counts of aggravated perjury.
15. The Defendant avers that General Pinkston and his office should be disqualified from the prosecution of this case as he has brought these charges against the Defendant as retaliation for being named as an at fault party in a civil claim involving the same subject matter.
16. The Defendant avers that General Pinkston and his office should be disqualified from the prosecution of this case because he is a necessary defense witness to the perjury allegations. Not only was General Pinkston a participant in the hearing in which he alleged the Defendant perjured himself, but his office had previously interviewed several witnesses in the Ooltewah rape case. The substance of these interviews was provided to the Defendant prior to his testimony. The content of these interviews will be essential to the issue of whether or not the Defendant's February 15, 2016 testimony constituted perjury. General Pinkston possesses information obtainable from no other witnesses, as only he can testify that he never actually interviewed the Defendant before or after testifying in Hamilton County Juvenile Court. Only General Pinkston can testify as to whether or not he had a complete copy of the Defendant's investigative file or the Fourth Judicial District Attorney's file prior to the hearing or prior to his defamation of the Defendant.

Memorandum in Support

“In determining whether to disqualify a prosecutor in a criminal case, the trial court must determine whether there is an actual conflict of interest, which includes any circumstances in which an attorney cannot exercise his or her independent professional judgment free of compromising interests and loyalties.” *State v. Culbreath*, 30 S.W.3d 309, 312 (Tenn. 2000) (internal quotation marks omitted). Further, a trial court must examine whether the prosecutor's

conduct creates an appearance of impropriety notwithstanding an actual conflict of interest. *Id.* at 312-13.

General Pinkston and his office should be disqualified based upon (1) his conflict of interest regarding the civil claim filed against him, (2) his conflict of interest as a necessary witness to the trial, and (3) his violation of Rule of Professional Responsibility 3.8(f) regarding pretrial publicity.

(1) Conflict of Interest: Preexisting Civil Suit

In the instant case, General Pinkston is prosecuting the Defendant while being accused in a civil action before the Claims Commission alleging that he provided defamatory statements to the media about the Defendant. The Division of Claims Administration chose not to use its statutory discretion to deny the civil claim, which directly inculpates General Pinkston for his behavior and alleges damages against the State of Tennessee based entirely on his conduct as district attorney. General Pinkston further could face personal liability if the Claims Commission determines that his actions were outside of his scope of employment. General Pinkston has a direct personal interest in bringing a criminal prosecution as an attempt to battle the civil claims filed against him. General Pinkston's prosecution of the Defendant can potentially give him, as district attorney, leverage over the Defendant as a civil claimant. Such a personal interest in the commencement of a prosecution clearly shows a conflict of interest and appearance of impropriety that requires disqualification of the district attorney. As a prosecutor, General Pinkston, is charged with seeking justice and he is to be "impartial in the sense that charging decisions should be based upon the evidence, *without discrimination or bias for or against any groups or individuals.*" *Culbreath*, 30 S.W.3d at 314 (emphasis added). Allowing General Pinkston to prosecute this case

despite a clear bias, e.g., a civil claim, would run afoul of the impartiality required of the district attorney.

Further, General Pinkston's staff should be disqualified from prosecuting the Defendant's case. "[G]overnments have a responsibility to the public to avoid even the appearance of impropriety and to act to reduce the opportunities and incentives for unethical behavior by their officials and employees." *Id.* (quoting Roberta K. Flowers, *What You See Is What You Get: Applying the Appearance of Impropriety Standard to Prosecutors*, 63 MO. L. REV. 60, 68 (1998)). As district attorney, General Pinkston is the supervisor of his office, including prosecutors who serve as assistant district attorneys general. He has the ability to promote, demote, hire, and fire his assistants. It necessarily follows that his assistant district attorneys would have an interest in prosecuting a case that would provide a benefit for their employer. Such an incentive certainly taints the credibility of the prosecution. Permitting General Pinkston's assistants to prosecute a case in which General Pinkston has a very personal and professional stake clearly creates an appearance of impropriety. "The perception of a fair trial is just as important as the reality." *State v. Tate*, 925 S.W.2d 548, 558 (Tenn. Crim. App. 1995). Allowing General Pinkston and his office to prosecute a case that appears to be a clear response to a civil suit filed against General Pinkston would provide harm to the public's perception of the justice system.

