

IN THE CIRCUIT COURT OF CARROLL COUNTY

STATE OF INDIANA)
)
) VS.) NO: 08C01-2210-MR-000001
)
RICHARD M. ALLEN)
)

MOTION TO TRANSFER

NOW COMES the Defendant, by and through his appointed counsel, **Robert C. Scremin** and **William Lebrato** and hereby submits this Motion to Transfer, and state as follows:

ARGUMENT

Richard Allen is currently being held in pre-trial detention at the Wabash Valley Correctional Facility, a maximum-security State Prison. After visiting with Mr. Allen at both the Westville Correctional Facility and the Wabash Valley Correctional Facility, it is counsel's belief that 1) Mr. Allen is not being treated similar to other pre-trial detainees being held in county jails, and 2) pre-trial incarceration at Wabash Valley Correctional Facility will seriously, if not fatally, impact counsel's ability to effectively represent Mr. Allen due to the distance of travel and visitation conditions.

FACTS

- 1) On November 3, 2022, the State of Indiana filed a motion on behalf of the sheriff of Carroll County asking the court to transfer Richard Allen to the custody of the Department of Corrections claiming that, due to this being a "high profile" case, the Carroll County Sheriff could not adequately provide Mr. Allen with necessary security or other needs at the Carroll County Jail. Judge Deiner, without holding an evidentiary

hearing on the merits, granted the State's motion and approved Richard Allen's transfer to the Department of Corrections, then *recused himself from the case that same day*. Mr. Allen had no opportunity to object to this transfer, and no one appeared to consider how this might negatively impact Mr. Allen's defense.

- 2) On April 5, 2023, Mr. Allen's former counsel filed an Emergency Motion to Modify Safekeeping Order (essentially a motion to transfer Mr. Allen to a county jail). I have reviewed counsel's Motion, and although I lack personal knowledge to vouch for all of the allegations made, as Mr. Allen's present counsel, I believe it to be a meritorious motion, and based upon 25 years of practicing law, I agree that Mr. Allen is not being treated similar to other pre-trial detainees in county jails, and that his pre-trial incarceration at a distant state prison severely impacts counsel's ability to effectively communicate with Mr. Allen and effectively represent him. I would incorporate the legal arguments made by prior counsel and add that Mr. Allen's distance from present counsel and the conditions during visitation negatively impact counsel's ability to effectively represent Mr. Allen.
- 3) On April 14, 2023, this court denied prior counsel's motion and Mr. Allen remains in the custody of the Department of Corrections.
- 4) On April 28, 2023, this court received a letter written by an inmate at Westville Correctional Facility, alleging that Mr. Allen was being abused and mistreated.
- 5) On September 18, 2023, prior counsel filed a motion for a Frank's Hearing, in support of their previously filed Motion to Suppress. Prior counsel included a 136-page Memorandum with 126 confidential exhibits. The memorandum and exhibits, among other things, alleged prison guards at Westville Correctional Facility were allowed to

wear patches on their official uniforms supporting Odinism, and that crime scene photos suggested a potential connection to Odinism (a Nordic religion and/or cult that has been associated, both in the prison system and in society in general, with white supremacy). After reviewing crime scene photos and visiting Mr. Allen at Westville Correctional Facility, present counsel believes these claims have merit, and that pre-trial incarceration within the State Prison System negatively impacts Mr. Allen's rights, in addition to counsel's ability to effectively represent him.

- 6) On October 27, 2023, this court appointed attorneys Robert C. Scremin and William Lebrato to represent Richard Allen. Attorneys Scremin and Lebrato both reside and maintain primary offices in Fort Wayne, Allen County, Indiana.
- 7) Fort Wayne is approximately 106 miles from Westville Correctional Facility and a two-hour drive. Fort Wayne is approximately 233 miles from Wabash Correctional Facility and approximately a three-and-a-half-hour drive (without stops). Counsel's most recent visit to Mr. Allen at Wabash Valley Correctional Facility was a 10-hour day.
- 8) On November 19, 2023, counsel visited with Mr. Allen at Westville Correctional Facility. The visit was an arduous process which included lengthy travel, complicated and protracted prison security procedures, and difficult visitation conditions. Throughout our legal consultation, Mr. Allen remained uncomfortably and unnecessarily shackled and chained in a manner resembling Hannibal Lecter, while guards watched through glass panels and the door ajar. Mr. Allen clearly appeared intimidated by the guards and was hesitant to speak freely with counsel (*See Ex. 1 Affidavit Investigator S. Moller*).
- 9) Although none of the prison guards were wearing patches in support of Odinism, one of the guards did have a symbolic *face tattoo* of Odin's Spear and multiple hand and finger

