

STATE OF INDIANA                    )        IN THE CARROLL CIRCUIT COURT  
  ) ss:  
COUNTY OF CARROLL                )        CAUSE NO. 08C01-2210-MR-1  
  
STATE OF INDIANA                    )  
    Plaintiff                         )  
    v.                                 )  
  )  
RICHARD ALLEN,                     )  
    Accused                         )

**DEFENDANT’S SECOND MOTION TO DISMISS BASED UPON NEWLY  
DISCOVERED DESTROYED AND/OR MISSING EXCULPATORY OR  
POTENTIALLY USEFUL EVIDENCE**

Comes now the accused, Richard Allen, by and through counsel Andrew Baldwin, and pursuant to the 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> Amendments to the United States Constitution, Article 1, Section 12 of the Indiana Constitution and Ind. Code § 35-34-1-4(a)(11), moves this Court to dismiss charges against the accused for destroying or losing exculpatory evidence or potentially useful evidence, in violation of the standards set out in *Brady v. Maryland*, 373 U.S. 83 (1963). In support of said motion, the accused states the following:

1. That on February 7, 2024, the accused filed his Motion to Dismiss for Destroying Exculpatory Evidence and memorandum in support of said motion.
2. In his first motion, the defense detailed how a February 17, 2017 interview of third-party suspect Brad Holder was destroyed while in the possession of law enforcement along with multiple days of other interviews.
3. On March 18, 2024, a hearing was held on said matter.

4. At the March 18, 2024 hearing, Steve Mullin (investigator for the prosecutor's office) testified that other evidence was destroyed in 2017, as well, as it was purportedly unintentionally taped over.
5. Furthermore, at said March 18, 2024, hearing, the defense tendered Mullins's undated reports that purportedly explained how the evidence was destroyed.
6. The prosecution did not tender these reports to the defense until after the motion to dismiss was filed; also, said reports were only turned over to the defense after the defense requested those items from the prosecution.
7. On April 2, 2024, this Court issued its ruling denying the defense motion to dismiss the charges.
8. Since the time of this Court's denial of said motion, the defense has learned of other exculpatory evidence and/or potentially useful evidence that the prosecution has not turned over to the defense, is missing or that the State of Indiana has destroyed.
9. Just like Allen's first Motion to Dismiss, the missing/destroyed evidence relates to third-party suspect Brad Holder.

#### **Brad Holder's missing phone extraction data**

10. During a recent deposition of Brad Holder, the defense learned that Brad Holder is pretty sure that he turned over his phone to law enforcement on February 17, 2017.
11. The prosecution has not turned over any data, extractions, reports or other evidence from Brad Holder's phone.
12. Curiously, on the same day and at the same time that Brad Holder believes that he turned his phone over to law enforcement officers, his son (Logan Holder) also turned over his (Logan Holder's) phone.
13. The prosecution has turned over the data extracted from Logan Holder's phone, but not any data extracted from Brad Holder's phone.
14. While the data from Logan Holder's phone was extracted, law enforcement apparently claim that they (law enforcement) failed to

extract data from Brad Holder's phone even though both he (Brad) and his son (Logan) turned over their phones to law enforcement at the same time.

