

FILED

STATE OF INDIANA)
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) SS:
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COUNTY OF CARROLL)

IN THE CARROLL CIRCUIT COURT
SEP 25 2023

Shawn E. McBurns
CLERK CARROLL CIRCUIT COURT

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

CAUSE NUMBER: 08C01-2210-MR-00001

STATE'S 2nd OBJECTION TO DEFENDANT'S MOTION TO SUPPRESS

Now comes the State of Indiana, by Prosecuting Attorney, Nicholas C. McLeland, and respectfully objects to the Defendant's Amended Motion to Suppress and would ask the Court to deny the same and in support of said motion states the following:

1. That on May 19th, 2023, the Defendant filed a Motion to Suppress the evidence seized as a result of the search warrant executed on the home of the Defendant.
2. That on September 13th, 2023, the Defendant filed an Amended Motion to Suppress the evidence seized as a result of the search warrant executed on the home of the Defendant.
3. That the Defense alleges that the search warrant is unconstitutional because the issuance of the search warrant was a result of an improper ex-parte application in that the Affiant, Sheriff Tony Liggett, failed to advise the Judge of material facts and made false and misleading representations with reckless disregard for the truth and that without these false and misleading representations and omissions, the search warrant would not have been issued.
4. This is commonly referred to as a *Franks v. Delaware* argument from *Franks v. Delaware*, 438 U.S. 154 (1978).

5. That per the Franks case, the Defense's attack must be based on deliberate falsehood or acts of reckless disregard for the truth and those allegations must be accompanied by an offer of proof. That the claim should point out specifically the portion of the warrant affidavit that is claimed to be false, accompanied by a statement of supporting reasons. That further this should be supported by affidavits or sworn statements or other reliable statements from witnesses or an explanation for their absence.
6. That the Defense has filed such a memorandum outlining their beliefs of what was omitted and false.
7. That once again, while the memorandum is colorful, dramatic and highly unprofessional, it is not completely true.
8. That the State believes the allegations outlined by the Defense are not supported by evidence that they have collected.
9. That Sheriff Tony Liggett did not intentionally or recklessly omit evidence or lie about evidence in the probable cause affidavit to support the search warrant.
10. That the Defense also alleges that the search warrant was unreasonable under the Indiana and Federal Constitution in that it lacked probable cause, that it failed to establish that the items to be seized were in the residence or could be expected to be in the residence; that the affidavit failed to provide particular information that particular items related to the particular crime would be found in the home; and that the affidavit failed to connect generic items to actual items that were possibly used in the crime.
11. That in September 2022, while reviewing the evidence in the investigation into the murders of Abigail Williams and Liberty German, investigators discovered an interview that was done with Richard Allen in 2017 by Indiana Conservation Officer Dan Dulin.

12. That in the 2017 interview, Richard Allen admitted being on the trail the day that Abigail Williams and Liberty German went missing.
13. That he stated that he was on the trail between 1:30 P.M. and 3:30 P.M. and that while he was on the trail, he was using his phone.
14. That on October 13th, 2022, investigators invited Richard Allen and his wife, Kathy Allen, to speak to them and follow up on that interview done in 2017.
15. That both Richard Allen and Kathy Allen came to the interview on their own on October 13th, 2022, they were not under arrest and were free to leave the interview at any time.
16. That investigators learned from those interviews that Richard Allen reaffirmed that he was in fact on the trails the day that Abigail Williams and Liberty German went missing and further admitted to being on the high bridge.
17. That he also told investigators that he was wearing blue jeans, and a blue or black Carhartt jacket with a hood and that he was wearing a head covering.
18. That, further, Richard stated that he did own guns and that the guns were in his home.
19. That investigators learned from Kathy that Richard Allen still had guns and knives in the home, along with a blue Carhartt jacket.
20. That Investigators believed a firearm was involved in the abduction and murder of Abigail Williams and Liberty German because an unspent .40 caliber round was found between the bodies of Abigail Williams and Liberty German.
21. That Investigators believed a knife was used in the murder of Abigail Williams and Liberty German.

