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COUNTY OF CARROLL)

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RICHARD ALLEN)

IN THE CARROLL CIRCUIT COURT

CAUSE NO. 08C01-2210-MR-000001

MOTION TO COMPEL AND MOTION FOR SANCTIONS

Comes now the Defendant, Richard Allen, by counsel, Andrew Baldwin, Bradley Rozzi and Jennifer Auger, and for his Motion to Compel, states as follows:

Introduction

1. On October 28, 2022, the State of Indiana, by its prosecuting attorney, Nicholas McLeland, charged Richard Allen with two counts of murder.
2. Mr. Allen’s initial hearing was held on October 28, 2022.
3. On November 14, 2022, attorneys Bradley Rozzi and Andrew Baldwin entered their appearances in this matter on behalf of Mr. Allen.
4. Pursuant to Rule 2.5 of the Indiana Rules of Criminal Procedure, the state must disclose and furnish all relevant items and information under Section (B)(2) to the defense within thirty days of the initial hearing, an appearance by defense counsel, or an appearance by pro se defendant, whichever is later.
5. Ind.R.Cr.Pr. 2.5(B)(2) states that the State must disclose the following information within its possession or control:
 - (a) The names and last known addresses of persons whom the state intends to call as witnesses, with their relevant written or recorded statements.
 - (b) Any written, oral, or recorded statements made by the accused or by a co-defendant, regardless of whether charged or joined, and a list of witnesses to the making and acknowledgement of such statements.
 - ...
 - (d) Any reports or statements of experts, made in connection with the case, including results of physical or mental examinations and of scientific tests, experiments or comparisons.

- (e) Any books, papers, documents, photographs or tangible objects that the prosecuting attorney intends to use in the hearing or trial.
 - (f) Any books, papers, documents, photographs or tangible objects which were obtained from or belong to the accused.
 - (g) Documents produced pursuant to Rule 1.4 (Subpoenas Duces Tecum and returns prior to filing).
6. Additionally, the state has the duty to disclose evidence which is favorable to the defense. *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. U.S.*, 405 U.S. 150 (1972); *Minnick v. State*, 698 N.E. 2d 245, 755 (Ind.S.Ct. 1998).
 7. The above information was due to the defense 30 days after Attorney Baldwin and Rozzi entered their appearance. Therefore, it was due by **December 14, 2022**.

Motion for Sanctions

General Facts

8. Between September 8, 2023, and October 6, 2023, nine months after it was due, the State of Indiana sent the defense 14 hard drives, 5 flash drives, 3 DVDs and several emails containing discovery disclosures, amounting to almost 4 terabytes of information.
9. Before the defense had a chance to review all of this late discovery (utilizing only 2 lawyers and 2 non-lawyers – 3 of whom were not able to work full time on the case) the prosecutor requested that the defense be disqualified on October 10, 2023 and the Court ordered the defense to stop working on the case on October 12, 2023. Accordingly, Mr. Baldwin and Mr. Rozzi did not work on the case again until January 19, 2024.
10. During that thirty-four (34) day timeframe from September 8, 2023 through October 12, the defense was only able to review a tiny fraction of the massive amounts of discovery that had been dumped on the defense 9 to 10 months after it was due.
11. Attorneys Rozzi and Baldwin were reinstated and re-entered their appearances on January 19, 2024. The 2017 extraction and data and other items of discovery were turned over to the defense on January 30, 2024. However, it did not appear to the defense that the hard drives were organized the same as when originally provided during their first tenure, and these changes have caused considerable delay in locating certain evidence, if that evidence can be located at all.
12. Additionally, it appears to the defense that the State of Indiana has belatedly disclosed tens of thousands of documents spread through many hard drives. For example, the State of Indiana first turned over the hard drive labeled “FBI case:7C-

IP-2134732” to the defense on 10/31/23 (after Rozzi and Baldwin were off the case); and the State of Indiana turned over the hard drive labeled “ORION” to the defense on 12/7/2023 (after Rozzi and Baldwin were off the case). After Rozzi and Baldwin were reinstated, the State of Indiana turned over those two hard drives to Rozzi and Baldwin on January 30, 2024. While the defense should have had those hard drives on or before December 14, 2022, the defense did not receive those hard drives until January 30, 2023.

