

STATE OF INDIANA)
) SS:
COUNTY OF CARROLL)

IN THE CARROLL CIRCUIT COURT

STATE OF INDIANA)
)
VS.)
)
RICHARD M. ALLEN)

CAUSE NUMBER: 08C01-2210-MR-00001

MOTION FOR LEAVE OF COURT TO SUBPOENA THIRD-PARTY RECORDS

Comes now the State of Indiana, by Nicholas C. McLeland, Prosecuting Attorney for the 74th Judicial Circuit, and moves this Court for an Order for ViaPath Technologies, Attn: Andrea Melera, 3120 Fairview Park Drive, Suite 300, Falls Church, VA 22042-4570, to produce to the Carroll County Prosecutor's Office, Attn: Nicholas C. McLeland, 101 West Main Street, Delphi, IN 46923, any and all phone calls made by inmate Richard Allen while he was housed at Westville Correctional Facility and Wabash Correctional Facility, both of which are part of the Indiana Department of Corrections.

After Richard Allen's arrest in October of 2022, he was transported to the Indiana Department of Corrections for safekeeping pending trial. He has been housed in the Indiana Department of Corrections since November 3rd, 2022. He began his stay in the Westville Correctional Facility and now has been moved to the Wabash Valley Correctional Facility. During his incarceration, Richard Allen made several phone calls from the two facilities. During some of those phone calls he made statements that the State intend to use at trial as evidence in the case. The phone calls are kept by a third party, ViaPath Technologies. They are the keeper of the records for the phone calls made by inmates housed in the Indiana Department of Corrections.

Based on this information the State has filed a Motion for Leave to obtain these records. The State is requesting the phone calls made by Richard Allen during his incarceration in the Indiana Department of Corrections from November 3rd, 2022 until present specified in the attached Subpoena Duces Tecum and/or Request for Production of Documents and Records to a Non-Party: (H.I.)

This request is made for the purpose of preparing for trial in this matter. The State believes that the phone calls will be introduced into evidence. The State believe the phone calls made by Richard Allen are relevant and would assist the State in presenting it's case at trial.

This matter is set for trial to begin on May 13th, 2024. Given the short time frame, the State of Indiana believes that Trial Rule 34(C)(2) applies in that only 1 day of notice is required to the Defense before the subpoena can be served. The State of Indiana has been in contact with the Defense about the phone calls. The parties have had discussions about stipulating to the phone calls. However, to date, the State has not heard back from the Defense as to whether they will stipulate or not. The State has notified the Defense of this subpoena. Further the State has notified the Defense that the State believes Trial Rule 34(C)(2) applies given that trial is to start in 13 days. The State is unaware if the Defense consents or objects to this motion but is notified of the same.

WHEREFORE, the State of Indiana, by Nicholas C. McLeland, Prosecuting Attorney for the 74th Judicial Circuit, respectfully prays that this Court review the attached Subpoena and then order production of said records, and such other relief as is just and proper in the premises.

Respectfully submitted,



Nicholas C. McLeland

Prosecuting Attorney
101 West Main Street
Delphi, IN 46923
765-564-4514

CERTIFICATE OF SERVICE

I hereby certify that service of a true and complete copy of the above and foregoing pleading or paper was made upon the following parties and filed with the Carroll Circuit Court by depositing the same in the United States mail in an envelope properly addressed and with sufficient postage affixed this _30th_ day of April, 2024.

ViaPath Technologies
3120 Fairview Park Drive
Suite 300
Falls Church, VA 22042-4570



Nicholas C. McLeland
Carroll County Prosecutor
28300-08

STATE OF INDIANA)
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SUBPOENA DUCES TECUM

**TO: ViaPath Technologies
3120 Fairview Park Drive
Suite 300
Falls Church, VA 22042-4570**

RE: Richard Allen

Now comes the State of Indiana, by Prosecuting Attorney, Nicholas C. McLeland, pursuant to Rule 2 of the Indiana Trial Rules of Trial of Criminal Procedure, requests that the following documents and records be produced for the Carroll County Prosecuting Attorney Nicholas C. McLeland, at 101 West Main Street, Suite 204, Delphi, Indiana 46923, within thirty (30) days from the date of service of this Request for Production of Documents and Records to a Non-Party. You may comply by mailing a copy of the requested documents to the Prosecutor's office post-marked prior to the date on which production is required by the Indiana Rules of Trial Procedure.

DEFINITIONS

As used in this request, the term "document" encompasses the full scope of that term as it is used in Trial Rule 34, including, without limitations, all writings, papers, photographs, videos, and other recordings and communications of any kind, whether printed, electronically recorded, filmed,

or recorded or produced manually or by other process. The term “document” includes all margin comments, handwritten notes, date of receipt stamps and notations of any kind appearing on any document. The term “document” includes all files and data stored on computer disks or hard drives, all files and data stored on any computer databases.