15. Jerry Holeman stated under oath at a recent deposition that he believes police "just looked through" Brad Holder's phone, but encouraged the defense to find out for sure from the FBI (Holeman May 3, 2024 deposition p. 6, lines 13-15)
16. When asked if he (Holeman) would have extracted data from Brad Holder's phone if given the opportunity, Holeman was non-committal: "Depends on the circumstances, but I think you'd have to ask the FBI what they did..." (Holeman May 3, 2024 depo. p. 6, lines 22-25)
17. Finally, after being pushed by the defense, Holeman finally conceded that he would have extracted data from Holder's phone if given the opportunity (Holeman May 3, 2024 depo. p. 7, lines 8-12).
18. The defense finds it highly, highly unlikely that law enforcement would take the time to collect both Brad Holder's phone and Logan Holder's phone but then choose to only conduct an extraction of Logan Holder's phone, especially when Brad Holder was a suspect at that time, and no evidence provided to the defense suggests law enforcement considered Logan Holder a suspect.
19. On February 17, 2017, documents specifically sought by the defense (Doug Carter's emails with the FBI) provided evidence that:
  - a. Brad Holder was a suspect within days of the murder and certainly on February 17, 2017 when Holder interviewed at the Delphi police station and turned over his phone to law enforcement.
  - b. State Police Superintendent Doug Carter was aware that Brad Holder was a suspect.
  - c. Even the top FBI agent in Indianapolis, Jay Abbott, was aware that Brad Holder was a suspect on February 17, 2017.
  - d. Logan Holder was not mentioned as a suspect in these emails.
20. This begs the question: why would law enforcement take both Brad Holder's phone and Logan Holder's phone, but only extract data from Logan Holder's phone (when he was not a suspect) but would not extract any data from Brad Holder's phone (when he was a suspect)?

21. Additionally, the defense possesses 101 phone extractions that law enforcement conducted on a variety of other phones, many of which seemingly have little or nothing to do with the murders.
22. This begs another question: why would law enforcement take the time to extract data from 101 phones, most of which were not owned by suspects, yet would not extract data from Brad Holder's phone when they had his phone in their hands on February 17, 2017 and he was a suspect at that time?
23. The defense believes that the above information provides strong circumstantial evidence that law enforcement *did* extract the data from Brad Holder's phone on February 17, 2017 and has not turned it over to the defense.
24. Logic and common sense support this belief.
25. If law enforcement failed to extract suspect Brad Holder's phone data while it was in their hands on February 17, 2017, then the only other explanation would be that law enforcement was completely and utterly inept.

**All evidence of Brad Holder's second interview with law enforcement is missing**

26. Additionally, Brad Holder testified in his deposition that in addition to law enforcement's February 17, 2017 interview (which was purportedly accidentally taped over) that law enforcement conducted a second interview of Brad Holder sometime later, probably within a year or two of his first interview.
27. Holder further testified at his deposition that: (A) law enforcement conducted this second interview at the Logansport Police Station; (B) the interview took about an hour-and-a-half; (C) the interview was likely videotaped in an interview room; (D) the interview involved much questioning about Patrick Westfall.
28. After the deposition, the defense alerted the prosecutor's office that the defense had: (A) no phone dump extraction evidence from Brad Holder's phone; and (B) no evidence whatsoever (in the form of video, audio, reports, notes or any other type of evidence) of law enforcement's second interview of Brad Holder at the Logansport Police Station.

29. On May 13, 2024, the prosecution advised the Defense by email that they cannot locate an interview of Brad Holder at the Logansport PD and have no record of Brad Holder's phone being downloaded.
30. At a recent deposition, when Unified Command's Jerry Holeman was asked about how the defense could obtain any information about this second interview, Holeman said he had no idea, but encouraged the defense to reach out to the Logansport PD to find out. (Holeman depo. p. 5, lines 20-25 and p. 26, lines 1-2)
31. The defense is not required to locate exculpatory evidence or potentially useful evidence of third-party suspects. That is the requirement of law enforcement.
32. Also, at said May 2, 2024 deposition, Brad Holder told a third different story concerning how many times he met victim Abigail Williams (two times) and that one of Brad Holder's meetings with Abby Williams took place at Patrick Westfall's house.
33. When Jerry Holeman was confronted with Brad Holder's ever-changing stories concerning how many times Brad Holder met Abby Williams, Holeman stated: "Perfectly reasonable, in my opinion, that he remembered somebody *insignificant*. If you've only met them twice, you may not remember that, so I don't see exactly what you're asking me." (Holeman depo. p. 4, lines 1-15)(Emphasis added)
34. When Holeman was asked if it were likely that Brad Holder would not remember meeting Abby when Holder was asked three days after the murders at his February 17, 2017 interview, but then seven year later he would remember meeting Abby twice, Holeman responded: "Possibly, yeah." (Holeman depo. p. 4, lines 16-21).
35. Holeman showed no curiosity, nor interest whatsoever about why Holder's stories have changed. This attitude supports an argument which defense will later make in this motion that law enforcement have acted intentionally or in bad faith to conceal evidence to such a degree that they cannot even admit obvious factual inconsistencies that point the finger at third-party suspects.
36. Patrick Westfall was interviewed on August 17, 2024, and law enforcement extracted data from Westfall's phone.

