

STATE OF INDIANA                    )  
  ) SS:  
COUNTY OF CARROLL                )

IN THE CARROLL CIRCUIT COURT  
  
CAUSE NUMBER: 08C01-2210-MR-00001

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

**STATE’S MEMORANDUM IN SUPPORT OF CONTEMPTUOUS CONDUCT**

**I.     Introduction**

Now comes the State of Indiana, by Prosecuting Attorney, Nicholas C. McLeland, and files its findings of fact and conclusions of law for the hearing on the information of contemptuous conduct filed by the State. A hearing was held on the contemptuous information on March 18<sup>th</sup>, 2024. Evidence was heard and concluded. The Court accepted the exhibits into evidence and took its decision under advisement pending memorandums filed by each side. The State now files this memorandum in support of the information for contemptuous conduct.

**II.    Contemptuous Conduct**

The exhibits that the State put into evidence support the contemptuous conduct on the part of Brad Rozzi and Andrew Baldwin outlined in the State’s information for contemptuous conduct. The deception to the Court began in November of 2022, when both Brad Rozzi and Andrew Baldwin told the Court that a “Gag” order was not necessary because they had no intentions to talk to the media about this case. Within a week, both Brad Rozzi and Andrew Baldwin published a press release to media outlets. Brad Rozzi testified at the contempt proceedings that this was to curry favor with his client. It is clear that the press release was to curry favor with the public. Although it was not a violation of any “Gag” order, it was a preview into future contempt shown to the Court by showing blatant dishonesty.

The next act of indiscretion was an email from Andrew Baldwin to Brandon Woodhouse. This email was a violation of the “Gag” Order. The email released information from discovery to a member of the public. That member of the public then further disseminated information protected by the “Gag” order by putting it on the internet for the world to consume. While the

content in that email may not be egregious to the Court, the fact that Andrew Baldwin and Brad Rozzi hid their error from the Court until it was found by the State, is egregious, showing yet another example of the Defense deceiving the Court.

Finally, the Defense intentionally and knowingly leaked information to the public in the form of crime scene photos and other discovery protected by the “Gag” order and the Protective Order. The State admitted screen shots of text messages between Mark Cohen and Robert Fortson, neither of which are involved in this case in any way, nor are they employees or team members of anyone involved in this case. While these screenshots are voluminous, they paint a clear picture. Robert Fortson speaks about information that is only privy to the Defense. Robert Fortson talks about it within days of the Defense receiving discovery from the State. Robert Fortson has copies of the crime scene photos, he knows when Defense is working on certain aspects of the case, and he knows about the oral interview with Professor Turco three days after the recorded statement is turned over to the Defense. The Defense states that Mitch Westerman broke into their office and stole the pictures and then released them to Robert Fortson. It is clear from the messages between Mark Cohen and Robert Fortson that Robert Fortson received the crime scene photos and other discovery from Mitch Westerman. It is also clear that Mitch Westerman was feeding Robert Fortson several other pieces of discovery all the way up until October 2<sup>nd</sup>, 2023. The leak was recurring. It is also clear from the text messages between Mark Cohen and Robert Fortson that the strategy to leaking the information is to gauge the public opinion of the leaked information. It was an effort by the Defense to put the information out to the public to gauge their response of the Defense’s theory of the case. This would allow the Defense to change that strategy if the public response wasn’t one that they thought was beneficial.

The screenshots from the iCloud account of Mitch Westerman. The screenshots are of text messages between Mitch Westerman and “Andy”. Again, the messages are voluminous but if the Court will read through them, the Court will clearly see that “Andy” is Andrew Baldwin. In the text, “Andy” talks about writing the Franks’ memo and how it is a huge endeavor on his part. In other messages, “Andy” encourages Mitch Westerman to reach out to the media and push their narrative. “Andy” further states that he has already been in touch with Dateline and spoke to them. All of this is a violation of the “Gag” order by Andrew Baldwin and the Defense.

