Appellate Case No. 25A-CR-00591

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

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| STATE OF INDIANA,<br>Plaintiff, | ) |
| VS. | ) |
| RICHARD M. ALLEN,<br>Defendant. | ) |

THE HONORABLE FRANCES C. GULL, PRESIDING

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**The Transcript**

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Nicholas McLeland/James Luttrull/
Stacey Diener
Carroll County Prosecutor's Office
101 West Main Street, Suite 204
Delphi, Indiana 46923

Attorneys for Plaintiff

Bradley Rozzi
Hillis, Hillis, Rozzi and Dean
200 Fourth Street
Logansport, Indiana 46947

Andrew Baldwin
Baldwin, Perry and Wiley, PC
150 N. Main Street
Franklin, IN 46131

Jennifer Auger
42 East Jefferson Street
Franklin, IN 46131

Attorneys for Defendant

MR. ROZZI: Yeah. I think she's a neuropsychologist. I don't know if "forensic" is the right word. And I have her CV and everything, and again, I feel a little bit unprepared, I just forgot to print it off, I just forgot. And so I was just more focused on this other issue and I can just simply e-mail it to you, it wouldn't be that difficult.

THE COURT: Okay. I don't have a problem – I mean, I expected – I mean, we've already had the firearms expert, you've got all of your investigative staff and all that additional administrative expenses that you both have been experiencing, so I've been expecting some type of motion along these lines, so I don't have a problem with that. I'll grant your motion to, obviously, proceed in ex parte now on the record, to retain Dr. Wescott; and if you want to just send me that information. And I don't have a problem as far as – I do this in Fort Wayne – sending orders to the DOC to allow this individual to have access to him. It would have to be – you know, at my jail, it has to be by appointment.

MR. ROZZI: Yeah. Yeah, sure.

THE COURT: So –

MR. ROZZI: Well, I do – in talking with her, you know, her visits – she might have the need to visit with him I'll say in person. You heard me ask Sheriff Schroeder about that, you know, the ability to do that just for example, rather than through the glass, so I might – if the Court would permit me to tailor an order –

THE COURT: Yeah.

MR. ROZZI: -- 'cause – you know, and, of course, you're gonna look at it before you sign it, but I may tinker with the wording a little bit, just so there's some convenience aspect to it, but understanding that there are

restrictions on everything in jails and prisons and –

THE COURT: Oh, yeah.

MR. ROZZI: -- I get that. We've just went through all that, so –

THE COURT: Ad nauseum.

MR. ROZZI: I couldn't hear what the Court said, but –

THE COURT: I said ad nauseum we went through all of that.

MR. ROZZI: Yeah. Well –

THE COURT: I mean, it has to be done, so I –

MR. ROZZI: Yeah.

THE COURT: -- I don't have a problem with that.

MR. ROZZI: Yeah, I appreciate that.

THE COURT: Okay. Can I have my motion back?

MR. ROZZI: You may.

THE COURT: Thank you. All right. So you'll just send me something and we'll go from there. Is there anything else that we need to attend to outside the presence of the State of Indiana?

MR. BALDWIN: Judge, I don't know, I think this is – I'm – in prepping for the suppression issue that wasn't, but soon will be, I expended some – I mean, our firm advances monies on – we were making posters on – to help explain it, that will also be used at trial, and I don't – I'm just presuming that that'll be fine. I don't want to get stuck with the bill on that, but we were trying to do the things that visually help people understand a complex set of facts, I guess. And, you know, it can be – it can be pretty expensive, so I didn't know if that's just a bill. I don't really under – I'm not used to billing, it's not my – I don't – I'm not a public – typically a public defender, so I don't really know how to do

that, so we're gonna advance it and then I'm just gonna send a bill in and I guess you will scrutinize it and see –

THE COURT: Yeah.

MR. BALDWIN: -- what's reasonable.

THE COURT: And I do have both – you both have submitted bills –

MR. BALDWIN: Yeah.

THE COURT: -- to include your staff time, as well as your own personal time. So I've had the opportunity, I've kind of perused them. I haven't really perused them for purposes of approval. I don't see that there's gonna be an issue with that, but yeah, that's an expense that you should be reimbursed for. Okay. Anything else?

MR. ROZZI: No, ma'am.

MR. BALDWIN: No. Thank you, Judge.

THE COURT: All right. Thank you. And thank you to the Department of Correction, we appreciate your time.

MR. ROZZI: I agree. Thank you.

THE COURT: Okay. Jodie – and Jodie will provide another transcript.

(THIS CONCLUDES THE PROCEEDINGS HAD AT THE EX PARTE HEARING HELD JUNE 15, 2023, IN THIS CAUSE.)

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

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|---|---|
| STATE OF INDIANA,<br>Plaintiff,<br><br>VS.<br><br>RICHARD ALLEN,<br>Defendant. | )<br>)<br>)<br>)<br>)<br>)<br>) |

**RECORD OF IN CAMERA PROCEEDINGS**

**HELD ON OCTOBER 19, 2023**

APPEARANCES

For State of Indiana:
Nicholas C. McLeland/James Luttrell
Carroll County Prosecutor/Deputy Prosecutor
101 West Main Street, Suite 204
Delphi, Indiana 46923

For Defendant:
Bradley A. Rozzi
Hillis, Hillis, Rozzi & Dean
200 Fourth Street
Logansport, Indiana 46947

Andrew J. Baldwin
Baldwin, Perry & Kamish, PC
150 North Main Street
Franklin, Indiana 46131

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

JODIE L. WILLIAMS..... .REPORTER

**PROCEEDINGS**

ATTORNEY NICHOLAS MCLELAND: Judge, I wanted to do some introductions. I finally got approval from our council to hire a paid attorney to help me, so –

THE COURT: Okay.

MR. MCLELAND: Small town, local government. So this is Jim Luttrell, he's a retired prosecutor from Grant County. He's decided or agreed to come on board –

THE COURT: Okay. Have a seat.

MR. MCLELAND: -- he signed the oath to my office –

THE COURT: Okay.

MR. MCLELAND: -- and all that. I'm gonna handle a written appearance –

ATTORNEY JAMES LUTTRELL: Nice to meet you, Judge.

THE COURT: Nice to meet you, Jim.

MR. MCLELAND: -- next week.

THE COURT: Okay.

MR. MCLELAND: Or maybe tomorrow, if I have time, Judge, if I get it done.

THE COURT: Okay.

MR. MCLELAND: But he will be entered in, and we're trying to get him up to speed.

THE COURT: Okay. Well, good.

ATTORNEY BRADLEY ROZZI: Well, I'm the one that kind of asked to huddle up, so if you want me to lead or if you want to say some things, I'm

okay with whatever approach you want to take here.

THE COURT: Go ahead.

MR. ROZZI: Well, I think –

THE COURT: I've got – Jodie's got our portable FTR going, just so that we've –

MR. ROZZI: Oh, okay. That's fine.

THE COURT: - got a record.

MR. ROZZI: You know, obviously, I'm happy to hear that the Court's gonna make some decisions on the pending pleadings today.

THE COURT: Um-hmm. (Affirmative response)

MR. ROZZI: I assume Andy feels the same way. We – you know, it's time to kind of get some closure, if you will, with regard to those items, so that we can move forward. It's probably obvious that the tension from our side is coming, you know, from the words "disqualification" that were murmured in the phone conference that we had a couple weeks ago. I'm assuming you understand how that kind of raises the intensity level of the circumstances. And I guess my – if I have a concern today, it's that, you know, we're gonna go out on the – kind of in the public, so to speak, in the courtroom, on the record, and have a discussion about an on-going investigation, and I – that's what I kind of gathered from the e-mail. You know, I think you invited Nick to talk about that if he wanted to.

THE COURT: Um-hmm. (Affirmative response)

MR. ROZZI: And, you know, it makes me a little uncomfortable, because I don't know – first of all, there are no pleadings that are pending, whether they're motions to disqualify or contempt citations or whatever they

might be, that really frame any of the issues. And I have no problem – I mean, I don't have any problem talking about this stuff privately on the record in a – you know, in an ex parte type confidential hearing. I just think it's a little – it's difficult to expect that there will be any kind of structure to the idea of, you know, "Hey, there's an on-going investigation and just tell us what's going on." And I don't know that it has any relevance to what we're really trying to accomplish today. And I also don't know why Nick would want to talk about an on-going investigation in public, knowing that that, in itself, could be a little damaging to their circumstances. And so we're lawyers, we're used to having issues framed, we're used to having an opportunity to prepare. And I don't have anything to hide and I know he doesn't have anything to hide. You've maybe gathered that we've cooperated, we ran into the State Police posts, our respective posts, if you will, and I had somebody advise me of my rights and I waived those and I gave a formal statement, he did the same. And I'm not sure that we're gonna benefit or that this will be productive to just open floor this, and that's my biggest concern today.

THE COURT: Um-hmm. (Affirmative response)

ATTORNEY ANDREW BALDWIN: I'm more of a – like, the due process side. I'm not really sure what will happen, but I just don't know – I don't know what's gonna happen and I would like the opportunity to know what's gonna happen and prepare for they're claiming or whatever before it happens. And I feel like – I don't feel like – I don't want to say ambushed, but it's just – it's hard to know, for me, what to do when I don't know what's happening, there's not a pleading we can respond to, things like that. So, you know, you had indicated that, you know, when he – when Nick said - I don't know if he said the

word “disqualification", but –

THE COURT: Oh, he did.

MR. BALDWIN: Was it that word?

THE COURT: Um-hmm. (Affirmative response)

MR. BALDWIN: Okay. I didn't know if he just said it in a more generic way.

THE COURT: Um-um. (Negative response)

MR. BALDWIN: And your response was, you know, “I'm leaning in that direction” or something along those lines.

THE COURT: Um-hmm. (Affirmative response)

MR. BALDWIN: And so that – that's, you know, a cause of concern. I mean, we're still wanting to try this case in January and I'm willing to – you know, we have made changes at my office that will prevent this from ever happening again, you know. And we can take directives from the Court, we can – you know, we're locking down every single thing on Delphi, it's in a dedicated room. We are – we put locks on our conference room or the war room where this guy went, my friend, went in and did this without my knowledge. And that – and no document, whether it's benign or something super, you know, like a crime scene photo, is ever gonna be left alone for a single, solitary second ever again. So, you know, I'm hoping that that can be something that the Court, you know, can say, “All right. That's fine.” And then let's get on with the trial. But I'll shut up now.

THE COURT: Anything, Nick?

MR. MCLELAND: Judge, I guess my plan today was give the Court a summary of the investigation. I've got witnesses here and exhibits to present

that go towards the investigation. I'm more than happy to hand those over to Defense. I know it may harm the investigation, but I think it would be important that the Court hear these things. I guess, the heart of it (inaudible) investigation, I think it's important – I think the importance of you hearing it is outweighed by that, and so I have those things. I'm concerned that the leak is not just a one-time leak. The evidence that we have shows it is an on-going leak, however it's being done, and it's just – what's next? That's – I have an issue, what's next? I mean, I spent the past 17 days investigating this night and day when I should have been focused on preparing for trial. And when I say night and day, I mean phone calls at 2 a.m., 3:30 a.m., night and day, and so that's where I'm at, Judge. Again, I'm an officer of the court, I'm reporting to the Court what I know, and that's kind of where I see my role.

THE COURT: Okay.

MR. ROZZI: You know, this is starting to scream due process to me. I've not – well, I haven't seen any of these exhibits and I don't know really, frankly, I don't know anything about any of this. And I'm not distancing myself from Mr. Baldwin, I'm just saying I have no connection with any of these people; okay? And the idea that somehow the prosecutor is gonna get to roll out a bunch of statements and exhibits and, you know, testimony without us having any forewarning or any idea – anyway of scrutinizing that, seems a little outside the boundaries of due process to me. Plus, again, I get back to what is the relevance to what is going on in this case? Why we – are we going to use an open courtroom to air an ancillary matter? It's not really connected in any way, at this point, to the proceedings that are on-going, whether it's the Franks issue or anything of that nature. And I will tell you this, and I am prepared to show the

Court this, I would rather do it in private, this problem has been a problem from the very beginning. I have ten pages of a deposition transcript in this file from my deposition, our deposition that I took of Trooper Holman in this case, and in that deposition, he talks openly about how there were crime scene links from the very beginning, unequivocal crime scene leaks, and that as soon as this crime occurred, they were investigating information that had been released, because there were laypeople that were part of the search party and the implication is – and I've got the transcript – is that those people that found those girls started to, essentially, disseminate or distribute information, and law enforcement, essentially, try to catch up with them, but it was really too late, as you might expect. Once it gets in the hands of the public, it's too late. So he told us that, almost volunteered that information to me, in the deposition. The second concern I have is that – I think I shared with the Court just as an example, a week or two ago, somebody sends me a Court TV, you know, bit – and I can assure you, I've never watched one of those bits on this case. I don't know even know if I've ever really watched Court TV, maybe back when Simpson was on-going, I don't know. And in that bit, Barbara MacDonald is talking, two different occasions she mentioned how she's getting information from investigators on the ground that were at the crime scene. Now, we can all draw implications about that; but most importantly, it was corroborated by the fact that she was holding in her hand documents that I know to be directly related to the Purdue report. I mean, I saw the pictures, I know where those came from. And if, you know – the point here is, is I'm gonna say this maybe a little loosely, but forgive me. I don't care. I don't care that all this stuff is out there, because it's been out there for

five or six years. I don't have time, he doesn't have time, he doesn't have time to sit and try to marshal all of this stuff while this case is on-going, because there's no end to it. And – but the point is, is the Court needs to have some context that this is nothing new. I'm super – I lost sleep over the fact that there's a man who's dead that I don't even know and, frankly, Andy doesn't know, and it's tragic. I don't know what life circumstances he had or what surrounded this, we've not – none of that information has been shared with us. But at the end of the day, what's going on out in the cyber world and in the public, as you might expect in a case of this magnitude that's been publicized for six years, was beyond our control before we even got involved.

MR. BALDWIN: There's even a guy in Florida who says the guy in Texas who leaked all this stuff has received from a disgruntled Carroll County employee a whole file filled with stuff, and photos included. And I haven't seen – I haven't even seen the photos that were leaked, I don't know what they are, you know. I mean, if this could be set for a formal hearing in the future, where we have a chance to do it the right way, then that's one thing, but, you know, to go in there and we don't have any counter – way to counteract anything. If I know what it is, I can, "Oh, okay, that's – I know what that is" or "I don't know what that is." And it's – you know, and in the meantime, you know, we can – I don't know, we – honestly, this is the worst, lowest point of my career right now, because somebody did what they did to me, and I – you know, that has nothing to do with Richard Allen.

THE COURT: It certainly does not.

MR. BALDWIN: Richard Allen needs to have counsel there, so – I just don't want to go in there and not be able to fight back with – if it – with

evidence that we – or witnesses that we have to counteract whatever they claim that they have, so –

THE COURT: Okay. Here are my thoughts, in no particular order: I don't know how many folks are out there, and I certainly don't wish to air publicly to the world the concerns that I have about this matter. My intent in having this hearing was to go through some of the pleadings that we have not yet decided. So I was going to start with reminding everybody about the decorum order, reminding everybody why we're here, to shut up, etcetera. There have been reports to my sheriff about disruptive people; and I will remind people, if they are disruptive, they will be removed, and my sheriff is fully prepared to execute arrests if necessary, because I know we've seen in our other hearings people have been disruptive and hateful. So under the rules – under the Canons of Judicial Conduct, I'm required to advise people within the room that the media is here and they are filming. They're doing pool coverage, so there's only two cameras in the courtroom and everybody's going to get coverage from that. And then, I want to talk about the pleadings. Defendant filed a verified motion for immediate transfer of custody. The State filed its response. The motion, again, has a lot of inaccuracies and some speculation, and it has been refuted ably I think by the affidavits that have been submitted by the State, and I'm going to deny the motion. The Defendant then filed a motion for broadcasting order. The State filed its response. Your motion's overbroad, it's got a lot of irrelevant verbiage in it, and I am required to consider individual requests for hearings, so I will – if the media wishes to have an individual request submitted, they know fully well how to do that and I've provided to counsel all of those requests that I've gotten so far for this hearing. So if you want to file them for particular

hearings, you're certainly welcome to do that, but the media is all over this and they're not – they know how to do this.

MR. ROZZI: Yeah. I was just trying to understand, are you suggesting that you're gonna determine that on a case-by-case basis or a hearing-by-hearing basis?

THE COURT: Hearing-by-hearing.

MR. ROZZI: Okay.

THE COURT: Yeah.

MR. ROZZI: All right. Okay. I just wanted to make sure I understood what –

THE COURT: The State filed its motion for leave of Court to subpoena the third-party records. I think that was directed, again, to DOC. I, clearly, can't grant that. I'm gonna grant the Defendant's motion to quash. But if you continue to raise his medical and mental health in pleadings, that's fair game then for that to be provided to the State. You have also filed, Mr. McLeland, a motion for future pleadings and filings to be sealed prior to being released to the public. I've not gotten a response from the Defense.

MR. ROZZI: Can I speak on that?

THE COURT: Sure.

MR. ROZZI: I think it's important to note that, you know, we've – so we had this discussion come up before and there was – basically, we decided, okay, we're done sealing stuff, we're gonna make it public. I had – before we filed that Franks brief, I had a long conversation with the court reporter, Karen Allen, over in Delphi, because I wasn't sure about – Allen or Roller? I always want to call her Karen –

MR. MCLELAND: Allen.

MR. ROZZI: Karen Allen – because I wasn't sure about the mechanics of how all of this stuff was moving from Delphi to your office, and I know that you had set up some kind of a website or something that people could access. And I was under the understanding, in speaking with Ms. Allen – I'm not blaming her for anything, but that when we file these things, they were going from them and they were hitting a button – we were filing with Carroll County, they were hitting enter, and they were sending it to you and you were, essentially, filtering this stuff or, at least, you were seeing it before it became public.

THE COURT: Nope.

MR. ROZZI: And so that's the way I – in talking with her, that's the way I understood the mechanics. Which, I think, is what happened to a pleading the other day, from what I understand. We filed something and you either put it in a queue – I think there's a – anyway, I tried to do some homework on that, and that's what I –

MR. BALDWIN: I was a part of one of those conversations and she – that's what she said.

THE COURT: So do – does that need a hearing? I'm happy to have a hearing on that, I don't have a problem with that.

MR. ROZZI: Well, I don't really – I guess, I'm just telling you for context, that's what I –

MR. BALDWIN: I mean, could there be a happy medium of we file it confidentially and then the – so the Judge then gets a chance to review it first? 'Cause I – that's what we thought was going on anyway, but if that's not what's going on –

THE COURT: No. It's being filed confidentially if you mark it as such.

MR. BALDWIN: I know. Yeah, I know that now.

THE COURT: I had my staff mark the memorandum confidential after it had been filed and disseminated to the public, because the actual warrant was in there, and that's covered under a miscellaneous cause number. I'm happy to have a hearing.

MR. ROZZI: Well, what is your ruling, I guess to make sure I understand? I don't want to fight about something that we don't need to argue about.

THE COURT: I haven't ruled on that.

MR. ROZZI: Okay.

THE COURT: You haven't filed a response and that –

MR. ROZZI: Yeah.

THE COURT: -- my question is do we need a hearing on that or do you wish to file a response? The Franks motion, clearly, needs a ruling, and I'm working on that. The motion and exhibits are about 1500 pages and there are hours and hours and hours of interviews that have been made available, that my IT staff has now cleaned to make sure they're okay. We already talked about that. And then, I mean, that brings us to my concerns that I had that I raised with all of you on our phone call. And I write everything out, and this is what I intend to say in open court: I have concerns regarding the defense team and the totality of the circumstances surrounding your representation of Mr. Allen. Candidly, my concerns began at our hearing on November 22nd of last year. Mr. McLeland filed a motion for gag order, and we were in chambers, and you

assured me, gentlemen, "We don't want the media in our lives, we will not try this case in the media." And less than two weeks later, you issued an undated press release that contained an awful lot of information that would not normally be revealed. I don't know, I think you knew or should have known those were potentially violative of Rule 3.6 of the Rules of Professional Responsibility, but it is that press release that prompted me to issue the order December 2nd, granting the gag order until further hearing. April 18th of this year, you filed a notice of tort claim against the Department of Correction. You stated in that notice that it was your intent to pursue, "Our client's claims against you. The full amount of damages sought on behalf of my client is unknown." I don't know how you could do that in representing Mr. Allen in a criminal matter and then launch off into a civil matter, I think that's inappropriate. May of this year, we were notified by the State of the Brandon Woodhouse arrest and the subsequent discovery of your work product, and I think it was an outline that you created for yourselves with the discovery. It was pretty detailed, I don't know if that's the right word. That, apparently, happened in December of last year, and that was not revealed to anybody, not shared with the Court, it wasn't shared with you – although, apparently, you guys knew about what was going on.

MR. BALDWIN: He didn't know.

THE COURT: You knew.

MR. BALDWIN: I did know.

THE COURT: So then, Mr. Woodhouse gets arrested and here we are. Grossly negligent to e-mail that to the wrong Brad. Your pleadings on the safekeeping order contain inaccuracies and falsehoods. That was proven in the hearing we conducted in June, the evidence presented by the State clearly

demonstrated the falsity of your claims, and that was very troubling to me. And then, the last couple of weeks that we have been dealing with. The State provided you discovery. That has been severely compromised. We now have an on-going investigation. I'm not gonna call it a criminal investigation, I don't know what it is, but it's clearly being investigated by the State of Indiana. Everyone involved has sought counsel, including you, Mr. Baldwin, you've had an attorney enter a written appearance this morning. I don't want to get into the investigation, candidly. You are the constitutional authority for the State of Indiana; if you choose to pursue it, that is up to you. If you choose to abandon it, that is clearly up to you. I'm glad to hear that you have cooperated. But Mr. Baldwin's attorney has, clearly, shared – I don't know if you've seen his pleading –

MR. MCLELAND: I saw it, Judge, yes. I got it kind of late. He e-mailed us and then –

THE COURT: Okay.

MR. MCLELAND: -- I saw that was filed on the way here.

THE COURT: Well, yeah, so he's clearly shared it in his pleading, down to the fact that an individual has committed suicide. He included the fact that you left materials all over a conference-room table, accessible to anyone, and this is a friend of yours who, apparently, you have consulted with on this case. So again, it's up to you if you wish to pursue that. I'm looking at the totality of the circumstances. You know, when I look at a suppression, the case law requires me to look at the totality of the circumstances, and that's what I'm doing; and it pains me to say this, but the totality of these circumstances demonstrate gross negligence and incompetence on the part of the defense team. I am unsatisfied with your representation of Mr. Allen. I am gravely concerned

about his rights to have competent, non-negligent representation. He currently doesn't have that right now, because what you have demonstrated is negligence and incompetence. Now, I am sharing my thoughts with you privately. I don't want to say this in open court. I would encourage you to talk privately about what you wish to do. I don't want this coming out, it is not where we need to be with this case, but I will. But you don't know that, you have just now been made aware of my concerns and where I'm landing; so if you wish to have a private conversation, I would encourage you to do that. I don't believe your client is here yet. No, he's not. Clearly, you'll need to speak with him, as well. So –

MR. BALDWIN: I'm not good at reading between the lines.

THE COURT: You're a lawyer, that's what you do for a living.

MR. BALDWIN: When you say have a private conversation, are you talking the four of us or –

THE COURT: I'm talking about you. I am not accusing the State of gross incompetence and negligence. I am finding gross incompetence and negligence with you.

MR. BALDWIN: So - okay. So –

MR. ROZZI: Forgive me – go ahead.

MR. BALDWIN: No, no.

MR. ROZZI: I mean, obviously, reading the tea leaves here, what you're giving us a chance to do is bow out gracefully, if you will, if that's the right term. Is there a scenario where the Court would accept if I stayed in the case? I mean, I'm not – I'm a team player and I'm not the kind of guy that just bail out on somebody just for the sake of doing it, but I think it's obvious that, you know – he can speak differently, but I'm not as connected to some of, you know, this

most recent circumstances as he is. Mr. Allen is in a situation where he's gonna have counsel that's – if he has new counsel, it's gonna take them a year to get up to speed with the depth of information that continues to come in. And so, I think that his 6th Amendment rights matter. And, you know, I'm probably the one that can at least move this thing forward with some sense of judicial economy. I don't like it and that's not what I intended to do when I came in here today, but that would be kind of a worst-case scenario on our side. You know, I guess – and so is that an option that the Court would entertain?

THE COURT: No.

MR. ROZZI: So basically, what you're saying is "You guys either quit on your own accord or you make me fire you"? That's what –

THE COURT: No. I'm saying to you that this is my – this is what I plan to say in court on the record when we convene at two o'clock.

MR. ROZZI: Well, so are – is the culmination of that that you're removing us from the case?

THE COURT: I will, based on what I've just shared with you.

MR. ROZZI: Okay. Well, I just want to make sure we're –

THE COURT: And I'm just giving you the opportunity to have a conversation which – how do you want that to go? I don't want to do this. I don't want to do this, but I will if I have to.

MR. BALDWIN: How would – should we bow out gracefully, as Brad says, how – would we even have a hearing? How would that go? 'Cause if we're out of the case, then –

MR. ROZZI: Then you're gonna go ahead and rule on a bunch of stuff without lawyers in the room, that's –

THE COURT: No, I would not do that. If you decide that your best course of action is to file a motion to withdraw, you can do that today, and I'll send Mr. Allen back to the DOC after you've had a chance to speak with him.

MR. BALDWIN: Would that happen before the hearing or after the hearing? That's –

THE COURT: Your motion to withdraw would happen before the hearing.

MR. BALDWIN: Okay. That's what I wanted – yeah.

THE COURT: Yeah. Because that's – I – he has rights, and I don't want those rights compromised by having a hearing with him not having counsel. I assume, if you choose to withdraw, that his financial situation hasn't changed and he would still be entitled to court-appointed counsel. I can't imagine that he has the ability, at this point, to hire counsel. I don't know that.

MR. BALDWIN: Brad and I need to go talk.

THE COURT: Yes, you do. Thank you, gentleman.

MR. MCLELAND: Yep. Thank you, Judge.

(Off record.)

(On record.)

THE COURT: Thank you, Jodie.

COURT REPORTER: You're welcome.

THE COURT: Okay. Yes.

MR. ROZZI: All right. So obviously, we're kind of trying to figure out how to address this issue with very short notice, very little notice. The first thing we did is really to talk to the client.

THE COURT: Um-hmm. (Affirmative response)

MR. ROZZI: Our client is a big part of this, the biggest part of this, and he has communicated to us that he does not want us to withdraw from this case. He wants us to continue with his representation. He understands, I think, that he's not the gatekeeper or he doesn't have the authority to really force the Court to do that. He would like to say that on the record. We asked him if that's what he wanted to do. We suggested maybe he would do it in chambers. It seems a little bit of a difficult position to put a man who's accused but not been found guilty, put him in a courtroom and have him, you know, have to speak in this circumstance with 15 minutes notice. Andy and I – I'm gonna speak for myself, I'll let him speak for himself. I'm gonna file a motion to withdraw. I don't want to do it, but I don't think that I have a choice at this point. The options I've been given without any notice by the Court really are either I withdraw or I'm gonna be publicly shamed and that's the way I see this. And I think that public shaming is not only – there's not only a professional element to that, I think there's a personal aspect to that, too. But when the media is teed up like this and, you know, we show up here today with the Court having told us that we were gonna conduct some business, that that somehow bleeds over into a forced resignation or whatever you want to – however you characterize this, that, you know, I don't feel like I have any other choice professionally. I have a life beyond this courtroom and beyond this case and I have a family, too, and I have a law practice. But I think had been – we been given some notice of what we were actually – if this would have been framed in a pleading format or some formal disciplinary claim, which there's a process for that in our business, then we could have come in here today with an opportunity to refute some of those things that you clearly had, you know, thought through and prepared before we got

here. And we didn't have that opportunity and it's – the idea that I'm gonna have to go in here in an open courtroom and, essentially, defend myself against claims that I don't agree with without any notice and without any opportunity I think is unfair. But I'm also – I also have some common sense and, you know, me going in there and standing my ground because my client wants me to is just gonna make things worse for him, and so I'm gonna withdraw my appearance. I'm gonna walk out of here, I'm gonna go down to my car, I'm gonna call my staff, and have them prepare a motion, and I'm gonna withdraw my appearance, but I'm doing it because I don't think I have any other choice professionally, not because I want to, and not because my client wants me to. And I respect the Court has an opinion, but we're professionals and we can disagree –

THE COURT: Of course.

MR. ROZZI: -- and, you know, I am extremely, you know, I'd say frustrated's probably a soft word, with the idea that we showed up today without any real opportunity to prepare for any of this, and I just think it's improper, and that's where I am and that's my position.

THE COURT: Well, I think we talked about, when you asked for a disqualification, and I indicated on our phone conversation I'm inclined to do that.

MR. ROZZI: It was a phone conversation that was not on the record and then some follow-up e-mails.

THE COURT: True.

MR. ROZZI: There's an informality to that.

THE COURT: True.

MR. ROZZI: And you also said that you hadn't even done any

research and you hadn't, you know, had time to talk to your senior Judge and all these other things. And he hasn't filed a pleading with the Court, either.

THE COURT: No, I'm doing this on my motion.

MR. ROZZI: And I'm a lawyer who practices in lots of courtrooms and I've been through some disqualification actions. I've – in 20 years, I've never had a disciplinary complaint in my life that's been confirmed, if you will. But I've seen lawyers disqualified and there is a process for that and it's not this, with all due respect, where you walk into somebody's office, a judge's office, and they read a prepared statement to you and, essentially, that statement is an indictment on my professional, you know, activities, and then you're handed a – you know, essentially, a sheet of paper with two – you know, with two options and one of them is, is "I'm gonna go out here and shame you or you can quit." I just – you can understand how upset that would make any lawyer, and I just think it's – I don't think it's the right way to handle this from a due process standpoint. So I have no choice but to, you know, withdraw my appearance, 'cause I'm not gonna go in there and take a public shaming without having any notice of it, I just – you know, that's where I am with it.

MR. BALDWIN: I'm the same, withdrawing. I mirror what he said. I mean, I do appreciate giving us the advance notice. If there is some appreciation for that, I do appreciate that; but beyond that, I wanted to take this, you know – I wanted to take this and finish it out. I'm stunned, I don't know what to say, so I'll just say I'm moving to withdraw orally.

THE COURT: Okay.

MR. ROZZI: Is the Court gonna generate some further instructions on what to do with all of this discovery that we have and –

THE COURT: I already have.

MR. ROZZI: -- all of this information and –

THE COURT: There's an order. I granted the State's protective order on discovery.

MR. ROZZI: No, I'm talking about my possession of all of this information. Am I to take it out to the trash can? Am I supposed to wait for another attorney? Is the Court gonna give us some guidance on how to move all of this information from one law office –

THE COURT: I did.

MR. ROZZI: -- to another?

THE COURT: When I granted the State's protective order, the – I think it's the last paragraph of that protective order directs you to return it all to the State of Indiana, all the copies, all of the – whatever you gave them they are required, under that order, to return to you.

MR. ROZZI: At the conclusion of the case.

THE COURT: Or your representation.

MR. ROZZI: I know what order you're talking about, I read the order before I came today.

THE COURT: Okay.

MR. ROZZI: So we're supposed to just take everything back and give it to the State and then just retain our work product until somebody asks us for it?

THE COURT: Your work product is your work product. I mean, I would hope that you would share that with successor counsel, I would hope that you would help successor counsel just with the transfer of all of the information,

because that's in your client's best interest to do that, but that's entirely up to you. That's your work product that you have developed. I mean, clearly, the discovery is required to go back to the State.

MR. ROZZI: Okay. Thank you. What do you want to do with Mr. Allen?

THE COURT: I can transport him back to the Department of Correction.

MR. ROZZI: Do you want to make a record with his – I mean, I think it's appropriate that the Court let him speak into the record, his thoughts, unless the Court just accepts that as notice that those are his opinions.

THE COURT: Well, you wouldn't lie to me about that.

MR. ROZZI: I would not lie to you about anything.

THE COURT: So of course, that's your representation that that's what he would say if he were brought in here. I can't imagine the DOC being comfortable bringing him into my office. I would not be comfortable having him in my office.

MR. ROZZI: Would the Court also be inclined to mark as an exhibit the prepared statement, so that it's part of the record?

THE COURT: I have the record rolling.

MR. ROZZI: Okay.

THE COURT: Yes.

MR. BALDWIN: So we're gonna leave, I guess, and you're gonna – how is this – you're just gonna get up on the bench and say –

THE COURT: I will just indicate to – Mr. McLeland's going to be in there with Mr. Luttrell, and I'll just say we've had a turn of events and defense

counsel is withdrawing and that's all I'm gonna say.

MR. BALDWIN: Can you wait for us to get out of here?

THE COURT: Of course. And we can have you – I don't know where you're parked at. We have a hearing set for October 31st that I'd like to keep as trial setting and appointment of new counsel and, if you can get things together by that date to return to Mr. McLeland, that would be good. Otherwise, if – with your permission, I will give successor counsel your contact information.

MR. BALDWIN: Okay.

MR. ROZZI: Okay.

THE COURT: Where are you parked?

MR. ROZZI: Nice to meet you. Sorry to (inaudible).

MR. LUTTRELL: (Inaudible)

MR. BALDWIN: Just right out there in front of the building. I mean, there's a parking lot – there's a little parking lot right in front of the building, I don't know what –

THE COURT: Everybody's in the courtroom, so I don't think that there's any anybody out in the hallways.

MR. ROZZI: I'm gonna go get my staff member, I'm gonna have her – I don't need any – we'll rendezvous at some point and try to get the stuff back.

MR. MCLELAND: Okay. That's fine. Between Steve and I and Sarah and you –

MR. ROZZI: Okay.

MR. MCLELAND: -- we will get it all –

MR. ROZZI: That's fine.

MR. MCLELAND: -- done. That's – either Sarah.

MR. ROZZI: Thank you.

THE COURT: Thank you.

(THIS CONCLUDES THE PROCEEDINGS HAD IN CAMERA ON OCTOBER 19, 2023, IN THIS CAUSE.)

