

STATE OF INDIANA)
) SS: IN THE CARROLL CIRCUIT COURT
COUNTY OF CARROLL)

STATE OF INDIANA) CAUSE NUMBER: 08C01-2210-MR-00001
)
VS.)
)
RICHARD M. ALLEN)

**STATE'S RESPONSE TO DEFENDANT'S AMENDED MOTION
TO COMPEL AND REQUEST FOR SANCTIONS**

COMES NOW the State of Indiana, by Prosecuting Attorney, Nicholas C. McLeland, and respectfully files its response to the Defendant's Amended Motion to Compel and Request for Sanctions filed March 17, 2024. The State would ask the Court to consider the following:

1. In response to Request paragraph 5(a)(ii), on January 30, 2024, the 02D2 Allen Physical Discovery Release signed by Sarah Luxenberg, Assistant to Brad Rozzi, specifically notified the Defense of videos that are missing corresponding audio. Specifically, on page 5 in the 6th bullet point, is stated: the hard drive labeled **Delphi DVR Drive 1 Export** containing uncatalogued interviews from Franklin Street Investigation Center, 02-25-2017 to 04-07-2017, **there is no detectable audio on the original drive from which this duplicate was made.** This is the same loss described in the Delphi Police Chief Mullin two-page letter describing loss of data from inserting Drive 1 into the DVR to extract an interview file and a DVR malfunction reformatted the drive thereby appearing to erase all files. However, the belief at that time was that the lost files were interviews from 04-28-2017 to 06-01-2017. Chief Mullin was at that time making an educated guess as to dates of lost files, when in fact Drive 1 was taken to Indiana State Police for recovery effort. That Drive 1 was in the possession of Indiana State Police from approximately June 2018 until approximate November 2022, for recovery efforts,

and a copy of the original Drive 1 in its current state is described in 02d2 Allen Physical Discovery Release. Therefore, it is now known that the video files on **Delphi Drive 1 Export** are interviews from the dates of 02-25-2017 through 04-07-2017 without audio, as audio files were not recovered, while the video files were recovered.

2. That in response to Request paragraph 5b,
 - a. the State provided two reports of Steve Mullin created when he was Delphi Chief of Police regarding the two instances of DVR malfunction resulting in lost interview recordings, these reports were included in response to Defendant's March 8, 2023, certified letter.
 - b. In addition, Carroll County Prosecutor Investigator Steve Mullin testified, at length, during the hearing on March 18, 2024, explained the efforts made to recover the data, circumstances surrounding the two DVR malfunctions, and was subject to cross examination by the Defense.
 - c. That in response to this pleading Investigator Mullin searched for written communication with Indiana State Police regarding Drive 1 from the second incident of DVR malfunction and found an email from February 23, 2018.
 - d. That specific to this Motion to Compel, Investigator Mullin would testify that the recovery software from China was not able to be purchased through a local agency. Therefore, he contacted Indiana State Police Brian Bunner and ISP did purchase the software, but it was not successful in recovery of Drive 1. That no Indiana State Police report was generated because this was not a forensic examination. When the drive was returned, Mullin was gathering all investigation materials in his capacity as Prosecutor Investigator.

- e. Upon preparing the copies of hard drive data for discovery in this case, Investigator Mullin made a more thorough examination of Drive 1 and documented, as stated above, that hard drive labeled **Delphi DVR Drive 1 Export** contains uncatalogued interviews from Franklin Street Investigation Center, 02-25-2017 to 04-07-2017, **there is no detectable audio on the original drive from which this duplicate was made.** These are video only files.
3. That in response to Request paragraph 5c, if the Defense opens the files containing law enforcement reports and runs a keyword search based on the date of the interview, the result should direct them to reports referencing the date for a determination of who participated in interviews on said date. The State has not compiled a list of who was interviewed, or which officers conducted the interviews, during the dates in question, because without audio, the files are not helpful to the investigation or trial preparation of this case. This loss is not the result of intentional conduct but rather a malfunction of recording equipment intended to memorialize investigative efforts.
4. In response to Request to paragraph 6, the information has been provided in the discovery response dated March 8, 2024, the testimony of Investigator Mullin at the hearing on March 18, 2024, and the contents of this Response. No further explanation has been reduced to writing.
5. Defense Paragraphs 7, 8, and 9 are statements rather than requests.
6. In response to request 10, phone dump data does exist, and it has been provided.
7. In response to request 11, all geo-fence data in the State's possession has been provided to the Defense and is listed in the Discovery Releases. The agency responsible for the interpretation of the geo-fence data is the FBI CAST team; specifically, Special Agent

Kevin Horan (retired) and Special Agent Sabric.

8. That to the State's knowledge, the above response addresses all inquiries found within Defendant's Amended Motion to Compel.

Wherefore, the State of Indiana, by Prosecuting Attorney, Nicholas C McLeland, and files their response and would ask the Court to dismiss Defendant's Amended Motion to Compel and Request for Sanctions without a hearing.



Nicholas C. McLeland
Attorney #28300-08
Prosecuting Attorney

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the Defendant's attorney of record, through personally delivery, ordinary mail with proper postage affixed or by service through the e-filing system and filed with Carroll Circuit Court, this __23rd__ day of March 2024.



Nicholas C. McLeland
Attorney #28300-08
Prosecuting Attorney