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STATE OF INDIANA)
)SS:
COUNTY OF CARROLL)

IN THE CARROLL CIRCUIT COURT
CAUSE NO.: 08C01-2210-MR-1

STATE OF INDIANA,)
Plaintiff,)
)
VS.)
)
RICHARD ALLEN,)
Defendant.)

RECORD OF HEARING
HELD ON OCTOBER 31, 2023

APPEARANCES

For State of Indiana: Nicholas C. McLeland/James Luttrell
Carroll County Prosecutor/Deputy Prosecutor
101 West Main Street
Suite 204
Delphi, Indiana 46923

For Defendant: William Lebrato/Robert Scremin
Chief Public Defender/Deputy Public Defender
100 East Main Street
Suite 721
Fort Wayne, Indiana 46802

THE HONORABLE FRANCES C. GULL JUDGE
JODIE L. WILLIAMS REPORTER

1 **PROCEEDINGS**

2 THE COURT: We are on the record. Thank you, Karen. All right.
3 Are we ready? Is the State ready?

4 ATTORNEY NICHOLAS MCLELAND: Yes, Your Honor.

5 ATTORNEY JAMES LUTTRELL: Yes, Your Honor.

6 THE COURT: Defense ready?

7 ATTORNEY WILLIAM LEBRATO: Yes.

8 ATTORNEY BRADLEY ROZZI: Yes.

9 THE COURT: We are on the record in *State of Indiana versus*
10 *Richard Allen*, 08C01-2210-MR-1. I'll show that the State is here by Mr.
11 McLeland, Mr. Luttrell; Defense is here by Mr. Lebrato, Mr. Scremin. And I note
12 yesterday late, the written appearance by Mr. Rozzi and Mr. Baldwin. So we are
13 here – Mr. Lebrato, earlier this morning, you filed a motion to continue the jury
14 trial.

15 MR. LEBRATO: That's correct, Your Honor.

16 THE COURT: Go ahead, sir.

17 MR. LEBRATO: I explained that to Mr. Allen.

18 THE COURT: Okay. And what is the State's position?

19 MR. MCLELAND: Judge, the State has no objection as long as the
20 time is chargeable to the Defendant.

21 THE COURT: Okay.

22 MR. LEBRATO: And, Your Honor, that's in our motion that we
23 would accept all the CR 4 time.

24 THE COURT: Yeah. I show, in paragraph four, the State doesn't
25 object as long as CR 4 is charged to the Defendant. Okay. So then we have the

1 appearances by Mr. Rozzi and Mr. Baldwin. Gentlemen?

2 ATTORNEY ANDREW BALDWIN: Judge, we're – Mr. Allen has asked
3 us to represent him and we are – we entered our appearance to represent him.

4 THE COURT: Okay. Well, as we had our hearing on the 19th, at
5 that – prior to that hearing, we had some discussions. Counsel, you withdrew,
6 you chose to withdraw – withdraw from the case, rather than be removed for
7 gross negligence. What's changed in the 12 days?

8 MR. ROZZI: Well, Judge, I don't – I think I've made it abundantly
9 clear in my pleadings with the Court that the conduct of the Tribunal in
10 chambers a week and a half ago left us with no choice but to withdraw, because
11 we were gonna put ourselves in a direct conflict with our client by sitting in the
12 courtroom and accepting, you know, what was a lashing, essentially, from Your
13 Honor. And so that was a strategic move so as to protect our client's rights and
14 I think I've made that abundantly clear. I don't know how that couldn't be clear
15 at this point. Beyond that, us transitioning from contracted public defenders to
16 private council puts Mr. – puts us in an entirely different situation with our
17 client, which is the Sixth Amendment – his Sixth Amendment right to have
18 representation. And to the extent that the Court is trying to intervene into that
19 right without some due process, you know, it's my client's contention that that's
20 just not appropriate and he has his right to have counsel of choice. So I don't
21 really know that there's much else to say. I think, in the normal course of
22 business – I'm a private practitioner, I was once a public defender. In the normal
23 course of business and in every other case I've ever been involved with, when
24 there's a public defender assigned to a case, such as Mr. Scremin and Mr.
25 Lebrato – excuse me if I messed your name up – but in every other case, when

1 private counsel enters their appearance, the public defender taps out and,
2 basically, private counsel gets up and running, and I don't see why this case
3 should be any different.

4 THE COURT: Well, again, you haven't answered my question that
5 nothing has changed in the 12 days since I found gross negligence on the part
6 of the Defense in representing Mr. Allen.

7 MR. ROZZI: Well, the answer to the question is, is that we didn't
8 act grossly negligent, and the Court has an opinion that's different than our
9 opinion and, you know, at this point, without some due process and some
10 findings, with a notice – an opportunity to be heard, that we're just on a different
11 page about how we acted and what our circumstances are, so that's the answer
12 to the question.