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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 STATUS HEARING**

**HELD ON OCTOBER 19, 2023**

APPEARANCES

For State of Indiana: Nicholas C. McLeland/James Luttrell
Carroll County Prosecutor/Deputy Prosecutor
101 West Main Street, Suite 204
Delphi, Indiana 46923

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. Thank you for your patience, ladies and gentlemen. Thank you, Mr. McLeland, Mr. Luttrell, for your patience. We've had an unexpected turn of events, ladies and gentlemen. Earlier this afternoon, the defense attorneys have withdrawn their representation of Mr. Allen. Mr. Baldwin made an oral motion to withdraw, I granted that oral motion to withdraw; and Mr. Rozzi will be submitting a written motion to withdraw, I'm assuming within the next couple of days. They have confirmed with the Court that Mr. Allen's financial situation remains static, meaning he is continuing to be entitled to appointed counsel. I will reach out to public defenders to make that appointment. As Mr. Allen is now without counsel, I've ordered him transported back to the Department of Correction. Mr. McLeland, I know that we have already scheduled a hearing in the Carroll Circuit Court October 31st at 9:00 a.m. I'd like to maintain that hearing, if we can, please.

ATTORNEY NICHOLAS MCLELAND: Yes, Your Honor.

THE COURT: I think, at that point, we can have counsel appointed. I'd like to set a new trial date. Obviously, I don't believe counsel will be prepared within the next couple of months to try a case of this magnitude in January, so we'll set dates for the trial. I think we need to set a date, as well, for the suppression hearing that was filed now by former counsel. I have asked the attorneys to provide all of the discovery previously provided to – back to the State of Indiana. I know I entered a protective order on the discovery and, honestly, I don't remember when that was, I think it was in April of this year perhaps, maybe sooner, but the attorneys have been ordered to provide all of that discovery back

to the State and, if you would maintain that until such time as it can be turned over to successor counsel, I would appreciate that, Mr. McLeland.

MR. MCLELAND: Yes, Your Honor.

THE COURT: I've also asked the defense attorneys to cooperate with successor counsel. They're not required to do that, but I think that they will in the best interest of Mr. Allen. They're not required to provide any of their work product, but they will be required and have indicated that they will cooperate with successor counsel. So, obviously, without counsel, Mr. Allen's hearing cannot proceed. I apologize that I know many of you have been waiting for several hours. I know, Mr. McLeland, you and your staff and you had some witnesses here that came earlier to have the hearing, but clearly, this is outside of our control. So is there anything, Mr. McLeland, that you'd like to state for the record?

MR. MCLELAND: No, Your Honor. I think we could address the other issues at the October 31st court date.

THE COURT: All right. With that being said then, we are in recess. Thank you. I'll see you in October.

MR. MCLELAND: Thank you, Judge.

(THIS CONCLUDES THE STATUS HEARING HAD ON OCTOBER 19, 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,<br>Plaintiff,<br><br>VS.<br><br>RICHARD ALLEN,<br>Defendant. | )<br>)<br>)<br>)<br>)<br>)<br>) |

**RECORD OF HEARING**

**HELD ON OCTOBER 31, 2023**

APPEARANCES

For State of Indiana: Nicholas C. McLeland/James Luttrell
Carroll County Prosecutor/Deputy Prosecutor
101 West Main Street
Suite 204
Delphi, Indiana 46923

For Defendant: William Lebrato/Robert Scremin
Chief Public Defender/Deputy Public Defender
100 East Main Street
Suite 721
Fort Wayne, Indiana 46802

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

JODIE L. WILLIAMS..... .REPORTER

**PROCEEDINGS**

THE COURT: We are on the record. Thank you, Karen. All right. Are we ready? Is the State ready?

ATTORNEY NICHOLAS MCLELAND: Yes, Your Honor.

ATTORNEY JAMES LUTTRELL: Yes, Your Honor.

THE COURT: Defense ready?

ATTORNEY WILLIAM LEBRATO: Yes.

ATTORNEY BRADLEY ROZZI: Yes.

THE COURT: We are on the record in S*tate of Indiana versus Richard Allen*, 08C01-2210-MR-1. I'll show that the State is here by Mr. McLeland, Mr. Luttrell; Defense is here by Mr. Lebrato, Mr. Scremin. And I note yesterday late, the written appearance by Mr. Rozzi and Mr. Baldwin. So we are here – Mr. Lebrato, earlier this morning, you filed a motion to continue the jury trial.

MR. LEBRATO: That's correct, Your Honor.

THE COURT: Go ahead, sir.

MR. LEBRATO: I explained that to Mr. Allen.

THE COURT: Okay. And what is the State's position?

MR. MCLELAND: Judge, the State has no objection as long as the time is chargeable to the Defendant.

THE COURT: Okay.

MR. LEBRATO: And, Your Honor, that's in our motion that we would accept all the CR 4 time.

THE COURT: Yeah. I show, in paragraph four, the State doesn't object as long as CR 4 is charged to the Defendant. Okay. So then we have the

appearances by Mr. Rozzi and Mr. Baldwin. Gentlemen?

ATTORNEY ANDREW BALDWIN: Judge, we're – Mr. Allen has asked us to represent him and we are – we entered our appearance to represent him.

THE COURT: Okay. Well, as we had our hearing on the 19th, at that – prior to that hearing, we had some discussions. Counsel, you withdrew, you chose to withdrew – withdraw from the case, rather than be removed for gross negligence. What's changed in the 12 days?

MR. ROZZI: Well, Judge, I don't – I think I've made it abundantly clear in my pleadings with the Court that the conduct of the Tribunal in chambers a week and a half ago left us with no choice but to withdraw, because we were gonna put ourselves in a direct conflict with our client by sitting in the courtroom and accepting, you know, what was a lashing, essentially, from Your Honor. And so that was a strategic move so as to protect our client's rights and I think I've made that abundantly clear. I don't know how that couldn't be clear at this point. Beyond that, us transitioning from contracted public defenders to private council puts Mr. – puts us in an entirely different situation with our client, which is the Sixth Amendment – his Sixth Amendment right to have representation. And to the extent that the Court is trying to intervene into that right without some due process, you know, it's my client's contention that that's just not appropriate and he has his right to have counsel of choice. So I don't really know that there's much else to say. I think, in the normal course of business – I'm a private practitioner, I was once a public defender. In the normal course of business and in every other case I've ever been involved with, when there's a public defender assigned to a case, such as Mr. Scremin and Mr. Lebrato – excuse me if I messed your name up – but in every other case, when

private counsel enters their appearance, the public defender taps out and, basically, private counsel gets up and running, and I don't see why this case should be any different.

THE COURT: Well, again, you haven't answered my question that nothing has changed in the 12 days since I found gross negligence on the part of the Defense in representing Mr. Allen.

MR. ROZZI: Well, the answer to the question is, is that we didn't act grossly negligent, and the Court has an opinion that's different than our opinion and, you know, at this point, without some due process and some findings, with a notice – an opportunity to be heard, that we're just on a different page about how we acted and what our circumstances are, so that's the answer to the question.

THE COURT: Does the State have any opinions or wish to weigh in?

MR. MCLELAND: Judge, I guess I'm at a loss at this point. We've struggled up to this point, Judge, and again, I was there in chambers in the meeting, I agree with the statements made by the Court about the Defense being grossly negligent. Again, this started back at our first hearing back I believe in November, with the actions outlined by the Court about Defense's statement in chambers, and then a – kind of a direct 180 from that statement once chambers – once they left chambers. And then, there was a leak from the Defense in December that wasn't made aware to the State or to the Court until the State found out. Then we have the various motions that were filed with not only negligent statements, Judge, but I think outright lies, and I think that's been proven in court and hearings that we've had. We then have the *Franks* motion

that was filed, Judge, that – what you have to outline in a *Franks* motion is very clear, and defense counsel spent over 100 pages outlining their theory of the case, instead of argument for the *Franks*. And again, I think everything they've done, including the most recent leak, is just an effort by them to push this case out into public and try this in the public eye and not in this court. The State's concern is that Mr. Allen has a fair trial, that is the State's concern, but that goes both ways. We deserve a fair trial, too, Judge, that right goes both ways. And I just don't think the actions by the Defense can be attributable to anything else but gross negligence, Judge, and so that's the State's opinion.

THE COURT: Mr. Allen, I understand that you wish to have Mr. Baldwin and Mr. Rozzi represent you in this matter. I have grave concerns, Mr. Allen, about their representation of you, the previous findings by this Court of their gross negligence. Mr. Allen, you are entitled to adequate representation in your case, you are entitled to a vigorous defense in your case. And this is difficult, Mr. Allen, because I know what you want, you've indicated that through your attorneys, but I cannot and will not allow these attorneys to represent you with the concerns that I've had, with the gross negligence that I have found. They withdrew, rather than be found grossly negligent and be removed. I can't do it, sir, I just can't. I have –

MR. BALDWIN: Judge –

THE COURT: Let me finish. I cannot allow that. I have appointed able counsel to represent you. Mr. Scremin is here, Mr. Lebrato is here, they have an investigator here, as well; and I will grant their motion to continue your trial. And I'm sorry that this is happening to you, Mr. Allen. Mr. Lebrato, Mr. Scremin, I know that you have not talked with the State, I know you have not

yet received discovery. There is no way that you can tell me when you will be ready for trial. I have asked former counsel to cooperate, I have asked former counsel to provide the discovery to you. It's my understanding that, Mr. McLeland, you've indicated that that has not been provided to you.

MR. MCLELAND: Correct, Your Honor.

THE COURT: Gentlemen, when can I expect that you would return the discovery to the State of Indiana?

MR. BALDWIN: By the end of the week, perhaps today.

THE COURT: That would be great; if you could get it today, that would be wonderful, then that can be provided to successor counsel. You are not required to cooperate with successor counsel. I would hope that you would, in Mr. Allen's best interest, but that is entirely up to you. If you could have the discovery to the State by the end of this week, that would be great. I know that I'd previously entered an order that discovery was to be complete by November 1st; obviously, that's not gonna happen. Do you want to pick a trial date, Mr. Lebrato? Mr. Scremin?

MR. LEBRATO: Yes, Your Honor. Briefly speaking with the State, tentatively we would like a trial date in November; but not knowing what exactly we're gonna be getting, I can't tell the Court with any certainty that we would be ready in November. We will do everything in our power to be ready by then. It's my understanding that it's a massive amount of discovery.

THE COURT: It is. Karen, I know that you brought the calendar in. Could we get a date in November? Okay. I'm looking at November of 2024, there's an Election Day, there is Veteran's Day, and then Thanksgiving.

MR. LEBRATO: If October or December would work better –

THE COURT: October?

MR. MCLELAND: That's fine, Judge. The State – whatever is fine with the Court is fine with the State, Judge.

THE COURT: Mr. Scremin? Mr. Lebrato?

ATTORNEY ROBERT SCREMIN: October would be fine, Your Honor, for a start.

THE COURT: Then, why don't we look – October 14 is marked off. What is that?

MR. SCREMIN: Columbus Day, Your Honor.

THE COURT: Columbus Day? Thank you, Karen. You may mark that off. So we'll look at October 15th through the 31st?

MR. MCLELAND: Fine, Judge.

THE COURT: And we, again, would pick the jury in Fort Wayne and bring them here to Carroll County for the trial. There's a pending motion to suppress, there is the *Franks* that is not yet – I haven't finished even reading it or going through all of the hours of interviews that were provided on a flash drive – so you'll need a hearing date for that. Once you get the discovery and once you've had the opportunity to review the pleadings, you could either adopt those pleadings or make your own, it's up to you. Anything else from the State?

MR. BALDWIN: Judge, we want to create a record on – to be clear on what you're doing: You are disqualifying Brad and me; is that correct?

THE COURT: Correct.

MR. BALDWIN: We would like to be heard through my attorney, David Hennessy.

THE COURT: Sure.

ATTORNEY DAVID HENNESSEY: Good morning, Your Honor. I do have a limited appearance on record which hasn't been removed or disqualified. The Court has my preliminary memorandum about disqualification when Mr. Rozzi and Mr. Baldwin were appointed counsel. This is yet different. The law that I gave the Court is even more certain. The Court appears to be saying that it's protecting Mr. Allen, but the Court's finding of gross negligence was summary, without notice, without the opportunity to be heard. Had you given Mr. Rozzi and Mr. Baldwin notice of your intentions on October 19th when they were formed, which seems to be like a week earlier, then they could have been prepared. I can tell you this on behalf of both of these gentlemen, you would have the Indiana Public Defender Council come testify, you would have competent attorneys from across the state come testify, you would have defense counsel that are – have been declared experts in criminal defense. Mr. Baldwin's one of a handful of lawyers in the state that's certified in criminal defense. So your summary ruling violates the Constitution and your summary ruling is unfair to everyone, especially Mr. Allen, because he was never able to make a record. Your finding of gross negligence, what you cited to them in chambers, which has never been put on the record, is not gross negligence, it's a zealous representation, maybe too zealous for the Court's favor, but it was good lawyering. The memorandum on the *Franks* issue is a work of art. It's legal writing at its best.

THE COURT: This has nothing to do with the *Franks* issue, sir.

MR. HENNESSEY: No, but that –

THE COURT: Nothing to do with that, so please stay –

MR. HENNESSEY: No, it has to do with your finding of gross

negligence, and what I'm citing to the Court are the activities –

THE COURT: I never mentioned the *Franks* –

MR. HENNESSEY: I'm sorry?

THE COURT: Never mentioned the *Franks* hearing, never mentioned the motions, sir.

MR. HENNESSEY: Okay. You mentioned the transport orders. Unfortunately, the public and I – I was not allowed in representing Mr. Baldwin, and unfortunately, the public and I aren't privy to the recording of the session outside the presence of Mr. Allen. He has a right to be present at every critical stage of the proceedings. When the Court coerces a withdrawal or quitting, that's a critical stage of the proceedings. He wasn't present. And I'd be happy to address each and every point that you think constitutes gross negligence. I've practiced criminal defense for 40 years. I understand and know in detail what these two lawyers have done on behalf of Mr. Allen has been nothing but zealous representation. So thank you – I have no expectation you'll change your mind – for allowing us to make a more complete record about your finding of gross negligence in disregard for Mr. Allen and unfairness to Mr. Baldwin and unfairness to Mr. Rozzi.

THE COURT: Thank you, Mr. Hennessy.

MR. HENNESSEY: Thank you, Judge.

THE COURT: Anything else from the State?

MR. MCLELAND: No, Your Honor.

THE COURT: Mr. Scremin?

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

THE COURT: Mr. Lebrato?

MR. LEBRATO: No, ma'am.

THE COURT: All right. Thank you very much. We've set a trial. We are in recess.

(THIS CONCLUDES THE PROCEEDINGS HAD AT HEARING ON OCTOBER 31, 2023, IN THIS CAUSE.)

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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 PROCEEDINGS AT HEARING ON**

**MOTION FOR CONTEMPT HELD MARCH 18, 2024**

APPEARANCES

| | |
|---|---|
| For State of Indiana: | Nicholas C. McLeland/Stacey Diener/<br>James Luttrell<br>Carroll County Prosecutor's Office<br>101 West Main Street, Suite 204<br>Delphi, Indiana 46923 |
| For Defendant: | Bradley A. Rozzi<br>Hillis, Hillis, Rozzi & Dean<br>200 Fourth Street<br>Logansport, Indiana 46947 |
| | Andrew J. Baldwin<br>Baldwin, Perry & Wiley, PC<br>150 North Main Street<br>Franklin, Indiana 46131 |
| For B. Rozzi and A. Baldwin: | David Hennessy<br>9335 Promontory Circle<br>Indianapolis, IN 46236 |

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

JODIE L. WILLIAMS.....REPORTER

**PROCEEDINGS**

THE COURT: *State of Indiana versus Richard Allen*, 08C01-2210-MR-1. We are here on multiple pending motions. I think the first motion I set was the State's motion for leave to amend its charging information.

ATTORNEY NICHOLAS MCLELAND: Yes, Your Honor. Your Honor, before we get started, I'd like to introduce to the Court Deputy Prosecutor Stacey Diener. We brought her on board to help assist with the case and try the case. I was notified today that a tradition, at least in Allen County, to enter the appearance for the deputy prosecutor, so I'll follow this up with a written appearance today, Judge, after the hearing.

THE COURT: Okay. Good morning, Ms. Diener.

ATTORNEY STACEY DIENER: Good morning.

MR. MCLELAND: Judge, the State has filed an amended count – or an amendment to add counts and would like to add counts three and four. The State's gonna make an oral motion to dismiss counts five and six. I think there's an argument to be made that those are allowed to be filed outside the statute of limitations; but given that we are past the five-year mark on those, Judge, I think it's appropriate to dismiss those two, and so the State's not gonna go forward on counts five and six, so the amendment is just here to add counts three and four, Judge. We believe that's allowed, we believe that's appropriate at this time. Those counts better match the discovery that we've submitted to the Defense and better match the probable cause that's been filed with the Court. We did that, we filed those counts in plenty of time for the Defense to prepare for trial. We believe it's allowed under the statue and we'd ask the Court to grant the same, allow the Court leave to file those two additional counts, Judge.

THE COURT: Mr. Rozzi, Mr. Baldwin.

ATTORNEY BRADLEY ROZZI: Judge, we have no objection.

THE COURT: Then, I will show, without objection, counts three and four are added, and I'll grant the State's oral motion to dismiss count five and six. Do you waive initial hearing on the added counts, gentlemen?

MR. ROZZI: Yes, ma'am.

THE COURT: Thank you. That takes care of that. The next motion, then, that was set by the Court – and I don't know if we want to take this up or if it's – what everybody's position is. The State filed a motion for all future pleadings and filings to be sealed for the Court's review before being released to the public.

MR. MCLELAND: Judge, that motion was filed I guess prior to the last hearing that we had back in October, I can't remember the day, October 17th I think. At this point, Judge, the State's gonna withdraw that motion. I had forgotten that it was filed and still pending, Judge. I apologize.

THE COURT: Okay. That's fine. I just wanted to make sure we're clean on the record. So I'll show that as being withdrawn. I know that the Defense, in the contempt proceedings, filed verified emergency motion – did you get those orders to them?

COURT REPORTER: Yes.

THE COURT: Okay. So you've got the orders where I've denied the verified emergency motion for a continuance, the supplement motion for continuance, and I think that was it, so that's been resolved. I'm not sure, Mr. Hennessy, on March 12th, you filed a motion to stay all ancillary proceedings and get this case to trial. I'm not sure – and I know the State filed its objection to

that. Did you wish to be heard further on that?

ATTORNEY DAVID HENNESSY: No, Judge. It just makes perfect sense in my mind.

THE COURT: It just what?

MR. HENNESSY: I'm sorry?

THE COURT: You said it makes perfect sense?

MR. HENNESSY: Yes.

THE COURT: Anything further on that then, Mr. McLeland?

MR. MCLELAND: No, Judge, just note our objection. We've continued this hearing once before to give the parties ample time to prepare. The State's ready to proceed forward, Judge, today, and so we prefer to proceed forward today, Judge.

THE COURT: And we will proceed forward. So I'll note the motion, deny it without hearing. I understand that you've indicated, sir, in paragraph four, that this hearing will last at least one day and probably two. I have scheduled this for one day, so you'll need to conduct yourselves appropriately to make sure that it gets done. Defense has also filed a motion for specific findings of fact and conclusions thereon. That's, obviously, going to be granted and I will make findings. Defense also filed an objection to change of venue. I've noted your objection, Mr. Hennessy. This is –

MR. HENNESSY: To the change of venue?

THE COURT: Yes, sir.

MR. HENNESSY: Okay. Would the Court be inclined to identify any exceptional circumstances that's referenced in the rule?

THE COURT: No.

MR. HENNESSY: Okay.

THE COURT: I've noted your objection. It wasn't filed until March 12th. This matter has been pending since I think January, when the State filed its verified information for contemptuous conduct, January 29th. I set the first hearing in February. That was continued to today on Defense motion. That was continued without objection, so I don't find it's timely at this point; but based on your concerns and your objection, all future hearings, if there are any, outside of the trial, will be conducted in Carroll County. Just reminding counsel that you all have agreed to conduct jury selection here in Allen County with an Allen County jury. And then, the final motion that I have pending is a verified petition for recusal of the prosecutor from contempt proceedings.

MR. HENNESSY: Yes, thank you – oh, wait – I think he's a necessary witness and I've explained to him that and I've explained why I think he's a necessary witness; in particular, we're going to have evidence that there's a Gary Beaudette that goes by Fig, FigSolves, and a few other handles, and that he and Mr. McLeland were exchanging communications and information. We'd like to know what that was. There were other leaks that we've investigated and have become aware of and were not investigated, and those leaks were more substantial than the allegations against Attorneys Rozzi and Baldwin; for instance, there was two leaks of probable cause affidavits, the sealed probable cause affidavit that was submitted in support of the charging information, which had details of the investigation, then there was a leak of the affidavit for probable cause to search Mr. Logan's property, which neither of those could have come from the Defense and they were more substantive than what's alleged against the defense attorneys. So there's others of those that Mr. McLeland knew about

and could have directed investigations and we'd like to know why not, because I intend to show that this is a targeted prosecution for criminal contempt. So I think he should recuse himself, because he was also intimately involved in the investigation; for instance, when Sergeant Holeman was interviewing Mr. Fortson, he told Mr. Fortson he was gonna call the Judge, and ended up calling Mr. McLeland, and then reported back to Mr. Fortson some additional threats about jail and contempt and obstruction of justice, so that's a conversation that was during the investigation, connected to the investigation, so I believe that he is a legitimate witness on that basis. And there were other – there's other involvement in the investigation and other knowledge of other leaks. And then, we believe that the prosecution is going to allege that Mr. Westerman took nine photographs without permission in the conference room of Mr. Baldwin's law office, but we don't believe that all nine of those were taken by Mr. Westerman, and we will have evidence as to why they could not have been. So that's why I think that Mr. McLeland should recuse himself from the contempt. As you can see, there are two other lawyers for the prosecution here today, one with more experience than Mr. McLeland, and they could easily handle the proceedings. Thank you.

THE COURT: Mr. McLeland.

MR. MCLELAND: Judge, a couple I guess different objections to make to Mr. Hennessy's motion, I'll try to take them in order that he recited them to the Court. In regards to the communication with a Gary Beaudette and then other leaks that the Defense believe occurred in this case, I'm not sure how that evidence is relevant to what we're here to do today, Judge. In the State's mind, we're here for a very narrow focus and that is to present evidence that supports

the information in the State's filing of contemptuous information. I'm not sure how communication between I and another person and then other leaks the Defense believe occurred have to do with anything with the allegations outlined in our information against Mr. Rozzi and Mr. Baldwin; and so, I don't think that information is relevant or even pertinent for the Court to hear in support or in denial of our information. Again, Rule 401 says for it to be relevant, there has to be a tendency to make a fact more or less probable than it would be without the evidence. That's not the case here. The Defense seems to want to say that, "Hey, we leaked information, but it's okay because the State leaked information that is," in their mind, "more important," and I just don't see how that's relevant. So that's the first argument in regards to Beaudette and the leaks. If the Court does find that it's relevant, again, the rules seem pretty clear that only in extraordinary circumstances can an attorney be called as a witness. If the Court takes a look at *Chapman v. State*, 354 N.E.2d 673, and *Metheney v. State*, 583 N.E.2d 1202, those are both still good cases, and that the general – and they say that the general rule is that counsel is not subject to being called as a witness unless it is required by a compelling and legitimate need. Where the evidence is easily available from other sources, and absent extraordinary circumstances, an attorney who participates in a case should not be called as a witness. And again, that's under *Metheney*, 583 N.E.2d. Judge, here, if they – if that evidence is relevant and the Court does allow it in, they're able to get that through other means. They could call Gary Beaudette. They could call other people that they believe are involved in the leaks. It isn't necessary for me to testify on those matters, Judge. In terms of the Westerman photos and how many photos were took – were taken by Westerman, again, they can have Mitch Westerman here to

testify to how many photos he took; and so that information is easily accessible through other witnesses. The State believes this is an attempt by the Defense to derail the hearing today, knowing that I'm the one that's prepared for the hearing on the contemptuous information, Judge, and the other two prosecutors seated at this table haven't prepared for that, and so I think it's an effort by them to derail this hearing and I would ask the Court to deny the motion.

THE COURT: Anything further?

MR. HENNESSY: Thank you, Judge. This is clearly an information for indirect criminal contempt. The law in that respect gives the accused, the defense attorneys, all the rights of any citizen accused of a crime, including the right to present evidence, including representation. With regard to the relevancy, Judge, since it is an indirect criminal contempt proceeding, there are two issues: One, is there contempt? Two, if there – the Court fines contempt, what is an appropriate punishment? The fact that – and he – Mr. McLeland misspoke. They didn't release anything, not once. They didn't post anything publicly. It requires public dissemination. And so when you – that accusation is false. And then, he accuses me of having ulterior motives, which is also false and not appreciated. But on those two issues, whether they're in contempt or not, is – other leaks are relevant and probative on that issue, because it requires willful conduct. Now, all these other leaks were purposeful. The people that posted it and leaked it – and keep in mind, it was more substantial information than what they're accusing them of, the attorneys of – that was willful, so that's a perspective. With regard to punishment, the fact that two probable cause affidavits leaked, had details of the investigation, they alleged crime scene photos that were stolen by Mr. Westerman were – those crime scene photos were going to be in evidence

eventually, there's just no way around it. The probable cause affidavits, no. And they had more details, they had specific details, they had – they posted information about the bullet and the gun found in Mr. Allen's house, that was not from the Defense, and that was far more damaging in terms of leaks, so that's why it's relevant. With regard to having Mr. Westerman here, I also wanted to ask Mr. McLeland what he did to get Mr. Westerman here, because he listed him as a witness, scheduled a deposition, he didn't show up. And with Gary Beaudette, we can't get him here, and wanted – that's another reason when I – I'm gonna renew my motion for a continuance, but since he says no, no, no, since I can get other people to say what his communications were, he shouldn't have to testify, he's kind of trying to shift the burden. So if that – if the Court's gonna buy that, then I need time to do what he wants me to do, and we'll have to ask the Court for some money to do that. So he's here. It's not my fault that nobody else got prepared for the hearing, because he's known for weeks. I told him early on when I got on the contempt proceedings that I intended to do that and I've never changed that position. With regard to – and the other thing is the clean hands doctrine I think gives us relevancy and, with regard to his testifying. And then – get Westerman here – what else did he say? Oh, also, another thing that he would – we would want him to testify to is, after the Court issued the gag order, there was an in-chambers, off-record conference with the attorneys and he participated in it, and basically, that was modified informally to allow the Defense to share some information with regard to strategizing and preparing for trial, and he was present for that, and I believe we'll have testimony that he didn't object, and so that's another reason he should testify. So for all of those reasons, it is relevant. The other leaks are relevant surely under – there's more than what

I've laid out for the Court here, which will be – there's evidence as we go through the hearing.

THE COURT: Well, while I'm not conceding that anything from outside sources is relevant, if it may be relevant, then I suppose, but I see no compelling reason to have Mr. McLeland called as a witness to testify and will deny your verified petition. Mr. McLeland, are you ready to proceed on your information for contempt?

MR. HENNESSY: I'm sorry?

THE COURT: I'm speaking with Mr. McLeland.

MR. HENNESSY: Oh. I didn't know.

MR. MCLELAND: Yes, Your Honor.

THE COURT: Do you wish to make any preliminary statement or just get right into the –

MR. HENNESSY: Your Honor –

THE COURT: -- testimony?

MR. HENNESSY: -- if I may, I have some preliminary matters I would like to address.

THE COURT: Please don't interrupt me. I'm not done speaking with Mr. McLeland. Did you wish to make any preliminary statement or just get right into the evidence?

MR. MCLELAND: Judge, I prefer just to get right into the evidence. I think my information outlines what we intend to present here today, Judge.

THE COURT: Mr. Hennessy.

MR. HENNESSY: I have some additional preliminary matters, if I may.

THE COURT: Sure.

MR. HENNESSY: Thank you. First, I would like to supplement Mr. Ausbrook's filings, which I'd like to have marked as Exhibit A, if I may approach the court reporter.

THE COURT: You may.

MR. HENNESSY: May I, I'm sorry?

THE COURT: I said you may.

MR. HENNESSY: Thank you.

MR. MCLELAND: Mr. Hennessy.

MR. HENNESSY: Yes, sir? Oh, thank you. So, Judge, Defendant's Exhibit A is a publication, a bench note, from the Indiana Supreme Court that was updated on January 1, 2024, that lays out the procedure for the various types of contempt proceedings. If I may approach?

**DEFENDANT'S EXHIBIT A OFFERED**

THE COURT: Is there any objection to Defendant's A?

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

THE COURT: Show Defendant's A is admitted without objection.

**DEFENDANT'S EXHIBIT A ADMITTED**

MR. HENNESSY: Do I give it to her or you?

THE COURT: To the court reporter, please.

MR. HENNESSY: Thank you. And then, I would like to renew my continuance. As the Court knows, in my verified supplement in my verified original motion, the discovery that I was receiving from the State was delayed, and I'm not alleging that – I'm not alleging anything improper in that regard, it just affects of what I've been able to do. For instance, the original Indiana State

Police report regarding their leak investigation did not have the attachments because someone clicked on the wrong button. We discovered that, both Mr. McLeland and I, on March 1, and then I didn't get them until – because of some kind of e-discovery glitch, I didn't get them until the next Tuesday, and it went from 33 pages to 272. And so I was only able to go through that late last week, and there's a lot in there that I would want to follow-up investigation on and I need more time to do it. Mr. Mullins recorded Mr. Woodhouse's YouTube and, with regard to Mr. Woodhouse, from the framing of the pleadings on the contempt proceedings, it would seem to be the accidentally misdirected e-mail, which only had an attachment of an outline organizing discovery. And then, I didn't have – I've not had time to watch the entire YouTube presentation of Mr. Woodhouse, but it appears that he also had photographs, which could not have come from the Defense and there was no connection between him, Mr. Westerman, Mr. Fortson, Mr. Cohen, or anybody else that claims to have received them. I got the recorded interviews taken by Sergeant Holeman late. I've listened to them, I've taken notes, but I didn't have time to get them transcribed, which would simply make the ability to use them to cross examine any witnesses more difficult, but not impossible. Mr. Snay contacted me within the last three or four days and shared information that he had about other leaks, which I would need to investigate and try to track down. We received additional screenshots from unknown people and we need – I need time to investigate that. Also, just in terms of adequate organization and making exhibits for presentation in an adversarial hearing, I need more time. So according to – well, I cited the case in my motions and I've identified for the Court what I need more time to do, so I renew the request for – they're entitled to adequate representation. As I

indicated, it's indirect contempt, all the rights and privileges of any citizen accused of a crime are present and that includes the time necessary for adequate representation. Thank you.

THE COURT: Mr. McLeland.

MR. MCLELAND: Judge, I'll try and take these in order again, I tried to jot them down. In terms of the ISP report, it was made available that Friday. Mr. Hennessy didn't want to drive to Delphi to get it and so we attempted to deliver it through e-discovery. We attempted three times and then he got it on Tuesday. I can't explain why he got it on Tuesday and not that Friday, but that is true that we tried it. We did on e-discovery only because he didn't want to drive up to Delphi to get it in physical form, and so we were attempting to get it to him to accommodate his desire not to drive to Delphi. Mullin's recording of the YouTube channel, my information is that he's got that, he's had the time to examine that. The recordings from Holeman, they're not transcribed; I don't know that that matters, Judge. We can still question Holeman about those today. If he's got notes on those, then he should be ready to go forward on those. The other leaks, again, Judge, I'm not sure how those are relevant to today's hearing. We're talking about the information the State filed with the Court and not about other leaks, and so I'm not sure that's relevant. And then, I don't – the screenshots, I'm not sure which ones he's talking about. He did provide me with some screenshots. If they're the same ones he provided me with, again, I'm not sure how they're relevant, Judge, to today's hearing, so the State would ask the Court deny the motion.

THE COURT: Anything else?

MR. HENNESSY: Well, I appreciate Mr. McLeland believing that I

should be ready, but I'm not, and that's the key. And the key is if I provide the Court with specific reasons and we've – I've done that, and it's just a matter of fairness and justice. Thank you.

THE COURT: All right. Your supplemental motion for continuance is also denied. Anything else?

MR. HENNESSY: And then, thank you, Judge. I would like to – well, I'll take that up at another time. I would like to – I also had filed – there – oh, wait. Your Honor, I need to interpose an objection to the lack of a special judge. It's clear that the information for contemptuous conduct was filed pursuant to 34-47-3-5(D). 34-47-3-7 provides that indirect contempt requires a special judge for any part of the allegations that are not alleged to be a violation of direct order of the Court. So they've alleged the press release, which was a day before the order, so it cannot be directly connected to an order of the Court. The – they allege a failure, as if there was some obligation to notify the prosecution and the Court that there was a misdirected e-mail that was accidental and that Mr. Baldwin followed up on with the wrong recipient within the hour, asked him delete it, so he had every reason to believe it was clear. But there's no direct order of the Court that applies to accidentally misdirected e-mails. The conversations that they got out of Westerman's iCloud account, that's not a direct order. The failure to secure evidence and discovery materials, there was no order from the Court that they secure any such materials. Not being completely honest with the Court, that involves – one, it's false; but two, that involves evidence away and apart from. So for all – what 34-47-3-7(C) says is that for all items not related to a court order, including any claim of contempt based on acts cumulatively taken, a special judge has to be appointed under IC

34-47-3-7(C), and that's also in the bench note that was issued by the Indiana Supreme Court. So I request a ruling on my objection for the lack of a special judge for the contempt proceedings.

THE COURT: Mr. McLeland.

MR. MCLELAND: Judge, I think if the Court takes a look at section B the under that Indiana Code, it states, "This section does not apply to an indirect contempts growing out of willfully resisting, hindering, delaying, or disobeying any lawful process or order of the court," and so I think that allows this Court to proceed over this information that the State has filed.

THE COURT: Well, and I would find that the February 17th, 2023, order that was issued at the State's request for a protective order governing discovery is an actual order. Mr. Hennessy, your objection is noted.

MR. HENNESSY: And then, I'd like to – you've not ruled on it yet, but I did file for a judicial recusal and I would like to have marked and admitted into evidence your e-mail from October 8th, 2023, and your – as Exhibit B, and then your e-mail of May 2nd, 2023, as Exhibit C, if I can approach the court reporter.

**DEFENDANT'S EXHIBIT B AND C OFFERED**

THE COURT: You may. When was that filed?

MR. HENNESSY: I'm sorry?

THE COURT: When was that filed?

MR. HENNESSY: Oh, the recusal petition?

THE COURT: Yes.

MR. HENNESSY: I'll have to look.

MR. MCLELAND: Judge, it was filed the same time all the other

motions were filed –

THE COURT: March 12th.

