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COUNTY OF CARROLL)
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RICHARD M. ALLEN)

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

**DEFENDANT’S RESPONSE TO STATE’S MOTION IN LIMINE AND
REQUEST FOR HEARING**

Comes now the Defendant, Richard Allen, by Counsel, Bradley A. Rozzi, and in response to the State’s Motion in Limine file-marked April 29, 2024, Defendant Allen states as follows:

1. On April 28, 2024, at 11:15 a.m., the Court directed an email¹ to both the State and the defense addressing various legal and logistical matters associated with the forthcoming jury trial. In the second to last paragraph of the email, the Court without any prompting by lawyers from either side, included the following statement, “I am quite familiar with the law regarding third-party perpetrators and unless the defense can provide a nexus between any alleged third-party perpetrators in the charged crimes those allegations are unsupported and will be inadmissible.”;

2. On April 29, 2024, at 12:09 a.m. the State without hesitation, accepted the Court’s invitation to limit evidence regarding third-party perpetrators. Paragraph “7” of the State’s Motion in Limine is proof of this fact;

3. The Court has established a pattern of summarily denying pretrial evidentiary Motions filed by the defense throughout this case. The Motions have been denied despite the defense supporting many of its Motions with evidentiary support in the form of video interviews, audio interviews, crime scene photos, Affidavits of witnesses, and various other forms of corroborating documentation. In contrast, the State’s Motion in Limine contains no supporting documents or other information justifying any limitations on the Defendant’s ability to present evidence regarding third-party perpetrators.

4. Defendant Allen’s defense team is quite familiar with the law regarding the admissibility of evidence of third-party perpetrators which requires only that

¹ See partially redacted email attached to Defendant’s Motion for Pre-trial Hearing filed on April 30, 2024.

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Defendant Allen establish “some connection between the third-party perpetrator and the crime.” The Court must balance Defendant Allen’s Sixth Amendment right to present a defense with the State’s desire to limit such evidence;

5. The Defense has spent the better part of a year conducting discovery, seeking out exculpatory evidence from the State, and developing credible defense related theories which the defense intends to present to the jury in this case. The State of Indiana has sought out no assistance from the Court in an attempt to limit the discovery process. In fact, the Defense has conducted numerous depositions involving third-party perpetrators without the State seeking any orders of protection or orders limiting the discovery process;

6. The Defense anticipates that its trial presentation will include somewhere between one to two dozen witnesses that will provide relevant and credible information for the jury regarding the culpability of third-party perpetrators. To the extent the Court carries out its warning referenced in the April 28th email, the trial will be reduced to unnecessary delays due to lengthy offers to prove and lengthy delays due to large gaps in the scheduling of witnesses to appear for trial testimony. The absence of any articulated and reasoned legal guidance from the Court in advance of the trial would promote the lack of judicial economy throughout the proceedings;

7. The Defense requests the Court set the State’s Motion in Limine for Hearing, for a full day, during the week beginning May 6, 2024, at which time the parties would be entitled to present evidence regarding admissibility of third-party perpetrator evidence. This approach to the business of jurisprudence would assist in clarifying the nature and scope of the evidence to be admitted at trial, which would benefit both parties, the Court, and the jury; and

8. In its Motion in Limine, the State requested to limit evidence regarding several other matters. The Defense’s response to each request for limiting instructions is as follows:

State’s Paragraph “1”. State requests relief from “Any comments about Counsel for the State that constitutes a personal attack on the attorney for the State or comments on the role of the State’s attorney.” Said request is unsupported by any specific facts or allegations and therefore, should be denied. The Attorneys, including Counsel for the State are bound by the Rules of Professional Conduct;

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State's Paragraph "2". The State seeks to limit the Defense from comments which constitute the personal opinion of Defense Counsel about any evidence, witness, outcome or penalty. The State provides no specific facts or documentation supporting its request for a limiting instruction. The request is unsupported and should be denied;

