IN THE INDIANA COURT OF APPEALS
CAUSE NO. 25A-CR-00591

RICHARD ALLEN,	**)**	**Appeal from Carroll Circuit Ct.**
Appellant/Defendant,	**)**	
	)	
v.	**)**	**Trial Ct: 08C01-2210-MR-1**
	)	
STATE OF INDIANA,	**)**	**The Honorable Francis Gull,**
Appellee/Plaintiff.	**)**	**Special Judge.**

APPELLANT'S BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

RULES

STATUTES

CONSTITUTIONS

SECONDARY SOURCES

Statement of Issue

I. Whether the search of Allen's home was unconstitutional and the resulting evidence inadmissible because law enforcement omitted or altered key facts in the warrant application.

II. Whether statements Allen made while gravely disabled during unprecedented pretrial solitary confinement were involuntary, the product of unconstitutional detention, and inadmissible.

III. Whether the trial court denied Allen his right to a fair trial, to present a complete defense, to explain the scene, and impeach the investigation.

Statement of Case

On October 28, 2022, the State charged Richard Allen with two counts of felony murder by kidnapping, which was amended on March 22, 2024, to add two counts of murder. App. II, 101; VII. 77. On November 11, 2024, following a twenty-five (25) day trial, the jury returned a guilty verdict on all counts. App. XI, 81-86.

The trial court sentenced Allen to an aggregate sentence of 130 years. App. XI, 169. Allen filed a motion to correct errors, which the trial court denied. App. XI, 197; XII, 98, 100.

Statement of Facts

On February 14, 2017, fourteen-year-old L.G. and thirteen-year-old A.W. were found dead in the woods. Two days later, Allen—like many others—came

forward and reported he had been on the trail that day and saw three girls. Nov. Supp. I, 227.[1] Because law enforcement wanted to know whether he had seen any "possible suspects," he was interviewed in a parking lot. After the interview, the lead was marked "cleared," and the report was misfiled. Id.

Allen then returned to his job, family, and home in the small Delphi community. For the next five years, he did not sell his car, destroy his clothes, dispose of his gun, or relocate, but continued his normal routine. No witness identified Allen as Bridge Guy.

When the report was rediscovered in September 2022, law enforcement insisted Allen was Bridge Guy without a single eyewitness. Over the next several years, the State built its case against Allen.

I. Warrant.

A. The Bridge Guy video.

On February 13, 2017, around 1:30 pm, L.G.'s older sister dropped off L.G. and A.W. at the Monon High Bridge Trial to explore and take photos. Tr. X, 11-12, 16, 46-47, 83-87. The girls had the day off from school and the weather was unseasonably warm. Tr. X, 8-10.

[1] In November 2025, the Clerk Filed an Amended Notice of Completion of Transcript. The Supplemental November Transcripts will be cited as Nov. Supp. [Vol], [page]. Citations to November audio files will be Nov. Supp. Ex. [#] (time).

When the girls failed to meet L.G.'s father at the specified time and no one could reach them, L.G.'s family contacted police, and an extensive search began. Tr. X, 130-31. The next day around noon, the girls were found murdered in the woods near Deer Creek not far from the High Bridge. Tr. X, 229-30; XI, 13, 189.

The best evidence law enforcement had was from L.G.'s phone found at the scene under A.W.'s body. Tr. XI, 209-10; Ex. X, 229-31. At 2:13:51 p.m., L.G. recorded a 43-second video, showing A.W. walking across the bridge with someone (Bridge Guy) behind her. Tr. XIII, 70-71. Law enforcement enhanced the video, yielding the following:

Supp-Ex. II 246 (00:14). The man is heard telling the girls, "Down the Hill." Tr. XIV, 19.

Law Enforcement set up a tip line and many people came forward. Sixteen-year-old R.V., her sisters IV and A.S., and her friend B.W., told police that they were on the trail, and as they were leaving, they saw a man near the entrance to the Freedom Bridge. Tr. XII, 115, 121, 147.

Besty Blair, who frequently walked the trails for exercise, came forward and told police she saw a white man on the High Bridge standing on a platform and seemed to be waiting for someone. Tr. XII, 163-64; Nov. Supp. Ex. 103 (16:45). She thought the man was the guy in the video because he was wearing

the same clothes. Nov. Supp. Ex. 103 (3:15); Tr. Vol. XII, 159-61. When she reached the bridge, she turned around and noticed two girls approaching. Tr. XII, 159; Nov. Supp. I, 145.

Four months after the murder, law enforcement interviewed Sara Carbaugh. Nov. Supp. Ex. 115. She told police that, on February 13, while driving eastbound on County Road 300, she saw a muddy man wearing a tan coat walking west toward town. Id. (12:10-12:16). After seeing the image of "Bridge Guy" in the media, Carbaugh said he possibly was the man she had seen. Id. (8:15-9:30).

B. 5.5 years later - Richard Allen.

On September 21, 2022, law enforcement re-discovered the tip from Allen. Tr. XIII, 154; Ex. XII, 78. In the February 2017 tip, Allen called and said he was on the bridge "between maybe 1 and 3" and saw three girls. Ex. XII, 78. Allen shared his address, phone number, and MEID number, which is a unique identifier that can be used to track a phone's location. Tr. XIII, 121, 220-21.

The lead investigators immediately started investigating now 50-year-old Allen. They believed that the man the four girls (R.V. and others) saw on the trail was Bridge Guy. Tr. XIV, 12.

Allen still lived in the same house and worked at the same CVS store in Delphi as he did in 2017. On October 13, 2022, when police showed up at his house, Allen agreed to talk with them. After riding to the station with police, Allen patiently answered questions about his personal life and the walk he took

on his day off 5.5 years earlier. Supp. Ex. 290 (14:45). Allen explained, after spending the morning with his mom on February 13, 2017, he went home to get a jacket before going to the trails. He walked out to the first platform of the High Bridge, looked at the fish and then walked back before returning home to watch the stock market. Id. (42:00).

He explained that he came forward after law enforcement asked to speak with anyone who had been on the trail. The next day, a DNR officer interviewed him in a parking lot. Id. 23:45. Allen believed he told the officer he was on the trail between noon and 1:30 or 1:45. Id. 24:53. He could only recall seeing three girls leaving the trail. Id. 41:00.

Being five years passed, Allen could not remember what car he drove or the clothes he wore. Id. (36:00-39:00; 43:30). He remembered wearing "blue jeans" and a "jacket." Id. (43:30). When asked what type of jacket, Allen did not remember and listed all the jackets he owned – a blue Carhartt, a black Carhartt or off brand with a hood, sweatshirts, hoodies, and a fleece. Id. (44:00). He kept a skull cap in his jacket. Id. (45:00). He could have been wearing tennis shoes or boots. Id. (45:45).

When law enforcement asked for consent to search, Allen expressed concern that they were making him "somebody's fall guy" by trying to fit pieces together that do not fit to close the case. Id. (54:00-56:30; 1:00:40). He was confused, thinking they were talking to him to look for "helpful" information. Id. (54:00-56:30.) Although he understood they had to clear everyone on the trail, he was bothered by the time passage.

After a break, law enforcement returned more confrontational with Allen who became frustrated with being accused of murder and law enforcement contacting his wife and daughter while he was at the station.

Confronting Allen with the Bridge Guy photo, Allen responded, "if that is taken with the girls' phone, that is not me. I have never met those girls before." Id. (1:13:25-50: 1:23:20). They accused Allen of admitting he wore the same clothes as Bridge Guy, and Allen corrected the investigator, reminding him that he said he could have been wearing a sweatshirt. Id. (1:23:35). Allen added that everyone has looked at the Bridge Guy photo for years. To him, it did not even look like Bridge Guy was wearing a Carhartt. Id. (1:26:20 – 1:27:30).

Finally, when law enforcement accused him of either being out there to kill the girls or to introduce them to someone, Allen said "good luck finding anything that points to that." Id. (1:24:35). Despite Allen repeatedly telling law enforcement "arrest me or take me home," they would not stop. Id. (1:25:20). Allen eventually had to get up and walk out to end the interview.

C. The Story Det. Liggett Told the Judge.

On October 13, 2022, the State applied for a warrant for Allen's home, car and electronics. App. III, 118. In Det. Liggett's probable cause affidavit, he concluded that "Allen is the last individual to have contact with [L.G.] and [A.W.]" and "is the individual depicted on the Monon High Bridge from the video taken from [L.G.'s] phone." App. III, 121-22. He reasoned that Allen admitted he was wearing a blue jacket and head covering like Bridge Guy and was on the trail/bridge around the time of the abduction and witness (the four girls,

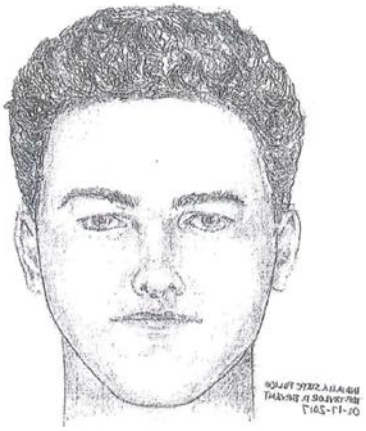
Blair and Carbaugh) saw a man they believed to be Bridge Guy wearing a blue jacket. App. III, 120-22. Det. Liggett implied Blair and the girls saw the same man because they similarly described his jacket. Id. 120.

Also, Det. Liggett concluded that Allen drove his black 2016 Ford Focus and parked at the old CPS building on 300 North. App. III, 120. He claimed that witnesses (Blair and Wilson) saw a car backed into a parking spot at the CPS building. Id. Wilson felt the driver of the car was trying to conceal the license. Id. Wilson said the car was a purple PT Cruiser or small SUV type vehicle. Id. "Blair and Wilson drew a diagram and had the vehicle they saw parked in the same general area and manner." Id.

D. The part of the story Det. Liggett did not tell the judge.

1. Blair's description of Bridge Guy did not match Allen.

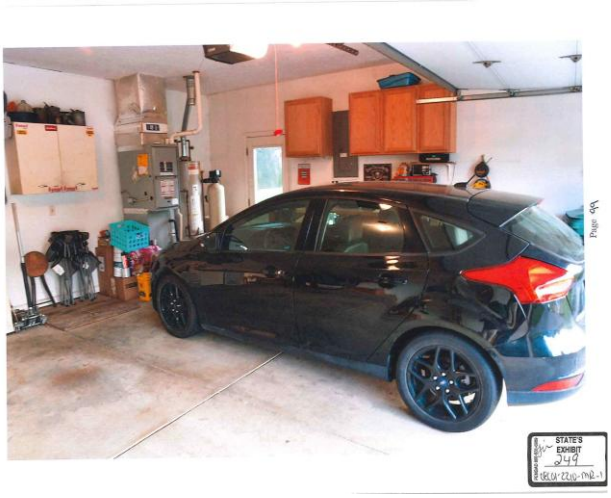
Detective Liggett did not tell the judge about the differences between Blair's description of the man on the bridge and Allen's appearance. Just three days after the murders, Blair described the man as white, age 20, of medium build and having brown curly hair. Nov. Supp. I, 143-44. An artist completed this sketch which Blair rated a 10 out of 10 for accuracy. Id. 144-45; Ex. IX, 226.

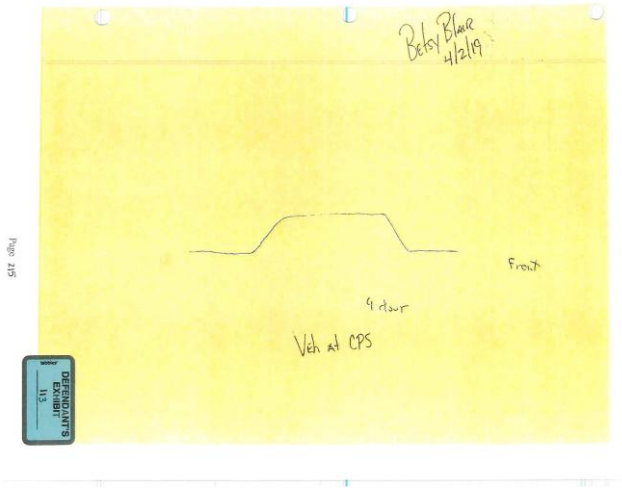


In 2019, Det. Liggett personally interviewed Blair, who again described the man as slender, youthful "boyish" looking, in his 20s to early 30s, no facial hair and with "poofy" hair like the sketch portrayed which she still gave a 9 out of 10 in accuracy. Nov. Supp. Ex. 107 (1:20-3:00; 11:42:10)); Nov. Supp I, 145. At the time of the murders, Allen was 44 years old, 5' 6" and had very short hair. Ex. XII, 82, 125.

2. Blair's description of the oddly parked car did not match Allen's.

Det. Liggett also omitted Blair's description of the oddly parked car as resembling a "1965 Ford Comet" with "sharper angles." Nov. Supp. I, 145; Nov. Supp. Ex. 107 (6:30). Below is her drawing of the car compared to Allen's hatchback.





Nov. Supp I, 215-16; Ex. Vol. XII, 99.

Blair also said the oddly parked car was a "non-descript color," but not black. Nov. Supp. I, 145. Allen's car was black. Id. 161.

3. Blair did not believe the man on the bridge was the same man Carbaugh saw walking down the road.

Det. Liggett omitted that Blair told him the man Carbaugh described walking down the road is not the same man she saw on the bridge. Nov. Supp I, 145; Ex. 107 (8:00). Below is Carbaugh's sketch.

Ex. Vol. VII, 245.

After talking with Blair in 2019, ISP issued a press release distinguishing the man Carbaugh saw from the man on the bridge. Ex. VII, 247. The ISP explained the men "**are not the same person**" and that Blair's sketch "is representative of the face of the person captured in the video of L.G.'s cell phone." Id. (emphasis added).

4. Carbaugh said the man walking down the road was wearing a tan coat.

Detective Liggett also made false statements in the affidavit. He claimed that "[a]n interview was done of Sarah Carbaugh in 2017" and she stated she saw a man "wearing blue colored jacket" and was "muddy and bloody." App. Vol. III, 120. In her 2017 interview, Carbaugh did not describe the man as "bloody," only "muddy." Nov. Supp. Ex. 115. She said he was wearing a tan jacket. Id. (00:12:10-00:12:15).

5. Allen never said he was wearing a blue Carhartt and his wife said Allen had purchased his current Carhartt a couple years earlier.

Det. Liggett falsely stated that Allen said he was wearing a black or blue Carhartt with a hood and a head covering. App. IV, 121-22. Allen told investigators that he did not know what he was wearing and it could have been anything from a Carhartt to a sweatshirt and that he kept a skull cap in his jacket. Supp. Ex. I 290 (44:00-45; 1:23:35). Although Allen's wife said he had a blue Carhartt in 2022, Liggett left out that she said Allen purchased that coat "a couple of years ago." Nov. Supp. I, 201. The girls were killed in 2017.

E. The warrant.

The trial court issued the warrant. App. Vol. IV, 117. Law enforcement seized from Allen's home multiple items, including a Sig Sauer gun, knives, casings and the Carhartt-type jacket with a white and yellow patch on the front pocket.[2] Ex. XII, 102-118. These items featured prominently during Allen's trial.

F. Allen denies the bullet is his, that he was Bridge Guy or had anything to do with the murders.

At the scene, officers found an unspent (unfired) .40-caliber Smith and Wesson Cartridge near L.G.'s right ankle. Tr. XI, 89-91; 199-200; Ex. XIV, 155-57. When ISP Analyst Melissa Oberg cycled six cartridges through Allen's gun, she did not find any marks that matched the marks on the cycled round at the

[2] Bridge Guy's coat does not have a patch like Allen's. Add, 3.

scene. Tr. Vol. XV, 12. Thus, she could not establish a link between Allen's gun and the unspent round at the scene. Id.