37. The phone extraction shows that Westfall's phone had no data prior to August 11, 2023 (which was the day that law enforcement contacted Westfall and asked him to come in to be interviewed one week later).
38. In other words, it appears that Patrick Westfall either erased all of the phone data on his phone or purchased a new phone after police contacted him on or about August 11, 2023. The only data found on Westfall's phone was between August 11, 2023 (on or about when police contacted him) and August 17, 2023 (when he was interviewed). No texts, videos, photographs, email messages nor any other data existed on Westfall's phone before the day that police contacted Westfall on August 11, 2023.
39. When Jerry Holeman was confronted with the fact that Patrick Holder likely erased/attempted to hide his phone data from the State Police, Holeman claimed that he found nothing unusual, stating: "People erase things all the time." (Holeman depo. p. 8, lines 8-11). Later, Holeman stated that he found nothing suspicious about Patrick Westfall deleting/concealing his phone data before his (Westfall's) August 17, 2017 interview. (Holeman depo. p. 9, lines 1-3)
40. Again, Holeman's attitude toward third-party suspect Patrick Westfall supports the defense's position that law enforcement has intentionally destroyed evidence, or acted in bad faith, or have intentionally not provided missing evidence such as Brad Holder's second interview as well as other items identified in this motion.
41. At his August 30, 2023 interview, state trooper David Vido did not even ask Brad Holder if he (Holder) would allow state police to extract data from his (Holder's) phone, even though it is clear that Holder had brought his phone with him to the interview.
42. Therefore, it is not known whether Holder similarly hid/erased data from his phone like it appears Westfall hid/erased data from his phone.
43. It certainly is curious as to why Vido did not request Holder's phone data when Holder brought his phone to the August 30, 2023 interview.
44. It is also curious as to why Vido failed to ask Brad Holder one single question about Elvis Fields.

45. It is also curious as to why Vido failed to ask Brad Holder one single question as to the incriminating statements that Amber Holder attributed to Brad Holder that are detailed in Franks I.
46. Vido's failure to ask such important questions to Brad Holder during the August 30, 2023 interview supports the Defense contention that law enforcement is acting in bad faith.

**Mimicked crime scene image found on Brad Holder's social media is lost**

47. In addition to Holder's 2017 missing phone extraction and missing evidence of Holder's second interview at the Logansport Police station, as well as Holder's "taped over" first interview from February 17, 2017, another key piece of evidence is also missing: the mimicked crime scene photo that was on Brad Holder's social media pages.
48. Trooper Purdy viewed this mimicked crime scene image on Brad Holder's social media page sometime in the Spring of 2017. (this image was marked as Exhibit F in Purdy's depo and discussed on pages 79-81).
49. This mimicked crime scene image found on Holder's social media page holds an eerie similarity to the actual crime scene.
50. In the mimicked crime scene image found on Holder's social media page, the bodies of two women appear to be staged, lying on the ground in the woods with branches laid across their bodies.
51. One of the women in the mimicked crime scene image found on Brad Holder's social media page has her arms staged/positioned in a similar manner as one of the victim's hands were staged/positioned in this case.
52. At the time that Trooper Purdy observed the mimicked crime scene photo on Brad Holder's social media page, the general public did not have knowledge of the appearance of the crime scene, the positioning of the bodies on the ground in the woods or that branches, and sticks were arranged on the bodies.
53. In an April 12, 2017 report from trooper Ryan Winters, it was learned that the State Police also came into possession of said mimicked crime scene image through an internet sleuth named Ryan Boucher.