State's Paragraph "3". The State seeks limitations on the Defense as it relates to innuendos or inferences that are not supported by admissible evidence. The request is overly broad, unsupported by factual allegations and therefore, should be denied;

State's Paragraph "4". The State seeks to limit the Defenses ability to conduct voir dire through the introduction of substantive issues in this case to the jury pool. The State provides no specific references to what substantive issues should be limited. The request is overbroad, unsupported by any specific facts, and therefore, should be denied;

State's Paragraph "5". The State seeks to limit the Defenses ability to question potential jurors about their feelings about the credibility of certain anticipated trial witnesses. The State's request contains no specific facts that would support such a concern. The State's request is overly broad and therefore, should be denied;

State's Paragraph "6". The State seeks to limit the Defense from introducing hypothetical questions that include facts that are not in evidence or questions that are not helpful in violation of Rule 705. The State's request is overly broad and contains no specific facts or issues for which said anticipated hypothetical questions would be address. Therefore, the State's request should be denied;

State's Paragraph "7". See references in Paragraphs 3-6 above;

State's Paragraph "8". See references in Paragraphs 3-6 above;

State's Paragraph "9". The State seeks to limit the defenses ability to challenge the State's geofencing expert, Kevin Horan, based on relevance. The State's request is overly broad, contains no specific facts which the State is seeking to limit, and usurps the Defendant's Sixth Amendment right to present a defense. Therefore, the State's request should be denied;

State's Paragraph "10". The State seeks to limit the introduction of prior bad acts pursuant to the evidentiary rules. Again, the State provides no specific facts to support its request for limiting instruction. The Trial Court has granted broad discretion in administering the Rules of Evidence in a fair and just manner during the

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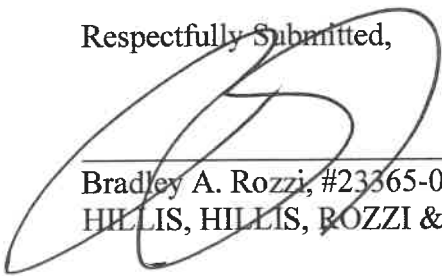
course of the trial. The State's request is also overly broad and therefore, should be denied;

State's Paragraph "11". The State seeks to limit evidence related to its own failure to provide the defense discovery consistent with a local rule regarding discovery and consistent with Rule 2.5 of the Indiana Rules of Criminal Procedure. However, the State provides no specific facts to support its request for a limiting instruction. Therefore, the State's request should be denied; and

State's Paragraph "12". The State seeks to limit the Defendant's ability to offer up PowerPoint presentations that were created by the State and its investigative team over the course of the six year investigation in this case. The State's Motion provides no documentation to support its request for a limiting instruction. Therefore, the State's request should be denied.

WHEREFORE, Defendant Allen respectfully requests that this Court schedule an all day hearing on the State's Motion in Limine as a relates to third-party perpetrator evidence. Defendant Allen believes that said hearing is necessary to ensure a fair, efficient, and just determination of the facts to be presented to the jury in this cause. Defendant Allen requests that said hearing be scheduled during the week beginning May 6, 2024.

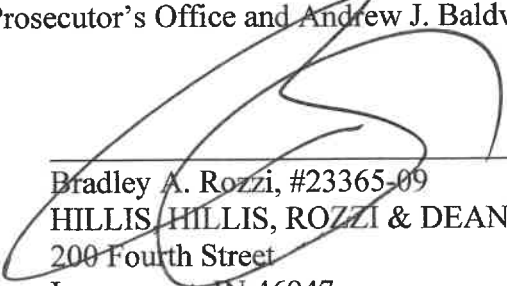
Respectfully Submitted,



Bradley A. Rozzi, #23365-09
HILLIS, HILLIS, ROZZI & DEAN

CERTIFICATE OF SERVICE

I certify that I have served a copy of this document by the County e-filing system upon the Carroll County Prosecutor's Office and Andrew J. Baldwin the 30th day of April, 2024.



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