Appellate Case No. 25A-CR-00591

STATE OF INDIANA	)	IN THE ALLEN SUPERIOR COURT
	)SS:	
COUNTY OF ALLEN	)	CAUSE NO.: 08C01-2210-MR-1

STATE OF INDIANA, Plaintiff,	)
VS.	)
RICHARD M. ALLEN, Defendant.	)

THE HONORABLE FRANCES C. GULL, PRESIDING

The Transcript

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STATE OF INDIANA)	IN THE CARROLL CIRCUIT COURT
)SS:	
COUNTY OF CARROLL)	CAUSE NO.: 08C01-2210-MR-1

STATE OF INDIANA,)
Plaintiff,)
)
VS.)
)
RICHARD ALLEN,)
Defendant.)

RECORD OF INITIAL HEARING

HELD OCTOBER 28, 2022

APPEARANCES

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Defendant appears pro so

THE HONORABLE BENJAMIN A. DIENER.....JUDGE

KAREN ALLEN ..... .REPORTER

PROCEEDINGS

THE COURT: Let's go on the record. This is case number 08C01-2210-MR-1, caption *State of Indiana versus Richard M. Allen*. Are you Richard M. Allen?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Mr. Allen appears in person in the custody of the Sheriff of Carroll County. We're here for an initial hearing in a criminal proceeding. Mr. Allen, we're not here to determine any questions of fact, we're here to explain to you the charges to which you're responding to, the statutes under which you're charged, your rights to an attorney, and your constitutional rights. Before we get to any of that though, the Court notes that on today's date the State of Indiana filed a Verified Request to Prohibit Public Access to a Court Record and the Court also, in response to that petition, filed an – or entered an order, which can be found on the docket, Court Order Sealing Request and Court Records Pending Public Hearing. There are a system of rules called the Indiana Rules of Court Rules on Access to Court Records, and Rule 6 allows for the request to seal records and the records themselves to be sealed pending a public hearing, and so the Court has granted that temporary relief and scheduled a public hearing on November 22, 2022, at 9 a.m. to determine if the requested Court records should be restricted from public access as requested by the State of Indiana. The State of Indiana has the burden of demonstrating that it's entitled the relief it's seeking and the State of Indiana has to post a public notice in compliance with the Access to Public Records Act and the Court's date and time for that hearing should allow for the notice to be posted and 20 days to pass, which is required under the rules. That covers some preliminary matters

that are atypical. The rest of the matters are fairly typical. Mr. Allen, if you'd raise your right hand to be sworn. That's all right. Is he – okay, I see it.

(Defendant sworn.)

THE COURT: I suppose it's worth noting for the record it does appear that maybe you have some protective gear on.

THE DEFENDANT: Yes.

THE COURT: I don't watch – I don't own a bullet-proof vest, but it looks like a bullet-proof vest and some other things, and so the Court notes that the Defendant is in custody and there have been extraordinary matters taken to protect the individual. We're here for an initial hearing. Mr. Allen, do you read and understand the English language?

THE DEFENDANT: Yes.

THE COURT: What is your age?

THE DEFENDANT: Fifty.

THE COURT: What is your date of birth?

THE DEFENDANT: 9/9 of '72.

THE COURT: What are the last four digits of your Social Security number?

THE DEFENDANT: (Indicates)

THE COURT: What is your current valid mailing address, if you have one?

THE DEFENDANT: 1967 Whiteman Drive, Delphi, Indiana 46923.

THE COURT: Are you under the influence of any drug, including alcohol, at this time?

THE DEFENDANT: No, sir.

THE COURT: If, at any time, you do not understand anything I say, will you, please, let me know.

THE DEFENDANT: Yes.

THE COURT: You're charged in count 1 with murder, a felony. Count 1 alleges that on or about February 13th, 2017, in the county of Carroll, state of Indiana, Richard M. Allen did kill another human being, to-wit: Victim 1, while committing or attempting to commit kidnapping of Victim 1. Without admitting to the allegations contained in count 1, do you understand the allegations contained in count 1?

THE DEFENDANT: Yes.

THE COURT: Count 1 charges you under Indiana Code 35-42-1-1. This statute provides, in relevant part: A person who kills another human being while committing or attempting to commit kidnapping commits murder, a felony. Do you understand the statue under which – do you understand the relevant portions of the statute under which you're charged?

THE DEFENDANT: Yes.

THE COURT: You're charged in count 1 with murder, a felony. A person convicted of murder in Indiana may be sentenced to a term ranging from 45 years to 65 years, the advisory sentence is 55 years, and the fine can be imposed not to exceed $10000. Do you understand the range of penalties for a person convicted of murder?

THE DEFENDANT: Yes, sir.

THE COURT: You're charged in count 2 with murder, a felony. Count 2 alleges that on or about February 13th, 2017, in the county of Carroll, state of Indiana, Richard M. Allen did kill another human being, to-wit: Victim

2, while committing or attempting to commit kidnapping of Victim 2. Without admitting to the allegations contained in count 2, do you understand the allegations contained in count 2?

THE DEFENDANT: Yes.

THE COURT: Count 2 again charges you under Indiana Code 35-42-1-1. This statute provides, in relevant part, that a person who kills another human being while committing or attempting to commit kidnapping commits murder, a felony. Do you understand the statue under which you're charged in count 2?

THE DEFENDANT: Yes.

THE COURT: Count 2 charges you with murder, a felony. A person convicted of murder may be sentenced to a term ranging from 45 years to 65 years, the advisory sentence is 55 years, and a fine can be imposed not to exceed $10000. Do you understand the range of penalties for a person convicted of murder?

THE DEFENDANT: Yes.

THE COURT: Those are the two offenses to which you're responding to in this action. We'll now go over your rights to attorney and then your constitutional rights. As you – excuse me – you have the right to retain and be represented by an attorney in this case. You also have the right to proceed without an attorney if you so desire; and if you do not have the money, means, or property to hire your own attorney, an attorney will be appointed to represent you potentially at no cost to you. So there are there are three choices, only two differences, the three choices are hiring your own attorney, being your own attorney, or being examined to see if you qualify for court-appointed counsel;

and so two of those, you still have the services of an attorney, one you hire yourself, the other the Court appoints, and the third being you serve as your own attorney, which I've got three pages of dialogue I have to read to you –

THE DEFENDANT: Sure.

THE COURT: -- to explain how foolish that is before I can allow you to do that, but I also must allow you to be foolish if you have your mental faculties and that's your choice. Do you understand your attorney rights, Mr. Allen?

THE DEFENDANT: Yes.

THE COURT: And do you wish to be examined to see if you qualify for Court-appointed counsel, do you wish to proceed as your own attorney, or do you wish to have time to see if you can hire an attorney of your own choosing?

THE DEFENDANT: I wish to hire an attorney of my own choosing at this point.

THE COURT: You must retain counsel within 20 days, 2-0, because there are deadlines for filing motions and raising defenses, and if those deadlines are missed, the legal issues and defenses that could have been raised will be waived or given up; do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: When the Court found probable cause to support the charging information, it set bond at twenty million dollars cash or corporate surety. This is the first time anyone's heard that, the State included, and so that's what bond has been set at. Defendant's indicated a desire to hire an attorney, which is Defendant's choice. We'll now go over the constitutional rights and then we'll set the matter for omnibus hearing and jury trial. Your

constitutional rights are as follows, Mr. Allen: As a defendant charged in a criminal prosecution, you have certain legal and constitutional rights guaranteed to you. You have the right to a speedy public trial by jury in the county in which the offense was allegedly committed; and the Court is scheduling that trial for March 20th, 2023, 9 a.m. as a first setting. Did you get that date and time, Mr. McLeland?

ATTORNEY NICHOLAS MCLELAND: Yes, Your Honor.

THE COURT: And since it is a first setting, March 20th, 2023, the Court is setting an omnibus hearing for January 13th, 2023, at 9 a.m. The omnibus hearing is tethered to those deadlines that were referenced previously, Mr. Allen, and so counsel certainly must be retained before the omnibus hearing to meet those deadlines; and if you cannot retain counsel for financial reasons, notify the Court at your earliest opportunity in writing and you'll be examined to see if you qualify for Court-appointed counsel at the Court's earliest opportunity. Your constitutional rights are as follows – or continue: We talked about the trial that you're entitled to and it's been scheduled. You will be presumed innocent unless and until the State proves you guilty beyond a reasonable doubt. You have the right to face all witnesses against you and to see, hear, question, and cross examine those witnesses. You have the right to require witnesses to be present at any hearing to testify in your behalf and, at your request, subpoenas will be issued by the Court requiring witnesses to appear on your behalf. You have the right to remain silent and you cannot be required to give any testimony or make any statement against yourself to anyone. You have the right to be heard in your own defense at any hearing or trial concerning the charges against you. Anything you say, however, may be used against you. Do you have any

questions concerning any of the rights that I've advised you of?

THE DEFENDANT: No, sir.

THE COURT: Upon finding probable cause, the Court set bail at twenty million dollars cash or corporate surety. Bail is permitted, even in this type of case. To preclude bail, the State has certain burdens to meet, although initially we could set a no-bail hold subject to review, I suppose. Does the State wish to be heard regarding the issue of bail or release at this time, Mr. McLeland?

MR. MCLELAND: Judge, the State is orally gonna move the Court to consider putting a no-bail warrant on Mr. Allen or consider holding Mr. Allen with no bail. I can follow it up with a written motion, if the Court prefers that, but I am orally moving for the Court to consider that, Judge.

THE COURT: The Court set bail upon finding probable cause, in case the Defendant was unable to be brought before the Court for an initial hearing, and that has occurred. The Court is going to order Defendant held without bail pending a formal bail review hearing, likely with the assistance of counsel, and so you've been explained your attorney rights, Mr. Allen. Pending omnibus hearing or further bail review hearing, you are going to be held without bond, and the issue of bond can be brought before the Court by written motion by either an attorney of your choosing or Court-appointed counsel, if you qualify, if you are unable to hire an attorney of your choosing. Do you understand the process?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. We've got a trial date, we've got an omnibus date. If you're unable to hire an attorney, notify the Court in writing and we'll have a similar hearing as we had today to see if you qualify for Court-appointed

counsel and then, if you do qualify, I image we'll address the issue of bail at a formal hearing, but it's – everything is one step at a time in all cases and even this case. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Anything further today, Mr. McLeland?

MR. MCLELAND: No, Your Honor. Thank you.

THE COURT: Okay. That'll be the order of the Court. We've got the hearing dates and times. You're ordered to appear as ordered, Mr. Allen. That concludes the initial hearing. Thank you.

MR. MCLELAND: Thank you, Judge.

(THIS CONCLUDES THE PROCEEDINGS AT INITIAL HEARING CONDUCTED OCTOBER 28, 2022, IN THIS CAUSE.)

STATE OF INDIANA)	IN THE CARROLL CIRCUIT COURT
)SS:	
COUNTY OF CARROLL)	CAUSE NO.: 08C01-2210-MR-1

STATE OF INDIANA,)
Plaintiff,)
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VS.)
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RICHARD ALLEN,)
Defendant.)

RECORD OF PROCEEDINGS

HELD ON NOVEMBER 22, 2022

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JODIE L. WILLIAMS..... .REPORTER

PROCEEDINGS

THE COURT: We are on the record. Good morning.

ATTORNEY NICHOLAS MCLELAND: Good morning, Judge.

THE COURT: Good morning, ladies and gentlemen. Welcome to Carroll Circuit Court. As Officer Bohde has indicated, my name is Fran Gull. I am a Judge in Allen Superior Court in our Criminal Division up in Fort Wayne, Indiana. I am serving as Special Judge in *State of Indiana versus Richard Allen*, 08C01-2210-MR-1. I was appointed November 3rd of this year by the Indiana Supreme Court by Chief Justice Rush. I will show that the Defendant is here in person with his attorneys, Mr. Bradley Rozzi and Mr. Andrew Baldwin. The State is here by the elected prosecutor, Mr. Nicholas McLeland. We are here today on the State's Verified Request to Prohibit Public Access to a Court Record that was filed with the court October 28th of 2022. Before we begin, I just would like to inform those of you present here in the courtroom of the Courthouse Management and Decorum Order that was entered for this hearing November 22nd that I entered with the court on November 18th of 2022. The attorneys received this order, so they know what to expect, and you've already, ladies and gentlemen in the gallery, experienced some of the directives. Only one entrance to the building was open, you were searched, your bags were searched. If you have your cell phone here in the courtroom, again, please ensure that that cell phone is off, and no other electronics are permitted in the courtroom. I will tell you, consistent with my practice in Allen Superior Court, if your phone goes off, I will have it confiscated and it will be destroyed. Ladies and gentlemen, please remain seated throughout the proceedings as we go through this hearing this morning. If you must leave, please, do so quietly and, please, do so with the

least amount of disruption possible. Once the hearing is concluded, I would ask that you remain seated until the parties and the Court have left the courtroom and courtroom security indicates that you may leave. Mr. McLeland, on October 28th of this year, the Carroll Circuit Judge granted your Verified Request to Prohibit Public Access to a Court Recorder and ordered the charging information and the probable cause and other court documents sealed and deemed to be a confidential court record pending public hearing. That order scheduled November 22nd at 9 a.m. to be that public hearing. Under the Indiana Rules of Court, the rules on access to court records that were effective January 1 of this year, the burden is on the State of Indiana to demonstrate by clear and convincing evidence that the requirements of Rule 6, paragraph A have been satisfied. Since we are proceeding under the Indiana Rules of Court, the Rules of Access to Court Records are not applicable. The Access to Public Records Act under Indiana Code requires the State to proceed under the Rules of – Trial Rules, so we will be proceeding under that; therefore, no public testimony or comment is necessary, as that is only required under the Access to Public Records Statute Title 5. So, gentlemen, are you ready to proceed?

ATTORNEY BRADLEY ROZZI: Yes, ma'am.

MR. MCLELAND: Yes, Your Honor.

THE COURT: All right. Mr. McLeland, you may proceed.

MR. MCLELAND: Thank you, Judge. As the Court mentioned, the State did file a verified request to keep the records confidential and specifically the probable cause affidavit and the charging information. The State's proceeding under Rule 6; and what Rule 6 says, Judge, is, in extraordinary circumstances, if the State showed that public interest will be substantially

served by prohibiting access or the access will create a substantial risk of substantial harm to the State or other persons or the general public or that a substantial prejudice – prejudicial, sorry – substantial prejudicial effect to on-going proceedings cannot be avoided without prohibiting access the Court can restrict access to those records. As the Court said, the burden's on the State. I must show by clear and convincing evidence – clear and convincing evidence – that at least one of those requirements are met. Doesn't have to be all of them, Judge, just one. And then, if the Court does decide to keep the probable cause and charging information confidential, the Court's required to do so in the least-restrictive means necessary. So, Judge, in that effort, I have decided to present a couple of exhibits for the Court to consider. I've presented those exhibits to the Court and I want to go over those exhibits, Judge. I've presented those to the Defense, I have in court today, as well. Exhibits – what's been marked as State's Exhibits 1 and 2, Judge, those are affidavits from – Exhibit 1 is ISP Detective Jerry Holeman, and Exhibit 2 is from the Carroll County Prosecuting Office investigator Steve Mullin. They've both been involved in the case for several years. They have intimate knowledge of the details of the case. They both believe, in their affidavit, that releasing information would jeopardize the on-going investigation. The next exhibit, Judge, is State's Exhibit 3, that's a letter from Becky Patty, that is L.G.'s guardian. She's in favor of keeping the records confidential, as well. And then, Judge, Exhibit 4 is an online petition that circled not only the county, the state, and the nation. There's over 40,000 signatures on that petition, also petitioning the Court to keep the records confidential. The State's moving to admit those four exhibits, Judge.

STATE'S EXHIBITS 1 THROUGH 4 OFFERED

THE COURT: Any objection from the Defense?

MR. ROZZI: No, ma'am.

THE COURT: Jodie, I'll have you mark those as State's Exhibits 1, 2, 3, and 4 as reflected by Mr. McLeland, please; and show those admitted without objection.

STATE'S EXHIBITS 1 THROUGH 4 ADMITTED

MR. MCLELAND: Thank you, Judge. Judge, there's not a lot of precedent for a hearing like this. I've searched high and low for case law, talked to several people, there's just not a lot of precedent. This is an unusual situation, an extraordinary circumstance, if you will. The State is confident in the evidence that's been presented in both the probable cause and the charging information, we're confident of that evidence and of the contents, but I am concerned. I have two concerns: The continued investigation and then protecting the witnesses involved in that case, Judge, those are my two main concerns. It's my job as the prosecutor, in part, at least, to enforce the law in an effort to protect the community. It is the public interest for me to enforce that law to protect the community. The first concern talks about the integrity of investigation, and I think that falls under the public interest factor and consideration for the Court. This is still a very on-going investigation. Our goal is to find anyone else who was involved in this heinous crime. That is the public interest, to find anybody else involved and get justice for A.W. and L.G. We still get tips every day, tips come in every day. We have good reason to believe that Richard Allen is not the only person involved in this, that there may be other actors involved, that's why we left the tip line open, that's why we left the tip e-mail open. The question becomes, at least in the State's mind: Is it more important to release the details

of the investigation to the public or more important to keep those confidential in order for the investigation to continue and find anyone else that's responsible? The public has an absolute right to the information, I don't deny that, Judge; but at what cost? This rule was designed for extraordinary circumstances where the Court can limit that access. The State believes that this is one of those extraordinary circumstances. Keeping the public – keeping the record confidential serves the public interest. It puts the investigation in the best position possible to determine if anyone else was involved. It is in the best interest of the public that the investigation find anyone else involved. The second part that I'm concerned about, Judge, is the safety of the witnesses and other people involved in the case. We have seen the extraordinary lengths the media has gone to in order to get the next soundbite or the next clip for their broadcast. We are a society of people that has to know right now. Social media, Facebook, Instagram, we want all the information right now, immediately. The media has went to great bounds to interview anybody involved with the case: Mr. Allen's wife, Mr. Allen's old neighbors in Mexico, they've staked out his house. They've went to these extraordinary circumstances to get anything they can involved in this case. Even by Richard Allen's own admissions, a letter to the Court asking for a public defender, they forced his wife to move and abandon their home. We also know the prior judge, Judge Diener, recused himself, by his own admissions to an e-mail to the Court judicial staff, he had concerns for his safety, for his staff due to the facts surrounding the arrest, so much to the point where he felt it was necessary to get out of the case, Judge. And so the State believes these are real concerns, real concerns for the witnesses and the people involved in this case. Look at the amount of security we have here today, Judge. We don't have

a lot of security in Carroll County, but I can tell you, my tenure here, I've never seen the display of law enforcement that we have here today. This is a highly publicized case. We've had countless meetings over the couple months – or past month about security, how to get Mr. Allen in here, all for the safety of everybody involved in this case, Judge, and that should extend to the witnesses and should extend to the other people involved in this case. The Court can imagine the media pressure, intimidation, and evidentiary issues that may arise if the name of the witnesses are released and those witnesses are subject to constant harassment and bombardment by the media. The State also has concern that they may be interviewed on the six o'clock news and their testimony will be taken as such, that causes evidentiary issues. Some of the witnesses were juveniles at the time, they are now 19 and 20, in their first and second year of college. They need to be able to focus on what they're doing in school and not be worried about the constant harassment from media. And I'll remind you, Judge, some of the people – some of the witnesses are still juveniles, and so there's concerns there. Again, Judge, the burden is on me, I have to show by clear and convincing evidence, and so the gauge starts at the presumption that the information should be released and I have to convince you to move that ticker far enough to keep it confidential. And so, Judge, I looked up "clear and convincing"; we don't deal with it a lot, we deal with beyond a reasonable doubt, and so I looked up the jury instruction for clear and convincing. The jury instruction says the facts supporting the claims are highly probable. Look what we have here today, Judge, the chaos, the amount of attention this has drawn, the concern for safety. Defense counsel, the State, everybody has had a concern for safety for themselves, for Mr. Allen, for everybody involved. Went to extraordinary lengths

to protect everyone here today. We can't look at this case like any other case. This is an extraordinary case, it is by its nature. The State believes it's important, and allowed under Rule 6, to keep the PC and the charging information confidential, not only to protect the integrity of the investigation, but also to protect the witnesses in the case, Judge. So the State respectfully would ask the Court to continue to keep the PC and the charging information confidential; however, if the Court deemed that those items should be released, the probable cause and the charging information, I would ask the Court to consider redacting the witnesses' names to protect their identity and the people involved in this case. In an effort to do so, Judge, I have a redacted charging information and probable cause that I'd like to submit to the Court for their consideration. It has the names of the witnesses and the people involved in the case redacted, Judge. And if the Court's so inclined, at this time I'd like to at least admit that to the Court not as an exhibit, but as for consideration for the Court to consider a redacted version, as opposed to releasing the entire document.

THE COURT: Any objection, gentlemen?

MR. ROZZI: No, ma'am.

THE COURT: Okay. Thank you. I won't mark this as an exhibit. This will be my work product, so it's not available to anybody other than myself and my staff.

MR. MCLELAND: Thank you, Judge. So, Judge, I'm about done, I wanted to leave you with one last thing. As I said, I did a lot of case law research to find any support of my motion or anything that is not in support of my motion. I came across a case, *Brown versus State*, Indiana Supreme Court case. It's from

1969, it's old, but I wanted to read you a quote from that case, 'cause it kind of hit home dealing with the circumstances that we have today, and the Court says this, "The right of the news media to fairly and accurately report the news, the right of the defendant to a fair trial before an impartial tribunal, free of influence of generated prejudice and inflamed passion of the community, and the right of citizens to fully comprehend and analyze the administration of the court system are elements necessary to the attainment of justice – elements necessary to the attainment of justice – if any one of these rights fall, the rest will surely fall and the term 'justice' will become hollow and meaningless in our constitutional system." Judge, again, the State's asking that you keep those things sealed. I appreciate the time here in court today and I appreciate you allowing the State to have entered exhibits and make an argument. Thank you, Judge.

THE COURT: Thank you, Mr. McLeland. Mr. Rozzi.

MR. ROZZI: Thank you, Nick. Judge, you know, let me just start by saying that Mr. Allen in this case seeks transparency. It seems to me that, you know, in the normal course of operations in our courtrooms around the state, that that's what we get, that's the norm, and really there's no reason in this case to sway from that. I would point out first, if I could direct the Court to the pleading that was filed on October 28th, 2022, the Verified Request to Prohibit Public Access to a Court Record, this pleading, if you look at it, is deficient on its face, and I would direct the Court specifically to the fact that Rule 6(A) specifically says, "A verified written request to prohibit public access to a court record may be made by any person affected by the release of the court record." It requires a verification. And a verification, in our business, is a – that word is a term of art, as you know. I.C. 1-1-4-5 codifies the very essence of what a

verification is. And what you're gonna find – and I would direct the Court to *Smith v. King*, 7 – excuse me, it's a little dark in here, frankly – 716 N.E.2d 963, it's a 1999 case involving an election dispute. Specifically, headnote three of that case addresses what a verification is and what the minimum standard to meet that verification is and it says, "When applied to pleadings, verified means supported by oath or affirmation in writing. Pursuant to Trial Rule 11(B), it's sufficient if the Petitioner simply affirms the truth of the matter to be verified by affirmation or representation in substantially the following language" and it says, quote, "I/we affirm under penalties for perjury that the foregoing representations is or are true", end quote. The essential purpose of a verification is that the statement be made under penalty of perjury. And it cites *Austin v. Sanders*, 492 N.E.2d 8, 1986. This document contains no verification which references that under – that it's been signed under the pains and penalty of perjury, so I think it's facially deficient and I would ask the Court to consider that before we even get to the rest of this. And, of course, I can offer up the case to the Court, but I know you have the citation, so we should be good. Moving on, we get to the Access to Public Records statute, I.C. 5-14-3-1, open-door law, all those kinds of phrases that get thrown around in our practice, and what I would say to you is that, you know, I actually – when I took a look at this statute, I was actually surprised to find that the very first section, 5-14-3-1, the first chapter, codifies public policy, and I think that's extremely rare in our practice when you actually see a statute that, essentially, codifies the public policy. And I'm not gonna read the whole thing, Your Honor, you've probably already looked at it, but the first sentence says, "A fundamental philosophy of the American Constitutional form of representative government is that government is the servant of the people and

not their master." It sounds like something Thomas Jefferson wrote, frankly, but more importantly, you get to the last sentence and it says, "This chapter shall be liberally construed to implement this policy and place the burden of proof for the non-disclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect." It says two important things: One, liberal construction, which means it pertains to many documents in our judicial system; and two, most importantly, it places the burden of proof on the State in this case, which Mr. McLeland has already acknowledged, and that burden of proof is, of course, the clear and convincing standard. So I think the point I'm trying to make here is that the Legislature felt so strongly about the disclosure of public records that it actually codified the public policy, I just think that's really unique, and one of my counterparts that I practice with would say "That's pretty cool." It's just not the kind of law that we're used to seeing. So moving on, you know, this Rule 5 is kind of the driving force here actually in this access to court records arena that we're in, and the Rule 5 basically says that, you know, exclusion up front is – or, I'm sorry, that transparency up front is where the Court ought to be with this and only under extraordinary circumstances should the Court deviate from that. And that word "extraordinary" is the second word in Rule 6 too, by the way. And what you see, if you read through these rules, is that there are a lot of terms that are used that just really bolster and beef up that burden of proof and I think they just speak to how important it is that we have transparency in this community – in this system, I should say, and that's no different in this case. So let's get to Rule 6. Mr. McLeland hit on a couple of the bullet points, one being that the public interest is substantially served by prohibiting access – again another strong word

"substantially" – disclosure of the records will create a significant risk – again, a significant risk – of substantial harm to the prosecutor, other persons, or the public, disclosure will work some prejudicial effect on the on-going proceedings. So all strong words, again, consistent with the clear and convincing standard. Let's touch on the first one specifically, will the public interest be substantially served by limiting access, and Mr. Allen's position is no, it will not, it's exactly the opposite. This is a case where the crime occurred over five years ago, it's taken almost six years for an arrest to be made. Time and public resources have been exhausted over that scope of time, those are almost impossible to quantify, and any secrecy involved in this investigation, in my opinion and Mr. Allen's opinion, has done nothing but increase the hype and the public interest. I mean, it's – the idea that the public has known very little is what has caused, you know, all this attention to occur; and so, by continuing that pattern or allowing the State to maintain this confidentiality, I think we're just perpetuating the problem. My suggestion is, is that the opposite would happen if you unseal the records, and that is to say that the public can see the truth regarding the facts that support the allegations in this case, they can see where the expenditure of their tax dollars has gone. And, you know, Mr. McLeland talks about the second prong here and that the release of the records will create a significant risk of substantial harm to the prosecutor, other persons, or the public. You know, at this point, I don't want to sound flippant, but what's the risk? I mean, we've all just walked in here today, you know, with security and the right safeguards in place and we're fine. You know, there are a few juveniles referenced in the affidavit and I do understand that that may play a little bit larger role in the Court's opinion today, just trying to protect

those individuals and, you know, frankly, Mr. Allen – the Defense doesn't have any problem with redacting some names of witnesses and things of that nature that do – that might serve a purpose, but, you know, I haven't heard and nor have I seen in any of these exhibits that were introduced by the State any actual references or appreciable threats that have occurred. You know, in other words, we didn't hear John Doe or, you know, Jane Doe come in here today and tell you that they received a phone call from an anonymous person last week with a – you know, a threat on their life. I haven't heard an officer say that he or she has been – their lives have been threatened. I think a lot of this is just driven by the social media aspect of this. You can get on Facebook any day of the week and find somebody threatening somebody, not that I don't take those things seriously, but, you know, it's like fast food, most of that doesn't have a lot of quality to it, it's just quantity. And I haven't heard anything, any evidence today, other than some argument about the law, which actually supports the idea that there are any appreciable threats on anybody involved in this case. And so, you know, any suggestion at this point regarding this second prong, that there'll be some significant harm to the public or people involved I think is just conjecture and speculation. Moving on, you know, there's a practical problem here, too, and the practical problem is if the Court orders these records to remain confidential, we're gonna be forced to walk into this courtroom and delicately dance through all the factual scenarios in this case because the public's gonna be sitting behind us, and that doesn't seem to make any sense, it seems to make things more difficult. You're gonna have people reading between the lines, you know, all this stuff's gonna go down in print and then you're gonna have all these – you know, the public trying to decipher what we did and didn't say and what

we're inferring and, you know, it makes our job way more difficult. I would argue that it's gonna make Mr. McLeland's job more difficult. You know, how do we talk about law and facts in a bond hearing? We've got a bond motion pending. How do we talk about law and facts in a suppression hearing? How do we talk about law and facts in a hearing on change of venue? All those things which are pretty customary in cases like this. The public would be sitting right here the whole time and so it just doesn't make any sense practically, either. You know, and I'll just finish with this, you know, the burden again, we've talked about the clear and convincing evidence. I haven't gone back and counted, I didn't, you know, do any internet searches before I came in here today, but over the last five years I have some very ingrained memories of State Police press conferences in this community, I don't know if there were two or four or six or eight or ten, I frankly don't know, it seemed like a lot. And, you know, in my mind, for the State to come and – for the State to be a part of that process of having public press conferences, releasing composites, things of that nature, and asking the public for help, and then to turn around today and suggest to the public, "We don't really want you to see what's here," it's kind of like talking out of both sides of your mouth. I mean, that's the way I view it and I think that's the way Mr. Allen views it and, you know, we think that the standard is extremely high here, clear and convincing evidence. Nick gave me a little crash course on what the *Black's Law Dictionary* says. What I know about clear and convincing evidence is, for those of us that practice in civil court from time to time, it's the standard that we employ when we're trying to terminate somebody's parental rights, which i think is pretty darn high. And to say that the State has met that burden in this case I think is just not accurate. None of these documents that you've seen have

any information in them which suggests anything with detail, that somebody's in harm's way or that some other suspect is, you know, out there and needs to be apprehended. It's just conjecture and we would ask that you unseal the records, if you will, for lack of a better phrase, and let's move on with this. Thank you.

THE COURT: Any response, Mr. McLeland?

MR. MCLELAND: No, Your Honor.

THE COURT: Well, gentlemen, I really appreciate your excellent oral advocacy. I will take the petition under advisement to review the exhibits that have been submitted, the case law that's been argued by counsel, and issue a written ruling in due haste. I know that this case has generated a lot of public interest and I know that the attorneys and Mr. Allen deserve this Court's attention as quickly as possible. I know with the holiday coming up, that's – will not interfere with my ability to review my notes and the exhibits and issue a written ruling. Mr. Rozzi, you and Mr. Baldwin did file a motion or a petition to let to bail. Can we set that for hearing while we're all here today –

MR. ROZZI: Yes, ma'am.

THE COURT: -- so that we can get that matter resolved? Are you looking at this year, as well, or –

MR. ROZZI: I'm thinking January. Is that –

THE COURT: You're thinking January?

MR. ROZZI: Yeah.

MR. MCLELAND: Yeah, that's fine, Judge. I'm out the first week in December and then we have a jury trial starting here December 12th, so December's kind of –

THE COURT: Okay.

MR. MCLELAND: -- shot from the State's perspective, Judge, so I'd be looking at January, as well.

THE COURT: Okay.

MR. ROZZI: I think my biggest concern is just, frankly, giving Mr. McLeland's office some time for him to get us some of the basic discovery and us being able to have a little time to sort through it.

THE COURT: I was gonna ask you about that.

MR. ROZZI: Yeah.

THE COURT: I know that the prosecutor's indicated it's pretty much an open-file discovery policy here in Carroll County.

MR. MCLELAND: It is, Judge, yes.

THE COURT: You've received what? Anything?

MR. ROZZI: Well, just the PC affidavit.

THE COURT: Okay. So you don't have any of the formal discovery from the State of Indiana?

MR. ROZZI: Yeah, I don't know what the volume's gonna be like, so I don't want to get ahead of ourselves on the scheduling side. I wouldn't even have a problem, Andy, early February even, is that reasonable or am I –

ATTORNEY ANDREW BALDWIN: No.

MR. ROZZI: Late January/early February?

MR. BALDWIN: I would like some time to –

THE COURT: Are there any particular days of the week that work better? I'm looking at the first week in February then, if that's what you all are talking about. This is my calendar for the next two months.

MR. BALDWIN: Judge, I will be in a murder trial down in southern Indiana the first week of February, so that would not work for me.

THE COURT: So that won't work for you. Okay. What about the second week? I'm in a murder trial every week, just so you know.

MR. BALDWIN: Yeah. Let's see here –

THE COURT: So the second week in February?

MR. ROZZI: I'm more open than, it sounds like, than the Court. Second week of February's fine with me.

MR. BALDWIN: I – not knowing how long that trial is gonna last, if we're gonna do the second week, I'd prefer – like the 10th? It should be completed by then. I'd hate to continue it.

THE COURT: Okay. I was looking – so you're looking at the first full week? The 10th?

MR. ROZZI: Friday?

THE COURT: You're saying the 10th?