Oberg then fired four cartridges from Allen's gun. Tr. XIV, 229. She compared the markings on these **spent** cartridges to the markings on the **unspent** cartridge at the scene and concluded that Allen's gun was the source of **some** of the markings on the unspent cartridge at the murder scene. Tr. XIV, 173, 225.

After learning of Oberg's conclusion, on October 26, 2022, law enforcement interrogated Allen again. For about 1.5 hours, Det. Holeman accused Allen of killing A.W. and L.G. or, at least being in involved. Supp. Ex. II, 291. Allen explained the "very day" the police asked anyone on the trail to come forward, "that is what [he] did." Supp. Ex. II 291, 34:30. "I went for a walk on the trail and went home" and "I did not murder two little girls." Id. (44:00).

Det. Holeman repeatedly confronted Allen with Oberg's conclusion that marks on the casing at the scene "matched" his gun. Each time, Allen denied that the bullet at the scene was from his gun. Id. 291 (5:55; 7:40; 11:30; 12:30: 12:50; 13:45; 14:05; 23:35; 25:20; 26:15; 30:20; 32:3035:40; 46:20; 47:20; 48:50; 53:50; 56:00). Holeman even claimed the methodology was "scientific" and like "fingerprints." Id. (30:20; 31:20; 35:30; 56:50; 59:15; 1:16).

Exhausted and frustrated by Det. Holeman's relentless accusations that he murdered A.W. and L.G., Allen consistently said he could not tell him what happened to the girls because he does not know. Id. (9:00:12:50). He did not

know how that round got between the girls or how they died. Id. (9:34; 12:50). He emphatically stated, "I did not murder two little girls." Id. (13:00; 29:00).

Despite Det. Holeman's lying about experts identifying Allen and his voice on the video, Tr. Vol. XV, 119, Allen continued to deny he was Bridge Guy. Supp. Ex. II, 291 (7:20; 15:15; 23:55). Det. Holeman tried a different lie, saying five witnesses saw Allen with L.G. and A.W. and a gun. Id. (24:00; 30:00). Again, Allen said, "it did not happen" and "I don't care how stressed out I get I am not going to admit to something I had nothing to do with." Id. (24:40; 27:40; 35:55; 36:30; 44:20: 1:14).

Det. Holeman tried to use Allen's depression against him, claiming it was because he killed two little girls. Id. (42:20). That did not work.

Det. Holeman even used Allen's wife as an interrogation tool. While Allen was being interrogated, ISP told her that the bullet at the scene matched her husband's gun. Id. 35:00; 41:00; 1:12. When they brought her into see Allen, he hugged her and said, "it is going to be alright." Id. 1:18:10. While left alone together, she asked how his bullet got at the scene and he repeated what he told Det. Holeman. "I am not going to say something I did not do, and I can't explain something I don't understand." Id. 1:19:30. He told her, "I know that no bullet from my gun was connected with a murder in anyway shape or form." Id.1:20. ISP lied to Allen's wife too, telling her that a witness identified Allen. Id. 1:21. Allen assured her, "they are not going to get away with this" and told her "I am sorry you are having to hurt. I am sorry I am having to go through it." Id.

II. Westville.

A. Solitary Confinement.

Just a few days after 50-year-old Allen was arrested for the first time in his life, he was sent to IDOC as a "safekeeper." App. II, 116-17. IDOC transferred him to the Westville Correctional Unit ("WCU"), a maximum-security segregation unit for the "worst of the worst." Tr. XVI, 104-07, 111. The movies refer to it as "the hole" used mostly to punish. Tr. XVI, 106-07, 110, 111.

Allen was the first safekeeper in any IDOC employee's memory to be placed in WCU. Tr. XVI, 114, 223, 233; XVII, 15; XVIII, 197; XXI, 107. Pretrial safekeepers with mental health issues are usually placed in a mental health unit. Tr. XVIII, 196-97. The IDOC knew Allen had major depressive disorder (MDD) and was hospitalized in 2019 for suicidal ideation. Tr. XVII, 150-51, 164, 168, 178, 230; Ex. XIII, 46, 55. He received a D mental health code—the second most severe—entitling him to one out-of-cell psychologist visit weekly. Tr. XVII, 54, 157; XVIII, 195; Ex. XIII, 53. During the visits, Allen was shackled and confined in a 3×3-foot cage, separated from the psychologist. Tr. XVII, 169, 171; Ex. DDD (video 1002).

Allen had no face-to-face interaction unless shackled or separated by bars. Tr. XVI, 119; Vol. V, 22. Outside his cell, he was restrained with leg irons, handcuffs, and a belly chain on a lead. Ex. DDD (videos 987, 1005, 1153, 1164); Tr. XVI, 131-32; Vol. XVII, 153. Other Westville inmates in general population lived in dorms, played games, ate together, watched TV, and moved more freely. Tr. XVI, 119, 126.

Allen was placed in a "strip cell," striped of everything but the bare necessities. Supp. ExBB5. Allen's cell was 8.4 x 12.5 with a camera, a mattress on a concrete slab and a bug infestation. Tr. XVI, 113; XVII, 83; Ex. XIII, 68. His only view was a narrow window facing a razor wire fence. Tr. XVI, 118. Meals were passed through a door slot; he ate alone on the floor or bed. Tr. XVI, 120-21.

Allen was recorded 24/7, with "suicide companions" outside his cell door writing down his statements and behavior. (Tr. XVII, 83-84; XVI, 139; XVI, 140, 154, 203, 247) and guards with video cameras filming his showers, movements outside the cell, and attorney meetings. Tr. XVI, 128, 137; XVII, 84.

IDOC knew solitary confinement could worsen Allen's MDD and even cause psychosis, and their policy restricts the time inmates with serious mental illness ("SMI") can stay in solitary to 30 days. Tr. XXI, 142; XVII, 204-205; XVIII, 200. But, IDOC did not apply that policy to Allen, and he remained in the most secure solitary cell in WCU for 13 months. Tr. XVI, 115, 119, 237; XVII, 83, 110, 155, 205, 156

B. Allen's decompensation.

On arrival at WCU in November 2022, Allen appeared like a "deer in headlights," but was coherent, quiet, and weighed 180 pounds. Tr. XVI, 188, 192, 223, 246; XVII, 32, 119. By April 2023, he weighed 135 pounds, was psychotic, and gravely disabled.

Early in custody, Allen maintained innocence and believed solitary was meant to "tear him down." Tr. XVII, 179–180, 182. He told the psychologist, Dr. Wala, he felt like a "broken man" after two weeks. Ex. XIII, 51.

Allen described a quiet, normal life previously. Ex. VIII, 61–62. Allen was extremely devoted to his wife. Tr. XVII, 181. On November 14, 2022, he emotionally told her, "if this becomes too much for you call the detectives and I will…tell them whatever they want to know." Tr. XVIII, 26

By January 26, 2023, Allen was expressing paranoia. Ex. XIII, 67–68. In late March and early April, around the time Allen received his discovery and met with his attorneys, Allen's behavior suddenly worsened. Guards thought he was "acting up." Tr. XVI, 135, 188, 248. He refused meals, became nonsensical, spoke of "old bear claw" hypnotizing him, and acted like he was from medieval times. Tr. XVI, 249; XVII, 18. He ripped legal mail, washed his face in the toilet and drank toilet water. Tr. XVI, 99, 225–226. He stuck a spork into his genitalia, and covered himself in feces, spit, and vomit. Tr. XVI, 225; XVII, 14; XVI, 199.

Video from early April showed Allen frightened, extremely thin, bleeding, shaking, contorting, and interacting with non-existent stimuli. Ex. DDD (videos 964, 973, 980). He was pacing back and forth, eating his Bible and hitting his head on the cell door. Tr. XVI, 200, 224, 249.

On a video from April 12, he was naked while he flapped his hands, punched the air, counted imaginary objects, pulled feces from his anus and smeared it into food, and marched in place. Ex. III (41:50); Tr. XVII, 125.

By April 13, Allen's health had become dire. The IDOC psychiatrist, Dr. Martin, saw him naked, covered in feces, with brown fluid from his mouth from eating it. Ex. XIII, 197; Tr. XXI, 115. Dr. Martin found him "very psychotic," hallucinating, and incompetent to consent to treatment. Ex. XIII, 94, 116, 123, 140.

On April 14, the IDOC ordered involuntary medication and found him "gravely disabled"— a working diagnosis of MDD with psychosis. Ex. XIII, 109–110; Tr. XVII, 127; XXI, 144. He had lost an abnormal amount of weight and was not sleeping. Tr. XVII, 127; XXI, 144.

Haldol produced minimal improvement. Tr. XXI, 120–21. He continued to speak in loose associations about things like nuclear war, poisoning, dying, losing reality, cryogenic eyeballs, and not remembering confessions he had already given. Tr. XVII, 129–130; Ex. XII, 112–113; Ex. VIII, 117–119; DDD (1026). He also continued to play with his feces. Ex. XII, 232–234; Tr. XVI, 198–99. After letting Allen sit in his feces for two hours on April 23, he was removed from his cell and given a shower. Id.; Tr. XVI, p. 198-99.

Allen symptoms continued through May. Tr. XVII, 98–102; Ex. XIII, 12–13; Ex. DDD (video 1052). On May 3, Dr. Wala diagnosed Allen with a brief psychotic disorder, noting he had disorganized speech and behavior, but no delusions or hallucinations. Tr. XVII, 103-06.

On May 25, his shot was still not working. Allen paced for two hours and banged the back and front of his head on the metal door for about an hour. Ex.

III (cell video). Despite his self-injury and a visible goose egg on his head, no one checked on him. Id.

The next day, Allen had two black eyes from banging his head and, on June 5, IDOC was administered another 30-day involuntary emergent Haldol injection. Tr. XVII, 193–95; Ex. DDD (video 1153); Tr. XVI, 201–202; Tr. XXI, 142 (another injection on June 16).

On June 20, 2023, Allen was catatonic and extremely skinny. Ex. DDD (video 1201). Guards carried him to the infirmary, strapped in a chair. After his visit, he remained vacant while staff wiped drool from his mouth. 20:00; 29:30. That same day, Dr. Martin claimed Allen was coherent, oriented, not psychotic, and had been free of psychosis for seven weeks, returning to baseline on May 2. Tr. XXI, 129, 160.

C. Allen's confessions.

1. Allen's family.

Allen confessed to his family over the phone April 3, May 10, May 17, June 5, and June 11. On April 3 he told his wife, "I did it…I killed [A.W.] and [L.G]," later saying "maybe I did… I think I did." Tr. XVIII, 28; Ex. 313 (3:44).

On May 17, 2023, Allen insisted to his mother he killed the girls. Ex. 313 (2:38). The next day on May 18, Allen banged his head against his cell door to the point he had a gash. Tr. XVII, 11, 16.

On June 5 and 11, Allen told his wife he did it but that he has lost his mind, he is probably going to kill himself, feels like he is already in hell and

does not understand what is happening. Ex. 313 (June 11 -5:15 and 7:00); (June 5-4:00-4:30).

2. Guards.

From April through June, guards repeatedly heard Allen confess "I killed A.W. and L.G." amidst bizarre behavior. His statements occurred while he smeared feces, rolled in it, drank toilet water, shouted at his shadow, sang, masturbated, paced, saluted, asked nonsensical questions, hit his head, and asked if he was dead. Tr. XVI, 186, 187, 200, 206–207, 222–228, 244–45; XVII, 2–3, 11, 16, 28, 30–36, 41, 45–49, 190; Ex. Vol. XII, 229–250; XIII, 84.

On April 29, Allen made a more specific statement to a guard, claiming he killed two girls in Delphi with a box cutter that he stole from and left in the trash at CVS. He was going to rape them, but he panicked and killed them. Tr. XVII, 12. He said they were screaming. Id. 18. Just the day before, he was covered in feces. Ex. DDD (10152).

3. Dr. Wala.

On April 5, Allen's emotions shifted rapidly; he questioned whether he was God. Tr. XVI, 158–59. He slipped a sheet under the door wanting to confess to the warden. Id. 157, 161, 165–66; Ex. 292. Later, Allen told Dr. Wala, "I killed A.W. and L.G. I'm sorry." Tr. XVII, 87-88. He had intense eye contact, bizarre smiling, and circumstantial thought. Tr. XVII, 87–96; Ex. XIII, 7. Although he would go off on a tangent and sometime never return to the original topic, Dr. Wala claimed his confession was concise. Tr. XVIII, 93, 96.

Allen said he was motivated by sex but was uncertain whether he had sex with the girls. Ex. XVIII, 7; Tr. XVII, 90. Allen also confessed to molesting his sister and daughter– claims contradicted by them. Tr. XVII, 90l; XX, 47, 50. Two days later, Allen asked Dr. Wala if he had confessed. Ex. XIII 84.

On May 2, Allen was very tangential, repeating himself and jumping between topics. Tr. XVII, 98, 100. He said, "I killed A.W. and L.G. I will kill everyone. I will wipe out the whole world after I die." Id. 99. He mentioned World War III, was confusing nightmares and reality, thought he must have schizophrenia, was randomly saying "methamphetamine" and telling people, including Dr. Wala, he loved them. Ex. XIII, 12-13. The day before Dr. Wala was unable to have a meaningful conversation with him. Ex XIII, 132.

On May 3, he confessed to following the girls to the bridge when the bullet fell out and then he said, "down the hill." Tr. XVII, 107. He was going to rape them but saw a van. He crossed the creek, slit their throats and covered their bodies with tree branches. Id. He also said he feared missing Easter, thought his interactions with Dr. Wala were fake, and was paranoid about his safety. Tr. XVII, 107–109; Ex. Vol. XIII, 18. After entering a summary into Allen's record, Dr. Wala destroyed her notes. Tr. XVII, 203, 209.

On May 10, with Dr. Wala present, Allen told his wife "I did this… I killed A.W. and L.G.," while also insisting he was losing his mind. Ex. 313; Tr. XVII, 114. He continued believing he was dead, that the world would blow up if he fell asleep, that water was poisoned, and that he was reliving the same day. Ex. XIII, 30, 34, 38–39, 143, 149; Tr. XVII, 191, 195–196.

Dr. Wala listened to podcasts about Allen three hours/day while commuting to work. Tr. XVII, 138-42. Before Allen was arrested, she researched a suspect on IDOC's database and, after she treated Allen, she posted on social media about his case. Id. 141, 142.

III. Witnesses and Trial.

Beginning October 17, 2024, Tr. IX, 109, the State tried Allen on two counts of murder and two counts of felony murder. App. VII, 77. During the twenty-five-day trial, the State's built its case against Allen on seven points.

A. What the jury heard

1. Bridge Guy

The jury saw the video of Bridge Guy on L.G.'s phone. Ex. 247. They also heard from two of the four girls (R.V. and B.W), Blair and Carbaugh. After seeing the video, the witnesses believed they saw Bridge Guy on February 13, 2017. Tr. XII, 113, 121, 147, 192.

Blair thought she saw him on the platform of the bridge. Tr. XII, 159-61. She described the man as white, possibly in his 20s or 30s, with brown, poufy hair, and youthful or boyish appearance. Id., 159-61, 165-66, 169. She also believes she saw A.W. and L.G. approaching the bridge while the man was still on it. Id., 159-61. Blair's Fitbit data placed her near the bridge at the time of L.G.'s video. Tr. XII, 161; Ex. XI, 115.

Although Carbaugh, in 2017, reported seeing a muddy man in a tan coat about 4:00 p.m. walking west on 300 North toward town, Tr. XII, 189-97, 203, by trial, she claimed the man was muddy *and* bloody and wearing a blue jacket. Id. at 202-03.

