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Carroll Circuit Court
Carroll County, Indiana

STATE OF INDIANA	)	IN THE CARROLL CIRCUIT COURT
	) ss:	
COUNTY OF CARROLL	)	CAUSE NO. 08C01-2210-MR-000001

STATE OF INDIANA)
Plaintiff)
v.)
)
RICHARD ALLEN,)
Accused)

POST HEARING MEMORANDUM

As previously argued by the defense the entire process for pursuing indirect contempt was defective. Should the Court reconsider that argument the defense would offer some additional authority. "Acts of an indirect contempt, on the other hand, are those 'which undermine the activities of the Court that fail to satisfy one of the direct contempt requirements'." *Id*. (quoting *Hopping*, 637 N.E.2d 1294): See Ind. Cod. §§ 34-4-7-3, 234-4-7-5.1. Indirect contempt proceedings require appointment of a Special Judge and an array of due process protections, including notice and an opportunity to be heard. Id.: Ind. Cod. §§ 34-4-7-9, 34-4-8-1. *Williams v. State, ex. rel. Harris*, 690 N.E. 2d 315 (Ind. Ct. App. 1997).

State's Exhibit 1 was the press release from the defense that the prosecution alleged constituted indirect contempt. Mr. Rozzi testified as to three legitimate purposes of the release: 1. put an end to the incessant and inordinate requests from the media: 2. respond to the torrent of detailed information disseminated by State actors and family members, (See defense Exhibit T which identified over one hundred and thirty press conferences, press releases or media disseminations); and 3. generate tips to assist with the defense of Mr. Allen of which there were many that were very useful.

It bears repeating that the press release did not violate any existing Court order. Mr. McLeland represented to the Court that the gag order was issued December 1, 2022. The Court

accepted his representation when taking judicial notice until the defense challenged it. Both then conceded it was issued December 2, 2022.

It is understandable that Mr. McLeland and Judge Gull may have taken umbrage at the press release due to prior unrecorded conversations in chambers. "However, the contempt power 'does not lie to sooth the wounded sensibilities of a Judge…' *Grimm v. State,* 162 N.E2d 454 (Ind. 1959), *Acccord Mockabee v. State* 80 N.E.3d 917, 921 (Ind. Ct. App. 2017)

To the extent the Court believes there was a violation of a Rule of Professional Conduct trial courts do not have jurisdiction to review such as noted in the first memorandum on contempt filed by the defense.

State's Exhibit 2 was the attachment to the accidentally misdirected email to Brandon Woodhouse. It was a thumb drive map. Mr. McLeland complained that it contained names. It did contain names, but that was necessary to be able to identify what was where on the thumb drive. It was nothing more than a discovery organizational outline. There was nothing in that outline that identified any substance of interviews or conversations with the persons named or any other substance at all.

Compared to the leaks of two entire probable cause affidavits which contained details of the investigation, the disclosure of the discovery of a bullet and gun and others the thumb drive map was insignificant.

Mr. McLeland argued that was a violation of the protective order. First, it was not "disseminated". The definition of disseminate is to spread widely. That e-mail was sent to one single person who was an unintended recipient. The evidence showed that Mr. Baldwin contacted Woodhouse within an hour to have him delete it. Second, Mr. Rozzi testified

concerning an in chambers conversation where the protective order was intended to prohibit public disclosure through media outlets. His testimony was not contradicted.

State's exhibit 3 was a discovery receipt that was not admitted.

State's exhibit 4 Was the e-mail string between Messrs. McLeland, Baldwin Rozzi and Judge Gull concerning the leaks and ensuing investigation. Mr. Baldwin and Mr. Rozzi cooperated fully and without delay. They were open, honest and complete in their communications to investigators and the Court.

State's Exhibit 5 consisted of five pictures which the State alleged were disseminated by Fortson after having received them from Westerman. Sergeant Holeman testified that he "believed" he had seen them at a deposition. Mr. Rozzi testified that he reviewed the deposition exhibits and compared them to the five photographs rather than rely on memory alone. He then testified, without contradiction, that two of the photos were not created or used by the defense. Thus, those two could not have come from Westerman. To the extent they may have come from Fortson he had many other sources as confirmed by State's Exhibit 6 which was one hundred and forty-three pages of Fortson's communications.

The remaining three photographs were not offensive and would eventually be public. It was not dissemination of damaging information. The evidence disclosed many sources of the photographs that were never investigated.

The most egregious leak was the detailed probable cause affidavit to search Logan's property. Sgt. Holeman testified he asked "Barbara" where she got and she said from Logan. However, he also testified the search warrant affidavit is never left with the person, just a copy of the search warrant. Thus, Barbara's statement had to be false. That affidavit also had "MURDER

SHEET" overlaid on every page. Sgt. Holeman never asked the murder sheet people about it and never did any further investigation as to the source.

State's Exhibit 6 was one hundred and forty-three pages of Fortson's communications. The State had previously provided undersigned counsel one hundred and forty-five pages. At no time did they disclose what pages were removed or why.

Not once did Fortson identify Westerman as his source. Not once did he describe any direct contact with Andrew Baldwin. Not in person, not by phone or any messaging application. (See Appendix I attached hereto).