MR. BALDWIN: Right.

THE COURT: I don't want to jam you up. I mean, if that's not a good day, we can go to the second – the week beginning February 14th.

MR. BALDWIN: I actually would prefer that, 'cause I'd like to come out of that trial and have time to prepare for –

THE COURT: Okay.

MR. BALDWIN: -- the hearing. I appreciate it. Of course, I also have another murder trial scheduled that week, but I don't think that's gonna go, so –

THE COURT: What about February 17th? Will it take all day? Is

that fair? Half a day?

MR. ROZZI: I think we should set the day aside.

THE COURT: The day?

MR. ROZZI: Just to be – until we get off and running here and we have a better idea of kind of how quick the lawyers work and that type of stuff.

THE COURT: Okay.

MR. ROZZI: I'm okay on the 17th. Nick?

MR. MCLELAND: That's fine.

MR. BALDWIN: Yes.

THE COURT: All right. February 17th. Can we start like at 10? That way, my staff and I don't have to get up that early. My intent is to have as many hearings here in Carroll Circuit as possible. I have no idea what the calendar looks like for the sitting judge.

MR. ROZZI: Sure.

MR. MCLELAND: We don't have anything on that date as of now, Judge.

THE COURT: Okay. As of now.

MR. MCLELAND: I have the court calendar. Now, that, obviously, is subject to change, but right now there's nothing set for that day.

THE COURT: Okay. So we could set it February 17th, 2023, at 10:00 a.m. And I'll make sure that Mr. Allen joins us, I'll get a transport order. All right. I know that we have a omni hearing in January. There's already been a trial setting, and it was my understanding when I spoke with the judge before – after his recusal, that that trial setting is a first setting –

MR. MCLELAND: That's correct, Judge –

THE COURT: -- which –

MR. MCLELAND: -- when the prior – sorry to interrupt the Court. When the prior judge set it, he did set it as a first setting in March.

THE COURT: Okay.

MR. ROZZI: I'd say we just let it sit for now, till we –

THE COURT: Sit?

MR. ROZZI: Yeah. I mean, we're not setting aside the week yet; right? We just have the date on the calendar?

MR. MCLELAND: So do we need to change the omnibus date to the let bond date hearing date?

THE COURT: I'm happy to do that if you'd like. Would that be easier for you?

MR. MCLELAND: I think that makes sense, but –

MR. ROZZI: I would – yeah, I think it's a good idea.

THE COURT: Okay. So cancel January 13th and we'll just do February 17th as a bond hearing and an omnibus hearing. And that's satisfactory to counsel, Mr. Rozzi?

MR. ROZZI: Yes, ma'am.

THE COURT: Okay. Is there anything else that we need to do on the record, Mr. McLeland?

MR. MCLELAND: I don't believe so, Judge, no.

MR. ROZZI: Nope.

THE COURT: Mr. Rozzi?

MR. ROZZI: No.

THE COURT: All right. Thank you, gentlemen.

MR. ROZZI: Thank you.

THE COURT: I appreciate your advocacy.

MR. MCLELAND: Thank you, Judge.

THE COURT: Ladies and gentlemen, as I indicated, if you would all remain seated until the parties and Mr. Allen have been removed from the courtroom.

(THIS CONCLUDES THE PROCEEDINGS HAD ON NOVEMBER 22, 2022, IN THIS CAUSE.)

STATE OF INDIANA	)	IN THE CARROLL CIRCUIT COURT
	)SS:	
COUNTY OF CIRCUIT	)	CAUSE NO.: 08C01-2210-MR-1

STATE OF INDIANA,)
Plaintiff,)
)
VS.)
)
RICHARD ALLEN,)
Defendant.)

RECORD OF PROCEEDINGS AT

HEARING HELD JANUARY 13, 2023

APPEARANCES

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THE HONORABLE FRANCES C. GULL .....JUDGE

JODIE L. WILLIAMS..... .REPORTER

PROCEEDINGS

THE COURT: Well, good morning, everyone. We are here on *State of Indiana versus Richard Allen*, 08C01-2210-MR-1. I'll show the Defendant's here in person with counsel, Mr. Rozzi and Mr. Baldwin. The State is here by the elected prosecutor, Mr. McLeland. We are here – originally, we set this hearing on the Defense Motion for a Change of Venue. I would just remind everyone that the Court has again issued a management and decorum order for this hearing. At the conclusion of the public portion of the hearing, ladies and gentlemen, I will clear the courtroom. There is an ex parte matter that we need to attend to with myself and counsel for the Defense. The Defendant will remain. The prosecutor and all of you will be asked to leave the courtroom. I think my security detail, which is Officers Bohde and Tinkel, will remain in the courtroom. I believe the gentlemen that have escorted Mr. Allen into the courtroom will also remain in the courtroom. At the conclusion of this hearing then, we will take up the ex parte motion. Since the scheduling of the hearing on the motion for change of venue, I have added, on my motion, the State's Motion to Prohibit Parties from Disseminating Information that was filed by Mr. McLeland on November 22nd of last year. Additionally then, I set the Supplemental Motion for Discovery that was filed by the Defendant on December 30th of last year and the State's response to that motion, which was filed on January 12th, so we need to take care of those things. I appreciate – those of you in the audience, I appreciate your patience. I know the hearing was scheduled for ten o'clock. I met with counsel in chambers to discuss procedural issues and to kind of get a – figure out where we're at with everything. So I did grant the State's Motion – I know we keep calling it a gag order, it's the motion to prohibit folks from discussing

things. I did grant that motion pending this hearing. We've had the opportunity to discuss in chambers the professional responsibility of counsel, the requirements that they are permitted, under the Rules of Professional Responsibility, to discuss procedural matters, potentially to discuss the upcoming bail hearing that's currently scheduled for February 17th, and that is basically the extent of what the attorneys are permitted to discuss with members of the media or the public. I would remind those of you that are in the courtroom that are family members and potential witnesses in this matter, you are also covered by the gag order and I would ask that you respect the gag order and not discuss with the media the facts of the case, your testimony. Anything that would be inappropriate for the attorneys to discuss would also be inappropriate for you to discuss, and I appreciate your continued honoring of that order. Is there anything else on the gag order that we need to discuss on the record, Mr. McLeland?

ATTORNEY NICHOLAS MCLELAND: No, Your Honor.

THE COURT: Gentlemen for the Defense?

ATTORNEY BRADLEY ROZZI: No, ma'am.

THE COURT: So our – my recitation of our discussion adequately has been reflected in this record?

MR. MCLELAND: Yes, Your Honor.

THE COURT: Thank you.

ATTORNEY ANDREW BALDWIN: Yes.

THE COURT: I know the discovery in this case is more than voluminous, it's extraordinarily voluminous, and there's been – I know that the State has an open-file policy basically, where you give everything to the Defense.

I appreciate that, I'm sure the Defense appreciates that; but I know, as well, there are just thousands of pages of discovery. What I would like to do, gentlemen, is I know that you've been working very diligently with each other to discover information back and forth. Mr. McLeland, you've provided, so far, everything that you have; and I appreciate that you've been categorizing that information for the Defense. I know that the Defense has the opportunity then to re-categorize it as you see fit for your purposes. So rather than rule or do anything on the Supplemental Motion for Discovery that was filed by the Defense and the State's response thereto, I would like to take that under advisement to give counsel the opportunity to work as diligently as you have been working. I have shared with you some of my thoughts about the discovery and, again, I appreciate that the State has been very diligent in providing information to the Defendant; and I trust when the Defendant acquires information, it will be as diligent in providing that to the State. Is that an accurate statement, Mr. Rozzi and –

MR. ROZZI: Yes, ma'am.

THE COURT: -- Mr. Baldwin?

MR. BALDWIN: Yes.

THE COURT: So is there anything further we need to discuss about discovery or does that reflect what we discussed in chambers?

MR. MCLELAND: In the State's perspective, that reflects what we discussed in chambers, Judge. Thank you.

THE COURT: Mr. Rozzi, Mr. Baldwin?

MR. ROZZI: Agreed.

MR. BALDWIN: Yes.

THE COURT: Okay. Very good. All right. Then we have the motion for change of venue that was filed by the Defense. Thank you for the good advocacy on behalf of Mr. Allen, Mr. Rozzi and Mr. Baldwin. I think it's patently clear from the filing that you provided to the Court that it would difficult, if not impossible, to find a jury here in Carroll County, Indiana, that would be not involved in some fashion with the underlying investigation or the facts of the case. Mr. McLeland, it's my understanding that you agree with that, that it would be difficult, if not impossible, to find a jury here in Carroll County?

MR. MCLELAND: Correct, Your Honor. I believe that's accurate.

THE COURT: Okay. The statute, however, gives the Court the opportunity, rather than completely venue it to a completely different county, that the statute does give the Court the opportunity to recognize that we cannot, in fact, select a jury in Carroll County from Carroll County citizens, but that we could go to another county and select a jury and bring them back to Carroll County, so that the trial could be conducted here in Carroll County. Is that fair?

MR. MCLELAND: Judge, that is fair, yes. I believe that's the case.

THE COURT: Okay. Mr. –

MR. ROZZI: Agreed.

THE COURT: -- Rozzi? Okay. I think it's really important that we try this case here in Carroll County. I think all of the witnesses are here, the families of both the victims, as well as Mr. Allen, friends are all here. I think the expense to witnesses for both the Defense and the State would be extraordinary if we were to take this case outside of this county. So my preference would be to acknowledge that we cannot get a fair jury here in Carroll County, but rather, go to another county and select a jury from another county and bring them to

Carroll County. I have my financial coordinator here with me, as well as my court executive and director of court operations. They've been looking at other potential areas that we could select a jury from. I know we had some brief discussions in chambers about some particular counties that we might go to. I know that you've had the opportunity, Mr. Rozzi and Mr. Baldwin, to speak with Mr. Allen about that. And what I would like to do is to ask counsel to notify the Court within a week of – from today's date if you have agreed upon a county that we can go to to select a jury. So I would accept an e-mail from you gentlemen that you have agreed upon a county, and then I can contact whatever county you have agreed upon to see if they are able to accommodate us. Is that acceptable to the Defense?

MR. ROZZI: Yes, ma'am.

THE COURT: Mr. McLeland?

MR. MCLELAND: Judge, yes; and again, it's important for the State's perspective to try the case here and I'll work diligently with Defense to attempt to find a different county to pick the venire from, Judge.

THE COURT: Okay. All right. I think, other than the ex parte, is there anything else that we need to discuss on the record, Mr. McLeland?

MR. MCLELAND: Judge, I just want to confirm the February 13th date is for the let bail hearing and to our – from the State's perspective, I don't know of any other motion to date that we need to discuss on that day, and I want to confirm that with the Court.

THE COURT: Actually, it's February 17th.

MR. MCLELAND: The 17th, I'm sorry. Today's the 13th. February 17th, yes, Judge, at –

THE COURT: Friday the 17th, and that –

MR. MCLELAND: -- ten o'clock; is that correct?

THE COURT: Yes.

MR. MCLELAND: Okay.

THE COURT: Ten o'clock and that will be here. That's also our omnibus date.

MR. MCLELAND: Right. Okay.

THE COURT: I know that we have a trial scheduled in March that was scheduled at the initial hearing back in October. I can't see that happening. I mean, you're both looking at me like, "There's no way. Not gonna happen in October [sic]."

MR. ROZZI: I think we can – can we just have an agreement that – an understanding that we'll address that at the bail hearing?

THE COURT: At the bail hearing?

MR. ROZZI: Yeah. I think we're all on the same page about –

MR. MCLELAND: I'm satisfied with that, Judge.

MR. ROZZI: -- realistic –

MR. MCLELAND: I don't anticipate it happening in March, I think that's ambitious, but we can address at the omnibus hearing, Judge, that's fine.

THE COURT: Ambitious, that's a good way to put it. Okay. So nothing then else from the State?

MR. MCLELAND: No, Your Honor.

THE COURT: Mr. Rozzi?

MR. ROZZI: No, ma'am.

THE COURT: Okay. Then, the bond hearing, the omni, and a

discussion about the feasibility of the trial date will happen Friday, February 17th at 10 a.m. here in Carroll Circuit Court. I will get a transport order to make sure that Mr. Allen is brought back to us from his current incarceration. Is there anything else that we need to chat about, gentlemen?

MR. MCLELAND: No, Your Honor.

MR. ROZZI: No.

THE COURT: No? All right. Thank you very much. We will, then, proceed into the ex parte, and I know that the gentlemen ringing the courtroom from the law enforcement will escort all of you out of the courtroom, including the State of Indiana.

MR. MCLELAND: Thanks, Judge.

THE COURT: Thank you.

(THIS CONCLUDES THE PROCEEDINGS HAD AT THE HEARING HELD JANUARY 13, 2023, IN THIS CAUSE.)

STATE OF INDIANA	)	IN THE CARROLL CIRCUIT COURT
	)SS:	
COUNTY OF CIRCUIT	)	CAUSE NO.: 08C01-2210-MR-1

STATE OF INDIANA,)
Plaintiff,)
)
VS.)
)
RICHARD ALLEN,)
Defendant.)

RECORD OF PROCEEDINGS AT EX PARTE

HEARING HELD JANUARY 13, 2023

APPEARANCES

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THE HONORABLE FRANCES C. GULL .....JUDGE

JODIE L. WILLIAMS..... .REPORTER

PROCEEDINGS

THE COURT: All right. The officers that are here in the courtroom, gentlemen, would you stand – and the two gentlemen in the back of the courtroom, can you hear me okay?

UNIDENTIFIED OFFICER: Yes, ma'am.

THE COURT: Okay – and the officers with the Allen County Sheriff's Department, would you all, please, raise your right hands to take an oath. Do you and each of you solemnly swear or affirm under the penalties for perjury that you will not communicate in any form or fashion to anyone the contents of this ex parte hearing, so help you God?

(Bailiffs sworn.)

THE COURT: Thank you. And, gentlemen, do you all understand you may not speak to anyone, including each other, about this hearing or the information divulged in this hearing? Violations of your oath and this order to be silent is punishable as contempt of Court with up to 365 days in jail and a fine of $1000. I just say that so that you understand the importance of keeping the information that you hear in this courtroom here today to yourselves, and I trust that you will follow the oath. Thank you, gentlemen. Mr. Baldwin, you may proceed.

ATTORNEY ANDREW BALDWIN: Thank you, Judge. These are very rare, so I don't want to like – I'm happy to produce witnesses, but I also wanted to see how much short circuit we can do, if any. Basically, this is not any surprise to anybody. At this stage of the game, we're really desperate for an investigator, that's the main thing that we're asking for. I have witnesses that can testify about how much work they put in as on a volunteer basis, so that –

that's gonna be one topic. Another topic is less important and it is, it is taxing for our staffs a little bit and we will – we're going – I think going to ask for some consideration of the possibility of money for time that our staffs are taking. That's – my paralegal is here to talk about that, if needed. And then, we – we're not prepared, because we're still going through the evidence, but we're – we anticipate in the future we'll need another hearing related to ballistics experts and, depending on how the other pieces of evidence go, you know, perhaps other things; but right now, we're desperate for an investigator. So I'm happy to put on evidence that I think will help the Court understand kind of the dilemma we're in.

THE COURT: Okay. You may proceed.

MR. BALDWIN: Okay. Matt Hoffman.

(Witness sworn.)

THE COURT: Go ahead.

MR. BALDWIN: Thank you.

DIRECT EXAMINATION OF MATTHEW HOFFMAN

QUESTIONS BY MR. BALDWIN.

Q State your name for the record.

A Matthew Hoffman.

Q And spell it, spell your last name for the record.

A H-O-F-F-M-A-N.

Q All right. I'm just gonna kind of lead you here, since it's quasi-informal, but basically you start – you volunteered to help out on this case; is that correct?

A Yes.

Q You're a retired – tell – give the Judge just some brief background.

A I'm a retired firefighter. I've been in the public safety realm for about 30, 35 years. I currently work as a contractor with the State of Indiana, part of Homeland Security, and Indiana National Guard.

Q Now, at the time that you offered your services – and we've known each other for a long time – you were between a job and a job that was gonna be starting in the future, in that little window?

A Yeah, in between two contracts, one ended and the other one had yet to start up.

Q So tell the Judge a little bit about what I have asked you to do or what Brad and I have asked you to do and what you've been doing.

A Yep. So we get tips and leads from the general public, and they asked me if I would do my best to follow up on those leads and tips and interview the people who were providing information, either phoned in, e-mailed in, texted in.

Q We've had some mail come in too, as well, packages?

A Yes, yes.

Q How many different people have, roughly would you say have phoned in, e-mail, texted, or sent in packages?

A My estimate would be that we're getting close to a hundred at least.

Q And out of that, how many have you returned phone calls to or contacted, communicated in some way?

A Fifteen.

Q All right. And kind of go through the process with the Judge so she understands.

A So what I do is the in – we kind of break down of what we think the tip is going to be about based on the message that was left and how credible we think

some of that information sounds, we prioritize it, and then I do phone interviews. And I record the date, the time that I'm making the phone call, and then I have a phone conversation; and those phone conversations last anywhere from five to ten minutes all the way up – the longest one I had was almost two hours.

Q And what is the purpose of those phone calls?

A So usually the people will give me their background on what they think they have that's interesting or that we would find interesting, and so they offer potential suspects, they offer potential pieces of evidence, things like that.

Q What, roughly, percentage have – of the 15 that you've actually talked to do you think are – they're – we don't ever need to talk to that person again versus yeah, we need to follow it up?

A Of the 15 that I've completed to this point, I would say we probably should be taking seriously and following up with at least half of those, if not more.

Q And can you give an idea to the Judge of what "follow up" means to you with those people; what would that kind of look like?

A Anything that they've – oh, what it would look like in terms of we've contacted them again, either in person or telephone conversations.

Q Can you think of a particular one that's of interest, one of the people that have contacted us that you think, "This is really, really important that we follow up"? Can you think of one in your brain right now?

A Yes.

Q Okay. I want you to tell the Judge what would you expect, beyond just talking to them, that that follow up is gonna entail in terms of legwork?

A This particular person that I had a con – one of the longer conversations with, that was the one that was almost two hours, they live in Missouri, and the

individual that they were concerned about also lives in Missouri, but travels frequently to the area. And the person is a family member that called, is a family member, and they've noticed that each time that this family mem – this member of their family is out of town, there seems to be some sort of an event that happens in the area that they're visiting that makes the news and so they're like, "This is just happening way too often, and I've got receipts of where this person has been" and such, so they had quite a bit of information and they had quite a bit of evidence to back up what they were saying.

Q Okay. And that's what I wanted to get to. I mean –

A Yes.

Q -- it sounds kind of crazy, you know, that, you know, we're getting some crazies out there that are calling –

A Yep.

Q -- and – but this is one example, just one, that caused you, like, okay this is not –

A Yes.

Q -- this is worth investigating?

A Yes.

Q How many hours of volunteer time do you think you were putting in per week or per day?

A When I was between contracts, I was probably putting upwards of 30 to 35 hours a week. Since my new contract was picked up, it's been scaled back significantly to maybe about five hours a week, at best.

Q You're not an investigator; is that correct?

A That's correct.

Q All right. And do you think that an investigator could – you would be able to communicate with an investigator to follow up on those leads?

A Yes.

Q And also, we still have roughly 80 to 90, maybe even more, people that we've got to contact; is that right?

A Yes. And there are people who send in regular bits of information as they come across it, so –

Q Good point. The number of people versus the volume –

A Yes.

Q -- of information is (inaudible).

A The volume of information is more than the people, yes.

Q And we got a chance to follow up – like, if somebody sent in a multitude of pieces of information, have you had an opportunity to even follow up on this individual?

A No, sir.

Q We do have a collated spread – not a spreadsheet – a piece – information where all of these people and their phone numbers and –

A Yes.

Q -- contacts are? That's part of the purpose; yes?

A Yes.

MR. BALDWIN: All right. I have no other questions. The Judge may have questions for you though.

CROSS EXAMINATION OF MATTHEW HOFFMAN

QUESTIONS BY THE COURT.

Q What's your hourly rate?

A I'm a volunteer.

MR. BALDWIN: Yeah, Judge, we're not expecting him to be a detective. I – his – the purpose of his testimony is really just to give you an understanding of what we're dealing with –

THE COURT: Okay.

MR. BALDWIN: -- in one area.

THE COURT: All right. Thank you, sir. You may step down.

THE WITNESS: Thank you.

MR. BALDWIN: Call Sarah. She's super nervous.

THE WITNESS: Public speaking is why I'm not an attorney.

(Witness sworn.)

DIRECT EXAMINATION OF SARAH EASTER

QUESTIONS BY MR. BALDWIN.

Q State your name for the record.

A Sarah Easter.

Q Sarah's a couple different ways of spelling; A-H on there or no?

A H at the end, yes.

Q E-A-S-T-E-R?

A Yes.

Q Okay. What do you do?

A I am your paralegal.

Q Since we've gotten on this case, can you kind of give the Judge an idea of additional work, if any, that you've had to perform.

A A lot of the people that call into our offices with the tips and information, I speak with them and get a general idea of what it is that they want to share

with us, along with their contact information. Some of those are quick calls, some of those can take a while.

Q You had a lengthier one yesterday.

A Two days ago, I was on the phone for about 30 to 40 minutes with someone, just getting general information from them. And then, I work on the spreadsheet that was discussed, entering everything in so that we can keep track of it, as well as any mail that comes in, e-mails that we receive, I catalog all of it and save it to our online – or our system of keeping files.

Q Is it fair to say that every single day we're getting e-mails?

A Yes.

Q Multiple e-mails?

A Yes.

Q Beyond that, we've got this first round of voluminous discovery. What's your kind of role with that?

A I will be going through and cataloging it, naming it appropriately for our office, so that we know what it is, and putting it in a – our system, just kind of cataloging it and sorting it so it's easy for you to – Andy to access.

Q And I know it's impossible really to say how long that is going to take, but knowing that there's gonna be even way more than we already have, how many hours per week would you guess that just cataloging the evidence is gonna take?

A On top of the other duties that I have with other cases, I would guess for this I'd be doing anywhere between seven to nine hours a week just working on getting that in our system.

Q Okay. And – but that's – at some point in time, that will end, but –

A Yes, yeah.

Q And how many hours, even if it's an hour, would you say you're dealing with, per week, with –

A With just the calls?

Q -- calls and e-mails?

A Probably two to three hours.

MR. BALDWIN: That's all the questions I have.

THE COURT: All right. Thank you, Ms. Easter. You did great.

MR. BALDWIN: Judge, I have – from a – one thing you may want to know is I have a – is how much does it cost for an investigator. We've been talking with a couple; the range seems to be from $60 at the low end to roughly $75. There's kind of that – there's kind of a small range of these.

THE COURT: Per hour?

MR. BALDWIN: Per hour.

THE COURT: Sixty to 75 an hour? Okay.

MR. BALDWIN: Per hour. I think the rest of what I'm going to be talking – or we're gonna be is just argument. Well, I don't even know if it's argument, just telling you about kind of what we need; is that okay?

THE COURT: Okay.

MR. BALDWIN: You know, I've been doing this almost 30 years, I'm in my 29th year. I can't – I've had some big cases with lots of evidence and lots of discovery that is manageable. Maybe it wouldn't be manageable in another law firm, but ours is pretty well organized and I feel like we can handle a lot. We cannot handle this. Between me and Brad, it is – it's – every day, I mean, even his staff gets stuff that they send to us and then we put it into our spreadsheet. And there – I will say that there are – just like Mr. Hoffman said a second ago,

there's lots of suspects out there that we're getting information about, and we're very cautious – I feel like we are, at least – to – and when we talk to be careful about not omitting people. Like this Missouri business, for example, it seems pretty far fetched to me that some guy from Missouri's driving out, yet there's what I would generally label receipts out there about is this a possibility; and as a defense lawyer, the one thing that you do not want to do is learn 20 years from now, when Rick is sitting in prison, that we found a guy – DNA or whatever has turned up – and you didn't – "Oh, that was the guy that we kind of brushed off." So what we need is an investigator to really – that really is an expert in, you know – in talking to people and vetting, more so than Matt. I mean, Matt's a – he has some experience in that realm, but not the type that we need. And I appreciate his help big time, 'cause we – without him, we would be really way behind. But I feel like if we had even one investigator full-time, 40 hours a week, that's still gonna be – that's still gonna be a lot of work for them, because not only do they have to go through the vetting of the information that we're getting, that's just one part of this thing. Then they have to follow up on all that stuff by going out and talking to people or finding – and following up on that stuff. And then, by the way, we have discovery, so – and we haven't even looked at all of the witnesses that are being – all of their statements and going out and talking to these people from the State's discovery, so it's multifaceted. We really need a full-time investigator. I mean, I'm not gonna sit here and say – we could use five full-time investigators, but initially, just to kind of catch up to where the State is, since they've had five years of working on this; but we're asking, for now, for one full-time investigator. You know, when I've asked for this kind of thing in the past, different – you probably have your own way of doing it. Just for me it's

– normally what'll happen, in some courts at least, is "Here's your first limit." It's kind of like you have X amount and, once you hit that, then, you know, you'd come back and ask and explain why you're spending the taxpayer money beyond of that or need more money. Whether it's that or just authorizing a 40-hour investigator a week or whatever, we need something and we need that, you know, as soon as possible and appreciate the Court's consideration on that. As it relates – I'm not as – you know, as far as office staff and stuff, I mean, I think part of it is, when you take on a gig like this, your office is involved in it. You shouldn't really, to some degree – I've never asked for my office staff on cases where I've been asked to be a special – or a defense lawyer or public defender, when judges have made that request in the past. I just don't ask for my staff to be billed for. I do think it's – it's been – busy as both of our practices are, it is a request that I would ask that we can bill – it doesn't have to be a whole lot, but just something, knowing that we've got a little bit of extra money coming in, just – as Sarah said, she has a lot of other obligations and so she's staying till six, seven o'clock at night sometimes so that she can finish her work on or try to stay updated on the Allen case. So I think my request would be, you know, maybe five hours a week. And I didn't even ask what you're – I don't even know what we pay you.

MS. EASTER: Like my hourly rate? I'm not sure.

MR. BALDWIN: She's paid a salary, so – I think $15 an hour. I think we pay more than that, but I don't – I'm very cognizant, I'm a taxpayer, I don't like people coming in and taking advantage of a big pot out there. That's not my style, I don't like it, and I – but as a small business owner, it's still – it's something that could help us defray some of it. I think Brad probably feels the

same way; I'll let him talk to you about that. And then, Judge, the other stuff, as I said earlier, we're gonna – once we get into this, we know we're gonna need a ballistics expert, but that – we're gonna save that for a different day. We still have a lot of people to talk to. We have experts that we've each used in the past on ballistics, so we're gonna determine that and try to find the best person that makes sense financially, as well. So is there anything you want to say?

ATTORNEY BRADLEY ROZZI: Judge –

THE COURT: Mr. Rozzi.

MR. ROZZI: -- if I could, I have a few comments. I mean, obviously, we're working and, you know, Andy's office and my office are 70 miles apart, so I'm not exactly sure what's going on physically there other than what he's telling you or I assume from some of the dealings here; but I've got two burdens on my staff, to kind of characterize this. One of them is the need to have Max Baker around who's sitting here and Max has worked diligently on this venue issue. You can see I've got binders in front of me that are fully tabbed and ready to go today, which is fine, we didn't need them, but Max was responsible for a lot of the information that was included in the original request to move this case that you saw. And Max is gonna continue to be involved because I need him to be in another facet and that is that as this – these truckloads of discovery come in, you know, rather than me, at my hourly rate, clicking and pointing on every little link, I think it's a little bit more efficient to have Max, in some cases, go through some of that, those circumstances, and try to vet out what really matters and what doesn't because, in fairness, I want to say we got an Excel spreadsheet from the State – well, I'll tell you, when they delivered the original packet of discovery to me, when we picked it up here, Nick – it was all on a thumb drive, the first

phase, which was amazing to me that we're doing that, it was a 256-gigabyte thumb drive. But he also handed my paralegal a stack of papers that I'm gonna say is 150 to 200 pages and it is Excel spreadsheets, line by line, probably six font, you can't read them without a glass to look at it, you can't read them, and there's probably 200 pages of line items of various things, whether it be tip line information or discovery, photographs or whatever. I mean, it's just item by item of every possible thing you could fathom in this case, but there's a stack of papers that's – it's probably three, four inches tall. And that's just one round. So Nick, essentially, was handing me the Excel spreadsheets of just the numerical items in various forms, formats, whatever, just to give you some idea of the volume. I mean, it's – there might have been 75 lines on each of those sheets, maybe a hundred. You know, some of that, again are, you know, a lot of duplicate photos and things like that; but my point is, is that I think it's cheaper for me to have Max spend ten hours a week – and I'm paying him – well, he's an intern, but I'm paying him $10 an hour. You gotta understand he's also driving two and a half hours to come back to my office from Bloomington to work when I need him in the office, and he's been there quite a bit lately. So I'm paying him ten bucks an hour. You know, he's interested in this profession, so there's a benefit there, but I think that's reasonable, just thinking about the gas, so that he can get back to the office. And I certainly don't want a lot of this information floating around down in Monroe, in Bloomington, either, you know what I mean; like I don't want to give him a file. I'm even a little concerned about electronic information flying back and forth. And I will say, in that respect, that I'm gonna transition to my staff, my paralegal, whose name is also Sarah with an H, Sarah Luxenberg is her last name. She's not here today. She, I would suggest, is

putting in about ten hours extra a week on this case, very similar to what Sarah Easter is doing; but one of the things that my Sarah is doing is she's on the road. Nick has chosen to give us the discovery in person, as opposed to e-mailing us the stuff, which again, I'm not opposed to right now; but she's been making trips over here to get information and then we're delivering that down to Indianapolis, to either Noblesville, his office in Noblesville, or whatever, the parking lot meeting, you know, one of those deals, exchange. So there's also the additional cost of those expenses that come with this. And again, we haven't even really gotten into vetting discovery. One of the rounds of discovery has been catalogued. I think the outline that I saw was 15 pages and I don't – maybe more than I have; actually, it's right here in front of me. The point is, is that, you know, I'm thinking about ten hours a week. I'm not trying to undercut anybody here, but I think I'm paying Sarah $20 an hour or $19-something maybe, just to give you some idea of what the market's like in our area. She's also been with me for 23 years, as long as I've been doing this, so that's where she is. But those are things that, you know, that I'm experiencing. And then, the one thing I do want to comment about, these tips and stuff, which is probably the most frustrating part of this case, honestly. I was telling Rick that I decided one Saturday morning I was gonna call a couple of those people back, and I dialed the first number that I had and some woman in Cincinnati and, I mean, I'm telling you for – heck, for 45 minutes. Now, I could have hung up the phone, but I just felt, at that point, I needed to hear what we were dealing with to get an idea. And there's literally – he said we had a hundred so far. The State has thousands of those catalogued and they've given those to us in Excel format, so we have their catalogue of five years of people that have called in and name and

number and all that kind of stuff. Do I have any intention of calling those people back? Clearly not, but it's there and the State has talked to those people. And I would say finally, the idea of – Andy talked about, you know, other suspects or that kind of – you know, that idea that there's somebody in Missouri traveling here, we're not – this isn't necessarily us trying to create that narrative as much as it is vet out the State's narrative, because the discovery itself, I'm reporting to you, has a whole panoply of that in it. You know, they – and I'm using this term loosely – they have – the State has its own laundry list or long list of suspects, I mean, it's that kind of case, and they've got slideshows – I'm looking for the word, not slideshows, but –

MR. BALDWIN: PowerPoint.

MR. ROZZI: PowerPoint, thank you. They've got PowerPoint – you know, PowerPoints made of these suspects. And so some of it is just us kind of doing similar work that they were doing, but just to give you some idea of the scope of this stuff. And look, when I took this case on, I knew that this was coming. I certainly didn't understand the scope of it until I get in the middle of it, but I'm not sitting here suggesting that I had no idea that Sarah and my office was gonna be burdened by it, but I'm just sharing with you the reality of lawyers who want to work in this field and also need to continue to maintain a practice, that's what we're dealing with. And so I'm just sharing that with the Court as an officer of the court.

MR. BALDWIN: One last thing, Judge: Matt Hoffman has been doing – really, I appreciate so much how he's helped, and if we could continue to use his help on a part-time basis, I – but I wouldn't want him to continue on without pay, so I would also ask the Court to consider, as part of it, like $15 an

hour up to maybe ten hours a week or something like that if the Court thinks, based upon what – everything we've said and represented is – would make that a necessity. But again, I'm mindful, I am. I'm a taxpayer myself, I understand money, so –

MR. ROZZI: And I've been working with Max, too (inaudible) and so he and I have been working together remotely, so – but, you know, he's been part of assisting me in some of the early goings and I think that's gonna continue,

THE COURT: Anything else?

MR. ROZZI: No, ma'am.

