

STATE OF INDIANA)
)SS:
COUNTY OF CARROLL)
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STATE OF INDIANA)
)
 v.)
)
RICHARD ALLEN)

IN THE CARROLL CIRCUIT COURT 1
CAUSE NO.08C01-2210-MR-000001

**MOTION FOR COURT TO CERTIFY COURT ORDERS FOR
INTERLOCUTORY APPEAL PURSUANT TO APPELLATE RULE 14 and
REQUEST TO RULE EXPIDTIOUSLY ON SAID MOTION**

Comes now the accused, Richard Allen, by and through counsel and moves this Court to certify the September 4, 2024, court order (granting the State’s motion that prevents the defense from presenting certain evidence) and the August 28, 2024, order (denying the defense’s motion to suppress certain statements made by Richard Allen) for interlocutory appeal pursuant to Indiana Rule of Appellate Procedure 14. Furthermore, the defense would request this Court to rule expeditiously based upon the October 14 trial date. In support of said motion, Allen states the following:

1. The Indiana Supreme Court has recognized that orders in limine have historically been eligible for interlocutory review. (“Orders in limine are eligible for discretionary interlocutory appeal.”) *Means, II v. State*, 201 N.E.3rd 1158, 1165 (2023) (“*Orders in limine are eligible for appellate review under Appellate Rule 14(B) to the same extent, and with the same*

prerequisites – trial court certification and Court of Appeals acceptance – as any other interlocutory order. The tentative nature of orders in limine does not result in the categorical exclusion of those orders from discretionary interlocutory review, which is why our appellate courts have long reviewed orders in limine through interlocutory appeals). Id. at 1167.

2. In the past, interlocutory appeals concerning motions in limine have also been allowed to the benefit of the prosecution. *See State v. Harold Lewis*, 883 N.E.2d 847 (Ind.Ct.App.2008). (*After the trial court granted the defendant’s motion in limine, the State of Indiana received an order in limine preventing the prosecution from presenting certain evidence. The trial court then certified the order for interlocutory appeal and the Court of Appeals then accepted the order for interlocutory review, ultimately reversing the trial court’s ruling*).
3. The denials of Motions to suppress are also eligible for interlocutory appellate review. *See Kelley v. State*, 825 N.E.2d 420, 424 (Ind. Ct. App. 2005). (*Direct review of the denial of a motion to suppress is only proper when the defendant files an interlocutory appeal*).
4. The defense contends that the Court’s September 4, 2024, order denied Richard Allen’s right to present a defense in violation of the 6th Amendment to the United States Constitution.

5. Furthermore, the defense contends that the Court's September 4, 2024, order denied Richard Allen his constitutional rights of the following provisions of the Indiana Constitution:

a. **Section 12.** All courts shall be open; and every person, for injury done to him in his person, property, or reputation, shall have remedy by due course of law. Justice shall be administered freely, and without purchase; completely, and without denial; speedily, and without delay.

b. **Section 13 (a)** In all criminal prosecutions, the accused shall have the right to a public trial, by an impartial jury, in the county in which the offense shall have been committed; to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process for obtaining witnesses in his favor.

c. **Section 19.** In all criminal cases whatever, the jury shall have the right to determine the law and the facts.

6. Furthermore, as to the alleged confessions of Defendant Allen, the defense contends that the Court's August 28, 2024, order denied Defendant Allen of his 5th, 6th, and 14th Amendment rights under the U.S. Constitution, as well as his constitutional rights under Article I (Section 12, 13, and 14) of the Indiana Constitution.

7. If this Court has erred and the determination of the error is withheld until after judgment, then the appellant, victim's families and citizens of Carroll County will suffer substantial expense and damage as follows:

a. Richard Allen will suffer continued incarceration while awaiting the ruling from the Court of Appeals.

- b. If Richard Allen is convicted without interlocutory appeal then he, as well as the families of the victims, would first suffer through the anticipation of a ruling from the Court of Appeals or Supreme Court on these critical issues and then whether a reversal will result in a second lengthy trial. If the appeal in regular course (not interlocutory) results in a reversal then Richard Allen and the victims' families will have to endure a second lengthy trial.
- c. Also, the taxpayers of Carroll County will suffer substantial cost, perhaps in the millions of dollars between appellate costs, attorney's fees, expert costs, and costs for security in two different counties based upon a second trial, as well as time of all the parties involved, including the trial judge, prosecutors, defense attorneys, law enforcement, family members of the victims and others who will all sit through a second lengthy trial. Additional costs associated with sequestering a jury during a second trial would also be significant in both expense and time.
- d. Moreover, the prosecution of Defendant Allen has brought about world-wide attention in nearly every form of media coverage as well as extensive coverage by various social media platforms. The disclosure of facts and information, including many facts unknown to the public even to this day, at a jury trial will result in the consumption of this information by these reporting sources. The

dissemination of this information to the public, which will undoubtedly occur, will make it more difficult for Defendant Allen to find unbiased jurors in the event of a re-trial.