The Defendant is mindful that this Court may wish to avoid setting a precedent of recusing the district attorney's office based solely on the Defendant filing a civil suit against a prosecutor. However, the circumstances in the instant case are unique in several ways. First and foremost, the Defendant filed his claim with the Division of Claims Administration *before* the criminal charges were levied against him. The filing of this suit was by no means a criminal defense tactic, but it

was set forth because General Pinkston's statements to the media were patently untrue and caused severe damage to the Defendant's reputation.

Secondly, good faith lawsuits against prosecutors are extremely rare because statutory and common law protects prosecutors from most legal actions. A District Attorney General is an agent for the State of Tennessee and consequently is protected with sovereign immunity, which the Tennessee General Assembly has only waived in certain circumstances as set forth in Tennessee Code Annotated § 9-8-307. *See Shell v. State*, 893 S.W.2d 416, 418 (Tenn. 1995). In addition to the limited scope of actions set forth by the Claims Commission, a prosecutor also enjoys absolute immunity for much of his job functions. *Id.* at 422; *Lucas v. State*, 141 S.W.3d 121, 130 (Tenn. 2004) (explaining that Tennessee Claims Commission Act further provides that "absolute" common law immunities remain available to the State). Absolute immunity protects a prosecutor, for example, in his capacity as an advocate for the State. *Shell*, 893 S.W.2d at 422; *Burns v. Reed*, 500 U.S. 478 (1991). Thus a prosecutor is only "potentially liable" for "actions taken in an investigative or administrative capacity." *Id.*; *Buckley v. Fitzsimmons*, 509 U.S. 259 (1993).

In the civil claim filed by the Defendant alleging wrongdoing by General Pinkston, the Defendant's claim is based upon the defamatory statements made by General Pinkston to the media. A prosecutor's statements to the media are not protected by absolute immunity. *See Buckley*, 509 U.S. at 277 ("[The prosecutor's] statements to the media are not entitled to absolute immunity.") Further libel and slander are specifically delineated in the Tennessee Claims Commission Act as actionable causes. *See* Tenn. Code Ann. § 9-8-307(a)(1)(R). Claims such as the Defendant's are rare and will continue to be rare. In the vast majority of cases, a prosecutor will be protected by absolute immunity and sovereign immunity.

(2) Conflict of Interest: Lawyer as Witness

General Pinkston's participation in this case violates of Rule of Professional Conduct 3.7, which prohibits a lawyer from acting as an advocate at a trial in which the lawyer is likely to be a necessary witness. The Defendant has been charged with deliberately lying on the stand regarding an investigation into the Ooltewah rape charges. The Ooltewah rape case has also been investigated by members of the Department of Children's Services, the Hamilton County Sheriff's Office, and the District Attorney's Offices for both the Fourth and Eleventh Judicial Districts. A trial on this matter will involve extensive testimony from all involved in investigating to determine what the Defendant knew when he testified and whether such testimony constituted perjury. General Pinkston and his office will certainly be witnesses in this capacity. Only General Pinkston can answer questions regarding whether he interviewed the Defendant prior to his testimony in Hamilton County. Further, only General Pinkston will be able to testify whether he interviewed the Defendant after the testimony or as part of his investigation leading to the indictment. Only General Pinkston will be able to testify that his comments to the media calling the Defendant a liar on February 17 and 18, 2016, were made without the benefit of having the Defendant's full file or the files of the District Attorney General for the Fourth Judicial District. Only General Pinkston and members of his office can testify regarding what information they possessed from the Sevier County Court and the Gatlinburg Police Department that would show that the Defendant did not testify falsely regarding his attempt to contact DCS.

Further, General Pinkston was the questioning attorney in the February 15, 2016 hearing that elicited the allegedly perjured testimony. He was a direct witness of the allegedly perjured testimony and he made comments to the media afterwards in which he accused the Defendant of

perjury. As a direct witness of the alleged crime, General Pinkston is in no position to advocate the case.