13 THE COURT: Does the State have any opinions or wish to weigh
14 in?

15 MR. MCLELAND: Judge, I guess I'm at a loss at this point. We've
16 struggled up to this point, Judge, and again, I was there in chambers in the
17 meeting, I agree with the statements made by the Court about the Defense being
18 grossly negligent. Again, this started back at our first hearing back I believe in
19 November, with the actions outlined by the Court about Defense's statement in
20 chambers, and then a – kind of a direct 180 from that statement once chambers
21 – once they left chambers. And then, there was a leak from the Defense in
22 December that wasn't made aware to the State or to the Court until the State
23 found out. Then we have the various motions that were filed with not only
24 negligent statements, Judge, but I think outright lies, and I think that's been
25 proven in court and hearings that we've had. We then have the *Franks* motion

1 that was filed, Judge, that – what you have to outline in a *Franks* motion is very
2 clear, and defense counsel spent over 100 pages outlining their theory of the
3 case, instead of argument for the *Franks*. And again, I think everything they've
4 done, including the most recent leak, is just an effort by them to push this case
5 out into public and try this in the public eye and not in this court. The State's
6 concern is that Mr. Allen has a fair trial, that is the State's concern, but that
7 goes both ways. We deserve a fair trial, too, Judge, that right goes both ways.
8 And I just don't think the actions by the Defense can be attributable to anything
9 else but gross negligence, Judge, and so that's the State's opinion.

10 THE COURT: Mr. Allen, I understand that you wish to have Mr.
11 Baldwin and Mr. Rozzi represent you in this matter. I have grave concerns, Mr.
12 Allen, about their representation of you, the previous findings by this Court of
13 their gross negligence. Mr. Allen, you are entitled to adequate representation in
14 your case, you are entitled to a vigorous defense in your case. And this is
15 difficult, Mr. Allen, because I know what you want, you've indicated that through
16 your attorneys, but I cannot and will not allow these attorneys to represent you
17 with the concerns that I've had, with the gross negligence that I have found.
18 They withdrew, rather than be found grossly negligent and be removed. I can't
19 do it, sir, I just can't. I have –

20 MR. BALDWIN: Judge –

21 THE COURT: Let me finish. I cannot allow that. I have appointed
22 able counsel to represent you. Mr. Scremin is here, Mr. Lebrato is here, they
23 have an investigator here, as well; and I will grant their motion to continue your
24 trial. And I'm sorry that this is happening to you, Mr. Allen. Mr. Lebrato, Mr.
25 Scremin, I know that you have not talked with the State, I know you have not

1 yet received discovery. There is no way that you can tell me when you will be
2 ready for trial. I have asked former counsel to cooperate, I have asked former
3 counsel to provide the discovery to you. It's my understanding that, Mr.
4 McLeland, you've indicated that that has not been provided to you.

5 MR. MCLELAND: Correct, Your Honor.

6 THE COURT: Gentlemen, when can I expect that you would return
7 the discovery to the State of Indiana?

8 MR. BALDWIN: By the end of the week, perhaps today.

9 THE COURT: That would be great; if you could get it today, that
10 would be wonderful, then that can be provided to successor counsel. You are
11 not required to cooperate with successor counsel. I would hope that you would,
12 in Mr. Allen's best interest, but that is entirely up to you. If you could have the
13 discovery to the State by the end of this week, that would be great. I know that
14 I'd previously entered an order that discovery was to be complete by November
15 1st; obviously, that's not gonna happen. Do you want to pick a trial date, Mr.
16 Lebrato? Mr. Scremin?

17 MR. LEBRATO: Yes, Your Honor. Briefly speaking with the State,
18 tentatively we would like a trial date in November; but not knowing what exactly
19 we're gonna be getting, I can't tell the Court with any certainty that we would be
20 ready in November. We will do everything in our power to be ready by then. It's
21 my understanding that it's a massive amount of discovery.

22 THE COURT: It is. Karen, I know that you brought the calendar
23 in. Could we get a date in November? Okay. I'm looking at November of 2024,
24 there's an Election Day, there is Veteran's Day, and then Thanksgiving.

25 MR. LEBRATO: If October or December would work better –

1 THE COURT: October?

2 MR. MCLELAND: That's fine, Judge. The State – whatever is fine
3 with the Court is fine with the State, Judge.

4 THE COURT: Mr. Scremin? Mr. Lebrato?

5 ATTORNEY ROBERT SCREMIN: October would be fine, Your
6 Honor, for a start.

7 THE COURT: Then, why don't we look – October 14 is marked off.
8 What is that?

9 MR. SCREMIN: Columbus Day, Your Honor.

10 THE COURT: Columbus Day? Thank you, Karen. You may mark
11 that off. So we'll look at October 15th through the 31st?

12 MR. MCLELAND: Fine, Judge.

13 THE COURT: And we, again, would pick the jury in Fort Wayne
14 and bring them here to Carroll County for the trial. There's a pending motion to
15 suppress, there is the *Franks* that is not yet – I haven't finished even reading it
16 or going through all of the hours of interviews that were provided on a flash drive
17 – so you'll need a hearing date for that. Once you get the discovery and once
18 you've had the opportunity to review the pleadings, you could either adopt those
19 pleadings or make your own, it's up to you. Anything else from the State?