MR. MCLELAND: -- the motion to recuse –

THE COURT: Okay. I found it.

MR. MCLELAND: -- should have been all filed on the same date.

MR. HENNESSY: Thank you.

THE COURT: Is there any objection to whatever is –

MR. MCLELAND: No, Judge. Sorry, I didn't know the Court was waiting on me, I apologize.

THE COURT: No, that's okay. I don't know what your exhibits are, sir.

MR. HENNESSY: May I approach?

THE COURT: Have they been marked?

MR. HENNESSY: Yes.

THE COURT: Okay. What are they?

MR. HENNESSY: It's your e-mail from October 8th, 2023, and your –

THE COURT: And what is the exhibit number, sir?

MR. HENNESSY: B is the October 8th, 2023, and C is the May 2nd, 2023.

THE COURT: All right. I'll show, without objection, B and C are admitted.

**DEFENDANT'S EXHIBITS B AND C ADMITTED**

MR. HENNESSY: And then, with regard to the judicial recusal, I would like to call Sergeant Holeman for some brief testimony. If you'd like me to

sum it up, I would.

THE COURT: Why don't you just sum it up.

MR. HENNESSY: I'm sorry?

THE COURT: Sum it up.

MR. HENNESSY: Okay. In – when he interviewed people, he invoked the power of the court and he would tell them that the judge is very adamant that they delete the photos or give them to him. He indicated that you would issue contempt of court, and with Mr. Fortson, he said he could call you, reach you immediately, and see if you wanted to issue that order of contempt. So what he put in the minds of other citizens was that the Court was deeply involved in the investigation, ready at a moment's notice to send them to jail. And I would like to have his testimony in the record in support of the judicial recusal so it's in the record.

THE COURT: Is this an offer to prove?

MR. HENNESSY: Well, no, it's – I want to call him to testify.

THE COURT: Any objection, Mr. McLeland?

MR. MCLELAND: Judge, again – let me I guess address Exhibits B and C. I don't think that they – those exhibits show any bias on the Court's part. I'm familiar with those e-mails and, again, don't show any prejudging by the Court or any bias towards anyone involved in this hearing. In regards to the testimony of Sergeant Holeman, I guess I'm not sure how his statements show that this Court is not appropriate to preside over these matters, and so again, I don't think it's relevant in terms of this motion for recusal, Judge, and so the State would object to that.

THE COURT: Well, in your motion, sir, in paragraph ten, you

indicate that the Court conducted its own investigation. I did no such thing. I directed counsel to cooperate, I directed counsel to get to the bottom of what was going on. Your request for recusal is denied.

MR. HENNESSY: And –

THE COURT: Did you have any else – any other preliminary matters before we get to –

MR. HENNESSY: I'm looking, 'cause you've made some rulings just here today I need to take off my list. No, ma'am.

THE COURT: Mr. Mc –

MR. HENNESSY: I would do a brief opening statement, if the Court would allow.

THE COURT: Go ahead.

MR. HENNESSY: Thank you. As I pointed out, Judge, there are two issues: One, whether there is contempt; and two, what an appropriate punishment would be if the Court does find contempt. With regard to the contempt, the information, it is not properly filed. The information should have been filed in a separate action. It fails to give adequate notice of what exactly they are alleging was contemptuous conduct. What I can glean from the filing is that – the press release of December 1, and there was no order prohibiting that until December 2nd. And then, they say that misdirected e-mail. That was not willful, there was no duty or obligation to report it, and when it was discovered that Mr. Woodhouse had been dishonest about deleting it, both Mr. Baldwin and Mr. Rozzi were open, honest, and completely cooperative. And then, as I indicated earlier, the prospective – the alleged leak and this leak, and then the – so I don't know what else they're alleging – oh, Westerman, but they've charged

him with conversion. So if somebody breaks – and they're, apparently, saying that that violated one of the Court's orders, but it has to be willful. If somebody breaks into my house and steals embarrassing photographs and then puts them on the Internet, that's not my fault, I didn't public disseminate any embarrassing photographs, and that's exactly what the allegation regarding Mr. Westerman is. They admit that they were taken without authorization, both Mr. Baldwin and Mr. Rozzi cooperated in the investigation, so on the facts and the law, after all the evidence, there is no – should not be any finding of contempt. Thank you.

THE COURT: Did you wish to make any statement, Mr. McLeland?

MR. HENNESSY: I'm sorry?

MR. MCLELAND: Judge, again, I think the information and testimony we have today will speak for itself. I think I've outlined in my information that, from the evidence the State's gathered, we believe it's more than just Westerman breaking into the office of Mr. Baldwin. From the evidence we've gathered, it looks like it was a continuous and on-going leak up until the leaked crime scene photos, and so again, all this is outlined in the information, Judge, I don't think it's necessary to regurgitate it all to the Court here today. And so the State's ready to go forward with evidence, Judge, and jump right into it.

THE COURT: You may call your first witness.

MR. MCLELAND: Judge, before I call my first witness, I would ask the Court to take judicial notice, under Rule 201, of the gag order that was filed by the State on November 22nd, 2022, in this case, and then the Court's order granting that gag order on December 1st of 2022. And then, I'd also ask the Court to take judicial notice with what I'm gonna have marked as State's Exhibit

1, which is the press release released from the Defense on December 1st, 2022, Judge.

**STATE'S EXHIBIT 1 OFFERED**

THE COURT: All right. I will take judicial notice of the motion filed by the State of Indiana for an order prohibiting parties, counsel, law enforcement, etcetera – the gag order that was filed November 22nd of 2022. I will also take judicial notice of the order that this Court entered on December 1st of 2022, granting the State's motion for a gag order. And State's Exhibit 1 is the press release that was issued by the Defendant counsel. Any objection?

MR. HENNESSY: Well, first, I object to judicial notice – and I'm looking for it, both Mr. McLeland and the Court indicated that was issued December 1, '22?

THE COURT: Correct.

MR. HENNESSY: And I – the chronological case summary says December 2nd, and I'm trying to find the gag order, because I've reviewed it a number of times and I believe it was file-marked December 2nd, 2022, but I would like to clarify that. So I would object on relevancy on State's Exhibit 1 – what was it? – the press release, I would object on relevancy because of the respective dates.

THE COURT: All right. I show that the Court granted the Defendant's – or the State's motion on December 2nd. I will take judicial notice of that order, December 2nd, 2022. On December 1st, I set that for hearing.

MR. HENNESSY: So it's December 2nd; correct?

THE COURT: Correct.

MR. HENNESSY: Well, then, therefore, I do object on relevancy,

because the press release was dated December 1st, '22, so that order cannot be relevant to something that was done the day before.

THE COURT: So you're objecting to State's Exhibit 1?

MR. HENNESSY: I'm – that's my objection to State's 1, and it's also my objection to the Court taking judicial notice. One, under 201, it says you can take judicial notice if provided accurate information, and you were not provided accurate information because he said it was December 1, 2022, and the Court accepted that assessment until reviewed at my request, so it don't fit 2 – it does not fit 201.

THE COURT: Mr. McLeland.

MR. MCLELAND: Judge, under 201, the Court can take judicial notice of a fact that is not subject to reasonable dispute because it's generally known within the trial court's territorial jurisdiction and it can accurately and readily be determined from sources whose accuracy cannot reasonably be questioned. In terms of the two orders, those are part of the CCS, Judge. Mr. Hennessy is right, I misspoke, it looks like it was ordered on December 2nd; and so the motion was filed on November 22nd, it was ordered in December 2nd, so I think it's pretty clear the Court can take judicial notice of those, because those are not disputed. In terms of the press release, Judge, again, I don't think it's something that's disputed. Mr. Hennessy's brought it up several times in his opening arguments and motions that – or remarks to his motions that he's filed, so there's no dispute that this was filed or that press release is from the Defense. And again, I think the Court even says in their order for the gag order that, "On the Court's motion, in response to Defendant's undated press release," and so I think it is relevant because that – it looks like that prompted the Court to issue

the gag order without a hearing, and so I think it's important for the Court to know that. Again, I think the Court's well aware of it, I think that's why the Court made the order for the gag order, and so I think the Court can take judicial notice of it under 201.

MR. HENNESSY: May I?

THE COURT: Sure.

MR. HENNESSY: Thank you. The issue here, as he says, is contempt. So there would have to be evidence of a violation of a court order, which it cannot be, it just can't. It's the day before. Now, I understand, based on discussions in chambers, it might – some people might be disconcerted by it, but it wasn't a violation of a court order, so it's not relevant to his allegations of contempt.

THE COURT: I will show State's Exhibit 1 is admitted over objection, as the objection goes to the weight that the Court would give that particular exhibit, rather than its admissibility. Is there anything else before we get into the actual evidence?

**STATE'S EXHIBIT 1 ADMITTED**

MR. HENNESSY: Are you taking judicial notice?

THE COURT: Yes, I am taking judicial notice of the Court's record dated December 2nd, 2022.

MR. HENNESSY: Over the Defense objection?

THE COURT: Yes, sir.

MR. HENNESSY: Thank you.

MR. MCLELAND: Judge, State's prepared to call its first witness.

THE COURT: You may call your first witness.

MR. MCLELAND: Judge, the State would call investigator Steve Mullins, please.

(Witness sworn.)

**DIRECT EXAMINATION OF STEPHEN MULLIN**

QUESTIONS BY MR. MCLELAND.

Q Will you state your name, please.

A Stephen L. Mullin.

Q And where are you employed?

A At the Carroll County Prosecutor's Office as investigator.

Q And how long have you been employed in that capacity?

A Since January of 2020.

Q And prior to that employment, were you employed in a law enforcement capacity?

A Yes, I was.

Q Can you tell me about that, please.

A I was a police officer with the Delphi Police Department, and then a deputy sheriff with the Carroll County Sheriff's Department, detective at the Carroll County Sheriff's Department, chief of police in Delphi, and then at the Carroll County Prosecutor's Office, investigator.

Q How long have you been a law enforcement officer, if you know?

A I figured last night, 42 years.

Q Okay. As part of your duties with the investigator – with being an investigator in the Carroll County Prosecutor's Office, are you working on the case of *State of Indiana versus Richard Allen*?

A Yes, I am.

Q And tell me largely what your role has been in that case up to date?

A It's been –

MR. HENNESSY: Objection: Relevancy. We're here for contempt. His investigation regarding the issues raised by the Prosecutor's information is what is relevant –

THE COURT: Overruled.

MR. HENNESSY: -- not his investigation of the –

THE COURT: Overruled.

MR. MCLELAND: Judge, I'll rephrase the question. I'm okay with staying away from that.

Q So I want to move on, Mr. – or Investigator Mullins, to – are you familiar with an individual by the name of Brandon Woodhouse?

A Yes, I am.

Q And how are you familiar with him?

A Brandon Woodhouse has been arrested in Carroll County for various law offenses over the years.

Q And is it fair to say he has a lengthy history – criminal history in Carroll County?

A Yes, he does.

Q Now, Mr. Woodhouse came on your radar most recently in March of 2023; is that correct?

A Yes.

Q How did he come on your radar during that time?

A I received a phone call from a person who identified herself as Dorena Hipsher, she informed me that there was a YouTube channel that Brandon had

created.

Q And did you go and view that YouTube channel?

A I did.

Q And what did you see on the YouTube channel?

A On the YouTube channel, I observed that Brandon Woodhouse had a screenshot of the evidence, listed evidence, in the Richard Allen case.

Q And you were familiar with that list of evidence?

A Yes, I was.

Q Have you viewed the evidence or the discovery involved in the Richard Allen case?

A Yes, I have.

Q And is it safe to say you're familiar with that evidence?

A Yes, I am.

Q I'm gonna show you what's gonna be marked as State's Exhibit B, I believe –

MR. HENNESSY: State's Exhibit what?

MR. MCLELAND: Two. I'm sorry, Judge, I misspoke, State's Exhibit 2.

Q Investigator Mullin, can you describe that document.

A Yes. It is the same as I saw on Brandon Woodhouse's YouTube page, it's titled "Richard Allen thumb drive map".

Q And was that the title of the document that you saw on Brandon Woodhouse's YouTube page?

A Yes, it was.

Q And tell me – you told me the title. What does that document contain?

A It contains information concerning the Richard Allen case, witnesses and evidence for the case.

Q And does that match what you saw on the YouTube channel for Brandon Woodhouse?

A Yes, it does.

MR. MCLELAND: Judge, the State would move to admit what's been marked as State's Exhibit 2 into evidence.

**STATE'S EXHIBIT 2 OFFERED**

MR. HENNESSY: No objection.

THE COURT: All right. Without objection, 2 is admitted.

**STATE'S EXHIBIT 2 ADMITTED**

Q As your role of the investigator, you've also been tasked by me to assist in exchanging discovery with the Defense for the Richard Allen case; is that true?

A Yes.

Q And tell me the normal procedure that you go through when you're exchanging discovery with the Defense.

A My practice was to create an itemized list of the items that were to be given over to the Defense, whether they be information files or whatever they were, and then have the Defense, an agent, sign for the release of those items.

Q And so you would draft a receipt or a list of items you were handing over to the Defense and then have that for Defense to sign once those items were picked up; is that correct?

A Yes.

Q I'm gonna show you what's been marked as State's Exhibit 3. Can you describe that document that I handed you.

A Yes. It is a receipt which I drafted for a release of evidence. I titled it 1-0 or 10 Allen.

Q And can you outline the evidence or – is that a document you drafted?

A Yes, it is.

Q And does it have both Attorney Rozzi's and Attorney Baldwin's name on it?

A Yes, it does.

Q And was – did that document describe evidence that you turned over to them as part of discovery?

A Yes, it was.

Q And again, that's a document you drafted?

A Yes, it is.

MR. MCLELAND: Judge, the State would move to admit what's been marked as State's Exhibit 3.

**STATE'S EXHIBIT 3 OFFERED**

MR. HENNESSY: Objection. It's never been provided to me in discovery on the – regarding the contempt proceedings. I asked to enlarge the discovery deadline, the Court denied it, and I object because it's never been provided to me before and I'm – it's not been connected to the thumb drive map and, therefore, it is not relevant.

THE COURT: Any response?

MR. MCLELAND: Yes, Judge. If the Court would give me just a moment, I'm gonna pull up the date of the e-mail that I sent Mr. Hennessy that had that attachment in it. In terms of the relevancy, Judge, I believe it's relevant for information that's going to appear later in the hearing in terms of a continued leak by Defense of information. Judge, I apologize, I'm having trouble – I sent all

the attachment – all the exhibits in an e-mail, Judge, and I'm trying to get the Court a date for that e-mail and confirm that Mr. Hennessy received it. Judge, I apologize, I can't seem to find the e-mail at my fingertips here that I sent Mr. Hennessy, but it was included in an e-mail with other attachments that I sent to Mr. Hennessy as part of discovery for the contempt.

MR. HENNESSY: Can I?

THE COURT: No, he's still looking. I guess I'm not sure what the objection is, that you didn't get it? Your clients certainly got it, if they signed for it.

MR. HENNESSY: I didn't get it. What you ordered was to exchange the exhibits for the contempt hearing.

THE COURT: Yes.

MR. HENNESSY: Even if they had it, it was never identified to me for potential use in the contempt hearing. That's the kind of notice that the discovery, reciprocal discovery, requires. And I would also note that the items that are in – listed in State's Exhibit 3 are not on State's Exhibit 2. And so, 2 was admitted without objection because it was the attachment that was accidentally sent to Mr. Woodhouse. So since the items listed on 3 aren't on 2, it's not relevant.

THE COURT: I'll show 3 is not admitted.

MR. HENNESSY: I'm sorry?

THE COURT: I will show 3 is not admitted.

MR. HENNESSY: Thank you. I'm sorry, but –

THE COURT: Do you need an assisted listening device?

MR. HENNESSY: I'm sorry? Oh, no. I'll just try to –

THE COURT: Go ahead.

MR. MCLELAND: Thank you, Judge.

Q And so, Mr. Mullin – or Investigator Mullins, is your practice again to draft a receipt for the Defense for when they picked up discovery?

A Yes.

Q Okay. And you would list out the discovery – in that receipt, you would list the discovery that you were turning over to them?

A Yes, I would.

Q And then, you would have somebody, a representative from their office or them themselves, sign for the discovery and date when they received that discovery; is that correct?

A Yes. Yes, that is correct.

Q And that was your common practice for all items that you turned over as part of discovery; correct?

A Yes, it was.

Q Okay. Do you recall – as part of discovery that you handed over to Defense, do you recall there being an interview with a professor from Purdue by the name of Jeffrey Turco?

A Yes.

Q And what kind of in – was it an audio/video interview or what kind of interview was that?

A I believe it was an audio interview of Professor Turco that I handed over to the Defense.

Q And would you have gone through the same procedure when you handed over that evidence to the Defense of making a receipt and documenting that in

the receipt, meaning – when I say "that", meaning which – what discovery you're handing over to them?

A Yes, I would.

Q And would you have had the representative from their office date it when they picked it up?

A Yes.

Q Do you recall, from your memory, that – when the Defense picked up the information concerning the interview with Professor Turco?

A I believe it was September the 27th, I don't have the document in front of me.

Q Okay.

A Yes.

Q And so you believe they picked that information up on September 27th of 2023?

A Yes, September 27th, 2023.

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

THE COURT: Mr. Hennessy.

MR. HENNESSY: Thank you, Judge.

**CROSS EXAMINATION OF STEPHEN MULLIN**

QUESTIONS BY MR. HENNESSY.

Q You first learned about the Brandon Woodhouse YouTube from Ms. Hipsher?

A Yes, I was.

Q And what she told you was that Brandon Woodhouse actually had Rick Allen's thumb drive, didn't she?

A Something to that effect, yes.
Q And that was not true?
A No.
Q And on the YouTube, you saw the map of the thumb drive?
A Correct.
Q And that simply identified what was on that thumb drive?
A Can you repeat the question, please?
Q Sure. The map simply identified what was on that particular thumb drive?
A I'm sorry, I'm not sure if I understand what you're trying to say.
Q Okay. I'll move on. Do you organize discovery for the prosecutor?
A Yes.
Q Do you make a list that's handy for him and his assistants to locate any particular piece of discovery?
A I create an itemized list of the items that we have as I go along, yes.
Q So that would be a – like a map for them to go find the actual piece of evidence?
A I have done something like that, yes.
Q And that is exactly what you saw on the YouTube, only it was for the Defense; correct?
A What I saw on the YouTube channel was what I said earlier and the picture shows was that it was – at the title at the top of the page, it said, "Richard Allen thumb drive map."
Q But it did not have any substance of what anyone said; correct?
A It showed a list of the items and witnesses.
Q Correct, but it didn't say what the witnesses had said.

A Correct.
Q So there was no substance to it?
A In that sense, yes.
Q And then, did you see anything else on the YouTube?
A Mr. Woodhouse was simply talking about the items on the list of items that were on the thumb drive or what he called the thumb drive.
Q Did he show any pictures?
A No.
Q And then, did you ever contact Mr. Woodhouse?
A I did not.
Q Did you interview anybody else regarding the Woodhouse document?
A Other than Mrs. Hipsher, no.
Q And you saw the actual e-mail that was accidentally sent to the wrong recipient, Mr. Woodhouse?
A I don't believe I did.
Q So you don't know that it was addressed to "Brad" and not "Brandon"?
A I don't know.
Q Why did you not look at the actual e-mail?
A I have enough to look at, I didn't have time to focus on any other issues other than this, and I handed my report over to the prosecutor.
Q So you couldn't read a four-line e-mail, but you went through a multiple-page thumb drive map?
A I looked at what was on the YouTube channel and transmitted that to the prosecuting attorney.
Q Right. But you just told me you didn't have time to read a four-line e-mail

that said "Brad" and not "Brandon". You just didn't have time; right?

A I'm not sure if I understand your question.

Q Okay. Well, I'm asking you if you have just said today under oath that you just didn't have time to review the four-line e-mail that was addressed to "Brad" and not "Brandon"?

A Yes.

Q Okay. So you, as you sit there, have no knowledge whether Mr. Baldwin intended to e-mail Brandon Woodhouse; correct?

A As I said, I only looked at what I had in front of me.

Q Right. So you have no information or knowledge that Mr. Baldwin intended to e-mail Brandon Woodhouse?

A I don't know what his intent was, I'm sorry.

Q The question is: Do you have any information –

MR. MCLELAND: Which I'm gonna object. He's asked and answered his question. He can't speculate as to what Mr. Baldwin meant or did not mean to do.

MR. HENNESSY: Well, then Mr. McLeland's not understanding the question, either. I'm not asking him to opine as to what Mr. Baldwin's intent was, I'm asking him if he has any information or knowledge. He was assigned to investigate the Brandon Woodhouse –

THE COURT: But that's not the question you asked him. You asked him what his intent was and he said – that was the objection, and I would sustain the objection.

Q Okay. Do you have any information or knowledge – strike that. You were assigned, by Mr. McLeland, to investigate the Brandon Woodhouse information;

correct?

MR. MCLELAND: Judge, I'm gonna object again. That's not what Mr. Mullins testified to. Mr. Mullins testified that he was contacted by Ms. Hipsher that Brandon Woodhouse had a YouTube channel and he viewed that YouTube channel.

THE COURT: Sustained.

Q (Sighs) After you spoke to Ms. Hipsher, did you have – report that to Mr. McLeland?

A I'm sorry, can you repeat the question?

Q Sure. After you got the information from Ms. Hipsher, did you report that to Mr. McLeland?

A Yes, I did.

Q And what did he tell you to do?

A Document it.

Q And why did you then go watch the YouTube?

A I'd already watched the YouTube when I reported it to Mr. McLeland.

Q Okay. And then, do you have any information from anyone that Mr. Baldwin meant to send an e-mail to Brandon Woodhouse?

MR. MCLELAND: Again, I'm gonna object, Judge.

MR. HENNESSY: It's information, Judge, does he have any information.

THE COURT: Overruled.

MR. HENNESSY: That's a yes or no question.

THE COURT: Overruled.

Q Do you have any information that Mr. Baldwin intended to e-mail Brandon

Woodhouse?

A I don't know what his intent was.

Q That's not the – that's not an –

MR. HENNESSY: Can you direct him to answer the specific question, Judge?

THE COURT: Did you have any information?

A Oh. No, I did not.

Q Do you have any knowledge of such?

A No.

Q Thank you. And then, you did no other investigation regarding Westerman's photos or any other leaks?

A No.

Q In your employment with the Pros – Carroll County Prosecutor's Office, did you become aware of other leaks – other investigation of any other leaks?

MR. MCLELAND: Judge, I'm gonna object to relevance. That's not what we're here to discuss today, Judge. We – the State has outlined the contemptuous information, and it's the State's belief that the investigation of other leaks and whether or not he's conducted those or looked into those isn't relevant to the information here today, Judge.

MR. HENNESSY: I just asked – only asked if he investigated anything else, and his answer no would have been a lot shorter than this discourse.

THE COURT: Sustained.

Q And then, you remember giving a deposition on March 1 –

A Yep.

Q -- of 2023 – 2024?
A Yes.
Q And you were under oath?
A Yes.
Q And do you recall saying that Mr. Woodhouse was displaying screenshots in his YouTube video?
A Yes.
Q So you did see some screenshots in the YouTube video?
A I saw the display on his laptop showing what I've already described as the information contained in the Richard Allen thumb drive map.
Q And then you took screenshots?
A I did.

MR. HENNESSY: That's all I have. Wait.

THE COURT: Mr. McLeland.

MR. HENNESSY: That's all I have.

THE COURT: Mr. McLelend.

MR. MCLELAND: Judge, thank you.

**RE-DIRECT EXAMINATION OF STEPHEN MULLIN**

QUESTIONS BY MR. MCLELAND.

Q Investigator Mullin, the outline that you saw on Mr. Woodhouse's YouTube, is that something you created and then handed over to the Defense as part of discovery?
A No.
Q Okay. And so have you ever seen that document prior to viewing it on Mr. Woodhouse's YouTube channel?

A I had not.

Q And so it's not something that you – someone else created that you turned over as part of discovery; is that correct?

A I did not create that document.

Q Okay. When you saw the YouTube channel, the information in the probable cause, meaning the witnesses' names, was that information sealed? Do you know?

A I believe it was at that time.

Q And so the outline listed several of the witnesses, including some juvenile witnesses; is that correct?

A It did.

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

THE COURT: Mr. Hennessy.

**RE-CROSS EXAMINATION OF STEPHEN MULLIN**

QUESTIONS BY MR. HENNESSY.

Q What was the date of the e-mail?

A I don't know what the date of the e-mail was. I didn't –

Q So you –

A I never saw an e-mail.

Q So you don't know if it was before or after anything was sealed or unsealed?

A That would be correct.

Q Okay. And then, did you know that the affidavit with those names had been leaked by Gary Beaudette before they were unsealed and before it was available to the Defense?

A I don't know.

MR. HENNESSY: Okay. Nothing further.

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

THE WITNESS: Thank you.

THE COURT: You may call your next witness.

MR. MCLELAND: Judge, before I do that, this has been done, the Court already has this document from Mr. Hennessy's I guess preliminary motions, but I think it's important to resubmit it again in this context, since we're dealing with the contempt now, and so the State is gonna ask the Court to take judicial notice of what I'm gonna mark as State's Exhibit 4, which is the e-mail from the Court and it's the e-mail chain that Mr. Hennessy has previously admitted.

**STATE'S EXHIBIT 4 OFFERED**

THE COURT: Any objection?

MR. HENNESSY: No.

THE COURT: All right. Without objection, 4 is admitted.

**STATE'S EXHIBIT 4 ADMITTED**

MR. MCLELAND: And again, Judge, that shows the – there's an explanation there from the Defense of when the e-mail was sent and so that clears up the date when it was sent, to give the Court some context of when it was sent.

THE COURT: Okay.

MR. MCLELAND: The State would next call Lieutenant Jerry Holeman, please.

(Witness sworn.)

DIRECT EXAMINATION OF LIEUTENANT JERRY HOLEMAN

QUESTIONS BY MR. MCLELAND.

Q Will you state your name, please.

A Jerry Holeman, H-O-L-E-M-A-N.

Q And how are you employed?

A With the Indiana State Police.

Q And how long have you been employed in that capacity?

A It'll be 22 years in June.

Q And did you go through special training or education to become a law enforcement officer?

A Yes, I did.

Q Can you tell me about that, please.

A I went through the Indiana State Police Academy, I graduated – I started January, 2001, and I graduated in June of 2001.

Q And are you familiar with the case of *State of Indiana versus Richard Allen*?

A Yes, I am.

Q Are you an investigator who participated in the investigation of that case?

A Yes, I am.

Q And I want to take you back to October of – the beginning of October of 2023; do you recall that time?

A Yes, I do.

Q And what happened in the beginning of October of 2023?

A I received a phone call from you, stating that you had received information from Becky Patty, who is the grandmother and legal guardian of Liberty German, that crime scene photos were being leaked.

Q And once you were told of that information, what did you do next?
A I started inquiring on what type of photos were leaked and tried to find out where they were being leaked from.
A And what did you do first to go about finding out that information?
Q Well, I received a phone call from Aine and Kevin – Aine Cain and Kevin Greenlee, who said they had also received the photos, and they described those photos to me over the phone.
Q When those photos were described to you, were you familiar with the photos they were talking about?
A Yes, I was.
Q How were you familiar with those photos?
A One of the descriptions of the photos was one that Mr. Baldwin and Mr. Rozzi showed me in my deposition.
Q And why was it unique enough that you could tell the photo from a description?
A It was a side-by-side that I've never seen before that day and it was created, obviously, by the defense attorneys, and I recall seeing it that day, and that's the only time I ever saw that photo.
Q And so from the description from those individuals you talked to, you recognized the photo was something the Defense had created?
A Yes.
Q What did you do next?
A I believe I called you back to let you know that there was more than just what Becky Patty had told you.
Q And from there, where did the investigation lead you?

A I talked to, again, Aine Cain and Kevin Greenlee who said that they knew who sent them the photos.

Q And who sent them the photos?

A Mr. Cohen.

Q And did you speak to Mr. Cohen?

A Later, I did.

MR. HENNESSY: Objection: Hearsay. Violation of the right of – to confrontation.

THE COURT: Overruled.

Q Did you speak to Mr. Cohen?

A I did later; but before that, I got more information from Aine and Kevin, they stated that Mr. –

Q Hold on, let me –

MR. HENNESSY: Objection. What did he say?

THE COURT: Did you stop him there?

MR. MCLELAND: Yes.

Q And when you spoke to Aine and Keven, did you get documents from them?

A Yes.

Q What documents did you get from them?

A They gave me several documents that were screenshots that they received from Mr. Cohen with communication with Mr. Fortson.

Q Okay. Did you receive any pictures from them?

A Yes.

Q And what pictures did you receive from them?

A The pictures that they stated that Mr. Cohen sent them.
Q And when you got the pictures from them, did you recognize the photos?
A Yes, I did.
Q And I don't want you to go into detail, but what were the photos of?
A Some of them were of the crime scene that, again, I knew had to come from the defense attorney, because one of them was of Liberty and her private parts were blacked out and they used a circle, and in all the ones that we ever used for any type of reason, we used rectangles.
Q I'm gonna show you what's been marked as Defendant's Exhibit 5 – State's Exhibit 5 –
MR. HENNESSY: Yeah, there you go.
Q -- can you take a look at those documents, please, and can you tell the Court what those documents are.
A The first one is a picture –
Q Not – just as a group, I'm sorry.
A Oh.
Q It was a bad question. Can you tell the Court, as a group, what those documents are.
A Photos that I received from Kevin and Aine.
Q And what do the photos show?
A Crime scene photos, some of them are pictures of drawings of the crime scene.
Q And do you recognize those photos?
A Yes, I do.
Q And how do you recognize those photos?

A Again, they're crime scene photos and also photos that were presented to me in my deposition.

Q Judge, I'm gonna ask the Court to admit what's been marked as State's Exhibit 5. I'm gonna ask the Court to admit those under seal. They're graphic crime scene photos. I did not transmit those to Defense. I told Mr. Hennessy I was not gonna transmit those to him.

**STATE'S EXHIBIT 5 OFFERED**

MR. HENNESSY: Let's see them.

MR. MCLELAND: I'm more than happy to have them look at those, but I would like those filed under seal, Judge.

THE COURT: Any objection?

MR. HENNESSY: Judge, yeah, I need to see them. Mr. McLeland let me look at them. I've never received copies because I didn't want to because I don't want to be sitting accused of contempt. I have no reason to object to them being placed under seal.

THE COURT: All right. I will show 5 is admitted without objection and I will seal –

MR. HENNESSY: No, no. I need to see the exhibit. You asked if I object to them being sealed. I gotta make sure this is what I was shown before, because they weren't given –

THE COURT: Show him the photos, please.

MR. HENNESSY: No objection, Judge.

THE COURT: All right. I'll show 5 is admitted without objection and, without objection, 5 will be sealed.

**STATE'S EXHIBIT 5 ADMITTED**

Q Now, Mr. Holeman, if you recall, were those all the photos that you received from Ms. Cain or – sorry, the individuals Kevin and Aine?
A No.
Q Okay. Those are just a – the ones we admitted are just a portion of those?
A Yes.
Q Okay. And again, the ones specifically of the crime scene depicting Liberty, was that something the law enforcement created?
A No.
Q And how did you know that?
A Like I said earlier, we use rectangles to block out the private parts, and that one had one rectangle and a circle, so I knew it was not produced by any of us.
Q When you saw that photo, did you recognize it though?
A Yes.
Q Where did you recognize it from?
A It was a crime scene photo that was used and was taken at – from the scene.
Q Was it also presented to you in a deposition?
A I believe so, yes.
Q Same questions with the side-by-side photo that showed Abby: Did you – is that something that law enforcement created?
A No.
Q Did you recognize the photo?
A Yes.
Q And how did you recognize it?

A It was shown to me in the deposition by Mr. Baldwin and Mr. Rozzi.
Q Once you got those photos, what did you do – once you got the photos and the information from Kevin and Aine, what did you do from there?
A I notified you again of the photos and what my thoughts were, and then I scheduled a time to meet with Aine and Kevin to take a statement and receive all of the information that they got from Mr. Cohen.
Q And as part of the information, the documents that you got from them during that interview, did those include screenshots of messages?
A Yes.
Q And who were the messages between?
A Mr. Cohen and Mr. Fortson.
Q How did you know they were between Mr. Cohen and Mr. Fortson?
A Well, I saw the pictures of the – Facebook pictures of Mr. Fortson, and Mr. Cohen told me they were.
Q So you were able to identify, from the messages, Mr. Fortson?
A Yes.
Q I'm gonna show you what's been marked as State's Exhibit 6 I believe; are you familiar with that bundle of documents?
A Yes, I am.
Q And how are you familiar with that bundle of documents?
A Those are the documents that I received from Mr. Greenlee and Mrs. Cain.
Q And can you describe what those documents are, not the content of them, but what they are.
A They are screenshots of communications between Mr. Fortson and Mr. Cohen on Facebook.

Q And how do you know that?

A 'Cause I'm familiar with Facebook and it says "Robert Fortson" and then it's also identifying Mr. Cohen.

Q And do those accurately represent the documents that you received from Aine and Kevin?

A Yes.

MR. MCLELAND: Judge, the State would move to admit what's been marked as State's Exhibit 5.

THE COURT: Six.

MR. MCLELAND: Six.

MR. HENNESSY: Six.

MR. MCLELAND: I'm sorry.

**STATE'S EXHIBIT 6 OFFERED**

MR. HENNESSY: Preliminary questions, please.

THE COURT: Yes.

MR. HENNESSY: Do you know how many pages is in 6?

A I do not.

MR. HENNESSY: Do you remember how many pages you received from the Murder Sheet people?

A I don't know the exact number, no.

MR. HENNESSY: And then, so State's Exhibit 6 reveals conversations between two people?

A Yes.

MR. HENNESSY: Is Mr. Fortson deceased?

A Pardon me?

MR. HENNESSY: Is Mr. Fortson deceased?

A Yes, he is.

MR. HENNESSY: Judge, I would object on hearsay. It's impossible for the Defense to be able to cross examination and confront the speakers. This is clearly communications between two people, neither of whom are available for cross examination.

THE COURT: Any response?

MR. MCLELAND: Judge, the State does not believe it's hearsay. It's not going to the truth of the matter of the content in the statements, it's going to show that there was a conversation and that there was a continued leak. If the Court does deem it's hearsay, I believe there's an exception. If the Court reads through the documents and reads through the statements in the document, there are several messages where Fortson says – or asks Cohen to protect him from distributing the information and to delete messages once he knows the investigation starts, and so it's clearly statements against his interest in terms of trying to delete those messages and hide the evidence, and so the State would ask to overrule the objection.

