

STATE OF INDIANA)
) SS:
COUNTY OF CARROLL)

IN THE CARROLL CIRCUIT COURT

STATE OF INDIANA)
)
VS.)
)
RICHARD M. ALLEN)

CAUSE NUMBER: 08C01-2210-MR-00001

**STATE'S OBJECTION TO DEFENDANT'S MOTION TO SUPPRESS FILED APRIL
11TH, 2024**

Now comes the State of Indiana, by Prosecuting Attorney, Nicholas C. McLeland, and respectfully objects to the Defendant's Motion to Suppress filed April 11th, 2024 and would ask the Court to deny the same. In support of said motion the State would ask the Court to consider the following:

1. That the State has provided the Defense with statements of Richard Allen. Those statements include phone calls made by Richard Allen to his wife and his mother and statements that he has made to Indiana Department of Corrections staff and inmates. The statements made to Indiana Department of Corrections staff and inmates, referred to as suicide companions, consist of statements on "door sheets". These "door sheets" are forms provided by the Indiana Department of Corrections for monitoring the behaviors and statements of Richard Allen at a frequency determined necessary by mental health personnel.
2. That the State has identified and provided the names of all suicide companions, which the State intends to call as witnesses for confessions and relevant statements against his own

interest, which includes sixteen (16) correctional officers, eight (8) inmate companions, Warden Galipeau, Mental Health personnel and Indiana State Police Officers.

3. The admissibility of a confession is controlled by determining from the totality of the circumstances whether the confession was made voluntarily and was not induced by violence, threats, or other improper influences that overcame the defendant's free will. *Carter v. State*, 730 N.E.2d 155, 156 (Ind. 2000). Citing *Wilcoxon v. State*, 619 N.E.2d 574, 577 (Ind. 1993). The same test determines whether Miranda rights were voluntarily waived. See *Gregory v. State*, 540 N.E.2d 585, 592 (Ind. 1989). Thus, the voluntariness of a defendant's waiver of rights is judged by the totality of the circumstances. See *Allen v. State*, 686 N.E.2d 760, 770 (Ind. 1997), cert. denied, 525 U.S. 1073, L. Ed. 2d 667, 119 S. Ct. 807 (1999). An express written or oral waiver of rights is not necessary to establish a waiver of Miranda rights. See *Horan v. State*, 682 N.E.2d 502, 510 (Ind. 1997), reh'g denied.
4. The Fifth Amendment's privilege against self-incrimination applies to the states through the Fourteenth Amendment. When a defendant challenges the voluntariness of a statement under the United States Constitution, the State must prove by a preponderance of the evidence that the statement was voluntarily given. In addition, Ind. Const. art. I, § 14 provides that no person, in any criminal prosecution, shall be compelled to testify against himself. The Indiana Constitution requires the State to prove beyond a reasonable doubt that the defendant voluntarily waived his rights and that he voluntarily gave his statement.
5. The self-incrimination clause of the Fifth Amendment protects an accused only from being compelled to testify against himself, or otherwise provide the state with evidence of

a testimonial or communicative nature. *Curry v. State*, 643 N.E.2d 963, 968 (Ind. App. Ct. 1994). In order to be testimonial, an accused's communication must itself, explicitly or implicitly, relate a factual assertion or disclose information. *Id.* Absent (custodial) interrogation, there is no infringement of the Fifth Amendment rights identified in *Miranda* and no occasion to determine whether there has been a valid waiver. *Id.*

6. The term "interrogation" under *Miranda* refers not only to express questioning but also to any words or actions on the part of police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect. Since police cannot be held accountable for the unforeseen results of their words and actions, the definition of interrogation can extend only to words or actions on the part of police officers that they should have known were reasonably likely to elicit an incriminating response. *Curry v. State*, 643 N.E.2d 963 (Ind. App. Ct. 1994)
7. That the Defendant is being held in pre-trial detention for his safety pursuant to Court Order. Inmates of the PLUS program and subsequently Corrections Officers at the IDOC holding facilities have been assigned to observe Richard Allen and record his behaviors, which has included documenting statements by Richard Allen. That the assignment of correctional officers to replace inmate companions coincided with Richard Allen being provided with legal documents for his case; therefore, it was determined no longer appropriate for inmates to provide companion services due to the GAG order and Discovery Protective Order.
8. That the Defendant alleges all his statements, subsequent to arrest should be suppressed for the reason that they are all are involuntary due to the conditions of his pre-trial

detention which they characterize as illegal coercion, either psychological or physical in violation of his constitutional rights.