The State argued that Fortson saying he was going to Franklin somehow connected Fortson to Baldwin because his office was in Franklin. That is an unsupported leap in logic. There was no evidence that Fortson actually went to Franklin and there was no mention of Andrew Baldwin regarding his trip to Franklin. The State ignored Westerman's ties to Franklin.

Throughout the one hundred and forty-three pages admitted there were only four references to "Andy". The first was that "they" may have Messer's phone. "She tried to give it to Holeman, but he ghosted her, so she gave it to Andy". No source was identified for that information and it was not attributed to "Andy". The second was that Andy had audio of Professor Turco's statement. The third was that the Judge was setting a suppression hearing, but Andy is seeking clarity. Those three references did not identify the source of the information and was not attributed to "Andy". The last was that "he's going to be with Andy tonight". There is no identification who "he" is or what they might be meeting about. There was no evidence of any meeting. Again, he did not identify any source for his alleged information.

State's Exhibit 7 was Andrew Baldwin's email to Judge Gull copying all the other attorneys. He began by saying "we" want the leaker caught. He related what he knew as of

October 9, 2023, regarding the photographs and other leaks. He ended with the suggestion that the FBI should investigate. If he had knowingly, intentionally or willfully participated in any dissemination of any photographs he would never have suggested the FBI investigate.

State's Exhibit 8 is Mr. Rozzi's letter to Judge Gull consisting of seven pages. He disclosed all that he knew about the "leak" and reported other more sensitive and damaging leaks for the Court's consideration.

State's Exhibit 9 is Mr. Westerman's affidavit which clearly establishes that what he did was not known by Mr. Baldwin and that Mr. Baldwin did not participate. He admitted that what he did was without any authorization whatsoever.

State's Exhibit 10 consists of 20 pages of back-and-forth messages between Mr. Baldwin and an unidentified person. The State alleged that person was Mr. Westerman. That exhibit was admitted over objection because it contained Mr. Baldwin's mental impressions and work product and failed to identify the other participant. Mr. McLeland read that exchange with advanced knowledge that it was communications regarding consultation on the case. He never should have read it.

Mr. Rozzi testified about an in-chambers meeting with Judge Gull, Brad Rozzi, Andrew Baldwin, Nick McLeland and perhaps one other prosecutor involved in the case early on. Mr. Rozzi testified that during that meeting, Judge Gull clarified that the parties could share information and brainstorm with anyone; that the intention of the gag order was only to prevent the parties from holding press conferences, sending out future press releases and conducting interviews with media. That testimony was uncontracted. The defense tried to call Mr. McLeland as a witness but the Court would not allow it . He had the opportunity to cross-examine Mr.

Rozzie regarding about that conversation but did not. The Court cannot rely upon its own memory without being a witness, which would relate back to the defense's request for recusal.

Mr. Baldwin' communications with Westerman and sharing of his Frank's memorandum with him and others for critique is exactly what was contemplated. The prosecution's allegation that Mr. Baldwin's discussions with Westerman violated the gag order is unfounded and not supported by the evidence.

Additionally, Sgt. Holeman and Mr. Mullins testified that they were aware that Mr. McLeland was exchanging information with Gary Beaudette, the most prodigious leaker of all. The Court would not allow evidence of the substance of those communications. It therefore is not known what information Mr. McLeland disclosed. It would have been relevant and probative as to whether Mr. Baldwin's discussions with Mr. Westerman were prohibited by any rule or order or were inappropriate in any manner. If Mr. Baldwin is to be held in contempt Mr. McLeland should face scrutiny as well.

Attorneys with combined criminal defense experience of one hundred and twenty years testified that they would routinely consult with both lawyers and non-lawyers about the evidence in a case during trial preparation. They all said it was crucial to trial preparation and explained why.

Those lawyers testified as to sending and receiving misdirected e-mails. They would address those mistakes exactly how Mr. Baldwin did. They also testified, contrary to Mr. McLeland's argument that Mr. Baldwin should have reported to him and the Court, that it would not cross their minds to report such events to a prosecutor or judge. Notably, there was no evidence of any obligation for Mr. Baldwin to report the accidentally misdirected e-mail to the

prosecution or judge. Furthermore, he had taken immediate corrective action and reasonably believed it had been resolved.

Each of those lawyers testified it was standard practice for criminal defense attorneys and their regular practice to establish a separate area in their offices to spread out the discovery and anticipated evidence for trial preparation. They had never thought to secure the area because they never expected a betrayal like Mr. Baldwin suffered. No one expects to be betrayed

Eight additional experienced criminal defense attorneys echoed the testifying lawyers with affidavits that were not admitted.

The Court declined to hear testimony and admit documents of much more detailed, serious and damaging leaks. It has been preserved in the record. Those leaks were purposeful and willful. The defense renews its plea for the Court to consider such evidence when contemplating whether Mr. Rozzi or Mr. Baldwin knowingly, intelligently or willfully committed indirect attempt beyond a reasonable doubt. The Indiana Supreme Court in *State v. Shumaker*, 200 Ind. 623, 704-06, 157 N.E. 769, 791 (1927), that the appropriate standard in an indirect contempt proceeding is beyond a reasonable doubt. The Court applied the beyond a reasonable doubt standard in *In re Perrello*, 270 Ind. 390, 398, 386 N.E.2d 174, 179 (1979).

Respectfully Submitted,

/s/David R. Hennessy

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served upon all counsels of record at the time of filing.

/s/ DAVID R. HENNESSY

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