THE COURT: Okay. Having done a couple of death penalty cases, several life without parole cases, I'm, unfortunately, quite familiar with the needs that you have and I have no problem approving funds. I think I told you this earlier, I'm gonna meet with a member of County Council to find out what the funds availability are. I'd like you – I don't have a problem with reimbursing Mr. Hoffman and giving you money for that, paying for your paralegals, paying for a private investigator, I have no problem with any of that. I'll issue an order detailing my comments to you about – what is Max's last name?

MR. ROZZI: Baker, B-A-K-E-R.

THE COURT: I've got Sarah Luxenberg.

MR. ROZZI: Yes. L-U-X-E-N-B-E-R-G.

THE COURT: N or M?

MR. ROZZI: E-N.

THE COURT: N as in Nancy?

MR. ROZZI: Yes.

THE COURT: Okay. I've got Ms. Easter's name. Easter, common

spelling? Like Easter, happy Easter? And Mr. Hoffman. I don't – do you have an investigator in mind or you've just kind of thought about the range of money that you would need for an investigator is 60 to 70 bucks?

MR. BALDWIN: Right. We've got a couple of – I've talked to Brad and –

THE COURT: Okay.

MR. BALDWIN: -- he's in charge of that part of it.

THE COURT: So we've talked about an investigator; your paralegal, Ms. Easter; Mr. Baker; Ms. Luxenberg, your paralegal; and some additional money for Mr. Hoffman, if he continues, as well. Okay. I guess my thought would be – I know in your motion you ask to be able to just submit those directly to the Auditor. I'll speak with the Auditor and find out what her thoughts – her or his, I don't know who it is – what their thoughts are. Leslie Owen is my financial coordinator, very familiar with processing invoices, very familiar with dealing with –

MR. ROZZI: Did you say Owen.

THE COURT: Owen, Leslie Owen. Ross now, I'm sorry, now it's Leslie Ross, R-O-S-S, she's the financial coordinator for Allen Superior Court. I'll probably have you submit your invoices directly to her so that she can make sure that they're in proper form and get them to the Auditor, that way we – when I was appointed special judge, I know that the process here in Carroll Circuit Court is a little bit different than what I'm familiar with. The court staff has been handling a lot of that – well, handles all of that for the Court.

MR. ROZZI: Karen Allen.

THE COURT: Yeah. Which is probably not appropriate in this

situation; so if I can deal with it directly with my coordinator and the Auditor, I would prefer to do that, so that we don't have an issue with any of the court staff talking about things or sharing information that should not be talked about nor shared.

MR. ROZZI: And I appreciate that. I actually hadn't thought about that. I talked to Karen a month ago about the mechanics of all this –

THE COURT: Yeah.

MR. ROZZI: -- and she was very helpful, but –

THE COURT: Yes.

MR. ROZZI: So do you have contact information for Ms. Ross that – I mean, like an e-mail or, you know, something?

THE COURT: I will get that to you, yes. I will get contact information. She's here someplace, I think she's waiting.

MR. ROZZI: So I think that what – if I'm not mistaken, what you're saying is just any of the financials that arise from this case, we just push them to her?

THE COURT: Correct.

MR. ROZZI: Okay.

THE COURT: Correct. Okay. Anything else?

MR. ROZZI: No, ma'am.

MR. BALDWIN: So even our own – we have not billed yet as attorneys, so we should submit to Ms. Ross?

THE COURT: Yes.

MR. BALDWIN: Okay.

THE COURT: Yes. Okay.

MR. ROZZI: Judge, I –

THE COURT: Yes?

MR. ROZZI: I do want a – I do have a question about that. You know, on the billing statements, I know that these will be scrutinized, you know, I mean, I just – I'm preparing for that. That's not normal. When I get into these cases, typically I'm working with the PD's Office in Lafayette. We send the bill over and, generally, you know, it gets paid and that's it. But, you know, obviously, the detail and what you put into your statements, you know, does speak to what you're doing from a work-product standpoint.

THE COURT: Yes.

MR. ROZZI: And so I've always tried to tow the line between, you know, enough but not too much kind of thing; you know what I'm saying?

THE COURT: Yes.

MS. ROZZI: And so I just want the Court to be conscious of that, that that's kind of – those are the things that I'm thinking about when I'm submitting these.

MR. BALDWIN: And if you need more detail, 'cause a lot of mine might be just "reviewed discovery"; if you need "reviewed discovery related to a certain topic" or something, happy to do that, too.

THE COURT: Okay.

MR. BALDWIN: So just – of course, you know that you can do that, I'm not trying to tell you that you can. Feel free to yell at us or whatever –

THE COURT: I don't yell.

MR. BALDWIN: -- need detail or whatever –

THE COURT: I don't yell.

MR. BALDWIN: -- need more detail.

THE COURT: All right. Thank you, gentlemen.

MR. ROZZI: Thank you.

THE COURT: Thank you, lady.

MR. BALDWIN: Thank you.

THE COURT: Okay. Jodie, you can go off the record.

(THIS CONCLUDES THE PROCEEDINGS HAD AT THE EX PARTE HEARING HELD JANUARY 13, 2023, IN THIS CAUSE.)

STATE OF INDIANA	)	IN THE CARROLL CIRCUIT COURT
	)SS:	
COUNTY OF CARROLL	)	CAUSE NO.: 08C01-2210-MR-1

STATE OF INDIANA, Plaintiff, VS. RICHARD ALLEN, Defendant.	)))))))

RECORD OF HEARING

HELD FEBRUARY 17, 2023

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JODIE L. WILLIAMS..... .REPORTER

PROCEEDINGS

THE COURT: Well, good afternoon, everybody.

MR. GEORGE IJAMES: Brad Rozzi and Nick.

ATTORNEY ANDREW BALDWIN: Good afternoon.

ATTORNEY NICHOLAS MCLELAND: Good afternoon, Judge.

THE COURT: All right. So is Mr. Ro – oh, Mr. Rozzi, there we go.

MR. IJAMES: I can pin a certain person, Judge.

THE COURT: I'm sorry?

MR. IJAMES: Do you want me to pin somebody in the middle?

THE COURT: Doesn't matter. Okay. Can we unmute everybody, please. Yeah, I'm not sure if Westville will allow him unmuted. I'm not sure, 'cause that's on their end.

MR. IJAMES: I think – well, looks like he's looking.

THE COURT: Okay. He's checking at the door, apparently. Okay. Hey, Mr. Allen, we can hear you now.

THE DEFENDANT: Oh.

THE COURT: We can hear you now. Thank you.

THE DEFENDANT: Sorry.

THE COURT: Okay. No, that's okay. That's fine. I know, originally, you were muted and we couldn't hear you, so I know you were clamoring for somebody to help, but our IT person got you unmuted. All right. We are here on *State of Indiana versus Richard Allen*, 08C01-2210-MR-1. I'll show that Mr. Allen is here with Mr. Baldwin and Mr. Rozzi. The State is here by Mr. McLeland. With the consent of the parties, we are doing this by Zoom so that we can address the Defendant's petition to let bail. Mr. Rozzi, you filed a motion to continue that

hearing, as well as a motion to continue the trial. You may proceed, sir.

ATTORNEY BRADLEY ROZZI: Judge, you'll have to forgive me, the audio (inaudible) – (audio feedback) – I'm getting a lot of feedback.

THE COURT: George?

MR. IJAMES: Is that from the jail or us?

THE COURT: Maybe from the jail.

MR. ROZZI: Okay.

THE COURT: Okay.

MR. ROZZI: Yeah, I'm still getting (inaudible) – (audio feedback). Judge, I think you asked about our motion to continue.

THE COURT: Yes.

MR. ROZZI: Not only (inaudible) – obviously, the volume of discovery is (inaudible) between the State and the Defendant is significant, that's an understatement. Mr. McLeland has worked (inaudible), as have we, to arrange for things, and I think there's five or so hard drives, with several terabytes of information –

THE COURT: What is that?

MR. ROZZI: -- that – can you hear me up there?

THE COURT: Hold on just one second. Can you mute Mr. Allen? I don't know if it's coming from there. All right, Mr. Rozzi, try again.

MR. ROZZI: Go ahead.

THE COURT: There we go.

MR. ROZZI: So it's – there, that's a little better.

THE COURT: Okay.

MR. ROZZI: The State had offered up, you know, some discovery

on Monday and we just haven't had a chance to really even to dig into that at all at this point, and there's just no way, practically, that we can move forward with a bond hearing without at least having, you know, reviewed on a basic level the discovery that's been offered up. And I'm guessing it's probably gonna take us, you know, four to eight weeks to catalog this information and, essentially, just get some idea of what we're dealing with. There are some hardware challenges and some software challenges that come with that. I think we were informed by Mr. McLeland's staff that it's gonna take over a day to just download each of the disks and the – or the hard drives independently. And I do think that there are a few of the hard drives that I understand may have some problems – they're having some problems with the audio. Those are things that Mr. McLeland's office and my office can work through, but, you know, we've also had some discussions about the possibility of taking some depositions, so I would anticipate, to kind of get to the heart of the matter, that we would want to set this bond hearing or this bail hearing out probably into May –

THE COURT: Okay.

MR. ROZZI: -- maybe mid-May might be appropriate.

MR. BALDWIN: Even June.

MR. ROZZI: Maybe June.

THE COURT: Okay. And, Mr. McLeland, you've indicated – what is your position?

MR. MCLELAND: Judge, I have no objection to that. I understand the Defense's motion. I filed a response to that motion not objecting to continuing the let bail hearing. I also have no objection to continuing the trial date, as well, Judge.

THE COURT: Okay. 'Cause I know we had talked earlier about discussing the March trial date and bond hearing. Obviously, if we're looking at a bail hearing sometime in May or June, clearly we're also – and you've also asked, Mr. Rozzi and Mr. Baldwin, to continue the trial. I anticipated that that's where we were going to be with this, so I don't see that we really have any issue with continuing everything. Do you wish to – give me some dates, mid-May and June.

MR. BALDWIN: I wish I'd brought my glasses.

MR. ROZZI: Judge, you know, I guess it's kind of one of those cases where, for the most part, I'm willing to make accommodations to the Court's schedule, knowing all the logistics. I don't have anything – I know I have one case that would matter that would require, you know, us to meet a – set aside a whole week, I think that's in July or August though. I'm pretty good with any dates that can happen in May through most of June.

THE COURT: Okay.

MR. MCLELAND: Judge, this is Nick McLeland. I'll just inform the Court that the – the State's – the Court's trial calendar, our trial weeks for May and June are the week of May 15th and then in June, June 5th, and I believe that covers us for both those months in terms of what weeks are set for jury trials in Circuit.

THE COURT: Okay. So those are weeks that are not available for you and the Court?

MR. MCLELAND: Those weeks I'll be in trial in Circuit Court, and the Circuit courtroom will be used for trials those two weeks, Judge.

THE COURT: Okay. I've got Jodie looking now for a Friday in –

without those dates in May or June, Jodie.

MR. MCLELAND: Judge, the court reporter for Circuit Court also told me that the Judge – Judge Diener's gone the week of June 26th, and so I know that's a little bit later than what Defense had recommended, but that week is wide open in terms of hearings in Circuit Court.

THE COURT: Okay.

MR. BALDWIN: I – this is, for the record, Andy Baldwin. I know it's way out and Rick – it's maybe a bit longer out that Rick would want, but with five hard drives filled with stuff that we don't even know what it is yet, for that hearing to have any meaning, I would think that that is not – that's an appropriate amount of time, but I've not talked – I haven't talked to Brad about it. Of course, he may disagree.

MR. ROZZI: I do not. June 30th is fine or the week of June 26th I guess, to be more precise.

THE COURT: I can't do that week. I am teaching that entire week. That's why Judge Diener is gone, as well, and that week is available in Circuit Court. Jodie is indicating June 16th is available.

MR. ROZZI: I'm fine with that.

MR. BALDWIN: Let me see. Let me check.

MR. MCLELAND: Judge, might I ask – and maybe Defense is better – well, how long does the Court anticipate this let bail hearing to take?

THE COURT: Well, it's on you, Mr. McLeland. I don't know how many witnesses you would anticipate calling. We can start as early as eight o'clock in the morning on June 16th and go till we're done.

MR MCLELAND: If it takes more than the day, is the Court

concerned that that's a Friday and we're in – have the weekend splitting between that?

THE COURT: No, I'm not, unless you are.

MR. MCLELAND: No, that's fine, Judge.

THE COURT: Okay. I mean, if – do you anticipate it taking more than a day? That's what we had it set for originally.

MR. MCLELAND: I don't think so. At least from my standpoint, Judge, in terms of the evidence I'm gonna put on, I don't anticipate it taking more than that, but I'm not sure what – and maybe the Defense doesn't know at this point what, if any, evidence they anticipate putting on.

MR. BALDWIN: I'd say that's hard to say, if we put on any evidence, what it would be, just because we haven't really gone through this, especially the stuff we got on Monday, so I don't know. I don't know. Brad, do you have an opinion on that?

MR. ROZZI: I think is there a possibility, just to be safe, that we could tee it up on Thursday, instead of Friday?

THE COURT: If we have to. I mean, I – my trial schedule is I'm in a trial every week from now until the end of my career I feel like, so I can get some – I can have one of my colleagues cover something if that's – if you want to start on June 15th, and we could do the 15th and the 16th.

MR. ROZZI: I think that sounds like a reasonable way to approach this, 'cause you never know with just all the logistics, we could have things that cause some delay, maybe some technical issues, who knows. I think Thursday's a better day, if we can do that.

THE COURT: Do you want the 16th, as well?

MR. BALDWIN: I agree. Yes.

MR. ROZZI: Yeah, 15th and 16th.

THE COURT: All right. What time do you want to start?

MR. ROZZI: Eight, 8:30, I'm fine with either.

MR. BALDWIN: Yeah.

MR. MCLELAND: I don't have an opinion, Judge. Whatever's most convenient for the Court is fine with me.

THE COURT: Okay. Why don't we go June 15th at 8:30, and we'll reconvene on June 16th if we need to. That way, we've got both of those days set.

MR. ROZZI: Very good.

MR. BALDWIN: Awesome.

THE COURT: Okay. Do you want to go ahead and pick trial dates?

MR. ROZZI: I mean, does that seem a bit premature if the Court – I'm gonna – Judge, I'll kind of defer to you on this. I mean, if you're more comfortable just having a couple dates on the calendar so the media has something to talk about, that's okay with me; but I don't know if I – I'm fine if we just waited until June and discussed it, personally.

MR. BALDWIN: Yeah. It – we're starting – Brad and I, Judge, are starting to realize kind of the enormity – if we didn't already know it before, we now know it for sure – of the ask at hand and, you know, I don't know your style of – Judge, I've heard a lot of good things about, you know, your style, very straight-forward and so forth, and so I'll be straight-forward, I don't see this thing getting tried – it would be shocking to me if we could be ready by the end of the year, I just don't see that. Brad, am I speaking out of school?

MR. ROZZI: No. I think that that's a fair assessment based on what

we've been confronted with discovery –

MR. BALDWIN: I'm sorry to say that, Rick, but –

MR. ROZZI: Yeah.

MR. BALDWIN: But it's up to the Judge anyway, so it may not matter.

THE COURT: Well, I mean, just as long as we all understand, gentlemen, that this is being continued on Defense motion, so all of the Criminal Rule 4 time is counting against you.

MR. BALDWIN: Yes.

THE COURT: And clear – and I know that you've had conversations with Mr. Allen about Criminal Rule 4 and the import of that so, I mean, if you want to have a trial setting on June 15th, when we come down to do the bond hearing, I'm happy to do that, as long as everybody understands the clock is ticking against the Defendant.

MR. BALDWIN: Yes.

MR. ROZZI: I understand that, Judge. And I think, you know, the intention – we're talking kind of outside of the courtroom here and the intention is for us to order up some depositions in April and May, and I really think that the Defense will have a much better idea of how to address some of these timing issues once those are finished so, you know, if we bump this out into June and just address them at the June bond hearing, I think that that makes sense.

THE COURT: Mr. McLeland, what is your position on that?

MR. MCLELAND: Judge, again, as long as it's clear that the time for Criminal Rule 4 purposes is taken against the Defense, then I'm not in a position to object. I understand it's a tremendous amount of discovery to go

through and so, as long as it's on Defense's motion, the State doesn't object.

THE COURT: Okay. Then, I will grant the motion to continue the trial and schedule this for trial setting June 15th at 8:30 in Carroll Circuit Court. I will have the motion to transport Mr. Allen to the Carroll Circuit Court for that morning for that hearing; and if we need to keep him overnight and if we need him on the 16th, I guess my preference would be not to transport him back and forth for his comfort.

MR. ROZZI: That's acceptable.

THE COURT: Okay. Is there anything else on the record that we need to talk about, Mr. Rozzi?

MR. ROZZI: No, ma'am.

THE COURT: Mr. Baldwin?

MR. BALDWIN: No, Your Honor. Thank you.

THE COURT: Mr. McLeland?

MR. MCLELAND: Judge, I did file a motion for a protective order for discovery purposes. I – it's probably covered under the gag order, the court order, but I thought perhaps maybe we could address that on the June 15th date or beforehand, whatever the Court deems appropriate.

THE COURT: Have you had the opportunity to review that – Mr. Baldwin? Mr. Rozzi? – the motion for protective order.

MR. ROZZI: I have.

THE COURT: What is your –

MR. BALDWIN: Yes.

THE COURT: -- position on it?

MR. ROZZI: Judge, I don't really have any kind of consternation

about it.

THE COURT: Okay.

MR. ROZZI: There is a paragraph in the order, if I could just mention – paragraph 5 in the order basically prohibits, you know, any one that we would share – well, it requires us to redact, you know, personal information, identifying information, in the event we share it with any experts, and I can just tell the Court, you know, that's gonna be a pretty tall task considering, again, the voluminous nature of the discovery. I don't want to get overly mired down in the technicalities here, but I suspect the Prosecutor's Office has done a lot of that through their software program already. I do think that you're gonna get good faith – a good-faith, you know, effort by the Defense, if we were to share this with someone, that we're gonna make a good-faith effort to protect that information, but for us to – to hold us to that high standard of redaction of all the information I think is a little bit – a bit overreaching.

THE COURT: What are your thoughts, Mr. McLeland?

MR. MCLELAND: Judge, we have done our best to redact the protected information. The State's theory is that if we missed something, just because of the voluminous nature of the discovery, that if that stuff is released to an outside party, whether it be an expert or someone else on the defense team, that that information could possibly get out and hurt either a witness or somebody else involved in the case, and so that is the reason for that, Judge. Again, we tried our best to redact all that information. We just want to make sure we protect all the parties involved.

THE COURT: Okay. All right.

MR. ROZZI: Your Honor –

THE COURT: I don't have a problem – go ahead.

MR. ROZZI: Yeah, just offered a solution here, Judge. Look, I'd be happy to retain a ledger of anyone that we generate or offer this information to during the course of the case as a confidential ledger and then have them sign an NDA agreement that just says, "Hey, you know, you can't distribute or disseminate any of the information," and I think that satisfies –

THE COURT: I –

MR. ROZZI: -- you know, that concern.

THE COURT: I think that's a good idea. Thank you, Mr. Rozzi, I appreciate that offer. I'll go ahead and grant the motion, then, for protective order regarding discovery with that understanding with the Defense that they'll keep a confidential log and instruction to anybody that they provide this to. I'm assuming we're talking investigators and experts. I can't imagine this going all over the place, so I'll hold you to that, then, Mr. Rozzi, Mr. Baldwin. Anything else from the Defense?

MR. ROZZI: No.

THE COURT: Okay.

MR. BALDWIN: No, Your Honor.

THE COURT: Mr. McLeland, did you have anything additional?

MR. MCLELAND: No, Your Honor. I – well, I guess one more thing. I assume the omnibus hearing will be continued to that June 15th date, as well.

THE COURT: The what? What that again?

MR. MCLELAND: The omnibus hearing.

THE COURT: Yes.

MR. MCLELAND: Okay, Judge. Nothing further from the State,

then.

THE COURT: Okay. I will tell – gentlemen, I will tell you that I have received another Media Intervenors Renewed Motion to Intervene and another Motion to Grant Public Access to the State's Verified Request to Prohibit Public Access. I know it was filed – you have access to this, filed on February 10th. When you filed, Mr. McLeland, your request to prohibit public access, I opened up the information and the affidavit for probable cause. The media is now demanding – the motion didn't incorporate the actual request that you made. The media is now asking for that request.

MR. MCLELAND: Judge, I was trying to pull up that request quickly here, but –

THE COURT: Yeah. It was – you filed it October 28th.

MR. ROZZI: Just to make sure I'm clear: When I looked at this, the media's asking him to disclose the formal pleading that he filed requesting confidentiality; right?

THE COURT: Right.

MR. ROZZI: Just the pleading?

THE COURT: Right.

MR. ROZZI: Okay. All right. To the extent we have a dog in the fight, I don't have any problem with the disclosure of it.

THE COURT: Okay. Nick?

MR. MCLELAND: Judge, I'm not – sorry.

THE COURT: Go ahead.

MR. MCLELAND: Thank you. Judge, honestly, I don't have – I mean, I don't have an issue with that. I believe the pleading just talks about

why I can seal it, in terms of the rule that I use. I can't seem to find the pleading now. I've pulled it up. I should have pulled it up before today, Judge. I'm sorry, I didn't know we were gonna address it today. I don't believe there's anything in the pleading – there it is. Let's see. Judge, yes, the State doesn't have any objection with releasing that to the public, as well. And again, it's just a standard pleading to keep the records prohibited and it doesn't list any sensitive information in there that I can see in terms of witnesses or the other things that the State – or that the Court has determined should remain confidential.

THE COURT: Okay. I didn't either. I looked at it and I'm not sure why everybody's clamoring for this, other than it's been sealed, so I'll grant that, as well. All right. Nothing else then that we need to talk about on the record? All right.

MR. MCLELAND: No, Judge.

THE COURT: And thank you, I really do appreciate the consent of the parties to do this by Zoom. You saved me a six-hour travel down and back, so thank you, I do very much appreciate that, gentlemen. All right. See you in June. Thank you. George, you can –

MR. BALDWIN: Rick, we'll talk to you soon.

MR. ROZZI: Judge?

THE COURT: Yes?

MR. ROZZI: Are we gonna have another – maybe a telephone conference here after we have this hearing or -

THE COURT: Yes, yes.

MR. ROZZI: Okay.

THE COURT: I'll call you.

MR. ROZZI: Is your staff gonna direct –

THE COURT: I'll call you.

MR. ROZZI: You're gonna call us, okay. Very good.

THE COURT: Yeah. All right.

MR. ROZZI: Thank you.

(THIS CONCLUDES THE PROCEEDINGS AT HEARING CONDUCTED FEBRUARY 17, 2023, IN THIS CAUSE.)

STATE OF INDIANA)	IN THE CARROLL CIRCUIT COURT
)SS:	
COUNTY OF CARROLL)	CAUSE NO.: 08C01-2210-MR-1

STATE OF INDIANA,)
Plaintiff,)
)
VS.)
)
RICHARD ALLEN,)
Defendant.)

RECORD OF PROCEEDINGS AT HEARING ON

SAFEKEEPING ORDER HELD JUNE 15, 2023

APPEARANCES

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THE HONORABLE FRANCES C. GULL .....JUDGE

JODIE L. WILLIAMS..... .REPORTER

PROCEEDINGS

THE COURT: All right. We are on the record in *State of Indiana versus Richard Allen*, 08C01-2210-MR-1. I'll show that the Defendant's here in person with counsel, Mr. Rozzi, Mr. Baldwin. The State is here by the elected prosecutor, Mr. McLeland. Gentlemen, are we ready to proceed?

ATTORNEY BRADLEY: ROZZI: Yes, ma'am.

ATTORNEY NICHOLAS MCLELAND: Yes, Your Honor.

THE COURT: All right. Before we get started, I'll just remind everybody about the courtroom decorum order. You've all been very kind and waiting for us as we had some discussions in chambers about how things would be proceeding today. I'd like to start by advising everyone, we've had the opportunity to review the file and to have some discussions in chambers about the confidential pleadings that have been filed with the Court over the last several months. With the agreement of counsel – and I do appreciate the agreement of counsel – I will be entering an order sometime next week that will unseal all of the pleadings that have been submitted to the Court. My court executive will create a webpage and I will provide that webpage address to counsel. We will download all of the unsealed documents to that webpage and then they will be available to whomever wishes to review what has previously been deemed to be confidential. I would remind the attorneys that they are still working under the gag order that prohibits comments and discussions with the media. I know that we're here on a motion to suppress evidence and a motion to reconsider the safekeeping order. I'd like to proceed with the motion to reconsider the safekeeping order, but consistent with our discussions in chambers, the motion to suppress evidence will be continued to be reset. I know we didn't come up

with a date yet, but we will, before the conclusion of the hearing, come up with a date to reset the suppression hearing. I would ask the defense attorneys to file the *Franks versus Delaware* notice to the State and then we can reset the suppression hearing at that time. So, Mr. Rozzi, Mr. Baldwin, are you ready to proceed on the motion to reconsider the safekeeping order?

MR. ROZZI: Yes, ma'am.

THE COURT: All right. Mr. McLeland, you're also prepared?

MR. MCLELAND: Yes, Your Honor.

THE COURT: You may proceed.

MR. ROZZI: Judge, just by way of a brief opening.

THE COURT: Yes.

MR. ROZZI: You know, I guess the first issue that maybe the Court might want to tackle is the burden of proof. You know, we're kind of in this kind of weird situation here where we've got the safekeeping act, which is – in Indiana is I.C. 35-33-11-1, and clearly, there was a pleading that was filed by the former Sheriff, Mr. Leazenby, back in 2022, that essentially asked for relief under that statue. And basically, the allegations in that pleading, as you know, are, "Hey, Judge, we got a situation here where there's a lot of media coverage and we're primarily – we're concerned about that and just the burden that that places on our Sheriff's Department and the system at large – or as a whole here in Carroll County; and number two, that we don't feel like we have the manpower or the staffing to address the needs that might exist in terms of detaining Mr. Allen and transporting him." I think those are really the two pillars upon which their pleading is based. The Court also knows, just by looking at the record, that the former judge, the Honorable Judge Diener, who presides in this court on a daily

basis, issued an order essentially granting the Sheriff's request to engage the safekeeping statue and did that without any type of an evidentiary hearing, nor was there any – were there any affidavits filed or any sworn statements or anything of that nature that was offered up to the Court to support the allegations, if you will, or the concerns is what I would – how I would refer to them, in the Sheriff's motion. And so that leaves us in the situation where, you know, really there's been no due process offering of evidence that supports the motion. And then beyond that, I, of course, procedurally file a motion to modify. You know, I probably could have couched that motion as a motion to dismiss or terminate or some other, you know, word that maybe fit the circumstances a bit better, but I really do think, generally, it's the Sheriff's burden to put on some evidence that the safekeeping order is appropriate. Now, with that being said, I'm not here to try and ambush the Sheriff or the Prosecutor or whoever is, you know, defending, in a sense, that petition. I'm willing to put on evidence, if that's the most orderly process for the Court, but I do think that it's important to understand that it's really not our burden, and the statute's pretty clear that there needs to be a showing that Mr. Allen, in this case, is in some imminent danger or serious bodily injury, a pretty high standard. And so I'm prepared to present some evidence in that regard, but in fairness, I'm not sure it's my burden, but I'm looking to the Court for some direction. And in the same breath, of course, I would ask for a separation of witness order. I think I've rounded up most of the people that – I kind of tried to pick people out, but I see a few of the witnesses that I'm gonna be calling here.

THE COURT: Okay.

MR. ROZZI: I might check in the hallway to make sure.

THE COURT: Okay. Go ahead.

MR. ROZZI: Is Sheriff Schroder in here? Okay. Maybe if you could grab him, just because we don't want – you know, let's make one admonishment and –

THE COURT: Sure.

MR. ROZZI: -- get on with it, so to speak.

MR. MCLELAND: Judge, if I might interject?

THE COURT: Yeah.

MR. MCLELAND: I already had my witnesses step out, 'cause I – defense counsel made us aware in chambers that he's gonna ask for this motion. I can have them step in quickly, Judge, just so they can have the admonishment.

THE COURT: Okay. Okay, are all the witnesses now in the courtroom that would be called on the safekeeping order?

MR. ROZZI: I believe so, yes.

THE COURT: Okay. Those of you that have been subpoenaed or know to be a witness in this proceeding, you are advised there is a motion for separation of witnesses. The import of that means that you cannot talk about your testimony with anyone other than the attorney that called you, you cannot be in the courtroom during any other witness's testimony, and you are not permitted to discuss the testimony of other witnesses amongst yourselves or with anyone else. Is that a sufficient admonishment from your perspective, gentlemen?

MR. ROZZI: Yes, Judge.

MR. MCLELAND: Yes, Your Honor.

THE COURT: Thank you. You may step back out in the hallway,

please.

MR. ROZZI: May I continue?

THE COURT: Yes, sir.

MR. ROZZI: Judge, just by way of a brief summary of kind of what I think you're gonna hear today, our position rests, you know, in part on some basic, you know, statutory law in Indiana; I've already noted that, 35-33-11-1, safekeeping statute. Second, we believe that, you know, this is a circumstance where there are some equal protection issues and due process issues under the Fourteenth Amendment. And some of that just pertains to the disparity in treatment that I believe Mr. Allen is receiving versus others that are similarly situated. The due process argument, obviously, is similar to what I talked about earlier, just there's got to be some evidentiary showing. And then, Mr. Allen's Sixth Amendment right to counsel I think is kind of in play here and that is to say that there have been some hurdles that I think you're gonna hear about with regard to us having access and getting access to him and having some confidential access to him, and, you know, those types of things that I think kind of are wrapped around the Sixth Amendment. I alluded to this earlier, the Sheriff's request that was filed back in 2022 is primarily asking for relief for what I would consider to be maybe practical reasons, that, you know, this community was inundated with media requests and were just – it's just been overbearing, essentially, on the community, but it – I don't think it's – you know, there's no information or allegations, there are no – there is no information, there are no allegations in this petition that pertain to the law as it relates to safekeeping and the standard. There's no doubt today that, in response to our request, one of the things the Court's gonna hear is that Mr. Allen has been incarcerated and,

while incarcerated, has made some incriminating statements, he's implicated himself in this crime. Of course we're aware of that. I believe that the State's gonna introduce that evidence to try and garner up some emotional support here; but at the end of the day, anything that exists is generic, at best, and it's the State's – or it's the Defense position that whatever has been said by him in the last several months is entirely inconsistent with the approach that he had taken leading up to his arrest in this case, including all of those interviews with the police and for months after he was incarcerated. And, in fact, to the extent that the State offers up any evidence of these statements, you're gonna see – at some point in this case, you're gonna hear that, you know, at one minute he's saying one thing and the next minute he's saying something totally opposite. So, you know, they're generic discussions and admissions at best and, you know, the Court should know that that's coming. We're not hiding from any of that. We're of the position that his mental and physical state is deteriorating and that whatever he's doing and the actions that he's engaging in, frankly, are largely related to that circumstance. Beyond that – you know, the Defense's goal today is to try and find a practical solution to what really shouldn't be a problem, and that problem is, is that we don't have convenient access to our client because of the distance and a lot of these hurdles and some of the – I'll call them conditions that are existing in the facility where he's housed, and there's no reason why this should even be an issue in this case. It's never been an issue in any other case that I've dealt with in the 20 years – 23 years I've been doing this, and there's no reason why Mr. Allen should be treated differently, why I shouldn't have access to him, why Mr. Baldwin shouldn't have immediate access to him and why our team or staff, our support staff, shouldn't have instant access to him. And I'm

asking the Court today to follow the law and then issue a practical ruling, a ruling that's practical and addresses that problem, so we can get on with the merits, and that's really why we're here today. Thank you.

THE COURT: Mr. McLeland.

MR. MCLELAND: Judge, the State's in a unique position because I don't represent the Sheriff's Office, I don't represent the DOC. My real interest in this, Judge, is to protect the interest of the Sheriff in terms of – part of the reason for the safekeeping is that we're short on manpower to be able to protect Mr. Allen and to be able to transport him back and forth to hearings. And that's really the State's main concern, that he's protected while he's in custody and that's protected when he's transported back and forth to custody, because, as Mr. Rozzi said, the evidence and all the briefings are gonna come out today and the evidence is gonna come out that he has made admissions. The admissions put him in heightened security risk, that's just the reality. If he's moved to a jail that's closer to our community, there's likely more people who are emotionally tied to this case. And so the State's real goal is to keep him safe and to make sure that when he's transported that he's safe. Also, the State wants to address some of the allegations that the Defense outlined in their motion, some of the allegations against the DOC. Some of the allegations are Mr. Allen's being treated unfairly or differently from other inmates and that's just not the case. The reality is he's been treated better than other inmates there. He's not getting any ill treatment because he's the Defendant in this case or for any reasons. And so that's really the State's main roll in this hearing, Judge, and that's the evidence the State intends to introduce.

THE COURT: All right. You may call your first witness, Mr. Rozzi.

MR. ROZZI: Thank you. I would call Chief Deputy Tobe Leazenby.

(Witness sworn.)

MR. ROZZI: One second, Your Honor.

