

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)

MOTION TO DISMISS FOR DESTROYING EXCULPATORY EVIDENCE

Comes now the accused, Richard Allen, by and through counsel Andrew Baldwin and Bradley Rozzi, and pursuant to the 5th, 6th and 14th 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 exculpatory 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. Richard Allen stands accused of murdering two victims on or about February 13, 2017.
2. Since receiving discovery on this case, the defense has unearthed significant evidence that third parties named Brad Holder and Patrick Westfall were involved in the murders. That evidence is critical to the theory of defense.
3. The defense would incorporate into this motion the contents of a Franks memorandum that was filed with this court on September 18, 2023, which

provides the details of the evidence that supports Brad Holder's and Patrick Westfall's involvement in the murders.

4. In discovery, the defense found a document dated February 17, 2017 that appears to be an FBI report memorializing an interview of Brad Holder. Contained within the document are these words: "The below is an interview summary. It is not intended to be a verbatim account and does not memorialize all statements made during the interview. Communications by the parties in the interview room were electronically recorded. The recording captures the actual words spoken. (Emphasis added).
5. Also, in discovery, the defense found a document dated February 19, 2017, that appears to memorialize an interview of Patrick Westfall. The report itself does not indicate whether the interview was recorded, although the defense would expect that standard procedure would require video or audio recording of all statements.
6. After locating this document, the defense sought a copy of the recording detailed in the February 17, 2017 report so that the defense could listen to the exact spoken words of Brad Holder during his interview, that is vital to Allen's defense, particularly the statements that the author of the document admits were not memorialized in the document.
7. Also, the defense requested a copy of all audio/video of Patrick Westfall's interview that was memorialized in a February 19, 2017 report.

8. On September 8, 2023 the prosecutor communicated in a letter that there were no audio or video interviews of Brad Holder or Patrick Westfall available. Prosecutor McLeland offered no explanation as to why these didn't exist.
9. Before the defense had an opportunity to investigate the reason why these material pieces of evidence were not available, Prosecutor McLeland called for the disqualification of Attorneys Rozzi and Baldwin, as Richard Allen's lawyers. Judge Gull, without a great deal of hesitation said she was leaning toward granting McLeland's request. Ultimately, Judge Gull caused Rozzi and Baldwin to be taken off the case. This occurred *before* Baldwin and Rozzi learned of why crucial videotaped interviews were missing.
10. On January 31, 2024, after being reinstated to the case, the prosecution turned over discovery to the defense, including a letter cataloguing the evidence that the prosecutor was turning over to the defense.
11. Contained on page 5, paragraph 5 of the itemization of discovery are these words that explain Brad Holder's missing videotaped interview and Patrick Westfall's missing interview (if one existed): **"Due to a DVR program error discovered on 9-20-2017 all recordings up to February 20th, 2017, were recorded over. There is no detectible audio found on this drive."** Remember, Brad Holder and Patrick Westfall were interviewed during this very short window (February 14, 2017 – February 20, 2017) within days of

the murders. The videotaped interviews were deleted by the police. It is unknown what other interviews were deleted during the relevant time frames. The destruction of material interviews of key suspects, early in the investigation, demonstrates negligence, if not intentional conduct on the part of the State. How could law enforcement, while investigating the most serious of crimes, record over interviews of material suspects with recklessness or intentionality?

12. As a material part of his defense, Richard Allen is expected to direct the attention toward Brad Holder and Patrick Westfall as being involved in the murders of these two young victims. The evidence will also show that Richard Allen does not know Brad Holder or Patrick Westfall and therefore, that Richard Allen had nothing to do with the murders. This destroyed videotaped interview of Holder and of Patrick Westfall (if it ever existed) was expected to contain evidence that could provide exculpatory and material evidence in support of Richard Allen's defense. If a recording of Westfall was never secured, that too is a purposeful or negligent failure to preserve material and exculpatory evidence.