(3) Violation of Tennessee Rule of Professional Responsibility 3.8(f), Pretrial Publicity

Prior to the indictment of the Defendant, General Pinkston made comments via press releases to the media explicitly accusing the Defendant of perjury. In these statements to the press, General Pinkston specifically called the Defendant's testimony "perjurious." Further, in a second press statement issued on February 18, 2016, his office explicitly stated "General Pinkston believes Detective Burns perjured himself in Hamilton County Juvenile Court on Monday, February 15." See Gatlinburg detective defends testimony, district attorney responds, claims detective perjured himself, *Times Free Press*, Feb. 18, 2016. Attached hereto as Exhibit 4.

Rule 3.8 of the Rules of Professional Conduct specifically govern the special responsibilities of a prosecutor. Subsection (f) provides that "except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, [the prosecutor in a criminal case] shall refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused . . ." Tenn. Sup. Ct. R. 8, RPC 3.8(f). While a lawyer may state to the media that an investigation of a matter is in progress, see Tenn. Sup. Ct. R. 8, RPC 3.6(b)(3), a prosecutor "should . . . avoid comments which have no legitimate law enforcement purpose and have a substantial likelihood of increasing public opprobrium of the accused," see Tenn. Sup. Ct. R. 8, RPC 3.8, cmt. 5. General Pinkston needlessly made conclusory statements to the media that the Defendant committed perjury for the sole purpose of inflating his own persona. His statements were in no way made for the purpose of investigating or prosecuting a crime but rather were for his purpose of playing to the crowd. His objective was politics and pandering, not seeking justice.

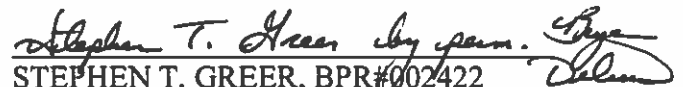
By publically chastising the Defendant and calling him a liar to the media, General Pinkston did nothing but heighten the public's condemnation of the accused in violation of his ethical responsibilities. "Expressions by the prosecutor are a form of unsworn, unchecked testimony and tend to exploit the influence of the prosecutor's office and undermine the objective detachment which should separate a lawyer from the cause for which he argues." *State v. Golz*, 111 S.W.3d 1, 6-7 (Tenn. Crim. App. 2003) (citing STANDARDS RELATING TO THE PROSEUTON FUNCTION AND THE DEFENSE FUNCTION § 5.8(b), Commentary b (ABA Project on Standards for Criminal Justice, Approved Draft 1971)). By making conclusory comments to the media stating the Defendant committed perjury, General Pinkston violated Rule 3.8(f). His comments to the media had absolutely no legitimate law enforcement purpose and instead were clearly aimed at General Pinkston's goal of garnering publicity for his own benefit.

WHEREFORE, the Defendant moves that the District Attorney for the Eleventh Judicial District and his office be recused from the prosecution of the above-captioned case.

Respectfully submitted this 6th day of July, 2016.



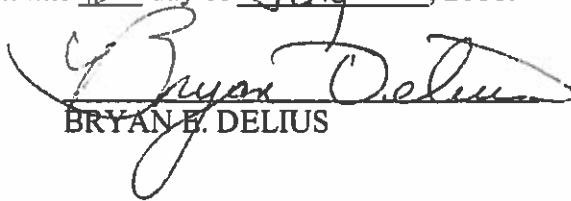
BRYAN E. DELIUS, BPR#015800
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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been served upon the Office of the District Attorney General, 600 Market Street, Suite 310, Chattanooga, Tennessee 37402-1972, by facsimile transmission [(423) 209-7401] and by depositing in the U.S. Mail with sufficient postage to carry same to its destination this 6th day of July, 2016.


BRYAN E. DELIUS

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2016 JUL -7 AM 8:30
VINCE DEAN, CLERK
BY _____ DC

CLAIM FOR DAMAGES

Libel (Defamation)

Tenn. Code Ann. § 9-8-307(a)(1)(R)

**State of Tennessee
Division of Claims Administration
502 Deaderick Street
Nashville, Tennessee 37243-0202**

Name: Floyd Rodney Burns

Address: 2627 Old Newport Highway

City: Sevierville

State: Tennessee

Zip: 37876

Home Phone: (865) 428-8946

Work Phone: (865) 436-4212

Are you an employee of the State? No

DESCRIPTION OF INCIDENT

Date of Occurrence: February 17 and 18, 2016

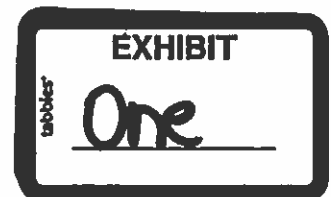
Location: Hamilton County; however, publishing of defamatory statements spread nationwide