THE COURT: Take your time.

DIRECT EXAMINATION OF CHIEF DEPUTY TOBE LEAZENBY

QUESTIONS BY MR. ROZZI.

Q All right. What's your name?

A Tobe Leazenby.

Q And, Mr. Leazenby, just tell the Court what's your current occupation and position?

A I'm currently with the Carroll County Sheriff's Office serving as appointed chief deputy by Sheriff Tony Liggett.

Q Okay. And is it fair to say, just to kind of get past the technicalities or formalities here, that you were the former sheriff here in Carroll County for several years?

A Yes, sir, because 2015 and 2022.

Q Okay. So in November – or in 2022, in late 2022, you were the acting sheriff; is that right?

A The elected sheriff, yes, sir.

Q Okay. And is it fair to say that you filed a motion essentially asking for a safekeeping order with this court back in November of 2022?

A Yes, sir.

Q Okay. And have you had a chance to review that motion in advance of coming in here today?

A Briefly, yes.

Q Okay. Would it help you to have the motion in front of you as I ask you questions to refresh your memory?

A If I may, please.

MR. ROZZI: May I approach?

THE COURT: You may.

Q Just take a look at this document and let me know if that's from – if you're familiar with that document.

A Yes, sir, I'm familiar with this document.

Q All right. And is that the motion that I've just alluded to that was filed by you – signed by you and filed back in November of 2022?

A Yes, sir.

Q Did you draft this motion yourself?

A Actually, I had presented a similar motion to – request, I should say, to the Court and, as I recall, the Court had actually come up or provided this particular document.

Q Okay. So let me see if I can ask a more direct question: Did you prepare that motion in your office on a computer, essentially?

A I prepared a similar motion to this. Again, the wording was adjusted by the Court.

Q Okay. So you prepared a document that we, presumably, don't have here today; right?

A I would assume so, yes.

Q Okay. And you presented that document to the Court?

A Yes.

Q And then, this was the result?

A Right.
Q This document?
A Yes.
Q And then, you were asked to sign this?
A Yes.
Q Who asked you to sign this?
A The Court
Q Who's the Court?
A Judge Diener.
Q Okay. And that's how this is – essentially became – to be –
A Yes.
Q -- was there was a process?
A Yes.
Q Okay. The information that's contained in this motion, did you offer up all the information or was some of that offered up by Judge Diener and others?
A The wording, if I understand you correctly, were – was information that I had originally documented it in a previous request –
Q Okay.
A -- and so the wording was simply adjusted in his document that the wording was the same, it's just that it was – adjustments were made by the Court with this document.
Q Okay. Did you provide to the Court any additional documentation in support of – I'm gonna call these allegations – in support of these allegations before this document was finalized, let's say?
A Again, the only thing I recall is providing, again, similar information as it

relates to the narrative in this document stating my concerns of security.

Q Okay. Well, why don't we just try to get to the brass – get down to the brass tacks here: Did you offer up any e-mails with threats on Mr. Allen's life or on jail staff or anything like that to the judge with your original pleading?

A No, sir. The only thing that I had mentioned was, obviously, this being high profile. Again, it's similar to this wording.

Q Okay. So the way I understand is this: You didn't offer up any supporting documentation at all other than just your thoughts about high-profile cases in the media, all of which is, frankly, referenced in here?

A Yes.

Q You didn't receive, in advance of this particular circumstance, any audio threats from anyone that you shared with the Judge, somebody called your Sheriff's Department and said something on the phone?

A No direct threats to me as sheriff of the county.

Q Okay. Did you provide up any kind of digital media communications or anything like that to the Judge before this was finalized?

A No, sir.

Q All right. And you acknowledge that Mr. Allen ultimately was arrested I think it was October 26 – does that sound about right? – of 2022.

A Approximately, yes.

Q Okay. Let me just direct your attention again to this – to paragraph three of this pleading, if you would. Paragraph three, I'm gonna read it to you and ask you some questions about it; okay?

A Um-hmm. (Affirmative response)

Q It says, "The Defendant has been charged in a high-profile cause, creating

potential safety and security concerns because of extensive coverage from an array of various media platforms, both mainstream and social, throughout this state, the United States, and the world." Are those, basically, your words?

A Yes, sir.

Q Okay. And so is it fair to say that your concerns were based on potential threats, not any material threats to your life?

A Correct.

Q Or Mr. Allen's life?

A Correct.

Q Or the lives of any of the law enforcement officers involved in this case?

A Correct.

Q Let me direct your attention to paragraph four, I'm gonna read that to you and ask you some questions; you okay with that?

A Yes, sir.

Q All right. Paragraph four, "In that the Defendant has been charged in said high-profile cause, it is felt by the undersigned potential safety and security concerns exist involving not only the Defendant, but also jail facilities in Carroll and White Counties within the state of Indiana." Your words; right?

A Yes.

Q Again, is there anything – was there – strike that. Were there any specific material threats made on you, your staff, or on Mr. Allen's life that support those words?

A No, sir.

Q Let me direct your attention to paragraph five, I'm gonna read that to you and ask you some questions; you okay with that?

A Yes, sir.

Q "Because of the aforementioned reasons, as Sheriff of Carroll County, Indiana, I cannot provide the services, attention, or supervision necessary to protect or meet the Defendant's needs or to ensure, protect, and guarantee the safety or security of the Defendant, staff, or facilities." Those are your words; right?

A Yes, sir.

Q And do you acknowledge that there hasn't been any immediate threat on your facility, even as we sit here today?

A Yes.

Q Certainly not before this.

A Correct.

Q Okay. So the crux of your motion was actually more along the lines of, "Hey, Judge, I just don't have the manpower, so to speak, to deal with this. Can you help?" Is that a fair kind of summary?

A A portion, yes.

Q All right. So it's my – is it accurate to say – well, strike that. Is it accurate to say that after Mr. Allen's arrest, that he was actually moved out of Carroll County and detained somewhere else?

A Yes.

Q And did that happen basically immediately?

A Yes.

Q Did you make those arrangements with the Sheriff of White County to have that done?

A Yes, sir.

Q Okay. So that was all kind of coordinated ahead of time?
A Yes.
Q And so did he ever actually spend any time in the Carroll County Jail?
A As I recall, maybe one night.
Q And so tell the Court what arrangements you made to have him placed in White County.
A Just a matter of simply having direct communication with Sheriff Bill Brooks and explaining my concerns of potential safety and security of our facility and ask him if he could temporarily hold Mr. Allen for us.
Q Okay. And were you confident that Mr. Brooks and his facility was adequate to hold him on a temporary basis?
A At that time, yes.
Q Did you have any belief or any information that suggested that he was gonna be moved somewhere else within a day or five or ten or any amount of time?
A Potentially involving the safekeeping aspect, I felt at some point he might be moved.
Q But you didn't have any guarantees at that point?
A Correct.
Q Do you routinely move offenders from your jail to other jails in the normal course of business?
A Yes, sir.
Q Is that sometimes based on overcrowding?
A Mainly because of overcrowding, yes.
Q Is it also sometimes based on the fact that you might have a co-defendant

in your jail and you can't really have co-defendants in the same air space?

A Correct, sir.

Q Are there ever reasons why inmates get moved around to other jails?

A Those are the two primary.

Q Okay. Your jail happens to be unusually small; right? Is that –

A Very small, sir.

Q Yeah. One of the smaller ones in the state, I assume.

A Correct. Our maximum capacity is 34.

Q Okay. So you – do you routinely lean on White County, for example, to house inmates for you?

A Mainly White County and then, sometimes, either Tippecanoe or Clinton.

Q I'm sorry, could you say that again.

A Sometimes also Tippecanoe or Clinton Counties.

Q Okay. Tippecanoe's a pretty expansive jail with a lot of resources; right?

A Right.

Q And White County's a newer facility, as well?

A Newer compared to ours, yes.

Q Sure. Okay. They have more resources over there?

A Yes.

Q Do you ever farm anybody out to Cass County?

A We have had a few; in fact, we may have one or two there now.

Q Okay. And they've got a much larger facility than you have?

A Newer addition, yes.

Q Okay. And just recently opened; right?

A Right.

Q In the last few months –

A Yes.

Q -- in fact; right?

A Right.

Q Okay. Is it fair – I'm looking at paragraph seven of this pleading, if I could draw your attention to that, take a look at that and let me know when you're ready.

A Yes, sir.

Q So is it fair to say that at the time that you filed this motion, that you were willing to accept responsibility for transporting Mr. Allen to and from wherever he ended up?

A Yes, or and/or coordinating with DOC.

Q Okay. So it says here, "I will be responsible for transporting or for coordinating"; right?

A Right.

Q So you were willing to be a part of all that?

A Yes.

Q At the time when you petitioned the Court, did you have any interest in ensuring that Mr. Allen was going to be treated like other pre-trial detainees?

A That's the ultimate goal, if you will, for all detainees is the safety and security of those individuals, so that would include Mr. Allen.

Q So the answer's yes?

A Yes.

Q Did you ever go to Westville to visit that facility before he was transported up there?

A No.

Q Since he's been there, have you ever gone up there, not necessarily to visit Mr. Allen specifically, but to go up and take a look at the circumstances under which he's detained?

A No, sir.

Q And you're aware, you've been aware, I assume, for several months now, that there's been an on-going call it a feud, if you will, about his detention circumstances?

A From what I've seen of media reports, yes, sir.

Q Okay. Are you aware of anyone else in your department that has gone up to Westville to visit Mr. Allen, not – again, not him and talk to him, but visit and inspect the circumstances up there since he was arrested?

A I am not aware, no.

Q Was it brought to your attention at some point that I had worked out an arrangement to have Mr. Allen moved?

A Yes.

Q Okay. And was it your understanding that Mr. McLeland was okay with that occurring?

A It's my understanding Mr. McLeland's position was that that was a Sheriff decision.

Q Okay. You've not heard that he was okay with that? You think he was –

A No.

Q -- punting to the Sheriff's Department?

A Right.

Q Okay. And is it your understanding that the Court was amenable to doing

that at some point?

A I mean, I know that the Court had entertained the request, but I don't know the Court's position.

Q All right. You acknowledge that Cass County was kind of – was really the centerpiece in terms of where to try to move Mr. Allen when these discussions were ongoing?

A Yes.

Q And that's a facility that's roughly how far from here?

A Timewise, roughly 20 minutes.

Q And was there a point in time when you were involved in any decision as to whether or not to move him to Cass County?

A No.

Q Okay. Was that, presumably, your superior?

A Yes.

Q Sheriff Liggett?

A Yes.

Q Okay. Do you have a transport officer that works at the jail, or did you when you were sheriff?

A Yes.

Q As a full-time officer?

A Yes.

Q Okay. Does that transport officer travel to and from various jails and prisons, picking up, moving offenders, and things of that nature?

A Yes. However, I should interject that due to – like many county jails, due to low labor force, if you will, that individual's been placed into a rotation, so we

utilize him randomly when we can. So, like now, he's in and out, if you will.

Q Okay. But that's something that's normal in jail systems; right? I mean, you're constantly moving inmates around.

A Sure.

Q All right. Do you have any kind of emergency response unit or SRT team or anything like that that works for the Sheriff's Department?

A No, sir.

Q Like a drug interdiction team that serves warrants on an emergency basis?

A No, sir.

Q So if you're dealing with high-profile stuff where you're serving a warrant and there's suspected to be guns and drugs, do you seek out the assistance of other agencies?

A Yes, sir.

Q And is that something that you do routinely in this business?

A Yes, sir.

Q Let's talk about attorney-client visits at the Carroll County Jail; okay?

A Yeah.

Q Do those happen fairly regularly?

A Yes, sir.

Q And when attorneys visit the jail, is it fair to say basically you walk in and you push a button and talk to the jail staff and they make arrangements for you to come in and visit your client?

A Yes, sir.

Q And is it fair to say that that's really not any more complicated than parking on the street down here, right in front of the door, and just walking ten

or 15 yards in the door?

A Yes.

Q Are you aware of any circumstances where attorneys that enter your jail to speak with clients are patted down or they're walked through a metal detector or anything like that in advance of meetings?

A They are asked if they have any, you know, items of potential contraband or cell phones or they're asked to leave cell phones outside of that meeting room, and so overall, security wise, yes, they – they're not necessarily patted down, if you will, but simply asked to – if they have any particular items on them.

Q Forgive me, but I've obviously been in that jail and visited with clients before; do you agree that a lot of those meetings happen in the room – there's kind of a library in your jail where there's a big table and some chairs?

A Correct.

Q It's a fairly sizeable room?

A Yes, sir.

Q And it's a pretty comfortable place to sit and communicate with clients; right?

A Right.

Q And that's kind of the norm when attorneys come to visit; right?

A Correct.

Q Are you aware of any circumstances where any of your staff or Sheriff Liggett's staff now – I understand there's this transition – have mandated that these visits be video recorded by your staff?

A I mean, obviously, we have cameras in our facility, but I mean, I'm not aware of any mandated recording.

Q Where one of your jail staff holds a camcorder and walks around and follows the inmate and the attorney and videotapes his stuff?

A Nothing I've ever witnessed.

Q Say that again, please.

A Nothing I've ever witnessed.

Q Okay. Do you believe that there are visits that occur with inmates routinely where the inmates are not shackled, let's say like Mr. Allen is here today?

A Within the confines of the building, correct. Yeah, they're not shackled and –

Q No legs shackles?

A Right. The only time we, obviously, utilize that type of equipment is when we go outside of the building with a defendant.

Q Sure. No belly chains?

A No.

Q No handcuffs – box handcuffs like he's wearing today?

A No.

Q You ever see anybody moved around the jail with like a leash or a chain on, hooked to them, where an officer's walking them around?

A Not within the building, no.

Q That would all be very unusual in terms of attorney-client visits in your jail?

A Right, yes.

Q Very convenient to walk in there and meet with a client and have discussions; right?

A Yes, sir.

Q And do you agree that lawyers are able to bring documents in, like discovery?

A Correct.

Q Laptops?

A Yes.

Q You know, anything that they basically needs, pens, pencils, those kinds of things?

A Yes.

Q And do you allow – does your staff there allow inmates to drink water when they're meeting with their lawyers? Is there any problem with that?

A No.

Q I mean, just basic needs – right?

A Right.

Q -- to have a conversation with a lawyer.

A Correct.

Q All right.

MR. ROZZI: May I approach?

THE COURT: You may.

Q Let me hand you what's been marked as Defendant's Exhibit A, it's just a photograph of Mr. Allen; I'm sure you recognize that.

A Um-hmm.

Q Yes or no? Just because we're trying to pick up a recording.

A Yes, sir.

Q Okay. And you acknowledge that that's a photo that was taken of him

while he was incarcerated up in Westville?

A Yes, I understand that.

Q Okay. And you know that I've taken some exception to this photo; right?

A Yes.

Q And primarily the condition of his clothing and just the way he looks?

A Yes, sir.

Q You see the – his clothing on Defendant's A?

A Yes.

Q Is it obviously soiled and discolored and stained?

A There appears to be, yes.

Q I mean, is this the kind of clothing you would see on your inmates at the Carroll County Jail? Do they look like this?

A No, sir.

Q You would wash clothes and give the new clothes if –

A They routinely do that.

Q -- they looked like these?

A Yeah.

Q You take care of your inmates?

A I always try to, yes.

MR. ROZZI: Move to admit A.

DEFENDANT'S EXHIBIT A OFFERED

MR. MCLELAND: No objection, Judge.

THE COURT: All right. Without objection, A is admitted.

DEFENDANT'S EXHIBIT A ADMITTED

MR. ROZZI: I have no further questions.

THE COURT: Mr. McLeland.

MR. MCLELAND: Thank you, Your Honor.

CROSS EXAMINATION OF CHIEF DEPUTY TOBE LEAZENBY

QUESTIONS BY MR. MCLELAND.

Q Deputy Leazenby, first of all, how many years in law experience – or how many years have you been a law enforcement officer?

A Thirty-seven.

Q Thirty-seven years. And for some of that time, you were the elected sheriff; is that correct?

A Correct.

Q Throughout that time, you've always dealt with offenders, inmates, people who are charged with various offenses?

A Yes, sir.

Q And also people that have been convicted of those offenses?

A Yes, sir.

Q Even at the Carroll County Jail, people that are convicted are held there weeks, months, sometimes years after their conviction; is that fair?

A Correct.

Q Majority – is it fair to say the majority of the cases that we have in Carroll County are drug related, OWI, theft, level felony and minor misdemeanor cases; is that fair to say?

A Yes.

Q We don't have someone who's at least alleged to have committed the murder of two little girls –

A Correct.

Q -- in this county?
A Correct.
Q Have you ever had that, in your experience?
A We have had homicide defendants, yes, in our jail.
Q And given the notoriety of this case and the kind of level of media attention in this case, when Mr. Allen was taken into custody, did you have concerns about his safety?
A Yes.
Q Now, you had no direct threats of – that concerned his safety; is that correct?
A Correct.
Q But you were concerned that he may be in danger?
A Right.
Q Were you concerned about him being in danger from other inmates?
A Potentially.
Q Our jail doesn't have a – sorry, the Carroll County Jail doesn't have a segregation unit; is that correct?
A Correct.
Q And so he would have to be housed with other inmates?
A Correct.
Q And did you have a fear that there may be some kind of retribution from those other inmates against Mr. Allen?
A Potentially, yes.
Q Did you have a concern that when he was transported back and forth to the courthouse there may be issues?

A Yes.

Q Now, we – Mr. Rozzi asked you about the transport officer. Typically, when you have a transport officer, how many people go to transport another inmate?

A Usually it's a one-on-one or one-on-two or more sometimes.

Q And you talked about staffing issues, and I guess there's been nobody who's been exempt in the Sheriff's Office at this point who hasn't had to transport somebody.

A Correct.

Q You included; right?

A Correct.

Q The Sheriff included?

A Right.

Q And so typically when you transport somebody it's a one-on-one situation.

A Correct.

Q Would you feel com – at the time that you filed this, did you feel comfortable transporting Mr. Allen in a one-on-one situation?

A No.

Q The visitations with attorneys and clients, those are videotaped; correct?

A Yes, they have –

Q There's no audio, but there's –

A There is video.

Q -- image videotaping of those meetings. Why is that done?

A Again, that's mainly for – if you will, to monitor, mainly for the safety and security of not only the facility, but that individual that is – because we have had individuals act out against their attorneys and so we want to, obviously, provide

for the safety of the attorneys coming into the building, as well, or anyone visiting the inmate.

Q Sure. And did you – when you filed the motion, those safety concerns were in the front of your mind when you filed the motion?

A Yes.

Q And you didn't make the decision to grant the safekeeping; is that fair?

A That's correct.

Q The Court did that; right?

A Right.

Q But you filed the motion with your concerns and outline those concerns in the motion?

A Correct.

Q Before you signed the motion, did you review it?

A Yes.

Q And so there may have been some I guess corrections or additional language added to the motion before you signed it, but you had an opportunity to review it before you signed it?

A That's correct.

Q And did you firmly believe the statements in that motion were correct?

A I did.

Q And did you believe those statements in that motion when you signed it?

A I did.

Q When – have you asked the Department of Correction to house people for safekeeping purposes before?

A Yes.

Q And in other cases when you do that, do you go inspect the facilities at DOC before they're transported?

A Typically I have not. I must comment that I've been to Westville, although some time ago, but I know the general layout, if you will –

Q Sure.

A -- of that facility and so – but this particular case I did not because I have faith and trust in the Department of Corrections.

Q Sure. It – and I guess my – word the question better: Was it routine for you to go inspect the facilities at DOC before you asked that an inmate be transported for safekeeping?

A No.

Q It would seem unusual to me that you would ask for a safekeeping order and, before they're transported, go to that facility, check it out to see if it meets your standards I suppose, and then allow the inmate to be transported.

A Again, I have trust in the Department of Corrections –

Q Sure.

A -- and their facilities and resources.

Q Mr. Rozzi had asked you about if inmates are shackled or handcuffed in your facility. Have you had occurrences where you've had a high-risk inmate where they are shackled during attorney visits?

A If we have, it's been some time ago. I can't recall any recent specific incidents.

Q Would it be your – well, did you know, was it your policy when you were the sheriff to have – if there's a high-risk defendant, that they be restrained in some way when they visit with their attorney?

A Yes.

MR. MCLELAND: I don't have any other questions, Judge.

THE COURT: Mr. Rozzi.

RE-DIRECT EXAMINATION OF CHIEF DEPUTY TOBE LEAZENBY

QUESTIONS BY MR. ROZZI.

Q Have you had other murderers housed in your jail in the past?

A Yes.

Q And do – Mr. McLeland asked you if you had any direct threats and you acknowledged that you hadn't had any direct threats on his life or yours or anybody else's; right?

A Right.

Q Did you have any indirect threats on his life or yours or anybody else's?

A Not indirect, but I guess I will say rumors or social media innuendos.

Q Okay. Did you send law enforcement teams or authorities out to act on those?

A No, because we weren't fully aware of the actual location of those individuals.

Q And let's talk about when he was transported to White County; were you aware of the circumstances under which he was housed in White County, the White County Jail?

A As far as specifically where he was placed –

Q Yeah.

A -- within White County? No. Again, I obviously had trust and still do have trust in Sheriff Bill Brooks.

Q So you didn't go over there, either?

A No, but I know their facility.
Q Okay.
A Yeah.
Q But are you aware that he was isolated over there?
A Again, once he was turned over to Sheriff Brooks, at that point that was his call, it's his building.
Q You don't even know?
A I don't.
Q Did you attempt to call any other sheriffs in any of the other surrounding counties, maybe Tippecanoe, for example, to try and work some long-term arrangement out for him?
A No, sir.
Q And Mr. McLeland asked you about transportation, you said you have this one officer. Does your department routinely ask for assistance from other law enforcement agencies in the course of your business?
A Yes.
Q And you could have sought out that assistance in terms of transporting him; right?
A Potentially, yes.
Q I mean, the State Police has been intimately involved in this case for the last five or six years; right?
A Right.
Q They have far greater resources than your staffing has; right?
A Right.
Q And your department has?

A Yes.

Q Would have been an option?

A Potentially.

Q Mr. McLeland asked you about whether or not it would have been – or whether or not it would have been routine for you to inspect a facility; do you recall that question?

A Yes.

Q And your answer was?

A No.

Q If you had to do it over again, would you now think about inspecting, having been through all this?

A No.

MR. ROZZI: All right. I have nothing further.

THE COURT: Mr. McLeland.

MR. MCLELAND: Judge, yes, if I may.

RE-CROSS EXAMINATION OF CHIEF DEPUTY TOBE LEAZENBY

QUESTIONS BY MR. MCLELAND.

Q Sheriff Leazenby – or Deputy Leazenby, do you have concerns of Mr. Allen's safety today if he's placed in the Carroll County Jail?

A I do because of our combination of several things: staffing, the concern of additional inmates, and not knowing – and my – if I may speak, it was a proactive effort on my part in addressing this.

Q You had to act quickly; is that fair in saying?

A Yes.

Q He was arrested –

A Yes.
Q -- there was concern that if he's housed in your jail – what was the concern for his safety? That another inmate would act out against him?
A Inmate or, potentially, any, you know, outside sources, not knowing, you know, who may carry through with some type of an outside threat.
Q This crime is very closely connected to our community?
A Right.
Q A lot of people involved?
A Yes.
Q A lot of emotion involved?
A Right.
Q And rightly so.
A Yes.
Q And so did that house some of your fear that someone may become too emotionally involved and act out in an inappropriate way against Mr. Allen?
A Correct.
Q And that – is that fear still there today, still present today?
A I – yes, I would say so.
Q As more evidence comes out –
A Yes.
Q -- would you say your fear's gonna be heightened or diminished?
A I would say heightened.
Q And let's be clear: The admissions he's making in DOC, once those come out –
A Right.

Q -- that he admitted to these crimes –

A Right.

Q -- once that information is public, does that heighten your fear of his safety or diminish it?

A Heighten it.

MR. MCLELAND: I don't have any other questions, Judge.

THE COURT: Thank you, Chief. You may step down.

THE WITNESS: Thank you.

THE COURT: Mr. Rozzi.

MR. ROZZI: We'll call Max Baker, Your Honor.

(Witness sworn.)

DIRECT EXAMINATION OF MAX BAKER

QUESTIONS BY MR. ROZZI.

Q What's your name?

A My name is Max Baker.

Q And, Max, if you would, tell the Judge where you live?

A I live in Logansport, Indiana.

Q Okay. And, Max, how do you – how are you involved in this circumstance; just give the Judge some background.

A I began working as an intern at Brad Rozzi's office around November last year on this case, just helping him with the burden. There's a lot of work to do on this case, so he needed an intern to help lighten the load a bit.

Q Okay. So tell the Judge what your highest level of education is.

A I have my high school diploma from Logansport High School and I'm currently a junior at Indiana University Bloomington.

Q All right. So you'll be graduating after next year; right?
A Um-hmm.
Q Yes or no?
A Yes. Sorry.
Q No, that's all right. Had you worked in other law offices, even before you worked for me?
A Yes. Last summer I worked with Mark Leeman, an appeals attorney in Logansport, Indiana, and yeah, that's about it.
Q Okay. And do you have some general, you know, intention to pursue an occupation in the legal industry?
A Yes. Once I finish my undergraduate degree, I hope to attend law school.
Q Okay. And just tell the Judge generally what your nature – what the nature of your involvement has been in this case.
A Well, it began with helping with the change of venue motion; and then, once we started getting discovery in, obviously the discovery in this case is pretty massive, so I began to help process that and digest a lot of that information. That is my main role, but another one of my roles has also been helping Brad visit and speak with Rick on occasion.
Q Okay. And is it also true that you've been working with some of the people – most of the people behind me that are kind of sitting here, part of our support staff?
A Yeah. It's kind of been a group effort, yeah.
Q Okay. Have you also been privy to some of the discussions and conversations about Mr. Allen's detention situation and trying to get him moved to another facility?

A Yes, I have.

Q Have you had a chance to visit – I think you just said you did, but have you – how many times would you estimate that you visited with Mr. Allen up to today's date?

A I have visited Rick four times while he's been incarcerated.

Q And can you generally just give the Judge some idea of the timeframes? I don't expect you to recite the exact dates, but –

A Yeah.

Q -- just give her some idea.

A Absolutely. So the first visit was on my Christmas break, it was around Christmastime of December last year; and then my last three visits have all been in the month of May of this year, once I got back from college.

Q So one visit around Christmas and three in the month of May?

A Yeah.

Q Tell the Judge, just for you and – well, is it fair to say that you visited with me – we've gone together every time that you've gone?

A Yes.

Q All right. Tell the Judge what it takes for you and I just generally to get – essentially to get in Rick's air space, to get to a place where we can talk to him.

A I – do you want me to ans – it has changed during my visits.

Q Well, let's talk about distance and time and things like that.

A Oh, okay. Yeah, so it's about an hour and a half drive from Logansport to Westville. That's been a little longer recently 'cause they've been doing some construction on the roads in between here and there, but yeah. I mean, usually we have to call and give them advanced notice that we will be going and they

have to make preparations, that sort of thing, but yeah, it's a pretty far drive, longer with the detour now.

Q And so when we get to the prison, give the Judge some idea of kind of what initially occurs – well, let's just strike that. Let's talk about the first visit back in December; you recall that visit?

A Yes.

Q Tell the Judge what you remember about us getting access to Mr. Allen during the first visit.

A Out of all the times we went, it was the least-complicated process. Basically, we just kind of walked in. Rozzi showed his identification. I kind of, embarrassingly, forgot my wallet that day, left it at the office, so I didn't have my identification with me, so I told the lady at the front desk my name, and then that's really all we had to do, and then we were put in a van and driven to Rick's area of the prison.

Q What did we take with us, if you recall?

A Laptops, phones, work material, I mean all different sorts of things. We – none of our bags were searched or anything like that.

Q Yeah. There wasn't any kind of shake-down that occurred in the front at the –

A Absolutely not, no.

Q -- front gate or anything like that?

A No.

Q All right. And where did we visit with him, if you recall?

A We visited – I do believe it was the Captain's office. It was somebody's office. It was a pretty large room with a large kind of table in the middle of it.

Q And how would you describe Rick's physical appearance and demeanor at that visit?

A I mean, he kind of looked like he had always looked. I mean, that was very – he was not long into his stay at the correctional facility, so not much about his physical appearance had really changed. He was still – you know, had some weight on him, still looked healthy, his demeanor was pretty normal, albeit – I mean, he was obviously undergoing a lot of stress and that sort of thing, but he looked healthy and normal for what I saw – from what I saw.

Q And in terms of communicating him – communicating with him, not specifically, but was he communicative I should say?

A Absolutely, yeah.

Q Okay. Were we having productive exchanges, attorney-client exchanges?

A Yes.

Q And tell the Judge what you recall about the presence of other officers during that first visit, other prison staff.

A So, yes, Rick – every time I've basically went, he's been escorted by I would say four to six guards; and, during our meetings, usually some guards hang around where we were, where we were meeting. The first meeting, the door was left slightly ajar and a couple of guards were propped up outside, and I knew that 'cause they were – I could hear their kind of conversations from time to time.

Q Okay. And so, eventually, you said that the next I think three visits you had were in the month of May?

A Um-hmm.

Q Yes or no?

A Oh, sorry, yes.

Q Okay. And let's talk about those visits. Tell the Judge, did – were there changes in the way things occurred at the prison in May?

A Yes, there were massive differences.

Q Okay. Let's talk to the Judge about the front gate and kind of what changed there in terms of us getting there.

A Oh, yeah. So at the front gate, identification was absolutely required, bags were searched. We were not allowed to take our phones in, we were not allowed to take our watches in, we were not allowed to take laptops or computers in. We got patted down by an officer there, had to go through metal detectors. It was a completely different process, yes.

Q What were we required to do with our phones?

A We were required to leave them in the car. We couldn't –

Q We couldn't even have them in the building at that point?

A Yeah. I remember you had asked if we could put them in a locker and that request was denied. They have lockers for personal belongings right next to the check-in.

Q Okay. And so where did we meet with Rick, if you recall, during these May visits?

A I believe we met in a therapy – it was another type of office, but this one was much, much smaller. It was, I would say, about half the size of the original one.

Q Okay. Can you just describe to the Judge, as we're sitting here, to the best of your ability, like how big of a room are we talking about?

A I would say twelve by six, I mean not big at all, I mean –

Q Okay. Adequate to meet somebody; right?

A Yes. Yeah, yeah.

Q But it was a different room all together?

A Yes.

Q Okay. And describe to the Judge what his escort was like, if it was any different than the first time, to the room.

A I would – oh, yeah, this time there was a video camera that was recording Rick; one of the guards was walking behind him, recording him as he was being taken to our meeting room.

Q All right. And when you said a video camera, I mean it's kind of old fashioned, but it was a camcorder; is that right?

A Yes, yeah.

Q All right. And so is this the first time you'd ever seen this video camera as part of this narrative?

A Yes.

Q All right. Tell the Judge how the video camera was employed, so to speak, by the prison staff throughout the visit.

A So yeah, during our conversations with Rick, there was this pretty big window that overlooked the room. Rick was sat in a plastic chair with no armrests in the middle of the room, and for the entirety of our conversations with our client, the camcorder was held outside the window, kind of bearing down directly at him.

Q How far was the camcorder from your notepad and your body, so to speak, your person, if you could estimate?

A It was a couple of feet. I kind of had to – because the desk was behind, I kind of had to lean over, just to make sure that none of my notes were being

picked up or anything like that.

Q All right. And so is it – did I actually – do you recall me asking to have him sit – well, strike that. Were there other chairs in the room?

A Yes.

Q Tell the Judge what the room was like.

A So you have the desk, which I was sitting at, which was right next to that window where he was being recorded from. That desk had kind of a spinney office chair and then, to the left of that, by where the door we entered was, there were two just cushioned kind of regular chairs and then there was another desk to the right of the room that also had another kind of spinning desk chair.

Q All right. And so, did you – did I, at some point, make a request to just have him sit in one of the office chairs?

A Yeah. In our second visit, you requested that he sit in one of the padded chairs to the left of the room.

Q All right. What was the reaction?

A They told you no and they brought in a – the plastic chair for him to sit in that I referenced to earlier without the armrests.

Q Can you speak up a little bit.

A Oh, yeah. They said no and they brought in the plastic chair that I referenced earlier without the armrests on it.

Q Okay. Where'd they put the plastic chair?

A Right in the middle of the room.

Q And where was it relative to the camera?

A I mean, directly facing the room.

Q So he's looking, essentially, right into the camera the whole time?

A Yes.

Q How far away was he, if you could estimate?

A Five, ten feet.

Q Okay. Pretty close?

A Yes.

Q And so is it fair to say the whole time we're meeting with our client, we've got a video camera sitting right behind your head, basically –

A Um-hmm.

Q -- on the other side of a window?

A Um-hmm.

Q Yes or no?

A Yes.

Q And presumably, recording what's going on in this room?

A Yes.

Q All right. As far as his – you know, his circumstances, was he shackled similar to the way he's shackled today?