THE COURT: All right. How show 6 is admitted over objection.

**STATE'S EXHIBIT 6 ADMITTED**

MR. HENNESSY: I'm sorry, I would also belatedly like to add relevance, because none of those conversations are connected to either Mr. Baldwin or Mr. Rozzi, and there's no evidence or testimony that they were aware of the conversations, that they authored or authorized the conversations, so there's no connection to the two people that are charged with indirect contempt. Relevance.

THE COURT: You may proceed.

MR. MCLELAND: Thank you, Judge.

Q What did you do next in the investigation?

A After receiving this information, I – like I said, I did an audio/videotaped statement of Mr. Cain – or Mrs. Cain and Mr. Greenlee, and then I contacted Robert Cohen.

Q And did you interview him, as well?

A Yes.

Q And after you interviewed him, what did you do next?

A After I interviewed Mr. Cohen, I believe I interviewed Mr. Rick Snay.

Q And between the interviews of those people, did you have an opportunity to go through the documents that were handed over to you?

A Yes.

Q And the interviews that you conducted with those people, did it match the information that you saw in those documents?

A Yes, it did.

Q After you talked to Mr. Snay, what did you do next?

A Mr. Snay advised me that he received –

MR. HENNESSY: Objection: Hearsay.

MR. MCLELAND: It's okay.

Q Who did you interview after Mr. Snay?

A Kyra Debruin.

Q And through your investigation, did you continue to gather information on how the photos were leaked?

A Yes.

Q Was that the purpose in interviewing these people, to determine the source?
A Yes.
Q And once you saw the messages from Mr. Fortson, did you attempt to interview him?
A Yes, I did.
Q Did you attempt to interview him about the things in that document?
A Yes.
Q And did he give you any information?
A No.
Q Did you attempt to subpoena his Facebook records to get a certified copy of those documents?
A We did.
Q And when you examined his Facebook page, were those messages in there?
A I did not examine his Facebook messages, but Detective Rector did –
Q Okay.
A -- he would be better.
Q And do you – okay. After you attempted to interview Fortson, who did you interview next?
A I attempted to contact Mr. Westerman after I interviewed Mr. Fortson.
Q And so the information that you got from the investigation at this point, where did it tell you the leak was coming from?
A Mr. Westerman.
Q Did you know who Mr. Westerman was?
A Not at the time, no.

Q Okay. Did you investigate to find out who he was?

A Yes. I found out that he was –

MR. HENNESSY: Excuse me, preliminary question, please.

THE COURT: Yes.

MR. HENNESSY: When you say found out, did somebody tell you stuff?k

A I did some investigation on my own.

MR. HENNESSY: I'm sorry?

A I did some of the investigation on my own.

MR. HENNESSY: Yeah, but what did you investigate? I mean, did you read documents or talk to people?

A Yes.

MR. HENNESSY: Okay. I'd object as derivative of hearsay, denial of the right to confrontation.

THE COURT: Any response?

MR. MCLELAND: Judge, I don't think it's hearsay for him to tell the Court how he found out who Mr. Westerman was, I just don't think that hearsay applies, Judge.

THE COURT: So it's course of investigation?

MR. MCLELAND: Yes, Your Honor.

THE COURT: Okay. Then overruled.

MR. HENNESSY: I'm sorry, what was the –

THE COURT: Overruled.

MR. HENNESSY: No, I got that, but what did the Court say right before that?

THE COURT: He said it's during the course of the investigation, how he got to where he got.

MR. HENNESSY: Okay. Well, there's no course of investigation exception to the hearsay rule, there hasn't been for about 15, 20 years.

THE COURT: I've overruled the objection, sir.

MR. HENNESSY: Yes, ma'am.

Q And through this process, did you – tell me about your attempts that you made to talk to Mr. Fortson directly.

A I attempted to call his – one of the phone numbers I had for him. I actually – I had two, and the first one said, "This is Robert Fortson. Please leave a message." I left him a message identifying myself as with the State Police and that I needed to talk to him about some information that came up in an investigation. And then, I had another number, I didn't know at the time, but it was actually to his father, Bob Fortson; and I spoke with Mr. Bob Fortson and he said that he worked at the Air Force base and that he's probably up there and that he would call him and let him know to get in contact with me.

Q And so on or about October 10th, did you go to the Air Force base and attempt to talk to Mr. Fortson?

A Yes, I did.

Q And did you gather any information from him?

A Very little.

Q Did you ever attempt to get ahold of Mitch Westerman?

A Yes, I did.

Q And does Mitch Westerman – through your investigation, did you find out if Mitch Westerman had a connection to the Defense, Mr. Rozzi or Mr. Baldwin?

A I did.
Q Tell me about that connection.
A He used to work for Mr. Baldwin as a – I'm not sure what he was employed as, but he used to work for Mr. Baldwin.
Q Do you know if he was still employed by Mr. Baldwin?
A I do not believe he was, no.
Q And that takes us to October 12th of 2023. What did you find out on October 12th of 2023?
A I received a phone call from a sergeant with the Fishers PD that Mr. Fortson had committed suicide.
Q And were you able to gather any other information about the facts surrounding his suicide?
A Fishers PD said that it was obvious suicide and that he – that during a conversation with his wife, he was upset and – because of the photos that he leaked and that he wished he would have just been honest.
Q Did you conduct any other investigation into his suicide?
A No.
Q Once your investigation was complete, were you able to determine the chain of how the photos were leaked?
A Yes.
Q Can you tell me that?
MR. HENNESSY: Objection. Preliminary question: Was this based on stuff people told you?
A No, I don't believe so.
MR. HENNESSY: Was it based on documents that you read?

A Yes, more than likely.

MR. HENNESSY: So basically, you're gonna express your conclusions based on information?

A Yes.

MR. HENNESSY: Provided by other people?

A Correct.

MR. HENNESSY: Objection: Denial of right of confrontation, hearsay.

MR. MCLELAND: Again, Judge, this is through the course of an investigation. I'm trying to elicit from him a summary of what conclusions he found from his investigation into the leaked photos, Judge.

THE COURT: Overruled.

Q And so, Mr. Holeman, can you tell me, from your investigation, what were you able to determine how the photos were leaked?

A I was able to determine that Mitch Westerman, who used to work for Mr. Baldwin, was also in the Air Force with Robert Fortson prior, he wasn't at the time, but he was friends with Robert Fortson through the Air Force. And it appeared to me, through my investigation, that he was sending information that he was getting directly from Mr. Baldwin to Mr. Fortson, and Mr. Fortson was putting that information out to other people.

Q What platforms was Mr. Fortson using to disseminate that information?

A He was using Facebook and also Reddit.

Q And did Mr. Fortson disseminate the crime scene photos that we previously admitted into evidence?

A Yes.

Q And you were able to examine the contents of the conversations between Mr. Fortson and Mr. Snay; is that correct?

A Mr. Snay?

Q Mr. Cohen, sorry. I'm getting confused.

A Mr. Cohen, yes.

Q And from that conversation, were you able to determine whether this was a one-time leak of photos or an on-going leak?

MR. HENNESSY: Objection: Based on hearsay. It's an opinion, not a fact, and he should not be allowed to testify to it.

THE COURT: Sustained on opinion.

Q Through the investigation into the Richard Allen case, did you interview a professor at Purdue by the name of Professor Turco?

A Yes.

Q And you interviewed him in September of 2023; is that correct?

A That is correct.

Q Why'd you interview him that time?

A During the deposition with Mr. Baldwin, I mentioned that we had received information from a Purdue professor, but I did not know his name, so I found out who he was and I found out that he had never technically been interviewed, so I went and interviewed him.

Q And you conducted that interview and then turned it over to be included in discovery for the Defense; is that correct?

A Yes.

Q And that interview was done in September of 2023?

A Yes.

Q And then, from your investigation, were you able to determine if Fortson was talking about that interview?

A Yes, I did.

Q And when was he talking about that interview, if you know?

A I know it was right after –

MR. HENNESSY: I'm gonna object. Will the Court just show a continuing objection to the testimony based on the conversation between two other people –

THE COURT: Yes.

MR. HENNESSY: -- Fortson and Cohen? Thank you.

Q And so, were you able to determine when Mr. Forston was talking about that interview between you and Professor Turco?

A It was within days. I don't know the exact date, I'd have to look.

Q And was that information ever released to the public by you?

A No.

Q Was that information – to your knowledge, was that information out to the public?

A No.

Q Were there other instances – during the course of your investigation, were there other instances that you found where Fortson was releasing information that was only privy to the Defense?

A Yes.

MR. HENNESSY: Objection: Conclusion. Ask that it be stricken –

THE COURT: Sustained.

MR. HENNESSY: -- 'cause the answer came in so quick. I'm sorry?

THE COURT: Sustained.

MR. HENNESSY: Thank you. And stricken?

THE COURT: Sure.

MR. HENNESSY: Thank you.

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

THE COURT: Mr. Hennessy.

MR. HENNESSY: Thank you.

**CROSS EXAMINATION OF LIEUTENANT JERRY HOLEMAN**

QUESTIONS BY MR. HENNESSY.

Q Let me start where you stopped: So the Professor Turco report, the only time you've seen that is in this private discussion between Mr. Fortson and Mr. Cohen?

A The only time I saw what?

Q The only reference you've testified to about the Turco – Professor Turco interview was in the conversation between two people, Fortson and Cohen; correct?

A Yes.

Q So you didn't see it publicly disseminated out on the Internet?

A No, I did not.

Q So that was just contained in that conversation?

A To my knowledge, yes.

Q And then, back to Westerman. In your report – you did a report of your investigation?

A Yes.

Q On just these – what we'll call the leak investigation?
A I did, yes.
Q And the original report was 33 pages?
A I'll believe you. I don't know exactly how long my actual report was, because there's other people involved in it. If you –
Q And then –
A -- say the original was 33 pages, I –
Q Then, with the attachments, it turned out to be 272 pages?
A Yes.
Q Okay. Now, in there, you placed Mr. Westerman's affidavit that was filed with the Court.
A No, I don't know what you're talking about.
Q You don't think you did?
A My affidavit?
Q Westerman's affidavit was filed with this Court. Have you ever seen it?
A Yes, yes.
Q Okay. So you know that he said he took photos of stuff, but didn't take the actual stuff, discovery materials.
A That is correct.
Q And that Mr. Baldwin had no knowledge that he had done it.
A Yes.
Q And that he did so without any authority from either Mr. Baldwin or Mr. Rozzi.
A That's what he said, yes.
Q And there is no evidence that Mr. Baldwin or Mr. Rozzi authorized Mr.

Westerman to share anything with anybody?

A That is correct.

Q And then, did – were you involved in seeking the prosecution of Mr. Westerman?

A Yes.

Q And then, so you had conversations with Mr. Hamner, the elected prosecutor of Johnson County?

A I did.

Q And that's where Mr. Baldwin's office was?

A Yes.

Q And that's where Mr. Westerman purloined the –

A Yes.

Q -- by photographs; correct?

A Yes, sir.

Q And then, he passed it on to a special prosecutor?

A He did.

Q And then, you also discussed seeking charges against Mr. Baldwin?

A I did.

Q And none were ever filed?

A No, none were ever filed.

Q And then – I wish I'd stop saying “and then”. I – oh, so there's five photos that you received from the Murder Sheet people?

A There were more than that.

Q Oh, okay, but five in evidence?

A Five that I believed were from the crime scene, yes.

Q Yeah. Now, you said you recognize some of them for having viewed them at depositions by Mr. Baldwin and Rozzi?
A Yes, sir.
Q When you saw the one that has the blackout, the circle and – did that have blackouts at the deposition?
A Yes, I believe so.
Q I'm sorry, and then you said something about a side-by-side.
A I did.
Q Side-by-side of what, if you can say without revealing too much, cause it's under seal?
A Sure. There was a side-by-side, half the paper was a picture of Abigail and on the other half was a picture of an asterisk.
Q Of a who?
A Like an asterisk, like a star.
Q Now, you talked about your attempt to get a statement from Mr. Forston.
A Yes, I did.
Q And did you threaten him with jail?
A No.
Q Do you remember giving a deposition on March 1?
A I do.
Q And have you reviewed it?
A I did.
Q You had one –
A I didn't sign it, because there was –
Q What'd you say?

A I did not sign it because there was missing information and false statements in there.
Q What'd you say?
A I did not sign it because there was missing information and had false statements – incorrect –
Q Well, yeah, I'll give you it was incorrect, but I don't know, false is a little strong.
A Incorrect.
Q And it was a transcriber. And so, when you received it, you – you've had depositions before?
A Yeah.
Q So when you received it, there was an errata sheet.
A Um-hmm. (Affirmative response)
Q Correct? Did you – and then, so the process is, if you find mistakes, you go to the errata sheet, you correct them, and then you sign your errata sheet.
A I filled it out, but I told Mr. – the prosecutor that there was a lot missing, so I don't know if it was just not transcribed, but I wasn't gonna sign it because it was – the first part of our deposition was missing.
Q Right.
A Yeah.
Q But the part that was there you could have ascribed to.
A Sure.
Q Okay. All right. Ooo.

MR. HENNESSY: May I have a moment? Sorry.

Q I'll come back to that. Did you tell Mr. Fortson that he could be held in

contempt of court and/or charged with obstruction of justice?

A Yes.

Q Did you tell him you could get the judge on the phone immediately?

A No.

Q You didn't say, “Let me call the judge real quick”?

A I did say I was gonna call the judge, yes.

Q And you said, “I'm gonna call the judge, let her know, and see if she wants to issue that order of contempt”; correct?

A Yes, sir.

Q Then you went out of the room?

A I did.

Q Did you call the judge?

A I did not.

Q Why did you tell Mr. Fortson you could call the judge?

A So I'm in the military, so I have a chain of command, I was brought up that way. I called the prosecutor first. I've never done a contempt, so I thought I was gonna have to give the information directly to the judge, ‘cause she ordered it. I talked to the prosecutor and he said that he would forward that information.

Q Why did you give Mr. Fortson the impression that you had the ability – the judge’s phone number and could call her immediately?

A I don't believe I did.

Q Well, when you said, “Let me call the judge real quick,” what impression do you think a person would have?

A I said I was gonna go call the judge, yes.

Q Yeah. So what do you think a person's impression of that would be?

MR. MCLELAND: Objection, Judge: Calls for speculation.

Q This guy has the ability to call the judge; right?

THE COURT: Sustained.

Q Did you tell him it would ruin things for Mr. Allen?

A What's that?

Q Did you tell him it would ruin things for Mr. Allen?

A Yes. I said it would ruin things for everybody, yes.

Q And then you said that it didn't – and I quote, "It doesn't bother me any, because it's all bullshit in my opinion"?

A Yes, sir.

Q And then you told him that you had gotten information from Mark Robert.

A Yes.

Q Who you later learned was Mark Robert Cohen?

A That is correct.

Q And a K. Smith.

A I believe I said K. Smith or Kyra, which I was confused because both of those names came up, so I wasn't sure if that was the same person or if it was a different person, but later I identified that person to be – actually, before that, but I forgot that that person was Kyra Debruin.

Q So you don't believe there's a K. Smith that exists?

A If there is – there probably is, but I do not know her, I've never spoken with her.

Q Okay. I want to go back to my question about did you threaten jail.

A Okay.

Q And on page 14, the question was, "Didn't you indicate to him that he

could go to jail over this?"

A I did.

Q Okay.

A I did indicate it. I said there's a possibility that the judge could order a contempt is what I said in my interview.

Q So yeah, you told him, "You can go to jail over this."

A I did not threaten him. I told him there was a possibility that he could.

Q Well –

A I was just being upfront.

Q Your opinion it's not a threat. Would you admit that some people might take that as a threat?

MR. MCLELAND: Objection, Judge. Again, this calls for speculation.

THE COURT: Sustained.

Q Do you recall Mr. Fortson telling you that he wanted to have consultation before he talked to you?

A He did.

Q And at first, he just simply said consultation?

A No, he said that he thought he needed to talk to somebody.

Q Right. And then later, he specified attorney?

A Yes.

Q And you kept talking to him?

A I did not ask him questions, but I was explaining to him what I was there for and yes, but I didn't ask questions until after I talked to the prosecutor.

Q And then you asked questions?

A I asked him I think one question and that was is he not willing to – maybe a few, I don't know, I'd have to look.
Q Yeah.
A But I asked him if he was not willing to give up the information that I knew he had and he said, “Not without a lawyer.” I said, “That's fine.”
Q But he had invoked counsel before then?
A Absolutely.
Q And you took a recorded statement from a Ms. Ehlenfeldt [phonetic]?
A I did.
Q And she had some pictures?
A She had pictures on her phone, yes.
Q Did you see them?
A I did.
Q And did you connect them to any of the other pictures?
A Yes.
Q Which ones?
A I don't recall exactly which ones, but it should be in my report that they were once that were released to – by Mr. Fortson to Mr. Cohen, and I had her delete them.
Q But she told you she got them from a Tyler Carpenter?
A Yes.
Q And who is he?
A I don't know.
Q You could never find him?
A Nope.

Q What effort did you make?
A What's that?
Q What effort did you make to find the source of the photos, Tyler Carpenter?
A At that time, we were just – I talked to the prosecutor, and that time we weren't interested in all the people that had him, because we'd already located the source and where they came from.
Q If there was only one source; correct?
A To my knowledge, yes, there was only one source.
Q But that's your belief?
A Through my investigation, I've only located one source.
Q Right.
A Yeah.
Q But so what you had at that point was your belief that Westerman obtained these pictures without permission; correct?
A Yes.
Q That he gave them to one person only, Mr. Forston?
A Yes.
Q That Mr. Forston gave them to Mr. Cohen?
A And Mrs. Debruin.
Q Kyra told you –
A Kyra.
Q Oh, yeah, I'll get there. So you had no interest in knowing who else had them?
A We had a lot of people that had them and, at that point, nobody was releasing them, so we got the word out that there could be potential

consequences if they did release them, so after speaking to the prosecutor –

Q Well, in all of your interviews, you told them that you – the judge was adamant that you find the photos and get them or delete them.

A Have them deleted, yes.

Q And every person that you did talk to that you identified in the chain, you talked to them about contempt?

A I talked to them about what?

Q Contempt –

A Yes.

Q -- possibility. So from that, you learned that a Tyler Carpenter allegedly had them?

A No, Kyra Debruin.

Q No –

A Who?

Q Tyler Carpenter.

A Kyla?

Q Tyler Carpenter.

A I don't know –

Q You just admitted that Mrs. Ehlenfeldt told you she got them from a Tyler Carpenter.

A Are you saying "Tyler"?

Q T-Y-L-E-R.

A Yes.

Q Carpenter.

A Yes.

Q So what was the confusion?
A I thought you said Kyra Carpenter.
Q Oh.
A It was Kyra Debruin.
Q And you were charged with getting these photos, but you didn't locate or attempt to locate Tyler, who allegedly had them, because, well, you'd already found out who you believed the source was; correct?
A Yes.
Q And you made that decision in conjunction with Mr. McLeland?
A What's that again?
Q You made that decision in conjunction with Mr. McLeland?
A Yes, I did have a discussion with the prosecutor.
Q And then, Ms. Ehlenfeldt told you about a screenshot somehow connected to a George Rye (phonetic), who was former law enforcement; do you recall that?
A It was a separate investigation, but yes.
Q And what was that investigation? Was that investigation not related to leaks?
A Correct. That was – that investigation, the information she was giving me, was not related to the leaks.
Q What investigation was it related to?
A Harassment.
Q Harassment?
A Harassment.
Q And then, she told you she had sent them to Christina Mack?
A She sent the photos to her or –

Q Yeah, the photos.
A Yes.
Q And so did you go talk to Christina Mack?
A No.
Q So she might still have these photos?
A She hasn't released them, so – she has not released them, if she does. I think most people –
Q Well, you haven't seen that she's released them.
A Correct.
Q You don't know how many people she maybe sent them to?
A That is correct.
Q And the same with Tyler Carpenter, he might still have them?
A Yes, sir.
Q And then, how many total photos do you believe Westerman took?
A I don't recall exactly that he took. There were some that looked like they were downloaded from another Facebook page. I think he probably took –
Q I'm sorry?
A Without – I'd have to look at the photos to give a number.
Q What'd you say about downloaded from a Facebook page?
A There were some downloaded from somebody's Facebook page.
Q By Westerman?
A I don't know. They were just sent to Mr. Fortson –
Q I'm sorry?
A They were sent from Mr. Fortson to Mr. Cohen. I don't know who –
Q Oh. So Mr. Fortson maybe downloaded other pictures from Facebook?

A Could have, yes.
Q And did Mr. Forston, to your knowledge, have other sources for photographs and information on the investigation?
A To my knowledge, no.
Q So in his conversation with Mr. Cohen, he doesn't talk about other people?
A Can you repeat that? Who doesn't talk to other people?
Q I'm sorry?
A What do you – can you repeat the question?
Q You said you reviewed conversation between Fortson and Cohen, and so my question was: Did Fortson talk about other people?
A Yes.
Q Okay. Did he ever mention Mr. Westerman?
A Just Mr. Baldwin, he mentioned Mr. Baldwin.
Q Fortson?
A Yes.
Q Mentioned Mr. Baldwin?
A Yes, sir.
Q In what respect?
A In the screenshots of the text messages between them two, he said "Mr. Baldwin told me I was going up to Allen County", "Mr. Baldwin told me this", "Mr. Baldwin told me that the crime scene was gonna be –
Q You're saying that Fortson claimed that Mr. Baldwin had direct conversations with him?
A That's what he – that's what it was eluding to, yes.
Q You ever corroborate that?

A I tried to.
Q With what? Phone records?
A No. I tried to interview Mr. Fortson and Mr. Westerman.
Q Right. And you didn't. You had Detective Rector interview Mr. Baldwin.
A What?
Q What?
A Could you repeat the question?
Q Yes. You had Detective Rector interview Mr. Baldwin?
A Yes, I did.
Q For two hours?
A I don't know, I wasn't there.
Q You mean you haven't looked at it?
A No.
Q And did you say, "Hey, ask him about contact with Mr. Forston"?
A I don't believe I told Mr. – or Detective Rector how to conduct his interview, no.
Q Did you get a download or a forensic examination of Mr. Forston's cell phones and electronic devices?
A Detective Rector did, yes.
Q And so have you reviewed the phone records?
A Just in discussion with Detective Rector.
Q What'd you say?
A Just in discussion with Detective Rector.
Q Oh. Any corroboration that Mr. Baldwin ever spoke to Mr. Fortson in the phone records?

A I don't recall, but that'd be a great question for Detective Rector.

MR. HENNESSY: Don't go anywhere.

Q Now, early on, the discovery of the victims, there was a leak from a search party member; correct?

A Yes.

MR. MCLELAND: Objection, Judge.

Q And that –

MR. MCLELAND: Again, I don't think – I'm not sure where you're going with this line of questioning. Mr. Holeman answered before I could object, but I don't know that this is relevant to what we're here to discuss today, Judge. I don't think it's relevant to these proceedings.

MR. HENNESSY: I'll tie it up.

THE COURT: And if you don't?

MR. HENNESSY: I'll argue why it's relevant.

THE COURT: I'll give you a little leeway, but it needs to be tied up.

Q That leak was crime scene photos?

A Yes. Well, no, it wasn't a crime scene yet, because the search party had found them, so we didn't get to them yet, so it couldn't have been a crime –

Q Right.

A -- it couldn't have been a crime scene yet, it wasn't a crime scene yet, because the search party located them. It wasn't a crime scene until we got there and secured the scene, but it was photos of articles that eventually were in the crime scene. Does that make sense to you, sir?

Q Not really.

A Okay.

Q 'Cause there was photos of the girls –
A No.
Q -- and the sticks.
A I never saw those.
Q You don't believe?
MR. HENNESSY: May I have a moment, Judge?
THE COURT: You may.
MR. HENNESSY: What?
THE COURT: I said you may.
Q Okay. In your deposition, at page eight, under oath on March 1 of 2024, you indicated that the leak from the search party member had some text messages and some photos of clothing.
A Yes.
Q And you're not calling them crime scene photos why?
A 'Cause it was before the police was notified. It wasn't a crime scene until we got there.
Q So you're saying civilians found the girls first?
A Yes.
Q So then, he took pictures before law enforcement got there?
A That is what I believe, yes.
Q And then he publicized them?
MR. MCLELAND: Judge, I'm gonna object at this point. I'm failing to see how he's tying this up and how it's relevant to the contemptuous information that the State has filed and the point of this hearing, Judge.
MR. HENNESSY: There were other crime scene photos out there. I

mean, he's technically saying it's not a crime scene because law enforcement hasn't shown up, but it was the scene of a crime and some other guy, way before these defense attorneys were appointed, had photos of clothing and other things, we don't know what, so yes, I think it's relevant because that was out in the public arena long before any photos from Westerman.

THE COURT: These weren't crime scene photos taken by the police?

MR HENNESSY: Correct.

THE COURT: Okay. Then, it's not a crime scene.

MR. HENNESSY: What'd you say?

THE COURT: Then, it is not a crime scene – not crime scene photos. These may be photos taken by civilians, but he's testifying that they were not there yet –

MR. HENNESSY: Correct, but it's –

THE COURT: -- so they can't be –

MR. HENNESSY: -- pictures –

THE COURT: -- crime scene photos taken by police.

MR. HENNESSY: But it's pictures of the scene of the crime, and if you put them out in the public, you're not gonna be able to discern when the police showed up, whether these are police photos or other photos, but they will clearly be, to the public, pictures of the scene of the crime.

MR. MCLELAND: Judge, we're here to discuss the photos that were leaked from the Defense, I don't think there's a debate about that; and I've got some additional documents to file that I would ask the Court to take judicial notice of. I don't think there's any debate that the crime scene photos that were leaked in this situation came from the Defense, the Defense has admitted that.

And so now, Mr. Hennessy wants to say – well, I'm not sure what he wants to say. He wants to say there were other photos taken, and since those were leaked, the ones leaked by the Defense are no big deal is what I think he wants to say –

MR. HENNESSY: Well –

MR. MCLELAND: -- but I'm not sure, but I don't know how that's relevant to the crime scene photos that were leaked in this instance.

THE COURT: How are these relevant?

MR. HENNESSY: Because they need to establish that Mr. Baldwin and/or Mr. Rozzi publicly disseminated what they've alleged, and it goes to the weight of their evidence that, in fact, there were other sources of photos of the scene of the crime.

THE COURT: And I will give it the weight that it deserves, sir. Please proceed.

MR. HENNESSY: Thank you.

Q And that was investigated by other people?

A Yes.

Q And the fellow that had the pictures, law enforcement just told him not to do that again?

A Correct.

Q Nobody reported it to the prosecutor, to your knowledge?

A To my knowledge, no, but more than likely, they probably discussed it.

Q I'm sorry?

A That would have been the former prosecutor.

Q Oh.

A You'd have to ask him.

**RE-DIRECT EXAMINATION OF LIEUTENANT JERRY HOLEMAN**

MR. HENNESSY: Judge, that's all I have for Sergeant Holeman at this time.

THE COURT: Mr. McLeland.

MR. MCLELAND: Thank you, Judge.

**RE-DIRECT EXAMINATION OF LIEUTENANT JERRY HOLEMAN**

QUESTIONS BY MR. MCLELAND.

Q Lieutenant Holeman, Mr. Hennessy asked you if there was any evidence authorizing – or any evidence showing that Baldwin or Rozzi authorized to share anything to anybody; you recall that question?

A I do.

Q And from looking at the documents of the conversation between Fortson and Cohen, were you able to find evidence the leak was on-going?

A Yes.

MR. HENNESSY: Objection: Hearsay. It's an opinion, it's a conclusion, it's for the Court, not the serg – not the police. If they want to go pull out evidence, conversations – even though it would be objectional for hearsay that would be overruled – if they want to point to specific facts, then it allows them to argue to the Court the conclusion that it was on-going, that would be proper, but to simply ask this detective, "Did you find" – you know, what evidence? Did you just find evidence that the leak was on-going? Leak from who? To whom? So I object, relevancy, a conclusion of law actually, and an opinion not supported by facts that are currently in evidence or identified to the Defense.

MR. MCLELAND: Judge, the State believes Mr. Hennessy's opened the door at this point for us to be able to talk about the contents of the messages.

He asked if there was any evidence authorizing – or from Baldwin and Rozzi authorizing to share anything with anybody, he also asked if this detective was able ever – ever able to confirm or was ever able to see if Westerman had – or Westerman, sorry – Fortson had mentioned Baldwin's name, if he had other sources; and so with those questions, Judge, I believe he's opened the door for us to talk about the contents of those messages and the State would like to do that.

MR. HENNESSY: I would agree. If they want to go point to something or a number of things within the conversations that allows the Court to conclude the leak was on-going where they identify sources in the document, it's in there. But they can't just simply say, "Hey, you've read this whole thing and you found out the leak was on-going." That's just not a proper question.

THE COURT: Overruled.

MR. MCLELAND: Judge, I guess I'll withdraw the question and we'll just point to specific facts or specific conversations within the exhibit that's been admitted.

Q So, Mr. Holeman, I'm gonna show you what's been admitted as State's Exhibit 6. Now, you've testified earlier this is a conversation between Mr. Fortson and Mr. Cohen, and so I'd like you to read, on page one here, this first message I'm directing you to, can you read that. Read it to yourself. Are you familiar with that message?

A Yes.

Q Can you read to the Court what it says.

A It says, "What up? Same rules? Let's get permission to share anything outside of our convo and respect any nos."

Q And that message is from who? Who's sending it?
A Robert Fortson.
Q I want to draw your attention to – draw your attention to the next page and this conversation here, can you read that to the Court.
MR. HENNESSY: I'm sorry, what page?
MR. MCLELAND: Well, they're not marked. Here, I'll show you.
MR. HENNESSY: Yeah, I know. Okay.
Q And can you read that message, to the best of your ability, to the Court.
A "It should be next weekend. I'm sitting in Franklin with it all. They want me to –
Q And –
A -- they want me to punch holes in all their stuff and look at it."
Q And that message is from who?
A Robert Fortson.
Q Where is Mr. Baldwin's office located?
A Franklin.
Q Lieutenant Holeman, I ask you to take a look at that message; can you read that message to the Court.
MR. HENNESSY: Not – Judge, I'm going to object because this particular message is no connection to – I mean, I can't find it, I mean, 'cause they didn't number these things.
THE COURT: The exhibit is in.
MR. HENNESSY: What'd you say?
THE COURT: The exhibit has been admitted. They are allowed to discuss the exhibit that is properly before the Court, sir.

MR. HENNESSY: Well –

THE COURT: You may continue.

MR. MCLELAND: Thank you.

Q Can you read that, Mr. Holeman.

A Yes, sir. "Defense just got the girls' phone records. No details yet, but they're saying that there is good stuff in there" – or "the stuff good on there."

Q We'll go to the next page, can you read that message.

A This one? That's the same one.

Q Okay. So same message there recorded. Who is that message from?

A Rob Fortson.

Q And so Fortson's saying that the Defense just got the phone records of the girls?

A Yes.

Q Okay. I draw your attention to this message, can you, please, read it into the record.

A "Purdue professor said the exact opposite of what Holeman said. Andy has the audio from it –

MR. HENNESSY: I'm sorry, I –

A -- the Purdue professor, who is still there, mind you, consulted with a Harvard professor and said, yes, those are runes, yes, it is cult-related stuff, so digest that for a second in the grand scheme of the police work –

Q And who is that message from?

A There's more. You want me to –

Q Go ahead and – sorry.

A Sorry, I'm a slow reader.

Q That's okay.

A -- Judge has said she is going to set a suppression hearing, but Andy is looking for clarity on it, that means Franks hearing or what she is meaning for sure. We shall see. I'll watch that now." That's from Robert Fortson.

Q And what is the date of that message?

A October 2nd.

MR. HENNESSY: May I see that page?

MR. MCLELAND: Sure.

MR. HENNESSY: Thank you.

Q Again, Lieutenant Holeman, when was the date of that message?

A October 2nd –

Q And when did you conduct the interview of Professor Turco?

A In September, I don't remember the exact, but then I turned it over a couple days before this to you.

Q Did you ever release that interview to the public?

A No.

Q Did you release it to anybody but my office?

A No.

Q And are you familiar with somebody involved in this case that goes by Andy?

A Yes.

Q Who?

A Mr. Baldwin.

Q What's Mr. Baldwin's first name?

A Andy.

Q Okay.

MR. HENNESSY: Your Honor, may I go over there, so I can read those, what they're gonna show him, so Mr. McLeland doesn't have to come back and forth?

THE COURT: Certainly.

MR. HENNESSY: What'd you say?

THE COURT: Certainly.

MR. HENNESSY: Thank you.

Q Lieutenant Holeman, I'll direct your attention to this; can you read this message.

A "I thought about a way I could show you the crime scene without sending the pics, maybe photograph something with the pics on my phone in the photo."

Q And who's that message from?

A Robert Fortson.

Q Who it's directed to?

A Mr. Cohen.

MR. ROZZI: Judge, I couldn't hear who he said it was directed to. Could you, please, have him repeat that? It is a little tough to hear back here.

Q Sure, but I'll ask the question again: Who was that message from?

A Robert Fortson.

Q And who was it directed to?

A Robert – or Mark Cohen.

MR. ROZZI: Thank you.

Q Will you read this message, please.

A "Facebook? You have no worries about it. It's technically crime scene and

a big piece of current evidence."

Q Who is that message from?

A Robert Fortson.

Q And then, can you read – could you read this series of messages, please.

A "Go side by side with the Barbara one, make it a poll, ask F, rune, spatter, other? Four options there. Tell them to list their other in the comments. I'd also let them argue over it, if it's the actual F." That's from Mr. Fortson to Mr. Cohen.

Q So throughout your history as a law enforcement officer, you've had an opportunity to investigate several crimes; is that correct?

A Yes.

Q And you had an opportunity to read those messages and go over the entirety of State's Exhibit 6; is that correct?

A Yes.

Q From your investigation, what conclusion did you draw from that information?

MR. HENNESSY: Objection: Improper question. It's not for the witness to conclude and it's summing up.

THE COURT: Overruled.

MR. MCLELAND: I'll rephrase the question, Judge, that's fine.

THE COURT: Overruled.

Q Lieutenant Holeman, were you able to conclude from those messages that the leak was on-going?

A Yes.