What State Agency: District Attorney General 11th Judicial District

Describe the Incident:

Background

1. Claimant Floyd Rodney Burns is a detective with the City of Gatlinburg Police Department. He has been employed with the Gatlinburg City Police Department for approximately 25 years.
2. District Attorney General Neal Pinkston is the elected District Attorney General for the 11th Judicial District, which comprises of Hamilton County, Tennessee. He was elected to this position without opposition in 2014.
3. District Attorney General James Dunn is the elected District Attorney General for the 4th Judicial District, which comprises of Sevier, Jefferson, Cocke, and Grainger Counties. He was elected to this position in 2006 and reelected in 2014.



4. Gatlinburg is a city located in Sevier County, Tennessee.
5. During the early hours of December 23, 2015, Gatlinburg Police Department was notified of a potential assault victim who was being treated at LeConte Medical Center in Sevierville, Tennessee as a result of injuries suffered in Gatlinburg.
6. The Claimant served as lead detective of the potential assault and his investigation resulted in his filing Juvenile Court Petitions charging three juvenile assailants with Aggravated Rape (Tenn. Code Ann. § 39-13-502); Aggravated Assault (Tenn. Code Ann. § 39-13-102); and Assault (Tenn. Code Ann. § 39-13-101) based upon criminal actions taken against four juvenile victims.
7. Claimant's decision to charge the above-stated Juvenile Court petitioner was based upon his communication and cooperation with General Dunn's office, who has jurisdiction over Gatlinburg, Tennessee, where the alleged crime occurred.
8. The suspects and victims were all members of the Ooltewah High School men's basketball team, located in Hamilton County, Tennessee. The team was on a trip to Gatlinburg for a basketball tournament.
9. The incident garnered widespread media attention in the Chattanooga and Knoxville areas, and further has been reported in nationwide news outlets.
10. General Pinkston unsuccessfully attempted to participate in the prosecution of the juvenile suspects in Sevier County, Tennessee.
11. General Pinkston charged Coach Andre Montgomery, Assistant Coach Karl Williams, and Athletic Director Allard Nayadley, with violations of Tennessee Code Annotated § 37-1-403 for failing to report child abuse.
12. General Pinkston filed these charges via a petition to the Hamilton County Juvenile Court on January 15, 2016.

13. On February 15, 2016, the Juvenile Court for Hamilton County held a preliminary hearing regarding the charges against Montgomery, Williams, and Nayadley.
14. The Claimant was called to testify by the attorney for Montgomery during the February 15, 2016 hearing.
15. At no time leading up to the hearing did General Pinkston ever approach the Claimant to discuss his investigation and what he knew as the lead investigating officer on the aggravated rape cases in Sevier County, Tennessee.
16. At no time leading up to the hearing did General Pinkston ask the Claimant for his complete file to review.
17. As of February 15, 2016, General Pinkston only had portions of Claimant's file regarding the investigation of the aggravated rape cases in Sevier County, Tennessee.
18. According to witnesses at the hearing, General Pinkston become openly upset at the Claimant during the hearing based upon the Claimant's testimony.
19. On February 15 and 16, 2016, several news media outlets published stories criticizing the testimony of the Claimant and mischaracterizing his testimony.
20. On February 17, 2016, General Pinkston caused a press release to be distributed to news organizations in which General Pinkston stated that the Claimant had committed perjury and asking the Tennessee Bureau of Investigation to investigate his perjury allegation.
21. General Pinkston would not state what portion of Detective Burns testimony he believed consisted of perjury, but did submit a statement to media outlets stating that he wanted the TBI to investigate "Detective Floyd Rodney Burns for perjurious testimony related to statements he made during sworn testimony in Hamilton County Juvenile Court " *See Angry DA Seeks Perjury Charge Against Gatlinburg*, WDEF News, Feb. 17, 2016,

accessed at <http://www.wdef.com/2016/02/17/angry-d-a-seeks-perjury-charge-against-gatlinburg-detective/> on Mar. 2, 2016, attached hereto as Exhibit A.