tattoos emblematic of Odinism and/or Norse mythology. This same prison guard had a public Facebook account that also displayed the same tattoos in addition to a necklace with “Thor’s Hammer” inscribed with the letters BRSRCR, an acronym for “berserker” which is a very specific type of Norse battle ax and the name given to warriors fighting in honor of Odin. Other photos displayed three interlocking triangles; another symbol associated with Odinism. (*See Ex. 2*)

- 10) Mr. Allen stated that Westville guards were intimidating and reluctant to provide him with shower and recreational access, because it caused them extra work, and as a result, he often simply remained in his cell and went without recreational time or a shower to keep the peace.
- 11) On 12-22-23, counsel visited Mr. Allen at Wabash Valley Correctional Facility, where Mr. Allen had recently been moved without consulting counsel. The round-trip drive and visit took over 10 hours to complete. Access to the prison once again took nearly an hour, and several gates had to be manually cranked opened as there was a power outage in a portion of the prison and doors could not be opened.
- 12) Prison staff indicated they did not have any type of visitation rooms for counsel to use, because they “*were not equipped for such matters*” but had fashioned a visitation room in some sort of prep-kitchen within the prison housing unit. Counsel was informed the visitation would be monitored by video camera.
- 13) Counsel was taken to Mr. Allen, who was locked in a prison cell located within the kitchen. The cell appeared to be designed as a place to feed a prisoner. The cell had a solid iron door with a small, hinged iron flap approximately eight inches high, that opened just far enough to slide a food tray through. This iron flap was left open, and it

was through this small opening that we were allowed to see Mr. Allen and speak with him. A folding table was set up approximately six feet from the cell door with three chairs on the far side of the table. We were instructed to sit in the chairs and not to approach Mr. Allen or come within six feet of the cell door. This arrangement made it impossible to show Mr. Allen any videos or documents, or discuss the case with him, without raising our voices and almost shouting.

14) In twenty-five years of practicing law in five states, including representing numerous defendants charged with murder, I have never had to conduct an in-custody legal consultation in this fashion. The prison's visitation arrangement created an environment wherein effectively representing Mr. Allen was a fiction.

15) Mr. Allen stated that in the two weeks that he had been at Wabash Valley Correctional Facility he had not received or even been offered ANY recreational time and he believed he had taken one, possibly two showers, and he had not been allowed outside in the prison yard, although other inmates enjoyed outdoor recreation.

CONCLUSION

In twenty-five years of practicing law, I have never had to conduct an in-custody legal visit in the manner I have with Mr. Allen. I routinely conduct legal visits within the jails in Allen, Adams, Huntington, Randolph, and Wells counties, including consultations with numerous clients charged with murder. There is *never* a guard present during the consultation and there is *never* audio or video equipment recording the visit. My clients *are* never shackled, handcuffed or chained during visits (these are clearly State Prison policies, not county jail policies). I am often able to simply sit at a table with my client and have a conversation, but at the very least, I am able to sit directly across from my client and speak

through a large plexiglass partition where we can view videos and documents. County jails routinely, dare I say daily, have lawyers visiting pre-trial detainees, and as such, county jails have rooms specifically designed for attorney visits. County jails also have a streamlined access protocol for defense attorneys that often takes no more than a minute or two, as opposed to an hour, and laptops, phones and tablets are routinely allowed during attorney visits with no special requests. County jail visits with clients can even be set-up the same day. Clients in county jails are extremely accessible and multiple visits can be quickly and efficiently made when legal issues arise.

Based upon counsel's observations and experience, Mr. Allen *is not* being treated similar to other pre-trial detainees being held in county jails. However, even if this court were to find that Mr. Allen's pre-trial treatment within the State Prison System does not, in itself, justify moving him to a county jail, evidence is absolutely overwhelming that pretrial detainment at Wabash Valley Correctional Facility will seriously, if not fatally, impact counsel's ability to effectively represent Mr. Allen due to the sheer distance of travel and the unworkable visitation conditions. Counsel for Mr. Allen respectfully requests that he be transferred to either the Allen County Jail or the Adams County Jail.

Respectfully submitted by,

/s/ *Robert C. Scremin*

Attorney for Defendant

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