When the State was notified of the leaked crime scene photos in early October 2023, the

Defense was on a phone conference with the Court and gave the Court the explanation that Mitch Westerman broke in and stole the photos. When interviewed by the Indiana State Police, Andrew Baldwin stated that he gave the Franks' memo to Mitch Westerman to review. Then, at the hearing on March 18<sup>th</sup>, 2024, the Defense implied that Mitch Westerman is now a consultant of the Defense and any communication between Mitch Westerman and Andrew Baldwin should be considered work product. The Defense has consistently altered Mitch Westerman's involvement in this case. Why didn't the Defense make the Court and the State aware on the October 10<sup>th</sup>, 2023 phone call that Mitch Westerman was a consultant and that he had access to discovery? It is the State's belief that the Defense was trying to conceal or diminish Mitch Westerman's role in the leak.

A reasonable person can deduce that the Defense was trying to hide the fact that the Defense was intentionally leaking information. Once the State was notified of the leak, an investigation began where the State began to gather evidence. As the State got closer to the source of the leak, the Defense changed their story from Mitch Westerman being a criminal who broke into their office and stole discovery to Mitch Westerman being a consultant assisting on the Delphi case whose communication with Defense is protected work product. The Defense intentionally violated the Court's orders and leaked discovery information in an effort to push their narrative out to the public to gauge public response. This was a strategic move by the Defense in violation of the Court's orders.

The crime scene pictures, specifically, continue to cause havoc across the internet and revictimize the families of those involved. As recently as March 28<sup>th</sup> 2024, a YouTuber posted the leaked crime scene pictures on his channel to the public and ultimately to the world. That YouTube video made it back to the family retraumatizing them. It has become known that the YouTuber forwarded the pictures on to other YouTubers and they continue to be posted on the World Wide Web. Despite the State and investigators spending countless hours trying to track down all the various outlets the pictures and discovery were leaked to, the damage done by the leaked crime scene photos seems to be ongoing.

### **III. Governing Law**

Contempt is an inherent power of the Court. The contempt power is not bestowed on the courts by statute. "Among the inherent powers of a court is that of maintaining its dignity,

securing obedience to its process and rules, rebuking interference with the conduct of business, and punishing unseemly behavior.” *City of Gary v. Major*, 822 N.E.2d 165, 169 (Ind. 2005). The statutory definition of contempt is just “legislative recognition” of the court’s existing authority. *Id.* See also *In re A.S.*, 9 N.E.3d 129, 133 (Ind. 2014). The same inherent authority can support sanctions without contempt. Courts can exercise their inherent authority to enforce their orders and protect their dignity through sanctions that are not explicitly tied to a contempt finding. “Courts have upheld the imposition of sanctions in a number of contexts not explicitly involving contempt, a commonality is that these circumstances arose within an ongoing judicial process and the sanctioned persons were engaged in that process.” *In re A.S.*, 9 N.E.3d 129, 133 (Ind. 2014) (collecting examples of court sanctions for party or attorney conduct without formal contempt finding).

Contempt is a unique proceeding; it’s not civil or criminal. *State v. Heltzel*, 552 N.E.2d 31, 33 (Ind.1990) (“Contempt, however, is not a criminal offense. It is a sui generis proceeding neither civil nor criminal in nature, although both of those labels are used to describe certain categories of contempt.”). “Criminal contempt is not always readily distinguishable from civil contempt.” *Id.* But a particular contempt proceeding is described as civil or criminal in nature based primarily on the purpose of the sanction. *Id.* Civil contempt is the label applied to sanctions meant primarily “for the benefit of the party who has been injured or damaged by the failure of another to conform to a court order issued for the private benefit of the aggrieved party.” *In re A.S.*, 9 N.E.3d 129, 132 (Ind. 2014). Criminal contempt “is generally regarded as an act directed against the dignity and authority of the court which obstructs the administration of justice and which tends to bring the court into disrepute or disrespect....” *State v. Heltzel*, 552 N.E.2d 31, 33–34 (Ind. 1990). Criminal contempt sanctions are considered punitive because their “purpose it to vindicate the authority of the court, and it benefits the State rather than the aggrieved party.” *In re Contempt of Wabash Valley Hosp., Inc.*, 827 N.E.2d 50, 61 (Ind. Ct. App. 2005).