For each document produced, identify the corresponding request. If you claim any information sought herein is privileged in whole or in part, object to any form of any request or believe that any document would be excluded from production to the State, regardless of its relevance, state the reason(s) for said objection or ground of exclusion. Identify with particularity each document for which you claim a privilege including the date of the document, the person who prepared the document, the person to whom the document was directed, the substance of the document and the reason you believe the document is privileged.

INSTRUCTIONS

This Request for Production of Documents and Records to a Non-Party is made pursuant to Rule 2 of the Indiana Rules of Criminal Procedure. In accordance with that Rule:

1. You are entitled to reimbursement for costs resulting from your response to this Request for Production of Documents and Records to Non-Party. If there are costs associated with production of these documents, please let me office know and we will reimburse for those costs.
2. You are entitled to security against damages, or payment of damages, which may result from this request, and you may respond to this Request for Production of Documents to a Non-Party by submitting to its terms, or by proposing different terms, or by objecting specifically or generally to the Request by serving a written response to the Prosecuting Attorney, Nicholas C. McLeland, within thirty (30) days

from the receipt of the Request for Production of Documents and Records to a Non-Party, or by moving to Quash this Request for Production of Documents and Records to a Non-Party, as permitted by Rule 2 of the Indiana Rules of Criminal Procedure.

3. The failure to respond to this Request for Production of Documents and Records to a Non-Party, to object to it, or to move to quash it, as provided by the applicable Indiana Rules of Criminal Procedure or Order of the Court, within thirty (30) days from the date of service, will subject you to a Motion for Sanctions pursuant to Rule 2 of the Indiana Rules of Criminal Procedure.
4. You are required to keep this subpoena and the information contained therein confidential. This subpoena and the information listed herein is not to be released to the public and should be kept confidential. Any release of this information will be in direct violation of a Court Order.

DOCUMENTS AND RECORDS TO BE PRODUCED

1. Any and all phone calls made by Richard Allen, an inmate at the Indiana Department of Corrections from November 3rd, 2022 until present. That includes any phone calls he made at the Westville Correctional Facility and the Wabash Correctional Facility.
2. Any other documents, records, notes, videos and/or writings that are associated with any phone calls made by Richard Allen while he was house in either of the facilities of the Indiana Department of Corrections.

Submitted under my hand as counsel of record, pursuant to T.R. 2, on this __30th__ day of

April, 2024.

Respectfully submitted,



Nicholas C. McLeland, #28300-08
Carroll County Prosecutor
101 W. Main Street
Delphi, IN 46923
(765) 564-4514

CERTIFICATE OF SERVICE

I hereby certify that service of a true and complete copy of the above and foregoing pleading or paper was made upon the following parties and filed with the Carroll Circuit Court by depositing the same in the United States mail in an envelope properly addressed and with sufficient postage affixed this 30th day of April, 2024.

ViaPath Technologies
3120 Fairview Park Drive
Suite 300
Falls Church, VA 22042-4570



Nicholas C. McLeland
Carroll County Prosecutor
28300-08

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SUBPOENA DUCES TECUM

**TO: ViaPath Technologies
3120 Fairview Park Drive
Suite 300
Falls Church, VA 22042-4570**

Pursuant to Rule 2 of the Indiana Rules of Criminal Procedure, you are hereby directed to produce the following to counsel for the Carroll County Prosecutor, Nicholas C. McLeland, at 101 West Main Street, Suite 204, Delphi, Indiana 46923 within thirty (30) days of receipt:

1. All documents requested in the accompanying Request for Production of Documents to a Non-Party.
2. An executed Affidavit of Custodian or Records (enclosed).

Submitted under my hand as counsel of record, pursuant to T.R. 2, on this 30th day of April, 2024.

Respectfully submitted,



Nicholas C. McLeland, #28300-08
Carroll County Prosecutor

The Court finds that the requirements of Omar v. State of Indiana are met and the Request for Leave is Approved this _____ day of _____, 2024.

Frances Gull, Special Judge
Carroll Circuit Court

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AFFIDAVIT OF CUSTODIAN OF RECORDS

I, _____, on behalf of ViaPath Technology, being first duly sworn upon my oath, state the following:

1. I am the custodian of records attached hereto.
2. The copies of the records for which this certification is made and which are attached hereto are true and accurate reproductions of the original records maintained in my files.
3. The records reflect memoranda, reports, records, and data compilations that were made at or near the time of the occurrence of the matter set forth in each of the records, or from information transmitted by a person with knowledge of the matters set forth.
4. The memoranda, reports, records, and data compilations reflected are kept in the course of my regularly conducted business activity, and it is my regular practice to make the memoranda, report, record, or data compilation.
5. I am providing this Affidavit as the Custodian or Records, pursuant to Rule 803 (6) of the Indiana Rules of Evidence.

I do hereby swear and affirm under the penalties of perjury that the attached documents

are true.

Signature

Printed Name

Title

Name of Entity

Date