54. Boucher alerted Winters to the disconcerting images on Brad Holder's social media pages and then sent said images to Trooper Winters over the internet.
55. On April 12, 2017, Trooper Winters then shared with Jerry Holeman his (Winters's) knowledge of the mimicked crime scene images found on Holder's social media pages and the other information.
56. Because of the similarities between the images that Boucher sent Trooper Winters (from Brad Holder's social media) and the crime scene, Trooper Winters requested that Brad Holder be reinterviewed.
57. Despite that request, State Police ignored Trooper Winters and never re-interviewed Brad Holder. Brad Holder was only interviewed in August 2023 after Jerry Holeman was challenged by the defense to reopen the Brad Holder investigation.
58. To this day, the prosecution has failed to turn over the mimicked crime scene image that Purdy found on Holder's social media in 2017.
59. Fortunately, because internet sleuth Boucher had saved the image that he had turned over to Trooper Winters, the defense team was able to drive to Georgia and retrieve that image.
60. When deposed, Trooper Winters claimed that the State Police could not access the images that Boucher found on Holder's social media that Boucher then turned over to the State Police. (Winter depo August 23, 2023 p. 29, lines 20-23)
61. How could State Police lose such an important piece of evidence as an image found on a suspect's social media that mimics the crime scene?
62. The defense again would proffer that the mimicked crime scene photo was not lost. Logic and common sense dictates that such an important piece of evidence would not be lost by state police.
63. The defense is filing simultaneously herewith its Memorandum in Support of its Second Motion to Dismiss Based upon Newly Discovered Destroyed and/or Missing Exculpatory Evidence.



64. As detailed in said memorandum, if the defense can show that the missing evidence is exculpatory in nature then the defense does not need to show that the missing evidence was intentionally destroyed.
65. If, on the other hand, the defense cannot show that that the missing evidence was exculpatory in nature, but can show that the missing evidence is potentially useful evidence, then the motion to dismiss should still be granted if the defense can show that law enforcement intentionally or acted in bad faith regarding the destroyed or missing evidence.

### **The Exculpatory Nature of the Missing Evidence**

66. Currently, the list of missing evidence that the prosecution has not turned over to the defense includes the following:
- a. Video of Brad Holder's first interview from February 17, 2017.
  - b. Video of Logan Holder's interview from February 17, 2017.
  - c. Data from Brad Holder's phone extraction from February 17, 2017.
  - d. Video from Brad Holder's second interview with law enforcement taken at the Logansport Police Station sometime in 2017 or 2018.
  - e. Audio taken from Brad Holder's second interview with law enforcement taken at the Logansport Police Station sometime in 2017 or 2018.
  - f. Any reports, notes or documents concerning or referring to Brad Holder's second interview at the Logansport Police Station sometime in 2017 or 2018.
  - g. Mimicked Crime Scene Photo observed by Trooper Purdy on Brad Holder's social media page.
  - h. Images Ryan Boucher sent to Trooper Winters on April 12, 2017.
67. Notice that all missing items are related to third-party suspect Brad Holder.
68. Also, note that the prosecution is asking that the defense not be allowed to even mention the name "Brad Holder" during trial.
69. Currently, the list of evidence that the prosecution failed to turn over to the defense (until the defense requested the prosecution to turn it over or upon the prosecution realization that the defense would soon be learning about the existence of said evidence) includes:

- a. Todd Click letter and accompanying 85-page report (the prosecutor held on to this evidence for over 4 months, until he knew the defense would learn of its existence).
- b. Multiple Elvis Fields interviews.
- c. Rod Abrams interviews.
- d. Multiple Johnny Messer interviews.
- e. Multiple Taylor Hornaday interviews
- f. Ned Smith interview.
- g. Libby German phone dump.

70. Notice that all items a-g in paragraph 69 above are related to third-party suspects and Odinism.

71. Also, note that the prosecution is asking that the defense not be allowed to even mention any of these third-party suspects or Odinism during trial.