13. Most of the items found on the hard drives detailed above are not labelled in any descriptive fashion and many, if not most, of the items (consisting of documents, photographs, and video) have zero context as to what the significance of the documents/video/photographs are. Many of the items are not accompanied by a report or even notes that explain the reason such items are included in discovery. For example, one video shows a man that appears to be dead on a bed being turned over by what appear to be police. There is no context provided as to why that video is included in the massive amount of discovery or what this video has to do with the murders of LG and AW. That is just one example of thousands of examples the defense could cite of evidence with no context of why it is related to this case that the State of Indiana has provided to the defense.
14. Additionally, more recent evidence that the State of Indiana has turned over to the defense through e-discovery contains evidence that is seemingly sandwiched in the middle of completely unrelated discovery. For example, the State produced one e-discovery response received on March 15, 2024, which included a document labelled “Second half of Delphi - 3 supps”, consisting of 341 pages of documents. Most of the contents in this document are reports from Westville Correctional Unit. However, buried among these other reports is a narrative report on page 239 by Detective Vido of the I.S.P. describing a phone call with a Detective Liddell of the Manatee County Florida Sheriff’s Office detailing an investigation of a third-party suspect known by Unified Command in this matter. Det. Liddell told Det. Vido that the Manatee County Sheriff’s Office sent a tech to obtain a pair of a suspect’s jeans that appeared to have blood on them, and that Manatee County Sheriffs would send the items to the Lafayette, Indiana State Police Post. Additionally, Det. Liddell sent an email to Det. Vido with their report and a statement affidavit. Det. Vido noted that both documents were attached to the report. Neither the Manatee County Florida report nor statement affidavit were attached to the document the State of Indiana provided to the defense. The defense has not located any follow up discovery detailing whether the State of Indiana even attempted to test the blood on those pants for DNA and does not know if such a report exists, and if it does, whether it may be found sandwiched in between other discovery. This is just another example of the discovery issues plaguing the defense. This document would not have been found but for someone taking the time to go through this discovery one page at a time.
15. Furthermore, the State of Indiana has sent repeated, piecemeal discovery forcing the

defense to engage in a time-consuming process of reviewing and attempting to search multiple hard drives, flash drives and e-discovery for particular documents the defense believes exist but cannot locate. The State of Indiana has drowned the defense in late discovery disclosures which materially harms the defense team in preparing for trial in a meaningful and cohesive way.

LG's Cell Phone

16. On February 15, 2017, Lieutenant Brian Bunner of the Cyber Crimes Unit of the Indiana State Police conducted an extraction of data from LG's cell phone using a program called Cellebrite. Said information was downloaded via Cellebrite and several reports were generated therefrom.
17. When the defense was unable to locate in discovery the data from LG's phone, it sent an email to prosecutor McLeland on June 17, 2023 requesting a copy of that data from LG's phone as it had not yet been provided to the defense.
18. Clearly, the State of Indiana possessed the 2017 Cellebrite extraction and data on the date they filed charges against Mr. Allen (October 28, 2022) as well as when the defense requested the data from LG's phone in its June 17, 2023 email.
19. Despite being in the state of Indiana's possession for over 5 years when charges were filed against Mr. Allen on October 28, 2022, the extraction and data from LG's phone was not provided to Mr. Allen's attorneys until September 8, 2023, nine months after it was due to the defense.
20. However, even upon receiving the extraction and data from LG's phone, the defense was unable to immediately focus on that important piece of evidence as that evidence was just one small part of a much larger series of evidence dumps that the State of Indiana chose to turn over to the defense in a roughly 4 week period between September 8, 2023 and October 6, 2023 – more than 9 month later than required under the Indiana Rules of Criminal Procedure.
21. Included in the 2017 Cellebrite extraction of L.G.'s phone was a video purportedly taken on February 13, 2017, at 2:13 p.m. containing images of A.W. and a purported suspect. The State of Indiana failed to produce this extraction to the defense until September 8, 2023, nine months later than discovery rules mandated.
22. Additionally, in 2019, Indiana State Police (perhaps with outside assistance) conducted additional extractions of LG's phone utilizing different software programs. These newer extractions have been discussed by Indiana State Police officers in depositions but has not been located in any discovery provided by the prosecutor in any usable fashion. The defense has requested the State of Indiana to provide the locations of these newer extractions. Additionally, a certain extraction

software program called Axiom has been provided to the defense. The defense has been unable to open said extraction but apparently needs some type of special licensed program in order to open the extraction. The defense believes that the State of Indiana has not provided the special program.