MR. HENNESSY: That's no different than the very first time he tried

to do it and the Court sustained the objection, and then he just backed it up and slipped it right in by me, and Mr. Holeman answered like really, really quick, so I object, ask that it be stricken.

THE COURT: Sustained.

MR. HENNESSY: I'm sorry?

THE COURT: Sustained.

MR. HENNESSY: Stricken?

THE COURT: Certainly.

MR. HENNESSY: Thank you.

Q Lieutenant Holeman, the messages you read, do they correspond with events that were happening during the course of your investigation?

A Yes.

Q Meaning information was being leaked?

A Yes.

Q To your knowledge that you know of, did anybody else besides Defense have that information?

A Not to my knowledge, no.

Q Specifically the Professor Turco interview that you had done days before it was leaked by Fortson?

A Yes.

Q And Fortson is directing Cohen to push this stuff out to the public; is that correct?

A Yes, he is.

Q And from the text messages, why is he – what is the purpose of pushing it out to the public?

A To get their opinion.

MR. HENNESSY: To do what?

A To get the public's opinion.

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

THE COURT: Mr. Hennessy.

**RE-CROSS EXAMINATION OF LIEUTENANT JERRY HOLEMAN**

QUESTIONS BY MR. HENNESSY.

Q Mr. McLeland started to say – and he said, "We're gonna go through these individual pages to establish a connection between Mr. Baldwin and Mr. Fortson", you remember that?

A Yes.

Q And so Mr. Fortson – first off, do you know anything about Mr. Fortson's credibility?

A No.

Q Did you know that he pretended to be a lawyer?

A I have no proof of that, no.

Q Well, Mr. Cohen told you.

A He said he – that – yeah, Mr. Cohen said he thought he was.

Q No, he said he represented himself as an attorney.

A As an attorney, yeah.

Q What'd you say?

A I think you're correct, yes.

Q Okay. So do – was he an attorney?

A No.

Q So there's a false statement; correct?
A Yes.
Q At least one, at least one false statement from Fortson?
A Yes.
Q And then, he said he's sitting in Franklin, but doesn't say where?
A Correct.
Q And do you know where – if Mr. Westerman had connections to Franklin?
A Do I know if Mr. Westerman?
Q Has connections to Franklin?
A Other than Mr. Baldwin?
Q Correct.
A No.
Q Do you know if his girlfriend lives in Franklin?
A At the time, I did not know that, no.
Q Do you know if Mr. Fortson would meet Mr. Westerman in Franklin?
A No.
Q And then, you said the Defense got the phone records; correct? You read that part?
A I read that, yes. I didn't say that.
Q That had no reference to Mr. Baldwin, did it?
A I don't think so, no.
Q And then, he said – with regard to the Professor Turco, he said, "Andy has the audio"?
A Yes.
Q How do you know Westerman didn't tell him Andy has the audio?

A More than likely, that's what happened, yes.
Q So that's not necessarily direct contact between Mr. Fortson and Mr. Baldwin?
A No.
Q And then, shows the crime scene, there was no reference to Mr. Baldwin in that one you read; correct?
A Correct.
Q And then the "Facebook, no worries, crime scene, big piece of evidence," there was no reference to Mr. Baldwin?
A Correct.
Q And then – so there's only one time Fortson says Andy, and he doesn't attribute it to Mr. Baldwin, it could have been Mr. Westerman?
A That we discussed, yes, sir –
Q That'd be what?
A There's actually more references to Andy in there, but we didn't go over them.
Q But nothing Fortson's saying, "Hey, I'm with Mr. Baldwin"?
A No.
Q Nothing saying, "Hey, I talked to Andy directly"?
A I'd have to check on that.
Q Okay. And then, you read one about a Barbara. And you're familiar with Barbara MacDonald having leaked Professor Turco's report?
A No, I'm not.
Q Did you not investigate that?
A No.

Q And you said Fortson – I'm sorry, you said it was your opinion or belief that somebody wanted to release this stuff to get the public's opinion; right?

A That's what it said, yes.

Q Who – was that Cohen or Fortson?

A It was Fortson.

Q Okay. So he never said, "I want to – you should put this out there to damage the prosecution"?

A Did I what?

Q What?

A Could you, please, repeat the question?

Q So he never said, "Put this out there to damage the prosecution"?

A Who?

Q Fortson, the same guy that just wanted to get the public's opinion.

A Not to my knowledge, no.

MR. HENNESSY: Okay. That's all I have for now.

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

THE WITNESS: Thank you.

THE COURT: Could you just give that exhibit to Jodie, please. You may call your next witness.

MR. MCLELAND: Judge, before I do that, I've got a few more documents I'd like the Court to take judicial notice of, I've marked them as State's Exhibits 7, 8, and 9; 7 is an e-mail from Mr. Baldwin to the Court, dated October 9th of 2022; number 8 is a letter that Mr. Rozzi filed with the Court and that's in the CCS; and then, number 9 is the affidavit filed by Mr. Westerman in the CCS in this case, Judge.

**STATE'S EXHIBITS 7 THROUGH 9 OFFERED**

THE COURT: I'm sorry, what was 7?

MR. HENNESSY: If my –

MR. MCLELAND: Seven was an e-mail of Mr. Baldwin directed to the Court, to myself, and Mr. Rozzi –

THE COURT: Okay.

MR. MCLELAND: -- on October 9th I believe, Judge.

THE COURT: Any objection?

MR. HENNESSY: No objection to the admission of State's 7, 8, and 9.

THE COURT: All right. Without objection, 7, 8, and 9 are admitted.

**STATE'S EXHIBIT 7 THROUGH 9 ADMITTED**

MR. MCLELAND: Judge, the State would call Detective Ben Rector, please.

(Witness sworn.)

**DIRECT EXAMINATION OF DETECTIVE BEN RECTOR**

QUESTIONS BY MY MCLELAND.

Q Will you state your name, please.

A Ben Rector, and it's R-E-C-T-O-R.

Q And how are you employed?

A Detective for the Indiana State Police.

Q And how long have you been employed with the Indiana State Police?

A I graduated the Indiana Law Enforcement Academy on March 4th of 2011.

Q And are you familiar with the case of *State of Indiana versus Richard Allen*?

A I am.

Q And you became involved in the investigation into the leak of photos; is that correct?
A That's correct.
Q Tell me how you became involved.
A I was asked somewhere around October 6th I believe, give or take maybe, but I was asked to locate Brandon Woodhouse.
Q Okay. And did you locate Brandon Woodhouse?
A I did.
Q And did you have a conversation with him?
A I did.
Q What did you do after that?
A I had a conversation with Mr. Woodhouse and then, afterwards, I was asked to complete an interview with Mr. Rozzi and Mr. Baldwin.
Q And did you conduct those interviews?
A I did. Those were completed on October 12th.
Q And you were able to meet with Mr. Rozzi and ask him questions about the leaked photos; is that correct?
A That is correct.
Q Okay. And you were also able to do the same with Mr. Baldwin?
A Yes, that's correct.
Q When you interviewed Mr. Rozzi, did he represent to you who the members of their investigative team are?
A He did. He gave me several individuals that were kind of involved on their team, yes.
Q Were any of those individuals Mitch Westerman?

A No.
Q Were any of those individuals Mr. Fortson?
A No.
Q Did he ever mention – did Mr. Rozzi ever mention that Mr. Westerman was working with them as a consultant?
A He did not.
Q Did he mention his name at all throughout the interview?
A I believe we discussed him and I believe he said that he had no – I don't think he'd ever met Mr. Westerman to the best of his knowledge.
Q Okay. And did you discuss the discovery in this case with Mr. Rozzi?
A We did.
Q And do you know where they would usually keep the discovery for this case?
A Yeah, so we broke down the flow of discovery from your office through their hands, and ultimately, I believe Mr. Rozzi's secretary would pick it up and then it would, ultimately, go to Andy Baldwin's office.
Q And did you ask him about the photos that were leaked to the public?
A I did, yes.
Q Did he have any explanation of how those were leaked?
A The only knowledge he had was what Mr. Baldwin had told him relating to it.
Q Okay. And did you then interview Mr. Baldwin?
A I did.
Q And did Mr. Baldwin know Mr. Westerman?
A He did, yes.

Q Tell me about that.

A So he was a former employee of Mr. Baldwin's office and he had known him for several years.

Q And did Mr. Baldwin explain to you how the leaked photos got out to the public?

A Yes. He outlined how he believed that that had happened.

Q And tell me his explanation.

A So Mr. Baldwin told me that on the afternoon of October 9th, I believe, he received a text message from Mitch Westerman, indicated that he needed to speak with him. He stated that he had some plans that evening; however, he stayed at the office and, at some point in time, Mitch Westerman showed up at his office and informed him that he had taken pictures of these pictures.

Q Did Mr. Baldwin mention that Mr. Westerman was on their team?

A He did not, no.

Q Did Mr. Baldwin mention that he had used Mr. Westerman as a consultant?

A He did say that he discussed strategy related to Delphi with him, related to the Delphi case.

Q Did Mr. Baldwin say that he released any documents to Mr. Westerman?

A He told me throughout the interview that I believe one to two days prior to the *Franks* motion being published with the court that he had provided that document to or Mr. Westerman had shown up at his office and viewed the *Franks* motion two days – one to two days prior to it being published, and I think that date was September 18th.

Q Did Mr. Baldwin show you any kind of non-disclosure agreement that he

had with Mr. Westerman?

A No, he did not.

Q Did Mr. Baldwin show you any text or e-mail or anything confirming that he had a non-disclosure agreement with Mr. Westerman?

A No.

Q Did you discuss Mr. Woodhouse with Mr. Baldwin?

A We did, yes.

Q And what did he tell you about Mr. Woodhouse?

A He informed me that he had inadvertently sent Mr. Woodhouse a – I believe what it was called was a thumb drive map outlining some evidence or related to a hard drive that he was given.

Q Did he explain to you why he had Mr. Woodhouse's e-mail in the first place?

A Yes. He had consulted with Mr. Woodhouse I believe somewhere around December of '22 and discussing some things related to some knowledge that he may have.

Q Of the Delphi case?

A Or something intertwined with it potentially.

Q When you had a conversation with Mr. Baldwin, did he inform you that he'd also given the *Franks* memorandum to another civilian individual?

A He did, yes.

Q And who was that, if you recall?

A I don't recall the name, but it was a CASA worker I believe in Franklin County, but I don't recall the name.

Q Did he show you any kind of non-disclosure agreement or any

documentation confirming that she would keep that information confidential?

A No, sir.

Q After your interviews with Mr. Baldwin and Mr. Rozzi, what did you do next?

A Directly after that, I sought a search warrant to search Mitch Westerman's residence.

Q And did you get a search warrant?

A We did.

Q And was his residence searched?

A It was.

Q And did you gather electronic devices from that residence?

A Yes, we did.

Q Did you gather Mr. Westerman's cell phone?

A We did.

Q And were you able to download the contents from that cell phone?

A We were not, no.

Q Are you attempting to now?

A Yes, I believe so.

Q Tell me about that.

A So I believe – so when we got the device, it was locked and secured, and the device has been taken to our High Tech Crime Unit or our Crime Unit and I believe it's still on a GrayKey, attempting to break into the passcode.

Q If you had that passcode, would you be able to examine the cell phone?

A We would.

Q And the fact that it's on the GrayKey, do you have any idea how long it'll

take to get into the contents of that cell phone?

A Originally, I was told somewhere around two years, but it all depends, and it's out of our control.

Q From the electronic devices that you've collected from Mr. Westerman's house, did you – were you able to determine if Mr. Westerman had an iCloud account or not?

A We were.

Q And what did you do with that information?

A So we were able to determine that he did have an iCloud account and that was determined – or that was – we were able to access that information by a computer that was located in his garage and we were able to determine Mitch Westerman's iCloud account information.

Q Once you found out that he had an iCloud account, what did you do to gather the information from – gather the information from that account?

A I sought and was granted a search warrant for iCloud, and we ultimately gave that search warrant to iCloud – or to Apple.

Q And did you get back information from Apple?

A We did.

Q And that information you got back from Apple, tell me what that information was, just give me a ball – what did you get back from Apple?

A So from Apple, it's kind of – we have no picking and choosing of what we get, but I obtained I believe somewhere around 500 gigabytes worth of data which Apple provided to us and it was data which was backed up from Mitch Westerman's devices in some way, shape, or form.

Q And you were able to determine from the information you gathered that

the information on the iCloud was, in fact, backed up from Mitch Westerman's devices?

A Correct. There were personal photographs and family pictures from the Westerman family, so we believed it was, yes.

Q So not to be elementary, but to make sure I understand: When you say backed up, meaning that information came from his devices?

A That's correct.

Q Okay. Was the iCloud account registered to Mitch Westerman?

A It was, yes.

Q I want to back up – well, strike that. I'm gonna show you what's been marked as State's Exhibit 10; can you identify that exhibit?

A Yes, I can.

Q Can you tell me what that exhibit is?

A So these are screenshots which were located on this iCloud account, these are screenshots of conversations between an individual named Andy and they were stored within the iCloud.

Q When you say screenshots, what is a screenshot? Explain that to me.

A Kind of a hard process to explain, but it's a process where you're taking a picture essentially of whatever conversation – or whatever's happening on your device, you're taking a picture, a snapshot, of that information.

Q And you have to save it?

A Correct.

Q And then it's uploaded to your account?

A Correct.

Q Have you investigated crime – well, let me back up. Those represent

documents you found in Mitch Westerman's iCloud account; is that correct?

A That is correct.

Q And they represent screenshots of messages found in Mitch Westerman's account?

A That is correct.

MR. MCLELAND: Judge, the State would move to admit what's been marked as State's Exhibit 10 into evidence.

**STATE'S EXHIBIT 10 OFFERED**

THE COURT: Any objection?

MR. HENNESSY: Preliminary question?

THE COURT: Is there any objection? He's moved the admission of 10.

MR. HENNESSY: Correct, and I asked for a preliminary question.

THE COURT: Yes, you may ask.

MR. HENNESSY: Are there any dates on any of these pages of State's Exhibit 10?

A Not on –

MR. HENNESSY: On any of them?

A To the best of my knowledge, I don't believe there are, no.

MR. HENNESSY: Say that again, please.

A I do not believe there are, to the best of my knowledge.

MR. HENNESSY: And then – so do you know when Westerman allegedly took photos without permission in Mr. Baldwin's office?

A And I'm gonna have to go back to the previous question you just asked, because there is at least one date on these, there are also timestamps on some

of these, but it depends how the screenshot was taken at the time. My apologies on that.

MR. HENNESSY: I see the timestamps. I don't see any dates on any of them.

A Well, sir, one of the pages does have a date stamp on it.

MR. HENNESSY: What?

A One of these pages does have a date stamp on it.

MR. HENNESSY: Which one, since they're not numbered? May I approach the witness?

THE COURT: You may.

A Several of these do have a timestamp, and this one here does have a date and a timestamp.

MR. HENNESSY: Okay. When you say this one here, it says Monday, September 18, at midnight?

A That's correct.

MR. HENNESSY: So what year?

A I do not know.

MR. HENNESSY: And then, you say there's another one with a date stamp?

A No, sir. I believe there's others with timestamps –

MR. HENNESSY: Right, right.

A -- but they do not have date stamps.

MR. HENNESSY: But – so we don't know when any of these were sent back and forth between Mr. Baldwin and Mr. Westerman?

A The date stamp is not on them.

MR. HENNESSY: What'd you say?

A The date stamp is not on them.

MR. HENNESSY: What question did you hear?

A Can you ask the question again, sir?

MR. HENNESSY: Well, which one did you hear? I said, "So we don't know what date any of this exchange between Mr. Baldwin and Mr. Westerman was?" I didn't ask what time

A Correct.

MR. HENNESSY: So there – we don't know what day. And you've admitted that they were discussing discovery, what could be done/should be done on the case?

A I don't know that I admitted to that.

MR. HENNESSY: No, you haven't yet.

A So I guess –

THE COURT: How is this a preliminary question, sir?

MR. HENNESSY: What did you say, ma'am?

THE COURT: How is this a preliminary question when you're asking him things you would be asking him on cross examination?

MR. HENNESSY: Well, actually, I was trying to establish that it's work product, because that's gonna be our objection, so the question to him there, on a preliminary basis, was, "Does the content, the discussion of strategy, discovery, and matters that are protected by work product?" And furthermore, what is it relevant to, since we don't have any idea what year it was done or what date it was done, so what is it relevant to? To show that Mr. Westerman –

THE COURT: So your objection is relevance?

MR. HENNESSY: What'd you say?

THE COURT: Your objection then is relevance to the admission of this exhibit?

MR. HENNESSY: Work product and relevance, yes. What?

MR. MCLELAND: Judge, in regards to relevance, I believe it is relevant. I'm just entering it as an exhibit now, but once we get into the contents, it will show – the contents show the timeframe of when these conversations were held. It's relevant to show that Baldwin was leaking information to Westerman intentionally, purposefully, and that Westerman was not a member of his team, has not signed an NDA, to the State's knowledge. They don't discuss strategy, I don't think it's protected by work product. Of course, when he makes that claim, the burden shifts to him to prove that it is work product. I don't think it falls within the exception of work product. It's not attorney/client privilege. It's not anything discussing strategy of the case. It's discussing – Baldwin is telling Westerman information that's not out in the public and is telling him about files and documents that they're gonna file before they're filed in the public, and so it's relevant to show an on-going leak to Westerman.

THE COURT: I'll show 10 is admitted over objection.

**STATE'S EXHIBIT 10 ADMITTED**

MR. HENNESSY: Judge, would you seal that so that – one, it shouldn't come in because Mr. McLeland had no business reading the mental impressions of opposing counsel; and two, since it does have the mental impressions of defense counsel, it should not be made public, so we ask that it be sealed.

THE COURT: I'll seal it.

MR. MCLELAND: I have no objection to that, Judge. And I guess to follow that up, I will ask a few more questions of Mr. Rector – or Detective Rector, but I'm willing to not go into the contents of the messages, just with the understanding would ask the Court to, please, review those messages, because I do believe they're important to the contemptuous information. And so if defense counsel's okay with the Court reading those, instead of me reading them into the record, I'm satisfied with them being sealed, Judge.

THE COURT: Okay.

Q So, Mr. Rector, I want to direct your attention to State's Exhibit 10 – I'm gonna stand up here so the microphone catches me – there's a grey or light blue part of the conversation and then a dark blue part of the conversation. Can you explain that to the Court, which is out-going and which is an in-coming message?

A Yes, absolutely. So the blue messages would be the out-bound messages. The grey-in-color messages would be the in-bound messages that were received to whatever user.

Q And the name at the top of those messages is – whose name is there?

A Andy.

Q And again, these are messages that came from Mr. Westerman's iCloud account?

A That is correct.

Q Are these screenshots that you took with your phone?

A Absolutely not.

Q So would these be akin to photos that were saved in Mr. Westerman's iCloud account?

A Presumably, yes.
Q Photos that were taken from one of Mr. Westerman's devices?
A Correct.
Q Presumably that he took, Mr. Westerman?
A That's correct.
Q And so you had no part in capturing these photos, you just received the photos from the account and printed them out?
A Absolutely. This is how they were presented to me and I did nothing to alter them.
Q You had an opportunity to read through the messages in those screenshots?
A I did, yes.
Q And do those messages give you an idea of the timeframe when the messages were sent?
A They do, there are specific things that are cited in these messages that give us a proximity of the time in which they would have been sent or received.
Q So while there's no date stamp that states a specific day when they were sent, the messages give you context of when they were sent?
A Yes. When you read the content, that would give you some more knowledge into that.
Q I want to go back in time a little bit. You also executed a search warrant on the Facebook account of Mr. Fortson; is that correct?
A That is correct.
Q And you had an opportunity to examine the messages between Mr. Fortson and Mr. Cohen that were retrieved from individuals; correct?

A They're ones that would have been retrieved and presented to me by first Sergeant Holeman.

Q Okay. You had an opportunity to go through those messages?

A I did, yes.

Q The messages we've admitted into evidence today?

A Yes, that's correct.

Q When you examined Mr. Fortson's Facebook account, were those messages in his account?

A I did not see them, no.

Q Do you have any explanation of why they weren't there?

MR. HENNESSY: Objection: Relevance, speculation.

THE COURT: How's it relevant?

MR. MCLELAND: I'll withdraw the question, Judge. I don't have any other questions.

THE COURT: Mr. Hennessy.

**CROSS EXAMINATION OF DETECTIVE BEN RECTOR**

QUESTIONS BY MR. HENNESSY.

Q Let's start where – towards the end, he kept asking about photos in State's Exhibit 10. I don't see any photographs. Are there?

A Well, sir, what he's referring to as a photograph would be the screenshots, which appear in Photos when you save them that way.

Q Okay. So they're screenshots that came from iCloud?

A Correct, yes.

Q But there's no photographs in State Exhibit 10 that were being passed back and forth between Westerman and Baldwin?

A These are screenshot messages, sir.
Q So there's no photographs in the documents between Westerman and Baldwin?
A No, sir.
Q Thank you. So how long did your interview with Andy Baldwin take?
A I believe it was approximately two hours.
Q And was he cooperative?
A He was.
Q Didn't try to cut you off?
A He did not, no.
Q Answered every question?
A He did.
Q Openly and honestly?
A He answered every question, yes.
Q Did you ask him if he'd ever had any direct contact with Fortson?
A I do not believe I asked him that question, no.
Q Did he describe how Mr. Westerman had no authority to take pictures of anything related to the Delphi case?
A He described that he did not have the authority to take pictures in the conference room, yes.
Q So your answer to my question was yes?
A Yes.
Q Okay. Did you find out the date that Mr. Westerman confessed to Mr. Baldwin?
A What we were told was October 9th when – as in my testimony previously,

was that he showed up at Mr. Baldwin's office on October 9th and told him that he had done it.

Q And you know that that was reported then to the prosecution and the Court on October 9th?

A I believe it was, somewhere thereabouts, I'm not exactly privy to all that information, no.

Q And then, you interviewed Brandon Woodhouse?

A I did.

Q And from that, did you learn that Mr. Baldwin, within an hour of having mistakenly sent an e-mail to Mr. Woodson, called Mr. Woodson and told him to delete it.

A It's Mr. Woodhouse, sir, but yes, he –

Q Woodhouse, yeah. Woodson? Who's Woodson? Did you investigate the connection between Mr. Westerman and Mr. Fortson?

A I know that there was a connection from information received.

Q Sir, just – if you could just focus on my question. Did you investigate any relationship between Westerman and Fortson? That's a yes or no.

A I would have, yes.

Q You would have?

A Yes.

Q Do you remember what you did in that regard?

A I remember some context from phones that put a correlation between the two, but beyond that, I don't know what their relationship was.

Q Were you aware of a leak of the affidavit for probable cause to search Mr. Logan's property that was – had stamped on it for every page “Murder Sheet”?

MR. MCLELAND: Objection, Judge: Relevance. Same argument I've made in the past, Judge, concerning the hearing today.

THE COURT: That's not part of the contempt, sir, the allegations that have been –

MR. HENNESSY: Well, it can be if you allow the Defense, even though they're – you wouldn't give them time to adequately prepare, you wouldn't extend the discovery deadline –

THE COURT: Sir –

MR. HENNESSY: -- if you'd just let him ad –

THE COURT: -- I don't need a talking objection.

MR. HENNESSY: I'm sorry?

THE COURT: I sustained the objection. Thank you.

MR. HENNESSY: Well, no, I need to respond for the record to the Court's comment that it's not part of the contempt proceedings, because –

THE COURT: It is not.

MR. HENNESSY: -- it is part of the defense in the contempt proceedings. Thank you.

THE COURT: Any further questions?

Q Did you investigate any other leaks?

A I was given information by Brad Rozzi at the time of my interview with him about some information that was on a segment by Barbara MacDonald.

Q Did you investigate any others?

A Beyond that, no.

Q And then – so you had access and reviewed the actual e-mail that went to Mr. Woodhouse?

A Yes, that was provided to me, yes.
Q It was addressed to “Brad”; correct?
A That is correct, yes.
Q And Mr. Woodhouse is Brandon.
A That is correct.
Q So it clearly wasn't intended for Mr. Brandon Woodhouse?
A I don't think I can speak for what the intent was, I just know that’s how it was addressed.
Q Well, Sergeant Holeman does, why can't you?
A Because I speak to the facts, I don't know –
Q Okay. Oh, and you reviewed the thumb drive map that was attached to the misdirected e-mail?
A Yes, sir.
Q And that didn't identify what discovery is where on the dis – on that map – on that thumb drive?
A I guess you'd have to be more specific. I don't understand the question, sir.

MR. HENNESSY: That's all right, it's in evidence. Nothing further at this time.

THE COURT: Mr. McLeland?

MR. MCLELAND: No, Judge, no other questions. Thank you.

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

THE WITNESS: Thank you.

MR. MCLELAND: The State has concluded its portion of the evidence, Judge.

THE STATE OF INDIANA RESTS

THE COURT: All right. Then, this would be an appropriate time for us to break for lunch. If you would report back to the courtroom by one o'clock. The courtroom will be locked and everybody needs to vacate and take your materials with you.

MR. BALDWIN: Judge, I had a question.

THE COURT: We're not done yet, folks. We're still on the record, have a seat.

MR. HENNESSY: You have a what?

MR. BALDWIN: A question unrelated to this. We had received an order that the motion to dismiss would be heard today. Is that still the case?

THE COURT: That was still my intent.

MR. BALDWIN: Okay. That's all I wanted to know. Thank you.

THE COURT: All right. Be back at 1, please.

(Off record at 12:01 p.m.)

(On record at 1:05 p.m.)

THE BAILIFF: All rise.

THE COURT: Thank you. You may be seated. Okay.

THE BAILIFF: No talking in the gallery at all, none.

THE COURT: All right. We are back on the record. Mr. Hennessy, are you ready to proceed?

MR. HENNESSY: Yes, Judge. First, I would make a motion pursuant to Trial Rule 41(B) at the close of all of the State's evidence. I would remind the Court that the proof has to establish willful and intentional disobedience. The standard is beyond a reasonable doubt, and that comes from

a 1927 case that has never been overruled, and I will quote from that – I just had it – oh – I'm so sorry – okay, it's the case of *State v. Shoemaker*, 200 Indiana – I-N-D – Supreme Court 623, 704 at – 704 to 706, 158 N.E.2d 69 at 791. The chief parts are, it's a – it's a criminal contempt case, the case is governed by the analogies of criminal procedure and the respond is entitled to the same rules of evidence, the presumption of innocence that avail him in any criminal case. The evidence must be sufficient to establish guilt beyond a reasonable doubt. I want to start with Mr. Rozzi, because there's truly little, if any, evidence of him and – at all. The only – if you look at it, he wasn't involved in the Westerman leak, that wasn't his office. He – the Woodhouse thing he wasn't involved in, there's no evidence that he was. There's no evidence connecting him to Westerman and there's no evidence that he lacked any candor towards the tribunal. Now, that leaves you with the press conference; and clearly, both Mr. Rozzi and Mr. Baldwin did the press release and – but it's a day before the court order, so that can't be contempt. So I ask for a finding of no contempt for Mr. Rozzi at that time.

THE COURT: Well, sir, we had State's Exhibits 1 through 10 that have been admitted, some without objection, some over objection. I have not reviewed any of those exhibits and am unable to rule on a 41(B) motion without having reviewed the evidence that has been presented, so I'll have to take your request under advisement.

MR. HENNESSY: Okay. Then, moving on to Mr. Baldwin.

THE COURT: I would have the same response to your argument, sir, I have not reviewed State's Exhibits 1 through 10 as it relates to any of the information and I –

MR. HENNESSY: I just want to –

THE COURT: If I could finish, please. Stop interrupting me.

MR. HENNESSY: Oh, I'm sorry.

THE COURT: I cannot make a ruling on your 41(B) without having reviewed the evidence, so I will take the evidence and your request as it relates to Mr. Baldwin, as well, under advisement.

MR. HENNESSY: I just wanted to make my argument, so you'd have it when you do review the evidence.

THE COURT: That's not necessary, I know what your argument would be, sir.

MR. HENNESSY: Okay. I would call Mr. John Boren to testify.

(Witness sworn.)

**DIRECT EXAMINATION OF JOHN BOREN**

QUESTIONS BY MR. HENNESSY.

Q Please state and spell your name.

A John D. Boren. Boren is B-O-R-E-N.

Q What do you do?

A I'm an attorney.

Q And how long have you done that?

A In October, it will be 47 years.

Q So you were admitted in October of 1977?

A That is correct.

Q Where'd you go to law school?

A I went to law school in Oklahoma for the first year and then I transferred back to Indiana, which was a lot cheaper as a resident, and I went to McKinney.

Back then, it was just Indiana University.

Q What was your practice after admission?

A Initially, after being admitted, I was a deputy prosecutor for G. Thomas Gray down in Morgan County for approximately 14 months. At the end of the 14 months, January 1 – (coughs) – excuse me – of 1979, I opened a practice in a little office above Foley, Foley, and Peden in downtown Martinsville and I practiced there for two years. After those two years, Steve Oliver and I formed a partnership called Boren, Oliver, and - no, it was just Boren and Oliver initially.

Q Have you tried both court trials and jury trials?

A I have.

Q How many, approximately, jury trials?

A Approximately 100 jury trials and too many court trials, I couldn't count them.

Q And have you done trial preparation in regard to those trials?

A I have done trial preparation. Actually, I started trying jury trials when I was an intern. Back then, it was pretty loose and, as my senior year or last year of law school, I tried two jury trials, one was a kidnap and the other one was a major felony case. So I've been doing jury prep ever since I started, and when I went out into private practice, I paid for myself to go down to the National College of Criminal Defense Lawyers and I met – as I now know, people don't recognize these names, but they were icons at the time – Bobby Lee Cook from Valdosta, Georgia; Racehorse Haynes from Texas; and Garvin Isaacs, who was from Oklahoma, and they taught us a lot about jury prep.

Q And with regard to consulting with other attorneys, is that normal and expected?

A It is. I, obviously, still do it today. I think maybe I should tell you that I'm of-council of the law firm Boren, Oliver, and Coffey now, so I've got one foot out the door, trying to clean up all my cases and get out, but –

Q And how about consulting with non-lawyers?

A I think it's more important to consult with non-lawyers than with lawyers, although, obviously, lawyers can give you some tips in regards to the law, but I've only – in 47 years of trying jury trials, I've only had one jury trial in which I had a lawyer on the jury, so it's real important, in my opinion, to consult with non-lawyers.

Q And in doing that so you get a better perspective of what – how your jury will react to the evidence?

A Absolutely. I –

Q So in doing that, do you share with them the discovery and what you've learned and what you expect the evidence to be?

A Absolutely. One of the things that I really felt like I had a good handle on was doing what we call mock juries, and for probably about four or five years, myself and Nina Miller, as a part of the public defender group in Indianapolis, conducted the seminars; and Nina was a psychologist and we taught prospective litigants how to assemble juries, how to interview jurors afterwards; and the evidence that you have, you want to see what's gonna suck the air out of a room or what's gonna be benign. Some things that we, as lawyers, think are real important, mock jurors will tell you they're not important at all.

Q And then, the consultation with both lawyers and non-lawyers, is that something criminal defense lawyers refer to as brainstorming?

A Absolutely. And there's probably another element to brainstorming.

Saturday mornings – this is what I'm gonna miss when I retire completely – but we would sit around and brainstorm our cases and, you know, talk about the facts and look at the evidence that we had that had been produced.

Q Have you attended continuing legal education seminars where brainstorming was discussed, recommended, and taught?

A Yes. I have been a presenter at least three different occasions in which we round tabled, and this was for medical malpractice. I did about a 50/50 practice in my 47 years, 50 percent was civil, 50 percent was criminal. But one of the seminars that we did was very much a brainstorming, and we would have a group of people who were attending our seminars and we would do our brainstorming and talk about it.

Q And then, are you familiar with the term "war room" in terms of trial preparation by criminal defense lawyers?

A Absolutely.

Q Please tell the Judge what that is.

A Well, that's where critiquing your case that you present to – whether it be lay-personnel or whether it be attorneys, you get an idea of how your presentation is coming across. And people – you know, hopefully you have good people that will tell you the truth like, "This is working and this is not."

Q But with regard to trial preparation for a major trial, would you have all of the evidence set out in a particular area as you approached trial?

A Absolutely. We – in my practice, which is in Martinsville, Indiana, we have two conference rooms, and we had a big conference room that, frequently, we would have pieces of evidence such as photographs, diagrams, you know, and as technology began to increase, we would have, you know, cell phone analysis,

all of that would be out in our – either – whichever room we decided to use. And frequently, I would have that in my office, as well.

Q And have you ever sent an accidentally misdirected e-mail?

A I have both sent accidentally –and I'm not real computer literate – and I've received e-mail that was not intended for me and sent to someone that was not intended.

Q What would you do once you realized you sent it to the wrong person?

A Once I sent it to the wrong person, I would try to communicate to that person that it wasn't intended for them and would they, please, delete it, and depending on the magnitude of whatever I'd sent, you know, I might ask them, you know, don't disclose this to anybody.

Q And if you received a misdirected e-mail, what would you do?

A When I realized it was misdirected, I would stop immediately, call the person, delete the e-mail, and tell the person that sent it to me that I had deleted it.

Q Having taken such corrective actions with either one, would you – would it cross your mind or would you feel obliged to report that to a prosecutor or a judge?

A I guess it would depend upon what it was, you know. I would probably – you know, I don't know that I've – no, I don't know why I would, you know, report that to either a prosecutor or a judge.

Q You fig – you would figure it was cured; correct?

A Right.

Q Okay. Why are you here?

A Well, I'm here because I'm getting old and I have experience and I do have

training, and you indicated to me that maybe that might be something that would – the judge would like to know about.

MR. HENNESSY: Thank you. Nothing further.

THE COURT: Mr. McLeland.

MR. MCLELAND: Thank you, Judge.

**CROSS EXAMINATION OF JOHN BOREN**

QUESTIONS BY MR. MCLELAND.

Q Mr. Boren, good afternoon.

A Good afternoon.

Q In your vast experience, which I appreciate, have you ever been subject to a gag order put down from a court?

A I have not been subject to a gag order in my 47 years. And I handled the Steven Judy case, that was before you were born, I'm quite sure.

Q Sure.

A He and I didn't get along well, so I was relieved that I didn't continue that representation, but I have never received a gag order. In civil practice, I've received non-disclo –

Q Sure.

A -- non-disclosure forms that we filled out.

Q Are you familiar with the gag order in this case? Have you read over it?