72. The evidence that the defense does have in its possession showcases that on multiple occasions, third party suspect Brad Holder has changed his answer concerning a very basic question: How many times has he met Abigail Williams?

73. According to the only police report that memorialized Brad Holder's "accidentally destroyed" first interview, Holder stated that he had **never** met Abby Williams.

74. At the time that he was first approached by law enforcement (February 17, 2017) and asked that question ("How many times did you meet Abby Williams?") common sense would dictate that the answer would be fresh in Brad Holder's mind and easy to detail because of (a) the proximity in time that Brad Holder's son dated Abby Williams (Logan Holder was dating Abby Williams at the time of the murders); and (b) the enormity of the situation (i.e. two girls had been murdered, one of whom dated Brad Holder's son).

75. If Brad Holder is in any way involved in the murders (as the defense believes the evidence strongly supports) then Brad Holder's claim (close in time to the murders) that he never met Abby Williams is understandable. Denying that he (Brad Holder) had ever even met Abby Williams could (in Holder's mind, at least) cause the police to take their attention off of Holder.

76. If at his February 17, 2017 interview, Holder was telling the truth that he never met Abby Williams, then his answer to police when asked the same question even 6 ½ years later, on August 30, 2023, should easily be the same: “I never met her” because a father would definitely remember if he had ever met his son’s girlfriend who had been murdered. Conversely, a father would know if he had never met the murdered girlfriend of his son involved in a high-profile case.
77. However, if at his February 17, 2017 interview, Holder was not telling the truth as to how many times he met Abby Williams, then it may be difficult for Holder to remember what lie he told law enforcement 6 ½ years earlier (February 17, 2017) when he was re-interviewed on August 30, 2023.
78. At his August 30, 2023 interview, Brad Holder’s story changed. Now, he claimed that in fact he had met Abby Williams **one time**.
79. Either Brad Holder intentionally lied to police in 2017 closer in time to when Logan dated Abby, or Brad Holder had simply forgotten his meeting with Abby Williams but then somehow remembered that meeting 6 ½ years later.
80. Then, at this May 2, 2024 deposition, Brad Holder provided yet a third different answer: he actually had met Abby Williams **two times**.
81. Furthermore, at his May 2, 2023 deposition, Holder remembered that one of those meetings occurred at Patrick Westfall’s house. (Holder depo. pages 20-21)
82. Brad Holder’s ever-changing answers to such a simple question provides evidence that the missing items (a-h detailed in paragraph 66) are exculpatory in nature.
83. When combined with the evidence contained on Brad Holder’s social media pages, including images of a rune inked onto Holder’s hand that mimics the way sticks were formed on Abby’s body, as well as all the other evidence detailed in Franks I, the ever-changing stories of Brad Holder on the simple topic of “how many times did you meet Abby Williams?” should all provide insight into why the defense believes that the missing evidence contained obviously exculpatory evidence. How could it not?

84. It would be impossible for the defense to show that the *missing* evidence contains clearly exculpatory evidence, therefore, the defense is left with providing circumstantial evidence, along with logic, reason and common sense as to why the many missing items would contain obvious exculpatory evidence.

85. The defense believes that it has shown that the missing/destroyed evidence is exculpatory in nature.

**The missing/destroyed evidence is exculpatory, but even if the Court disagrees, the Court should find the missing/destroyed evidence as “potentially useful” and dismiss charges**

86. As detailed in the accompanying memorandum, if this Court finds that the missing/destroyed evidence is not exculpatory but does find that it is “potentially useful” then the Court should dismiss charges if it also finds that law enforcement intentionally caused the potentially useful evidence to be destroyed or acted in bad faith regarding the missing evidence.

87. Franks I – IV provides many details of why this Court should believe that law enforcement intentionally caused the potentially useful evidence detailed herein to be destroyed or acted in bad faith.

88. The defense incorporates the contents of Franks I – IV in this motion.

89. Provided below are a few facts that support the defense contention that law enforcement has acted in bad faith or intentionally lost or destroyed evidence or have failed to turn over said evidence to the defense.