- e. Defendant Allen's detention circumstances are unlike any other pre-trial detainee, perhaps, in the history of this State. He has been, and continues to be, isolated from any sense of normal contact with the outside world with the exception of his ability to make monitored phone calls to his family. This has been the case for nearly two years. To the extent a re-trial would occur, Defendant Allen's detention circumstances would place further burdens on him and the facility in which he is housed. This workload would be compounded and would likely require months and months to organize, review, and prepare for a second trial.
- f. The voluminous discovery offered by the State, deposition transcripts resulting from discovery conducted by the Defense, and mounting number of transcripts stemming from the pre-trial hearings have resulted in a monumental amount of trial preparation for both the State and Defense.
- g. If a second trial were to occur, the compounding of discovery, transcripts, and other related materials stemming from this case, would place extraordinary burdens on the State, Defense, Victims' families, Defendant and Defendant's family, not to mention the

Judge and Court Staff members in both Allen County and Carroll County. Law enforcement officers from the various investigating agencies would be required to continue to exhaust their time and resources, even beyond the seven years that has already passed since the crimes were committed. And finally, the additional expenses to be borne by the taxpayers of Carroll County would continue to mount. It is for these reasons that an interlocutory appeal addressing the issues of Defendant Allen's pre-trial detention and incriminating statements, allegedly made by him thereafter, is appropriate.

- h. Additionally, should this Court not allow these issues to be heard by the Court of Appeals in an interlocutory fashion, then during the jury trial (set to begin October 14, 2024) the jury will be sitting for hours, or perhaps even days, while the defense presents its evidence in an offer of proof. Whereas should the Court of Appeals find that the trial court was in error, then the jury will not be forced to wait outside the courtroom or in their hotel rooms for hours or even days while the defense presents its offer of proof. The trial will run more efficiently and at less expense should these issues be resolved by the Court of Appeals before any trial takes place.

8. This Court's August 28th, 2024, Order and September 4th, 2024, Order both involve substantial questions of law, and the early determination of those issues will promote a more orderly disposition of the case, to wit:

The September 4, 2024, order denies Richard Allen the ability to present a defense, violating both state and federal constitutions

9. On September 18, 2023, the defense filed its first Franks notice at which time the defense revealed in great detail its defense that Odinism/Norse Paganism explained the unusual nature of the crime scene and furthermore identified particular suspects who were tied to the victims and/or tied to the crime scene.

10. The September 18, 2023 Franks notice was very transparent and left no doubt that the defense would be claiming that: (a) Odinism/Norse Paganists were involved in the murders of the victims; (b) law enforcement began investigating the links between the crime scene and Odinism/Norse Paganism within 3 days of the murders; (c) that law enforcement began investigating Brad Holder and Patrick Westfall as suspects within 3 days of the murders; (d) that at least 3 law enforcement officers continued to investigate into the Odinist/Norse Paganist ties to the murders and particularly ties between Brad Holder, Patrick Westfall and certain men in Rushville Indiana to the murders; (e) that Richard Allen had no connection to Odinism/Norse Paganism and therefore could not have left signatures of Norse Paganism at the crime scene.

11. In spite of the prosecutor knowing defendant Allen's third-party defense on September 18, 2023, the prosecution waited over seven months before filing its motion in limine on April 29, 2024. The prosecution's motion was filed fifteen days from the May 14, 2024, trial setting. On April 29, 2024, the prosecution filed its motion in limine requesting in paragraph 7a and 7b that the Court prevent the defense from presenting evidence that explains the defense's belief of what the crime scene shows (i.e. that certain signatures the killers left at the crime scene revealed that a ritualistic killing occurred at the hand of Norse Paganists/Odinists). Because Richard Allen has no ties to Norse Paganism, nor Odinism, the evidence the State of Indiana sought excluded would prevent Richard Allen from arguing that Richard Allen did not commit the murders as he knows nothing about Norse Paganism and therefore would have had no motive nor knowledge to leave signatures of Norse Paganism behind. On August 1, 2024, the defense presented evidence through expert witness Dawn Perlmutter that the crime scene was a "text book" ritualistic killing. This opinion was offered from an expert who literally wrote the book on analyzing a crime scene for a ritualistic murder and also has taught FBI and other law enforcement agencies all over the country what a ritualistic crime scene looks like. Furthermore, Dr. Perlmutter has almost exclusively worked for law enforcement and prosecution, not the defense.