23. As part of a reasonable investigation, the defense would have wanted the opportunity to compare the 2017 extraction to the 2019 extraction to see what differences might exist and the reasons for those differences and would have further wanted to exercise that opportunity on or before December 14, 2022, when the State of Indiana was required to turn over all extractions of L.G.'s phone so that the defense had as much time as possible to analyze L.G.'s phone extractions.
24. There is no justification for submitting the 2017 cell phone extraction or any other of the extractions and data nine months after they were due to the defense, especially when the State of Indiana had the evidence in its possession for almost 6 years prior to charging Mr. Allen.

Assistant Rushville Police Chief Todd Click Letter, Report and Evidence

25. Contained in these disclosures was the letter and 83-page report prepared by Assistant Rushville Police Chief Todd Click (hereinafter "Click report"), which was sent by certified mail to Prosecutor Nicholas McLeland on April 28, 2023. The Carrol County Prosecutor's Office signed for the certified letter and report on May 1, 2023. Yet, inexplicably, Mr. McLeland did not disclose this highly exculpatory report, nor the accompanying exculpatory videos and other related discovery, to the defense until September 8, 2023, four months after he received it. Rule 3.8(d) of the Rules of Prof. Conduct, Special Responsibilities of a Prosecutor states that "The prosecutor in a criminal case shall make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense. The prosecution should have turned that material over to the defense immediately upon his receipt of the same.
26. There is no justification for Prosecutor McLeland to delay turning over the Click report for over 4 months after the Carrol County Prosecutor's Office received it.
27. The delay in disclosing the Click report and evidence to the defense has resulted in harm to Mr. Allen. Had the State of Indiana turned over the Click report, videos and documentation in a timely manner, the defense would have:
 - (a) Focused on certain 3rd party suspects much earlier in their representation and would have then investigated this case much differently and much more efficiently;
 - (b) Changed the order of deposing witnesses and would have deposed certain

witnesses such as Elvis Fields, Brad Holder, Johnny Messer, Rod Abrams and Ned Smith, Patrick Westfall and Taylor Hornaday much earlier;

- (c) Asked different questions of law enforcement at their depositions; and
- (d) Been better prepared for trial earlier.

Terms of Mr. Allen's Imprisonment and Early Trial Considerations

28. The fact that Richard Allen remains trapped in solitary confinement in the secured housing unit (SHU) of both Westville Correctional Facility and Wabash Valley Correctional Facility while on pre-trial detention has caused a physical and mental deterioration of Mr. Allen, causing defense counsel to seek a speedy trial rather than risk their client facing further mental and physical deterioration.
29. The fact that the State of Indiana has violated rules of discovery through very late disclosure of large volumes of evidence, including evidence that supports the theories of innocence, has put the defense in a precarious position where it could have (1) kept the October 2024 trial date and then spent the next 6-8 months reviewing late evidence that the State of Indiana had in its possession at the risk of continued deterioration of their client's physical and mental wellbeing OR (2) seek a speedy trial and hope that they can put the case together in spite of the significant discovery violations perpetuated by the State that have put the defense at least 9-10 months behind where it should have been had the State of Indiana followed the rules.
30. As a basis for understanding the impact of solitary confinement for even two weeks on a human being, let alone 16 plus months, the defense cites the United Nations findings on that topic. The United Nation's Standard Minimum Rules for The Treatment of Prisoners (Rules 43 and 44) prohibits the imposition of solitary confinement for prolonged periods (defined as periods of **15 days** or longer). Additionally, per the U.N. Standards, solitary confinement should be prohibited in the case of prisoners with physical or mental disabilities when their conditions would be exacerbated by such measures. (Rule 45). United Nations G.A. 70/175, The United Nations Standard Minimum Rules for the Treatment of Prisoners, p. 13-14 (Dec. 17, 2015).
31. The decision to seek a speedy trial was not hastily made, but only decided after factoring in that Richard Allen has been languishing in solitary confinement for well over a year (approximately 536 days or 521 days longer than allowed by the United Nations, which equates to more than 20 times the standards set out by the United Nations) and continues to suffer both mentally and physically. The defense fears that delaying the trial will result in continued and prolonged mental and physical trauma to Richard Allen, or even worse. Choosing a speedy trial and dealing as best as it can with the fallout from the State of Indiana's late discovery disclosures was and still is

a better option than risking Richard Allen's well-being by prolonging the trial date to October.