Also, surveillance video captured a car like Allen's driving down 300 North at 1:27 p.m. Tr. XIV, 10. The prosecutor argued that this was Allen shortly before he parked and walked to the trail (Tr. Vol. XXI, 187-88), and that Carbaugh saw Allen walking back to his car after committing the murders. Tr. XXI, 196.

At trial, no eyewitness identified Allen as Bridge Guy. App. X, 191. The prosecutor, however, told the jury that Allen must be Bridge Guy because every witness "[is] adamant the person they saw was Bridge Guy[.]" Tr. XXI, 184. "[T]here's no doubt in their mind[.]" Id. And Blair, according to the prosecutor, must have seen Allen right before the girls because Allen told us "he went onto the Monon High Bridge, out to the first platform," which is "[e]xactly what Betsy Blair told you." Id., 187.

Trooper Harshman, who had listened to Allen's jail calls, believed it was Allen's voice on the video. Tr. XX, 194.

2. Bullet.

The jury heard from a battle of firearms experts over the bullet. For the State, Oberg testified that when she matched test firings from Allen's gun to

the unpent casings at the murder scene, she applied the Association of Firearm and Tool Mark Examiners (AFTE) methodology. Tr. XIV, 119-20, 189, 195-97. She gave an error rate for the methodology of 2.2% for false positives and 2.87% for false negatives. Id., 124-25. She discussed studies and articles that she reviewed to apply the methodology. Id., 138-42, 178-79.

Oberg admitted that the AFTE methodology is subjective. Tr. XV, 25-26. But she testified that in 17 years of applying it she was unaware of ever making a mistake in identification. Tr. XIV, 206-08. During closing, the prosecutor told the jury that she has "never been wrong." Tr. XXI, 189.

For the defense, Eric Warren, an expert in applying the AFTE methodology, testified that comparing toolmarks on an unspent cartridge with toolmarks on a spent test firings is akin to comparing apples to oranges. Tr. XX, 178. And, in his opinion, there was insufficient agreement on the toolmarks to match Allen's gun with the unpent casing found at the murder scene. Id., 175-76, 180, 187.

3. Timeline

Christopher Cecil testified regarding the movement and health data on L.G.'s phone. Tr. Vol. XIII, 64-65. The girls encountered Bridge Guy at 2:13 p.m., and L.G.'s phone stopped registering movement at 2:32:39 p.m. Id. He summarized the movement data as follows:

- 1:31:40 p.m. to 2:08:48 p.m.: 1682 steps walked.

- 2:08:48 p.m. to 2:18:48 p.m.: 414.38 meters walked.
- 2:25:22 p.m. to 2:32:39 p.m.: two flights climbed and final movement recorded.

Id. The State argued that this activity overlapped with Allen being on the trails and Allen completing the murders and leaving the scene by 3:56 where he was seen by Carbaugh walking on 300 North. Tr. XXI, 185-87.

Allen contested this timeline through Stacy Eldridge, a former FBI forensic analyst. She testified that someone inserted wired headphones or an aux cable into L.G.'s phone at 5:45 p.m. and removed it at 10:32 p.m. Tr. XXI, 24-26. This would silence the phone. Id., 26. And she noted that an incoming phone call occurred moments before the headphones or aux cable were plugged into the phone, which would have silenced the call. Id., 27.

In response to Eldridge's testimony, the State asked Cecil whether water damage could be responsible for Eldrige's findings. Id., 55. Over a hearsay objection, Cecil testified, he "Googled it" during the trial and found some unspecified, non-peer-reviewed "troubleshooting" forums reporting that water damage or dirt within the headphone socket could mimic headphones being inserted. Id., 56-58.

4. Confessed motive.

When the State arrested Allen, it had "no explanation" for the murders. However, the State argued that once placed in solitary, Allen confessed to the crime and a motive. Tr. XXI, 189-90. While gravely disabled, Allen confessed to

guards, Dr. Wala and his family. On May 3, 2023, he told Dr. Wala he was going to rape these girls but panicked and killed them. Tr. XVII, 12. He said they were screaming. Id. 18.

The prosecutor argued that the jury should believe Allen's confessions, despite his psychosis. Relying on the opinions of Dr. Wala, the guards and Trooper Harshman who reviewed Allen's video and calls, the prosecutor claimed that Allen's confessions were "logical and organized" and the product of "free will" and his newly found religion. Tr. XXI, 190, 183, 227.

Almost every guard testified Allen's bizarre behavior was "orchestrated" and not the product of mental illness. Tr. XVI, 158-59, 172, 188, 229; XVII, 3, 13. One guard said he knew Allen was truthful in his confession because of the "look in his eye." Tr. Vol. XVII, 18. Some guards claimed inmates commonly smear or eat feces as a "tool" for attention. Tr. XVI, 189, 232-33. None are mental-health professionals or knew Allen's mental-health code. Id. 187.

Each time Allen confessed to Dr. Wala, she said he was not delusional, hallucinating, or psychotic. Tr. XVII, 96 (Apr. 5), 109 (May 3), 113 (May 10). Although Allen expressed confusion and memory gaps, she suspected he was feigning or acting bizarrely. Tr. XVII, 93, 94, 123, 132. On cross, she admitted she may have been wrong and Allen might have been genuine. With hindsight, she was "on the fence." Tr. XVII, 206, 215.

The State introduced 31 Suicide Observation Reports containing Dr. Wala's opinions. Ex. 306 (Ex. XIII, 6–158). Except for a few (e.g., Ex. XIII, 105; XII, 112), she continued to find Allen non-psychotic while documenting paranoia, delusional thoughts, confusion about being dead, and self-injury. Ex. XIII, 9, 12-13, 19, 31, 35, 39, 81, 85, 125, 128, 137, 146, 149, 154, 158. She at times labeled him as feigning for secondary gain. Ex. XIII, 84, 88, 158. The day before he was deemed "gravely disabled," she wrote he could be exaggerating or consciously deteriorating. Id. 95-96; Ex. XII, 231. When he ate feces, she called the behavior "unclear." Ex. XIII, 133.

Dr. Martin believed Allen was psychotic but in remission after a mid-April Haldol shot and back to baseline by May 2. Tr. XXI, 129, 160. Like Dr. Wala, he described psychotic symptoms yet concluded Allen was "much improved." Ex. XIII, 205-06, 208. When either doctor acknowledged psychosis, they attributed it to factors other than solitary. Ex. XIII, 73-74, 198; Tr. XVI, 99.

Regarding Allen's phone-call confessions, Trooper Harshman said Allen's demeanor was calm and solemn, and he was not "under duress or stress". Tr. XVIII, 33. He opined Allen acted this way for attention. Id. 24, 62, 72, 74.

Allen called Dr. Westcott, a neuropsychologist, who opined Allen entered IDOC with MDD and physically and mentally decompensated, showing early signs by December and March, becoming psychotic April–June with residual symptoms later. Tr. XIX, 186, 210-11, 226, 229. Allen's solitary confinement,

sleep loss, and starvation produced sensory-deprivation delirium or psychosis. Tr. XX, 231. Dr. Westcott believed Allen was psychotic or delirious when confessing to Dr. Wala. Tr. XIX, 246, 233. After reviewing all records and videos and evaluating Allen for days, she found no evidence of malingering. Tr. XIX, 224, 227.

Dr. Grassian, a psychiatrist experienced with solitary-confinement cases, testified that such environments cause psychotic delirium, confusion, and disorientation. Tr. XX, 143, 148-49, 153. Delirious behavior often becomes grotesquely regressive, including smearing feces, sexual acting-out, self-harm and suicide. Id. 152. On recovery, memory is often absent. Id. He had "no doubt" Allen was delirious and saw signs of a false memory—common in delirium—where a belief evolves into a perceived recollection. Id. 154-56. Some people will say, "I think I did it" and after time start perceptualizing the event. Id. The more someone tries to remember, the more concrete and distorted the "memory" becomes, like a game of telephone. Id. 155, 158.

5. A detail only the killer would know.

Brad Weber, who lives near where the girls were found, told the jury he left work in Lafayette, around 2:02 p.m. and drove his white cargo van directly home, arriving around 2:22 to 2:27. Tr. XVII, 246. The State claimed that Allen confessed to Dr. Wala that he attempted to rape the girls but was scared after seeing a van, which forced him to flee with the girls across the creek. Tr. XXI, 193. Allen's statement, the State told the jury, contained "a detail only the

killer would know." Id. The State argued Weber's arrival home in his van was what interrupted Allen, causing him to take L.G. and A.W. across Deer Creek to kill them. Tr. XXI, 196.

6. Murder Scene.

The murder scene was unusual and complex. L.G. was naked, and A.W. was wearing L.G.'s clothes. Tr. XI, 244. A.W.'s right leg was positioned underneath her left. Ex. X, 225.

Both girls' throats were cut with a sharp instrument. However, the injuries were different. L.G. had so many incised wounds along her neck that it was difficult to determine the number. Tr. XIII, 11-13 Three major vessels were injured. Id., 22. There was a scalloped edge along an incision. Id., 16-17.

A.W.'s throat was cut only once and not as deeply as L.G.'s throat. Tr. XII, 239-46; Ex. X, 236. A.W. was likely murdered while wearing L.G.'s clothes. Tr. XVI, 49-50.

A.W. died in the location where she was found. Tr. XVI, 58. But after L.G. died, her two-hundred-pound body was moved several yards to its final resting place. Tr. XVI, 46-47, 56; Tr. XI, 193. This created a V formation with the girls' bodies. Ex. X, 130, 146.

Ex. X, 130, 146.

Sticks were deliberately arranged on the girls, Tr. XI, 45, 152, 244; Ex. X, 146, 152, 158, covering no more than three percent of their bodies. Tr. XV, 44.

It would have taken up to twenty minutes for A.W. to die. Tr. Vol. XIII, 21, 29-30, 36; XVI 47. Although L.G.'s injuries were more significant, it would have taken her between five and ten minutes to die. Tr. XIII, 23-24.

The blood pattern on A.W.'s hands was noteworthy. When injured, people instinctively reach for major wounds, getting blood on their hands and sleeves. Tr. XII, 244. L.G. had substantial blood on her hands. Ex. X, 205-06. But A.W. had little to no blood on her hands or sleeves. Tr. XVI, 47-48; Ex. X, 220-22. The State's blood splatter expert had "never seen" clean hands and sleeves in a case involving this amount of blood loss. Tr. XVI, 48.

The absence of blood may be consistent with unconsciousness or restraint, Tr. XVI, 48, but there were no defensive wounds, bruising, blunt force trauma, or ligature marks on either girl. Tr. XII, 243-45; XIII, 11; XVI, 48.

The bodies were lying in the prone position, yet both girls' faces had blood patterns flowing upward, against gravity, and over their chin and face. Tr. XVI, 43-47, 58; Ex. X, 203-04, 217. Thus, sometime during the murders, a person articulated the girls' torsos and necks above their chins. Id. 57-58.

It was clear, someone "lifted [L.G.'s] body" to create the flow pattern. Id. A.W. had a similar pattern, Id., 46-47, 58; Ex. X, 217, which meant her body was also articulated to a position where her neck was higher than her chin. Id., 58. This occurred while A.W. was wearing L.G.'s clothes. Id., 49-50.

About four feet off the ground, there was a notable blood pattern on a tree in L.G.'s blood. Id., 28, 65.

Ex. VII, 82.

The State performed a sexual assault kit on both girls and found no physical evidence of sexual assault. Tr. XII, 240-42; Vol. XIII, 11, 32.

Despite testing the sexual assault kit, hundreds of clippings from the clothing, and swabs from the girls' bodies, cartridge, and cellphone, law enforcement found no DNA from Allen. Tr. XV, 210, 226, 248.

The State told the jury that Allen controlled the girls, swapped A.W.'s clothes, articulated their bodies, and moved L.G. all by himself before fleeing

the scene by 4:00p.m. Tr. XXI, 186, 190. The State's witnesses repeatedly claimed Allen used the sticks as camouflage (Tr. XI, 77, 245; XV, 139; XVI, 59), and he moved L.G.'s body to make it harder to see. Tr. XVI, 46. This, the State argued, caused blood to flow over L.G.'s chin. Id., 64; Tr. XVI, 44-45. And, for reasons the State could not explain, Allen dressed A.W. in L.G.'s clothes and turned and repositioned her at the scene, causing blood to flow from her neck and over her chin. Tr. XVI, 58.

Although the girls' injuries were different and possibly caused by multiple weapons or "different mechanism[s]" altogether (Tr. XIII, 17, 34-35), the State's pathologist "speculat[ed]" that a single blade, such as a box cutter, caused all the injuries, including the scallop mark. Id. at 17-19.

The blood stain on the tree, according to the state, was an inverted L transferred from L.G.'s arm as she propped herself against the tree. Tr. XVI, 65. And a female hair and multiple incomplete profiles were scene contamination or "background DNA" from the girls sharing clothes or through incidental contact with people they knew. Tr. XV, 215. According to the State, it could not find Allen's DNA because the blood from A.W. and L.G. was overwhelming the scene and "compet[ing]" with any DNA Allen left behind. Tr. XV, 225-26.

7. The manner, quality, and thoroughness of the investigation.

At trial, the jury heard about the State's investigation from the day the girls went missing to a few days later when Allen met with Dulin. The State then told the jury to "fast forward" 5.5 years to the volunteer finding Dulin's report in September 2022. Tr. XXI, 186. The jury heard *nothing (maybe very little)* regarding the manner, quality, and thoroughness of the investigation between the murders in February 2017 and Allen's arrest in 2022.

On November 11, 2024, following a twenty-five (25) day trial, a jury found Allen guilty of two counts murder. Allen appeals. Below is the evidence the defense was prohibited from offering to the jury.

B. What the jury did not hear.

1. Bridge Guy

The jury never saw that sketch below, which is the man Blair saw on the bridge when A.W. and L.G. were approaching. App. XI, 10; Tr. IX, 210-11. The sketch does not look like Allen, who in February 2016 was short, 44 years old, with closely cropped hair. Ex. XII, 125.

Ex. Vol. IX, 226. In 2017, Blair rated this sketch a 10 out of 10 for accuracy. In 2019, she reaffirmed her confidence in her sketch and insisted that she could identify Bridge Guy if she saw him again. Nov. Supp. I, 145.

Nor did the jury hear that Blair, and at one point, the ISP, believed the man she saw (Bridge Guy) was **not** the man Carbaugh saw muddy and bloody. Nov. Ex. 107 (3:40-3:48) ("I think it's wrong."); Nov. Supp. I, 145; Ex. VII, 247.

2. The bullet

The jury never heard that that firearm and toolmark evidence is flawed and unscientific. Allen proffered expert witness William Tobin to explain the scientific community's criticism of the AFTE methodology. Ex. IX, 231. Tobin is a nationally recognized forensic metallurgist. App. X, 108-09, 164. He has extensive experience in metallurgy, bullet and lead analysis, and toolmark principles, along with a background in statistics. Ex. IX, 232-34. He is familiar with the President's Council of Advisors on Science and Technology (PCAST), which has criticized the AFTE methodology of toolmark identification. App. X, 165. Tobin reviewed Oberg's work and was prepared to explain the flaws in the AFTE methodology. App. X, 108-09, 165. He has testified in over 297 cases, Ex. IX, 231, and he has been recognized by state high courts as an expert on this topic. See Welsh v. Commonwealth, 913 S.E.2d 497 (Va. 2025).