Contempt is either direct or indirect. IC 34-47-2 is the chapter addressing direct contempt, and IC 34-47-3 is the chapter addressing indirect contempt. Direct contempt is based on conduct that happens in or near the court itself. Under IC 34-47-2-4(a), there is no written charge or complaint that is required. The court simply states the offending conduct and later reduces it to writing. The court may immediately enter judgment and punishment under IC 34-

47-2-4(b) thru (d).

Indirect Contempt occurs outside the presence of the court. The statutes identify 4 distinct bases for indirect contempt: disobeying process or a court order as outlined in IC 34-47-3-1; resisting, hindering, or delaying a process or order as outlined in IC 34-47-3-2; intimidating a witness as outlined in IC 34-47-3-3; or false reporting about a case or proceeding as outlined in IC 34-47-3-4. Because the conduct happens outside the presence of the court, someone has to inform the court of the conduct, then notice is given to the accused with a chance to confront and answer the allegations. In our case, the Court is considering indirect contempt where the Defense was given notice and a chance to be heard on the information.

In Indiana contempt is a completely unique proceeding. It comes from the Court's inherent power to enforce its authority and protect itself from interference. The words civil and criminal are just descriptions of types of contempt based primarily on the purpose of the sanction. Civil contempt sanctions are meant to benefit the other party, and criminal contempt sanctions vindicate the authority of the Court itself. The same contemptuous conduct can give rise to sanctions of both types. Prosecutors like any party or any "responsible person" with reason to believe someone should be held in contempt can file a verified information with the court providing the reasons. Whether the alleged contempt must be addressed in a separate case by a different judge depends on the type of contempt alleged—the defendant's alleged conduct, not the purpose of the sanction. The statute lays out this procedure. The statute says no special judge is required if the alleged conduct is disobeying a court order, which is the conduct alleged here. No special judge is required in indirect contempt growing out of willfully resisting, hindering, delaying, or disobeying any lawful process or order of court." Ind. Code § 34-47-3-7(b). The allegations here by the State are that Andrew Baldwin and Brad Rozzi willfully disobeyed a lawful order of the court after they were served with it.

"To constitute indirect criminal contempt, the act must be done with the intent to show disrespect or defiance." *Matter of Hatfield*, 607 N.E.2d 384, 385 (Ind. 1993). "Intent is a factual issue to be decided by the Court after hearing all the evidence." *Matter of Hatfield*, 607 N.E.2d 384, 385 (Ind. 1993), "Our Supreme Court has held that the respondent has the burden of establishing that her failure to obey the order was not willful." *Jones v. State*, 847 N.E.2d 190, 199–200 (Ind. Ct. App. 2006) (citing *In re Hatfield*, 607 N.E.2d 384, 385 (Ind.1993)). "The determination of whether to find a party in contempt permits the trial court to consider matters

which may not, in fact cannot, be reflected in the written record. The trial court possesses unique knowledge of the parties before it and is in the best position to determine how to maintain its authority, justice, and dignity and whether a party's disobedience of the order was done willfully." *Witt v. Jay Petroleum, Inc.*, 964 N.E.2d 198, 202-03 (Ind. 2012)


If the Court finds a party in contempt, the Court can sanction that party. "The purpose of the sentence imposed, which the State refers to as a sanction, was to vindicate the authority of the trial court and not to punish for the commission of a criminal act, as defined by the Indiana Legislature and codified in the criminal code." *Jones v. State*, 847 N.E.2d 190, 201 (Ind. Ct. App. 2006).

In this case, there is indirect contempt by the Defense. The State has presented evidence from which the Court can find that the Defense intended to leak the information from discovery which is a violation of the "Gag" order and the Protective order. The Court has witnessed many of the violations that the State presented at the hearing on March 18<sup>th</sup> 2024. That, in conjunction with the exhibits that were submitted into evidence, meet the burden for contemptuous conduct on the part of the Defense. The Sanctions for said contempt are left to the Court, but should ensure that this type of conduct does not occur again by the Defense.

  
\_\_\_\_\_  
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 personal delivery, ordinary mail with proper postage affixed or by service through the e-filing system and filed with Carroll Circuit Court, this \_1<sup>st</sup>\_ day of April 2024.

  
\_\_\_\_\_  
Nicholas C. McLeland  
Attorney #28300-08  
Prosecuting Attorney