**a. Missing portions of vital video from Jerry Holeman’s 10/26/22 interrogation of Richard Allen**

- i. Jerry Holeman interrogated Richard Allen on October 26, 2022 and said interrogation was videotaped.
- ii. However, the first few minutes of the interrogation are inexplicably missing.
- iii. The missing portions of the video, according to Jerry Holeman, would have shown Holeman discussing Richard Allen’s Miranda rights and freedom to leave the room, both

important concepts that might support the legality – or illegality – of Holeman’s interrogation.

- iv. No explanation exists as to why the only portion of the videotaped interrogation that is missing is the crucial beginning of the interrogation. The missing video supports the defense contention that Holeman knew he had screwed up and therefore edited out the first few minutes of the interrogation to avoid the statement being suppressed.
  - v. The missing video from Holeman’s October 26 interrogation of Richard Allen is evidence of intentionality of law enforcement involving the concealment or destruction of evidence and/or evidence of bad faith.
- b. Jerry Holeman lied in his August 10, 2023 deposition that Brad Holder was never a suspect**
- i. In his August 10, 2023 deposition, when asked if Brad Holder was ever a suspect, Holeman said the following: “Not really. No.” (Holeman depo. p. 172, lines 4-5)
  - ii. However, it is clear from reviewing emails between Doug Carter and the FBI that Brad Holder was a suspect very early on in the case.
  - iii. As stated before, Holder was thought to be a suspect and his name was known as a suspect even at the highest level of the state police (Superintendent Doug Carter) and even known to Indianapolis’s top FBI agent Jay Abbott.
  - iv. The fact that Holeman misled the defense by claiming that Holder was not really a suspect is evidence of the intentionality of law enforcement involving the concealment of evidence and/or evidence of bad faith.
- c. The prosecution failed to turn over the Todd Click exculpatory evidence for 4 months and then only turned it over after it was obvious that the defense would be learning of the existence of the Click letter**

- i. As detailed in Franks I and numerous other pleadings, the prosecution chose to not turn over exculpatory evidence from May 1, 2023 until September 8, 2023 of a letter from Todd Click and 85 pages detailing his investigation.
  - ii. Contained in the Click letter was evidence that 3 law enforcement officers who investigated the case believed that third-party suspects Brad Holder, Patrick Westfall and Elvis Fields were involved in the murders and Click's belief that the evidence supporting their involvement in the murders was much more compelling than the evidence against Richard Allen.
  - iii. As stated in a previous pleading, it is hard to believe that a much stronger example of exculpatory evidence could exist than documentation that 3 law enforcement officers essentially believe that the wrong man may have been arrested.
  - iv. The fact that the prosecution refused to not immediately turn over the exculpatory Click letter for over 4 months is evidence of the intentionality of law enforcement involving the concealment of evidence and/or evidence of bad faith.
- d. The prosecution failed to turn over exculpatory evidence contained in several videotaped statements until after the prosecution knew that the defense would soon learn of their existence.**
- i. As detailed earlier in this motion, and in Franks I, the prosecutor failed to turn over several videotaped interviews that provide exculpatory evidence concerning third-party suspects until after it was clear that the defense would soon be learning of the existence of those videotaped interviews.
  - ii. The prosecutor turned over these videotaped interviews nearly 9 months later than required under rule and statute.
  - iii. Those videotaped interviews provided exculpatory evidence in terms of blown alibis of third-party suspects as well as connectivity between third party suspects and also provable lies told by third party suspects concerning their knowledge of other third-party suspects.