3. Confessed Motive

The jury never heard Allen's confused, disjointed ramblings and screams during the months that Dr. Wala said Allen was making logical and organized confessions. The trial court permitted Allen to play 15 videos of him in solitary to impeach his confessions but required Allen to mute them. Tr. XVIII, 241–43; Ex. DDD (played muted). The excluded audio showed the following:

> Video 972 - guards extracted a skinny, wide-eyed Allen with blood on his forehead; Allen screamed for his "Dad," asked guards to hold his hands, and yelled "Roger" "Marvin" "wait for it."
>
> Video 980 – April 13 - guards ordered Allen to cuff up; naked and confused, he clutched the sink and shook. When officers entered, Allen begged to be put on an airplane and told them not to believe his last confession. (4:00).
>
> Video 1002 - April 17 -while being transported to see Dr. Wala, another inmate yelled "kill yourself Richard Allen."
>
> Video 1007 – April 17 - during transport for a forced injection, Allen screamed, spoke incoherently, asked for his "mommy" and "daddy", rambled about suicide and time travel, and within seven minutes, claimed to be both the stupidest and smartest person ever, and repeated "wait for it." A guard told him the "games are over" and commented on feces on him. Allen responded tangentially—"Rocky Balboa is my favorite actor," "clap on clap off." (10:00-end). A guard noted the feces "has been on [him] for a while." 14:55.
>
> Video 1026 -April 21 - during a haircut, Allen mostly stared into space; confused, he responded "leave the top" when asked if he wanted his face shaved.
>
> Video 10152 -April 28 - during a shower transport, Allen spoke incoherently, repeatedly saying "there is a god," "please don't do this," and "make it painless." (5:00; 9:26; 11:04; 13:30). With feces on his face, he asked to be euthanized and whether his wife was present. He said he was King Michael, claimed he had started WWIII, tried to save his family and Donald Trump, sang hymns, quoted scripture, and asked to be cryogenically frozen. (7:00-7:30; 11:34; 12:50; 14:50; 17:30; 19:05; 27-32:00; 45:30).

> Video 1201 - June 20 - guards carried a catatonic, drooling Allen to the infirmary. The medical professional discussed with Allen his cholesterol and blood pressure rather than his non-responsiveness and involuntary jerking. 15:30; 16:50. Allen stared blankly when asked the date or season.
>
> Allen asked this Court to watch the videos with the sound, especially 172, 1002, 1007, 10152, 1201 (at 15:30 and 16:15).

Also, the jury did not hear Allen, the morning he started confessing, tell his family in three intertwined calls that he was confused and losing his mind. Ex. XIV, 230-XV, 3.

In the first call at 3:12 am on April 3, Allen told his dad he was losing his mind and was uncertain how much longer he was "going to be lucid." Ex. Vol. XIV, 233. Allen said, "you guys know I would never do something like I've been accused of." Id. Allen felt he had been mentally tortured, like he is in Guantanamo Bay, and that there were drugs in his coffee and Kool-Aid. Id. 234.

In the call the jury heard, at 5:14 am, Allen told his wife for the first time he thinks he killed A.W. and L.G. and "evidentially did it." Ex. Vol. XIV, 242. Allen could not remember what he told his dad in the earlier call. Id.

Then, in a third call at 8:45 a.m., a panicked Allen told his wife he was not sure if his original call to her was a dream. He said he was not drinking the water or the coffee and questioned whether the attorneys who were coming to visit him were his attorneys. Ex. XIV, 239.

The jury only heard the second call with the confession (Tr. XVIII, 17, 19, 80-83), along with Trooper Harshman's opinion that the Allen showed no "indication" he was under "duress or stress" when he made that admission. Id. 32-33.

4. A detail only the killer would know.

The jury never heard that Allen's could not have walked the girls across the creek to kill them after seeing a van driving down a lane, as he confessed. The State had video showing Weber's van arriving home twenty-five minutes after the pause in movement of L.G.'s phone and nearly fifteen minutes after it stopped moving altogether. App. XI, 204-09. Specifically, security camera footage from Weber's neighbor, showed him arriving home around 2:44. Id. 233-239. And the State also had a report prepared by the FBI, which confirmed that Weber's cellphone arrived home around 2:50p.m. Id. 240.

The jury also never heard that Allen confessed to details that the real killer would know were wrong, including that Allen said he shot the girls. Tr. XX, 147, 149, 155. The judge prohibited Allen's expert, Dr. Grassian, from identifying Allen's signs of being in a state of delirium and hallmarks of a false memory. Tr. XX, 141, 154-56. One such hallmark was the facts Allen got wrong. Id. 146-50.

5. Allen's alternative, exculpatory explanation of the scene.

The jury never heard that, from the beginning, many investigators believed and investigated the girls' murders as part of a Norse Pagan ritual and that the usual and complex scene had "textbook" features of such. Tr. VI, 79.

There was "always a discussion" among law enforcement that this may be a ritual murder and that the sticks were Nordic runes. Ex. VII, 170-71. Also, many officers believed the scene was too complex for just one person to be involved. Tr. XIX, 128; Tr. Vol. VI, 155-56; *see also* Nov. Supp. III, 88-89.

Within the first week, the Carroll County Sheriff enlisted the FBI's Behavioral Analysis Unit to evaluate whether the sticks related to "pagan rituals." Ex. VIII, 7-8; Ex. VII, 170-171. After examining the evidence, the BAU declined to exclude pagan ritual as a plausible explanation for the murder scene: "[it remains] possible a new 'believer' or rogue believer in Odinism was involved in this case." Ex. IV, 244-45.

A Purdue Professor also consulted law enforcement on whether the sticks were "runically inspired." Ex. IV, 156, 162. He found it "quite plausible" "these markings constitute an instruction inspired by Norse runes (or modern recreations thereof) . . . ." Id., 225.

Law enforcement consulted with an undercover ISP Trooper regarding the sticks and the blood stain on the tree. Nov. Supp. V, 90, 101-102. The officer was familiar with Norse Pagan symbols through his covert intelligence.

Id. 94, 96-99. And he agreed the blood on the tree resembled the pagan Fehu rune. Id. 94, 100, 106-07. And he found similarities between the stick formations on the girls and pagan bind runes. Id. 118.

Once Allen was charged with the murders, the defense team consulted a nationally recognized expert, Dawn Perumetter who found seven features of a Norse Pagan ritual. They include:

Location. She explained that Norse pagans follow a Norse pantheon of gods, like Thor and Odin. Id., 69-71. They have nature-based ideology where events and rituals are conducted outdoors, in wooded areas, and near water bodies. Id., 69-71, 76. This murder occurred outdoors, in a clearing, and near a creek. Id., 80; Ex. VII, 56.

Date. Norse Pagan rituals often occur on Norse holidays or events. Tr. VI, 77. The Nordic holiday, Valisblot, which honor's Odin's son, Vali, begins at sundown on February 13, and continues until February 14. Id., 81. The girls went missing near sundown on February 13, and they were found the following day.

Means used. Ritual killings often involve a knife or ceremonial knife. Id., 76-77. And here, the girls were killed with a knife that made an unusual, scalloped mark.

Sticks. Ritualistic crimes usually involve symbolism at the scene. And with Norse pagan the symbolism would include arranging natural objects in a

specific way, like sticks and runes, Id.,75-75, 78, and "blooding the runes." Id., 74-75. These practices are integral to the "magical thinking" involved in Norse paganist rituals. Id.

Here, the stick arrangement showed intentional symbolism. Id., 87-88; Ex. VII 56, 80. It is difficult to explain the sticks as hiding the bodies—"[t]hey're absolutely not working that way, they're not functioning that way." Tr. VI, 118 The stick arrangement on A.W. mirrored the Norse rune "gebo." Id., 84-86; Ex. VII, 77-78. And the intentionally placed stick formation on L.G. looked like a Nordic "bind rune." Tr. VI, 85, 88-89; Ex. VII, 80.

Manner of death. Ritual sacrifices often involve blood loss and torture. Tr. VI, 77. The girls' throats were cut, and they suffered a prolonged blood loss, which is "indicative of a sacrificial offering or initiation type [activity]." Id., 82.

Body arrangement. In rituals the sacrifice will be displayed or arranged at the scene in a manner that is significant to the group. Id., 78-79. And an upside-down hanging body is an important element of Norse Paganism because Odin hung from a tree for nine days before discovering runes. Tr. VI, 92. Like A.W.'s positioning, the classic image of Odin depicts him with one leg bent behind the other. Id.

Unusual blood pattern. Finally, a ritual sacrifice would involve an atypical or symbolic blood pattern. And here, the blood pattern on the F tree appeared to look like a Norse pagan Fehu rune. Id., 93-94; Ex. VII, 82.

6. The manner, thoroughness and quality of the investigation.

The jury never heard how law enforcement bungled the investigation into the ritual killing or suspects connected to Norse Paganism. App. X, 60; Tr. XVIII, 55. ISP disregarded Brad Holder, the father of A.W.'s boyfriend, and Holder's friend, Patrick Westfall, as promising alternate suspects because they lost evidence, mishandled interviews, and conducted a poor investigation. App. IX, 227.

a. Investigation into ritual killing.

After examining the scene, several officers believed the scene was too complex for just one person to be involved. Tr. XIX, 128; Nov. Ex. III, 74-75; Tr. VI, 155-56. When the BAU evaluated the murder scene, it found it noteworthy "[A.W.] was clothed." Ex. IV, 244. "Allowing A.W. to dress ahead of time suggests [the suspect] felt differently toward her, including a possibly heightened level of guilt or regret, at least compared to [L.G.]" Id. Law enforcement explored a group of pagans connected to A.W.

In the weeks leading to the murders, A.W. had been talking with a boy, L.H., and meeting up with him a few times, Ex. V, 172-74; Ex.D HHH (00:05:57 to 00:06:15). She kept this relationship secret from her family. Ex. XIV, 94-95. On the day she was murdered, A.W. invited L.H. to meet her on the trails. Supp. Ex. D-HHH (00:50:53-00:51:20). L.H. had school, so he declined. Id. (00:50:53-00:51:36).

While law enforcement was searching for the girls on February 14, they learned about L.H. and A.W.'s secret relationship, pulled L.H. out of class in Logansport, and searched his phone. Ex. V, 154; Ex. II, 110. That moment, L.H. texted his father, Brad Holder, "She's missing." Ex. V, 154.

b. Lost and missing interviews.

On February 17, 2017, law enforcement interviewed both L.H. and Holder. Ex. V, 154. By then, law enforcement already suspected the murder scene involved a pagan ritual. Ex. VIII, 7-8; Ex. VII, 170-171.

During his interview, Holder reported being involved in a pagan "tribe", Ex. V, 154, and spending "every weekend" in Delphi, engaging in pagan rituals with Westfall and five or six others, including women. Ex. V, 154; Ex. II, 86. These rituals involved animal sacrifice and human bloodletting. Ex. III, 36; Tr. VI, 146.

Holder admitted knowing about A.W. and L.H. relationship, but he denied ever meeting her. Ex. V, 154.

Law enforcement recorded Holder's interview, but the Delphi Police recorded over their only copy before August 2017, permanently deleting it. Ex. II, 92. Only a one-page narrative remains. Ex. V, 154.

According to that narrative, Holder told police he owned a .40 caliber Smith and Wesson, Id., but law enforcement never collected it. Ex. V, 170-71. Nor did they collect his cellphone. Tr. IV, 159, 168, 178.

On February 19, 2017, law enforcement interviewed Westfall. Ex. II, 86. They failed to record this interview. Ex. Vol. II, 86; IV, 23. Only a five-paragraph narrative remains. Ex. II, 86.

According to his narrative, Westfall knew the woods where the girls were murdered "very well." Id. He reported knowing the girls but denied ever meeting them. Id. He also reported being a religious leader for local pagans, and he wore a neckless to the interview representing his efforts to pledge the "Vinlanders," id., a pagan "social club." Ex. V, 206; II, 249. There is no indication law enforcement asked Westfall whether he owned a .40 caliber firearm. Ex. II, 86. Westfall's phone was not searched at that time. See Tr. III, 239-40.

c. Alibi investigation.

When asked for an alibi, Westfall claimed he was home with his minor son, Ex. II, 86-87, and Holder told the officers he was at work at Liberty Landfill. Ex. V, 154.

On April 13, 2017, officers visited the landfill to investigate and spoke with an employee, Susan Case, who provided a printout showing Holder swiped out of work at 2:45p.m. Ex. II, 84, 108, which was thirty minutes after the Bridge Guy video.

Case invited the officers to review video to confirm the printout's accuracy, but they declined; nor did they interview other employees. Ex. II, 84;

III, 235, 237, 239. Unified Command marked Holder as a "cleared" suspect. Nov. Ex. I, 129. Tipsters continue to identify Holder as Bridge Guy.

Tipsters repeatedly called and reported Holder as a person of interest. Nov. Ex. I, 116, 127-131, 116 (Holder "posts half dead women and [shows] fascination with . . . symbols out of tree branches."); 128 ("[Check] the father of one of the girls boyfriend. [H]is name is [B]rad [H]older. . . [H]e also fit somewhat the description."). Each time a tip came in, law enforcement marked it "cleared," "nothing further," "covered," or "alibi confirmed." Nov. Ex. I, 116, 127-131.

Sometime around March 2017, Detective Purdy interviewed Holder to get his *assistance* in connecting the murders to Norse Paganism. Tr. IV, 135-38. Because Holder was not a suspect, Purdy did not record or document this interview with a report. Id., 136-38.

d. Unified Command declines to reinterview, despite reports Holder is posting pictures of "young girls believed to be deceased with sticks placed over their bodies."

In April 12, 2017, shortly before taking medical leave, Trooper Winters received a call from a tipster, Ryan Boucher, who shared pictures from Holder's social media. Ex. V, 25-27, 31-34, 102.

Winters found a concerning similarity between the murders and pictures posted on Holder's social media. Ex. V, 35, 44-45, 103. Those pictures depicted

"young girls believed to be deceased with sticks placed over their bodies." Ex. V, 103.

Winters also noted similarity between the stick formation on A.W. and a bind rune Holder tattooed or drew on his hand. Tr. V, 103; Ex. V, 34-35; Ex. VI, 18 (Holder: "That's a bind rune [on my hand]. Basically I took a Gebo rune and an Isa Rune and I made a bind rune."); *see also* Nov. Ex. I, 80; Compare also Ex. X, 152 with Ex. VII, 77.

Holder's social media also featured him holding guns and "homemade knives." Ex. V, 103. Winters immediately recommended to his superiors that law enforcement investigate Holder further. Ex. V, 53-54, 59-61, 103, which they declined to do, claiming his alibi was cleared by the FBI. Ex. V, 53-54, 59-61; 57.

Winters was not satisfied and urged the ISP to conduct its own investigation. Ex. V, 53-54, 59-61; 57. No further action was taken. *See* Ex. V, 60-61.

In 2018, Holder displayed a painting he made of Odin upside down with his right leg tucked behind his left, just like A.W.'s legs. Ex. VII, 81. Holder's painting also featured a red Fehu rune. Ex. V, 243.

Officers continued to find other social media posting from Holder that "mimicked" the crime scene. Tr. VI, 165. But law enforcement declined to interview Holder again.

e. Pagans finally re-evaluated.

Once the State charged Allen, his defense team insisted that Holder and Westfall receive another look. When law enforcement re-examined Holder, he changed his story about knowing A.W. Back in 2017, he told law enforcement he "never actually met [A.W.]." Ex. V, 154. But in August 2023, he told law enforcement he met A.W. once. Ex.D HHH at 00:06:12 to 00:06:15. And during a deposition a 2024, he said he met A.W. "two times, twice." Ex. V, 173. At least one of those encounters occurred shortly before A.W.'s murder at Westfall's home. Ex. V, 172-74.