Request for Sanctions

32. As a sanction for the belated disclosure of the report drafted by Assistant Rushville Police Chief Todd Click, the defense requests that the jury be instructed that Assistant Chief Click's report contains evidence tending to prove the innocence of Mr. Allen and that the prosecution failed to turn over that evidence to the defense in a timely manner. Further, the defense requests that the State of Indiana be excluded from rebutting any information presented by the defense and contained in Assistant Chief Click's report and accompanying videotaped statements. As a last sanction for the delayed discovery of the Click information, the defense requests that it be able to play the late-discovered video evidence of any witness it chooses to the jury without objection from the State of Indiana, foundationally or otherwise.
33. Indiana Trial Rule 37(2)(b) states that if a party fails to obey an order to provide or permit discovery, the court in which the action is pending may make such orders in regard to the failure as are just, including prohibiting it from introducing designate matters in evidence.
34. As a sanction for the late discovery or non-discovery, Mr. Allen requests that all data from L.G.'s phone, including video from all data extractions, be excluded from evidence.

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35. Additionally, the defense believes that there are multiple documents which still have not been disclosed to the defense, or that the defense cannot locate in the massive discovery provided to the defense. This includes the following:
 - a. On November 4, 2019, the State of Indiana sent a geofence warrant to Google requesting activity from any device in a specified distance and within a specified time of the area in which the bodies of A.W. and L.G. were located. On the same day, it appears Google returned data in a spreadsheet which contains 18,632 lines of data, each relating to a particular device ID. Generally, there is information received in follow up requests which identify subscriber data with device IDs. To date, no such spreadsheet or data has been located by the defense nor can any such information be found by the defense in spite of requests to the prosecution.
 - b. Detective Murphy testified in his deposition that law enforcement had pings and other phone information related to Elvis Fields's phone on 2/13/2017. To date, no such data has been located by the defense or the defense cannot

locate that information in the massive discovery dump, despite good faith efforts to locate said evidence, it if exists.

- c. S.O.P.s for evidence collection and retention for Indiana State Police, Carroll County Sheriff's Department and Delphi Police Department. To date, either no such documents have been provided or the defense cannot locate that information in spite of requesting said information from the State of Indiana.
- d. Chain of custody documents related to the bullet purportedly found near the bodies of L.G. and A.W. To date, no such data has been located by the defense or the defense cannot locate that information in spite of requesting said information from the State of Indiana.
- e. Chain of custody documents related to the sticks, branches and bark found at the scene. To date, no such data has been located by the defense or the defense cannot locate that information in spite of requesting said information from the State of Indiana.
- f. The defense possesses photographs of the bullet purportedly found in the ground near the bodies of L.G. and A.W. and photographs of the bullet at the crime lab. The defense has no other photographs or video of the bullet from any other time. In the event there are additional photographs or videos, the defense requests they be immediately produced. To date, no such photographs have been provided to the defense or the defense cannot locate said photographs in spite of requesting the State of Indiana to point out where said photographs are located the discovery. If no such photographs exist, then the defense would request that the prosecution affirmatively state that no such photographs exist.
- g. Prior to October 19, 2023, the State of Indiana previously provided the defense a number of Power Point presentations which were titled executive briefs or summaries which appeared to be presentations providing information to law enforcement during briefings, including a power point presentation connecting Elvis Fields to Delphi. To date, since getting back on the case, no such data has been located by the defense or the defense cannot locate that information in spite of requesting said information from the State of Indiana.
- h. According to certain law enforcement officers involved in the investigation who have been deposed, members of the F.B.I. Behavioral Analysis Unit (BAU) were present and engaged in the investigation of this crime. References have been made to BAU reports. However, the defense has not been able to locate any reports from the BAU agents or any other law enforcement concerning assessments of the crime scene regarding Odinism,

Nordic culture or paganism, Germanic culture, Runes, magic, cult activity or heathenism. To date, no such data has been located by the defense or the defense cannot locate that information in spite of requesting said information from the State of Indiana.