22. General Pinkston's allegation that the Claimant committed perjury was published in several media outlets including CBS News, the Chattanooga Times Free Press, the Knoxville News Sentinel, the Mountain Press, WTVC, WRCB, WDEF, WTVR, WVLT, and WATE.
23. The Tennessee Code defines perjury as crime when a person, "with intent to deceive," makes a false statement under oath. *See* Tenn. Code Ann. § 39-16-702. Perjury is a Class A misdemeanor. Perjury occurring during an official proceeding where the misrepresentation is material constitutes a Class D Felony. *Id.* § 39-16-703.
24. On February 18, 2016, three Tennessee Bureau of Investigation agents travelled from Hamilton County to Sevier County to obtain the Claimant's file on the aggravated rape cases from the Gatlinburg Police Department.
25. On February 18, 2016, the Claimant's counsel released a statement in attempt to stop the onslaught of negative media attention focused on Claimant's due to General Pinkston's libelous allegations accusing him of perjury.
26. On February 18, 2016, General Pinkston sent to the media *another* libelous statement in which he stated "General Pinkston believes Detective Burns perjured himself in Hamilton County Juvenile Court on Monday, February 15. That's the only reason he asked the TBI to investigate. He swore an oath to prosecute crimes, no matter who commits them." *See* Gatlinburg Detective Defends Testimony, District Attorney Responds, Claims Detective Perjured Himself, Times Free Press, Feb. 18, 2016, accessed at <http://www.timesfreepress.com/news/local/story/2016/feb/18/gatlinburg-detective-defends-testimony-calls-perjury-allegations-base-reckless/350860/> on Mar. 2, 2016, attached hereto as Exhibit B.

27. At the time that General Pinkston made defamatory statements that the Claimant committed perjury, he had not consulted with the Claimant about his testimony either before or after the February 15, 2016 hearing.
28. At the time that General Pinkston made defamatory statements that the Claimant committed perjury, he had not received the entire investigation file from the Claimant
29. As a result of General Pinkston's statements that were made with actual malice, the Claimant has suffered great damage to his reputation, his active cases have been postponed, he has been ridiculed by the public and media outlets.

Count I – Libel (Defamation)

30. General Pinkston published, through written press releases disseminated to media outlets, statements that the Claimant committed perjury at the February 15, 2016 hearing in Hamilton County Juvenile Court.
31. On February 17, 2016, General Pinkston sent a press release calling the Claimant's testimony "perjurious"; although, as noted by Jeff Farrell of the Mountain Press, "[r]elease from their office doesn't specify what part of his testimony they're looking at." See Jeff Farrell on Twitter, 2:02 p.m. on Feb. 17, 2016, accessed at <https://twitter.com/jeffintnpress/status/700032631971434496>, on March 2, 2016, attached hereto as Exhibit C.
32. On February 18, 2016, General Pinkston sent to the media another statement in which he stated "General Pinkston believes Detective Burns perjured himself in Hamilton County Juvenile Court on Monday, February 15."

33. At the time that General Pinkston made the above-stated publications, he did so with actual malice, as he recklessly disregarded the truth of his statement that the Claimant committed perjury.

34. General Pinkston's libelous press releases are not subject to absolute immunity and thus are cognizable causes of action pursuant to the Claims Commission Act. *See Buckley v. Fitzsimmons*, 509 U.S. 259 (1993); Tenn. Code Ann. § 9-8-301 *et seq.*; *Lucas v. State*, 141 S.W.3d 121 (Tenn. Ct. App. 2004).

35. As a result of General Pinkston's defamatory press releases, the Claimant has suffered injury to his character and reputation.

36. The defamatory allegation that Detective Burns lied during a hearing is a serious threat to the Claimant's reputation as a law enforcement officer.

37. As a result of the defamatory statement of General Pinkston, the Claimant has suffered emotional distress, as the Claimant has spent 25 years developing his career as a law enforcement agent and had a sterling reputation as a detective prior to General Pinkston's defamatory statements. As a result of these libelous statements, the Claimant has been devastated and humiliated causing depression and anxiety.

38. As a result of General Pinkston's defamatory statements, the Claimant's reputation as a law enforcement officer was needlessly tarnished, affecting his ability to effectively prosecute his extensive caseload.