At the insistence of Allen's counsel, law enforcement finally examined Westfall's alibi on August 17, 2023. Ex. 20, 35. Westfall's son, who was a minor when the murders occurred, could not remember if he was home with his dad when the girls went missing. Id. 37. This time, law enforcement collected Westfall's phone, but he deleted data before turning it over. Tr. III, 239-40.

On April 4, 2024, Allen's counsel deposed Case, the Liberty Landfill HR officer. Ex. 24, Ex. III, 195. In February 2017, Liberty Landfill was operating two staggered, overlapping shifts, one from 5:00a.m. to 1:30p.m. and a second from 7:00a.m. to 3:30p.m. Ex. III, 203. On the day the girls went missing, Holder was scheduled to work from 5a.m. to 1:30 p.m., but his badge swiped out during the second shift, around 2:45p.m. Ex. III, 207-08. Holder did not have sole custody of his badge. Id. 213-14. His badge was on a public rack,

outside the view of cameras, and accessible to other employees, including second shift. Id. There was no lock on the badges, and Holder's name was prominent on his badge. Ex. 24, Ex. III, 213-14. "[I]f somebody left when they were supposed to but somebody else clocked that person out an hour or so later, would that be known? [Answer] No." Ex. III, 222.

When the State moved to exclude any reference to the State's investigation into third parties, App. VIII, 49-50, the trial court held a hearing on the motion in July 2024. Tr. IV, 78.

At the hearing, Holder's wife testified that in 2018, Holder told her he "had a fight" with Westfall "because [Westfall] wanted to up from animal slaughter to a different type of sacrifice. Id. 139-140. She also testified that Holder claimed that "[Westfall] killed A.W." "with others," and that she needed to keep her mouth shut about it. Tr. VI, 141.

Summary of Argument

Unconstitutional Search

The trial court committed reversible error by admitting evidence seized under an unconstitutional warrant and by denying Allen a Franks hearing. Detective Liggett obtained the warrant for Allen's home only by omitting and altering witness descriptions to connect Allen to "Bridge Guy," and by misrepresenting that Allen admitted he wore a blue Carhartt, like Bridge Guy. These misrepresentations and omissions misled the judge into believing

multiple witnesses saw Allen and his car, when in fact they described someone else and a different car. Once the affidavit is corrected, there is no probable cause.

Unprecedented Confinement

Allen's confessions were involuntary and the product of grave mental disability caused by 13 months of maximum-security pretrial solitary confinement, which exceeded IDOC policy and caused psychosis, paranoia, and confusion while State actors were indifferent to his deterioration. Admission of these statements violated both federal due process and Indiana's protections against unnecessary rigor (Art. I, §§ 12, 15), and the error was not harmless, requiring suppression.

Unfair Trial

The trial court denied Allen his constitutional right to a fair trial through a series of arbitrary and prejudicial rulings that crippled his ability to present a complete defense. The trial court excluded critical exculpatory evidence—including Blair's sketch, which directly undermined the State's eyewitness theory and timeline—and barred expert testimony challenging the reliability of the State's forensic methodology.

It permitted inadmissible hearsay to rehabilitate the prosecution's timeline. And it blocked Allen from presenting evidence that showed the circumstances that led to his confessions and impeached their credibility,

including audio depicting his deteriorated mental state. The court further prevented Allen from introducing substantial evidence of third-party guilt and an incomplete investigation, depriving the jury of context necessary to assess reasonable doubt. Collectively, these errors violated Allen's Fourteenth and Sixth Amendment rights and created a fundamentally one-sided proceeding. A new trial is constitutionally required to restore the integrity of the adversarial process.

Argument

I. The trial court committed reversible error by admitting evidence seized from the unconstitutional search of Allen's home and denying a Franks hearing.

When reviewing the admission of evidence after denial of a motion to suppress, the court considers evidence favorable to the ruling and "uncontradicted evidence to the contrary." Holder v. State, 847 N.E.2d 930, 935 (Ind. 2006); Fox v. State, 797 N.E.2d 1173, 1175 (Ind. Ct. App. 2003). Factual findings are reviewed for clear error, but the constitutionality of a search is reviewed de novo. Holder, 847 N.E.2d at 935.

Allen filed a Motion to Suppress, a Motion for Franks Hearing, amended requests and a lengthy memorandum with exhibits. App. III, 74, 188; Vol. III, 192 - Vol. IV, 83; Nov. Ex. Vol. 1-IV. The trial court denied the motion and hearing, concluding Liggett's affidavit did not include false statements or omit facts with reckless disregard or intent to mislead. App. V, 106-07; IX, 193.

A. The trial court erred by concluding Det. Liggett did not make false statements or reckless omissions in his affidavit.

Both the State and U.S. Constitution guarantee that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation." U.S. Const., Amend. IV; Art. I, § 11. The State must include all "material facts" in a warrant application, including "facts that "cast doubt on the existence of probable cause" and a "source's reliability." Gerth v. State, 51 N.E.3d 368, 374 (Ind. Ct. App. 2016). A warrant is invalid if: "(1) the police omitted facts with the intent to make the affidavit misleading or with reckless disregard for whether it would be misleading, and (2) the affidavit supplemented with the omitted information would have been insufficient to support a finding of probable cause" Id. at 374-75 (citations omitted). The defendant must prove a reckless or deliberate false statement by a preponderance. Franks v. Delaware, 438 U.S. 154, 156 (1978).

An officer omits evidence with reckless disregard if the "officer withholds a fact in his ken that '[a]ny reasonable person would have known that . . . the judge would wish to know." Gerth, 51 N.E.3d at 375. Examples include facts undermining the type of drug seized or an informant's reliability. Query v. State, 745 N.E.2d 769, 772 (Ind. 2001); Gerth, 51 N.E.3d at 37; Stephenson v. State, 796 N.E.2d 811 (Ind. Ct. App. 2003); State v. Vance, 119 N.E.3d 626 (Ind. Ct. App. 2019).

This includes details undermining an officer's conclusion. Jaggers v. State, 687 N.E.2d 180 (Ind. 1997) (marijuana field officer described as "near" defendant's house was two to six miles away); U.S.A. v. Hernandex, 135

Fed.Appx. 97 (9th Cir. 2005) (mem) (detective misled court by incorrectly reporting witness's description of suspect, equating description with defendant).

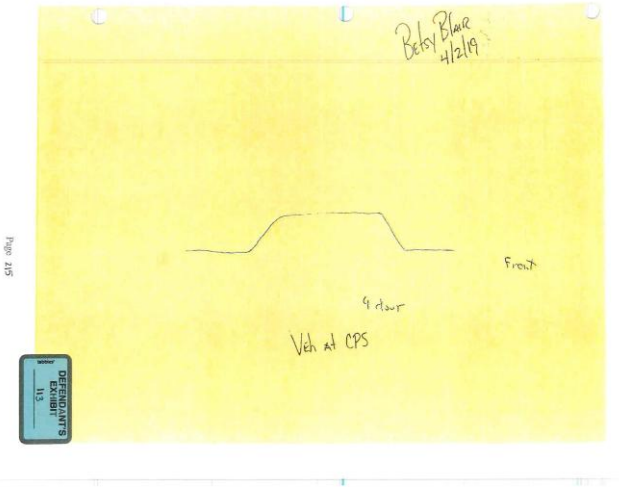
1. Detective Liggett omitted and changed key information that undermined his conclusion Allen was bridge guy.

Liggett misled the court in four ways. First, Det. Liggett misled the court to believe Blair's description of the man on the bridge matched Allen when it did not. Liggett told the court that Blair said the man was standing on the platform and wearing a blue jacket and jeans. App. Vol. III, 120. But Liggett omitted the rest of Blair's description that did not match Allen-- the man had brown "poofy" hair like the sketch below, was in his 20s or early 30s, youthful and medium build. Nov. Supp. I, 143-46.

Second, Liggett misled the court that Allen's car was parked at the old CPS lot during the time of the kidnappings. Det. Liggett told the court that after

Blair saw the man on the bridge, she saw two girls she thought were A.W. and L.G. on the trail approaching the bridge. App. Vol. III, 120. As Blair was leaving the trail, she saw a car oddly parked at the old CPS lot. Id. Around 2:10 pm, another witness, Wilson, also saw a car backed into the CPS lot as if concealing the license plate. Id. Both witnesses drew diagrams of the car parked in the "same general area and manner." Id.

Liggett told the court that Allen parked his black 2016 Ford Focus at the old CPS building but omitted that Blair said the car she saw during the time frame of the kidnapping was **not black** and had sharp angles like the sketch below. Nov. Supp I, 145; Ex. 107 (6:30). Considering the omitted information, Blair excluded Allen's black hatchback.



Nov. Supp. I, 215-16.

This is a material omission. U.S. v. Wells, 223 F.3d 835 (8th Cir. 2000) (invalid warrant where officer changed witness's car description in drive-by shooting).

Third, Liggett misled the court that the man walking on 300 north was Bridge Guy. Liggett falsely told the court that Carbaugh, in 2017, claimed the man was muddy and bloody wearing a blue jacket when she actually said his jacket was tan and he was muddy. App. III, 120; Nov. Supp. Ex. 115 (5:07:30). A bloody man in a blue jacket matches Bridge Guy; a muddy man in a tan jacket does not.

Liggett also omitted that Blair told him the man she saw on the bridge was **not** the same person Carbaugh described. Nov. Supp. I, 145; Ex. 107 (8:00). ISP even released a public statement the men "are not the same person." Ex VII, 247; Ex. 109.

Fourth, Liggett connected Allen to Bridge Guy by falsely claiming Allen admitted wearing a black or blue Carhartt and a head covering. App. IV, 121 (the man the four girls saw wore the same clothes as the man on L.G.'s phone); 122 (the clothes Allen admitted he wore "match the clothes by the individual on the bridge in the photo taken from the video from [L.G.'s] phone"). But Allen told investigators he did not know what he was wearing. Ex. 291 (44:00-45; 1:23:35).

Although Liggett used Allen's wife's statement that Allen currently owned a blue Carhartt as a nexus to his home, Liggett omitted that she said he

purchased his coat "a couple of years ago." Nov. Supp. I, 201. The girls were killed in 2017.

Had the court known Allen simply admitted owning a blue or black coat-- as does probably every 50-year-old man-- it would have known there is no connection between him and Bridge Guy.

2. Detective Liggett's omissions and false statements recklessly misled the judge.

Any reasonable person would have known the judge would wish to know that:

1) Blair's description of Bridge Guy and the car at CPS did not match Allen or his car;
2) In 2017, Carbaugh described the man walking down the road as only "muddy" wearing a "tan" jacket, not a "blue jacket" like Bridge Guy.
3) Blair did not believe she saw the same man Carbaugh saw.
4) Allen never said he wore a blue Carhartt or head covering (like Bridge Guy). And he bought his blue Carhartt a couple years before 2022.

The omitted and false information strikes at the heart of Liggett's conclusion -- that Allen was the man on L.G.'s phone.

The State's probable cause relies on a tight timeline making Allen the man the four girls saw on the trail, Blair saw on the bridge, and Carbaugh saw on the road. Any judge would want to know if witnesses described someone other than Allen, his car, or Bridge Guy.

Moreover, the fact Liggett lied twice in the affidavit about the connection between Allen and Bridge Guy (i.e., the blue jacket) shows more than reckless disregard for the truth. These falsehoods were directed at connecting Allen to L.G.'s video, which would otherwise include any white male.

3. **With the omitted and accurate evidence, the affidavit was insufficient to establish probable cause.**

Probable cause exists when there is sufficient evidence to cause a reasonably prudent person to believe a search will uncover evidence of a crime. Illinois v. Gates, 462 U.S. 213, 238, (1983). A reasonably prudent person would not believe Allen was connected to the murders or that evidence would be found in his home.

The State is left with Dullen's report claiming Allen told him he was on the trails between 1:30 p.m. and 3:30 p.m. and saw three girls, not four girls, like those who thought they saw Bridge Guy. Nov. Supp. I, 227. During his October 13, 2022 interview, Allen admitted wearing blue jeans and owning a gun, knives and a blue or black jacket, and walking out to the first platform of the bridge to watch fish.

But Allen does not look anything like the person Blair saw on the bridge. Also, his car is a different color and shape than the oddly parked car. And the man Carbaugh saw walking was most likely not even Bridge Guy.

If Allen being on the trail within the same two hours the girls were abducted is enough for a warrant, law enforcement would have obtained one for Allen's home in 2017.

In 2022, ISP had no more evidence connecting Allen to the murders than they had days after the murders when Allen, like others, responded to their request for help.

It was not enough then, and it was not enough in 2022.

4. The error requires reversal.

A court must suppress fruits of an illegal search. Wong Sun v. United States, 371 U.S. 471 (1963). The State's entire case is built on Liggett's half-truths and falsehoods. Without the gun seized in the search, there is no opinion from Oberg upon which the State arrested Allen. App. II, 107. And without the arrest, there are no confessions. See Section II.B.2. If the warrant was illegal, the State has no case.

Even if this court finds the confession was not a product of solitary, Allen is still entitled to a new trial. Before a "constitutional error can be held harmless, the court must [find] it was harmless beyond a reasonable doubt." Chapman v. California, 386 U.S. 18, 24 (1967). Without the fruits of the search-- the gun, a casing in a hope box, the Carhartt, knives and computer-- the State cannot prove the jury would have convicted. Ex. XII, 97-125; Tr. XXI, 187-89, 226, 228.

B. At minimum, Allen is entitled to remand for a Franks hearing.

Even if Allen's exhibits to the Franks motion did not prove by a preponderance that Liggett deliberately or recklessly falsified or omitted material information, they entitled him to a hearing. A defendant who makes a

"substantial preliminary" showing that an affidavit included a false statement or reckless omission necessary to probable cause is constitutionally entitled to challenge the warrant at a hearing. Bunnell v. State, 172 N.E.3d 1231, 1238 (Ind. 2021); Franks, 438 U.S. at 155-56, 171-72. To meet this showing, the defendant need not present conclusive proof but must support their accusations with evidence and citations to the warrant application. Franks, 438 U.S. at 171-72.

Here, the court's denial of a hearing was legally erroneous because Allen made a substantial showing. App. X, 106-07; Vol. IX, 193. Allen supported his claims with depositions, police interviews and reports. App. Vol. IV, 83. Citing Liggett's application, Allen made specific arguments. App. IV, 50-63, 80. In a final motion, Allen reiterated these points, urging the court to compare the affidavit with Blair's and Carbaugh's interviews. App. VII, 153, 168.

Tellingly, the trial court was willing to schedule a Franks hearing when Allen was represented by Fort Wayne attorneys but refused when the original attorneys were reinstated. App. V, 54. Allen's constitutional protections are not contingent on who his attorneys are.

II. The trial court erred by admitting statements Allen made while gravely disabled during his unprecedented pretrial solitary confinement in a maximum-security prison.

> "I found solitary confinement the most forbidding aspect of prison life. There is no end and no beginning; there is only one's mind, which can begin to play tricks. Was that a dream or did it really happen? One begins to question everything." ~ Nelson Mandela

Solitary confinement is a form of punishment, and depending on its conditions, even torture.[3] By 2023, when Allen was held in solitary for 13 months, it was well-established that prolonged isolation causes psychological pain, suicidal ideation, and psychosis. To protect inmates from psychological harm, the IDOC strictly prohibits solitary confinement over thirty days for anyone with serious mental illness ("SMI") and requires transfer if SMI symptoms appear.

When Allen exhibited the predictable symptoms of psychological pain, confusion and psychosis, IDOC administrators refused to transfer him to a mental health unit. When Allen's attorneys informed the court of his dire condition, the court also refused to move him, and the prosecutor delayed and mocked counsels' concerns while collecting evidence of Allen's confessions.