36. On April 16, 2024, pursuant to the Ind.T.R. 26(f), defense counsel sent a letter to Prosecutor McLeland via certified mail and e-mail requesting the above information (paragraph 36 a-h), or the identification of the location of the information in discovery if it had been previously discovered. Furthermore, defense counsel requested a response by Friday, April 19, 2024.
37. In its April 16, 2024 certified letter to the prosecutor, the defense requested that the prosecutor: (a) explain his reasons for failing to turn over the exculpatory Click information for 4 months when that that *Brady* material should have been turned over immediately to the defense upon receipt; (2) explain his September 6, 2023 email in which he (the prosecutor) made false claims and misrepresentations to the defense concerning the identity of a Purdue professor and law enforcement's attempts to locate said identity, even going as far as telling the defense that the State of Indiana may not be able to learn the identity when at the time of the email, the identity was already known; (3) explain the reasons for dumping 14 hard drives, 5 flash drives, 3 DVD's and certain e-discovery nine months later than required under statute and thereby putting the defense at a distinct disadvantage, especially while dealing with their client's mental and physical health issues which propelled their request for a speedy trial.
38. The defense requests the Court to order the prosecutor to explain his conduct around the issues raised in paragraph 37 above.
39. The State of Indiana has made no substantive response to the discovery deficiencies outlined in the defense's April 16, 2024 letter, nor has the prosecutor attempted to address the issues outlined in paragraph 37 herein.
40. Additionally, in early April, the defense requested the prosecution to provide Brady-Giglio material, if it exists, concerning certain law enforcement officials, both state and federal. The defense provided a deadline of April 15, 2024, for said Brady-Giglio material, then extended the deadline to April 19, 2024. To date the prosecution has failed to provide any Brady-Giglio material, nor has the State of Indiana indicated that no such material exists. The defense believes that at least one key member of law enforcement has Brady-Giglio material that the State of Indiana has still failed to turn over to the defense.

WHEREFORE, Defendant, Richard Allen, by counsel, respectfully requests the following:

- a. That the above documents be produced to counsel for the Defendant by 5:00

p.m. Friday, April 25, 2024.

- b. The State of Indiana be ordered to turn over Brady-Giglio material to the defense by 5:00 pm, Friday, April 25, 2024.
- c. That the State of Indiana be sanctioned for its discovery violations in the following way:
 - i. This Court will instruct the jury that the prosecution received certain evidence that tended to exonerate the defendant on May 1, 2023 but failed to turn over that evidence for over 4 months and that said failure to timely produce that evidence to the defense was a violation of the rules.
 - ii. Permit the defense to play any video that was belatedly produced without objection from the State of Indiana.
 - iii. Prevent the prosecution from rebutting the evidence that Todd Click provided to the prosecution on May 1, 2023.
 - iv. Prevent the prosecution from using any data or information extracted from Liberty German's phone in its evidentiary presentation.
- d. That the prosecutor be ordered to explain in written form his reasons for delaying turning over the Todd Click evidence as detailed in paragraph 38 above; the reasons why he sent an email that is filled with false statements and that misled the defense; and the reasons he failed to turn over a massive amount of evidence, but then chose to turn that evidence to the defense between September 8, 2023 and October 6, 2023 just 4 days before requesting the Court to dismiss defense counsel from the case. This request is made for several reasons, but especially to preserve the record.
- e. For all other just and proper relief in the premises.

Respectfully Submitted,

/s/ Jennifer Auger
Jennifer Auger, #21684-41

/s/ Andrew Baldwin
Andrew Baldwin, #17851-41

/s/ Bradley Rozzi
Bradley Rozzi, #23365-09

CERTIFICATE OF SERVICE & COMPLIANCE

I hereby certify that the foregoing document complies with the requirements of Trial Rule 5(G) with regard to information excluded from public record by administrative rule 9(G). I further certify that a copy of the foregoing has been provided to the following by IEFS on April 23, 2024:

Nicholas McLeland
Stacy Deiner
James David Luttrell
Bradley Rozzi
Andrew Baldwin

/s/ Jennifer Auger
Jennifer Auger

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