The jury would be able to assess the weight to give Dr. Perlmutter's assessment of the crime scene.

12. Furthermore, in its April 29, 2024 Motion in Limine, paragraphs 7c, 7d, 7e, 7f, 7g and 7h, the prosecution requested the Court to prevent the defense from presenting evidence that tied alternative suspects involved in Norse Paganism/Odinism to the murders, including evidence of the investigative efforts of 3 law enforcement officers who believed that the evidence credibly pointed the finger at certain 3rd party suspects and also social media posts that provide a nexus between certain 3rd party suspect and the murders.

13. Furthermore, in its April 29, 2024 Motion in Limine, paragraphs 7i and 7j, the prosecution requested the Court to prevent the defense from presenting evidence that 3rd party suspects Kegan Kline and Tony Kline committed the murders, even though credible evidence existed that (a) Kegan Kline had arranged to meet one of the victims on the day of the murders; (b) Kegan Kline implicated his father, Tony Kline, as being involved in the murders; (c) law enforcement tried to tie Richard Allen to Tony Kline and arguably only interrogated Richard Allen because of law enforcement's initial belief that Tony Kline and Richard Allen knew each other and committed the crimes together; (d) law enforcement officials discovered a cache of child pornography on Kegan Kline's personal cell phone during the course of their investigation; and (e) law enforcement

officials actually transported Kegan Kline to an area near the crime scene to corroborate his version of what he and his Father (Tony) did near the crime scene on the day in question.

14. Furthermore, in its April 29, 2024 Motion in Limine, paragraph 7k, the prosecution requested the Court to prevent the defense from presenting evidence of 3rd party suspect Ron Logan even though credible evidence existed that: (a) the bodies were found on Ron Logan's property; (b) an FBI-authored probable cause affidavit stated that Ron Logan (i) placed a phone call on or around his property around 2:09 pm (using cell tower data); (ii) Ron Logan provided false information about his activities during the times the crimes were committed and employed others to assist in deceiving law enforcement and furthermore plotted an alibi for a crime that had not yet been discovered; (iii) a court found that said probable cause affidavit provided probable cause that evidence of the murders would be found on Logan's property.

15. Furthermore, in its April 29, 2024, Motion in Limine, paragraph 8, the prosecution requested the Court to prevent the defense from presenting evidence from law enforcement officer Todd Click who investigated the Norse Paganist/Odinist ties to the murders as well as the ties of certain 3rd party suspects to the crimes, primarily those identified in paragraph 7a-h of the State's motion in limine. Click's testimony would provide evidence that connects those 3rd party suspects to the crimes, as would the

testimony of law enforcement Kevin Murphy who also investigated said connections alongside Click, including testimony that Elvis Fields posed the question to him of if his (Elvis's) spit would be found on one of the girls but he could explain it, would he (Elvis) be in trouble? Furthermore, Murphy would be able to tie Elvis Fields from Rushville Indiana to Brad Holder of Logansport Indiana, and that Brad Holder was an active Odinist whose son (Logan Holder) dated one of the victims and who also has changed his story multiple times about whether he had ever met the victim and whose social media posts included evidence that tied Holder to the crime scene.

16. Furthermore, in its April 29, 2024, Motion in Limine, paragraph 9, the prosecution requested the Court to prevent the defense from presenting evidence of geofencing, even though that geofencing evidence provided evidence that other 3rd party suspects were in the area of the crime scene at the time the prosecution is claiming that the crimes were committed.

17. After the May 13, 2024, trial date was continued, the Court held the hearing for said motion in limine on August 1, 2024, and likely because of the voluminous amount of evidence it received and reviewed, the Court was unable to rule on the State's motion in limine until September 4, 2024, which was 40 days before the scheduled October 14, 2024, trial date.

18. Included in the Court's ruling was the Court's belief that the admission of the evidence would confuse the jury. The defense respectfully rejects that

premise. Evidence that the Court excluded from the jury would actually provide the jury an understanding/explanation of why the crime scene appeared the way it appeared. In fact, the defense would argue that by keeping the evidence of Norse Paganism from the jury, it (the jury) would be confused as to why the crime scene appeared the way that it appeared. Additionally, the inclusion of evidence of 3rd party suspects as being connected to the murders is not confusing, but rather easy to understand and that it is up to the jury to either accept or reject the defense's contentions that the evidence connects Norse Paganism/Odinism and 3rd party suspects to the crimes.

19. Essentially, with its September 4, 2024, order, therefore, 40 days before the trial is scheduled to begin, Richard Allen's defense was completely gutted.