The question for this court is unprecedented but simple: Should the State be able to benefit from Allen's psychological pain that their deliberate indifference to his mental health caused?

Human decency provides the answer. No.

A. Standard of review and additional facts

An appellate court reviews a suppression denial for "substantial evidence of probative value that supports the trial court's decision." State v. Renzulli, 958 N.E.2d 1143, 1146 (Ind. 2011). It considers uncontradicted evidence

[3] Juan E. Méndez, U.N. General Assembly, Interim Report on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2, U.N. Doc. A/66/268 (Aug. 5, 2011).

favorable to the defendant and reviews legal issues de novo. Hartman v. State, 988 N.E.2d 785, 788 (Ind. 2013). The voluntariness of a confession is a legal issue. U.S. v. D.F., 115 F.3d 413, 419 (7th Cir. 1997).

Allen moved to suppress his statements made while in solitary confinement, which the court denied. App. VII, 190; X, 54; Tr. XVI, 92-94 (preserving issue). The court reasoned the statements were voluntary because Allen failed to show they resulted from State psychological coercion or coercive interrogation. App. X, 55. The court found Allen's detention was intended to protect him and that while he suffered from major depressive disorder (MDD) and anxiety, he did not have SMI that would render his statements involuntary. Id.

In addition to IDOC records and videos like those admitted at trial, Allen proffered an order and settlement from Indiana Protection and Advocacy ("IPAS") v. IDOC that the trial court excluded from the suppression hearing as irrelevant. Ex. VI, 153-216; Tr. V, 134-39.

In 2011, the Southern District of Indiana held that IDOC's housing of SMI inmates in solitary constituted cruel and unusual punishment, violating the Eighth Amendment. Ex. VI, 186. The Southern District found:

-SMI includes delusional disorder, psychotic disorder and MDD. Id. 163, 184.

-"Segregation is harmful to prisoners with SMI" due to lack of social interaction, significant sensory deprivation and forced idleness, leading to "decompensation" and "psychological[] pain." Id. 173, 175.

-An inmate decompensating from solitary may experience "hallucinations, sleep disturbance, memory problems, anxiety, paranoia, depression, eating problems, or engaging in self-injury or suicide." Id. 173. Suicide watch further exacerbates the illness. Id. 176.

-"The severe conditions in the segregation units cause a predictable deterioration" of SMI prisoners' mental health, and the "IDOC has explicitly observed, diagnosed and noted patient decompensation." Id. 176. The IDOC knew these effects occurred even in non-SMI offenders. Id. 174.

Before a hearing on relief, the parties reached a settlement including an "expanded" definition of SMI that "subsumed" the court's definition. Ex. VI, 193-95.

The IDOC's policies refer to the settlement, which "sets [the policy's] tone." Ex. VII, 26; Tr. V, 171. An inmate with SMI can only be held in solitary 30 days. Id. 26. If an inmate decompensates into SMI and is unlikely to return to general population within 30 days, transfer is required. Id. 45-47.

Allen admitted Dr. Westcott's 127-page report. Ex. BB11. On August 21, 2023, Westcott evaluated Allen, who had been in WCU over nine months. He was "terrified," unsure what was real, and wondering if he was dead, in hell, or

waiting for heaven. Ex. BB11, 19, 116. He could not recall weeks of early 2023, including playing with feces, confessing, or banging his head. Id. 19-20, 117. He believed he had been drugged. Id.

Westcott cited IDOC records showing "acute periods of confusion, paranoia, delusional thinking, cognitive slowing, aggression and combativeness." Id. 20-111. During this period of loss of "touch with reality," Allen confessed. Id. 4l

Westcott concluded Allen's psychosis stemmed from MDD, his personality, and the well-known effects of solitary confinement. Ex. BB, 125-26. Allen was "grossly disorganized, delusional and paranoid." Id. 123, 125-26. Objective testing ruled out malingering. Id. 122.

B. The trial court abused its discretion by refusing to admit the IPAS Order/Setttlement into the suppression hearing.

Evidence is relevant if it has "any tendency to make a fact of consequence in determining the action" more or less probable than it would be without it. Ind. R. Evid. 401.

Here, the order/settlement makes it more likely Allen's psychosis was caused by his confinement. The order found solitary confinement causes all the symptoms Allen experienced. Ex. VI, 173. Allen was more likely to decompensate because he spent seven months on suicide watch, an even more restrictive form of solitary. Id 176.

The order/settlement also makes it more likely Allen was subjected to psychological coercion by showing solitary causes "psychological pain." Id. 175. It demonstrates State action – the IDOC placing and keeping Allen in solitary, knowing it was causing this "predictable" pain. Id. 176.

The order/settlement shows how extensively IDOC violated its own policy, as it includes MDD in the SMI definition, restricting Allen's solitary to thirty days.

Allen was harmed by the court's refusal to consider the order/settlement because it undermined the court's findings and conclusions.

C. The State failed to prove Allen's statements made while gravely disabled were voluntary.

1. U.S. Constitution –- The State failed to prove that Allen's statements were not a product of psychological coercion.

An involuntary statement obtained through "State action" violates due process and is inadmissible. Colorado v. Connelly, 479 U.S. 157, 165 (1986). A confession is voluntary if it is a product of rational intellect and freely self-determined rather than overborne will by State law enforcement conduct. Rogers v. Richmond, 365 U.S. 534, 544 (1961). State law enforcement can include psychiatric facilities and prison staff. U.S. v. D.F., 115 F.3d 413 (7th Cir. 1997); Townsend v. Henderson, 405 F.2d 324, 328 (6th Cir. 1968).

Statements produced through a coercive environment are involuntary, regardless of whether solicited through police interrogation. United States v. Karake, 443 F. Supp. 2d 8, 55 (D.D.C. 2006) ("months spent in solitary

confinement, deprived of light, adequate food and contact with the outside world is, by itself, sufficient to sustain a finding of involuntariness"); D.F., 115 F.3d at 421 (7th Cir. 1997) (staff at State psychiatric facility created a coercive environment, rendering a juvenile's confessions involuntary). The crucial element is "police overreaching." Connelly, 479 U.S. at 165.

When State actors use more "subtle forms of psychological coercion," the defendant's mental illness is more significant in the voluntariness determination. Spano v. New York, 360 U.S. 315 (1959). But the State must still exploit the defendant's illness with coercive tactics. Connelley, 479 U.S. at 164-65. This is generally done through aggressive interrogation, but exploitation can occur in other ways. Townsend v. Sain, 372 U.S. 293, 308(1963) ("It is difficult to imagine a situation in which a confession would be less the product of a free intellect, less voluntary, than when brought about by a drug having the effect of a 'truth serum.")[4]

For a statement to be involuntary, State action must be "causally related to the confession." Connelley, 479 U.S. at 165.

a. The State's prolonged solitary confinement of Allen was State action.

Contrary to the court's finding that Allen failed to prove "State psychological coercion," it was the State's burden to prove Allen's statement voluntary by a preponderance of evidence. App. X, 55.

[4] Overruled on other grounds by Keeney v. Tamayo-Reyes, 504 U.S. 1 (1992).

To the extent Allen had a minimal burden of production, he met that. Prolonged maximum-security solitary confinement of a pre-trial detainee, especially after psychosis develops, is State action. Unlike the mentally ill defendant in Connelley who walked into a police station and confessed, Allen never voluntarily came into custody. He consistently protested innocence until enduring five months of maximum-security solitary with no human contact except while chained or caged.

Because it was pretrial, Allen's solitary was unprecedented and borderline, if not unconstitutional punishment. Tr. II, 141, 151; IV, 207; V, 38, 68, 104, 128, 173, 248; Littlefield v. Deland, 641 F.2d 729, 731 (10th Cir. 1981). Other IDOC safekeepers were in mental health units, not solitary. Tr. XVIII, 196-97. "On a continuum of possible punishments" in the justice system, "solitary confinement in a maximum-security facility" is the most extreme. Griffin v. Wisconsin, 483 U.S. 868, 874 (1987).

Also, Allen's solitary exceeded the 30-day IDOC policy restriction. Ex. Vol. VII, 26, 45-47. IDOC knew it could harm Allen. Ex. VI, 174. When IDOC observed Allen's predictable deterioration, they refused to transfer him. Tr. IV, 207; V, 37, 68, 104, 128, 248; V, 130-34 (keeping Allen in solitary when he was "no doubt" SMI was an administrative, not clinical decision).

Finally, the State's conduct also involved the prosecutor, law enforcement and the court. After Allen filed his April 5 emergency transfer motion citing his dire condition, the prosecutor waited nine days to respond while investigators monitored real-time calls in which Allen confessed. App. II,

229, 239; Tr. V, 58, 229. During this delay, Allen continued deteriorating. The prosecutor then mocked defense concerns as "colorful" and "dramatic," while that same day IDOC found Allen "gravely disabled." App. II, 239-42; Ex. XIII, 109–110.

Knowing Allen was decompensating, the court refused to transfer him, putting the onus on IDOC to provide care. App. II, p. 244; III, 178. It is fundamentally wrong to keep a gravely disabled Allen in solitary while using against him statements made to psychologists and suicide companions. Sims v. State, 601 N.E.2d 344, 346 (Ind. 1992).

One week later, the prosecutor sought all medical records, videos, and communications while confessions were ongoing. App. III, 17, 49. Monitoring and collecting his statements consumed hundreds of hours and produced over sixty confessions. Tr. V, 56-57, 68, 236. ISP interviewed inmates and guards and even sent a psychologist to speak with Dr. Wala. Tr. V, 57, 60, 63, 183.

Allen showed more than sufficient State action.

b. The State's prolonged pretrial solitary confinement was psychological coercion.

Allen's solitary was psychological coercion because it was prolonged, caused psychological pain and put him at the mercy of the State.

The prolonged nature is coercion because solitary confinement can bring a person "to the edge of madness, perhaps to madness itself." Davis v. Ayala, 576 U.S. 257, 288 (2015). This has been recognized in literature, law and science. Id. (citing Dickens, A Tale of Two Cities; In re Medley, 134 U.S. 160,

170 (1890); and Grassian, Psychiatric Effects of Solitary Confinement, 22 Wash. U.J.L. & Pol'y 325 (2006)). Solitary causes psychological trauma, including psychosis, hallucinations and paranoia. Williams v. Sec'y Pennsylvania Dep't of Corr., 848 F.3d 549, 567 (3d Cir. 2017) (detailing scientific studies). IDOC knew this. Ex. VI, 173, 176; Tr. V. 130-34.

From day one at WCU, Allen was placed in a "strip cell" -- the most restrictive cell in the most restrictive solitary unit-- with only bare essentials and a camera constantly recording him. Ex. BB5; Tr. V, 116. Soon thereafter, IDOC ordered guards to videotape him when out of the cell, including showering and attorney visits. Tr. V, 207, 245-46, 250; BB5. Suicide companions remained outside his door documenting everything, regardless of suicide watch status. Tr. V, 95-96, 181, 209, 212. He had no contact with anyone unless caged or chained.

The sensory deprivation, social isolation and forced idleness is difficult even for healthy people. Ex. Vol. VI, 173; Gisli Gudjonsson, Memory distrust syndrome, confabulation and false confession, Cortex 87 (2017), p. 156-57 (a healthy man wrongfully implicated and detained in solitary questioned his memory and suspected he committed the crime; though he stayed sane by reading, exercising, and praying, the experience traumatized him).

Early videos show Allen pacing his 8.5 x 12.5 cell, laying down, doing leg crunches, writing, reading, and looking distressed. Cell Videos (Dec.-March). Within two weeks, Allen said he was "broken" and told his wife, "if this becomes too much for you call the detectives and I will…tell them whatever

they want to know." Tr. XVIII, 25, 51. Had Allen's solitary been thirty or even ninety days, he would not have decompensated. But it was thirteen months.

The prolonged solitary caused Allen "predictable" psychological pain – paranoia, nightmares, memory problems and confusion. App. VI, 173; Ex. DDD. It is undisputed Allen deteriorated to being "gravely disabled" and "very psychotic," and the IDOC involuntary administered anti-psychotics between April and late June. Ex. II, 121, 127. Although Wala noted concerns about feigning, she diagnosed psychosis, and suspected incompetence and overmedication. Ex. II, 120-21, 126-28, 137; Tr. V, 196.

And WCU only monitored Allen's mental health. Tr. XVIII, 202-03; App. IV, 177. Talking with a psychologist while shackled in a cage is not treatment. Ex. DDD (video 1002-cage); Tr. XVII, 17.

Solitary put Allen in a constant state of vulnerability. Solitary confinement has long been recognized as psychologically coercive, equated to the "rack, the thumbscrew, [and] protracted questioning." Chambers v. Florida, 309 U.S. 227, 237 (1940). Pre-trial solitary is "punishment" already underway and "convey[s] . . . without the necessity of spoken words, the implied threat of further punishment." Townsend v. Henderson, 405 F.2d 324, 328 (6th Cir. 1968). It does not matter why a defendant was in solitary, whether justified, or whether the prison planned further punishment. Id. 329; Donnell v. Myers, 220 A.2d 376 (1966); Brooks v. Florida, 389 U.S. 413 (1967); U.S. v. Koch, 552 F.2d 1216 (7th Cir. 1977); Stidham v. Swenson, 506 F.2d 478 (8th Cir. 1974); Arnett v. Lewis, 870 F.Supp. 1514 (D.Ariz. 1994).

In this harsh environment, Dr. Wala controlled all aspects of Allen's life including whether he got bedding, clothes, meal items, books, personal items, and utensils. Ex. II, 118, 127, 136, 142. She could provide a new window and a tablet or strip him to bare necessities.

Privileges were contingent on pleasing her. Whether Wala had ill intent is irrelevant. It is what Allen thought and what solitary confinement did to him or would do to many of us. See, e.g. Ex. II, 141 (after confessing to Wala on May 3, he asked for his property back and she indicated she needed more consistency).

Senator McCain, a prison camp survivor, explained solitary "crushes your spirit and weakens your resistance more effectively than any other form of mistreatment." Atul Gawande, Hellhole, THE NEW YORKER 41, at p. 38 (Mar. 30, 2009). Allen entered solitary confinement compromised; he left broken.

c. Allen's confessions were a product of solitary-induced psychosis, not rational intellect.

IDOC records show that Allen continued to suffer from psychotic during the times he confessed. On April 5 when he confessed to Dr. Wala, he was not eating or sleeping and was drinking from the toilet. Ex. II, 126.

On May 3, when he confessed, Allen had symptoms of paranoia and disorientation. Ex. II, 141. Despite Wala claiming he presented as "more organized than he has been," the day before he was confusing nightmares with reality and claiming to have started WWIII. Id; Ex. II, 134; 12-13. Two days

before, he was too disjointed to hold a conversation. Id. 132. Days earlier he covered himself in feces and claimed he was King Michael. Ex. DDD (01052).

His confessions to guards occurred during bizarre and psychotic behavior. Ex. XII, 229-250; XIII, 84; Ex. BB7. Guards believed he was faking, but they are not clinicians, and Dr. Westcott found no malingering through objective testing. Tr. V, 243; Ex. BB11, 122

Allen confessed to his family on April 3, May 10, May 17, May 25, and June 11. On April 3, he also fell on the floor, asked if he was dead, and was suicidal. Ex. XIII, 6–7, 73. On May 10, he believed he was dead, that the world would blow up if he slept, his water was poisoned, and he was reliving the same day. Ex. XIII, 30, 34, 38-39, 143, 149. On May 17, he was paranoid of attorneys and staff with Odin patches. BB11, 74. On May 25, Allen paced for two hours and banged his head. Ex. III (11:46); (01153). On June 11, he thought he was in hell and did not understand what was happening. Ex. 313 (5:15 and 7:00).