WHEREFORE, the Claimant seeks \$300,000.00 in damages for injury suffered as a result of the defamatory actions of General Pinkston.

CERTIFICATION

I certify that all the statements contained herein are true and that the injuries and/or damages reported were actually incurred. I also acknowledge that it is a misdemeanor to file a false claim with the Division of Claims Administration.

Signed,

Floyd Rodney Burns on the 14 day of March, 2016.
Floyd Rodney Burns

Submitted by the Law Offices of Bryan E. Delius, 124 Court Avenue, Sevierville,
Tennessee, 37862, (865)428-8780, by

Bryan E. Delius on the 14 day of March, 2016.
Bryan E. Delius, BPR 15800

ANGRY D.A. SEEKS PERJURY CHARGE AGAINST GATLINBURG DETECTIVE

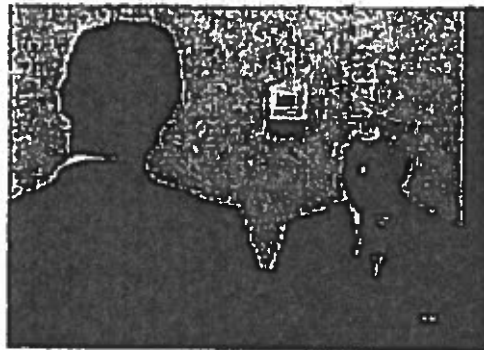
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By: Bill Mitchell

Submitted: 02/17/2016 - 5:43pm

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Tags: Gatlinburg Police Department, Neal Pinkston, Ooltewah Basketball Assault, Ooltewah Basketball Scandal, Ooltewah rape case, perjury, TBI



Gatlinburg police detective Rodney Burns started a fire storm Monday when he testified at preliminary hearing for three Ooltewah coaches. Burns told the court that there was no "rape or torture" of a 15 year old student who was attacked with a pool cue by other basketball players.

That statement, and others, drew a harsh response today from Hamilton county district attorney general Neal Pinkston, who's now asking the TBI to investigate the detective for perjury.

DETECTIVE RODNEY BURNS, GATLINBURG POLICE DEPARTMENT "What this case actually is...is much smaller than what it's been blown-up to be."

Detective Burns saw the attack on a freshman basketball player on Gatlinburg from a different perspective than district attorney Neal Pinkston. The D.A. is charging Ooltewah High School's head basketball coach Andre Montgomery, assistant coach Karl Williams and Athletic Director Jesse Nayadley with failing to report abuse or suspected sexual abuse.

DET. BURNS "...they were not doing it for sexual gratification ..this was something stupid that kids do...that shouldn't have been done."

The student suffered serious injuries from a pool cue used by a senior as he was held down by two fellow players. he underwent surgery to his colon, bladder and prostate.

It happened December 23 as the team played in a tournament. The three students face a variety of charges including aggravated rape.

The detective's assessment also drew other criticism.



DR. STEVE HIGHLANDER, MEMBER, HAMILTON CO. SCHOOL BOARD "I totally disagreed with the detective from Gatlinburg. I felt like the implications of the accusation were made in Gatlinburg and Sevier county were far more serious than the detective seemed to take."

State senator Todd Gardenhire called the detective's testimony "disturbing." An angry Chattanooga police Chief Fred Fletcher posted a comment on his personal Facebook page on Tuesday morning. He called it "rape".

District attorney Pinkston's office announced Wednesday that he is asking for a TBI investigation of "Detective Floyd Rodney Burns for perjurious testimony related to statements he made during sworn testimony in Hamilton County Juvenile Court "

The D.A.'s office did not indicate which parts of Burn's testimony may have been perjury.

Share:



Gatlinburg detective defends testimony, district attorney responds, claims detective perjured himself

February 18th, 2016 by Staff Report in Local Regional News Read Time: 5 mins.

EXHIBIT
B



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Detective Rodney Burns of the Gatlinburg Police Department...

Photo by Dan Henry /Times Free Press.

An attorney for a Gatlinburg, Tenn., police detective calls allegations that the officer may have spoken untruthfully during a hearing in the Ooltewah basketball rape case "base" and "reckless."