- iv. The fact that the prosecution failed to turn over exculpatory evidence that supports the involvement of third-party suspects in committing the murders until after the defense would soon learn of their existence is evidence of the intentionality of law enforcement involving the concealment of evidence and/or evidence of bad faith.
- e. **The prosecution and law enforcement attempted to conceal the identity of a Purdue professor whose testimony contradicted the sworn statement of Jerry Holeman**
- i. This matter has been detailed in Franks I, II and III and in various other pleadings previously filed.
  - ii. At his August 10, 2023 deposition, Jerry Holeman stated under oath that part of the reason that law enforcement ruled out that persons practicing Odinism or some type of cult had committed the murders was because a Purdue professor had ruled out such a possibility. (Holeman August 10, 2023 depo. p. 63, lines 7-20)
  - iii. However, after reviewing the Purdue professor's report prepared on or about March 1, 2017 as well as listening to the Purdue professor's September 19, 2023 interview, it was determined that the Purdue professor never made such a claim as Jerry Holeman stated in his (Holeman's) deposition.
  - iv. Furthermore, at his deposition, the Purdue professor (Jeffrey Turco) specifically denied that he had ever made the very statements that Holeman attributed to Turco. (Turco depo. p. 65, lines 7-25 and p. 79, lines 18-25)
  - v. Additionally, the prosecution told the defense in a September 6, 2023 email that the identity of the Purdue professor was still unknown and may not ever be able to be found. This was untrue as Jerry Holeman had already learned of Jeffrey Turco's name weeks earlier.
  - vi. Additionally, the defense learned that the actual Purdue report from March 1, 2017 (which also contradicted Holeman's deposition testimony) was in the possession of law enforcement since that time, but was purportedly

rediscovered by law enforcement by in August 2023. The prosecution finally produced said report to the defense on October 4, 2023 and only upon request of the defense.

- vii. Jerry Holeman's August 10, 2023 deposition testimony was false concerning the findings of the Purdue professor and therefore his testimony is evidence of law enforcement's intentionality in attempting to conceal evidence and/or evidence of bad faith.
  - viii. The attempt of law enforcement and the prosecutor to conceal the identity of the Purdue professor is further evidence of intentionality in attempting to conceal evidence and/or evidence of bad faith.
- f. **The prosecution failed to turn over one of the key pieces of evidence for nearly 9 months and then only after the defense kept requesting the prosecution for the same**
- i. A key piece of evidence in this case is the phone data extracted from victim Liberty German's phone.
  - ii. The prosecution and law enforcement had possessed that evidence for 5 years prior to Richard Allen's arrest and therefore should have been able to provide that evidence immediately to the defense.
  - iii. However, the defense did not receive that evidence until September 8, 2023, almost 9 months later than required under criminal rule.
  - iv. After the defense had a chance to review said data from the phone, it was determined that exculpatory evidence existed in the phone that did not support law enforcement's timeline and supports that third-party suspects were involved in the murders.
  - v. The failure of law enforcement to turn over Liberty German's phone for nearly 9 months, thereby concealing exculpatory evidence the defense could have been exploring from the



beginning of their representation, is further evidence of intentionality in attempting to conceal evidence and/or evidence of bad faith.

**g. Law enforcement concealed the Blocher report until April 26, 2024**

- i. On April 26, 2024 the State of Indiana turned over a report from Steve Mullin concerning the findings of Sgt. Mitch Blocher of the Indiana State Police.
- ii. Contained in the body of that report was exculpatory information concerning ping information that supports that on February 13, 2017 the victims were not located at the same scene as they were found on February 14, 2017.
- iii. The failure of law enforcement in turning over this report for well over 1 year beyond when the prosecution was required to turn it over (and only after the defense sent a certified letter and filed a motion to compel and for sanctions demanding that the prosecutor turn over certain evidence) is further evidence of intentionality in attempting to conceal evidence and/or evidence of bad faith.