A I would say exactly like how he is today, with the handcuffs with the bar in between them, the ankle cuffs, and then the belly chain.

Q Okay. So basically, is this the way you've seen him every time you've seen him?

A Yes.

Q All right. And did you feel like in that room that there was any privacy whatsoever when we were meeting with him?

A Oh, absolutely not, no.

Q Did you have any confidence at all that anything we were saying was – that

those windows were soundproof or the door was soundproof or anything like that?

A No.

Q Did we have an additional meeting in that room at some point, a second one?

A Yes, yeah.

Q All right. And do you recall there being any differences between the first meeting and the second meeting?

A Not, I mean, too many, maybe a couple. I mean, I know one we went with Andy, that was kind of the main difference in my mind.

Q Okay. All right. Do you recall the environment in that room, whether or not it was hot? Cold?

A On one of the occasions, it was – I mean, it was a hot day out, but it was – I mean, it was about 90, 95 degrees in that room. I left the conversation kind of dripping in sweat, basically.

Q And the entire time, Mr. Allen is sitting in a plastic chair in the middle of the room facing a camera; right?

A Yes.

Q With shackles on, leg shackles, and a belly chain?

A Um-hmm, yes.

Q Had that ever changed, you know –

A No.

Q -- up in those two visits?

A No.

Q All right. Did we visit again more recently?

A Yes.

Q Approximately when was that?

A I think the 30th of May.

Q All right. So just about a week or two ago?

A Um-hmm.

Q Yes or no?

A Yes, yes. Sorry.

Q Okay. Tell the Judge what the purpose of that visit was.

A That visit consisted of a person visit with Kathy and her husband. We wanted to get Rick to see his wife, 'cause we thought it would be a – kind of a mood booster for him, help his cause.

Q Well, let's talk about that. During the second and third visits, did you have a chance to observe his demeanor and his state of health?

A Oh, yeah. I mean, Rick looked and sounded absolutely awful during those second and third meetings, just he looked weaker. I mean, he – you could see it today, he's lost so much weight. He just seems fragile. When he talks, he's much quieter than he used to be, seems much more anxious about things, much more repetitive in his speaking, not really able to respond to questions consistently. I mean, it's like one out of every ten questions we asked him we were getting a genuine response to.

Q So was there really any ability to have a rational exchange with him in those two meetings?

A Not much at all, no.

Q All right. So did we arrange this meeting with his wife to try and maybe pull him out of this funk?

A Yes.

Q And that's what happened a couple weeks ago; right?

A Yes.

Q Tell the Judge what you recall about us getting into the prison during that meeting and what was allowed and not allowed.

A The rules changed a little bit during that meeting and we were allowed to take a computer in with a flash drive, but we were still not allowed to have phones, no watches, if I do recall correctly, and then we were still patted down and searched before we went in.

Q All right. And when – I recall there being a visit where actually there was – you were not gonna be allowed in at one point; do you remember that?

A Yeah, that –

Q Which visit was that?

A That was the third visit, the one we went with Andy. For some reason, they said I was not on the guest list or something to that nature; and even when I showed them my identification, my driver's license, they informed me that I was not gonna be able to go in until you and Andy made a couple calls, and about 30 minutes later, they let me go with you guys.

Q So in fairness, we got it worked out?

A Yes, yes.

Q But it was different than the times before; right?

A Yes.

Q All right. And so, getting back to this last visit, tell the Judge where we visited Mr. Allen.

A So I'm guessing this is – the room we visited him is the typical visitation

room at Westville, it was kind of like a house-type of structure and inside the building there were – I would describe lunch tables, kind of like my public school, all throughout for, you know, different inmates I'm guessing to meet with family members and that sort of thing; and then the back of the room was filled with vending machines for snacks, water, that sort of thing; and then there were two guards stationed in there when we got in and –

Q So they brought Rick in; right?

A Um-hmm.

Q Tell the Judge what he looked like in terms of how he was being restrained is probably the word I was looking for earlier.

A Yeah. I mean, he was still kind of restrained how we normally – how he kind of always has been. On this occasion, though, I noticed that Rick's entire face was bruised and kind of looked – scarring a little bit, I mean, he looked to be in horrible shape. Kind of looked like he got a really bad suntan, but you could tell that it was all bruising.

Q Okay. Let me go back to one of those visits real quick and let me ask you about his clothing. Was there a time when you noticed – you pointed out that there was a considerable change in his appearance?

A Yes.

Q Tell the Judge what you remember about that.

A On the second and third visits, Rick's clothing appeared to be brand new each time, like he had just – like they had just gotten his outfit out of the box. He wore white sneakers each time, which were extremely bright, looked like they had just been bought at the store, something like that. So there was a massive change in the quality of clothes he was wearing from my first visit to my second

and third visits.

Q And was that – did those occur after I filed this motion alleging some of these concerns that we had?

A Yes.

Q All right. Did that strike you as being kind of odd?

A Yes, yeah.

Q So then, going back to this last visit, did we make arrangements for Kathy – through the prison, for her to visit?

A Yes.

Q Okay. And so where were – tell the Judge where they were seated and what the logistics were surrounding their actual visit.

A Okay. So they were seated kind of to the right side of the room, directly across from each other. One of the guards that brought Rick in was seated five to ten feet away from them, basically close enough to hear, I would assume, every aspect of their conversation, whether they were whispering or not. There was another guard on the far left side and then two guards at their desks, who I think are normally stationed in that area, and then a couple of guards came in and out while we were meeting – while they were meeting.

Q These two gentlemen that were – you mentioned that were stationed on either side of him, were those people that routinely transport him?

A Yeah, those were the guards that I have noticed routinely transport Rick, yeah.

Q Okay. And so was he allowed to have some interaction with Kathy?

A Yes. They were allowed to hug at the beginning and end of their meeting.

Q Okay. Was he shackled?

A He was not handcuffed at that time.
Q Okay. This is the first we've ever met with him when he didn't have any at least handcuffs on; right?
A Yeah.
Q Do you remember seeing him walk in the actual facility?
A Yes.
Q We were already there; right?
A Yes.
Q When he came in, describe to the Judge what you saw.
A When Rick walked in, the guards that were escorting him took him past Kathy to the left side of the room and brought him into this room. About five to ten minutes passed and then Rick came out with a completely different outfit.
Q Okay. So they changed him – his clothes or something; right?
A Yep.
Q How was he restrained when they brought him in initially?
A Full shackles, if I remember correctly.
Q Okay. So basically, he has leg shackles on; right?
A Um-hmm.
Q That were restricting his ability to walk?
A Yes.
Q And he's got these hand shackles on; right?
A Uh-huh, yes.
Q He's always looking like I'm looking, with one hand over the other, as he is now?
A Yes.

Q And he had a belly chain; do you recall that?
A Yes.
Q Do you recall them having a leash actually attached to him?
A Yes. On this occasion, they did have a chain leash that was attached to him, yes.
Q And where was that – what was that, what was going on with the leash?
A I just saw it was connected to the belly chain.
Q Okay. Was an officer holding it, walking him, basically?
A Oh, yes, yes.
Q Did it look like walking a dog?
A Yes.
Q Did I say something to them?
A Yes, yes.
Q Was I pretty upset by that?
A Yes, you were.
Q So basically, he's walking around a jail; right?
A Yes.
Q Like I am, small steps, and he's got a leash, with somebody walking him on a leash?
A Yes.
Q Am I exaggerating?
A Not really, no.
Q How long did he meet with Kathy?
A About an hour.
Q All right. And as we sat there, did the officers ever leave and go anywhere

else?

A No.

Q I mean where he would have had some privacy.

A No. The one officer that was next to him stayed next to him the entire time.

Q All right. Was there anybody else in the building other than us and the people you described?

A No. They had closed down the visitation center for the hour, so it was completely dead quiet in the room. I mean, me and Brad were sitting pretty far away from where Rick and Kathy was, but even at times, I could hear aspects of their conversation –

Q Okay.

A -- that's how quiet it was.

Q It was quiet in there; right?

A Yes.

Q Okay. And what were your observations of his physical condition at that point? Was it any different than before?

A Yeah. His entire face was bruised, as I briefly mentioned earlier, and I mean, every single time I visited him, it was – and a couple weeks passed, he just looked weaker and weaker and weaker; and this time, he looked, I mean, awful, his entire face was bruised and I just – yeah.

Q Is it fair to say Kathy was pretty emotional?

A I mean, absolutely, yeah.

Q I mean, she hadn't seen him in seven or eight months; right?

A Yeah.

Q While she was visiting with him, was there a point in time when she was just crying?
A Yes, yeah.
Q And do you recall either her or somebody asking for some Kleenex, Rick or her?
A Yes.
Q And what did they give her?
A They gave her a couple pieces of toilet paper.
Q And tell the Judge, do you recall, at some point, there being a request to just get some water?
A Yes.
Q And who made the request?
A Rick or Kathy, I don't exactly remember.
Q Okay. Well, what was the reaction?
A It was – there was a no.
Q Just a flat no?
A Yeah, the request was denied, yeah.
Q How far were we sitting from a water fountain?
A Not far at all. The officer that was right next to them was also right next to a water fountain. It was, quite literally, right behind him.
Q How many requests were made for water while we were there?
A Two, if I remember correctly.
Q And what was the response?
A Both were denied.
Q And there's seven or eight full vending machines with Mountain Dew and

Pepsi and Fritos and everything else on the back wall, wasn't there?

A Yes.

Q How'd that visit end?

A We spoke with Rick briefly and then – after Kathy and him had spoken, and then he was taken back to his cell, I'm assuming, by the same officers that had escorted him in.

Q And then we departed?

A Yes.

Q And we haven't been back?

A We have not been back, no.

MR. ROZZI: Nothing further.

THE COURT: Mr. McLeland.

MR. MCLELAND: Thank you, Your Honor.

CROSS EXAMINATION OF MAX BAKER

QUESTIONS BY MR. MCLELAND.

Q Mr. Baker, you and I spoke before court, I think you're 20 years old; is that right?

A Yes.

Q Besides working on this case with Mr. Rozzi, have you worked on other criminal cases with him?

A Yes.

Q And during your work on those other cases, have you had an opportunity to visit DOC facilities?

A I'm not – I've visited other facilities, I'm not exactly sure whether or not they were DOC facilities.

Q Have you visited the Cass County Jail?

A Yes.

Q Okay. Have you visited jails in other cities?

A Yes.

Q Okay. During your time doing those visitations, did you ever have an opportunity to sit with or visit with somebody that had been accused of murder?

A Yes.

Q And was it someone who'd been accused of murder of two girls?

A No.

Q The first visit that you made with Mr. Allen in Christmas – during Christmas of 2022; is that correct?

A Yeah, around that time.

Q And the demeanor of the conversation between you and Mr. Allen, was that a normal conversation?

A Well, obviously a lot was going on in Mr. Allen's life, so he was a little anxious and it wasn't a normal conversation, but it was much more normal than my later conversations.

Q Let me rephrase: Did you introduce who you were?

A Yes.

Q Did he introduce who he was?

A Yeah, probably.

Q Okay. And then you visit him it looks like three times in May; is that correct?

A Yes.

Q The first visit in May, was the interaction the same as it was at Christmas

break?

A Absolutely not, not. He didn't even remember who I was.

Q And then, the third and fourth visit, what were those interactions like?

A I mean, similar. I mean, even those times he didn't remember who I was.

Q And let me back up: Did you know Richard Allen before you got involved with this case?

A No.

Q And so fair to say that if you didn't know him before you visited him on Christmas of 2022, you didn't know what was normal behavior, what his normal look was like, you didn't know what normal for him was; is that fair in saying?

A For him, yeah.

Q Okay. You're basing all the answers that you've given today on what you consider normal?

A I was more trying to compare between the different visits.

Q But you throw out a lot of adjectives in there, you know, "This was abnormal", "This was normal." You're basing that on your experience, not your experience with Mr. Allen?

A I believe I'm basing it on my multiple experiences and comparing them.

MR. MCLELAND: Okay. I don't have any other questions, Judge.

THE COURT: Mr. Rozzi.

RE-DIRECT EXAMINATION OF MAX BAKER

QUESTIONS BY MR. ROZZI.

Q Max, you've worked – done hard work on this case, haven't you?

A Yes.

Q And seen a lot of photos and video and watched a lot of interviews?

A Yes.

Q Let me hand you what's been marked as Defendant's B; you recognize this photo?

A Yes.

Q It's a picture of Mr. Allen a year or two prior to this?

A Yeah.

Q And is this what you believe that he looked like when he was arrested based on everything that you've seen in the thousands of pages of discovery?

A Yeah.

Q Did he look like that in May when we started visiting him?

A No.

Q Looks like he does now; right?

A Yes.

MR. ROZZI: Move to admit B.

DEFENDANT'S EXHIBIT B OFFERED

MR. MCLELAND: Maybe a couple foundational questions, Judge.

THE COURT: Yes.

MR. MCLELAND: Did you take that picture?

A No.

MR. MCLELAND: How do you know when that picture was taken?

A To be fair, I don't.

MR. MCLELAND: Okay. So you're just being told it was taken a year or two by Mr. Rozzi?

A Yes.

MR. MCLELAND: You don't know who took that picture?

A No.

MR. MCLELAND: I don't have any other questions, Judge. No objection to the photo.

THE COURT: All right. I'll show Defendant's B is admitted without objection.

DEFENDANT'S EXHIBIT B ADMITTED

Q Nick asked you about whether or not – I'm sorry, Mr. McLeland asked you whether or not you had ever been to visit with somebody that was accused of murdering two girls; you remember that question?

A Yes.

Q You ever been to visit with somebody that was accused of murdering a woman?

A Yes.

Q And do we do that all the time?

A We've done that quite regularly since I started.

Q Yeah. Where do we do that?

A I mean, we – it doesn't – it's nothing like how we meet with Rick. I mean, we –

Q Yeah; but where does that occur?

A It could occur multiple – it could occur in a room outside of the courtroom when we're at a hearing for a case, I mean –

Q Okay.

A -- it's occurred in very normal – more normal locations.

Q All right. Have we visited the Tippecanoe County Jail a whole bunch –

A Yes.

Q -- in the last six months?
A Yes.
Q And is that involving – a case involving death?
A Yes.
Q And when we go visit with that client, tell the Judge what the circumstances are like.
A That client is, by no means, shackled. She's in a completely normal state of mind given her circumstances. She is able to sit right next to us, able to assist in her defense, write stuff down, all different sorts of things.
Q Is it – what kind of room are we in?
A I mean, we're just in normal kind of visitation room, I would assume, or we were in a rec room I think the one time we visited the Tippecanoe Jail.
Q Right. There's a table in there?
A Yes.
Q And we're all sitting around the table?
A Yes.
Q Got discovery laid out on the table?
A Yes.
Q Having discussions with the client?
A Yes.
Q Interacting in more – much more unrestrained circumstances?
A Absolutely, yes.

MR. ROZZI: I don't have anything further.

THE COURT: Mr. McLeland.

QUESTIONS BY MR. MCLELAND.

Q So, Mr. Baker, let's just address the elephant in the room: Your testimony here today is implying that if Mr. Allen were in another facility his health would better, his state of mind would be better, his clothes would be better, and that's because you visited other people in other facilities and they're in a better situation, in your opinion, than Mr. Allen's?

A Yeah.

MR. MCLELAND: Okay. I don't have any other questions, Judge.

THE COURT: All right. Thank you, Mr. Baker. You may step down.

THE WITNESS: Thank you.

MR. ROZZI: One second, Your Honor. Captain Gary Lewis, Your Honor.

(Witness sworn.)

DIRECT EXAMINATION OF CAPTAIN GARY LEWIS

QUESTIONS BY MR. ROZZI.

Q Sir, would you, please, tell the Judge your name.

A Gary Lewis.

Q All right. And tell the Judge where you work.

A Westville Correctional Facility.

Q Okay.

MR. ROZZI: Are – is the reporter picking this up? Can you hear him okay? Okay.

Q And specifically, do you work on the maximum-security unit at the facility?

A Yes, sir.

Q Forgive me, I don't understand all the dynamics there, but I suspect that's

where your primary responsibility is.

A Yes.

Q Is that correct?

A Yes.

Q Okay. And how long have you been on that unit?

A Going on five years.

Q All right. Is there any more secure unit in all of Westville Correctional Facility than the unit you work on?

A I'm not sure. I'm not sure, there's probably another lock-up unit somewhere, but –

Q Have you ever visited the rest of the facility?

A The rest of the facility?

Q Yeah, Westville.

A Facilities or just my facility?

Q Let me make sure I ask the question correct: Is there – in the Westville Correctional Facility as a whole, is there another unit that's any more secure than the one you work on?

A No.

Q Okay. Are you aware of any other unit in the state that's really any more secure than the one you work on?

A Maybe a couple.

Q Okay. Have you worked at those?

A No.

Q All right. And are you basically in charge of the unit as it – at least during the day shift?

A Yes.

Q Okay. There's – I'm assuming there's another captain that may work in the evening.

A Yes.

Q Okay. And is it fair to say that your unit is kind of located in the back of the property and it's kind of its own separate facility?

A Correct, yes.

Q And in fact, to get there, you gotta go through the front gate – right? – the main front gate, where everybody goes to visit; is that right?

A Yes.

Q And then you have to go – be transported by a vehicle and then go through two more gates and then in to your facility?

A Yes.

Q Okay. What is the purpose of your unit?

A To house incarcerated offenders that are disciplinary problems.

Q I'm sorry, to house? I just can't hear you very well.

A To house –

Q I know you're soft-spoken, I'm sorry.

A To house all types of prisoners that have disciplinary problems, they could be safekeepings, they could be anyone, anywhere, they send them throughout the state that there's a problem or not a problem, well, I really can't identify what the problem is when they send them there, I just know they're in my facility and that's it.

Q Okay.

A I try not to look at that.

Q In the time that you've been there, have you ever housed an inmate that I would refer to as a pre-trial detainee, somebody that's not been convicted of a crime and awaiting trial?

A Since I've been there?

Q Yes.

A No.

Q This is a first; right?

A Yes.

Q Mr. Allen's situation?

A Yes.

Q And you see how he's restrained today; right?

A Yes.

Q I mean, you're familiar with this restraint circumstance; is that fair?

A Yes.

Q And is this how he's restrained all the time, whenever he's out of his cell?

A No.

Q So he leaves his cell under different circumstances?

A Yes. It's not the same kind of restraint – it's not the same type of restraint, that isn't how he's restrained; similar, but not the same.

Q Okay. Is it fair to say that this is what he looks like when he meets with us?

A Does he have a black box on?

Q He has a black box.

A Yes.

Q Okay. Leg shackles, black box –

A Yeah.

Q -- body – belly chain I think they call them.

A Yes.

Q Do – now, just to be clear – I under – I know the Judge knows this, but we're making a record – there's thousands of other inmates in the Westville Correctional Facility; right?

A Well –

Q Other than Mr. Allen.

A I work in – I work in a different facility, we only got 255 offenders max unit.

Q Okay.

A So yeah, we got the whole Westville probably holds around 2500, 3000 people.

Q Right. There's a fence that, essentially, separates your building from the other buildings in Westville?

A Yes.

Q But all within the same perimeter?

A Yes.

Q And do any of those other thousands of inmates, to the best of your knowledge, move around the facility looking like he does and restrained like he is?

A Okay, so the circumstances are a little different. Like so, when – are you talking about when they come out of my facility and go somewhere else?

Q Let me just give you a hypothetical. Okay. When John Smith, who's housed on the other side of the fence, goes to visit with his wife in the visitation, is he shackled like this?

A No.

Q Okay. Is that part of the protocol for any of the other inmates that are on the other side of your fence when they go to visit?

A So here's the deal, like I always – I know what they do over there, you know, they don't – when offenders goes to the visiting room, no, they're not restrained; but for my unit, if they're going to – if they go to the visiting room, they're restrained like that.

Q Okay. And so he's not treated the same as other offenders that are outside of your maximum-security unit; is that an accurate statement?

A That would be an accurate statement.

Q Do you acknowledge that he always has leg shackles on when we meet with him; right?

A Yes.

Q And handcuffs – do you call these box cuffs?

A No. That's called –

Q What do you call these handcuffs?

A They're called handcuffs.

Q Okay. But they have a box on them, they're different than others; right?

A Yes.

Q He's all bound up in these chains; right?

A Yes.

Q Belly chains, is that what you call the chain that goes around his waistline?

A Yes, sir. Yes, sir.

Q And then, I saw the other day he had a leash on him. What's the purpose

of the leash?

A In the max-control unit if they escort them everywhere, that – the leash, it's called a lead.

Q A lead?

A A lead.

Q L-E-A-D? L-E-A-D, a lead?

A Yes, um-hmm, yes.

Q Like you would have on a horse or something?

A I don't know what's on a horse, but –

Q Okay.

A -- that's what we carry.

Q All right. Do you acknowledge, in this particular circumstance, that there was a timeframe where you were videotaping, your staff was videotaping our meetings with our client?

A I do recall.

Q And have you ever ordered your staff to videotape a meeting with any other inmates in that facility?

A Have I ever done it? No.

Q Have you ever directed your staff members to videotape any other inmates in that facility when they're meeting with their lawyers?

A No. No other offender meets with anybody with their lawyers in my facility.

Q You're gonna – I'm sorry, you're gonna have to speak up.

A No, we don't. No other incarcerated individual meets with their lawyer inside my facility.

Q Do you believe that anybody that's outside of your walls, all these other

thousands of inmates, are being videotaped when they're meeting with their lawyers, based on what you know about the prison setting?

A Based on what I know? It's just a feeling here, I don't know, I'm not sure, no, probably not.

Q Do you acknowledge that there are other inmates – that the other inmates in the facility have opportunities to visit family members in the visitation area?

A Yeah. I mean, they visit.

Q We just had a visit about a week ago with Rick; is that right? Two weeks ago, maybe?

A Yes, maybe, I'm not sure, yes.

Q Okay. You were there; right?

A Yes, I was there, but I got a lot of things going on, you know.

Q Yeah, okay, that's fine. Do you acknowledge that that visit was different because it was set up and his wife was a part of that?

A Yes, it was different.

Q And you – essentially, the visit occurred in a different area of the prison; right?

A Correct.

Q Which is what I assume is the normal visitation area for most people.

A You talked about where you at?

Q Yeah.

A Yes.

Q And do you acknowledge that it was different because the room was totally empty?

A Yes.

Q And there were guards that were, essentially, positioned next to him, one right within arm's reach of him; right?

A Correct.

Q And that was part of your protocol?

A Typical protocol?

Q Yeah, or not.

A Well, I don't know if it was a part of the protocol, but he is different. I mean, I don't know how different in what way, but I don't know what the circumstances would be, but yes, it was a different visit for him, yes, if you want to say that.

Q One of the things that caught my eye was he had to change clothes or something or –

A Well, all visits – all visitors – all incarcerated visitors that visit have to change their clothes, that wasn't different, that part wasn't different.

Q Okay. So they walked him into a room and he changed clothes and that's part of the protocol?

A That's part of it.

Q All right. Were you there when he asked for water?

A No, no.

Q Okay. Is there any reason why he shouldn't be able to get a drink of water in that facility?

A For who?

Q For Rick.

A I'm not aware of the rules that's in the visiting room, all I do is man the Westville Correctional maximum-security unit.

Q Okay. But you've been in the room; right?
A Where?
Q In that visit room.
A I've been in there before.
Q You were in there with us?
A Yes, I walked in.
Q There's a water fountain right against the wall, isn't there?
A For visitors.
Q And a bunch of vending machines?
A Correct.
Q Do you recognize the word "companion"?
A Yes.
Q Do you have a program at the prison that's called the Companion Program?
A Yes.
Q And is it – is that program one that you institute or you use, I should say, in the maximum-security unit?
A Yes.
Q And do you agree that, basically, you're posting an inmate, somebody from the facility, outside of the door of the detainee; in this case, Mr. Allen?
A Yes.
Q And do you agree that that – is it accurate to say that that program is in place because of staffing shortages and monetary challenges and things of that nature in the prison?
A I'm not sure about that.

Q Okay. So does – has Mr. Allen had a companion assigned to him since he's been in your facility?
A He has, but it switched to an officer.
Q Okay. So it's changed?
A Yes.
Q All right. But at one point, he had inmates that were sitting outside of his cell; right?
A Correct.
Q Basically – and forgive me, I've not seen this, but my impression is, is that there's somebody posted essentially at his cell door to watch him?
A Correct.
Q And those people communicate with each other?
A Correct, with the –
Q And they're not directly supervised by other officers?
A What people communicate?
Q The companion.
A Communicates with?
Q Mr. Allen.
A They're just supposed to monitor any incarcerated offender that he's watching.
Q Okay. But they can communicate, it's not – there's no –
A They're not supposed to talk.
Q All right. But they do talk, don't they?
A I don't know if they talk or not. If I see him talking, he's fired.
Q I couldn't hear you.

A If I see them talk – if the officer would have seen him talking to whoever he's supposed to be watching, he's supposed to be relieved of his job right there.

Q Okay. Do you think there's ever been conversations between those inmates and the companions ever in your prison?

A I'm not sure. I don't sit there and watch them.

Q Okay. How far away are they for the two bodies when that circumstance is occurring?

A From where he's sitting in front of the door to –

Q Yeah. If he was standing at the door, how far would he be from the companion?

A Maybe a foot or two, two feet.

Q Close enough to have a conversation?

A I mean, we're close enough to have a conversation.

Q Right, but that would be close enough, one or two feet –

A Yes.

Q -- to have a conversation?

A Um-hmm, yes.

Q And your staff can't monitor everything that's going on there, can it?

A It's impossible to monitor any – everything that goes on.

MR. ROZZI: I don't have any further questions.

THE COURT: Mr. McLeland.

MR. MCLELAND: Thank you, Your Honor.

CROSS EXAMINATION OF CAPTAIN GARY LEWIS

QUESTIONS BY MR. MCLELAND.

Q Captain Lewis, during the time that Mr. Allen's been on your unit, have

you treated him differently than other people on your unit?

A No. Everyone's basically treated the same as far as the conditions, we don't treat anybody different, no.

Q Have you treated Mr. Allen harsher compared to the other people that are on that unit?

A No, sir.

Q Has Mr. Allen been placed in a cell that is, for lack of better words, worse than the other cells?

A No, sir.

Q And so everybody on your unit is treated equal?

A Equal.

Q Are they all given the same amount of rec time?

A Yes, sir.

Q Are they all given the same access to commissary?

A Yes.

Q Are they all given the same access to clothing?

A Yes.

Q All the same access to shower time; correct?

A Yep.

Q All the cells in your unit are identical?

A Yes.

Q And the way that they're set up with the bed, the toilet, everything that's in the cell?

A Identical.

Q Okay. Have you personally mistreated Mr. Allen in any way different from

the other inmates in your unit?

A No.

MR. MCLELAND: I don't have any other questions, Judge.

THE COURT: Mr. Rozzi.

RE-DIRECT EXAMINATION OF CAPTAIN GARY LEWIS

QUESTIONS BY MR. ROZZI.

Q Do you have any other pre-trial detainees right now in that unit in –

A Pre-trial? No, none that I know.

Q What kind of – tell the Judge what kind of people are housed in your unit; what kind of convictions are normal for people that are housed in your unit?

A Just –

Q I'm gonna withdraw that question, I'm gonna get right to the meat of the matter. You have murderers in there?

A Yes, sir.

Q Child molesters?

A Yes, sir.

Q Basically the worst of the worst in society?

A Yes, sir.

Q Do you recall me asking to see his cell at one point when I visited with your staff with you – at your facility?

A Um-hmm. (Affirmative response)

Q And what was the response from the Department of Corrections through you? I understand that –

A Through me, it was no.

MR. ROZZI: Okay. And – I don't have any further questions.

THE COURT: Mr. McLeland.

MR. ROZZI: Hold on one second.

THE COURT: Oh.

Q Is there a detainee or an inmate on your unit right now by the name of Robert Baston?

A Yes.

MR. ROZZI: Nothing further.

THE COURT: Mr. McLeland.

MR. MCLELAND: I don't have any other questions, Your Honor.

THE COURT: All right. Thank you, Captain. You may step down.

THE WITNESS: Thank you.

MR. ROZZI: One more witness, Your Honor.

THE COURT: Okay.

(Witness sworn.)

DIRECT EXAMINATION OF SHERIFF EDWARD SCHRODER

QUESTIONS BY MR. ROZZI.

Q What's your name?

A Edward Schroder.

Q And, Sheriff, tell the Judge where you're employed.

A I'm currently the Sheriff of Cass County, Indiana.

Q Okay. And just to kind of get through some of the technicalities here, you were a state trooper for, I don't know, a long time; right? Thirty years?

A Yes, sir. I retired from the State Police after 31 years as a major.

Q Okay. And so you were in charge of at least one post, if not others?

A Yes, sir.

Q Okay.
A About 350 people.
Q All right. And is it fair to say – well, just tell the Judge real quick, what are your general responsibilities in Cass County as the sheriff?
A As the sheriff, I believe my duties are serve the courts, as well as general law enforcement, and administrator – chief administrator of the Cass County detention – jail facility.
Q And tell the Judge, just as we sit here today, kind of what the size of your jail facility is and how many people you house maybe?
A We just – Your Honor, we just finished a remodeling addition, added approximately 150 beds. Our facility was 220, built in the year 2000. Now our 80-percent capacity's near 309 offenders.
Q So you had 220 beds, you added 150 more?
A Yes, sir.
Q Okay. And how far is your jail from here in Carroll County, roughly?
A Approximately 30 minutes.
Q And is this a modern facility, basically the most modern jail facility in the state?
A I don't know if it's the most modern in the state. It's the current technology for video conferencing, as well as video cameras, so it's the newer technology, yes.
Q Okay. And do you have the ability to house violent offenders?
A Yes, sir. That's what jails do.
Q Do you do that routinely?
A I would believe so, yes.

Q Do you house individuals actually for the Department of Corrections?
A Not in the essence that we hold them for them; we hold them while they're waiting transfer to the Department of Corrections after they have been sentenced.
Q Okay.
A So yes, we would have – in that sense, we would have them.
Q And some of those – is it fair to say some of those people are held for long periods of time?
A Yes.
Q I mean, we're not just talking days, it'd be months.
A Correct.
Q Okay. So do you house offenders from other counties?
A Currently, we do not have any from other counties, but we have memorandums of understanding for other facilities.
Q Okay. And so is it normal for that to happen over the course of your – has it been normal for that to happen over the course of your time as a sheriff?
A Just in the last year since we've completed our construction project.
Q Okay. Let me make sure I'm asking the question right: Is it normal for you to have – move inmates from your facility to other county facilities, back and forth, based on needs and space and things like that?
A Yes.
Q Basically, everybody helps everybody out?
A Correct, yes.
Q And what are your current capabilities in terms of segregating any particular inmate, if that needs to happen?

A It would really depend on the segregation needed. We have administrative segregation, as well as disciplinary segregation. We have padded cells for mental health crisis, as well as – we don't have any individual cells, but we have dual-people calls, dual-person, dual-male, dual-female cells.

Q Okay. You, frankly, gave me a little bit of a tour – I should say a tour through your prison a week or two ago; is that right?

A Yes, sir.

Q And did it by video; is that fair to say?

A Yes.

Q Is it – are you in a circumstance in your facility where you could house somebody like let's say Rick Allen, who is – maybe there's a heightened sense of security around that, with some reasonable comfort that he's gonna be safe?

A I believe housing-wise, yes. I believe the other administrative things go along with that, the media requests, the public information request, would be a burden for the staff, but yes, I believe we could house him.

Q So in terms of his actual physical safety, that's something that you could do if you were asked to do it?

A Correct.

Q I mean, is that the business you're in, basically housing people and keeping them safe?

A Yes, sir, it is.

Q Let's just talk generally about kind of – let's just – I'm gonna give you a hypothetical. Let's say that Mr. Allen was housed in your jail and I wanted to visit with him; tell the Judge how long it would take me to come over and see Mr. Allen just in raw time if you could estimate.

Q Is that if you're already at our facility or if you walk from your office?
A No, if I'm in my office.
Q It would be a half a block walk to our central control. He would talk to our central control operator, tell us who he's there to see. We would have the inmate moved and then we would put Mr. Rozzi in an attorney room – it's not face-to-face, it's through glass – and then we would have the inmate moved to him in – I would say in, best case scenario, 15 minutes.
Q Okay. So is it basically me just walking around the block and opening one door?
A Yes, sir.
Q And essentially, there's some meeting rooms and I just walk in one of those rooms and he's brought up?
A Yes, sir.
Q If you were to move him – if you – when you move inmates from their cell locations to visit with their lawyers, do they walk freely under their own free will?
A If we don't have them in administrative or disciplinary segregation, yes.
Q Okay. So, in other words, if they've threatened on officer or beat up another inmate or something, you gotta kind of tighten up; right?
A That's correct.
Q But in a case where, if I were just meeting with a client, they just walk freely. They're not shackled, are they?
A No. We do not normally, within the facility, shackle or handcuff offenders or inmates unless there's some reason to do that.
Q Okay. Is there any requirement for me to make advanced reservations, let's say a day in advance or hours in advance, for me to come and see a client?