13. Experienced defense lawyers fully understand the significance of comparing and contrasting the accuracy and credibility of one's video/audio taped statement with that information which is represented by law enforcement officers in police reports or summaries. It is through this process that Richard Allen would have been able to challenge the veracity

of the statements of Holder and Westfall. However, the State's intentional or negligent destruction of the original recordings deprive the Accused of such an opportunity.

14. The State's actions have deprived the defense of the ability to compare Brad Holder's words from February 17, 2017 (only 3 days after the victims were murdered) to the evidence that was unearthed over the next several weeks, months, and years. This would have allowed Richard Allen to determine whether Holder's story was consistent with unknown evidence at the time of Holder's first statement and whether it is consistent or inconsistent with future testimony (be that trial testimony or deposition testimony or statements made to other persons/witnesses).
15. In any criminal investigation the interviews of potential witnesses must be preserved (such as the precise words of Holder and Westfall in their 2017 interviews) because as additional information is developed, reviewing prior statements may reveal inconsistencies or raise questions about other witnesses or other information relevant to an unbiased investigation.
16. Without the actual audio/video that would provide the exact words spoken from Brad Holder's mouth, the accused Richard Allen will never, ever be able to know exactly how many inconsistencies existed in the original statements of Brad Holder and Patrick Westfall when compared to the evidence that was later discovered or future testimony of Holder and

Westfall. Nor can Richard Allen challenge the credibility of Holder and Westfall in light of subsequently discovered evidence.

17. Furthermore, Allen is deprived of the ability to confront either suspect with their own words contradicting any self-serving testimony they may offer throughout the investigation or prosecution.
18. On August 30, 2023 (following depositions in which the State of Indiana and law enforcement learned that the defense believed Brad Holder to be an actor in the murders) law enforcement finally reinterviewed Holder for what is believed to be the first time since 2017.
19. While in 2017 (according to the memorialized report) Brad Holder told law enforcement that he never met Abby Williams who was purportedly dating his son¹, his story changed in 2023 when he talked to law enforcement. In 2023, Holder told the interviewer at the 39:09 mark: “I barely even knew that girl. I met her once.” Therefore, one material and highly relevant contradiction exists. It is therefore plausible that many more contradictions would be available to the defense but for the State’s intentional or negligent failure to preserve all of the evidence.
20. Such negligent and intentional conduct on the part of the police has also resulted in the absence of material evidence which could be exculpatory in nature. This circumstance, in and of itself, violates Richard Allen’s due

¹The 2017 report stated: “Holder never actually met Abby himself.”

process rights. We must however, place such conduct in a greater and more noteworthy context:

21. It has also been discovered that former Rushville Police Officer, Todd Click, reached out to Prosecutor McLeland in an attempt to bring to his attention, the existence of an 85-page report summarizing the investigation that revolved around Brad Holder, Patrick Westfall, and other affiliates. This letter, which landed on Prosecutor McLeland's desk (via certified mailing) on May 1, 2023, was not discovered to the defense until more than four months later, on September 8, 2023. And, only after the defense disclosed in depositions that they were aware of the Odinist ties to the crime scene and investigation. This failure to disclose on the part of the Prosecutor, if not entirely intentional, rises to the level of an untimely failure of disclosure of potentially exculpatory evidence. The failure to disclose sheds further suspicion on the absence of the Holder and Westfall interviews referenced herein.
22. Furthermore, as explained in the Franks Memo, it appears as if law enforcement, and possibly the prosecutor himself, attempted to conceal the identity of a Purdue professor who contradicts the sworn words of Trooper Jerry Holeman and Sheriff Tony Liggett concerning whether the crime scene contained signs of the involvement of an Odinist cult.
23. In more recent discovery, defense also located a prepared search warrant application to AT&T for data contained on Brad Holder's and Patrick