**h. Tobe Leazenby contradicted the sworn testimony of both Jerry Holeman and Tony Liggett concerning the number of people involved in the murders**

- i. This matter is detailed in Franks I.
- ii. Both Liggett and Holeman testified under oath that only one person, Richard Allen, was involved in the murder of the victims.
- iii. This proclamation under oath by Liggett and Holeman would negate the defense's contention that evidence supports that multiple people involved in Odinism were involved in the murders.
- iv. However, when Tobe Leazenby was deposed, he (Leazenby) stated under oath that Tony Liggett actually believed that multiple people were involved in the murders.

v. This conflicting sworn testimony of law enforcement is further evidence of intentionality on the part of law enforcement to conceal their actual beliefs concerning the number of people involved in the murders of the victims in order to direct the defense away from theories that Odinists were involved in the murders and additionally is evidence of bad faith.

i. **No recordings of Richard Allen's interview with Dan Dulin exists.**

i. In 2017, Dan Dulin has stated that he (Dulin) knew that he had audio-recorded interviews when conducting interviews of tips/leads. (Dulin depo. p. 55, lines 18-25)

ii. Dulin claims that he now believes that he never audio-recorded his interview of Richard Allen. ("I think I must not have audio recorded it, because all the other ones that I had are in a file on my computer. And I listened to each of them just in case they were mislabeled, every audio recording I have, and none of them was Mr. Allen" Dulin depo. p. 56, lines 2-9)

iii. This interview is crucial as what Dulin claims Allen told him (Dulin) helped establish the timeline used to secure a search warrant and to arrest Allen.

iv. The defense believes that Richard Allen was tape recorded and that the missing tape supports intentionality on the part of law enforcement and/or evidence of bad faith.

j. **Missing mimicked crime scene image**

i. This was detailed earlier in this motion and in Franks I.

ii. The fact that this incredibly exculpatory piece of evidence cannot be accessed, and therefore is still missing, causing them to travel to Georgia to obtain said image, is evidence of intentionality on the part of law enforcement to conceal exculpatory evidence and/or evidence of bad faith.

90. Brad Holder is a key third-party suspect, yet Jerry Holeman denied that fact and then law enforcement failed to turn over multiple pieces of

evidence that support Holder's involvement, along with other third-party suspects identified in Franks I.

91. Furthermore, law enforcement have claimed that Brad Holder's initial interview was taped over.
92. Furthermore, law enforcement claim, apparently, that they never extracted data from Brad Holder's phone when they extracted data from at least 101 other phones from people who weren't even suspects like Holder.
93. Furthermore, law enforcement claim, apparently, that they never extracted data from Brad Holder's phone when they extracted data from Logan Holder's phone which was turned over to the police at the exact time that Holder turned over his phone.
94. Furthermore, law enforcement has turned over zero evidence of Brad Holder's second interview conducted at the Logansport police station and the defense only learned of said interview through a deposition of Brad Holder conducted on May 2, 2024.
95. Furthermore, law enforcement claim that they cannot access the mimicked crime scene photo that was on Brad Holder's social media page.
96. All of the issues of missing evidence surround one person, Brad Holder and Odinism, which the prosecution is also attempting to block the defense from even mentioning at trial.
97. Richard Allen cannot have a fair trial when exculpatory evidence that would support the involvement of third-party suspects is missing.
98. Only so many coincidences can explain away why so much evidence concerning Brad Holder and Odinism is still missing and why the prosecution failed to turn over much of the evidence that the defense does in fact possess concerning third-party suspects for nine months or more and only after the prosecution knew that the defense would soon be learning of the existence of that third-party suspect evidence.

99. The bad faith of Law enforcement and prosecution has been proven through these numerous examples of missing evidence and evidence that the prosecution failed to turn over to the defense in a timely manner.
100. Because the missing evidence is exculpatory in nature the charges against Richard Allen should be dismissed.
101. Even if the Court finds that the missing evidence is not exculpatory, it is clearly potentially useful evidence and the numerous examples of bad faith contained in this motion require that charges against Richard Allen be dismissed.

WHEREFORE, Pursuant to the law detailed in his memorandum in support of this motion, as well as the facts contained in this motion, the defense requests this Court to dismiss all charges against Richard Allen.

Respectfully submitted,

/s/ Andrew Baldwin

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### **CERTIFICATE OF SERVICE**

This is to certify a copy of the foregoing pleading has been provided to all counsel of record for the opposing party, via IEFS this same day of filing.

/s/ Andrew Baldwin

BALDWIN PERRY & WILEY, P.C.