Attorney Bryan E. Delius, in a news release, said Detective Rodney Burns, a 25-year veteran with the Gatlinburg department, "wholly denies" any wrongdoing.

However, Melydia Clewell, spokeswoman for District Attorney General Neal Pinkston, released this statement in response to Delius' letter:

"General Pinkston believes Detective Burns perjured himself in Hamilton County Juvenile Court on Monday, February 15. That's the only reason he asked the TBI to investigate. He swore an oath to prosecute crimes, no matter who commits them."

"As for General Pinkston's life goals, he is a career prosecutor with no interest in leaving Chattanooga, Tennessee. Last fall he respectfully declined the Haslam Administration's attempts to appoint him to an open judgeship in Hamilton County."

Burns testified in a Juvenile Court hearing Monday where three Ooltewah athletics officials are charged with failing to report sexual assault on the 15-year-old freshman that happened during a tournament trip to Gatlinburg on Dec. 22.

THE CODE OF SILENCE

Ooltewah's code of silence created a culture of negligence

On the stand, Burns said the insertion of a pool cue into the boy's rectum, which punctured his colon, prostate and bladder, wasn't a rape because the assailants didn't receive sexual gratification.

Hamilton County District Attorney General Neal Pinkston responded by asking the Tennessee Bureau of Investigation to begin a probe. Pinkston said Burns' words on the stand contradicted what he wrote in incident reports.

Dellus said Burns' reports and his testimony were truthful and said Pinkston "needlessly injected himself into this case for his own political ambitions at the cost of victims." Dellus also said that "General Pinkston should be concerned instead with the systemic failure of Hamilton County Schools to stop a history of bullying and hazing."

Read the complete statement below:



Document: Gatlinburg Detective Rodney Burns' statement

Gatlinburg Detective Rodney Burns has received criticism from the community and local law enforcement for his testimony regarding the Ooltewah rape case. Burns released a statement defending his remarks.

More about the Ooltewah Rape Case

Three new candidates apply on final day to become Hamilton County's interim superintendent

Interim Hamilton schools chief candidate drops out of consideration, leaving one candidate

Top national attorney hired to represent victim in Ooltewah rape case



Jeff Farrell
@jeffmInpress



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Release from their office doesn't specify what part of his testimony they're looking at. No more details to be released at this time.

RETWEETS

2



2:02 PM - 17 Feb 2016



Reply to @jeffmInpress

Trends

#PeytonManning #NationalCerealDay #mondaymotivation #WakeUpIndia
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Burns, Rodney



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Mon 3/14/2016

Actual delivery:
Tue 3/15/2016 9:50 am

SEVIERVILLE, TN US



Delivered

TN US

Signed for by: C HARPER

Burns, Rodney

Travel History

Date/Time	Activity	Location
3/15/2016 - Tuesday		
9:50 am	Delivered	TN
7:59 am	On FedEx vehicle for delivery	NASHVILLE, TN
7:07 am	At local FedEx facility	NASHVILLE, TN
2:27 am	Departed FedEx location	MEMPHIS, TN
3/14/2016 - Monday		
11:53 pm	Arrived at FedEx location	MEMPHIS, TN
6:04 pm	Picked up	KNOXVILLE, TN
2:27 pm	Picked up	SEVIERVILLE, TN
	Tendered at FedEx Office	

Shipment Facts

Tracking number	802459698757	Service	FedEx Priority Overnight
Weight	0.5 lbs / 0.23 kgs	Delivered To	Mailroom
Total pieces	1	Total shipment weight	0.5 lbs / 0.23 kgs
Terms	Shipper	Shipper reference	R BURNS
Packaging	FedEx Envelope	Special handling section	Deliver Weekday



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IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE

Floyd Burns

Claimant,

V.

STATE OF TENNESSEE

Defendant

)
)
)
)
)
)
)

CLAIM NO: T20161418-1

NOTICE OF TRANSFER FROM
DIVISION OF CLAIMS ADMINISTRATION

This is a notice that the Division of Claims Administration has been unable to act on your claim within ninety (90) days and is transferring your claim to the Claims Commission pursuant to Tennessee Code Annotated, Section 9-8-402(c).