9. Statements by Richard Allen which the defense seeks to suppress are unsolicited and voluntary, like those in *Seay v State*, where defendant made unsolicited statement while he was being moved from one part of the jail to another, such statement was properly admitted into evidence. *Seay v. State*, 173 Ind. App. 348, 363 N.E.2d 1063, 1977 Ind. App. LEXIS 871 (Ind. Ct. App. 1977).
10. The defense has alleged that physical coercion by state actors has resulted in involuntary statements by Richard Allen that should be suppressed. The defense has also alleged that psychological coercion by state actors has resulted in involuntary statements by Richard Allen that should be suppressed.
11. That the Defendant has not alleged that any of these statements are the result of interrogation by law enforcement while in custody and the State would assert that Richard Allen is not being interrogated by law enforcement or any agent of the State during his pre-trial detention, regarding the charges pending herein or regarding any other criminal activity.
12. That case law on application of the protections of the Fifth Amendment indicates that absent interrogation by law enforcement or an agent of the State, the Defense does not have a basis to challenge the admissibility of voluntary statements made by Richard Allen.
13. The State acknowledges its burden to show beyond a reasonable doubt that the statement was not obtained in violation of the Indiana Constitution or by a preponderance of the evidence that the statement was not obtained in violation of the United States

Constitution; however, the State does not believe the Constitutional protections allow for the Defendant to allege that all statements during pre-trial detention are the result of coercion directed against him. This posture requires the Court to begin with an assumption that pre-trial detention in IDOC by its very nature is coercive interrogation by a State Actor, and thereby, shift the burden to the State to present testimony to refute illegal coercion for every statement made by the defendant.

14. The Defendant is making a blanket argument that all statements by Richard Allen are the result of improper influences, based on the Defendant's mental state, without having to address each statement and its unique circumstances. The Defense argument ignores the case law regarding application of their cited Constitutional protections by skipping over the threshold of showing or alleging interrogation by law enforcement or their agents. The Defense Motion expects to Court to accept that all inmates, employees and third-party medical or mental health personnel are acting as agents of the State, specifically law enforcement, with the purpose of illegally coercing statements from Richard Allen for his prosecution. The allegations and assumptions are absurd, unfounded, not supported by the Motion filed or any facts or evidence. The Motion to Suppress all of Richard Allen's statements is another attempt by the Defense to derail this case with conspiracy theories and inflame the public to believe the government has unjustly pursued charges against Richard Allen.

15. The State requests that the Defense be required to identify the specific statements of Richard Allen that were illegally coerced and identify the state actor whose conduct supports the allegations of coercion and describe the conduct they believe to be either

physically or psychologically coercive before the State is required to respond for further analysis by the Court.

16. In the absence of specific allegations by the Defendant as to each statement against his interest that is involuntary as a result of law enforcement interrogation, the State asserts that the Defendant has not sufficiently identified statements subject to a Motion to Suppress.

WHEREFORE, the State requests the Court the DENY Defendant's Motion to Suppress Statements filed on April 11th, 2024, as failing to state a claim for relief under the Fourth, Fifth and Sixth Amendments of the United States Constitution and Article 1, Sections 12, 13, and 14 of the Indiana Constitution, absent a more specific statement setting forth with specificity the statements obtained during custodial interrogation by law enforcement or their agent, and identifying the conduct by such state actor that would be psychological or physical coercion illegally and knowingly directed against Richard Allen for the purpose of inducing confessions or statements against his own interest.

Respectfully submitted.



Nicholas C. McLeland
Attorney #28300-08
Prosecuting Attorney

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon his attorney of record, through personally delivery, ordinary mail with proper postage affixed or by service through the efile system and filed with Carroll County Circuit Court, this __23rd _ day of April, 2024.



Nicholas C. McLeland
Attorney #28300-08
Prosecuting Attorney