A No, sir. We honor requests typically from 6 a.m. to 10 p.m. for both the prosecution and defense attorneys.

Q Let's talk about video cameras; do you have video cameras in your facility?

A Approximately 150, yes.

Q And did you actually show me some of those cameras and kind of what that looks like from your end in terms of what you can supervise and monitor a few weeks ago?

A Yes, sir.

Q All right. Did the visitation rooms have cameras in them?

A They do, yes.

Q Tell the Judge where they're located.

A In the upper – so if the attorney's sitting across, it'd be in the upper left-hand corner, in the ceiling.

Q All right. And is there any way for you, as a sheriff, a supervisor of these inmates, to hear or interpret what's going on between the attorney and client based on what you can get video access –

A No, sir.

Q -- based on the video access?

A It's a single dome camera that doesn't have the ability to tilt, pan, or zoom, so we have – and there's no audio capability in those rooms, as well.

Q Basically, it just shows the back of the heads of the inmate and see the attorney through glass; right?

A Correct.

Q If you were to detain – solitarily detain anyone, whether it be Mr. Allen or someone else, would they have the ability to shower daily?

A Yes, sir.
Q Would they have the ability to obtain discovery from their lawyers and, you know, view that without any kind of burden?
A We do not do electronic media, but we allow legal mail and correspondence through written documents, through paper.
Q So if I brought a pack of discovery in there and handed it to your jail staff, would they give it to him?
A Once they searched it to make sure – removed the staples and paperclips and then just thumb through it to make sure there's no other contraband, yes.
Q And they just hand it to him?
A Correct.
Q Are there attorneys that visit the Cass County Jail that are allowed to bring computers in there?
A Yes.
Q I mean, is – and phones?
A Yes.
Q And are there – is the visitation room essentially set up so that those things can happen with some convenience?
A Yes. The attorney and client or the offender/inmate are separated by ballistic glass with a – there's a technical term, but I'll call the old theater speaker so that you can communicate back and forth.
Q Okay. And, in fact, you can even share documents in that –
A Yes.
Q -- house; right?
A If they're paper.

Q Right there in that housing facility situation?
A Yes, sir. It will accept up to three pieces at a time.
Q Okay. Did you receive a call from me several months ago about trying to make some arrangements to get Mr. Allen to your jail?
A Yes, sir.
Q And essentially, is it fair to say that you were willing to do that if the Court signed an order directing you to do it?
A Correct. I think the exact phrasing used, I don't – I really don't want him, I don't need the extra heartache, the stress, and the litigation liability, as well as the media inquiries, as well as public records requests, but if so ordered by the Court, that's the business I'm in, and yes, we would do our best.
Q And I came to you up front and asked you about that in advance; right?
A Correct, yes.
Q Did you see what I reported to the Court in my pleadings?
A I read part of it, but I don't think I've read –
Q Okay.
A -- the entire argument.
Q Okay. Do you believe that your jail – whether you want to or not, do you think your jail is well suited to handle these kind of circumstances?
A Yes, sir. I think the modern jail we have, like probably 80 percent of the facilities in this state, would be accessible and capable of this type of custody.

MR. ROZZI: Okay. I don't have any further questions.

THE COURT: Mr. McLeland.

MR. MCLELAND: Thank you, Your Honor.

CROSS EXAMINATION OF SHERIFF EDWARD SCHRODER

QUESTIONS BY MR. MCLELAND.

Q Sheriff Schroder, good morning. I've never met you face-to-face, I know we've talked on the phone, but –

A Yes, sir.

Q -- welcome. I want to talk specifically about Richard Allen. If the Court does order you to house him, what kind of cell is he gonna be in?

A It would depend on his classification, as well as mental state and worried about liability and litigation, but more than likely, would be in a two-person cell, probably in our intake area. It's approximately 12 feet by 7 feet, two steel bunks, the stainless steel toilet, and a small desk.

Q Would there be another inmate housed with him in that cell?

A Not initially. I would not do that initially, no.

Q When – does that cell have a video camera on it or in it?

A Yes, sir.

Q And is it surveilled 24 hours a day?

A It's supposed to be.

Q Supposed to be?

A Yes, sir.

Q Fair enough, fair enough. The beds in – well, let me back up. Initially, he'd be placed in that cell. If he's evaluated and found to be suicidal, would he be moved to a different cell?

A Possibly, yes.

Q Tell me about the cell that you house people in that make suicidal threats or that you deem to be suicidal.

A Typical – we're in the process – the last phase of remodeling is we have a

medical/mental health area that's not open yet. It has the same type of cell but would allow some more movement; but right now, our current stance is that everyone who has those ideation ends up in our padded cells with a – what we call a suicide blanket, which is essentially a movers blanket that is rip-stop with Velcro, so that we can provide modesty, but yet remove anything that would cause the ability to choke or strangle yourself.

Q Sure. Is there a bed in that cell?

A No, sir.

Q It's just – I assume it's like our padded cell, it's just a big room and it's padded on all four walls?

A Yes, sir. It's a wrestling-mat type of material that has an epoxy paint on the walls and doors and floor.

Q And when – if Mr. Allen's housed in your facility, are you gonna allow him to walk from his cell to the visitation room unshackled?

A Until we couldn't – unless there's some security threat or some suicide/mental health ideation, then that's within our security facility, because it's – there are three layers of security, so we're not as concerned with about the movement within the facility.

Q On the opposite side of that, if he is deemed to be suicidal or a problem, what would be the protocol for moving him from the cell to the visitation?

A We would not allow visitation with attorneys until the medical staff deemed him as not suicidal.

Q How often do you have medical staff on hand?

A We have a contract with Quality Correctional Care and we have medical staff onsite from 7 a. to 7 p.m., so 12 hours a day.

Q If something happens after that time, does Mr. – would Mr. Allen just have to wait till the next day to see medical staff?

A If it's psychiatric, possibly. If it's medical, it would be –

Q Outside of medical emergency, where you had to call EMTs or whatever it is, but if he – if something happens outside that range, does he just have to wait till the next day to be seen?

A Yes.

Q Okay. And you talked about the shower time. Will he have rec time?

A We try to accommodate that, yes, once the –

Q Can you tell me about what kind of rec time he would have?

A Based on if he's in administrative segregation, they're locked in 23 hours a day, we provide the one hour a day. We have three separate recreation areas that we provide ability to get out and walk, do large-muscle exercises, as well as has a large overhead door to create an outdoor air-movement environment.

Q Sure. Talked about the attorney-client visitations. If Mr. Allen's housed in your facility, is he gonna be able to have face-to-face family visitations?

A No, sir.

Q What kind of visitations will he be able to have?

A We use a third-party vendor. Our system's currently contracted with HomeWAV and we have kiosks or tablet/iPad type devices that they can use for educational, as well as communication purposes.

Q Would Mr. Allen be allowed to take that tablet into his cell?

A He could, yes.

Q And would he be able to make phone calls from that tablet?

A The – there is the ability to make calls, but not video calls, so it may simply

be a telephone call, but not video.

Q What about to send – here in our county, we call them chirps, but they're texts – what about the ability to send text messages to people?

A Yes, that capability exists, yes.

Q And during this lunchtime, rec time, those times he's out of his cell, would he have interaction with other inmates in your facility?

A It would be minimal, maybe passing in the hallway or in the secure area of intake, but not generally is what I would speculate our stance would be.

Q Sure. This is kind of a hypothetical, I understand he has to go through the intake process and those things; but with what you know now, if you were to house Richard Allen, would he be eating lunch with all the other inmates during the regular lunch hour?

A No, sir.

Q Okay. Talked about the medical staff. Do you have any mental health staff that's available on your payroll?

A We do not have full-time mental health capabilities. We have an agreement, approximately four hours a week, with Four County – or this is now Four C Mental Health out of Logansport, as well as every other week with our medical provider, they either have someone come onsite or it's a telehealth-type visit.

Q Okay. So four hours a week between the two organizations or some kind of telephone conference with a partner that you're working with?

A Yes.

Q Okay.

A That would be very close, yes.

Q Now, transportation; if Mr. Allen's housed in your facility, are you and your staff willing to transport him to the Carroll County courthouse for hearings and/or the Allen County courthouse for hearings?

A No, sir. He's not my inmate.

Q Okay. And so who would that responsibility fall on?

A Fall back on the original agency, unless there's some agreement made; because as we house inmates or offenders for other counties, they are theirs, we are simply the housing facility.

Q Sure.

A We are not the transport agency.

Q Fair to say you don't transport for any other county that you're housing an inmate for, that's their responsibility, you're just the housing unit?

A Correct.

Q Okay. Again, you testified about this, but the meetings – even the meetings between Mr. Allen and his attorney will be recorded; is that correct?

A Video only, yes.

Q Video only with no audio?

A Correct.

Q But they are recorded?

A Yes.

Q And you had said will – the attorneys will be able to have laptops and cell phones in the visits?

A Yes.

Q But does the offender have access to those?

A No.

Q Okay. And so those are separated by a piece of glass, I think you said; and so even though the attorney's allowed to have the computer and the cell phone, the offender can't access it, can't touch it, those kind of things?

A Correct.

Q You'd mentioned just a little bit, but you said initially he would be placed in a holding cell by himself.

A Correct.

Q And I don't want to assume anything, but why, initially, would you put him in a holding cell by himself?

A I would be worried about –

THE WITNESS: Is it okay if I speak freely, ma'am?

THE COURT: Of course.

A We classify our offenders and we worry about – my job is to house them and keep them safe, so I worry about and we classify and move our inmates and offenders, and we try to in our administrative housing – for example, child molesters or suspected child molesters, we try to protect them from getting repercussions from other offenders –

Q Sure.

A -- and this is a large media – an area event that I would be concerned about –

Q Sure.

A -- any type of retaliation, if you will –

Q Sure.

A -- and that would be the reason. Also, as we come in, we still quarantine, we still follow diminished COVID protocols. I'll call them COVID protocols, but

we really do it for any other infectious disease, so we still limit movement as the offenders or inmates come in so that we can try to keep any communicable diseases from being spread within the facility. So that would start that process, and then, based on those others, I believe we would keep him segregated or isolated in his cell.

Q Sure. And, Sheriff, I'm gonna be candid with you: The fear is that if someone is alleged to have committed a crime or convicted of a crime that involves children, there's a fear of retaliation from the other inmates?

A Yes, sir.

Q And that's a concern of yours?

A Yes, sir.

Q And do you have that concern with Mr. Allen?

A Yes, sir.

Q You have not been comm – well, let me ask: Have you – has anyone communicated to you a threat concerning Mr. Allen?

A No, sir.

Q Have you seen any threats that say, "We're gonna get Mr. Allen"?

A No, sir.

Q And so you're basing this on your past experience?

A Yes, sir.

Q And you have that concern with Mr. Allen?

A Yes, sir.

MR. MCLELAND: I don't have any other questions, Judge.

THE COURT: Mr. Rozzi.

QUESTIONS BY MR. ROZZI.

Q You house offenders all the time that have co-defendants in cases, common witnesses, all kinds of common connections, don't you?

A Yes, sir.

Q Informants in drug cases?

A Yes, sir.

Q They all bring about concerns about safety, don't they?

A Yes, sir.

Q But do you deal with those in an appropriate manner and do your best to make sure everybody's safe?

A I believe I do my best. I believe that some will argue whether it's appropriate or not, but yes.

Q Okay. You mentioned the recreational opportunities. Look, this isn't Disney World; right?

A Right.

Q But you've got three separate rec rooms that you showed me on the camera the other day that would be suitable for somebody like Mr. Allen or him?

A Correct.

Q And is it fair to say that you – Mr. McLeland asked you about the cell and I think you said it was – I'm looking at my notes – 12 by 7 cell, two steel bunks. It's basically a two-man cell.

A Yes.

Q And, in fact, it actually has a little pod outside of it, which is more of kind of a seating area where – what I would call a dayroom area; is that right?

A In the mental health/medical area that we haven't occupied yet, yes.

Q I was gonna say, it's kind of a unique situation, 'cause you've got a little cell room and then you've got another room where the offender can go to that's got a table and –

A Yes.

Q -- an area to sit, a kind of leisure area; right?

A Correct. We haven't occupied that yet, but that is the goal down the road, which would include – so the cell now that I described does not have a shower in it, it has a toilet/sink/drinking fountain combination; so anyone in those has to be moved to a separate cell area for showering. This area, to try to accommodate medical, people with casts, canes, those kind of things, as well as mental health incidents, has a shower, as well as a table area in that so that we have less movement of that person.

Q Okay. You mentioned mental health, and Mr. McLeland asked you about this, you've mentioned Four County Counseling; right?

A Yes, sir.

Q Is it a fairly expansive mental health organization in Cass County and three other counties?

A Yes.

Q Hence the name?

A Yes.

Q And they're basically at your fingertips in terms of your – providing services?

A Yes and no. Most of the work they do for us is grant based, but they provide services, as well as a navigator in mental health, as well as the mental health from our medical provider.

Q And it – there's – do you agree there's hundreds of people in your jail with mental health issues?

A Yes, sir.

Q And your – do you believe that your jail is equipped to deal with those in a reasonable way when they come about?

A In the most extreme cases, yes; but the general addiction or depression and those types of mental health issues, no, I – we don't have the resources to do that.

Q Most extreme cases meaning like suicide issues and things like that?

A Yes, sir.

Q Mr. McLeland asked you about family visits and you suggested, well, there's no contact; do you recall that?

A Yes.

Q Is it fair to say that family members often come to the jail to visit with their – they come to the facility to visit with their – visit with inmates?

A Yes, it is.

Q Basically, you've got an area where they can come in and, essentially, get on a TV screen and look at their significant other or whatever; right?

A Yes. Our system has dual capability, you can do it remotely, which there's a fee for that because it's a third-party vendor, or you can come into our lobby and use our kiosk, probably like most jail custody facilities, and you can visit for free from that location during the normal movement times. It would be a little different in this case if he's – if he would happen to be housed there and in this segregation cell, because that is not as free movement and it would take the staff to move him to get to a tablet or a kiosk.

Q And as far as actual – do you have pastoral counseling on a routine basis at your jail?

A Yes, sir.

Q And as far as in-person contact, lawyer-client in-person contact, is it fair to say that you've accommodated me when I need to sit down in the air space of a client and share information with them?

A Yes.

Q That you have the ability to do that, too?

A Yes. We do have a contact attorney room that we use, not on a routine basis, but we use when an attorney would ask to say, "I need some time with my client, I need to have him sign some documents," or "I need to spend some time with him." It's more –

Q Or show him videos –

A Yes.

Q -- photographs, things like that?

A We have it, but it's more the exception than the rule, yes.

Q But I've used that, haven't I?

A Yes, sir.

Q And it's not much of a hassle, is it?

A No, sir.

MR. ROZZI: Nothing further.

THE COURT: Mr. McLeland.

RE-CROSS EXAMINATION OF SHERIFF EDWARD SCHRODER

QUESTIONS BY MR. MCLELAND.

Q Sheriff Schroder, I forgot to ask you, what about clothing? How many

changes of clothing would Mr. Allen have if he was in your facility?

A We change jumpsuits every I believe it's three days, I believe that's the DOC guideline we follow, Department of Corrections, through the Jail Operations Manual.

Q And so if it's every three days, it sounds like they'd be given two sets of clothing a week, perhaps three sets of clothing a week.

A We typically only give them one and then exchange them one-for-one.

Q Okay. Fair enough. If the – if an inmate were to soil his clothing on the first day, are they just stuck with them?

A No, sir. They'd make a re –

Q Okay. Tell me the protocol.

A They'd make a request through – every cell has an intercom speaker system and they could alert the corrections officers, "Hey, I need a new suit, I soiled myself," and then they will accommodate that.

Q Sure.

A I can't say it's immediate, but –

Q Sure.

A -- it will be –

Q Sure.

A -- the time, yes.

MR. MCLELAND: I don't have any other questions, Judge.

THE COURT: All right. Thank you, Sheriff. You may step down.

THE WITNESS: Thank you, Your Honor.

MR. ROZZI: I have nothing further.

THE COURT: Mr. McLeland, do you have any evidence on this?

MR. MCLELAND: Judge, I do, I have two witnesses. Could I ask the Court for a short recess, just so I can use the restroom?

THE COURT: Would counsel approach.

(Sidebar conference conducted.)

THE COURT: I just want to know kind of where we're at. You've got two witnesses.

MR. MCLELAND: Tony Liggett and the Westville warden.

THE COURT: Okay. Do you want to break for lunch?

MR. ROZZI: I don't, but I'm –

THE COURT: Okay.

MR. MCLELAND: So I don't care, I can (inaudible)

THE COURT: Yeah, we could take a quick break. How long –

MR. MCLELAND: I don't mean to be a pain, but –

THE COURT: No, no, no, that's all right. How long do you think you'll be?

MR. MCLELAND: Downstairs and right back up.

THE COURT: No, no, no, I mean in your witnesses, with your evidence.

MR. MCLELAND: Oh.

THE COURT: Ding dong, I don't care how long it takes you to go there. No, I don't care about that.

MR. MCLELAND: I don't really think too long (Inaudible) Tony about the transportation resources, and then Galipeau just to address allegations they made in their safekeeping.

THE COURT: So like another, like, hour and a half?

MR. MCLELAND: I guess I just couldn't –

THE COURT: Let's just break for lunch. I know you don't want to, but too bad.

MR. ROZZI: I'm fine with whatever.

THE COURT: Okay. Let's just break for lunch.

MR. ROZZI: I don't have anywhere else I need to be.

THE COURT: Well, I know you don't, because you were supposed to be here for two days.

MR. ROZZI: Yeah.

THE COURT: Why don't we just reconvene like at 1:15?

MR. MCLELAND: That's awesome.

THE COURT: Would that work? That would give you time to talk to your people.

MR. ROZZI: What time did you say?

THE COURT: 1:15. What about him? Where will they take him?

THE BAILIFF: Folks, we're still on the record. Thank you.

MR. MCLELAND: They can probably take him to the jury room.

MR. ROZZI: (Inaudible)

THE COURT: Okay. All right.

(Sidebar conference concluded.)

THE COURT: We're gonna go ahead and break for lunch. The State's evidence is gonna take about an hour, perhaps a little bit longer. It's almost 12:15 now, all of y'all have been sitting here for quite a while, so let's reconvene at 1:15, please. Jodie, you can go off the record.

(Off record at 12:12 p.m.)

(On record at 1:21 p.m.)

THE COURT: All right, we are back on the record. Mr. McLeland, are you ready to proceed, sir?

MR. MCLELAND: Yes, Your Honor. The State would call Sheriff Tony Liggett, please.

(Witness sworn.)

DIRECT EXAMINATION OF SHERIFF TONY LIGGETT

QUESTIONS BY MR. MCLELAND.

Q Would you state your name, please.

A Tony Liggett.

Q And, Sheriff Liggett, how are you employed?

A I'm the Sheriff of Carroll County.

Q And you've been the Sheriff of Carroll County since January 1st of 2023; is that correct?

A Correct.

Q And before that, how were you employed?

A I was at the Sheriff's Department, as well, as a deputy detective.

Q And, in fact, you were one of the – you're in the unique position that you were the – one of the lead investigators on this case; is that correct?

A Correct.

Q And when I say "this case", I mean the case against Richard Allen?

A Correct.

Q And how long have you been in law enforcement?

A I started in 2001.

Q And did you have an opportunity to look at the or review, at least prior to

today at some point, the motion for safekeeping that, at the time, Sheriff Liggett applied for to the Court?

A That Sheriff Leazenby?

Q Sheriff Leazenby, I'm sorry, yes, you're correct, Sheriff Leazenby.

A Yeah, at some point I reviewed it, yes.

Q Okay. So you were able to review that document and see the reason for the safekeeping?

A Yes.

Q And as your – when – as your time as a detective and deputy, had you seen safekeeping motions like that before?

A I had not, no.

Q Okay. As your time as sheriff, have you seen any safekeeping motions like that?

A Aside from that one, I have not.

Q Okay.

A I know they happen, but I had not seen one.

Q Sure. Are you in agreement with that motion that Sheriff – at the time Sheriff Leazenby filed?

A Yes.

Q And do you have concerns that if Richard Allen is housed in our jail that there would be some safety concerns?

A Yes.

Q And have you had any direct threats?

A No.

Q Have you had any e-mails or any kind of information conveyed to you over

social media that Richard Allen's gonna be hurt in your jail?

A No.

Q Okay. But you still have safety concerns?

A Yes.

Q Can you tell me why you have safety concerns?

A Our jail is extremely small. We're very – even at full staff, there's probably more CERT guys that brought him here today than we – if we were at full staff in our jail. I believe we have five full-time, a jail commander; and we're short staffed, our jail commander has to fill a shift. There's only one person on duty at any given time in the jail.

Q And is part of your safety concerns about his safety from other inmates?

A Yes.

Q And is the reason for that is because this case involves children?

A Yes.

Q And you've been at least privy that the information from the filings and some of the information from the case is gonna be released to the public; you understand that?

A Yes.

Q And throughout the case, we've had various leaks within the community about information that's gotten out about the investigation; is that correct?

A Correct.

Q As more information gets out, does that heighten your concern for his safety?

A Absolutely.

Q And we've heard information today that there's been confessions; does that

heighten your mood – or heighten your awareness for his safety?

A Absolutely.

Q And the fact that he's confessed five or six times that he killed the two girls, does that heighten your concern for his safety?

MR. ROZZI: Judge, I'm gonna object, at this point to leading. It's his witness.

THE COURT: The Rules of Evidence don't apply in pre-trial hearings. I'll overrule the objection.

MR. ROZZI: Thank you.

Q And so my point is, as more information comes out about everything, does that give you more cause to be concerned about his safety in our jail?

A It does.

Q And does that give you more cause to be concerned about retaliation from other inmates?

A Absolutely.

Q What about when he's being transported from the jail to the hearings, do you have concerns about his safety then?

A Yeah, again, our transport – we don't have a transport officer right now, because he has to fill in to a shift and, when we do have one, we have one guy. During the day, at full staff on the road, we have two road guys on duty at any given time. Even just normal transports to and from court are a pretty big strain and safety concern for us.

Q And you've kind of stated this, but typically, when you transport someone from your jail or from another facility, it's a one-on-one situation, meaning you only send one officer to pick up that inmate?

A Correct.

Q And at times, I think including you, everybody within your department has had to transport an inmate?

A Yes. I just got back from Kentucky, picking one up there.

Q And so your – my point is your staffing situation's so short that even you have to transport at times?

A Correct.

Q And so what concerns do you have if he's housed – let's just start with us: If he's housed in our jail locally, what concerns do you have about transportation?

A The biggest one is manpower and safety. We're gonna have to find – see if we can find other agencies to help us do those things.

Q Now, you know that part of the Defense's request is that he be moved from Westville to the Cass County Jail?

A Correct.

Q And you had an opportunity to talk to the Sheriff in Cass County?

A Correct.

Q And if he's moved to the Cass County's – Cass County Jail, whose responsibility is it for transportation?

A Carroll County's responsibility.

Q Do you have concerns of that happening?

A I do.

Q Tell me why.

A Again, finding the people to do it, it'll take more than one person to do it, as people can see today that it's gonna take more than one person to make that

transport – to even make – semi make it a safe transport. Again, when you talk about weeks and stuff like that and, you know, the court dates are – and times are open, so there's a security concern making that move.

Q I mean, even today, for security, you had I think your entire department, plus the assistance of Indiana State Police; is that correct?

A Correct, DNR, yeah.

Q Okay. Have you contacted the Department of Correction or any other agencies to see if they would assist in transportation if he is moved to the Cass County Jail?

A Briefly spoke, and it did not sound like they were interested.

Q Okay. So do you have a – let me get right to the point: Do you have a plan – if the Judge orders him moved to Cass County today, do you have a plan of action at this moment of how you're gonna transport him to the next hearing?

A At this moment, no.

MR. MCLELAND: Okay. I don't have other questions, Judge.

THE COURT: Mr. Rozzi.

MR. ROZZI: Thank you, Judge.

CROSS EXAMINATION OF SHERIFF TONY LIGGETT

QUESTIONS BY MR. ROZZI.

Q So you're suggesting that you've talked to some other agencies about – or the DOC about transporting him and that they're not really interested in doing that; right?

A Correct.

Q But did they tell you they wouldn't do that?

A I don't know that those words came out of their mouth, I don't think so.

Q Did they ever suggest that if the Judge ordered them to do that, that they wouldn't do it?
A No, I don't think those – that wasn't discussed.
Q Okay. This case involves various law enforcement agencies, doesn't it?
A Yes.
Q And frankly, one of those was the FBI; right?
A Correct.
Q Indiana State Police?
A Correct.
Q Local sheriff's department?
A Correct.
Q City police involved in some ways in this, even?
A Correct.
Q On the fringes?
A Yep.
Q The State Police has invested – have invested, frankly, hundreds of thousands, maybe millions of dollars in resources into this case, haven't they?
A Yes.
Q And they've been very public about that, hasn't the agency?
A I don't know how public they've been about it, but –
Q Well, holding press conferences and asking for public assistance and all these things; right?
A Okay, yeah.
Q So it stands to reason that you could call the Superintendent of the State Police and ask him if he would be willing to help with the transport of Mr. Allen

maybe 15 miles from here, doesn't it?

A That could be a call, absolutely.

Q And it would seem kind of odd if he said, "We can't do that" – right? – after investing all these resources into this case.

A The transport and housing of prisoners is not a State Police thing, it's upon the Carroll County Sheriff's Office to house, transport, things like that, so it's not in their normal realm; and I don't know if they've done that in the past, but it would certainly be a phone call I would look into.

Q They assist your department with lots of other matters, don't they?

A With the case?

Q Drug interdiction from time to time?

A Every once in a while.

Q Bomb threats; right?

A No.

Q You ever had a bomb threat where they rolled out their bomb team and brought dogs and emergency –

A Not to my knowledge.

Q -- vehicles and all that stuff?

A Not to my knowledge.

Q You know that they do that, don't you?

A Sure, yeah.

Q So it wouldn't be unreasonable to try and organize a 10- or 15-minute transport of Mr. Allen from one jail facility to another through them, would it?

A If that's what we need to do, that would certain be attempted to do, yes.

Q Let's talk about his safety. You acknowledge that you've looked at this

petition that was prepared by Sheriff Leazenby – former Sheriff Leazenby; right?
A Yeah, it's been a while, but yeah, yes.
Q And you would acknowledge that in this petition there's really nothing in here that references any immediate threat to Mr. Allen's safety back in November when it was prepared?
A I would probably have to read it again. I don't recall if there was any –
Q Okay.
A -- immediate –
Q Let me ask you this: Were you aware of any Internet, e-mail, phone calls, anything of that nature where somebody called your department and said they're gonna hurt this man?
A I don't specifically recall any of those.
Q Okay. And it would stand to reason that if that happened, you probably would know; right?
A I would think so.
Q Okay. Are you aware of any threats on Mr. Allen's life that have occurred since the safekeeping order was entered by – executed by Judge Diener?
A Directly to us, no.
Q Okay. What about threats on your staff's life?
A None, no.
Q So when Mr. McLeland was asking you about your concerns about his safety, have – did you ever visit Westville?
A I have, yes.
Q Okay. When did you visit Westville?
A Within this year, I believe.

Q Okay. Did you go up and see Mr. Allen?
A Yes.
Q Okay. Did you actually talk to him when you were there?
A No.
Q All right. Why'd you go up there?
A Why did I go up there?
Q Yeah. What was the purpose for your visit?
A I think we went up there to just reinterview him.
Q Okay. So you interviewed Mr. Allen at the Westville Correctional Facility?
A No, I don't think it ended up happening.
Q Okay. Did you – have you ever gone up there and inspected the cell block where he's being held?
A No.
Q Have you ever gone up there and inspected any aspect of the facility, the maximum-detention facility where he's being held?
A No.
Q So you really don't know what conditions he's dealing with on a daily basis because you haven't been there?
A Correct.
Q So there's two parts to this kind of dynamic, one is his detention circumstances on a daily basis; right? Where he's housed, what circumstances he's dealing with me, who's supervising, those kinds of things; right?
A Correct.
Q And the second part is just the idea of transporting him, frankly, once every few months various miles from one facility to the other; right?

A Okay, correct.
Q Would you agree with me, the most important aspect and the biggest responsibility that you have as a sheriff is making sure that his detention situation is an appropriate one for a pre-trial detainee?
A Sure, he needs to be in proper housing, sure.
Q Right. The transportation is just kind of a byproduct of having to get him from one place to another; right?
A Sure.
Q It's a very small segment of what we're dealing with –
A But there's –
Q -- in terms of the detention circumstances?
A There's a lot of safety involved with that, too, but yeah.
Q Okay. Okay. Mr. McLeland asked you, you said you were the lead investigator in this case?
A There were several of us, yes.
Q But you were the lead investigator?
A Eventually, I was the lead investigator for Carroll County, yes.
Q And so that means that you would have approved of his arrest?
A That I would have approved of his arrest?
Q Yeah, that you were supportive of getting an arrest warrant to take him to jail for murder?
A Yeah. It was a team effort, but yes.
Q So you have a vested interest in seeing him convicted, don't you?
A Yes.
Q All right. Do you think that you're really the best one to be in charge of

his care and custody?

A That was what I was elected to do, so yes.

Q Okay. To do both of those things?

A Yes.

Q All right. If there was another jail or custodial circumstance here that made a little bit more sense, would you be opposed to that?

A As long as – if you're getting at if he's at Cass County and I have to transport, as long as I can arrange to get that transport done safely, I'm not opposed.

Q At some point, did you receive a call from Mr. McLeland about the circumstances that I had made arrangements for in Cass County?

A I don't know if I received the call, but I got the information, yes.

Q And ultimately, you were the one that kind of pulled the plug on that circumstance, weren't you?

A No, I don't understand how –

Q Well, you're the one who said you wouldn't agree to move him; right?

A At that time, correct.

Q He was okay with it, wasn't he?

A I don't know what his position was.

Q Did you ever ask him?

A I don't know that we had that discussion.

MR. ROZZI: Okay. I don't have any further questions.

THE COURT: Mr. McLeland.

MR. MCLELAND: I don't have any follow-up questions, Judge. Thank you.

THE COURT: All right. Thank you, Sheriff. You may step down.

MR. MCLELAND: Judge, finally the State would call Warden John Galipeau, please.

(Witness sworn.)

DIRECT EXAMINATION OF WARDEN JOHN GALIPEAU

QUESTIONS BY MR. MCLELAND.

Q Will you state your name, please.

A My name is John Galipeau.

Q And, Mr. Galipeau, how are you employed?

A I'm employed as the Warden of Westville Correctional Facility, Department of Corrections.

Q And, Mr. Galipeau, you don't have to lean into the microphone. It doesn't amplify, it only records.

A Okay.

Q So if you speak in a normal, kind of outside voice, we'll all be able to hear you; fair enough?

A Will do.

Q Okay. And, Warden, how long have you been employed as the Warden of Westville?

A A little over four years.

Q Okay. And were you employed in law enforcement before that?

A No. I've been in DOC for 27.

Q DOC for 27 years? Okay.

A Yes, sir.

Q And I want to just get kind of the nuts and bolts of this and I want to bring

your attention – you're currently housing an individual on pre-trial by the name of Richard Allen; is that correct?

A Correct.

Q And are you familiar with that inmate?

A I am.

Q And you are housing him in your facility as a courtesy for Carroll County; is that correct?

A Correct, sir.

Q Okay. And he is housed in your facility?

A Yes, sir.

Q Where in your facility is he housed?

A He's housed in A-pod.

Q Okay. Can you tell me about A-pod?

A A-pod is a maximum-security unit, it has 55 individuals in it.

Q Okay. And is he segregated in that A-pod?

A Yes, sir.

Q And that means he's in a cell by himself?

A Correct.

Q What is in that cell?

A Depending on his mental health orders, currently I believe a mattress, his legal work, and a Bible.

Q Okay. And does he have a toilet in that cell?

A Yes, he does.

Q Okay. Does he have a shower in that cell?

A No, sir.

Q Okay. And do you know the dimensions of the cell?
A I believe it's 12 by 8 and a half.
Q Okay. And you said there is a mattress. Is there a bedframe or is the mattress on the floor?
A There's a bedframe.
Q Okay. Can you tell me about the bedframe.
A The bedframe is a standard-sized bedframe, it's just bolted to the floor, because it's designed as a suicide occupancy cell.
Q And so as I imagine a cell, that there's a bedframe, but it's directly on the floor and that is for suicidal purposes.
A Correct.
Q Or to prevent suicidal occurrences?
A Yes, sir.
Q Okay. Sorry, that was a poorly phrased question. Why did you house him in that unit?
A When he got there, I don't believe he was on – 'cause – well, first of all, that individual cell has a camera, so he could be on 24-hour surveillance.
Q And so it was important for you to have him on 24-hour surveillance?
A Correct.
Q Okay. So we're gonna come back to the question, but specifically – why did you – when you accepted him as a courtesy hold, why did you house him in the segregation unit, as opposed to general population?
A For his safety.
Q Okay. You have concerns about his safety?
A Yes, sir.