22. That the clothes that Richard Allen described wearing the day he was on the trails match the description of the man seen on the bridge from the video taken by Liberty German's phone.
23. That it was also gathered that Richard Allen still possessed the firearms, knives and the clothing and said items were in his house.
24. That based on this information, investigators prepared a probable cause affidavit with a search warrant for the home of Richard Allen.
25. That the probable cause affidavit covers all the information that law enforcement had gathered in the investigation in regards to Richard Allen up until October 13th, 2022.
26. That the probable cause affidavit outlines evidence that established probable cause to search the home of Richard Allen.
27. That Investigators applied for the search warrant on October 13th, 2022, and the same was granted that day by Carroll County Circuit Court Judge Benjamin Diener.
28. Investigators went to the residence of the Defendant, located at 1967 North Whiteman Drive, Delphi, Indiana, knocked on the door and executed the search warrant on October 13th, 2022.
29. The Defendant and his wife were asked to be out of the residence while the search warrant was executed but were allowed back in the residence immediately afterwards.
30. Investigators found several items in the residence, including a .40 caliber firearm and electronic devices, all of which are outlined in the Search Warrant Return.
31. That for a search warrant to be valid, it must be accompanied by an affidavit that establishes probable cause, which is a sufficient basis of fact that exists to permit a

reasonably prudent person to believe that a search of the premises will uncover evidence of a crime. *Esquerdo v. State*, 640 N.E.2d 1029.

32. That Indiana Code Indiana Code 35-33-5-2 specifies the minimum information necessary to establish probable cause, which is as follows:

- a. Information particularly describing the house or place to be searched and the things to be searched for;
- b. Information alleging substantially the offense in relation thereto and that the affiant believes and has good cause to believe that the things sought are concealed in that place that they are attempting to search; or the person to be arrested committed the offense described; and
- c. Information setting forth the facts known to the affiant through personal knowledge or based on hearsay constituting probable cause.

33. That under the 4th Amendment of the United States Constitution, the evidence needed to obtain a search warrant need not rise to the statute of facts necessary to obtain a conviction, the circumstances alleged in the affidavit need only lead a person of reasonable caution to believe that a crime has been committed. *Chambers v. State*, 540 N.E.2d 600 (Ind. 1989).

34. That when the sufficiency of the search warrant is challenged under the Fourth Amendment by the Defendant, as it is in the Defendant's motion, the role of the reviewing court is to simply ensure that there was a substantial basis for finding probable cause, reminding itself that it owes great deference to the initial probable cause determination; and will not invalidate a warrant by interpreting probable cause affidavits

in a hypertechnical, rather than a commonsense manner. *Watkins v. State*, 85 N.E.3d 597 (Ind. 2017).

35. That under Article 1, Section 11 of the Indiana Constitution, the reasonableness of the search is determined by using the Litchfield test which looks at the totality of the circumstances and requires consideration of both the degree of intrusion into the subjects' ordinary activities and the basis upon which the officer selected the subject of the search or seizure. *Litchfield v. State*, 824 N.E.2d 356.
36. That the inquiry requires a balancing of the degree of concern, suspicion, or knowledge that a violation has occurred; the degree of intrusion the method of the search or seizure imposes on the citizens ordinary activities and the extent of law enforcement needs. *Litchfield v. State*, 824 N.E.2d 356.
37. That the State believes that the affidavit does meet the threshold to establish probable cause under the 4th Amendment of the United States Constitution in that there was a substantial basis for finding probable cause and there was a high likelihood based on the evidence that investigators had that there was evidence of the crime in the home of Richard Allen.
38. That the State believes that the affidavit accompanied with the search warrant for the home of Richard Allen does establish probable cause under Article 1, Section 11 of the Indiana Constitution and does pass the Litchfield test for reasonableness under the totality of the circumstances.
39. That the State believes that the affidavit establishes the items to be seized were in the residence by statements made by Richard Allen and his wife, Kathy Allen.

40. That the State believes that the affidavit provides particular information that particular items related to a particular crime will be found in the home based on the statements made by Richard Allen and his wife, Kathy Allen.
41. That the State believes that the affidavit connects generic items to actual items that were possibly used in the crime based on the investigators evidence that they gathered throughout the investigation.
42. That the evidence that was gathered in 2017 was reaffirmed by the interview done with Richard Allen and his wife, Kathy Allen on October 13th, 2022.
43. Investigators believed, at that time, that they had enough probable cause to apply for a search warrant. Investigators also believed that if they did not execute a search warrant on the residence immediately, that there was a danger that the Defendant would destroy crucial evidence in the investigation. The investigators believed through their training and experience that there was a real chance that the Defendant would destroy evidence once he knew he was a suspect in the crime.

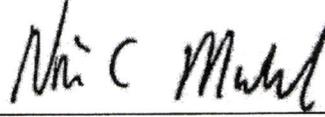
WHEREFORE, the State has shown that the actions by the officers were valid and justified and did not violate the Defendant's 4th Amendment under the United States constitution or Article 1, Section 11 of the Indiana Constitution and therefore the Motion to Suppress should be denied. Respectfully submitted.



Nicholas C. McLeland
Attorney #28300-08
Prosecuting Attorney

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon his attorney of record, through personally delivery, ordinary mail with proper postage affixed or by service through the e filing system and filed with Carroll County Circuit Court, this __25th__ day of September, 2023.



Nicholas C. McLeland
Attorney #28300-08
Prosecuting Attorney