A I think I have. My knowledge about this case is probably narrow. I'm sure many people sitting in the gallery know more about the case than I have, but I do believe I've read – was that gag order in February of 2022, maybe?

Q No, this was on December 2nd of 2022.

A I think I've read that one, as well.

Q If I were to present to you that the gag order prevented parties from disseminating information to the public, that would coincide with your knowledge of gag orders; is that a fair statement?

A Right. The gag order can be tailored in whatever way the judge chooses to tailor it.

Q And if you had a gag order that were in place and you were to consult with a civilian, what precaution would you take to ensure that that civilian doesn't disseminate information to the public?

A I might make a major mistake and think that my civilian would not disclose anything like that, I think that that would probably be my nature. I've never had an onerous gag order. That's probably the best way I can answer your question.

Q Have you been subject to – and I think you've answered this – have you been subject to a protective order in terms of discovery in a case?

A Protective orders in civil cases, yes, I have. I've never been – let's put it this way, I'm an old man and my memory is not that great, but for over 47 years I don't remember ever receiving anything like that. And even though Morton County – Morton County's kind of a small place, but we've had some pretty notorious cases and I've handled most of them.

Q The protective orders that you've had in civil cases, have you ever violated those?

A No, I've never vio – I've had one violated that impacted our case, but –

Q Sure.

A -- not me.

Q If you had a protective order and you did violate it, would you feel obligated

to notify the court?

A Certainly, if I realized I had violated it, yeah, I would tell the court.

Q What precautions – when you've had a protective order for discovery, what precautions do you put in place to ensure that civilian consultants that you have don't disseminate that information that's protected?

A I've never had the occasion where I had to sit down and tell – I mean, most of my consultants were experts who were professionals in their field, and I never had a reason to do that. Maybe that's negligent on my part, but I've never had to do that.

Q When you speak of the war room, would you put any precautions in place to keep the public from entering that war room?

A Interestingly enough, I consulted with my partner, Mr. Oliver, and like I said, he's been practicing 45 years, and you know, we never put a lock on any door, we never, you know, put a sign up, it just never was something that crossed my mind.

Q Have you ever been involved in a murder case where there were crime scene photos?

A Oh, yes.

Q And have you ever released those photos to the public?

A No. In the Steven Judy case, I remember Tom Gray handing me, "Here's your copy of these horrific crime scene photographs," and I do remember I shared them with a lady next – I was practicing, I was right out of the Prosecutor's Office, and I remember showing them to the lady next door and asking her what her impressions were.

Q Did you ever show those crime scene photos to one of your friends who

was not a la – let me clarify that – who was not a lawyer?

A Yes, I'm sure I did, yes.

Q Okay. And your testimony is that you wouldn't put any safety precautions in place to ensure that those photos didn't get disseminated to the public if you were to show them to a non-lawyer consultant?

A Well, now, are you assuming that there's an order telling me that I have to do that or I've got to take precautions?

Q Sure, let's assume that, let's assume you're bound by a protective order. Is there anything you would put in place to protect those pictures from being leaked or disseminated to the public?

MR. HENNESSY: Objection, Judge. He – Mr. Boren asked for clarification if there was an order to secure his war room, so then Mr. McLeland switched that around to whether there's a protective order, so it's an assumption, it's not – the question whether the court ordered that war rooms be secure is an assumption that's not in this case, because there was no such order.

THE COURT: Sustained.

Q Have you ever lied to the court?

A Have I?

Q Yes.

A Certainly not knowingly. I've – no, I've never lied –

Q Sure.

A -- because the definition of lie is that you –

Q Sure.

A -- lie.

Q You have a professional liability as an officer of the court to be honest with

the court; is that a fair statement?

A That – yeah. I have a real aversion to the Disciplinary Commission.

Q I agree. Have you ever told the court one thing and then done the complete opposite?

A I certainly don't recall ever doing that.

Q Okay.

A I would say this, I'm certainly capable of forgetting things, and my staff tells me –

Q Sure.

A -- I'm even worse now than before.

Q Sure, understand. Thank you, Mr. Boren.

MR. MCLELAND: I have no other questions, Judge.

THE COURT: Mr. Hennessy.

MR. HENNESSY: No re-direct. Thank you.

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

MR. HENNESSY: May he be excused?

THE COURT: I –

MR. MCLELAND: Yes, from the State's perspective, Judge. I don't intend to re-call him.

MR. HENNESSY: Okay. Thank you, Mr. Boren.

THE COURT: You may call your next witness.

MR. HENNESSY: Call Kay Beehler.

(Witness sworn.)

**DIRECT EXAMINATION OF KAY BEEHLER**

QUESTIONS BY MR. HENNESSY.

Q Please state and spell your name.

A Kay Beehler. My last name is B-double E-H-L-E-R.

Q What do you do?

A I'm a lawyer.

Q What kind of area of the law?

A I'm a criminal defense lawyer.

Q Did you start in Indianapolis?

A I did. I did.

Q You start as a prosecutor?

A I did –

Q Did you do –

A -- for about three years.

Q Did you do criminal defense work in Indianapolis?

A I did.

Q And then where did you go?

A I was in Indianapolis with the Public Defender Agency until 2004; and in March of 2004, I made my way to the state of Maryland and worked in their Capital Defense Division doing death-penalty defense only.

Q And have you retired from that position?

A I've tried, yes. I'm not very good at it.

Q Are you back in Indianapolis?

A I am back in Indiana, I'm in Vigo County right now. I specialize in appeals.

Q So you've had both court trials and jury trials?

A Yes.

Q And you've done trial preparation for both court trials and jury trials?

A Yes.

Q Please describe your trial preparation for the Court.

A I have interviewed witnesses. I have gone to the scene. I have looked at, examined, and photographed every piece of physical evidence in a case. We've made whiteboards, files. Particularly in capital cases, we would have a room, an absolute conference room full of file tubs in capital cases, it was discovery. We have – I've brainstormed with other lawyers. I have developed a theme of my case and tried to prepare my presentation around that theme.

Q Have you brainstormed with non-lawyers?

A Oh, yes. Oh, yes, absolutely.

Q In doing both, would you reveal the evidence so you could get their true reactions to it that you might find at a trial?

A Of course.

Q Have you attended continuing legal education seminars where brainstorming was discussed and taught?

A Absolutely, yes, many, many sessions on brainstorming, and particularly sessions on how to get your point across, how to put your case in front of a jury.

Q And would you share sensitive or graphic evidence with non-lawyers to ascertain their reaction?

A On occasion. Not – it would be case specific, it would be case specific, but yes, it absolutely happens.

Q Have you ever accidentally misdirected an e-mail?

A Oh, yes.

Q How many times?

A Oh, once or twice.

Q Have you ever received a misdirected e-mail?
A I have.
Q What would you do when you sent one?
A When I sent one, depending on to whom and what the subject was, I would normally either pick up the phone or send a quick e-mail back and say, "Disregard, irrelevant, not for you," or I'd pick up the phone and say, "Just delete that, please."
Q Did I ask what you do when you received one?
A When I received it, knowing it wasn't for me, I just – I scrolled on by, I just deleted it, wrong guy, wrong person.
Q Once you've taken curative action, would you see any need to report it to a prosecutor –
A No.
Q -- or a judge?
A No.
Q Do you know Mr. Baldwin or Mr. Rozzi?
A I do not, only from the publicity surrounding this case.

MR. HENNESSY: Thank you.

THE COURT: Mr. McLeland.

MR. MCLELAND: Thank you, Judge.

**CROSS EXAMINATION OF KAY BEEHLER**

QUESTIONS BY MR. MCLELAND.

Q Ms. Beehler, have you ever been subject to a – what we refer to as a gag order in a case?
A Yes. I've gotten them before, I've asked for them.

Q Okay. And have you ever been subject to a protective order for discovery?
A Yes. I'm under one right now in federal court.
Q With the gag order specifically, if you violated the gag order, even inadvertently, would that be something you'd notify the court of?
A I'm not sure specifically –
Q If you disseminated information in violation of the gag order, even if it was an accident, would you notify the Court that you had done so?
A Probably at the next opportunity, depending on what it was.
Q If you –
A I would note –
Q -- disseminated evidence or at least witness names and discovery in a case, would you notify the court, if it was a violation of a gag order?
A No.
Q Okay. And you said you were subject to protection order. When you would show or converse with non-lawyers, would there be anything you would put in place to protect the evidence so that you would comply with the protection order?
A There is a way, a mechanism, to brainstorm a case and not violate a gag order, it's done all the time.
Q Sure. Have you ever released crime scene photos to the public?
A No.
Q And have you ever lied to the court?
A Have I ever what?
Q Have you ever lied to the – to a court?
A No.

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

MR. HENNESSY: No re-direct.

THE COURT: All right. Thank you, ma'am. You may step down.

MR. HENNESSY: Call Andrew Maternowski.

(Witness sworn.)

**DIRECT EXAMINATION OF ANDREW MATERNOWSKI**

QUESTIONS BY MR. HENNESSY.

Q Please state and spell your name.

A First name is Andrew, middle initial C, as in Charles, last name is Maternowski, M-A-T-E-R-N-O-W-S-K-I.

Q Are you a criminal defense lawyer?

A Yes, I am.

Q How long?

A I'm in my 35th year.

Q And where'd you go to law school?

A I went to IU Indy.

Q And what was your practice after – oh, when did you get admitted?

A 1989, fall of '89.

Q And what was your practice after that?

A When I was in law school, I did a certified legal intern – externship I guess is what you'd call it with the Marion County Public Defender Agency. At that time, during my summer job, I was also working for a private attorney in Indianapolis doing criminal defense. When I finished school, I think the day I got sworn in I did a hearing that afternoon in Marion County and have spent 17 years working with that attorney, doing almost nothing but criminal defense; then I moved out of his building into another building for ten years, doing almost

nothing but criminal defense; and then, I moved back to the original building six or seven years ago. So it's always been primarily criminal defense.

Q Approximately how many court trials and jury trials have you had?

A Court trials, I have no idea. Jury trials, 35 to 50. I've never kept track of numbers like that or caseload or anything like that.

Q How many different jurisdictions?

A I've practiced throughout the state of Indiana. We have 92 counties. I think I've counted up, I've practiced in over 80 of them, probably juries in 20 – 15 to 20, maybe 25 different counties. I've done stuff in federal court in the Northern District of Indiana, the Southern District of Indiana, I think it's the Eastern District of Tennessee a jury trial, and then a jury trial in Missouri, and a jury trial in – not a jury trial, a criminal case in San Antonio, Texas, in federal court.

Q And in your trial preparation, would you consult with both attorneys and non-attorneys?

A Yes.

Q And would you share with them your – the expected evidence –

A I would.

Q -- for those trials?

A I would.

Q Why do you do that?

A To get a better perspective. I found that when I'm preparing for a trial, because I'm looking in my client's best perspective on how are we gonna try this case and win this case, the term I've used is "breathing your own fumes", when you think you have a great theory of the case, theme, a great approach to how

you're gonna defend the case, and then you call your older sisters and they tell you that – I can't use the terms my sister used, but that you're on the wrong track.

Q Do – you've heard me discuss with the other attorneys about a war room?

A Yes, sir.

Q What's your definition of a war room?

A Essentially, a conference room where everything is spread out. A lot of younger attorneys today can do everything on a phone or an iPad or a tablet or a laptop. I can't. I have to have printed pieces of paper spread out everywhere. When I start preparing my case, I make copies of almost everything and then I made a copy with color-coded pens, where I to all my notes, and I need a copy of that to be able to pick up and look and hold and then pick another piece up and look and hold and say, "Okay, here's what Witness A said, here's what Witness B said." I can't do that on a computer, so what I do is we have a conference room on the third floor and a conference room on the first floor. I'm in an old house on the north side of Indianapolis, and there's a big table up on the third floor and there's a big table on the first floor, and I would spread things out all over both of those tables, depending on which one I start using first.

Q Have you ever received a misdirected e-mail?

A I have, I've received many over the course of time, one from a prosecutor when he and I were discussing a deposition, and when I received it, I sent it back to the prosecutor and said, "This was not meant for me."

Q Was it apparent from the e-mail that he was intending to send that to a police officer?

A Yes. We were in the middle of talking about a suppression issue and trying

to schedule a deposition, and the e-mail that was sent to the police officer – or sent – intended to go to the police officer, but actually went to me, indicated that – referring to me, that I apparently figured it out, what the suppression issue was, and I told the prosecutor that I received that e-mail and, within a couple of days I think, the case was dismissed.

Q And have you attended CLEs where brainstorming was addressed or taught?

A I've both attended and taught at seminars.

Q Tell us a little bit about your teaching

A Okay. For 22 years, I've been on the faculty of the Trial Practice Institute, it's an annual program put on by the State Public Defender Council where we break down cases into small groups and you start with brainstorming and you start with – then move into voir dire techniques and direct exam, cross exam, opening statement, closing, and you – essentially, when you're in the brainstorming part of the case, everybody – we used to work from a set fact pattern, there's a fake case out there where there's some allegations against the person at two different crime scenes and everybody worked from the same fact pattern. About 15 years ago, we shifted to a bring-your-own-case format, where every participant – these are public defenders and private defense attorneys from throughout the state – would bring their discovery and bring their cases with them. We found it more helpful to do real facts and real cases that people were really going to be trying in the future.

Q And you've described your war room as being separate from your private office?

A Yes.

Q And would you expect to be betrayed by a friend or former associate that comes to visit you in your private office but, unknown to you, goes into your war room and takes pictures of the stuff in it?

A I would not.

Q Would you feel any need to put up protections against such a thing?

A No.

Q You would not anticipate such a thing happening?

A Oh, the location where the war room would be set up and everything would be spread out would not be in a location where I would expect anybody.

Q Well, from the general public; but what if they were a friend or a former associate and had come to where your office is and found you unavailable? Would they be passing like the first floor war room?

A In order to get to where my separate offices, they would go alongside where that war room is.

Q So they could go in there and take pictures without your knowledge?

A Yes.

Q And you would not expect you would be – have – suffer such a betrayal?

A I would not.

MR. HENNESSY: That's all I have.

THE COURT: Mr. McLeland.

**CROSS EXAMINATION OF ANDREW MATERNOWSKI**

QUESTIONS BY MR. MCLELAND.

Q Mr. – can you say your last name for me one more time? I apologize.

A That's all right. Maternowski.

Q Maternowksi, okay.

A It's a lot simpler than people try to make it.

Q Thank you, sir. Good afternoon.

A Good afternoon.

Q I want to talk about some e-mails first – well, let's back up. Have you ever been subject to a gag order –

A I have.

Q -- in a case? And have you ever been subject to a protective order?

A Yes.

Q And you had talked about if you inadvertently sent an e-mail to somebody. If you'd inadvertently sent an e-mail to a civilian in violation of a gag order, would that –

MR. HENNESSY: Judge, I'm gonna eject. Assumes facts not in evidence. A misdirected e-mail was not a violation of the gag order, that's a legal conclusion for this Court to make. Now, if he wants to say – ask the question, "Did you ever send an accidentally misdirected e-mail that had an outline of your discovery organization" that would fit the evidence so far.

THE COURT: Would you like to finish your question before I rule on his objection?

MR. MCLELAND: Sure. Judge, I'd like to respond to the objection too, but let me see if I can phrase it the same way, Judge.

Q If you sent an e-mail to a civilian in violation of a gag order, is that something that you would feel that you need to make the court aware of?

A It would depend on who that civilian was. If I just sent it to somebody random, yeah – I probably have 5000 people in my contact list, if I mis-clicked on something and it went to somebody, I would probably notify them immediately

and say, "That wasn't for you, don't do anything with it." Because I don't know what they did with it, I don't know that I'd have a reason to notify the court, I didn't intentionally violate it.

Q And so if you – let me make sure I got this correct: So if you sent an e-mail that violated a gag order that was in place in your case, meaning that e-mail would have to have some information pertaining to the case or evidence pertaining to the case, you wouldn't feel it necessary to notify the court that, even inadvertently, if it was inadvertently, that you had done that?

A I wouldn't notify the court at first. I'd probably notify – in a typical case for me, it would be the prosecutor – I would say to the prosecutor, "Hey this is what happened. What do you want to do?"

Q Okay. Fair enough.

A If they said we need to tell the judge, we'd tell the judge.

Q Fair enough. You had talked about oftentimes – maybe not oftentimes – there's been times that you've had cases and you've run the information by your sisters or sister to get their take on the presentation of your case –

A Yes.

Q -- is that –

A I've got –

Q Okay. Go ahead.

A I've got a D felony or a Level 6 jury of older sisters, I've got seven older sisters, and they're all semi-professionals and they've got a lot of experience. I've got one sister who's a retired nurse, who I trust her opinion on medical things more than any doctor's that I've had looked at autopsy photos, injuries, things like that.

Q And is that for you to be able to get a – someone from the public, their opinion on the strength or weaknesses of your case?

A With that particular sister, no, that's usually for more of an expert opinion, but I've done similar things with other people, other civilians, other family members, other attorneys, friends.

Q And again, is that to determine the strength and weaknesses of your case as they see it?

A Yes.

Q Okay. And so is it fair to say that with the evolution of the Internet and the evolution of social media that an attorney could also use social media and the Internet as a way to push out the facts of their case to gauge the public response?

A You could, yes.

Q Okay.

A I'm not sure how useful that would be if you're not getting any feedback.

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

MR. HENNESSY: No redirect. Thank you.

THE COURT: All right. Thank you –

MR. HENNESSY: May he be excused?

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

MR. HENNESSY: And can Ms. Beehler be excused?

MR. MCLELAND: I have no objection, Judge.

THE COURT: Yeah, that's fine. You may call your next witness.

MR. HENNESSY: Judge, at this time I would like to have an affidavit

of Thomas Leatherman marked as Exhibit D. You have all these; right?

MR. MCLELAND: Yes. Are you gonna attempt to admit all the affidavits that you gave me?

MR. HENNESSY: Yeah.

MR. MCLELAND: Okay. Judge, I just want to show the – a running objection to those. Without the witnesses here to testify, I don't think it's fair to the State, we don't have an opportunity to cross examine them or question them about the information in the affidavit, and so if this Court would just show my objection to those exhibits being submitted to the Court.

THE COURT: I'll show a continuing objection. I'm sorry, what was D?

MR. HENNESSY: D was Thomas Leatherman. C is Stacy Uliana – E. F is Aimee Schultz. G is David Pumphrey. H is James Fry. I is Lisa Johnson. J is Joel Wieneke. K is Gojko Kasich

THE COURT: Who?

MR. HENNESSY: Gojko Kasich. He's Lake County. It's G-O-J-K-O K-A-S-I-C-H. And I would call –

THE COURT: Okay. Excuse me. So are you are moving the admission of D through K?

**DEFENDANT'S EXHIBITS D THROUGH K OFFERED**

MR. HENNESSY: Yes, ma'am.

THE COURT: And the State is objecting. And your grounds again, sir?

MR. MCLELAND: Judge, the State's objection is based on the fact that these are affidavits, the State doesn't have an opportunity to cross examine

these witnesses in order to check the veracity of the statements made in the affidavit and to question them about those statements.

THE COURT: Any response to the objection?

MR. HENNESSY: No, ma'am.

THE COURT: Then, I will show D through K not admitted. You may call your next witness.

MR. HENNESSY: Julie Melvin.

(Witness sworn.)

**DIRECT EXAMINATION OF JULIE MELVIN**

QUESTIONS BY MR. HENNESSY.

Q Please state and spell your name.

A Julie, J-U-L-I-E, Melvin, M-E-L-V-I-N.

Q Do you know a Terry Williams?

A Yes.

Q What?

A Yes.

Q How do you know her?

A I met her through this case.

Q I'm gonna hand you what's marked as Defendant's L and ask if you can identify it.

A Yes.

Q What is it?

A That's my phone record of phone calls that we had back in 2017.

Q With Terry Williams?

A Yes.

Q And then –

MR. HENNESSY: Oh, move to admit L.

**DEFENDANT'S EXHIBIT L OFFERED**

MR. MCLELAND: Judge, I'm gonna object. I don't know what the relevance to this exhibit is, phone records between Julie Melvin and a Terry Williams, I'm not sure the relevance to this proceeding, Judge, so the State objects.

THE COURT: How's it relevant?

MR. HENNESSY: Well, the next sheet is a Facebook page, a shot of a Facebook page of Terry Williams, and it involves Terry Williams sharing with Ms. Melvin confidential information about the investigation and from whom she received it. These are the other leaks and the relevance again is to show that there's plenty of other sources not connected to – I mean, I'll tell you, I don't think the Westerman leak – Westerman's been connected to Andy by the evidence, but no knowledge of the leak, and so I'm asking to put in evidence of other leaks so that, on the issue of contempt, A, that there's much – many other sources of information about the investigation. As the evidence goes on, there will be testimony that even the – of the photos that they attribute to Mr. Westerman cannot have come from Mr. Baldwin's office.

THE COURT: And do you have this Terry Williams here to testify?

MR. HENNESSY: No.

THE COURT: Oh. Well, then I'd have to sustain the objection.

MR. HENNESSY: Okay. Show L offered, please.

THE COURT: I'm sorry?

MR. HENNESSY: You're showing L as offered, it's in the record;

correct?

THE COURT: It's marked, yes, and –

MR. HENNESSY: Okay.

THE COURT: -- you should give it to Jodie.

MR. HENNESSY: Very good.

Q Can you identify then what Exhibit M is?

A Yes.

Q And what is it?

A It's basically the accounting that Terry Williams gave to me on the phone, but it's written as she told it.

Q Was that a Facebook post?

A Yes, by Terry.

MR. HENNESSY: Offer M.

**DEFENDANT'S EXHIBIT M OFFERED**

MR. MCLELAND: Judge, I object on hearsay and also relevance. I guess I'm not sure of Mr. Hennessy's plan, but if his plan is to parade a bunch of podcasters and YouTubers up to the stand and talk about other leaks, that has no relevance in what we're here to discuss today, Judge. We're here to discuss the information the State outlined in the contemptuous information filed with the Court. The fact that they – the Defense believes there are other leaks or podcasters believe there are other leaks or YouTubers believe there are other leaks has no relevance to what we're here to discuss today, Judge, and so on those two objections, the State is objecting to the admission of those pieces of evidence.

MR. HENNESSY: Well, number one – oh, I'm sorry.

THE COURT: Go ahead.

MR. HENNESSY: Number one, it won't be a parade, 'cause I'm gonna call them one at a time. Number two, it's highly relevant, at least in my mind. It goes to the theory of the defense. Oh, and it – well, I've already explained why it's relevant to both the punishment and contempt.

THE COURT: Okay.

MR. HENNESSY: I think at some point, if you get to the question of punishment, organizational math and what kind of damage or prejudice or harm has that caused versus leaks about the complete probable cause affidavit, the existence of a bullet at the crime scene, the recovery of the firearm at Mr. Allen's house, and it goes on and on.

THE COURT: All right. I'll sustain the objection to M.

Q Have you followed the Delphi case?

A Pardon?

Q Have you followed the Delphi case?

A Yes.

Q Did you grow up in Delphi?

A No.

Q What county do you live in now?

A I live in Hamilton County.

Q And have you seen postings of other evidence from the investigation?

MR. MCLELAND: Objection, Judge, again: Relevance. I don't know what this has to do with the allegations outlined in the State's information.

MR. HENNESSY: Well, if he can't understand it, doesn't mean it's not admissible.

THE COURT: That's uncalled for, sir, and it's –

MR. HENNESSY: I'm sorry?

THE COURT: That is uncalled for. Evidence has to be relevant to be admissible and this is not admissible evidence, it's not relevant. I'll sustain the objection.

MR. HENNESSY: Okay. I'd make an offer to prove then and I can – and I'll approach with both the case law and the rule, if the Court would like to have it. I can do that by question/answer or I can do it in a summary fashion.

THE COURT: Summary fashion. I'm familiar with the case law and the rule, sir.

MR. HENNESSY: Okay. Ms. Melvin would testify that she has followed this closely, that she has seen many other posts that has been publicly disseminated on purpose and willfully by other people that is evidence from the investigation, including crime scene photos unconnected to the Defense, unconnected to Mr. Westerman, unconnected to Mr. Fortson, and that the sources have been vast, including law enforcement, Sergeant Holeman for one, and other people involved in the investigation. Thank you.

THE COURT: And if any of that had to do with the charges that are being alleged by the State of Indiana, it would be relevant. Do you have any further questions of this witness?

MR. HENNESSY: No, ma'am.

THE COURT: Do you have any cross exam?

MR. MCLELAND: No, Your Honor.

THE COURT: Thank you, ma'am. You may step down.

MR. HENNESSY: I will call Steven Wood.

(Witness sworn.)

**DIRECT EXAMINATION OF STEVEN WOOD**

QUESTIONS BY MR. HENNESSY.

Q Please state and spell your name.

A I'm sorry?

Q Please state and spell your name.

A Oh, it's Steven Wood, S-T-E-V-E-N W-O-O-D.

Q Do you have a nickname?

A Online, yeah, Skip Janson.

Q People call you Skip?

A They do.

Q And have you followed the Delphi investigation?

A I have. I followed it since August of 2020.

Q Do you know a Gary Beaudette?

A Yes.

Q How do you know him?

A He and I became friends, we initially met around I think January of 2022. I was – I made several appearances on his channel, YouTube channel, talking about the case, and we just became friends over that time.

Q And were you a part of a group that he was a part of a group of?

A I'm sorry, what? Say it again.

Q Were you a part of a group that he was a part of?

A Yes. We were in a Discord group.

Q Do you know of different names that he went by?

A He went by FigSolves, he went by FignewtonUSA I think on Reddit, but

mostly, you know, he's known as Fig.

Q And Fig?

A Um-hmm. (Affirmative response)

Q Is that one? Yes?

A Fig, FigSolves, Fignewton.

Q And I'm gonna hand you what's been marked as Defendant's Exhibit N and ask if you can identify it.

A Yeah, this is a conversation he and I had over text.

Q And how do you know that?

A I just – I'm familiar with the conversation. He and I talked a lot; like I said, we were good friends, so we communicated a lot.

MR. HENNESSY: Offer N.

**DEFENDANT'S EXHIBIT N OFFERED**

MR. MCLELAND: Judge, may I ask a few foundational questions?

THE COURT: Yes.

MR. MCLELAND: Mr. Wood, the conversation that you had with Mr. Beaudette, does it have anything to do about an e-mail sent from Mr. Baldwin to Mr. Woodhouse?

A It does not.

MR. MCLELAND: Does it have anything to do with photos that were taken from Mr. Baldwin's office?

A I don't believe so.

MR. MCLELAND: Does it have anything to do with a press release from the Defense that was released in December of 2022?

A I can't recall.

MR. MCLELAND: Does it have anything to do with an on-going leak from the Defense out to the public?

A From the Defense – I mean, we talked about on-going leaks –

MR. MCLELAND: I meant this conversation here that you're trying to admit.

A Oh, no, no, no, no.

MR. MCLELAND: Judge, then I object to the relevance to this hearing.

THE COURT: Any response?

MR. HENNESSY: No, I won't rehash.

THE COURT: Okay. Then, I will show N is not admitted.

Q Hand you Defense Exhibit O; can you identify that?

A Yeah, this is a – again, this is a text conversation between Fig, Gary Beaudette, and myself, and it's covering several different things about the case, about sources, sources in the case mainly.

MR. HENNESSY: Thank you. Offer.

**DEFENDANT'S EXHIBIT O OFFERED**

MR. MCLELAND: I guess I need to – can I take a look at it, please, see what it is? Judge, same objection as before, the relevance to what we're here to discuss today in court, so just same objection.

THE COURT: Any response?

MR. HENNESSY: Same response.

THE COURT: And I will show O is not admitted.

Q I'm gonna hand you an envelope marked "Flash drive, Fig, November 22, 2022, YouTube video"; are you familiar with that?

A I am familiar with the video, yes.

Q And inside is a flash drive of that YouTube; and you recognize that?

A I do.

Q And what does he talk – oops – what about in that YouTube?

A He talks about cartridges, bullets, casings, unspent casings, cartridges, mostly evidentiary stuff for the most part.

MR. HENNESSY: Move to offer Q.

**DEFENDANT'S EXHIBIT Q OFFERED**

THE COURT: Q?

MR. MCLELAND: Judge, I'm gonna object, same objection, relevance. I don't know what it has to do with the information outline in the State's filing.

MR. HENNESSY: Same response.

THE COURT: All right. I'll show Q is not admitted.

Q And then, did Mr. Beaudette reveal a lot of detailed information about the investigation?

MR. MCLELAND: Objection, Judge, same objection. I'm not sure that's relevant to what we're here to discuss here today.

THE COURT: Sustained.

MR. HENNESSY: I – it's the same relevance, it's the same – my theory and theme regarding contempt and punishment, there's two parts to it.

THE COURT: You need to give that exhibit to Jodie if you want it in the record, sir.

MR. HENNESSY: She has it.

THE COURT: Oh, you've got it? Okay. Do you have any further

questions for this witness?

MR. HENNESSY: Offer to prove.

THE COURT: Go ahead.

MR. HENNESSY: I'd like to do it in question and answer form. It'll be brief. That's the preference under the rule.

THE COURT: You may proceed.

MR. HENNESSY: Thank you.

Q Could you, please, just for the record indicate what kind of information Beaudette was putting out there?

A Are you – specifically to the October/November of 2022, or just in general?

Q All over.

A A lot of stuff, a lot of – so he claimed to have different sources and he talked about a lot of things, just –

Q Wouldn't he indicate that there was gonna be a release of documents in one week and then that occurred within one week?

A Yeah, he did. It – on I believe June 16th of 2023, he said that his source had told him they were gonna release a large set of documents, some are older, some new is how he described it, and then, a week or so later, they were released.

Q Did he post that he had the unredacted probable cause affidavit filed in support of the charges against Mr. Allen?

A Yes.

Q And was that before it was publicly available?

A I don't recall exactly. I do recall his – that he was adamant about the fact that the PCA had two version, there was a 1.0 and a 2.0, and what we've seen, the public seen, was a 2.0 version; and that was – again, came from the same

source that told him about the documents that were released in June.

Q And did he claim that his source was an employee of Judge Gull?

A He did.

Q Did he ever identify that person?

A He did not.

Q Did he attribute other leaked information to that source?

A Yes.

Q And what was it?

A He said that – one was more of an opinion-based, one said that this person thought that Richard Allen was guilty and hoped that Judge Gull kept him in Westville for a long time. Like I said, it was the PCA, the 2.0 version of that, the documents that were released in June. He – I mean, there was no reason to believe that he wasn't telling the truth, because everything he was saying was right.

MR. MCLELAND: Judge, I'm gonna object at this point. I think we've gone beyond an offer of proof. We're into speculation –

MR. HENNESSY: No, we're not.

MR. MCLELAND: -- on what Mr. Beaudette thought or didn't think.

THE COURT: Sustained.

MR. MCLELAND: So I don't have a problem if he wants to offer to prove, I don't have a problem if he wants to submit documents to the Court as an offer of proof, but I think we've gotten outside that scope at this point, Judge.

THE COURT: We're well beyond the offer of proof. Do you have any additional information that you wish to get from this witness?

MR. HENNESSY: I'm sorry? Where are –

THE COURT: Are you done with this witness? I've sustained the State's objection.

MR. HENNESSY: No, I'm sorry. Okay.

Q Did he identify any other sources?

A Did he – say it again, sorry.

Q Did he identify any other sources?

A He did.

Q Who?

A Prosecutor McLeland.

Q And was he in communication with Mr. McLeland?

A He was.

MR. MCLELAND: Judge, again, I'm gonna object. I think we're outside the scope of offer of proof, and so at this point, I'm gonna object to the continued line of questioning.

MR. HENNESSY: The documents – the documents would establish that Mr. McLeland and Mr. Beaudette were in communication, they were trading information, Mr. McLeland said he wanted to talk to other people in the group, Mr. McLeland sent Mr. Beaudette a message telling him to delete everything, so that would be the testimony. And then, lastly – I'm sorry, so he and Mr. McLeland communicated, and then any other sources besides the employee of Judge Gull.

MR. MCLELAND: Well, Judge, I'm gonna renew the same objection. I think this is outside the offer of proof of why his testimony of why these exhibits are relevant to the hearing here today.

THE COURT: Sustained. We are done with this offer of proof, sir.

MR. HENNESSY: Well, not really.

THE COURT: Yes, you are.

MR. HENNESSY: Well, but I have a right to make a record.

THE COURT: Well, then make your record in a summary fashion, not through this witness, because you are violating any kind of offer of proof –

MR. HENNESSY: Well, I –

THE COURT: -- you're just having him testify to information that you want to get into the record that –

MR. HENNESSY: I –

THE COURT: -- you can't substantiate or support.

MR. HENNESSY: Okay. I absolutely respectfully disagree, but the only last thing I'll say is that the November 22nd of 2022 YouTube clearly establishes that Beaudette had version – what he called version 2.0 of the probable cause affidavit one week before it was ever available to anyone. That's it. Thank you.

THE COURT: Do you have any questions for this witness?

MR. MCLELAND: No, Your Honor.

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

MR. HENNESSY: I re-call Mr. Mullins.

(Witness sworn.)

MR. HENNESSY: Thank you.

**DIRECT EXAMINATION OF STEPHEN MULLIN**

QUESTIONS BY MR. HENNESSY.

Q Mr. Mullins, you had described your function in the Prosecutor's Office organizing discovery and fashioning receipts as it was given to the Defense.

A Yes.
Q From your duties in that regard, can you tell the Court approximately how many external hard drives they were given?
A Sitting here today that would be hard for me to estimate, but several, probably 20, 25 something like that.
Q And then, how many flash drives?
A Again, difficult for me to give a quantification here at this moment without looking at my notes, but several, maybe – I'd like – maybe I can get some clarification about your question: Was that before or after they were removed?
Q Before and then after they were reinstated.
A Thank you. So before, probably maybe 15 –

MR. HENNESSY: Okay. Thank you. That's all.

A -- thumb drives.

MR. HENNESSY: That's all.

THE COURT: Any questions?

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

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

MR. HENNESSY: Re-call First Sergeant Holeman.

(Witness sworn.)

MR. HENNESSY: Judge, can Mr. Rozzi be excused? And he's okay with me proceeding.

THE COURT: That's fine. He's your client.

**DIRECT EXAMINATION OF LIEUTENANT JERRY HOLEMAN**

QUESTIONS BY MR. HENNESSY.

Q Sergeant Holeman, did you obtain documents or screenshots from Mark

Robert Cohen?

A Yes.

Q And did he go under funkocohen87?

A I believe so.

Q I'm gonna hand you what's marked as Defense Exhibit R and ask if you recognize it.