Q Okay. Why did you have concerns about his safety?
A Just the nature of the charges.
Q Did you have any direct threats made to you or your facility?
A No.
Q Were you made aware of any direct threats made to you or your facility?
A No, sir.
Q Okay. So I want to get back to the cell that he's in; you said you believe it's a 12 by 8 cell?
A Twelve by eight and a half, I believe.
Q Eight and a half. And is that the same cell that everyone else in that unit has, the same-sized cell?
A Correct, all 255 beds are the same.
Q Okay. And the mattress he's sleeping on, is it the same mattress that the other inmates in that –
A Yes, sir.
Q -- pod get? Is it the same mattress that the inmates in the entire facility get?
A Yes, sir.
Q Okay. And talked about he has a bed. Is he currently on suicide watch?
A He is.
Q Okay. Have there been times when he wasn't on suicide watch?
A Yes, sir.
Q The times he's not on suicide watch, is he in the same cell?
A Correct.
Q Okay. Has he been in the same cell his entire stay?

A His entire time.

Q And there's 24-hour video surveillance on the cell; correct?

A Yes, sir.

Q Is there audio and video surveillance or just video?

A Just video.

Q Just video. And when he's moved from that cell, is there video on him when he's moved from the cell?

A Yes, sir.

Q Okay. And is he put in shackles or handcuffs when he's moved from the cell?

A Yes, sir.

Q Why is that done?

A That's standard practice for all of them.

Q For all the inmates in that pod?

A All 255.

Q Okay. Does he have time to shower?

A He does.

Q How many times a week can he shower?

A Three times.

Q And does he have change of clothes?

A He does.

Q How many changes of clothes does he get?

A They get collected every Wednesday and distributed every Thursday.

Q And when they're distributed, how many sets of clothing does he have?

A I believe three.

Q Okay. And does he have access to commissary?
A He does.
Q Has he exercised his ability to buy commissary?
A He has.
Q What has he bought during – or what has he bought from commissary?
A I believe he's bought clothing, socks, shoes, shirt; not sure about food items, but he's bought clothing and hygiene.
Q So on top of the three sets of clothing he gets a week, he also has additional clothing in his cell?
A He does.
Q And additional shoes?
A Yes.
Q Does he get time for recreation?
A He does.
Q How much time does he get for recreation?
A One hour five times a week.
Q Okay. Is that different from the other inmates in that facility?
A No, sir.
Q Okay. And so it sounds like everything that he's gotten up to this point is identical to the other inmates in that unit of your facility.
A Correct.
Q Okay. He has a toilet in his cell; is that correct?
A Yes, sir.
Q Is there any limit on the amount of toilet paper he gets?
A No. When it's out, he puts the roll and we exchange it.

Q Okay. Is there a limit to how much or how often he can use the restroom?
A No.
Q Is he required – do you require him to wear the same set of clothing day after day?
A No.
Q And so he can change clothing at any point that he wants in his cell?
A Yes, sir.
Q Okay. Is he required to wear soiled or stained or tattered or torn clothing?
A No, sir.
Q And in fact, you said he had exercised his use of the commissary and he has new clothing in his cell; is that correct?
A He has at one time, yes, sir.
Q Okay. Does he have access to an electronic tablet of some kind?
A He does.
Q Tell me about that.
A It's a tablet from GTL; matter of fact, he was just issued a second tablet about two weeks ago. He broke his first tablet, and the average person in Westville would have to replace that for 250 dollars; we gave him the opportunity for an additional tablet.
Q Okay. So let me back up a little bit: What capabilities does he have with that tablet?
A If he purchases stuff, he can purchase music, download movies, but more importantly, phone calls.
Q And the phone calls, are they video calls or just the typical phone calls that we'd be used to?

A Just the typical phone calls.
Q Does he have access to be able to text people from that tablet?
A No.
Q And so he was issued a tablet –
A He was.
Q -- when he came to the facility? That tablet was broken by him?
A Yes, sir.
Q And in typical situations, it's my understanding that if a an inmate breaks the tablet, you make him pay the $250 replacement fee before they get another one?
A Correct.
Q That didn't happen here?
A No, sir.
Q What happened?
A We issued him a tablet based on behavior. We had a little – Mental Health designed some expectations for him to meet, and he met those, and we issued him another tablet.
Q Why would you issue him a new tablet without paying for the old one when you don't do that to the other inmates?
A It's not customary.
Q Okay. You do have medical staff on – I guess onsite at your facility; is that correct?
A Twenty-four hours.
Q And you do have mental health personnel onsite at your facility; is that correct?

A We do.
Q Has he been checked out by the medical staff on a regular basis?
A Yes, sir.
Q Have you gotten any reports – this is gonna be a broad term, but have you gotten any reports that he's unhealthy in any way?
A No, sir.
Q Have you gotten reports that his BMI and his vitals are all on track, that he's healthy?
A Normal ranges.
Q Normal range. Has he been checked out by medical personnel – or medical – mental health personnel on a regular basis?
A Almost daily.
Q And you said he was – he's gone on suicide watch recently. Was there a time when he wasn't on suicide watch?
A When he first got there, I don't think he was on suicide watch for a while, I can't give you an exact time; but the recent past months, he's been on some sort of suicide watch, whether it be constant or close supervision.
Q Okay. Do you know – within a range, do you know when that switched from not being on suicide watch to being on suicide watch?
A Let's see, I believe we got him November 4th, probably sometime in September [sic]. I think he was – he wasn't on suicide watch for the first couple months I believe.
Q Okay. And was there a time in the recent past where you began to get strange behavior from him?
A Yes, sir.

Q And at that point, did you have him seen on a more-often basis by the medical and mental health staff?

A Yes, sir.

Q Do you know what – for lack of better term, do you know what flipped the switch or what caused flip – the switch to be flipped?

A I know we went from suicide companion to officer companion I think a day after he received his legal work.

Q Okay.

MR. ROZZI: I'm sorry, would you finish that – I didn't hear what you said.

A We changed from suicide companion to officer companion the day after he received his legal work.

Q So I want to talk about suicide companion, what does that mean?

A The normal individual will have a suicide companion, comes from our PLUS unit, it's a religious unit, and the incarcerated individual would watch over him every five to 15 minutes and just take notes on behavior. Those logs would be reviewed by the shift supervisor and mental health staff.

Q And at some point, you switched it over to having officers in your facility actually be that companion watch?

A Twenty-four hours a day.

Q Okay. And so now, currently, he has an officer at his door or at the front of his cell who watches him 24 hours a day?

A Correct.

Q Plus, he's on camera in the cell 24 hours – well, at the times he's in the cell?

A Yes, sir.

Q Okay. Is he allowed face-to-face visits with family and friends?

A He had at least one, yes.

Q Okay. In the future, is he gonna be allowed face-to – if he's held at your facility, given what you know and the suicide watch and all those things, is he gonna be allowed face-to-face visits?

A Yes.

Q Okay. Do inmates in that pod normally – are they normally allowed face-to-face visits?

A None of them.

Q So only he is allowed face-to-face visits?

A Correct.

Q Okay. Did, at some point, you prevent him from having face-to-face visits?

A No.

Q Okay. So throughout his stay from October – late October/early November till now, that entire time, he was allowed to have face-to-face visits?

A If requested.

Q Okay. Want to talk about the attorney visits; is he allowed to have attorney visits?

A Yes, sir.

Q And you've had an opportunity – well, let me back up. Are attorneys allowed to bring cell phones into your facility?

A No.

Q And have you allowed attorneys to bring cell phones in your facility in the past, at least to your knowledge?

A No.

Q Okay. Are attorneys allowed to bring in computers into your facilities to meet with the inmates?

A No, sir.

Q Okay. If an attorney needed a cell phone or his computer to go over discovery with one of the inmates, are those accommodations you could make in your facility?

A Yes, sir.

Q Okay. The visitations with attorneys, are those recorded?

A They are – for general population? Yes, all visits are recorded.

Q Well, let's talk – I want to talk specifically about Richard Allen. The visitations between Richard Allen and his attorneys, are those recorded?

A They have been, yes.

Q At some point, they were recorded I think with a handheld camcorder; is that correct?

A Correct.

Q That has stopped?

A It has.

Q Why'd that stop?

A It was requested.

Q By the attorneys?

A Yes, sir.

Q Okay. Are the visitations still recorded by some kind of security camera?

A Yes, sir.

Q And that's a video recording with no audio; is that correct?

A Correct. So just to clarify: The visitation from the unit that he's incarcerated in currently, there's no face-to-face visits, so it's not recorded. The visitors go up to the front desk, they would get on the kiosk system, he would get on the computer at the facility, and they would talk, they could see each other. General population, where we took Mr. Allen, is all surveillanced.

Q Okay. And so the unit that Mr. Allen is on, none of those inmates get face-to-face visits?

A None of them.

Q With attorneys, family, nothing?

A Well, attorneys if requested, but no family.

Q Okay. In Mr. Allen's case, he's been allowed to visit his attorneys; and how was that facilitated, meaning where are they taken, that kind of thing?

A He was taken to the general population visitation room, I believe it was from 1 to 3 or so, and we closed off visitation at 12:30 to 3:30, just to make sure that he had privacy and that he didn't see any other individuals.

Q And if he's continued to be housed at your facility, are you willing to continue to accommodate the attorneys to continue to visit with him?

A Yes, sir.

Q And again, you're willing to accommodate them in terms of taking a cell phone or computer in so that they can review the discovery materials with Mr. Allen?

A Yes, sir.

Q Okay. Now, you said his behavior has been from non-suicidal to suicidal. Have there – has he – let me back up. Do you know specifically what changed his behavior?

A I believe it's when he receives his legal work, he's been on some sort of suicide watch the entire time after that.

Q Okay. And during that time, has Mr. Allen requested to meet with you?

A He's wroten me, yes.

Q And what did he write you?

A He wrote me numerous things. I think he sent me five or six letters, some of it –

MR. ROZZI: Judge, may I – may we approach?

THE COURT: Yeah.

(Sidebar conference conducted.)

MR. ROZZI: I'm not sure if we're gonna start having discussions about discovery that I don't have.

MR. BALDWIN: That's why I'm kind of like –

MR. ROZZI: I'm not aware of any of these letters. To that extent, I'm gonna start objecting, 'cause I'm –

THE COURT: Okay.

MR. ROZZI: -- not sure what he's gonna say.

THE COURT: Do you have them?

MR. MCLELAND: Yeah. I've been reaching out (inaudible)

THE COURT: Have you provided them to him?

MR. MCLELAND: Yes, I believe so.

THE COURT: Okay. Well, 'cause he needs them.

(Sidebar conference concluded.)

Q When Mr. Allen first came to your facility, was he taking advantage of the recreational time that he was afforded?

A It was hit or miss. Sometimes he would just refuse to go to rec, sometimes he went.

Q Okay. Has he refused – has he ever refused any meals?

A Yes.

Q Okay. Can you tell me about that.

A It's off and on. You know, we record them, we'll declare him on a hunger strike after his fourth missed meal. I don't know how many hunger strikes he's been on, but he typically eats. I check those logs every day. I know he ate breakfast this morning right about four o'clock.

Q And was he exercising not only at rec time, but was he exercising in his cell on a regular basis, as well?

A Was he exercising in his cell?

Q Yes.

A On occasion, yes, sir.

Q And throughout this time, again, he's being seen by medical and mental health staff on a regular basis his entire stay there?

A Correct.

Q Okay. Do you continue, to this day, to have concerns for his safety?

A Currently where he's housed at, I don't.

Q Okay. If he was moved to general population, would you have concerns for his safety?

A I would.

Q And has the mental health or medical staff expressed any concerns to you that would cause you to have concerns for his health or wellbeing?

MR. ROZZI: I'm gonna object to – we kind of talked about this in

chambers, we're getting into HIPPA issues here; on that basis, I object.

THE COURT: Sustained.

Q Have you seen anything in the reports that you get that Mr. Allen was being treated unfairly in your facility?

A I have not.

Q Is he being treated different from other inmates in your facility?

A No, sir.

Q In fact, it sounds like he's getting more benefits than the inmates in your facility?

A That is true.

Q When he's transported from your facility, does DOC – are they the ones that take care of the transport?

A Correct.

Q And they're the ones that have the manpower, supply the manpower to transport him; is that correct?

A Yes, sir.

MR. MCLELAND: I don't have any other questions, Judge. Thank you.

THE COURT: Mr. Rozzi.

CROSS EXAMINATION OF WARDEN JOHN GALIPEAU

QUESTIONS BY MR. ROZZI.

Q So Mr. McLeland asked you about his cell, I think you said it was a 12 by 8 and a half room; is that right?

A Correct.

Q I'm sure you saw the motion that I filed with the Court, alleging some of

the circumstances at your facility.

A I believe so, yes.

Q And in that motion – I'm looking at it right now – it says a six by ten room, does that sound consistent with what I've reported to the Court?

A I'm unaware of any six by ten room.

Q Okay. But was that consistent with what I reported to the Court?

A I believe so, yes.

Q So I was a couple feet off; right?

A A few.

Q All right. Two feet one way and two feet the other; right?

A Yes, sir.

Q All right. So I think what I heard today is that from the minute Mr. Allen was assigned to your facility, that he was placed in a – what I'll call a suicide cell; is that correct?

A Correct.

Q He wasn't necessarily on suicide watch, but he was detained as if he was suicidal?

A He was put in that room for the camera at that time, yes.

Q Okay. And so he – those circumstances have remained throughout his stay; right?

A Yes.

Q And that was before there was any mental health assessment of him or anything of that nature which suggested that he was suicidal; right?

A Correct. I believe he was on suicide watch a few months after he was there.

Q Do the other cells in the maximum security unit have cameras in them?

A Only four.
Q Okay. So there is a difference between the circumstances he's detained in in that maximum-security unit and 50 other cells; right?
A Just the camera, correct.
Q Well, pretty significant difference, isn't it?
A Sure.
Q Having somebody starting at you 24 hours a day, seven days a week, versus not; right?
A Sure.
Q It's my understanding that this unit that Mr. Allen is detained in is the most – highest-security unit within your facility; right?
A At Westville? Correct.
Q Yeah. We talked earlier, you weren't in here, but it's kind of a prison within a prison really, isn't it?
A It's separated, correct.
Q Yeah. Has its own gates that you have to go through, even after you get into the facility?
A It does.
Q Well, and the most heinous of criminals are often housed in that facility, aren't they?
A Half of them.
Q Half of the most heinous inmates?
A It's a 255-bed facility, half of them are department wide and the other half are Westville offenders.
Q Okay.

A So half of them are –

Q People that are –

A -- Level 2 offenders.

Q People that have been convicted of the most heinous crimes you and I can imagine; right?

A There's some bad crimes in there, yes.

Q Yeah. And he's basically detained right next to them, right with them, isn't he?

A Yeah, sure.

Q Okay. And those people are actually – these heinous offenders in your facility are actually set aside and removed from your general population, aren't they?

A Correct.

Q You wouldn't house those people with the people in general population, would you?

A Say that again, sir.

Q You wouldn't house those people with the people in general population.

A I do. I mean, like I said, half of the facility is designed for Level 2 Westville offenders, so whether they're in there for a day or a year, when they're released, they go back to general pop.

Q Okay. Now, did you have a chance to see Mr. Allen when he was first housed in your facility back in November?

A I believe so, yes.

Q Okay. Did he look anything like he looks now?

A Similar.

Q He's lost a lot of weight, hasn't he?
A He's lost some weight.
Q All right. And in terms of just his overall mental health, regardless of what's to blame for it, it's definitely deteriorated, hasn't it?
A It's changed.
Q Yes. For the worst; right?
A It's changed.
Q Yeah. For the worst, hasn't it?
A It's off and on. I mean, some – I spoke to him yesterday, he spoke fine.
Q Okay. But the point is, is that he doesn't look the same, does he?
A He's lost some weight.
Q And he's not acting the same, is he?
A On occasion. Like I said, he spoke clearly to me yesterday and last week, nothing, sir.
Q But he's engaged in some conduct in your facility that's, frankly, pretty unsanitary?
A To his doings, yes.
Q Yeah. Now, to the extent that you were – that he was – you said earlier that he was suicidal – right? – at some point.
A I said he was put on suicide watch.
Q Okay. Well, was he suicidal?
A Mental Health put him there.
Q You didn't have anything to do with that?
A No.
Q Okay. Did you ever suggest that anybody at your facility reach out to

either Mr. Baldwin or I, to talk to us about his circumstances?

A I have not personally, no.

Q Okay. Do you know anybody else in your facility that suggested that – to do that?

A I have not, no.

Q Okay. Do you know anybody in your facility that suggested that, "We should reach out to the Sheriff in Carroll County and maybe let him know what's going on up here"?

A Not to my knowledge, no.

Q You're aware, I assume, that I made a request to actually just inspect or look at his cell when I was up there on one occasion?

A Yes, sir.

Q And I'm kind of gathering this from what I experienced, but did – was there ultimately a phone call to you about whether or not I should be able to do that?

A There was communication, correct.

Q And were you the one that suggested to Captain Lewis that I couldn't do that?

A I said that no one can go in his cell until I get authorization.

Q Okay.

A It was an unusual request.

Q For me to just go see his cell?

A For anybody.

Q How far away was I at the time I asked for that?

A I'm not sure, I'm just saying it was an unusual request. I've never had that request before.

Q I mean, I was in the same building; right?
A Correct.
Q Probably just right around the corner; right?
A Correct.
Q Are you aware that I filed another request, a more formal request, to get in your facility?
A I'm not sure if I seen that one, no.
Q Okay. Has your DOC staff or attorneys talked to you about any of that?
A They do, we communicate.
Q All right. But that's not happened as we sit here today, has it?
A I just don't recall of it, no.
Q No, that I've had a chance or my staff had a chance to go in and see the circumstances under which he's detained.
A It has not.
Q Now, with regard to this tablet that you referenced, you said he has the ability to make phone calls on that tablet; right?
A He does.
Q So he could, theoretically, call his family; right?
A I think three family members are listed.
Q Okay. But anything that he said to them about his case would be recorded by your facility?
A Recorded by GTL.
Q Okay. Which you subcontract with them?
A Correct.
Q And so you have access to all that?

A I do not.
Q Well, somebody that – in the facility has access.
A Internal Affairs.
Q Okay. You have –
A His family members would –
Q -- an investigative team or something; right?
A I do.
Q Okay. And so they're the ones that monitor all those calls; right?
A Only one has capability of it.
Q I'm sorry?
A Only one investigator has the capability of it.
Q Okay. So anything that he would communicate to his family, if it was at all remotely related to his case, you would know about it or the investigator would know about it?
A If they listened to it, correct.
Q Well, they're listening to it, aren't they?
A I'm not sure.
Q Well, has anybody asked you to monitor any of that?
A Has anybody asked me?
Q Yeah.
A No. All inmates are recorded, they're all recorded.
Q Are you aware that the prosecutor has offered up phone calls and stuff to us?
A Say that again.
Q Are you aware that the prosecutor, Mr. McLeland, has offered up phone

calls and other things, recorded calls, to us?

A Well, the calls for the attorneys are not recorded.

Q No, I'm talking about the family members.

A Specifically what?

Q Are you aware that the State has offered up to us numbers – various phone calls of recorded conversations from that facility?

A Not that I'm aware of, no.

Q Nobody's ever asked you about any of that?

A Not that I'm aware of, no.

Q So, apparently, the investigative part of your staff is not communicating with you about his circumstances.

A I'm just now aware about his phone calls.

Q Okay. And your position is, with regard to our access to the facility, that we're not allowed to have cell phones in there?

A No attorneys are allowed to have cell phones.

Q Okay. Did anybody tell you I had a cell phone in there the first time I went in there?

A Yeah, the shake-down sergeant.

Q Okay. All right. After that occurred; right?

A Say that again.

Q I took a cell phone in there the first time, didn't I?

A And the second time.

Q Right. And then, all of a sudden, the rules changed, didn't they?

A The rules never changed, attorneys weren't allowed to have cell phones.

Q Well, then the enforcement of them changed, didn't it?

A No, it's not.

Q Now, with regard to this video circumstance – well, let me back up: Have you ever, in your time as a warden, housed a pre-trial detainee that's not been convicted of a crime at any point in their life?

A Not that I'm aware of, no.

Q Okay. First time; right?

A For me.

Q And you acknowledge there was a circumstance for a couple of months where your staff members were videotaping our visits with our client?

A Only video, yes.

Q Okay. And, in fact, you actually assigned a correctional officer that carried a video camera around and followed us around the facility into the room where we were meeting?

A Any time he was out of the cell, correct.

Q And that correctional officer was asked, essentially, to stage him or herself at the window next to where we were meeting?

A When he was on constant suicide watch, we had to, yes.

Q Okay. And that was never communicated to us before we visited with him, was it?

A I'm not sure what was communicated to you.

Q You certainly didn't do it; right?

A Do what, sir?

Q You certainly didn't communicate that to us.

A Not to you, no.

Q And you didn't communicate to your officer to tell your officer to

communicate it to us?

A No, sir.

Q You just did it?

A Yes, sir.

Q And at some point, there were concerns raised by us that we didn't have any privacy, wasn't there?

A There was.

Q And I'm assuming that your legal team at the DOC suggested that you stand down with regard to that videotaping.

A That was the decision.

Q Okay. And do you have any need to do that in the future when we're meeting with him?

A I don't.

Q Okay.

A We'll need constant visual if he's on mental health constant observation.

Q But you don't have any need to videotape attorney-client meetings; right?

A No, sir.

Q You ever videotaped an attorney-client meeting with another inmate?

A I believe so.

Q And who was that?

A I believe it was Mr. Campbell.

Q Okay. And when was that?

A Oh, probably a year ago.

Q Was it in the same facility?

A Yes, sir.

Q Or – does any of that go on outside of the maximum-security unit, in the general population?

A General population, they're all recorded.

Q They're always what?

A They're always recorded.

Q Well, did – do you have a specific officer assigned to each of those individuals as you move them around to visitation with their attorneys?

A No. I take them to the visitation room.

Q All right. Basically, there's normal surveillance up in the corner; right?

A Correct.

Q Do you – to the extent that Mr. Allen is afforded visitations with his family, do you have any problem with him having water during those visitations?

A It would be an exception.

Q You have to make an exception for him to have a drink?

A It would be an exception.

Q Okay. Inmates aren't allowed to have water when they visit with their family?

A No food or water during visits.

Q Okay. Well, this – the visitation room we were in just a week or two ago had vending machines from wall to wall; right?

A They can take them back.

Q Okay. So – but nobody can drink water?

A Not in the visitation room.

Q But I'm pretty sure I saw a water fountain over on the wall when I was in there; right?

A There may have been.
Q You're not sure if there is?
A It's probably for staff, if there is.
Q Okay. I've had a chance to review some articles regarding your facility. Are you generally aware that your facility is kind of in the midst of an overhaul?
A We are rebuilding, yes.
Q There's a gentleman, it looks like, by the name of Kevin Orme, do you know him?
A Kevin Orme?
Q Orme, I'm sorry.
A Yes.
Q He's the director of construction services of the Indiana Department of Corrections?
A Yes, sir.
Q And I see that there's been a lot of – well, frankly, the State has decided, essentially, tear your facility down and renovate it; right? Or remodel it?
A To rebuild.
Q Okay. Get rid of what you have now and replace it with something new?
A In the future.
Q Right. It's a billion-dollar project; right?
A I'm not sure of the money.
Q And there's been plenty of coverage regarding the circumstances and the ability – the circumstances at your facility; isn't that right?
A Say that again, sir.
Q Well, there's been plenty of media coverage regarding the circumstances

at your facility.

A I assume so.

Q And there's been findings, in fact, that it's – basically, it's – doesn't meet the modern safety and security standards and operation needs of your staff members?

A I'm not aware of that.

Q Okay.

A Westville's a pretty safe facility.

Q Well, do you read any of this literature?

A I didn't read that.

Q All right.

A I'd say Westville's a pretty safe facility.

Q Your facility was recently sued for violations that occurred in the very unit where Mr. Allen was housed?

A I don't know specifically what you're talking about, no.

Q Well, I just think I saw an article where somebody settled a lawsuit for 400,000 for wrongful detention in that facility.

A Not since I've been there.

Q You don't know anything about it?

A Not since I've been there.

Q In the motion that I filed, I actually included that article as a footnote, did you see that?

A Not since I've been there. I've been there for four years.

Q Did you review this particular motion that I filed with the Court?

A Yes.

Q Okay. You saw the photos that I attached of Mr. Allen?
A I'm not sure I saw any photos, no.
Q I'm sorry?
A I don't think I saw any photos.
Q Handing you what's been marked as –
A Oh, I saw that.
Q You're aware of this photo; right?
A I saw that.
Q And you're aware that I made – basically took exception to the condition that he was in at the time; right?
A Apparently so.
Q All right. And you would acknowledge, I assume, by just looking at that, the clothing that he's wearing is – it's soiled and stained, isn't it?
A It is. He just got out of the rec area on that particular day.
Q All right. And your rec area is where?
A He was offered the opportunity to go back and change, he refused.
Q Okay.
A In his cell, he had brand-new clothes that he purchased off commissary.
Q Does his shirt get that brown and that stained all in that rec period?
A I didn't inspect him before he went to rec.
Q Okay. Is the rec area there in that confinement area, the maximum-security facility?
A Is there a rec area?
Q Yes.
A There's several of them.

Q Right. Well, let's talk about that. Outside of the walls of that maximum-security facility, in the rest of the prison, there's all kinds of rec opportunities, aren't there? Basketball courts?

A There is.

Q How many do you have? Four, five, or six on the grounds?

A Probably.

Q Volleyball courts?

A No.

Q Baseball diamonds?

A Yes.

Q Plenty of areas where people could move about and recreate; right?

A Correct.

Q But in this particular situation, you have a confined area that's just a small cage, basically, just outside of the maximum-security unit; right?

A Not correct.

Q Well, what does the rec area look like?

A Actually, we just renovated it, so the rec area has a brand-new bike, it has a brand-new rowing machine on the inside rec area. The outside rec area has pull-up bars and it has a basketball net.

Q Okay. Is there anything in that rec area, people could go out and play in the mud or in the sand or anything like that?

A No.

Q So he wouldn't have any reason to look like he did in that photograph; right?

A I'm not sure how he got that stain on his shirt.

Q Okay. Well, did you – when you saw that photograph, did you go back and check the video to see, "Wait a minute, why does he look like he does?"

A No.

Q You have this companion program at the prison?

A We do.

Q And, basically, the program calls for you to post somebody at the jail cell or the door of any particular individual in there; right?

A If they're on some sort of mental health watch, yes.

Q Okay. So when somebody's sick and they're having mental health problems, the response is, is to basically stick a felon at their door and let them monitor that person; right?

A No. If they're sick and have severe mental health problems, they'll be moved to the infirmary.

Q Okay. But in this case, you engaged this companion plan, didn't you?

A Excuse me, I did what?

Q You were using companions with Mr. Allen, weren't you?

A We were for the first couple months, yes.

Q Okay. So these people are, essentially, convicted felons, aren't they?

A They're convicted, yes.

Q Well, they're felons, too, aren't they?

A I'm sure.

Q You don't have misdemeanants running around in your prison, do you?

A Not that I'm aware of.

Q And certainly don't give access to the maximum-security unit to those kind of people; right?

A No.

Q And so you've got inmates that are sitting at the door with somebody who's sick and you don't necessarily know what they're talking about, do you?

A Sick meaning health-wise or –

Q Yeah, mental health issues.

A I'm really unaware of his mental health issues other than I knew he was on some sort of watch.

Q And you're also unaware of what those companions are saying to those inmates, aren't you?

A They're not supposed to be saying anything.

Q Well, but you don't know that they are or aren't, do you?

A I don't know that they are.

Q They're pretty trustworthy people?

A For the most part.

Q They would not ever go back in the general population and breach any of those confidences, would that?

A That's not what I'm saying.

MR. ROZZI: One second, Your Honor.

Q You've got a very worthy team of transport officers that have been, frankly, very kind to us. Is this a team that you use in other circumstances when you're transporting individuals to and from facilities?

A Yes.

Q And is it a team that's trained to do this and, frankly, that's kind of their primary responsibility?

A It's one of their responsibilities, yes, they're trained.

Q Pretty good at it; right?

A They are.

Q I assume, correct me if I'm wrong, that housing Mr. Allen in this case has been quite a burden with all the lawyers involved and the demands and the visits and all the accusations?

A It's one of many challenges.

Q Okay. So the answer's yes, it's a challenge?

A It can be.

Q If the Judge were to just ask your facility or ask you for the use of your transport team to maybe move him to and from a county jail 15 miles or 20 miles or 30 miles, whatever that might be, they would be capable of doing that; right?

A They would be capable, yes.

MR. ROZZI: Okay. I have no further questions.

THE COURT: Mr. McLeland.

MR. MCLELAND: Thank you, Judge.

RE-DIRECT EXAMINATION OF WARDEN JOHN GALIPEAU

QUESTIONS BY MR. MCLELAND.

Q Warden, I want to show you again what's been marked as Defendant's Exhibit A.

A Yes.

Q Do you recognize that photo?

A I do.

Q Okay. I want to ask you some questions to put in context this photo. The Defense has alleged that this photo exhibits that their client is being mistreated – and I want to make sure I get the language right – that he's held in a cell no

bigger than a dog kennel and that he's a prisoner of war, and they want to use this photo to illustrate that those things are true, so I want you to tell me about this photo. Did somebody on your staff take this photo?

A No.

Q Do you know who took the photo?

A I believe the attorneys did.

Q Okay. And you started to say this and I think Mr. Rozzi cut you off a little bit, but when this photo was taken, where – was he coming from rec?

A Straight from the rec area.

Q And how long had he been in the rec area?

A Probably 45 minutes or so.

Q Okay. And the shirt that he's wearing, you don't know how it got torn?

A I don't.

Q Did he wear a different shirt every time he went to rec or the same shirt every time he went to rec?

A I believe he wore the same shirt. He was saving his other shirts for attorneys visits, from what I was told.

Q And so that shirt that he's wearing there, you believe that's a shirt that he wore for rec every time he went to rec?

A I know he wore that shirt to rec and then went straight to see his attorney.

Q Okay.

A I wanted the video to see how his shirt was so dirty.

Q But at the time that that photo was taken, he had clean clothes in his cell?

A That is correct.

Q Did he have new clothes from commissary in his cell?

A Yes.

Q Okay. And did you or your staff attempt to change him out of his rec clothes before he met with attorneys?

A No. We wouldn't have saw that stain, because his jumpsuit would have been buttoned up.

Q Okay. I thought you had made a comment before that he refused to change clothes.

A He came straight from the rec area. He had the opportunity to change clothes and he did not.

Q Ah, okay. So he had the opportunity to change before he met with his attorneys and he decided not to?

A Correct.

Q Okay. Is he clothed in shirts like that on a daily basis?

A No. If he is, again, that's his decision. He has clean clothes and his clothes are laundered every week.

MR. MCLELAND: Okay. I don't have any other questions, Judge.

THE COURT: Mr. Rozzi.

RE-CROSS EXAMINATION OF WARDEN JOHN GALIPEAU

QUESTIONS BY MR. ROZZI.

Q Do you know if he chose not to change clothes on that particular day?

A He went from the rec area back to his cell, where he had the opportunity to change clothes.

Q Were you transporting him?

A No.

Q Did you have anything to do with him going to the rec area to the cell?

A I did not.
Q Where were you physically when he went from the rec area to the cell?
A I might have been home, I can't tell you.
Q Okay. You don't really know?
A But I watched the video and I saw it.
Q Okay. Mr. McLeland filed a response in this case to the motion that I – or let me ask you this: You recall me filing a motion with a bunch of these allegations about his conditions; right?
A I saw it, yes.
Q You're intimately familiar with that, I'm assuming.
A I'm familiar.
Q And Mr. McLeland called you before he – when he was dealing with this issue – didn't he? – and asked you about all these things.
A I believe so, yes.
Q And in his response, I'm looking at it right here and it said, "He had clean shirts in his cell at the time of the photo, but Defense chose to photograph him in his dirty shirt in order to curry up sympathy in the public eye for the Defendant." I didn't have any choice on what he was wearing that day, did I?
A You did not.
Q So I didn't choose to photograph him in that circumstance, did I?
A Well, you chose to photograph him, yes.
Q But it wasn't prompted by me that he was wearing that stuff, was it?
A I'm not sure what it was prompted by.
Q Are you aware of any – let me – well, first of all, this vest that he's wearing today, you know what this vest is?

A Ballistic vest.

Q Yeah. Are you familiar with the technology involved in these?

A I mean, I'm familiar it's a ballistic vest.

Q Is it basically a shocker collar? Is there an electric charge that you can use or not?

A Is there electric charge built into that vest?

Q Yeah. I don't know.

A If it's a stun vest?

Q This vest.