Laura Dill

Administrative Assistant
Division of Claims Administration

DATE: June 13, 2016

cc: Attorney General's Office
Bryan E. Delius, Attorney

EXHIBIT
TWO

OFFICE OF HAMILTON COUNTY
DISTRICT ATTORNEY GENERAL
11TH JUDICIAL DISTRICT

NEAL PINKSTON
District Attorney General

May 12, 2016

RECEIVED
MAY 16 2016

Bryan E. Delius
Law Offices of Bryan E. Delius
124 Court Avenue
Sevierville, TN 37862

RE: TBI Investigation of Detective Rodney Burns

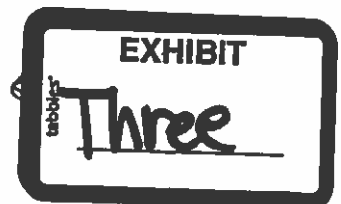
Mr. Delius,

The Tennessee Bureau of Investigation has completed their investigation into Rodney Burns. I intend to present the matter to the Hamilton County Grand Jury for their consideration on Monday May 16, 2016 at the morning docket. Please file an appropriate motion if you would like Mr. Burns to appear and testify to the grand jury. If you have any questions, please do not hesitate to contact me. I can also be reached via email at neal.pinkston@hcdatn.org

Sincerely,



Neal Pinkston



Gatlinburg detective defends testimony, district attorney responds, claims detective perjured himself

February 18th, 2016 by Staff Report in Local Regional News Read Time: 5 mins.

EXHIBIT
 Four



Gatlinburg, Tenn., police detective Rodney Burns defended his testimony in court Tuesday, Feb. 16, 2016. Burns, 25, is charged with perjury in a case involving a rape case in the Ooltewah area. District Attorney General Neal Pinkston accused Burns of lying under oath during a hearing in the Ooltewah case. Burns is charged with perjury in a case involving a rape case in the Ooltewah area. Burns is charged with perjury in a case involving a rape case in the Ooltewah area.



Detective Rodney Burns of the Gatlinburg Police Department...

Photo by Dan Henry /Times Free Press.

An attorney for a Gatlinburg, Tenn., police detective calls allegations that the officer may have spoken untruthfully during a hearing in the Ooltewah basketball rape case "base" and "reckless."

Attorney Bryan E. Delius, in a news release, said Detective Rodney Burns, a 25-year veteran with the Gatlinburg department, "wholly denies" any wrongdoing.

However, Melydia Clewell, spokeswoman for District Attorney General Neal Pinkston, released this statement in response to Delius' letter:

"General Pinkston believes Detective Burns perjured himself in Hamilton County Juvenile Court on Monday, February 15. That's the only reason he asked the TBI to investigate. He swore an oath to prosecute crimes, no matter who commits them."

"As for General Pinkston's life goals, he is a career prosecutor with no interest in leaving Chattanooga, Tennessee. Last fall he respectfully declined the Haslam Administration's attempts to appoint him to an open judgeship in Hamilton County."

Burns testified in a Juvenile Court hearing Monday where three Ooltewah athletics officials are charged with failing to report sexual assault on the 15-year-old freshman that happened during a tournament trip to Gatlinburg on Dec. 22.

THE CODE OF SILENCE

Ooltewah's code of silence created a culture of negligence

On the stand, Burns said the insertion of a pool cue into the boy's rectum, which punctured his colon, prostate and bladder, wasn't a rape because the assailants didn't receive sexual gratification.

Hamilton County District Attorney General Neal Pinkston responded by asking the Tennessee Bureau of Investigation to begin a probe. Pinkston said Burns' words on the stand contradicted what he wrote in incident reports.

Delius said Burns' reports and his testimony were truthful and said Pinkston "needlessly injected himself into this case for his own political ambitions at the cost of victims." Delius also said that "General Pinkston should be concerned instead with the systemic failure of Hamilton County Schools to stop a history of bullying and hazing."

Read the complete statement below:



Document: Gatlinburg Detective Rodney Burns' statement

Gatlinburg Detective Rodney Burns has received criticism from the community and local law enforcement for his testimony regarding the Ooltewah rape case. Burns released a statement defending his remarks.

Hamilton County Schools: A Right Case

Three new candidates apply on final day to become Hamilton County's interim superintendent

Interim Hamilton schools chief candidate drops out of consideration, leaving one candidate

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