A I don't think I've ever seen these.

Q Well, do you recognize it as Cohen?

A Again, I don't know if he went by funkocohen87 or not, but I'd have to check my notes or re-interview him to see if that's actually him.

Q Okay. Well, then did you, in talking to Mr. Cohen or reviewing his material, it's your belief that Mr. Cohen received pictures from Mr. Fortson and then Mr. Cohen put them on the Internet; is that correct?

A No.

Q Okay. What'd Mr. Cohen do?

A He sent them to Aine Cain and –

Q He sent them where?

A He sent them to Aine Cain and Kevin Greenlee.

Q Okay. Did he ever tell you that he also had – or did the Murder Sheet people ever tell you that he also had photographs of clothing, shoe prints, indentations from a tripod, that kind of stuff?

A No. I don't recall that.

Q Do you know a Mike Thomas?

A I do.

Q Do you know if Mr. Cohen ever told anyone he had scene photos and notes

from Mike Thomas?

A No.

Q Who is Mike Thomas?

A Mike Thomas was the chief deputy at the time for Carroll County.

MR. HENNESSY: I'll withdraw R. Do I need to leave that with the reporter?

THE COURT: No. If you're withdrawing it, I'll just show it's withdrawn. Any cross, Mr. –

MR. HENNESSY: I'm sorry?

THE COURT: Are you done with him?

MR. HENNESSY: No, no. I gotta find a file.

THE COURT: Okay. Hold on.

Q You testified earlier that one of the people you interviewed referenced the leak of the probable cause affidavit for the search of Mr. Logan's property?

A Yes.

Q And you testified that this person said they got it from Mr. Logan.

A In my deposition, I testified to that, yes.

Q Have you been involved in the execution of search warrants?

A I have.

Q How many? A lot?

A Yes.

Q Have you ever left a copy of the affidavit?

A No.

Q You've always left a copy of the actual search warrant?

A Yes.

Q But never the affidavit?

A Correct.

Q And can you identify – are you familiar with the affidavit for that search?

A I am.

Q And is State's Exhibit 5 [sic] a copy of that?

A Yes. Yes, it is. (Clears throat) Excuse me. Yes.

Q And then, did you ever explore or investigate why, on this copy, "Murder Sheet" is stamped?

MR. MCLELAND: Judge, I'm gonna object at this point. I thought he was going a different direction. I don't think this has any relevance to what we're here to discuss today, Judge. I was giving him a little leeway, but I don't know where he's going and if it's relevant to what we're discussing today.

THE COURT: How's it relevant?

MR. HENNESSY: I'm sorry?

THE COURT: How is it relevant?

MR. HENNESSY: Well, it's relevant – one, they've opened the door because they didn't object when he testified about the Logan affidavit leak, and so that's already in and I'm following up on it; and it goes to the extent of his investigation of this leak and his choice not to do further investigations or investigations of other leaks. And he also testified talking to Ms. Cain and Mr. Greenlee – is it Green?

A Greenlee, yes.

MR. HENNESSY: -- who are the Murder Sheet people, so he talked about how he talked to them, what they gave him, and this is another document that has their little podcast thing stamped on it.

THE COURT: Well, to the extent that the State inquired, I'll allow it.

MR. HENNESSY: Okay. Move to admit it.

**DEFENDANT'S EXHIBIT S OFFERED**

MR. MCLELAND: Just same objection, Judge.

THE COURT: All right. I'll show S – it's S, not 5 –

MR. HENNESSY: Yeah.

THE COURT: -- admitted over objection.

**DEFENDANT'S EXHIBIT S ADMITTED**

MR. HENNESSY: That's all I have for Mr. Holeman at this time.

THE COURT: Any cross?

MR. MCLELAND: No, Your Honor.

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

MR. HENNESSY: You ready?

THE COURT: You may call your next witness.

MR. HENNESSY: Call Mr. Brad Rozzi.

(Witness sworn.)

**DIRECT EXAMINATION OF BRADLEY ROZZI**

QUESTIONS BY MR. HENNESSY.

Q Please state and spell your name.

A Bradley Anthony Rozzi. Last name is spelled R-O-Z-Z-I.

Q How many different ways is that pronounced?

A I don't want to get into that conversation, we'll be here all day; okay?

Q The press release, what day was that?

A The day that – are you asking about the date it – that it was issued?

Q Yes.

A I believe it was December 1st.

Q The day be –

A There's a lot of dates running through my head, but I believe it was December 1st.

Q Was there an order in place before that time?

A No, there was not, no.

Q Did – were there conversations with the Court about not intending to try the case in public?

A There were, yes.

Q Was the press release an attempt to do that?

A It was not, no.

Q What was its primary purpose?

A Well, you know, first of all, it's something that was certainly thought out. It wasn't some, you know, kind of random act that just occurred. There's a lot of strategy that comes with things of that nature and, you know, in my opinion, I think really the first purpose that it served, from my point of view, is that it communicates to your client that you're behind them, you know, that you're behind them in terms of the endeavor that's ahead in a case like this. So lawyers that are trial lawyers that know what they're doing, that are well trained, will tell you that, you know, getting the client's trust and credibility is important, and so I think that's one of the reasons why, at least in my mind, that I thought it was a good idea. The second reason is maybe more unique to this case. You've got – you know, from the very day that I entered an appearance in the case, I'm getting e-mails and phone calls, you know the office is inundated with those kind

of things from third parties, from media sources. I mean, I can remember getting calls from NBC, from *Rolling Stone Magazine*, from publications out of London, and at some point, you know, Andy and I talked and just thought, "Hey, you know, one of the things we can do is issue a press release so everybody knows kind of where we're coming from and maybe we'll quell some of that, you know, kind of put some of that to rest."

Q So one –

A And so that's why we did it.

Q One pur –

A At least that's why I thought we did it.

Q One purpose was to stop random inquiries; correct?

A Yes.

Q Another thought was to do it in a manner where you wouldn't be subjected to questions?

A Oh, clearly, yeah, sure.

Q And then, were you fam – I'm gonna approach and hand you Defendant's Exhibit T. Were you familiar with the extent – when were you – describe – when were you appointed?

A I'm gonna say late October of 2022, estimating.

Q And were you familiar then with the extent of State agent-sponsored media presence and publications and press conferences and press releases?

A May I review this?

Q Yes, you may. That's State's – Defense Exhibit –

A Yes, I was generally familiar that a lot of these things were on-going. To sit here and say that I knew about every one of them would not be accurate.

Q Is Defense T a summary of the dates and the communications from State-sponsored people?

A That's what it appears to be.

Q What'd you say?

A That's what it appears to be.

MR. HENNESSY: Oh, move to admit.

**DEFENDANT'S EXHIBIT T OFFERED**

MR. MCLELAND: No objection, Judge.

THE COURT: All right. I'll show T is admitted without objection.

**DEFENDANT'S EXHIBIT T ADMITTED**

Q What then – was the press release an attempt to influence the public?

A No, sir.

Q Was it a plea for tips?

A I'm sorry, what was the question?

Q A plea for tips from the public, information from the public?

A Well, I think that we were aware that that could be one of the, you know, side effects or I should say the result of that, but I don't know that we sat and had any real discussions about that in great detail.

Q Did, in fact, you get some tips?

A Did we get some tips?

Q Yes.

A Oh, yes, certainly.

Q Were any of them of any value?

A Oh, very much so, yes.

Q And did you know that the Indiana State Police, sometimes with the

Prosecutor's Office, sometimes without, had a constant presence in the five years since the discovery of the bodies issuing statements and revealing a little bit of information, asking for tips from the public?

A I am aware of that.

Q So that happened? Was a –

MR. HENNESSY: I'm sorry, was there a question before him?

THE COURT: You're asking me the questions, sir.

MR. HENNESSY: Yeah, I got interrupted.

Q The – did you have anything to do with the e-mail to Woodson?

A Mr. Woodhouse?

Q Woodhouse.

A I did not. Well, I did not have anything to do with the initial e-mail. I clearly had something to do with reporting it when I learned about it in March of 2023.

Q Did you get e-mails from Mr. Baldwin the day Mr. Westerman had – or no, did you get an e-mail from – strike that. With regard to Woodhouse e-mail, were both you and Mr. Baldwin fully cooperative and truthful to the Court as that was discussed?

A Yes.

Q With the Westerman leak, did Mr. Baldwin advise you the very day that Mr. Westerman confessed to him what he had done without permission?

A Mr. Baldwin – Andy called me on the day that I believe that he learned of that and, basically, reported that to me and then, yes, we followed up and decided we were gonna call the prosecutor and the judge.

Q Was that reported immediately to the prosecution and the Court?

A Yes. After I learned of it.
Q What did you say?
A It was reported immediately after I learned of it for sure.
Q Well, right, but you learned of it the day Andy learned of it.
A I believe that's true, yes.
Q Have you reviewed, during the break, State's – the State's exhibit of the five pictures?
A Yes, I had a chance to look at it during the lunch recess.
Q And were you present for Mr. Holeman's testimony that he was presented with all of those pictures at deposition?
A Sorry, could you ask that again?
Q Sure.
A It's a little hard to hear and we've got a computer between us.
Q You want my hearing device they've been giving me?
A No, it's fine, I'm just – I can't really see you that well. Just go ahead and ask the question again.
Q Did you – were you here when Sergeant Holeman testified those five pictures had been presented to him at a deposition at which you and Mr. Baldwin were present?
A I was here, yes.
Q And over break, did you go back and contact the court reporter and get all exhibits that were presented to Sergeant Holeman at that deposition?
A I did, yes.
Q Were all five of those pictures presented to Sergeant Holeman?
A No, they were not.

Q Which ones were not?
A Can I see the exhibit?
Q Strike that. It's under seal. Well, no, he's described – what exhibit – I think State's 6. I'm gonna hand – oh, 5 – I'm gonna hand you State's 5, which has been admitted over objection. Can you, please, go through there and describe generally which photographs were not presented to Sergeant Holeman.
A Photographs three and photographs four –
Q I – well, what –
A I'm not going to talk about the details.
Q Well, neither have they, but three and four is not helpful, so there's a picture, and they've already said one of the victims that has blackout marks including a dash and a circle –
A Four.
Q -- could you find that one.
A That's the fourth page –
Q Okay.
A -- of this five-page exhibit.
Q Was that presented to Sergeant Holeman?
A It was not.
Q Is that something the Defense ever prepared?
A No, not – I haven't and I don't believe Mr. Baldwin has, because I was part of those depositions and I haven't seen this.
Q So you've never seen that before?
A I have not.
Q And to your knowledge, that picture was never given to the Defense?

A No. I just – I literally just looked through the exhibits when I was at lunch and this is not one of them.

Q Okay. What was the other one?

A It would be the third page on this five-page – in this five-page exhibit, which is a – it's a handwritten diagram, it looks like almost maybe, I don't know, pencil or crayons or something.

Q Is that the handwritten alleged diagram of sticks and like a roughly drawn person with sticks placed around them or did that –

A Yes, sir. Yes, that's a fair description.

Q Have you ever seen that before?

A No, I've never seen this.

Q Was that ever presented to Sergeant Holeman at the deposition?

A It was not attached to the exhibits that I looked at that were given to us by the court reporter and I believe it was absolutely not.

MR. MCLELAND: Judge, I want to make a point of clarification: I think Mr. Hennessy has mischaracterized Mr. Holeman's testimony. I had to look back at my notes. What I remember Mr. Holeman saying is some of the photos were from the deposition, not all of them, so that's my recollection of the testimony from Mr. Holeman, so I wanted to clarify that for the Court, Judge.

THE COURT: Okay.

MR. HENNESSY: The record will speak for itself and I guarantee he described the circle part, 'cause I wrote that down in my notes with question marks, wondering what he was talking about, and then it came out later what he was talking about.

Q Were you present at an unrecorded conference in chambers where the

protective order was discussed? What'd you say?

A It was the gag order, I think that's what you're talking about.

Q Okay.

A And yes, I was present.

Q And what was the discussion?

A The basic discussion was that Mr. McLeland, myself, Mr. Baldwin was there, I believe – I'm pretty certain former White County Prosecutor Bob Guy, Robert Guy, was present at that particular conference. I know it took place in Delphi, and I remember the discussion was prompted by the lawyers communicating to the Court that we felt kind of handcuffed, because we had these orders in place and we didn't really know who we could talk to, could you even talk to, you know, a potential witness? Could you share any information with them, you know, to try to determine their credibility or to corroborate information they were giving you, those kinds of things. I mean, I feel like even the prosecutor, you know, communicated that it was kind of an odd space that we were working in and we just didn't really know where the – you know, where the fog lines were, so to speak, on the road, and the Judge was kind enough, frankly, to have a discussion with us and try to define, you know, where those lines were. And, you know, my recollection of the conversation is, basically, Your Honor told us that, you know, this is primarily intended to keep us from releasing information to media outlets, to having press conferences, to doing what I would consider kind of more traditional media-type relations if you were, I guess, in a case like this, and so that was the nature of the conversation that we had.

Q Was it expressly discussed that you could discuss evidence in discovery that you'd received with people you wanted to consult with for trial preparation?

A I can't say that that was the exact discussion we had. I think it was more along the lines of if it's not the media, then it's okay.

Q Did you watch Barbara MacDonald's report on Court TV?

A I did.

Q In watching that, did you notice stuff that she had that could not possibly have come from the Defense?

MR. MCLELAND: Objection, Judge. I don't see what the relevance of that is to this hearing.

THE COURT: How's it relevant to the hearing, sir?

MR. HENNESSY: Well, it's the same response as before, but on this one I'm adding it could not possibly come from the Defense, which it goes directly to the issue of what Defense did provide, what Defense didn't provide, and he's prepared to testify he saw her with stuff that could not have possibly come from the Defense, and he's testifying on his own behalf on a –

THE COURT: Overruled.

Q Do you want the question again?

A I saw her, you know, holding a – what I would consider part of a report and talking about it openly, and it's certainly something that I knew was part of the discovery and it wasn't provided by me, and I'm fairly certain it wasn't provided by Mr. Baldwin, because both of us were pretty surprised that she was talking about this openly, you know, to the entire viewing public.

Q And wasn't there something about sticks?

A Well, it was the Purdue report is what it was.

Q Okay. And –

A I'm not even sure we had it at that point. I could be wrong, but if we did

have it, it was just right close in time, but I actually don't think that we even had it. I think that later, I – when I saw the report, then it was brought to my attention that there was this broadcast, and I watched the broadcast and it was the report that I had just gotten, and I actually shared that with the Court, just for context.

Q I'm gonna approach you and hand you an envelope that is marked "Flash drive, Barbara MacDonald interview on Court TV"; do you recognize that?

A I do.

Q And was that preserved on a flash drive?

A Yes.

Q Look inside, tell me if that's the flash drive.

A Yes.

Q Thank you.

MR. HENNESSY: Move to offer Barbara MacDonald on Court TV, Defendant's Exhibit U.

**DEFENDANT'S EXHIBIT U OFFERED**

MR. MCLELAND: Judge, same objection to relevance and, also, I believe it's hearsay. I haven't watched the report, but if it's gonna be her testifying about what she's gotten and what she believes is leaked, I think it applies to hearsay, Judge.

THE COURT: Any response?

MR. HENNESSY: Same response.

THE COURT: All right. I will show that U is not admitted as hearsay.

Q Are you familiar with the Indiana Public Defender Council's performance

guidelines?

A Generally I am, yes.

Q And have you lived up to them?

A Yes.

Q And is brainstorming and war rooms for trial prep common within criminal defense counsel and considered essential to trial preparation and adequate representation?

A It is.

Q And then, are you familiar with the Indiana State Police typical protocol for investigations such as the one at issue here?

A I actually do have some knowledge of their general protocols, yes.

Q And how do you have that?

A Because I've represented state troopers that have been accused of crimes. I've – I have a brother who's one of the chief detectives at the Peru post and I talk to him routinely. I'm very familiar with what goes on in the State Police, you know, investigative ranks, so to speak. And a lot of friends and a lot of other clients the work in that field.

Q And what would be their normal protocol for an investigation of leaks by defense counsel in a criminal case in which they were involved?

A Well, I've never been involved in a case where there was an allegation of a defense counsel leak, but I've certainly been involved in cases where there were let's say ethical issues at stake, and they typically farm those out to other posts. In fact, I had a meeting with one of their – I think they call them their internal investigative unit or whatever, I actually had a meeting a week or two ago with a client with an internal officer, and so they're typically farmed out to other posts

so that there's some separation of the activities, some independence.

Q Thank you. Without getting into them, are you familiar with, from your review of all of the discovery provided on this issue that they've given us over 100 pages of Fortson stuff, they've given us Westerman stuff, Cohen stuff, have you – are you aware of other leaks that cannot possibly be connected to the Defense?

MR. MCLELAND: Objection, Judge: Relevance.

MR. HENNESSY: Just in general. We're not gonna get into it, but whether he's aware of it.

THE COURT: I think you've made your point, Mr. Hennessy. I'll sustain the objection.

Q Oh, did both you and Andy – it's in evidence, you wrote a letter to Judge Gull, the State introduced that into evidence.

A Okay.

Q You recall that?

A Regarding the Westerman situation?

Q I can't remember.

A Yeah, I know I wrote a letter to her in the fall, I'm not sure. I might have done more than – I might have written more than one, so –

Q Are you positive that you and Andy cooperated fully with candor and honesty to all inquiries by the Court regarding anything at issue here?

A Yeah. I sat down with Officer Rector and signed an advisement of rights and answered every question that he asked me immediately after we heard of all this.

Q That wasn't the question. The question was with the Court, any questions asked by the Court, did you respond – it's Rule 3.3 of the Indiana Rules of

Professional Conduct, respond – candor versus the tribunal. It only applies to when the Court asks questions. Did you and Andy respond with full candor, honesty, cooperation to any question from the Court about anything at issue here?

A Yes, sir.

MR. HENNESSY: That's all I have.

THE COURT: Mr. McLeland.

MR. MCLELAND: Thank you, Judge.

**CROSS EXAMINATION OF BRADLEY ROZZI**

QUESTIONS BY MR. MCLELAND.

Q Mr. Rozzi, I think you said this, but I want to make sure I'm clear, I want to start back in the beginning with the press release. You concede that there was an in-chambers meeting before you and Mr. Baldwin made the press release where you told the Court, "Judge, there's no reason to issue a gag order. We're not about trying this case in the public" or something to that effect?

A I think it was – it was not that. There was a discussion in chambers, generally speaking, which I, frankly, think you prompted about trying this case in the public, I do acknowledge that.

Q And in that meeting, you said, "Judge, there's no need – we don't consent to the gag order, but there's no need for that gag order"; do you recall that?

A I think that's a fair summary of the conversation we had.

Q And then, after that is when the – you agree that after that is when the press release was put out by you and Mr. Baldwin?

A Yes, sir.

Q Okay. The e-mail that Mr. Baldwin sent to Mr. Woodhouse, when did you

find out about that?

A I found out about it on the day that we reported it, which I think was – it was some day in March. I think what I later learned was that it occurred maybe in December and, frankly, I've already forgotten the date on that, but I found out about it in March and then reported it immediately thereafter.

Q And do you know, was the e-mail sent before or after the gag order was put in place by this Court?

A I don't – Mr. McLeland, I really don't know, I'd have to look at the dates.

Q And do you agree that, perhaps not all, but some of the photos that were leaked by Mr. Westerman are photos that the Defense created from discovery provided by the State?

A Well, I don't know exactly what Mr. Westerman did. You know, I wouldn't know Mr. Westerman if he were sitting in this chair next to me; okay? So I don't know what he did.

Q So the answer is –

A I saw – so the answer is no, I don't know.

Q Okay. The photos that you saw today and State's exhibit, some of those, were those created by Defense, specifically the side-by-side photos?

A Those look familiar to me from the deposition of Mr. Holeman from early August, they do look familiar. I mean, of course, they're kind of screenshots of screenshots, so it's kind of hard for me to sit here and say that's exactly the document that we prepared. I'm not trying to get overly technical, but, you know, they might have been reproduced –

Q Okay. So I guess what is your answer? You don't know or –

A I'm not really positive.

Q Okay.

A You know, I don't know.

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

THE COURT: Mr. Hennessy.

MR. HENNESSY: Can I have a minute?

THE COURT: Sure.

MR. HENNESSY: No, no re-direct.

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

THE WITNESS: Thank you.

THE COURT: You may call your next witness.

MR. HENNESSY: I have no other evidence on behalf of Mr. Baldwin and Mr. Rozzi.

THE COURT: Any rebuttal?

MR. MCLELAND: I'm sorry, Judge?

THE COURT: Any rebuttal evidence?

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

THE COURT: Any argument you'd like to make, Mr. McLeland?

MR. MCLELAND: Judge, I'd like to just briefly. I'll try to keep it short.

THE COURT: Sure, go ahead.

MR. MCLELAND: I understand we've taken a lot of the day. But, Judge, this is a unique situation. I can honestly say I've never been in a situation where we've had to handle this kind of issue. From the State's perspective, this started in our first in-chambers meeting back in November of 2022. My

recollection of that is that we had an in-chambers meeting and I had the gag motion in hand and Defense said, "There's no need for that, we're not about trying this in the public", and then, just a few short days later, the press release is issued. The Court issued the gag order in response to that press release. Again, the State's belief is that, from the evidence, that was an attempt by the Defense to again try this in the public and push their narrative of this case out to the public. That, in itself, not a huge deal, Judge. We've addressed that, we've moved on. Then we move on to the e-mail sent by Mr. Baldwin. The State does believe the gag order was in place when the e-mail was sent. The Court can take a look at the documents that we submitted under judicial notice and they show the e-mail was sent in late December after the gag order was sent. I think it's in violation of the gag order, because it disseminates information, specifically witnesses' names and what evidence exists in the case, out to the public. Mr. Baldwin said that he contacted Mr. Woodhouse and had him delete it and didn't come forward and tell the Court until the State found it in March of 2023; and so I think there was a violation of the gag order that both parties failed to report and I think that is something for the Court to consider, as well. And then we get to the most egregious, Judge, in the State's mind is the leak of the photos. We got notice, the State got notice in the beginning of October that there was a leak. We began an investigation. There are several e-mails I submitted to the Court where the Defense says, "The leak's not from us. We've had all our people sign NDAs. We think it's from law enforcement." We start to track down the leak and, as we get closer and closer to the source of the leak, Mr. Baldwin and Mr. Rozzi come forward and say, "We know who the leaker is, we'll tell you, it's Mr. Westerman. He broke into my office and took some pictures and leaked them" –

I think Mr. Hennessy used the word "snookered" – "It wasn't our fault. We didn't know he was doing it. That's where the leak came from." As we continued to investigate, we pulled documents from Fortson's Facebook page. I think it's clear from the Facebook messages that the leak was not just the pictures, it was on-going. Mr. Fortson has information privy to only the Defense, when Mr. Baldwin's coming up to Fort Wayne to drop off exhibits and when he's meeting with Mr. Rozzi, when the information about the Purdue professor came out, information about the girls' cell phones. So all that information shows a continuing leak by the Defense to Mr. Fortson. We don't get to question – we don't get an opportunity to have Mr. Fortson here today because, in the midst of this investigation, he commits suicide. And the information that we have is that at least part of his reasoning is that it was – he was concerned about the investigation and the facts of this case. So we proceed forward with the investigation, we interview Mr. Baldwin and Mr. Rozzi, and Mr. Baldwin changes his story a little bit from what he told the Court and the State on October 10th. He now says Mr. Westerman is a consultant and that he's given him the *Franks* motion, he consulted with him about the Delphi evidence. That's his information that he gives Detective Rector when he interviews him. And so his story's changed a little bit. In the meantime, Mr. Westerman files an affidavit with the Court, and the Court has that. Mr. Rozzi writes a letter to the Court. The Court has that information, as well. And then we get to the search of Mr. Westerman's iCloud account, and we find out that Mr. Baldwin's talking directly to Mr. Westerman and releasing evidence, stuff about the crime scene, what the victims are wearing at the crime scene. And the ironic part is now Mr. Westerman, apparently, has turned into an employee of Mr. Baldwin, 'cause they made the

objection that those messages are now work product.

MR. HENNESSY: Now, I'm gonna object to that. Objections aren't evidence and that's been clear and been the law forever – and my – the fact I objected can't be laid at the feet of Mr. Baldwin, the client. And the objection was work product based upon the mental impressions of Baldwin. It didn't go to the Westerman stuff, so no, that is not making Westerman an employee. I object to the form of argument.

THE COURT: Overruled.

MR. MCLELAND: And so, it seems that Mr. Baldwin wasn't entirely honest with the Court on the October 10th phone call, and it seems, as we've gathered more information and we dig deeper into the investigation, again we show an on-going leak where the evidence only could have come from the Defense, and it shows an on-going leak. And it appears, from Mr. Fortson's message, that the goal of that was to push this narrative out to the community or out to the public to gauge their response. We even heard an attorney testify, he does that with his sisters, so it's not completely outside the realm to think Defense was doing this purposefully and intentionally. And so, Judge, given all those things, we believe the information – the State has proven the information outlined and the contemptuous information has been proven. It's not up to the State to recommend sanctions, in my opinion, that's left to the Court. What the State wants is just to be able to move forward with this trial and make sure that everyone has an equal opportunity at trial, not only Mr. Allen, but also the State. And I guess I'll leave you with this, Judge: If the shoe were on the other foot and I had leaked these photos or a friend of mine had leaked these photos, I can guarantee the Defense would be screaming from the mountaintops, not only to

have me removed from the case, but disbarred. Look at how much they've attacked me personally already in all their filings. And so I don't – I think it would be a totally different story if this was a leak committed by the State. The Defense wants you to believe that, "Oh, it's not a big deal, it wasn't our fault, it doesn't matter." It doesn't matter, Judge. It does. These are intimate photos of crime scene that are leaked to the Internet. And we still don't know if we have them all, we never will. And so, the families have to risk, every day when they get on the Internet, risk opening a page or getting an e-mail from somebody or getting a communication from somebody that has these photos attached, and that's the real damage, Judge. It opened the public, the potential jury pool, and everybody in the community up to evidence that's only presented at trial, and so, for given those reasons, Judge, I think the State's proven that the information in the contemptuous information have been presented to the Court. Thank you.

THE COURT: Mr. Hennessy.

MR. HENNESSY: Well, the hyperbole at the end has no foundation in the evidence. "We don't know if they're still out there, we don't know if we have them, the family has to live in fear", yet Mr. Holeman, Sergeant Holeman, when I'm asking him, "You know there are people reporting that other people have the photographs," but he didn't go investigate them, he didn't go try to get them. So if they're still out there, it's because they didn't do their job to go get them all after a leak that cannot be willful on the part of Mr. Baldwin, and Mr. Rozzi's not even involved with it. The press release – there's a case that says contempt isn't used to correct if you offend the sensibilities of the prosecution or the court. I get what they've said; in their mind, the press release had a legitimate purpose of not trying the case in public. The State did the same thing,

only much longer and much more detailed. They did get tips and it's helped the defense of Mr. Allen. It did not persuade the public, because this case has been on fire from day one, and you've had two camps and they fight each other. They got in a fight out here. And they go back and forth, they speculate, they get leaks for – they make leaks. So no, that did not influence the public. The e-mail to Woodhouse – and I apologize if there's a Mr. Woodson anywhere for continuing to butcher his name – how does that violate the gag order? The gag order says public dissemination. It's an accident. It happens to everybody. And you had three extremely experienced lawyers testified that they did exactly what Mr. Baldwin did. The evidence is, and it's in Sergeant Holeman's report, that within an hour, as soon as he discovered it, he contacted Woodson, told him to delete it. It would never cross my mind to report that to anybody, because I would consider it cured. So one, it wasn't to the public, it wasn't to the media, it wasn't public dissemination, it was a mistake, an accident. With regard to the photos, they kept trying to connect Fortson to Mr. Baldwin. There is no evidence – and my cross examination, I can't remember who it was, might have been Detective Rector, whoever was talking about the Fortson thing, there was only one reference to Andy, and it was not, "I talked to Andy. This is from Baldwin." You do have Andy and the rest of the evidence about Westerman from his two-hour interview and other communications to the police and prosecutor and Court is that Westerman has a law degree, but he is not an attorney. He is considered, by Mr. Baldwin and other lawyers, to be a highly skilled strategist. Many people consult him for trial preparation. It was conceded, I think, and Mr. Rozzi testified that that was a function that was permitted by the gag order. Mr. Fortson is only connected to Westerman, and they should have produced Westerman,

'cause – and Fortson clearly had other sources, so there's no direct connection from Fortson to the Defense, so their whole theory of a continuing leak to the public is not founded. What they were talking about was between Fortson and I want to say Cohen, discussions between them; but everything they pointed to, the *Franks* memo, the – everything referenced in that series that they went through never appeared in the public arena. It was never went on a podcast. That was only some of the photographs that Mr. Westerman took and, again, how can that be willful if you take something from me – you don't – you've got to know something about it for it to be willful, and there's no connection to that, there just isn't. I won't repeat the law on the burden, I would ask that you look at my memorandum that I filed in advance of today. Trial courts don't have jurisdiction to enforce the Rules of Professional Conduct. To the extent any of this would – should receive review upon a complaint to the Disciplinary Commission, that's a separate issue, because this is a criminal contempt proceeding. The Court doesn't have the – trial courts don't have the jurisdiction to do that. And then lastly, I was gonna ask, now that the evidence is all in, if I could do a subsequent memorandum, since you granted specific findings of fact and conclusions of law. I thought, perhaps, we'd have time before you rendered a decision. So if there is time and you're gonna take some time, I would like to do a post-hearing memo. Thank you.

THE COURT: Any final thoughts, Mr. McLeland?

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

THE COURT: So how much time do you want for a post-hearing memorandum?

MR. HENNESSY: I could probably get it done in a week.

THE COURT: And then, will the State ask for time to respond to that?

MR. MCLELAND: Judge, yes, just 'cause I'm not sure what he's gonna put in there, so I better have time to look at it. If I could have a week after that to respond, Judge, that would be sufficient.

THE COURT: So I'll give you, Mr. Hennessy, until March 25th to file a brief. The State would then have until April 1st. And then, the Court would take its 30 days to rule, so that puts the week prior to trial. Is there anything else from the State on the contempt information?

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

THE COURT: Anything else from the Defense?

MR. HENNESSY: No, ma'am.

THE COURT: All right. It's just a little bit over three – three o'clock p.m. I would still like to do the motion to dismiss that was filed by the Defense. Why don't we take a quick break, we've been sitting here for a couple hours.

(THIS CONCLUDES THE PROCEEDINGS AT HEARING ON MOTION FOR CONTEMPT CONDUCTED MARCH 18, 2024, IN THIS CAUSE.)

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| 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 ON**

**MOTION TO DISMISS HELD MARCH 18, 2024**

APPEARANCES

For State of Indiana:
Nicholas C. McLeland/Stacey Diener/
James Luttrell
Carroll County Prosecutors Office
101 West Main Street, Suite 204
Delphi, Indiana 46923

For Defendant:
Bradley A. Rozzi
Hillis, Hillis, Rozzi & Dean
200 Fourth Street
Logansport, Indiana 46947

Andrew J. Baldwin
Baldwin, Perry & Wiley, PC
150 North Main Street
Franklin, Indiana 46131

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

JODIE L. WILLIAMS..... .REPORTER

**PROCEEDINGS**

THE COURT: Before we get started – and, Ms. Diener, I understand you'll be easy handling the State's argument on the motion to dismiss?

ATTORNEY STACEY DIENER: Yes, I will.

THE COURT: Okay. I just wanted to advise counsel that when I granted the Defense request for speedy trial and set the trial as scheduled, I caused the jury office to begin the process to get the jury questionnaires out to everybody, and on March 14th, the questionnaire packets went out in the mail. That was the questionnaire that you all looked at before and submitted with the letter from the Court dated March 11th of 2024, to accompany the questionnaire, and I established the same timeline that we had before. So as soon as the questionnaires come back, I will provide those to counsel on a flash drive. And then I know, before we part company here after the motion to dismiss, there are several motions filed by both sides that we'll need to address before we go off the record. So –

ATTORNEY BRADLEY ROZZI: May I?

THE COURT: Yes.

MR. ROZZI: Judge, with regard to the questionnaires, did the Court include the proposals from both sides or –

THE COURT: Yes.

MR. ROZZI: -- either side? I just didn't understand exactly.

THE COURT: Yes.

MR. ROZZI: You did?

THE COURT: Whatever questionnaire you all approved and submitted back to the Court is the questionnaire –

MR. ROZZI: Okay.

THE COURT: -- that went out.

MR. ROZZI: All right. Very good. Thank you.

THE COURT: I think the only thing that I didn't have from counsel was a list of witnesses, but if you could provide that on the first day of jury – voir dire, we can play that downstairs for them. All right. Mr. Baldwin, you may proceed on your motion to dismiss for destroying exculpatory evidence.

ATTORNEY ANDREW BALDWIN: Thank you. We'd call Todd Click.

(Witness sworn.)

THE COURT: You may proceed.

MR. BALDWIN: Thank you, Judge.

**DIRECT EXAMINATION OF TODD CLICK**

QUESTIONS BY MR. BALDWIN.

Q State your name for the record.

A My name is Todd Click.

Q Spell your name, if you would.

A C-L-I-C-K, first name is Todd, T-O-D-D.

Q What do you do for a living?

A I am currently a parole agent with the State of Indiana.

Q What did you do prior to that?

A I was a police officer with the Rushville Police Department.

Q How long did you do that?

A A little more than 20 years, from February 6th of 2001, and then I retired December 31st of 2021.

Q To get to the heart of this, have you worked on the Delphi case?

A Yes, I have.

Q Can you tell the Judge what kind of work you did on the case.

A I provided investigative assistance to two other detectives, Detective Greg Ferency, who was a Terre Haute police officer with the – and he was also an FBI Joint Terrorism Task Force member, and Detective Kevin Murphy, who was Indiana State Police detective, who was also a FBI Joint Terrorism Task Force member.

Q And what kind of things were you doing in terms of investigative support?

A Conducting interviews and trying to gather evidence.

Q Over the course of how long did you do that?

A Roughly three years. I began providing assistance approximately June of 2018, and ceased when Detective Ferency was shot and killed in the line of duty July 7th of 2021.

Q All right. Can you just give a very general understanding, a little bit more detail than you did, but still general of what kind of things you did.