In August, Allen did not remember confessing or weeks of early April. BB11, 19, Throughout, he complained of memory loss. Ex. BB11, 97, 98; BB5, 25, 30, 112-13.; Ex. II, 120, 147.

State action overbore Allen's will. Allen did not confess until after five to seven months of solitary. Before arrest, he consistently denied involvement. Dr. Westcott opined Allen's psychosis was caused by the stress of solitary confinement on pre-existing illness. Ex. BB11, 125-26. Dr. Wala agreed that "a lot of the time," solitary confinement exacerbates mental illness, and it is

reasonable to believe Allen's confinement caused his psychosis. Tr. V, 134-37, 174.

The social isolation of solitary makes people question their "self." Williams, 848 F.3d at 566. If you are treated like you are guilty, you begin to think you are. Dr. Grassian testified a false memory starts with a belief. Tr. XX, 155. In his first confession to his wife, Allen said, "I think I did it." Tr. XX, 155-56. In his first confession to Dr. Wala, he was unsure if he had sex with the girls. Ex. XVIII, 7. Allen got facts wrong and confessed to crimes he did not commit. Tr. XVII, 90l; XX, 47, 50; BB15 (Allen claimed he shot the girls).

2. Indiana Constitution – The State failed to prove Allen's statements were a product of rational intellect rather than the State's misconduct.

The Indiana Constitution also protects against the admission of involuntary statements. Ind. Const., art. I, §§ 12, 14. Indiana's test is like the due process standard -- requiring a confession be "freely self-determined" by a "rational intellect and free will." Robbins v. State, 235 N.E.2d 199, 203 (Ind. 1968). However, it is more robust because it requires the State to prove voluntariness beyond a reasonable doubt. Pruitt, 834 N.E.2d at 114-15.

Also, it does not require State action be coercive to overcome a mentally ill person's will. State v. Banks, 2 N.E.3d 71, 76, 83 (Ind. Ct. App. 2013) (mentally ill defendant's statement involuntary due to his altered state and confusion, although officers neither coerced him nor knew of his illness). But mental illness alone will not render a statement involuntary. Id. There must be

some State negligence that contributed to overcoming the defendant's rational intellect. Banks, 2 N.E.3d at 83 (police gave confusing or inadequate warnings).

Here, the IDOC's refusal to apply their 30-day policy to Allen and to transfer him after he deteriorated is, at minimum, negligent State conduct that caused Allen's psychosis and confessions. And the prosecutor's delay and the trial court's refusal to set a timely hearing exacerbated the deterioration. This is conduct that our constitution cannot tolerate, regardless of whether it constitutes coercion under federal due process.

Also, the evidence does not show the statements were a product of rational intellect *beyond a reasonable doubt*. Allen was considered gravely disabled through June 16, when he received his last emergency injection due to self-harm. Tr. XXI, 142. Though Wala sometimes described Allen as more coherent or his symptoms not significant, the State cannot have it both ways – i.e., Allen decompensated to the point of forced medication but remained rational beyond a reasonable doubt. Even if Allen could occasionally hold a conversation, it does not render his confession voluntary.

D. Even if the Court finds Allen's statements voluntary, they are a product of unconstitutional detention.

1. Allen's prolonged solitary confinement violated Article I, §§ 12 and 15.

"[Indiana] courts are constitutionally bound by the basic concepts of fairness that are frequently identified with 'due process' in the federal constitution." Sanchez v. State, 749 N.E.2d 509, 515 (Ind. 2001). Article I, § 12 guarantees "for every person, for every injury done to him in his person. . .

remedy by due course of law." Ind. Const. Art. I, § 12. Here, Allen was sent to solitary for "safekeeping" without even a hearing or notice. Tr. V, 35, 180. Even when his attorneys informed the court of his dire condition, the court refused to set a hearing in violation of I.C. § 35-33-11-2. App. II, 244. Although the court eventually held a hearing on June 15, 2023, by that time the damage was done.

Fairness protections in criminal cases are found in different Indiana Constitutional provisions. McIntosh v. Melroe Co., 729 NE2d 972, 976 (Ind. 2000). Just as pretrial punishment violates federal due process, it violates the Indiana Constitution. Indiana is one of just six states protecting citizens from unnecessary rigor. The framers wrote, "[n]o person arrested, or confined in jail, shall be treated with unnecessary rigor." Ind. Const. art. 1, § 15. Typically, this provision requires a "prisoner suffers severe mistreatment." Kelly v. State, 257 N.E.3d 782, 802 (Ind. 2025).

Recognizing this provision applies to solitary confinement, the Indiana Supreme Court stated:

> The very essence of punishment, and the sole use of the prison walls, is the confinement of the convict within them; . . .**Humanity indeed forbids, as unnecessary rigor, that his confinement should be absolutely solitary**, or that all his natural and civil rights should be temporarily annihilated …

Helton v. Miller, 14 Ind. 577, 585 (1860) (emphasis added).

Here, Allen's treatment rose to the level of unnecessary rigor. Rigor is the "act or instance of strictness, severity, or cruelty."[5] When Allen started suffering from confusion, memory lapses, paranoia, and bizarre behaviors, there was no longer a risk he could not handle the harsh conditions of maximum-security solitary; it was a reality. The strictness, severity and cruelty of his confinement is evident on video where he is screaming in fear, confused about where he is, unable to respond and drooling, and self-harming.

The rigor was physical too. Williams, 848 F.3d at 567–68 (solitary can result in physical harm including self-mutilation as a maladaptive coping behavior). Allen lost forty pounds, was unable to care for himself, was tased, his face was black and blue and at times bleeding, and he was poisoned by fecal matter and toilet water. Indifference to his catatonia is shown where medical staff discuss blood pressure and cholesterol with a vacant Allen. DDD (1201 -15:30; 16:50).

This psychological and physical pain was unnecessary. IDOC could have transferred him upon deterioration as policy requires. Even an isolated infirmary cell would have been better than the "hole" designed for punishment. Tr. V, 87. Likewise, the court could have moved him when the court learned of his dire condition.

[5] https://www.merriam-webster.com/dictionary/rigor (last checked 12/4/25).

2. The constitutional violations require suppression.

Over 150 years ago, Dostoyeskey wrote "The degree of civilization in a society can be judged by entering its prisons." Davis, 576 U.S. at 290. In 2015, writing about the effects of solitary, Justice Kennedy harkened to this quote, noting, "There is truth to this in our own time." Id.

Applying the exclusionary rule to these constitutional violations would deter abuses within our prison system and law enforcement, protect judicial system integrity by showing it condemns such conduct, and protect the human dignity of those unable to make bond while awaiting trial. See Kokenes v. State, 13 N.E.2d 524, 530 (Ind. 1938) (excluding confession that was a result of physical abuse and solitary, in part, under Article I, § 15).

Indiana has a robust exclusionary rule. Relying on Article 1, §§ 11, 14, Indiana adopted the exclusionary rule long before the Fourth Amendment exclusionary rule applied to the States. Membres v. State, 889 N.E.2d 265, 274 (Ind. 2008) (citing Callender v. State, 138 N.E. 817, 818-19 (Ind. 1923)).

Under the exclusionary rule, to determine whether a statement is a product of an illegal detention, the court must ask if the statement "has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." Clark v. State, 994 N.E.2d 25, 266 (Ind. 2013). The court considers: "(1) the time elapsed between the illegality and the acquisition of the evidence; (2) the presence of intervening

circumstances; and (3) the purpose and flagrancy of the official misconduct." Id.

First, Allen's statements occurred during the illegality of his detention at WCU. Second, there were no intervening circumstances. Again, there is a well-known connection between solitary confinement and psychosis/delirium. Williams, 848 F.3d at 567. Third, the constitutional violation was flagrant because IDOC violated its own policies for keeping Allen safe and the court and prosecutor refused to help when Allen's attorneys warned of his deterioration.

Even if this Court finds Allen's statements were voluntary because he was not interrogated by law enforcement, he was still gravely disabled when he confessed. As such, his free will did not purge the taint of his illegal detention. The trial court erred by denying the motion to suppress.

E. The error was not harmless.

Before a federal or state "constitutional error can be held harmless, the court must [find] it was harmless beyond a reasonable doubt." Chapman v. California, 386 U.S. 18, 24 (1967); Torres v. State, 673 N.E.2d 472, 474 n.1 (Ind. 1996).

"No piece of evidence may have greater sway over a jury than a defendant's confession." State v. L.H., 215 A.3d 516, 519 (2019). The erroneous admission of statements to Dr. Wala, alone, was prejudicial because they were a large part of the State's case. Tr. XXI, 190, 227. The prosecutor particularly

concentrated on Allen's May 3 statement, arguing that Allen knew a fact only the killer would know. Tr. XXI, 193-64, 226. The confessions also countered Allen's confident and unwavering pre-solitary protests of innocence.

III. The court denied Allen his right to present a complete defense, to explain the scene, and impeach the investigation.

The Fourteenth Amendment guarantees a defendant the right to a fair trial. The amendment's Due Process Clause places significant, substantive limits on State power, prohibiting its arbitrary exertion and guaranteeing criminal defendants "a fair opportunity to defend against the State's accusations." Chambers v. Mississippi, 410 U.S. 284, 294-95 (1973). For an "opportunity" to be "fair," a defendant must be permitted to "confront and cross examine witnesses and to call witnesses in [his or her] own behalf." Chambers, 410 U.S. at 294–95. These overarching principles operate in tandem with the Sixth Amendment, which similarly "guarantees criminal defendants 'a meaningful opportunity to present a complete defense.'" Crane v. Kentucky, 476 U.S. 683, 690 (1986) (citation omitted).

Although trial courts have broad discretion in conducting trials, Joyner v. State, 678 N.E.2d 386, 390 (Ind. 1997), this discretion has constitutional limits. Holmes v. South Carolina, 547 U.S. 319, 324 (2006). That is, courts may not "infringe upon a weighty interest of the accused" through decisions that "are arbitrary or disproportionate to the purposes they are designed to serve." Id. (quotations and brackets omitted).

As explained more fully below, the trial court made several reversible errors under the rules of evidence and Indiana's trial rules. In many instances, these decisions violated the constitution as well.

A. Standard of Review.

"While [this Court] assess claims relating to admitting or excluding evidence for abuse of discretion, to the extent those claims implicate constitutional issues, [this Court] review[s] them de novo." Ramirez v. State, 174 N.E.3d 181, 189 (Ind. 2021)).

Errors in the admission of evidence will be disregarded as harmless "if its probable impact on the jury, in light of all of the evidence in the case, is sufficiently minor so as not to affect the substantial rights of the parties." D.R.C. v. State, 908 N.E.2d 215, 228 (Ind. 2009). But when the error is constitutional, the standard is higher. Generally, "before a federal constitutional error can be held harmless, the court must be able to declare a belief that it was harmless beyond a reasonable doubt." Chapman, 386 U.S. at 24.

B. The court committed reversible error by excluding Blair's sketch of Bridge Guy.

At trial, the court prohibited Allen from using Blair's sketch of Bridge Guy. App. XI, 10; Tr. IX, 210-11. This decision violated our rules of evidence and denied Allen his constitutional right to present a defense of mistaken identity.

Evidence is relevant when it has any tendency to make the existence of any fact that is of consequence to the determination of the action more

probable or less probable than it would be without the evidence. Evid. R. 401. A court may exclude relevant evidence if its probative value is substantially outweighed by a danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence. Evid. R. 403.

Blair's sketch proves she did not see Allen on the bridge. Blair did not identify Allen in court as Bridge Guy. App. X, 191. But according to the prosecutor, Blair must have seen Allen on the bridge because Allen told us "he went onto the Monon High Bridge, out to the first platform," which is "[e]xactly" where Blair saw Bridge Guy. Id., 187.

Blair's sketch shows Allen looked nothing like the person Blair saw. Just three days after the murders, Blair met with a sketch artist and described the man she saw on the bridge as white, about 20, of medium build and having brown curly hair. Supp I, 143-44. An artist created the following sketch based on Blair's description:

Nov. Supp. I, 144.

This looks nothing like Allen. At the time of the murders, Allen was short, 44 years old, with closely cropped hair. Ex. XII, 82, 125.

Blair's sketch also shows that she and Carbaugh saw different people. The State's timeline for the murders is dependent upon Carbaugh and Blair seeing the same person. Tr. XXI, 226; see Tr. VI, 132. And the prosecutor told the jury that every eyewitness "[is] adamant the person they saw was Bridge Guy[.]" Id., 183. "[T]here's no doubt in their mind[s]." Id. But Blair's sketch disproves this claim. Carbaugh, like Blair, made a sketch. When Blair saw it, she described it as "wrong" and not who she saw. Nov. Supp. Ex. 107 (3:40-3:48); Nov. Supp. I, 145.

Blair's sketch impeaches the investigation and shows law enforcement bias against Allen. For two years, law enforcement circulated Carbaugh's sketch without it yielding a single arrest. So in April 2019, ISP released Blair's sketch, declared it represented "the face of" Bridge Guy, and announced that Blair and Carbaugh did "not [see] the same person." Ex. VII, 247. After Allen's arrest, the story changed, and the jury was told Carbaugh and Blair saw the same person. Id.

Blair's sketch was reliable and probative of Bridge Guy's identity. Blair contacted law enforcement the day the girls went missing, Ex. IX, 130-31, and it was "very clear" to her she saw Bridge Guy. Id. Two days later she developed her sketch with an artist and a book of facial features. Id. She rated her sketch 10 out of 10 for accuracy. Nov. Supp. I, 145. In 2019, she met with law enforcement repeatedly, and she reaffirmed her confidence in her sketch. Id.; Ex. IX, 135-40. She insisted that she could identify Bridge Guy if she saw him. Nov. Supp. I, 145.

Blair's sketch is not hearsay. Indiana bars the use of out of court "statements" for the truth of the matter asserted unless the statement falls within an exception. Evid. R. 802. Here, Blair's sketch was not a "statement." Although Indiana has not reached the issue, other courts hold that a sketch is the functional equivalent of a photograph. No statement is involved. United States v Moskowitz, 581 F.2d 14 (2d Cir. 1978); Harrison v. Commonwealth, 384 S.E.2d 813 (Ct. App. Va. 1989) (collecting cases).

The sketch is not hearsay. A statement is "not hearsay" if "[t]he declarant testifies and is subject to cross-examination about a prior statement, and the statement . . . is an identification of a person shortly after perceiving the person." 801(d)(1) The rule applies regardless of whether the identifying witness makes a positive in court identification or not. See 6 Handbook of Fed. Evid. § 801:13 (10th ed.). Here, Blair identified Bridge Guy to law enforcement immediately and developed her sketch three days later.

Blair's sketch is also admissible as an adoptive admission. A statement is not hearsay when it is offered against an opposing party and is one the party "manifested that it adopted or believed to be true." Evid. R. 801(d)(d)(B). That occurred here. In April 2019, the ISP released Blair's sketch to the public and declared, "[this is] the face of [Bridge Guy]." Ex. VII, 247.

Blair's sketch is admissible under Indiana's common law too. Decades before Indiana adopted the rules of evidence, sketches were admissible if the eyewitness took the stand at trial. Rowe v. State, 314 N.E.2d 745, 749 (Ind. 1974).