A I'm not sure what type of vest it is.

Q Is there some kind of belt on him that has an electric charge that you employ if there's a safety issue?

A There should be one during transportation.

Q There is?

A I'm not sure what's on him now. During transportation, if the CERT team decided to use one, that's pretty standard.

Q Okay.

A Very standard.

Q Do you know that your staff had him on a leash when they brought him into visitation the other day?

A A restraint chain?

Q It looked like a leash to me, it was like what you'd be –

A We don't call it a leash, but a restraint.

Q Well, it's the same purpose; right?

A It's for control.

Q Just like you would control a dog if you put a leash on them?

A Just like we control the other 255 offenders.

Q Just like you would control a dog if you put a leash on them?

A That's not correct, sir.

MR. ROZZI: Nothing further.

THE COURT: Thank you, Warden. You may step down.

THE WITNESS: You're welcome, ma'am.

MR. MCLELAND: Judge, the State has no other witnesses.

THE COURT: Any rebuttal witnesses, Mr. Rozzi?

MR. ROZZI: No, ma'am.

THE COURT: Argument.

MR. ROZZI: Judge, this is – ended up right where I thought it was going to be and I'm just going to point the Judge to the law – the Court to the law; I mean, that's what matters here is the law. 35-33-11-1 requires that there be – not there be some speculation about this, but that there be some imminent threat of serious bodily injury or death or that he represents some substantial threat to the safety of others, and there has been, not before the order was signed by Judge Diener or after the order was signed by Judge Diener, any – not an iota of evidence to suggest that there's an imminent chance of serious bodily injury to anybody or any circumstance. I sympathize and understand fully how this happened. That's not the Defense's beef today. Clearly, we had a lot of people that were dealing with some circumstances that they hadn't dealt with before and, clearly, they were making some decisions on a rush, and clearly, when you do that, you have a tendency to do some things that maybe, when you look back,

you're like, "Oh, I probably would have handled it a little differently." But the problem here is, is that there was an attempt to cure this, to make it right, to get him in a situation that was a healthier situation long before this thing kind of went off the rails; and essentially, that attempt was kiboshed, for lack of a better word, by the sheriff, Sheriff Liggett, who told you today he wasn't gonna agree because he couldn't transport. Now, let's get back to the – kind of the foundational legal issues. The first one is that they haven't met their burden of proof. I've argued to the Court already that there's a due process issue here just simply because there was no judiciary finding of any kind or any evidence ever introduced to support the initial order that was entered; and if you look at the initial order, it very much mirrors – and this is all starting to make sense to me now, because it was done by, sounds like, the same person – but it all mirrors the request by the sheriff and it's all about speculative safety concerns and all those kind of things, which again, I understand that. I understand why they had those concerns, but that doesn't meet the legal standard to put him in a maximum-security facility where he is treated and housed, frankly, in the same sense as the most heinous criminals in the state of Indiana. He's the only pre-trial detainee in five, six, seven years of experience for these officers that got up here that's ever been in that circumstance. And the State wants to come in today, the State, who, frankly, agreed to move him at one point, now is coming in, Mr. McLeland doing his job and I understand that, the Sheriff's Department is part of his bailiwick, but they want to come in today and they want to compare his circumstances to that of the guy who's down the hall from him who's a convicted child molester, three-time murderer, or whatever it is, you've heard all that, all the crimes that these people have committed. That's not the

comparison. Under the Equal Protection Clause in the Fourteenth Amendment, we're comparing him with the circumstances under which other pre-trial detainees are detained. You can't put someone in Guantanamo Bay and say they're getting treated the same as the next inmate in Guantanamo Bay, doesn't work that way, that's not what the Equal Protection Clause is about. It's about treating him like other pre-trial detainees who are similarly situated, people in the Cass County Jail, people in the Tippecanoe County Jail, frankly, people in the Carroll County Jail. Just like Officer Leazenby said, they've had other people charged with murder in these counties, it's not – this isn't the first pass. And so don't fall for that trick of, "Hey, we're treating him just like the guy down the hall," because that's the wrong comparison, it's not the right analogy, and that's not what the Equal Protection Clause requires. The due process argument is also a Fourteenth Amendment argument, it basically is similar in that he was not afforded any due process because there was no evidentiary hearing, there was no standards set, it was just an order that was struck by the former judge in this case, and so we would rest our arguments on that, as well. The Sixth Amendment claim, you know – and I think the Court probably senses where we're going with this, but he has a right to counsel and that right extends to privacy and some convenience and just his overall ability to communicate with us so that we can defend him in some reasonable manner. But what the Court has learned today is that, first of all, just on it's – just demographically – I should say geographically, it's an hour and a half drive just to get to his same air space, and that's just to get to the front door. Beyond that, there's layers upon layers of security we've got to go through; and eventually, when we do get access to him, it's in a setting that's not overly comfortable, not overly convenient. We've

been, you know, different places, different times, but the bigger problem is, is that we have no privacy. There is no privacy when we're meeting with him. We show up at the jail one moment and we're taking our cell phones in the prison, and the next moment we show up and we gotta take our cell phone to the car. And we come back the next week and we walk in and we've got a jail officer, correctional officer, following us around with video cameras. I mean, it's the most bizarre thing that's ever happened to me in the 20 years I've been doing this, I still can't understand this, but basically, we're meeting with him, he's sitting in the middle of the room in a plastic chair that they chose to sit him in, not one of the half-padded chairs that was sitting right next to us, and they've got a video camera affixed on us for a half an hour or an hour in an 85-degree room, whatever it is. None of this is convenient, none of this facilitates an attorney-client relationship. You feel like you have no privacy, you feel like you have no ability to communicate with him in any sense – with any sense of confidentiality and, at this point in this case, we are consumed, as a defense team, with dealing with his detention, we're barely consumed with the facts, and it is starting to get to the point where it's overwhelming. We have not the time to focus on the things that are important, which is the guilt and innocence phase of this case. All we're dealing with are DOC attorneys, wardens, captains, correctional officers. We get – we go up there and we get to ride in the back of a van on a wheel well. I mean, and I get it, the people who are doing this are nice, but we get transported in a van and we sit on a wheel well in the back of a van, that's how we get to him. It's gotta stop. And I'm asking Your Honor to intervene, and I think, hopefully, what you heard today is, look, there could be a combination of a couple of things here, we could find a facility like Cass County,

which is a two-minute walk from my front door and much closer for Mr. Baldwin to visit, and we could use the DOC – because you have the power of the pen – to transport him, they could still do that. It would remove 90 percent of the burden on them of having to detain him and dealing with people like me, frankly, 'cause I think they're tired of me and I don't blame them, but I have a job to do. And that would be a nice combination of both. We could employ the State Police. They have invested so many resources in this case, the idea that they couldn't somehow pick him up from a county jail and drive him down the highway a few miles to the courthouse is just – that's beyond me. I don't know how you could explain that away. I mean, clearly, they have the ability to do that. This is not rocket science. I'm just asking the Court to intervene, recognize that his basic fundamental rights, he's being deprived of those, and to fix this situation. Confessions, non-confessions, incriminating statements, non-incriminating statements, however you want to phrase all that, we'll deal with that and, you know, a jury's gonna hear about all that when the time's right; but right now, we're talking about the rights of a pre-trial detainee. And, you know, there's a lot of case law in this, I – you know, I spent some time looking at that, most of it's referenced in my pleadings. I think the foundational case – give me one second here so I can find my case law – one of the foundational cases on the due process issue, the equal protection issue, is *Rhem v. Malcolm* and that citation is 507 F.2d 333, it's a 1974 case, it's good law, it's been around for a long time. And basically, what you're gonna find if you read that is, is that he is to be compared with other people that are similarly situated to him, not people who are on, as I coined it, death row, that's my term, that's my phrase, but it's not inaccurate. He is to be compared with other people in his situation and that's

what I'm asking the Court to consider and grant our request to, essentially, remove the safekeeping order altogether or modify it to another circumstance that's much more amendable and allows us to represent him and it's much for convenient, so we can get on with the real merits of the case.

THE COURT: Mr. McLeland, before you go.

MR. MCLELAND: Sure.

THE COURT: Mr. Rozzi, I – you've raised your Sixth Amendment right to counsel that extends to privacy and convenience, but your argument seems to focus on your convenience. When you were appointed by this Court, Mr. Allen was already at the Department of Correction, so you were well aware, as was Mr. Baldwin, of the hour and a half drive and the layers of security that would be imposed. Nobody asked DOC if they would transport, just that they were available to transport. So we don't have the answer to that particular question; correct?

MR. ROZZI: I don't know that I specifically asked them that.

THE COURT: You didn't –

MR. ROZZI: It certainly wasn't intentional.

THE COURT: -- that's why I'm saying you didn't ask him that. And I don't know if anybody's asked ISP, either. Has anybody asked ISP?

MR. ROZZI: I haven't. I don't think it's my job.

THE COURT: Okay.

MR. MCLELAND: Judge, I guess just to be candid –

THE COURT: Okay.

MR. MCLELAND: -- I did talk to an ISP official over lunch and said, "Is that possible?" And the answer I got was, "We don't know."

THE COURT: Okay.

MR. MCLELAND: I mean, that was not enough time to figure that out.

THE COURT: I just want to make sure that we're all talking apples and apples, not apples to oranges.

MR. MCLELAND: Sure.

THE COURT: You've also argued that he's being denied basic fundamental rights. Which specific fundamental rights is he being denied?

MR. ROZZI: I don't think I said that he was being denied basic – I thought –

THE COURT: You did.

MR. ROZZI: The Fifth – the Fourteenth Amendment and the Fifth – Sixth Amendment argument are the arguments I'm making with the Court.

THE COURT: Okay.

MR. ROZZI: And I've pled those in my pleading –

THE COURT: Okay.

MR. ROZZI: -- very clearly. I think maybe I'm grouping those things together.

THE COURT: Okay. Thank you. And then, the citations to your authority, you have cited the Second Circuit Court of Appeals, District Court in Massachusetts, Ohio, the Sixth Circuit Court of Appeals, the California Circuits, Connecticut Circuits, and Missouri Circuits. Do you have any Indiana law?

MR. ROZZI: No. I just offer up Federal law that –

THE COURT: Okay. So all I have – all that you've provided to me is federal law?

MR. ROZZI: Yes.

THE COURT: You've not cited any state law?

MR. ROZZI: Yes. I think it's prevailing federal law, I do.

THE COURT: And I have no problem with federal law, but you've cited no Seventh Circuit Court of Appeals, which controls our circuit.

MR. ROZZI: Nope.

THE COURT: Okay.

MR. ROZZI: That's what I found.

THE COURT: Is there any?

MR. ROZZI: Not that I'm aware of.

THE COURT: Okay. Mr. McLeland.

MR. MCLELAND: Thank you, Judge. As I said in the beginning, the State's in a unique position. I – the State doesn't have a huge concern of where he's housed. The State does believe he should be held without bond, and we believe that because of the evidence we've collected, the evidence that's been presented to the courts in various pleadings, the multiple confessions to multiple people, we believe that the evidence is strong, by preponderance of the evidence, the proof of guilt is evident, and the presumption that he committed these heinous acts are strong; and so as long as he's held without bail, the State doesn't have a real concern. I suppose it's the lawyer in me that wants to argue more than anything, but Mr. Rozzi brought up 35-33-11-1 and the desire to scrap the safekeeping order altogether. I don't see any provisions within that chapter that say if you scrap the safekeeping, the Defense then gets to choose what facility he's in. If the safekeeping order is scrapped, he comes back to Carroll County. I don't see anything, other provision, that says the Defense gets

to choose what facility he's in. I may have missed something, but I looked through that chapter with some extensive research and didn't find anything. And so if the safekeeping order is scratched, he comes back to the charging county, which is Carroll County, and that's where he's to be housed if the safekeeping order is scrapped. And so I think the Court – to me, when I read the motion, I think the Court hit the nail on the head, that this is about convenience for Mr. Rozzi. "We don't want the safekeeping order, the Sheriff hadn't met their burden, you should get rid if it, but we really want you to modify it to Cass County, so he's right next door to where I'm at." We heard the Cass County Sheriff testify, we heard the DOC Warden testify. It doesn't sound like his situation in either facility's gonna be much different. He's gonna be videotaped 24 hours a day in Cass County. He's not gonna have face-to-face visits. He's gonna have all the same amenities and maybe even less in Cass County than he has in DOC; and I say that because, in Cass County, he's not gonna have 24-hour medical or mental health facility or people there to look after him, and so he's gonna be in a worse spot for his safety in that respect. He's not gonna have those I guess conveniences at his hand 24 hours a day. The Cass County Sheriff said those are only there I think four hours a week for mental health and maybe 12 hours a week or 12 hours a day for the medical. And so I don't think the situation is much different from Westville, as opposed to Cass County, except for geographic area and convenience for Mr. Rozzi. And so again, Judge, we leave it to the Court's discretion. You've heard the concerns of our Sheriff about transport, about housing, about his safety, and so those are the main concerns I hear from the Carroll County Sheriff's Department. Are there other options for transportation? Possibly. I don't know what those are at this point and so I

can't comment on those, Judge. So that's the State's standpoint at this point. Thank you.

THE COURT: Anything else?

MR. ROZZI: Judge, just a couple of comments, reactions. First of all, you know, the Prosecutor again is sitting here talking about multiple confessions, multiple confessions. You're gonna hear, at some point, what he's talking about. This is one of those things where, at one minute, Rick Allen's saying one thing, and just two seconds later, he's saying something else. It's all very generic. This is not some, you know, inquisition where he's finally given up and thrown in the towel and he's just confessing. This is not that. And I've listened to what he's listened to. The second thing is, is that the idea that somehow the Cass County Jail's not an option, that's just me offering up an alternative. I would think that if any lawyer came in and asked for relief in the form of some prayer, that you would want to know what's the relief; and so I'm just offering up a suitable circumstance to the Court that might fit. I've even suggested loosely today that the White County circumstance wasn't that bad. Everything seemed to be fine there for the week that he was there. It's accessible, it's not very far. It's actually closer to this courthouse. Anything to make this a little bit easier. And then we get into the issue of convenience for me. Convenience for me. Okay, so the idea that Mr. Baldwin or I have to travel great distance and deal with all these layers of security and the changing rules and all these other circumstances, including having our own visits videotaped, is somehow okay? I mean, I'm trying to put him in a situation where we can have reasonable contact with him with reasonable notice and represent him like the Rules of Professional Conduct require me to represent him. And so, to the extent

that it's convenient for me, it's convenient for him, and that's what's important is what needs and what rights does he have. And him being accessible to us, without having to go through all these hurdles, and having some of the modern amenities like water when we meet with him, and not having him shackled up like this when we're trying to talk to him, having a computer in front of us so we can show him the thousands of hours of witness statements and other things, those aren't amenities, those are basic human rights, basically. And that's what we're asking for is just get us in a situation that's functional. We're not asking to put him at the Holiday Inn. And I don't see any reason why we're not there, nobody's really objecting. It's just that we can't get a van back and forth between two counties? For Christ sakes, we almost put a guy – we put a guy on the moon 40 years ago, we can drive the van around from Cass County to Carroll, I don't really see a problem with that. It's really frustrating, you can sense that from me. I just want to get on with the case and get him in a better circumstance and that's what I'm asking you to think about.

THE COURT: Okay. And in all fairness, Mr. McLeland, I don't hear that the Defense is asking to scrap the safekeeping order. The motion is, clearly, to modify the safekeeping order.

MR. ROZZI: Yeah.

THE COURT: Okay. I'll take the arguments and the evidence under advisement and review the case law that you have submitted to the Court. What else?

MR. ROZZI: Judge, did you want to have a –

MR. MCLELAND: Can we approach briefly, Judge?

THE COURT: Yeah, come on up.

MR. ROZZI: -- meeting in chambers or –

THE COURT: Well, come on up here for just a second, because I think –

(Sidebar conference conducted.)

THE COURT: What did you want to do with your motion for TRO?

MR. ROZZI: Well, I'm just asking the Court to order that it not occur.

THE COURT: Not to video – because it's the videotaping; right?

MR. ROZZI: It is.

THE COURT: Okay.

MR. ROZZI: I mean, I have no problem with the camera in the corner –

THE COURT: And they've stopped doing it.

MR. ROZZI: -- as part of the normal –

THE COURT: Okay.

MR. ROZZI: -- but this is not that.

THE COURT: No. Well, it is kind of, but it's –

MR. ROZZI: Well, not when they're sitting two feet away from you it's not.

MR. MCLELAND: That's being dramatic.

THE COURT: Video.

MR. ROZZI: You weren't there.

MR. MCLELAND: I wasn't, but –

THE COURT: I get it. What else?

MR. MCLELAND: (Inaudible)

THE COURT: Yeah.

MR. MCLELAND: -- then today – did you want to make that now or did –

THE COURT: Well, I want to wait until they file something, but I do want to pick trial dates today; okay?

MR. ROZZI: (Inaudible)

THE COURT: The con – yeah, the continuing (inaudible). And then, you want that on –

MR. ROZZI: Well, I'd almost like that on the record. I was hoping to address it.

THE COURT: What do you mean?

MR. ROZZI: Well, all I want is just an order telling whoever is detaining him they have to give us his records.

THE COURT: Give us his medical records.

MR. ROZZI: Without me going through all the –

THE COURT: All right. And if they – if you put at issue –

MR. ROZZI: But I don't want to give it to him.

THE COURT: But if you put it in issue and you continue to put it in issue, then you're gonna have to give it to him.

MR. ROZZI: If I file a request for a competency eval and argue he's not competent, certainly he's gonna get them. I mean, I don't –

THE COURT: But you can't have it both ways, Brad. You can't keep saying it and saying, "Well, if I do this", because what you're doing is you're alleging, in several of your motions, that he is teetering on the verge of –

MR. ROZZI: Yeah.

THE COURT: -- incompetency.

MR. ROZZI: Right, I agree with that, but I have – I don't know because I haven't evaluated any of this.

THE COURT: So you haven't seen it?

MR. ROZZI: Absolutely.

THE COURT: So as soon as you get it, then –

MR. ROZZI: No, I haven't had a call about, "Hey, you know, your client's, you know, doing this or doing that."

THE COURT: All right. Well, then I'll grant the motion – I'll grant both of them, but with the understanding that stop talking –

MR. ROZZI: I'm teetering on the brink of –

THE COURT: Stop talking about it –

MR. ROZZI: I will.

THE COURT: -- if you're not gonna proceed with it.

MR. ROZZI: If I can get them.

THE COURT: Okay? All right. Then, we have the ex parte and that will be done after everybody's out of here, but we do need dates for the trial.

MR. MCLELAND: Do you want to pick an omnibus date as to that?

THE COURT: Well, today was the omnibus date. Unless anybody's gonna stand on formality with an omnibus date, which we've blown completely out of the water –

MR. MCLELAND: Sure.

THE COURT: -- I'm not gonna worry about it.

MR. MCLELAND: No.

THE COURT: As long as I get you on the record, with your client's

consent, waiving any issue about omnibus.

MR. ROZZI: Yeah.

THE COURT: I mean, it's a formal filing for motions, and I don't stand on the formality of that, I don't care, unless you care?

MR. MCLELAND: I don't.

THE COURT: Okay.

MR. MCLELAND: (Inaudible)

THE COURT: Oh, yeah, yeah, I don't care about that. I'm available whenever, but – I left my calendar and stuff in there, can you go grab that? It's the big, thick calendar you printed. Do you have dates, that we can at least do dates?

MR. BALDWIN: Eeee.

THE COURT: Don't eee.

MR. ROZZI: I've got my calendar.

THE COURT: Go ahead.

MR. ROZZI: July 1st is fine, we'll start there. I feel like –

MR. BALDWIN: I don't know that –

MR. ROZZI: -- you know, I'm ready to put everything else down –

THE COURT: Okay.

MR. ROZZI: -- and just do it.

(Sidebar conference concluded.)

THE COURT: We're just gonna go ahead and pick trial dates then, please. All right. So I will – without argument, without a necessity for an additional hearing, you have filed a motion, Mr. Rozzi, Mr. Baldwin, for a temporary restraining order on the Department of Correction with the use of

cameras while they – while you are meeting with Mr. Allen, and I think that's fair, I'll grant that. I'll also grant your motion for the Department of Correction to provide Mr. Allen's medical records without necessity of a hearing. And then, we do need trial dates. Jodie stepped out – I left my calendar and stuff out there. I know that the Defense is going to be filing a supplemental motion for suppression, and you'll file the notice to the State on the *Franks versus Delaware* issue. And then, what kind of trial dates are we looking for? Because we get to trial dates, we also chatted up here just a moment ago about the omnibus date. I know it's a statutory deadline of – for filing of motions. Unless the State's gonna holler and scream about a deadline, I don't stand on formalities as it relates to the time limit. I think as a former prosecutor and a former practicing attorney, I think that always kind of hamstrings people. And today was supposed to be our omnibus date, but obviously, you have additional motions that you're going to be filing. As long as Mr. Allen waives any issue with an omnibus date, I'll allow motions to be filed.

MR. BALDWIN: I –

MR. ROZZI: I think what we're doing is agreeing to extend the omnibus date, practically; right?

THE COURT: Practically.

MR. BALDWIN: I just talked to Mr. Allen and explained, generally, what we're talking about and he's like – I asked, "Do you trust what I'm saying, my advice?" He said yes.

THE COURT: Okay. So there's no issue with the omnibus date being extended for purposes of filing motions and stuff. But before we part, I do want to set trial dates; and then, when we're done with this, I'd like to address

the ex parte motion that counsel filed earlier, which again, ladies and gentlemen, you'll have to leave the courtroom, the State will also be leaving the courtroom, and we'll address an ex parte just with counsel and the Court, excluding the State and participants.

MR. BALDWIN: Understood, Judge – or Your Honor.

THE COURT: Trial dates?

MR. BALDWIN: Judge, I think on the Defense side, we're going through it as quickly as we can. We still have at least one hard drive of evidence, if not more, that we have to go through, so it's a laborious process and we got lots of people working on it. So I don't want the Court to think we're not working hard, we absolutely are. So it's really hard for me to gauge – and, Brad, I don't know if you feel the same way – but it's hard for me to gauge – we would like to get this trial done as soon as possible, on one hand. On the other hand, we – you know, you get one shot at this, typically. We don't want to go in without knowing everything that we need to know, so I'm open to suggestions.

MR. MCLELAND: Judge, just so everybody's on the same page, I told Mr. Rozzi this, as well, but there's additional discovery coming per some subpoenas that we – that were granted by the Court, and so we're gonna get that stuff to the Defense as soon as possible, just to point out that we continue to get discovery in and we're continuing to send it off to the Defense.

THE COURT: Okay.

MR. ROZZI: May I?

THE COURT: Are we looking at this year still?

MR. ROZZI: May I ask a question?

THE COURT: Yes.

MR. ROZZI: Are there any administrative hurdles that maybe we haven't talked about that you – that are a problem with scheduling that, you know – you come from another county, you got other things going on.

THE COURT: As I shared with you, I have at least 20 other pending murder cases and a docket that is – this is my calendar till the end of the year.

MR. ROZZI: Okay.

THE COURT: There are 688 entries on my calendar till the end of the year for trials and pre-trials – mostly trials. However, that being said I have been granted unlimited senior judge days by Chief Justice Rush, and I have a senior judge available to me – pretty much when I ask for her, she can come cover my calendar. So if we're still looking at this year, I have unlimited access to a senior judge to cover my current docket.

MR. ROZZI: We would ask for a January date.

THE COURT: January, okay. Can you get me to next year? There's no calendar up here for, like the year, so I – and I don't have my phone with me, so Jodie's got me on calendar. All right. I'm assuming two weeks for trial. I don't know how long –

MR. ROZZI: I would say easy.

THE COURT: Easy two weeks? Three weeks?

MR. MCLELAND: Yeah, I would say that's probably –

MR. ROZZI: We need to plan for three or more.

THE COURT: Three?

MR. ROZZI: I think the longer this gets pushed out, the longer the trial's gonna be.

THE COURT: Well, that's on y'all. What about January 8th through

January 26th, understanding that jury selection will take place up in Allen County? At some point, we'll have to talk about specialized questionnaires. I have one of the most sophisticated jury systems in the country, so I can provide to you an extensive venire and questionnaires, but I'm assuming that counsel will wish to have a specialized questionnaire sent to that venire and I'm happy to accommodate that.

MR. MCLELAND: Judge, those dates are available from the State's perspective at this point. That's far enough in the future, I don't have anything on my calendar. We do have a holiday in between that week, I think, but –

THE COURT: There – I think Martin Luther King Day is sometime in there, but I'm sure that you would all appreciate a day off.

MR. MCLELAND: Sure, I absolutely agree, Judge, just gotta bring it to the Court's attention.

MR. ROZZI: Those dates are fine with the Defense.

THE COURT: All right. So we'll schedule trial for January 8th through the 26th of 2024. We'll take the 8th, 9th, and 10th perhaps to select the jury, maybe the 11th, as well, again, up in Fort Wayne, and we'll just kind of – we'll play that by ear. I know that we're gonna visit again before that date and time, clearly.

MR. ROZZI: Very good.

THE COURT: Anything else before we adjourn this record, Mr. Rozzi? Mr. Baldwin?

MR. ROZZI: No, ma'am.

MR. BALDWIN: No, Judge. Thank you.

THE COURT: Mr. McLeland?

MR. MCLELAND: No, Your Honor.

THE COURT: All right. Thank you very much for your advocacy on behalf of the State, on behalf of the Defendant. Ladies and gentlemen, we're now going to move to the ex parte part of the proceedings and everybody will have to leave the courtroom.

(THIS CONCLUDES THE PROCEEDINGS HAD AT SAFEKEEPING HEARING HELD JUNE 15, 2023, IN THIS CAUSE.)

STATE OF INDIANA	)	IN THE CARROLL CIRCUIT COURT
	)SS:	
COUNTY OF CIRCUIT	)	CAUSE NO.: 08C01-2210-MR-1

STATE OF INDIANA, Plaintiff, VS. RICHARD ALLEN, Defendant.	)))))))

RECORD OF PROCEEDINGS AT EX PARTE

HEARING HELD JUNE 15, 2023

APPEARANCES

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THE HONORABLE FRANCES C. GULL .....JUDGE

JODIE L. WILLIAMS..... .REPORTER

PROCEEDINGS

THE COURT: All right. So we are on the record now. We are outside the presence of the State and there's no spectators in the room. I'm assuming that the individuals that are on the bench behind you, Mr. Rozzi, excluding the Department of Correction guards, are your staff.

ATTORNEY BRADLEY ROZZI: My staff member, my staff member, Andy's staff member, Andy's staff member, Andy's staff member.

THE COURT: Okay. So the balance of the folks in the courtroom, there are two officers from the Department of Correction, there's an officer – I'm sorry, I don't know, are you DNR?

UNKNOWN OFFICER: No. I'm Lieutenant (inaudible), I'm with the Department of Correction.

THE COURT: Oh, you're with the Department of Corrections, as well; and then Officer Bohde. So I will place the officers under oath. I'm trusting that you've already explained to your folks the import of the ex parte hearing.

MR. ROZZI: Yes.

THE COURT: Okay. And, Mr. Baldwin, you've also explained to your folks?

ATTORNEY ANDREW BALDWIN: Yes.

THE COURT: All right. So if the officers – if you would all, please, raise your right hands for me. Do you and each of you solemnly swear or affirm under the penalties for perjury that you will not communicate in any fashion to anyone the contents of this ex parte hearing, so help you God?

(Officers sworn.)

THE COURT: Thank you. And all of you here in the courtroom,

including staff members, do you and each of you understand you may not speak to anyone, including each other, about this hearing or any of the information disclosed in this hearing? Violations of your oath and this order to be silent is punishable as contempt of court with up to 365 days in jail and a fine of up to $1000 dollars. Do you all understand the import of that? Okay. And everybody is nodding their head in the affirmative. All right. So, Mr. Rozzi, on June 6th, you filed a motion for ex parte determination of Defendant's motion for appointment of experts. You may proceed.

MR. ROZZI: Judge, I'm a little embarrassed to say that I don't actually have the motion in front of me.

THE COURT: Here.

MR. ROZZI: I was more bogged down –

THE COURT: Well, there was other things that were –

MR. ROZZI: Yeah, and I, frankly, just forgot to print it, but I don't think I really need to see it. I appreciate the Court offering that up. Look, this isn't rocket science. We're asking to get somebody on the medical side involved in this case, namely a psychologist that's been referred to me that might be – you know, that might have some experience in the areas that we think are important to Mr. Allen's current psychiatric circumstances, but I think, more importantly, there's a mitigation aspect to this case that's important, too. You've heard today, not for the first time, but that there have been some incriminating statements made by him, and we're certainly, again, not, you know, shying away from that. We have our explanations, the State will have theirs; but knowing that the landscape of the case has changed a bit, I think it's incumbent upon Mr. Baldwin and I to investigate and explore the idea of mitigation, as well. And

it would be anyway, but that certainly kind of ramps up the intensity of it. And so the primary purpose is that we also have this kind of unique issue where we – you know, in his detention circumstances, he has a psychiatrist that's kind of like his personal psychiatrist I guess in a way, and I think her name is Dr. Walla (phonetic). I'm sorry, I haven't actually seen that in writing, but having heard her name referred to on a number of occasions, I believe that's it. She, apparently, is meeting with him and communicates with him about various things. We've tried to extract some of that information from him some of – we've been semi-successful in learning what's going on that in that relationship. I haven't asked her. I did try to speak with her only one time, but I felt like getting the medical records was a responsible place to start and we're making progress there. But the point is, is that there's a mental health component to all this because there's been a psychiatrist or psychologist at the DOC involved and there's, apparently, a panel that has considered his circumstances or, I don't know, indirectly assessed him, I'm not really sure, and I think it's fair that we have somebody that can sort through a lot of this information and help us understand what it means to him. He also has a lengthy history of depression that's documented, and so, you know, we're aware of that and we, obviously, need some help trying to sort through what all that means to his current circumstances and what it means to him from a mitigation standpoint. And when I say a lengthy history, I'm talking a little loosely, but I believe, generally, he was diagnosed with depression I want to say 20 years ago or more, but I also am aware that, at one point in his life, that that resulted in an intensive in-patient stay. And so it's more than just some doctor down in Burlington, Indiana, signing a script and saying he's depressed, there is some meat on the

bones, so to speak. And so, you know, those are the primary reasons why we just – we need some help in terms of kind of sorting through all that. And I just heard from Mr. McLeland, just a few minutes ago, frankly, we were – once we recessed, we were talking about what's coming in terms of information, and in addition to more discovery – which will, by the way, never stop in this case, because they're getting tips daily so, I mean, they keep turning those things over – but in addition to that, he assures me that the volume of mental health records we're gonna get from the DOC's gonna be pretty great – extensive, I should say. He just told me that a few minutes ago. And so, you know, with all of that coming and just generally needing to be able to sort through that more efficiently, I started reaching out to people that I trust, and this Dr. Wescott was recommended to me. I communicated with her about the circumstances and she indicated she'd be very willing to help us. I think I noted in the – well, I didn't note in this motion, 'cause I certainly didn't reference her in this motion –

THE COURT: No, you didn't, 'cause –

MR. ROZZI: -- but I –

THE COURT: -- I was looking at it, trying to figure out what kind of experts are we talking about.

MR. ROZZI: Yeah. Well, I appreciate that. Actually, the way I've pled these in the past is I've filed a request for an ex parte hearing and then, if Your Honor grants the hearing, then I have another motion, which I actually have prepared – I know Sarah prepared it – that has the detailed information.

THE COURT: Okay.

MR. ROZZI: Now I'm just doing it orally, essentially.

THE COURT: Yeah, that's fine.

MR. ROZZI: 'Cause that's kind of the way the first hearing went. So I think Dr. Wescott told me – I'm pretty certain it was 7000 was the retainer. I think her hourly rate was – now I'm getting a little loose – $300 to $400. I can send you an e-mail and firm that up, whatever it was. It was what I generally expected – kind of expected for this circumstance. Another – umm, I don't want to get there. She's in northern – she's in the northern part of Marion County, that's where she practices, and so, geographically, you know, it's kind of consistent with what he's dealing with and I guess maybe not quite what I'm dealing with, I'm a little closer, but the point is that's what I'm asking the Court to do is just authorize reasonable funds and, in that order, I'm also asking the Court to allow her access to him wherever he is, without us having to get court orders to get, you know, into places to see him, you now, wherever he ends up or stays or whatever the Court's ruling is.

THE COURT: Okay.

MR. ROZZI: 'Cause again, you know, I just don't want to have to deal with all the red tape of trying to get somebody else that's involved other than me or Mr. Baldwin or Max or Matt in there.

THE COURT: Okay.

MR. ROZZI: So that's kind of the back end of the or – back end of the request.

THE COURT: Is she – she's a psychologist or a psychiatrist?

MR. ROZZI: She is a forensic psych –

THE COURT: Forensic psychologist?

MR. ROZZI: No, neuropsychologist.

THE COURT: A forensic neuropsychologist?