A Well, in June of 2018, Detective Ferency and Detective Murphy came to Rushville to conduct a interview with a gentleman by the name of Elvis Fields. They asked to use our interview room at the Rushville Police Department. They asked me if I would be willing to operate the equipment for them. They asked me if I was familiar with Elvis Fields, to which I was. They asked if I would kind of watch the interview and kind of give a – my opinion on what –

Q Kind of the hometown opinion of –

A Yeah, yes.

Q Okay. Keep going.

A Okay. So after that, Detective Murphy and Detective Ferency told me that

they were looking at a couple of individuals from the Delphi area.

Q Who were they?

A They were Brad Holder and Patrick Westfall.

Q Okay. Keep going.

A They asked me if I could help maybe try and find a tie between Elvis Fields and Mr. Holder and Mr. Westfall.

Q Okay. So that was one of your kind of things that you did in this course of this investigation?

A That is correct.

Q Were you able to find any ties between Elvis Fields and Brad Holder and Patrick Westfall?

A Yes, I was.

Q What ties did you find?

A While reviewing some photographs on Brad Holder's Facebook page, I located a photograph with the approximately five individuals, they were all wearing Vinlander T-shirts.

Q For those who don't know, what is Vinlander?

A Vinlander is a group that practices Norse and paganism religion, kind of along the Viking culture.

Q Okay. Keep going.

A So in the photos, I identified Brad Holder and Patrick Westfall, and there was a gentleman standing in between the two of them that I immediately recognized to be Johnny Messer.

Q Okay. How do you know Johnny Messer?

A Johnny Messer is from Rushville, he'd been arrested numerous times from

the Rushville Police Department, so I was very familiar with Johnny.

Q Okay. What else, if anything, did you do following the recognition that Johnny Messer from Rushville was hanging out with these two guys from Delphi named Brad Holder and Patrick Westfall?

A Okay. So I knew from previous incidents that Johnny Messer's uncle, Billy Messer, used to live with Elvis Fields.

Q Okay. So that's another connection?

A That is correct.

Q Keep going.

A So I contacted Detective Ferency and Detective Murphy and told them specifically to look at that photo and that the individual standing in between Brad Holder and Patrick Westfall was Johnny Messer, who was an individual from Rushville.

Q Okay. Was there any other – what did you do after that?

A Okay. So after that, I know that Detective Ferency and Detective Murphy came down to Rushville and we had conducted an interview with Johnny Messer.

Q Okay. And then what happened?

A After conducting that interview, we also conducted an interview with Taylor Hornaday, who was an ex-girlfriend of Johnny Messer's.

Q And did she provide any information that was useful in the investigation?

A Yes, she did.

Q Okay. Keep going. What next?

A She was able to provide photographs of Johnny Messer, Patrick Westfall, Brad Holder, several other individuals, that the photographs were taken during club meetings or outings that the Vinlander group conducted.

Q Okay. What did you do then?

A We conducted several other interviews. I had specifically asked Johnny if he had tried to recruit anyone else from the Rushville area to be a part of this Vinlander group. He denied that he did –

MS. DIENER: Judge, I'm gonna object to him reporting on what Johnny Messer may have told him.

THE COURT: Sustained.

MS. DIENER: Johnny Messer is not here to testify.

Q After your interview with Johnny Messer, what then did you do?

A I conducted several interviews of people that I knew were connected to Johnny Messer, and those individuals told me that Johnny had tried to recruit them into the Vinlander group.

Q Okay. So after you learn that Johnny Messer is recruiting people, then what do you do?

A We had also – during our interview with Taylor Hornaday, she had given us a cell phone of hers – well, she had indicated that there was a cell phone of hers that contained recordings of a kidnapping that Johnny was involved in, so we obtained a search warrant to go into that cell phone and conduct a forensic exam to retrieve those recordings.

Q Okay. Was that fruitful?

A There were recordings of Johnny Messer and another individual kidnapping an individual at gunpoint in the Indianapolis area.

Q What did you then do?

A At that point, we tried to identify who the victim of that kidnapping was, but we were unsuccessful.

Q Okay. Keep going. What was kind of the next big thing that you did on this case?

A All right. We conducted some other interviews. We had spoken with Joyce Moffitt, who is Elvis Fields's sister. During that interview, she confirmed that she had heard Elvis make comments about things associated with the crime scene, the murder crime scene of Abby Williams and Liberty German.

Q Okay. What did you do with that information or what did you do next?

A That information was given – of course, myself, Detective Murphy, and Detective Ferency were aware of that information, and I was told by Detective Ferency and Detective Murphy that they were going to try to contact Unified Command to try and obtain a search warrant for the residence of Elvis Fields.

Q Okay. What happened with that?

A We never heard anything.

Q Unified Command never called and said, "Yep, tell us what information and we'll try to get that"?

A Yeah. I – Detective Murphy and Detective Ferency were unable to give me an answer as to whether or not we were authorized to get a search warrant.

Q So Joyce Moffitt, Elvis's sister, says basically he's somehow involved in the crime and you weren't able to secure a search warrant of any type?

A That is correct.

Q Okay. What happened next?

A We conducted several other interviews throughout that timeframe.

Q Okay. Was there any other connection between Elvis Fields and Brad Holder that you know of?

A We were able to connect Elvis Fields to a gentleman by the name of Josh

Crisman. Josh Crisman was originally part of a group called the American Guard. There was a Make America Great Again rally that was held in Indianapolis approximately 2016 I believe, where the American Guard and Vinlanders were together, and after that rally, they had a house party at a gentleman's house by the name of Mickey McGilley.

Q Mickey McGinley?

A McGinley, yes, thank you. He was also – Mr. McGinley was also a Vinlander. He was also friends with a gentleman by the name of Brian James, who was the – I guess the head of the American Guard.

Q Okay.

A So we were able to connect Josh Chrisman, we knew that he was a semi truck driver that conducted deliveries for a company called Flynn Livestock that would transport hogs to different facilities. I know that Wiechman's Pig Farm in Delphi and then the Tyson plant in Logansport that they would make deliveries to. Elvis Fields kind of worked under the table at Flynn Livestock and he would get paid by the drivers to load and unload the semis and he would periodically ride with the drivers to make the deliveries.

Q So Johnny Messer knew – what's this this guy's name? The new guy that you were just talking about?

A Josh Crisman.

Q Josh Crisman. And Josh Crisman knew Elvis Fields?

A Yes, that is correct.

Q Okay. So that's another connection. Were there any other connections to Brad Holder, between Elvis Fields and Brad Holder?

A Between Josh Crisman and Johnny Messer, I don't recall any others.

Q Okay. Do you recall if there were any Facebook photos that you had looked at where Brad Holder was following Elvis Fields or vice versa?

A There were some pictures on Elvis Field's Facebook page and Brad Holder's Facebook page that were very similar in nature.

Q What do you mean by that?

A There was pictures of sticks that were placed in different arrangements. I know that there was a – like a picture of a folding pocket knife that they each had. They each has similar pictures of trees. It was just – the similarities were very odd.

Q Okay. So that could be another connection between Brad Holder and Elvis Fields?

A We believe so, yes.

Q Did Elvis Fields ever admit to anybody else or say anything else that was suspicious or would show that he might have been involved in these murders?

MS. DIENER: Judge, I'm going to object. Their motion is about a missing audio recording of a Brad Holder interview, and I'm not sure what the connection with Elvis Fields or how this is helpful to us with regard to their motion.

THE COURT: How is this relevant to your motion?

MR. BALDWIN: Judge, Mr. McLeland, in his response to our motion, said that – two things: Number one, that the – it's – this – the missing document, the missing video is not either exculpatory or materially useful to the Defense. What I am doing right now is laying down the foundation that, at the end of the road, you will see, yeah, this is actually – it actually would be materially useful to the Defense based upon his investigation, number one.

Number two, you will be finding, in a moment, that – well, Mr. McLeland argued bad faith, you have to prove bad faith. Well, that's difficult to do, and part of what is happening here is you're going to learn that Mr. Click – that the law enforcement working on this case operated in bad faith in that they refused to investigate – they tried to – in conjunction with other evidence that I will be talking about –

THE COURT: Okay. So we're gonna get to this evidence, then?

MR. BALDWIN: Yes.

THE COURT: Is that what you're telling me?

MR. BALDWIN: Yes.

THE COURT: Then, let's get to that evidence –

MR. BALDWIN: Yes.

THE COURT: -- shall we?

MR BALDWIN: I mean, it may not be through this witness, it may be through others.

THE COURT: Well, let's get to it then, sir.

MR. BALDWIN: Okay.

Q Did Elvis Fields make any admissions that you know of about being involved in the crime?

MS. DIENER: Objection. I would ask that those be admissions made to him.

THE COURT: Sustained.

MR. BALDWIN: Judge, hearsay – there's a hearsay exception against interest, and that's – if somebody says that, "I was involved in a crime," that would be against their interest.

THE COURT: To whom?

MR. BALDWIN: It'd be against their own interest. "I killed somebody," that would be – that's not hearsay, that's an exception to the hearsay.

THE COURT: The objection was that it wasn't to this gentleman here.

MR. BALDWIN: Oh.

THE COURT: That's what I sustained.

Q Did – did Elvis – did you ever hear Elvis Fields say anything where he was involved in this crime, as part of your investigation?

A Elvis did not say anything to me directly, no.

Q Did he say anything to Kevin Murphy?

A There was – back in February of 2018, I believe Jerry Holeman and Kevin Murphy interviewed Elvis Fields at the Rushville Police Department, and when Detective Murphy took Elvis back to his trailer, Elvis approached Detective Murphy and said, "Hey, if my spit is found on those girls and I've got a reason for why it's there, I'll be okay; correct?"

Q Okay. After that type of information, do you know if that was relayed – was that part of what information, if you know, was relayed to the United – Unified Command here to try to see if they'd be willing to get a search warrant for Elvis Fields's house?

A Yes. And that was – if I recall, that was part of the – well, there were some statements that Elvis had made to his sister that initially prompted the investigation into Elvis Fields.

Q Okay. And was that Joyce Moffitt or somebody else?

A That was a different sister.

Q Okay. What did that part of your investigation reveal?

A Elvis had made some statements to his sister Mary Abrams, I don't recall exactly all of the words that he used, but he had told Mary that he was gonna go away for a while, he had done something bad to some girls, he was on a high bridge, that they had placed sticks in one of the girl's hair to represent antlers, that he had – he was in a gang and that he had a brother now.

Q He had a what now?

MS. DIENER: Judge, I'd like to renew the objection. It's not bringing us back to Brad Holder.

THE COURT: We're kind of wandering far afield here. You said you'd get to the evidence, let's get there.

Q Okay. After Richard – well, just – let's just – how much stuff was out there, in your opinion, that would cause a good investigator to think Elvis Fields and Brad Holder were somehow connected to these murders?

A It was the belief of Detective Murphy, Detective Ferency, and I that there was a strong likelihood that there was – that Brad Holder, Patrick Westfall, and Elvis Fields had a strong involvement in the murders of the girls.

Q Okay. So how did this investigation on your end wind down?

A The – my investigation came to an end when Detective Ferency was shot and killed in the line of duty.

Q And then, what happened after that? What do you do then, if anything, on the Delphi case?

A I did absolutely –

MS. DIENER: Judge, may I object again and be more specific in my

objection. We're talking about a recording of Brad Holder in – on February 17th of 2017. All of this is years later. And they have to show how we would know that this evidence is exculpatory in 2017, when the recording goes missing, in order to meet the threshold for materially exculpatory. We're not getting there, and it doesn't seem to be going that direction, and it's irrelevant to what was known in 2017, when the recording went missing.

MR. BALDWIN: Again, Judge, Mr. McLeland responded to my motion, citing case law that says, number one, you have to show that it – as Ms. Diener just said, that it's either exculpatory or the other word was "materially useful to the Defense". This is all foundational for what now I'm about to get into, which is what happened after he was done, what was done or what wasn't done. Bad faith, very difficult to prove, and that's what we're – we're gonna be venturing into that territory; but also, it's going to show that what could have been or would have been on those missing videos would have been certainly, certainly useful to the Defense, materially useful, and/or exculpatory, and that's for the Court to decide.

THE COURT: I'd have to sustain the objection.

Q Did you have a chance – well, next, what did you then – what was the next time you did anything on the Delphi case?

A I did nothing further after Detective Ferency was shot and killed.

Q After Richard Allen was arrested, what, if anything, did you do?

A I eventually contacted a friend of mine, who was a former prosecutor, and was a criminal defense attorney.

Q Why did you do that?

A After Richard Allen was arrested, I was initially kind of shocked and

confused. I read the affidavit, the probable cause affidavit for the arrest, and I felt like the investigative information that Detective Ferency, Detective Murphy, and I had compiled was more compelling than what was contained within the probable cause affidavit for Richard Allen's arrest.

Q So what did you do based upon that thought?

A Well, I wasn't sure exactly what to do, so I reached out to a friend of mine, who is a former prosecutor and was a defense attorney for advice on what I should do.

Q And what did you do after talking with him?

A We decided that we would draft a letter to Mr. McLeland's office and that's what we did.

Q Okay. I'm handing you what's been marked now as Defendant's Exhibit A; if I could get you to review that for me and, when you're done, let me know.

A Yes. This is part of the letter that was submitted to Mr. McLeland's office.

Q Okay. And that was sent by certified mail?

A Yes, sir, it was.

Q What date?

A It would have been sent in the mail on April 28th of 2023.

Q Who did you send it to?

A Mr. McLeland's office.

Q What was your reasoning for writing this letter?

A Just to make sure that he was aware of the investigative work that Detective Murphy and Detective Ferency and I had conducted.

Q Would you also say you're –

MR. BALDWIN: Well, I'll move to admit Defendant' s Exhibit A.

**DEFENDANT'S EXHIBIT A OFFERED**

MS. DIENER: Judge, this letter refers to his report and it is a letter from 2023, and he indicated that he began his participation in June of 2018, and the rules regarding – the case law regarding a motion to dismiss for destruction of exculpatory evidence, or even, in the alternative, if it's potentially useful, determining whether the State acted in bad faith has to do with what was known at the time of the particular item of evidence being missing, lost, or destroyed. This is far beyond that time period and our argument is that it's not relevant for purposes of this hearing.

THE COURT: Any response?

MR. BALDWIN: If you're hiding evidence back in 2017, it might be something that you would do in 2023, and that's where this is headed, so –

MS. DIENER: There's been no testimony of hidden evidence, Judge.

MR. BALDWIN: Well, we're about to get into that.

THE COURT: You keep telling me we're about to get into that, sir, and –

MR. BALDWIN: It takes time, Judge, I'm sorry. I will –

THE COURT: I'll show Defendant's A admitted over objection. I think the objection goes to the weight I will give this particular exhibit, rather than its admissibility.

**DEFENDANT'S EXHIBIT A ADMITTED**

MR. BALDWIN: Thank you, Judge.

Q In this document, you say, "I want to write to ensure you've been provided all of the information associated with the investigative efforts for your use in this case and for disclosure to opposing counsel, as provided by law"; is that right?

A That is correct.

Q Why'd you do that?

A Per the advice of my attorney, any information that was presented to the Prosecutor's Office should also be discoverable to any defense counsel.

Q Okay. Is that all that you provided in the letter, the certified mailing, that you sent to Nick McLeland?

A There was also a brief summary of our investigative product.

Q I'm gonna hand you what's now being marked as Defendant's Exhibit B and ask you to review that. Tell me when you're ready.

A Yes. This is the investigative summary that was included with the letter to Mr. McLeland's office.

Q Pretty much much or, if not all, of what you have already previously testified to is contained in Exhibit B?

A For the most part, yes.

MR. BALDWIN: Okay. Move to admit Exhibit B.

**DEFENDANT'S EXHIBIT B OFFERED**

MS. DIENER: State objects for the same reason: It's outside the scope of what's relevant to the evaluation of a missing recording from February 17 – 2017, discovered missing that same year.

THE COURT: I'll show B is admitted over objection. Again, it's the weight, rather than admissibility.

**DEFENDANT'S EXHIBIT B ADMITTED**

Q So that was April the 29th that you sent this document, detailing much of what your investigation involving Brad Holder, Patrick Westfall, and Elvis Fields; is that correct?

A That is correct.
Q So did you hear from Nick McLeland on – at any time during May of 2023?
A No, I did not.
Q What about June of 2023? Did you hear from Nick McLeland at any time?
A No, I did not.
Q What about July of 2023? Did you hear from Mr. McLeland then?
A No, I did not.
Q What about August of 2023? Did you hear from Mr. McLeland then?
A I was contacted by Mr. Mullins of Mr. McLeland's office and it was mid-August, I believe, of 2023.
Q Tell me about that.
A He wanted to set up a meeting with me and Detective Holeman and asked that I provide all of my investigative materials, which would include police reports, audio/video recordings of interviews, and then they told me that they would sit down with me to go over some of the evidence that they had against Mr. Allen to try and put my mind at ease.
Q Put your mind at ease?
A That is correct.
Q I want to talk about some – so like videotapes of who? Who did you – well, strike that. Did you do that when you arrived?
A Yes, I did.
Q Okay. Did Mr. McLeland ask you, in May – well, or anybody from law enforcement ask you to bring any of those items in May of 2023?
A No, sir.
Q Did they – anybody in law enforcement or in Mr. McLeland's office ask you

to bring any of those pieces of evidence, videos of Elvis Fields and others, in June of 2023?

A No, sir.

Q July of 2023?

A No, sir.

Q Okay. But it was in August of 2023?

A Yes.

Q All right. So then what did you do?

A I went to the Indiana State Police Post and met with the detectives, Mr. Holeman and Mr. Vido [phonetic], I believe.

Q What happened there?

A I provided them with everything that I had. I provided them with a thumb drive that contained all of the interviews that was conducted. I believe there was some cell phone extraction data that was included in that, like my audio and video interviews, and then I sat down with Detective Vido [phonetic] for approximately an hour or so and just kind of gave a brief summary of the investigative work that Detective Ferency, Detective Murphy, and I had completed.

Q Did they seem interested in your investigative efforts?

A In my opinion, no.

Q Well, you said you were there because you were – how is it that you phrased it? – you were concerned?

A They – part of it was they were going to show me evidence against Mr. Allen to help put my mind at ease.

Q Did they do that?

A No, sir.

Q After this meeting with Vido and Holeman and whoever else you said, what then happened?

A I left the State Police Post. As I was walking out, I noticed Brad Holder sitting in the front lobby. I went out – on out to my car and drove back to Rushville.

Q After you drove back to Rushville, what – how often, if ever, did anybody from law enforcement contact you about what you had just provided them?

A I was never contacted.

Q Did you ever contact them?

A I contacted them – I contacted Detective Holeman and –

Q Why did you do that?

A Shortly after the *Franks* memorandum had been released, I was contacted by a friend of mine that stated a female by the name of Alycia Cole, who was – had had a child with Johnny Messer, had a cell phone of Johnny's that she believed I might be interested in.

Q Were you aware during your – the course of your investigation, before you kind of got off the investigation, of a phone that you would have liked to have had?

A Yes. We searched for several cell phones belonging to Johnny Messer that Johnny would have been using during the time that Abby and Libby would have been killed. We actually referred to that cell phone as the Goldilocks cell phone. We believed that there might have been information contained on that cell phone.

Q Okay. So what did you do once you heard that somebody had contacted you about a cell phone that belonged to Johnny Messer – did you say in 2017?

A That is correct.

Q What did you then do?

MS. DIENER: Judge, may I renew my objection unless this Johnny Messer cell phone relates somehow to Brad Holder.

THE COURT: Yeah –

MR. BALDWIN: It does.

THE COURT: -- sustained.

Q Did you cont –

MR. BALDWIN: I don't know where I can go, Judge. I mean –

Q Did you contact anyone about this phone to go – from the law enforcement side to go pick up this phone with evidence that you thought might be on there from 2017?

A I contacted Detective Holeman.

Q Okay. And what happened?

A I checked with Alycia Cole – when I spoke with Detective Holeman, I explained to him the significance that we felt the cell phone provided. Detective Holeman said that he would make arrangements to obtain that cell phone. I contacted Alycia Cole and told her that a Detective Holeman from the State Police would be contacting her to retrieve that cell phone. After approximately two weeks, I contacted Alycia, just to make sure that that cell phone had been recovered by the State Police and it had not been.

Q And then what happened?

A At that time, I contacted Brian Alvey, who's an investigator for the – your criminal defense team, advised him of the cell phone, and he went and retrieved the cell phone.

Q Are you familiar with Cellebrite and how, once the – tell the Judge what Cellebrite is and what you know – how you know how to use it.

A Cellebrite is a program that law enforcement uses to extract data from electronic devices. You can – for a cell phone, example, you can recover data that is currently on the cell phone and you can recover data that has been deleted from the cell phone.

Q Okay. Have you had a chance to look at the results of a phone dump from 2023?

A I briefly looked at it, yes.

Q Okay. I want to hand you what's marked as Defendant's Exhibit C or should be. Are you familiar with this thumb drive?

A Yes, I am.

Q Okay. What is that?

A This is the thumb drive that contains the extracted data from Patrick Westfall's cell phone.

Q How much data was on there, in terms of the dates? From what date to what date?

A There wasn't –

MS. DIENER: Judge, may I interrupt with a preliminary question?

THE COURT: Yes.

MS. DIENER: Did you already testify as to where the Westfall phone dump came from?

A No, I did not testify to that.

MS. DIENER: I would object on foundation.

THE COURT: Foundation?

Q Where did you get the phone dump information from?
A From you, sir.
Q Okay. What – I asked you to review that for me?
A That is correct.
MS. DIENER: Do you have specialized training in Cellebrite?
A I have not been trained on the Cellebrite program; however, I'm very familiar with the reports that are generated from the cell phone extractions.
MS. DIENER: But you're not trained?
A I have not been trained by the Cellebrite company, no.
MS. DIENER: And when you were a law enforcement officer, did you have access to Cellebrite equipment in order to operate that and to complete examinations with regard to a Cellebrite dump?
A When I was a detective, I was an investigator for the Indiana State Police Crimes Against Children Task Force. Any cell phone that we had that we were going to do a forensic examination on, we would take to the Indiana State Police Cybercrimes Unit, they were – they would extract that data and then they would provide me with the data that was extracted.
MS. DIENER: No other questions.
Q And, sir, that phone dump that you looked at today, that's what you have seen in other cases, that's the extraction?
A That is correct.
Q What dates did Patrick Westfall, on his phone, have for that extraction?
A The first date of significant extracted detail that I saw was on August 12th of 2023.
Q What about the last date?

A I did not review that.

Q Okay. Did you see anything in July of 2023, texts, e-mails, photographs, anything like that?

A No, I did not.

Q What about – let's go back to April, anything in April?

A No, sir.

Q Anything in January?

THE COURT: Excuse me, would counsel approach, please.

(Sidebar conference conducted.)

THE COURT: None of this is in your motion, not one shred of this is in your motion. Your motion deals with a document dated February 17th, 2017, it is an FBI report of Brad Holder, and on the same day – strike that, February 19th, the interview of Patrick Westfall. That is what you have complained about in your motion.

MR. BALDWIN: Right.

THE COURT: None of this is in your motion.

MR. BALDWIN: This is the evidence to support the motion and to counteract Mr. McLeland's argument that there's bad – there's not bad faith and that this is –

THE COURT: This is very specific, Mr. Baldwin. You did not incorporate any of this information in your motion to dismiss.

MS. DIENER: May I speak to our response?

THE COURT: Sure.

MS. DIENER: Our response about bad faith, we don't even get to bad faith unless they show that it's exculpatory, and then, in the alternative,

that it's potentially useful. We haven't even gotten to potentially useful for the recording that's missing of Brad Holder. So our response about bad faith is after we get through whether we're in the category of materially exculpatory, which is the heading of their motion, or potentially useful, and we aren't at either one.

MR. BALDWIN: What you would learn, Judge, is that Patrick Westfall, his phone – he brought his phone in to the police at their request, and the phone that he brought to them only had four days – knowing that he was going there, that he brought a phone with no data on it predating when he knew he was going in there; i.e., it's either scrubbed or he brought in a new phone. And that goes toward, Judge, showing that he had a predisposition or a – he was trying to hide evidence; and when he's trying to hide evidence, that then goes toward, "Well, if he was trying to hide evidence in 2023, what was he doing back in 2017?"

THE COURT: Then, perhaps, you should have pled that, because you did not plead that in this particular motion that I am holding in my hand.

MS. DIENER: And if I may say, Judge, the content of the motion with regard to Patrick Westfall says that they have been given a narrative and there is no recording and they are speculating as to whether we're not telling the truth about whether there's a recording, so I have a witness here to testify to that effect. So our preparation has been for the allegation of a dismissal based on destruction of exculpatory evidence, it is specific to a recording of Brad Holder on February 17 of '17 that was discovered missing or lost in August of '17. That's their time window.

THE COURT: And I've given you a lot of leeway. None of this – none of this testimony, very little of this testimony, deals with your motion to dismiss

for destroying exculpatory evidence as you pled. You can stand there and tell me all you want, but this is what you pled, and I'm not hearing any evidence about that.

MR. BALDWIN: In order to win on that, we don't – this is – we don't have to plead everything that's going to happen in a trial. I mean, the –

THE COURT: No, but you do in a motion to dismiss. You have to put the other party on notice, which you did, and they filed a particularized response to it.

MR. BALDWIN: I – well, if you're not going to allow me to do it, I can do an offer to prove and we can move this hearing along a little bit more quickly.

THE COURT: You can do an offer to prove, that's fine, yes.

MR. BALDWIN: As it relates to Patrick Westfall and his phone.

MS. DIENER: The missing –

THE COURT: As it relates to –

MS. DIENER: To Brad Holder.

THE COURT: -- what you have in your pleading.

MS. DIENER: Brad Holder is the missing interview, that's what's destroyed.

MR. BALDWIN: Well, Patrick Westfall, too.

MS. DIENER: No, he does not have a recording. This is about a lost recording. You've been given the narrative of Patrick Westfall. There is no recording.

MR. BALDWIN: That's the point.

MS. DIENER: You're alleging –

MR. BALDWIN: That's the point, there's not a recording.

ATTORNEY JAMES LUTTRELL: That's not destruction of evidence.

MS. DIENER: Your dismissal's based on destruction of evidence.

MR. BALDWIN: Yeah. All right.

THE COURT: So let's get to that.

MR. BALDWIN: Okay.

THE COURT: And if you want to do an offer to prove, do an offer to prove.

(Sidebar conference concluded.)

MR. BALDWIN: I'll do an offer to prove.

Q All right, let's move on to Brad Holder. You said you saw Brad Holder outside the interview room – correct? – when you left.

A I saw him in the lobby of the State Police Post.

Q What kind of questions do you – would you expect State Police to be asking Brad Holder in an interview, as an investigator?

MS. DIENER: Objection, Judge: Speculation.

THE COURT: Sustained.

Q I'm handing you what's been – going to be marked as Defendant's Exhibit D; can you identify that for me, please.

A Yes, this is a thumb drive that contains the audio recording of an interview conducted with Brad Holder.

Q And did you get a chance to review that?

A Yes, I did.

MR. BALDWIN: Move to admit Defendant's Exhibit D.

**DEFENDANT'S EXHIBIT D OFFERED**

MS. DIENER: I have a couple more questions, Judge. Mr. Click, what date is this interview from?

A August 30th of 2023.

MS. DIENER: State would object based on relevance with regard to a missing recording from 2017, which is the subject of this motion.

MR. BALDWIN: This is a Brad Holder interview, Judge, that van be compared to the transcripts that are memorialized – one page, a hundred words or something like that, memorization of the 2017 missing videotape, so I think that that's certainly appropriate and relevant.

MS. DIENER: Judge – I'm sorry, can you restate how that's relevant? I'm missing the connection.

MR. BALDWIN: Well, there's a missing video in 2017, and then the State followed up with an interview in 2023; and what's contained in here, which, if anything is different that's in here versus over in 2017, that would show that the missing evidence has value, so that's the relevance.

MS. DIENER: Judge, the evaluation of the value of the missing evidence, again the case law, which I'm sure the Court's well familiar with, that is cited in both the Defense's motion and the State's response, makes it very clear that with regard to missing evidence, the evaluation is specific to the time during which the evidence went missing. That's in 2017. This interview in 2023 is not relevant to that timeframe. Again, we're way beyond what the law requires for a motion to dismiss for destruction of exculpatory evidence.

THE COURT: Your objection is well founded. I will show it and not admit D.

MR. BALDWIN: Judge, if what's contained in the memorialized

transcript or report from 2017 has different information than what is contained in the 2023 interview, how can that – I don't understand how that can not be relevant.

THE COURT: Based on your pleading, sir, it is not relevant.

MR. BALDWIN: I will offer to prove, then, if that's okay. I will summarily detail what Mr. Click would have testified to and what the exhibit would show. Is that okay, Judge?

THE COURT: Yes, make an offer to prove.

MR. BALDWIN: Thank you. What you would learn from Mr. Click and his review of this document or this exhibit that Brad West – the 2023 videotaped interview, as well as the videotaped interview itself, is this: Brad Holder was never asked a single question about Elvis Fields; Brad Holder was never asked a single question about Johnny Messer; Brad Holder was never asked a single question about what he – what his ex-wife, Amber Holder, said that Brad Holder confessed that Patrick Westfall was involved in the case and was involved in the murders, that Brad Holder was scared of Patrick Westfall. All of that would be missing. Also, you would find out that in the 2023 interview, Brad Holder claims that he met Abby one time, but in 2017 memorialized paper, he never met her. All of that.

MS. DIENER: Judge, I renew my objection. The statements made by counsel with regard to Brad Holder not being questioned about Fields, Messer, or the ex-wife is all conjecture as to whether that information was even helpful to police. Again, these people are not on the inside of this investigation and they're making an evaluation from the outside and then transposing what Mr. Click knows from reviewing interviews that have been provided in Defense or

through his own investigation and its relevance as to what the law enforcement agencies knew in 2017 with regard to the interview of Brad Holder on February 17th of 2017, and the time period between then and when the interview recording was lost. It's a very specific timeframe. It's their motion. I don't understand why we're so far beyond it –

MR. BALDWIN: Judge –

MS. DIENER: -- but I'd appreciate your consideration.

MR. BALDWIN: Part of the evidence is also we did not receive any of those videos for ten months after they were owed us; three months, almost four months, after Mr. McLeland and his office was provided this documentation from Mr. Click, telling him, "We have all this evidence of other suspects." I think it's all relevant, but I will move on.

THE COURT: Please do.

MR. BALDWIN: Actually, that's all the questions I have.

THE COURT: Any cross?

**CROSS EXAMINATION OF TODD CLICK**

QUESTIONS BY MS. DIENER.

Q Mr. Click, in 2023, you were no longer with law enforcement?

A That is correct.

Q And you wrote a letter to the prosecutor about this investigation that you knew had been going on since 2017?

A That is correct.

Q And you actually participated it – in it at the request of – you described it being Ferency and Murphy; is that correct?

A That is correct.

Q And so if you prepared investigative materials and collected evidence and they were your connection to this investigation, why would they not have been given all of your information so that it was forwarded on to the Unified Command?

A They were provided with everything that was completed.

Q Why didn't you do that?

A No, I did provide them with that information.

Q You gave it to Ferency and Murphy?

A Ferency and Murphy, yes.

Q Okay. So as long as Ferency and Murphy passed it along, 'cause you guys were all working together, there'd be no reason to think they didn't have it; correct?

A That is correct.

Q You make statements about Mr. Holder and Mr. Westfall wearing Vinlander t-shirts; does that mean something? Why do you know it's a Vinlander t-shirt?

A Because the t-shirt said "Vinlander" across the chest.

Q You said you've know Elvis Fields for a long time?

A Yes, I have.

Q He's a local in your area?

A Yes, he is.

Q What's the mental capacity of Mr. Fields?

A I know he did not complete high school. He has –

Q Does he have diminished mental capacity?

A That I do not know.

Q Have you had contact with him?

A Yes, I have.

Q Often?

A Yes, I have. I know he's not a very smart individual. As far as if he's been diagnosed with any type of intellectual disability or anything like that, I'm not aware.

MS. DIENER: No other questions.

THE COURT: Mr. Baldwin.

**RE-DIRECT EXAMINATION OF TODD CLICK**

QUESTIONS BY MR. BALDWIN.

Q Did you ever run into anybody, in your time as a detective, that had low mental capacity that committed crimes?

A Yes, sir.

Q Serious crimes?

A Yes, sir.

MR. BALDWIN: Thank you. I did want to supplement my previous offer to prove with – Judge, if I may, and then I'll be done with him.

THE COURT: Go ahead.

MR. BALDWIN: Also, you would find that on this videotaped interview of Brad Holder, he is not asked about why he and Patrick Westfall were no longer friends, as described by Amber Holder, who said that it had something to do with a ritual gone bad in a forest – in a forest by a river. With that, I am done with this witness.

MS. DIENER: Again, the State would object that it was not known to law enforcement at the time that the video went missing and that's the reason

that we're here.

THE COURT: And your objection is well-noted. You may step down, sir.

THE WITNESS: Thank you.

THE COURT: Would you give that exhibit to the court reporter, please.

THE WITNESS: I'm free to go, Your Honor?

THE COURT: I didn't subpoena you.

THE WITNESS: Okay.

I THE COURT: He's asking if he's released and –

MR. BALDWIN: He's released from the Defense.

THE WITNESS: Okay.

MR. BALDWIN: Call Amber Holder.

(Witness sworn.)

**DIRECT EXAMINATION OF AMBER HOLDER**

QUESTIONS BY MR. BALDWIN.

Q State your name for the record, please.

A Amber Holder.

Q How old are you, Amber?

A I am 33.

Q Okay. What do you do for a living?

A I'm a manager at Public Storage, I work 11 properties.

Q You work 11 properties doing what?

A I clean the inside of the properties and the outside and help customers.

Q Okay. How long you been doing that?

A Maybe a year and three months.

Q Okay. I'll get right to this. Have you ever talked to the police about the murders in Delphi?

A Yes.

Q How many times?

A Twice.

Q Okay. Let's talk about the first time you talked to the police. You remember where that happened?

A Yes. At my grandmother's.

Q Okay. How long was that, the whole interview?

A Maybe an hour.

Q What did you talk about?

MS. DIENER: Objection. Judge, I would ask that he establish the date of this to determine relevance to this motion.

Q Was the –

THE COURT: Yeah. When was it?

Q When was it?

A I'm not sure. I'm not good with dates.

Q Was it after the girls were murdered?

A Yes.

Q They were investigating the murders?

A Yes.

Q Okay.

MS. DIENER: I renew my objection. It still needs to be within 2017, before the videos were – the video was missing.