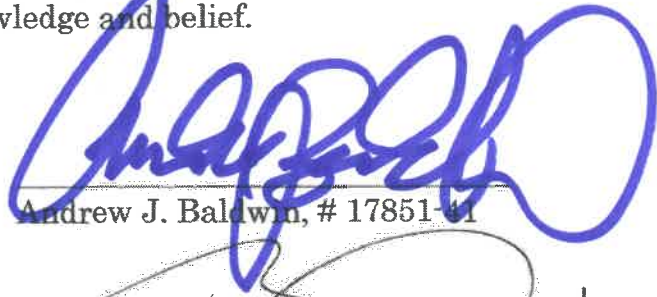
Westfall's mobile devices. Each application states that Holder/Westfall is "a known member of a religious sect, and elements of the Murder have potential religious significance. The information being requested is relevant to an ongoing criminal investigation." There is no evidence that the warrant was ever served. Also, the defense has not located any discovery regarding any data contained on Holder's and Westfall's 2017 phones or any other electronic devices. It defies logic that law enforcement would conduct forensic examinations of so many other phones in its investigation yet ignore the phones of Brad Holder and Patrick Westfall who were viewed as suspects within 3 days of the murders and interviewed by law enforcement (who then prepared search warrants for those phones). These suspicious facts further call into question the circumstances surrounding the destruction of key videotaped statements of Holder and Westfall (if it ever existed) and support Richard Allen's motion to dismiss all charges filed by the State of Indiana.

24. Defendant requests a hearing at which time he can present evidence and make arguments as to why these charges should be dismissed.

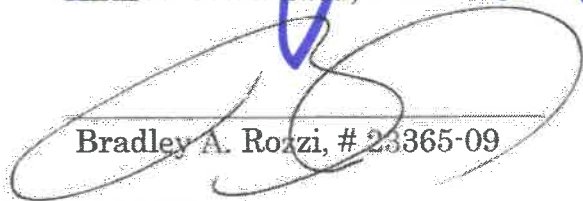
25. The defense files contemporaneously herewith his memorandum in support of this motion.

WHEREFORE, Richard Allen, for reasons cited herein and in the accompanying memorandum, moves to dismiss all charges against him and requests a hearing on his motion.

Comes now, Attorney Bradley A. Rozzi and Attorney Andrew J. Baldwin and swear and affirm under the penalties of perjury, that the facts stated herein are true and accurate to the best of their knowledge and belief.



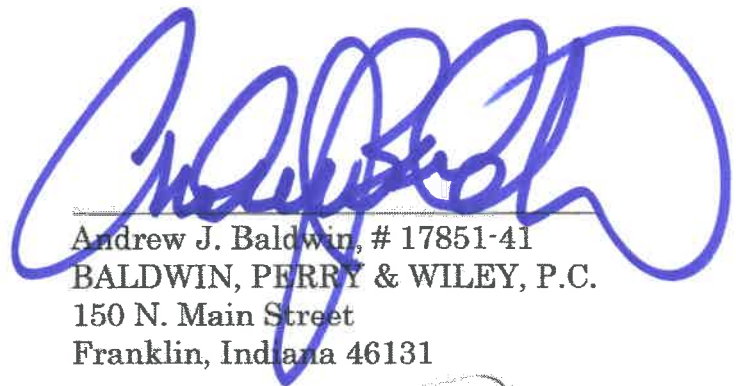
Andrew J. Baldwin, # 17851-41



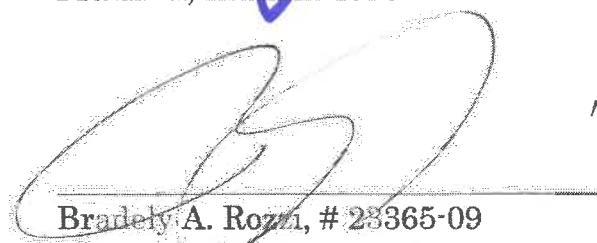
Bradley A. Rozzi, # 23365-09

CERTIFICATE OF SERVICE

I certify that I have served a copy of this document by the County e-filing system upon the Carroll County Prosecutor's Office the 7th day of February, 2024.



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