20. Certainly, between the Franks notices that have been filed and were made part of the record and the exhibits that were attached to those filings, as well as the evidence and testimony this Court received during the July 30 – August 1, 2024, hearings, the Court of Appeals would have more than enough record to review to either support or negate this Court's August September 4, 2024, order (as well as the August 28, 2024, order).

21. The issues to be presented to the Court of Appeals for interlocutory appeal concerning paragraph 7, 8 and 9 of the State of Indiana's April 29, 2024 motion in limine would all involve whether the trial court was correct in

granting the State's motion in limine, thereby denying the defense the ability to present evidence: (a) concerning its interpretation of the crime scene and how said interpretation excludes Richard Allen as a suspect; (b) concerning whether a nexus existed between certain 3rd party suspects and the crimes; and (c) whether evidence presented warranted the Court from excluding geofencing evidence.

The August 28, 2024, Order denying Defendant Allen's request to suppress incriminating statements violates Allen's State and Federal constitutional rights.

22. On November 3, 2022, Judge Benjamin Diener issued a safekeeping order which resulted in Defendant Allen's immediate transfer to a maximum security IDOC confinement facility wherein he was detained in solitary confinement for a period of nearly thirteen months. Defendant Allen was not afforded a due process hearing regarding his detention until June of 2023, nearly eight months after he was locked away in solitary confinement.

23. Throughout the course of Defendant Allen's detention, the State of Indiana began offering up discovery in the form of incriminating statements made by Defendant Allen to prison guards, inmate companions, the Warden, Defendant Allen's treating psychologist and Defendant Allen's family members.

24. Defendant Allen then moved to suppress the admissibility of said statements on the basis that said statements were involuntarily made and thus obtained in violation of Defendants Allen's 5th, 6th, and 14th Amendment rights under the U.S. Constitution. Defendant Allen also asserted that his rights under the Indiana Constitution (Article I, Section 12, 13, and 14) were violated.

25. On August 28, 2024, this Honorable Court issued the Amended Order or Judgment of the Court denying Defendant Allen's request for suppression and holding in totality, that the statements given by the Defendant to the various individuals were not coerced, were voluntary, and were not the result of interrogation by the State or its actors, nor the product of his confinement.

26. With regard to the August 28, 2024, Amended Order..., the issues to be addressed are as follows:

- a. Was Richard Allen denied his right to due process under both the State and Federal Constitutions when he was detained in solitary confinement without having been afforded a timely hearing on the State's motion for safekeeping order?
- b. Did the effects of Defendant's Allen's extended solitary confinement render statements made by him to the prison guards, inmate companions, the Warden, Defendant Allen's treating psychologist,

and Defendant Allen's family members involuntary and therefore, inadmissible at trial?

- c. Were the Statements allegedly given by Defendant Allen to his treating psychologist (Dr. Monica Wala) privileged pursuant to I.C. 34-46-3-1?

The August 28, 2024, Order involves a substantial question of law that could be resolved on appeal and lead to a more orderly disposition of the case.

Defendant Allen's incriminating statements stemmed from a most unique detention circumstance. Allen, nor his counsel, were given no choice in the matter. The issue of first impression here, is whether or not Defendant Allen's due process rights were violated, i.e., does the safekeeping statute (I.C. 25-33-11-1) require the Court to conduct a hearing to address the propriety of Defendant's pre-trial detention circumstances? Defendant Allen is unaware of any rulings in this State addressing this very issue. If the Court of Appeals were to find in Defendant Allen's favor, the admissibility of statements and other evidence stemming from Defendant Allen's wrongful detention would be inadmissible.

The normal remedy of a direct appeal is not adequate.

27. The remedy of an appeal is otherwise inadequate for all the reasons stated herein.

28. Because of the pending trial date, the defense would further request that this Court issues its ruling on this motion as expeditiously as possible.

29. The State of Indiana has been contacted and objects to the request but waives the 15 days to respond as they have indicated that the prosecution will promptly file their objection.

30. Based upon the pending trial date, the defense would respectfully request this Court to rule on this matter as expeditiously as it can and believes the prosecution would also benefit from an expeditious ruling.

31. This motion is not made to unnecessarily delay the trial, but out of a sincere belief that this Court's ruling is erroneous and will result in an unnecessary second trial should Richard Allen be found guilty.

WHEREFORE, Richard Allen, by and through counsel, would request this Court to certify the issues presented herein for interlocutory appeal to be heard by the Indiana Court of Appeals.

Respectfully Submitted,

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

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

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

CERTIFICATE OF SERVICE & COMPLIANCE

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

Nicholas McLeland
Stacy Deiner
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