20 MR. BALDWIN: Judge, we want to create a record on – to be clear
21 on what you're doing: You are disqualifying Brad and me; is that correct?

22 THE COURT: Correct.

23 MR. BALDWIN: We would like to be heard through my attorney,
24 David Hennessy.

25 THE COURT: Sure.

1 ATTORNEY DAVID HENNESSEY: Good morning, Your Honor. I do
2 have a limited appearance on record which hasn't been removed or disqualified.
3 The Court has my preliminary memorandum about disqualification when Mr.
4 Rozzi and Mr. Baldwin were appointed counsel. This is yet different. The law
5 that I gave the Court is even more certain. The Court appears to be saying that
6 it's protecting Mr. Allen, but the Court's finding of gross negligence was
7 summary, without notice, without the opportunity to be heard. Had you given
8 Mr. Rozzi and Mr. Baldwin notice of your intentions on October 19th when they
9 were formed, which seems to be like a week earlier, then they could have been
10 prepared. I can tell you this on behalf of both of these gentlemen, you would
11 have the Indiana Public Defender Council come testify, you would have
12 competent attorneys from across the state come testify, you would have defense
13 counsel that are – have been declared experts in criminal defense. Mr. Baldwin's
14 one of a handful of lawyers in the state that's certified in criminal defense. So
15 your summary ruling violates the Constitution and your summary ruling is
16 unfair to everyone, especially Mr. Allen, because he was never able to make a
17 record. Your finding of gross negligence, what you cited to them in chambers,
18 which has never been put on the record, is not gross negligence, it's a zealous
19 representation, maybe too zealous for the Court's favor, but it was good
20 lawyering. The memorandum on the *Franks* issue is a work of art. It's legal
21 writing at its best.

22 THE COURT: This has nothing to do with the *Franks* issue, sir.

23 MR. HENNESSEY: No, but that –

24 THE COURT: Nothing to do with that, so please stay –

25 MR. HENNESSEY: No, it has to do with your finding of gross

1 negligence, and what I'm citing to the Court are the activities –

2 THE COURT: I never mentioned the *Franks* –

3 MR. HENNESSEY: I'm sorry?

4 THE COURT: Never mentioned the *Franks* hearing, never
5 mentioned the motions, sir.

6 MR. HENNESSEY: Okay. You mentioned the transport orders.
7 Unfortunately, the public and I – I was not allowed in representing Mr. Baldwin,
8 and unfortunately, the public and I aren't privy to the recording of the session
9 outside the presence of Mr. Allen. He has a right to be present at every critical
10 stage of the proceedings. When the Court coerces a withdrawal or quitting, that's
11 a critical stage of the proceedings. He wasn't present. And I'd be happy to
12 address each and every point that you think constitutes gross negligence. I've
13 practiced criminal defense for 40 years. I understand and know in detail what
14 these two lawyers have done on behalf of Mr. Allen has been nothing but zealous
15 representation. So thank you – I have no expectation you'll change your mind –
16 for allowing us to make a more complete record about your finding of gross
17 negligence in disregard for Mr. Allen and unfairness to Mr. Baldwin and
18 unfairness to Mr. Rozzi.

19 THE COURT: Thank you, Mr. Hennessy.

20 MR. HENNESSEY: Thank you, Judge.

21 THE COURT: Anything else from the State?

22 MR. MCLELAND: No, Your Honor.

23 THE COURT: Mr. Scremin?

24 MR. SCREMIN: No, Your Honor. Thank you.

25 THE COURT: Mr. Lebrato?

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MR. LEBRATO: No, ma'am.

THE COURT: All right. Thank you very much. We've set a trial.

We are in recess.

(THIS CONCLUDES THE PROCEEDINGS HAD AT HEARING ON OCTOBER 31,
2023, IN THIS CAUSE.)

1
2 STATE OF INDIANA)
3 COUNTY OF CARROLL)

IN THE CARROLL CIRCUIT COURT
)SS:
CAUSE NO.: 08C01-2210-MR-1

4
5 STATE OF INDIANA,)
6 Plaintiff,)

7 VS.)

8 RICHARD ALLEN,)
9 Defendant,)

10
11 **CERTIFICATE OF REPORTER**

12 I, Jodie L. Williams, an official reporter for the Allen Superior Court, Allen
13 County, Indiana, do hereby certify that I took transcribed from electronic
14 reporting equipment all of the proceedings had at hearing held on October 31,
15 2023, in said cause.

16 I further certify that the above and foregoing transcript is a full, true, and
17 complete copy of said proceedings.

18 WITNESS my hand and seal this 2nd day of November, 2023.

19
20
21 *Jodie L. Williams*
22 _____
23 Jodie L. Williams, Reporter
24 Allen Superior Court
25 Allen County, Indiana

CERTIFICATE OF FILING AND SERVICE

Pursuant to Rule 2(D) of the Indiana Rules of Procedure for Original Actions, the foregoing was electronically filed using IEFS and on November 6, 2023 was served upon the following through IEFS and via electronic mail at the noted e-mail address:

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