Even if the sketch was inadmissible hearsay, Allen was still entitled to use it. "[S]tate law does not have the last word" on hearsay, Smith v. Brookhart, 996 F.3d 402, 419 (7th Cir. 2021), and the rule must yield to the constitutional right to present a defense. Id.; see also, Evid. R. 802 (hearsay is admissible when "other law" requires it). When identity is "crucial [to] the case", a defendant is entitled to defend on a claim of mistaken identity, Kucki v. State, 483 N.E.2d 788 (Ind. Ct. App. 1985), and this right cannot be abridged through the application of "arbitrary" or "disproportionate" rules, or the "mechanistic" application of otherwise rational rules. *See, e.g.,* Holmes, supra; Chambers, supra; Brookhart, supra

Excluding the sketch violated the constitution. Here, the State concedes that Bridge Guy's identity was "crucial to the case." Tr. 21, 185 ("[I]f we can determine who Bridge Guy is, we can determine who killed A.W. and L.G."). Blair's sketch was critical to Allen's defense of mistaken identity, and the judge's decision to exclude it was arbitrary and disproportionate to any legitimate government interest.

The error was harmful under both the constitutional harmless error standard, Chapman, supra, and Indiana's evidentiary standard, D.R.C., supra. There is no dispute the State's timeline depended upon (1) Blair seeing Allen on the bridge and (2) Blair and Carbaugh seeing the same person. Blair's sketch disproved both points. Excluding it affected Allen's substantial rights and the jury's verdict.

C. The court committed reversible error in excluding Tobin's testimony.

Allen tendered William Tobin to explain the scientific community's robust criticism of the AFTE's toolmark matching methodology. The judge excluded him because he was not a firearms expert, he was untrained in firearms identification, he did not examine the evidence in this case, and he did not conduct a firearms examination. App. X, 238. According to the court, Tobin's "testimony does not go to an issue before the jury and lacks relevance." Id. This decision violated our rules of evidence and violated Allen's constitutional right to present a defense.

Expert testimony should be admitted if (1) the expert is qualified "by knowledge, skill, experience, training, or education," and (2) the testimony "will help the trier of fact to understand the evidence or to determine a fact in issue" and Evid. R. 702. Indiana adopted this rule to "liberalize" the admission of expert opinion. Turner v. State, 953 N.E.2d 1039, 1050 (Ind. 2011).

Tobin was clearly qualified to explain the scientific community's robust criticism of the AFTE methodology. Tobin is a nationally recognized expert in forensic metallurgy and material science who has testified as an expert in many cases involving the validity and reliability of firearms and toolmarks.[1] App. X, 108-09, 164. He has extensive experience in metallurgy, bullet and lead analysis, and toolmark principles, along with a background in statistics. Ex. IX, 232-34. He understands the President's Council of Advisors on Science and Technology (PCAST), which has issued a detailed report criticizing the AFTE methodology. App. X, 165.

Tobin's testimony was essential for assessing Oberg's credibility and determining what to believe. Once an expert takes the stand, their credibility is fair game for impeachment. Tunstall v. Manning, 124 N.E.3d 1193 (Ind. 1999). And a party is free to challenge the expert's methodology with opposing testimony from another qualified expert. Ford Motor Co. v. Ammerman, 705 N.E.2d 539 (Ind. Ct. App. 1999). The jury is ultimately responsible for assessing witness credibility and determining what to believe. Tunstall, 124 N.E.3d at 1193.

Here, Oberg testified that she matched toolmarks on test firings from Allen's gun with toolmarks on the unspent cartridge found at the murder scene. Oberg told the jury she found agreement between the toolmarks by using the AFTE methodology. She gave an error rate of 2.2% for false positives and 2.87% for false negatives. Id., 124-25. She discussed studies and articles that she reviewed to apply the methodology. Id., 138-42, 178-79. And, over relevancy objections, she described studies relating to guns that were not even Sig Sauer Model P239. Id., 183-85. A lay juror might find this testimony impressive and coherent, but AFTE's methodology is anything but straightforward. Tobin's experience would help a jury understand the scientific community's criticism of AFTE's "subjective" methodology and force Oberg to engage with that critique.

Even if our rules tolerated Tobin's exclusion, the decision was patently unconstitutional. A defendant is entitled to "a meaningful opportunity to present a complete defense." Crane, supra. This entitles him to impeach a

witness who provides "a crucial link in the proof" of the defendant's guilt. Davis v. Alaska, 415 U.S. 308, 316 (1974). Although trial courts possess "broad discretion" to limit impeachment, Id. at 317, the discretion cannot be used to arbitrarily exclude competent, reliable evidence bearing on witness credibility when such evidence is central to the defendant's claim of innocence. C.f. Crane.

Here, Oberg's credibility was central to the case, and the judge arbitrarily excluded Tobin. Tobin's is an expert in the AFTE methodology *and its shortcomings*, he is experienced with firearms identification, and he examined Oberg's materials. App. X, 108-09, 165; see Welsh supra. There was no legitimate state interest in excluding Tobin.

Allen did not waive his right to appeal the Tobin issue by calling Warren. A party aggrieved by an erroneous evidentiary ruling, is entitled to respond to the improper ruling without sacrificing the right to appellate recourse. See Thomas v. Thomas, 577 N.E.2d 216, 219 (Ind. 1991); *see also* 1 McCormick on Evid. § 55 (9th ed.). Once the court excluded Tobin, Allen responded by calling Warren, who endorsed the use of the AFTE methodology and engaged Oberg in a battle of experts over how to properly apply the methodology to the evidence. This decision did not waive Allen's right to appeal Tobin's exclusion.

The error was harmful under both the constitutional standard, Chapman, supra, and the evidentiary standard, D.R.C., supra. The State told the jury Oberg's "never been wrong" and that Allen has "no explanation of how his bullet from his gun ended up between the bodies of A.W. and L.G., six

inches from L.G.'s foot." Tr. XXI, 189. Had the jury heard Tobin's robust impeachment of Oberg's methodology, the outcome of this case would probably be different.

D. The court committed reversible error in admitting hearsay to rehabilitate the timeline upon which the State built its entire case.

The state built its entire case upon the following timeline: Allen encountered the girls at 2:13, he completed the murders alone, left L.G.'s phone at the murder scene, was spotted by Carbaugh leaving the scene at 3:56 p.m., and never returned. Tr. XV, 130; Tr. XXI, 185-86.

If Allen committed the murders, there should be no human-initiated activity on L.G.'s phone after 3:56 p.m. But there was.

At trial, Allen called Eldridge, a former FBI forensic examiner, who examined the data from L.G.'s phone and testified that wired headphones or an aux cable were plugged into the phone at 5:45 p.m. on February 13, and then removed at 10:32 p.m. Tr. XXI, 24-26. This action would silence a phone call. Id., 26-27. And she noted that the data showed an incoming call moments before the headphones were inserted, suggesting someone was intentionally silencing L.G.'s phone. Id. Since the State claimed Allen left the murder scene at 3:56 p.m., Eldrige's evidence eviscerated the State's timeline and showed someone else committed the murders.

The State responded by asking Cecil, its phone expert, whether water damage could simulate headphones being plugged into L.G.'s phone. Id.,

55. Over a hearsay objection, Cecil testified, he "Googled it" and found some unspecified, non-peer-reviewed "troubleshooting" forums reporting that it could. Id., 56-58.

Cecil's testimony was inadmissible totem pole hearsay. Unless our evidence rules provide otherwise, out of court statements are not admissible for their truth. Evid. R. 802. For totem pole hearsay to be admissible, "each part of the combined statements must conform[] with an exception to the rule." Evid. R. 805. Here, the posts on the "troubleshooting" forum are at least double hearsay: (1) the internet forum and (2) the statements posted there.

Cecil's status as an expert does not affect the hearsay analysis. Statements contained in a "reliable authority" can be admitted over a hearsay objection when used to "contradict" an expert who is testifying on the witnesse stand. Evid. R. 803(18). But here, the online forum was neither reliable nor used to contradict Cecil.

Rule 703 does not avail the State either. Under 703, experts may testify to opinions based on inadmissible evidence, if the evidence is of the type reasonably relied upon by experts in the field. The rule, however, does not authorize experts to parrot facts that "the expert adds nothing to." Wright & Miller's Evidence § 6273 (2d ed.), at 312; *see also* Chatman v. State, 201 N.E.3d 241, 245 (Ind. Ct. App. 2022). Cecil added nothing here. He was a mouthpiece for totem pole hearsay that he "Googled."

The error was constitutional. A defendant is entitled to "a fair opportunity to defend against the State's accusations." Chambers, supra. This

includes the right to impeach a witness through cross examination when they provide "a crucial link" in the defendant's guilt Davis, supra. Here, the judge arbitrarily allowed the State to undermine Eldrige's testimony with a person's internet post, and it was impossible for Allen to impeach the person through cross examination.

The error was harmful. Eldridge's testimony undermined the timeline upon which the State built its entire case. Allowing the State to rehabilitate the timeline affected Allen's substantial rights and the jury's decision.

E. The court committed reversible error by excluding evidence that impeached the credibility of Allen's confessions.

At trial, Allen sought to impeach the credibility of his confessions. The judge made three reversible errors. Together, the decisions violated his constitutional right to present a defense.

When a defendant confesses, "the manner in which the confession was obtained" is relevant to the confession's credibility. Crane, supra.

1. The court erred by excluding the audio from Allen's solitary confinement videos.

At trial Allen moved to introduce 15 videos showing the conditions he endured in solitary confinement. The court sustained the State's hearsay objection and ordered Allen to mute the videos when he showed them to the jury. Tr. XVIII, 241-244; Ex DDD (videos with sound). This was reversible error.

The audio shows a delusional, confused, and disorganized mind. The evidence can only be fully appreciated by listening to it. Accordingly, Allen

respectfully requests this Court watch the videos with audio, especially 172, 1002, 1007, 10152, 1201 (at 15:30 and 16:15). Ex. DDD.

The statements in those videos are not hearsay. Statements are not hearsay when used to prove a defendant's state of mind. Evid. R. 801(c). This was precisely Allen's purpose in offering the evidence, and the trial court conceded this. Tr. XVIII, 241-43

To the extent there are older cases suggesting that a defendant can never admit his own statements, those decisions are inconsistent with (and should not survive) the adoption of the modern rules of evidence. Accord People v. Vanderpauye, 530 P.3d 1214 (Col. 2023).

The audio in the video is also relevant because it impeaches Dr. Wala's testimony and undermines her medical records. Wala's evidence gave the misleading impression that Allen provided organized and detailed confessions with a beginning, middle and end. Ex. XIII, 7, 18. But the omitted audio rebuts this, showing a disorganized, nonsensical and confused Allen. On May 3, for example, Dr. Wala describes Allen's mind as "more organized" than "he'd been." Ex. XIII, 19. But the April 28 video puts this statement in context, showing a disjointed, tangential, non-sensical, and rambling Allen. He is plainly psychotic and uncredible.

The audio also presents a vivid picture of solidary confinement's harsh conditions. Staff talk callously to Allen; Guards remark how long feces is on his back; inmates tell him to kill himself; and medical staff ignore obvious signs of SMI and overmedication. In one video, medical personnel ask Allen about his

cholesterol and blood pressure while ignoring his catatonia and drool. Without the audio, this video presents a misleading impression that the medical professionals are attentive, when in fact they are not. (1201-15:30 and 16:15).

The error was harmful. The audio shows that Allen's statements in solitary confinement are unworthy of belief. Excluding them, therefore, affected his substantial rights and likely influenced the jury's decision.

2. The trial court committed reversible error in prohibiting the jury from hearing two phone calls Allen made on April 3, 2023.

On April 2, Allen called his mother and discussed finding religion. Tr. XXI, 190. In the early morning hours of April 3, Allen made three intertwined calls. Over objection, the jury heard the second call where Allen confessed to his wife. But the judge prohibited the jury from hearing the calls that bookended it, where Allen questioned his sanity and the veracity of his own statements. Tr. XVIII, 17, 19; Ex. XIV, 230

Trooper Harshman's testimony made the error worse. Over objection, Harshman claimed that, when confessing, Allen was consistently "calm, subdued, and solemn" in tone, showing no "indication" of "duress or stress." Tr. XVIII, 33. But the excluded April 3 calls discredit this testimony. Allen was confused and forgetful in those. He believed he was losing his mind and that IDOC was poisoning him. Ex. XIV, 239. He referred to being "mentally tortured," comparing his environment to Guantanamo Bay. Id. 233, 234.

Independently, this error was harmful and warrants reversal. In closing, the prosecutor told the jury Allen started confessing on April 3 because "[he'd]

given himself to Jesus" the day before. Tr. XXI, 190. The excluded April 3 calls tell a different story. Allen was losing his mind, showing lapses in memory, and confusing dreams with reality. The prosecutor got to offer an inculpatory story for how the confessions started, while Allen was prohibited from presenting an exculpatory story through contemporaneous evidence.

3. The trial court erred by excluding the statements and behaviors that provided the foundation for Dr. Grassian's opinion that Allen's confessions were not credible.

At trial, Dr. Grassion testified that Allen suffered from delirium. Tr. XX, 149, 154-56. But the judge prohibited Dr. Grassion from discussing the statements that provided the foundation for this opinion, including Allen's statements that were patently false.

This was reversible error. First, Allen's false statements were not hearsay. He offered the statements to show his state of mind and prove that he was saying things unworthy of belief.

Second, even if hearsay, the statements were admissible under Evidence Rule 703, which provides experts may testify "to opinions based on inadmissible evidence, provided that it is of the type reasonably relied upon by experts in the field."

And third, the statements were admissible because the State opened the door three times. Trooper Harshman testified that Allen confessions were consistent with the facts and included details "only the killer would know." Tr. VXIII, 41, 84. The State also paraded witness before the jury who opined that

Allen's mind was intact when he confessed and that he was faking his symptoms. See, e.g., Tr. XVIII, 32-33; Tr. XVII, 93, 94, 123, 132; Tr. XVI 92-94. And Dr. Wala testified she saw no reason to screen Allen for delirium. Tr. XVII, 229.

Allen was entitled to counter all this with evidence that his statements were false, inconsistent with the murder scene, and consistent with delirium. Tr. XX, 146-48.

Independently, this error was harmful and warrants reversal. In closing, the prosecutor molded a story that, despite Allen's undisputed psychosis, his confessions were truthful. The judge affected the jury's decision when she prohibited Allen from showing that he made repeated untruthful confessions.

Together, the above three errors violated the constitution. The constitution prohibits a Court from "stripp[ing] [a defendant] of the power to describe to the jury the circumstances that prompted his confession[.] Crane. That is precisely what occurred here. Allen repeatedly presented evidence that placed his confessions into context and impeached their credibility, but the judge arbitrarily excluded the evidence and disproportionately ruled in the State's favor.

F. The trial court committed reversible error in denying Allen's motion to correct errors.

Allen timely filed a motion to correct errors, arguing the State elicited false testimony and allowed it to go uncorrected. App. XI, 204-09. The trial court denied the motion. App. XII, 98, 100.

The Fourteenth Amendment is violated when the prosecution knowingly solicits false testimony or knowingly allows it to go uncorrected. Glossip v. Oklahoma, 604 U.S. 226, 246 (2025); Napue v. Illinois, 360 U.S. 264, 269 (1953).

According to Dr. Wala, Allen confessed that he was attempting to rape the girls but abandoned his efforts and fled with them across the creek when he saw a van. Tr. XXI, 193. At trial, the State elicited testimony from Brad Weber, who told the jury he left work at the Subaru factory in Lafayette, Indiana, around 2:02 p.m. on February 13, 2017, and drove his white cargo van directly home. Tr. XVII, 244-46.

The prosecutor told the jury that the timeline for Weber's testimony, Allen's confession, and the step data on L.G.'s phone matched perfectly and proved Allen guilty. Tr. XXI, 196.

> If you take a look at the health app data, there's a pause in the movement for seven minutes. He has seven minutes with them. But before he can finish his deed or his deeds, he sees a van. Brad Weber's coming home from work down his private drive to his home and he scares Richard Allen. Then Richard Allen forces the girls across the creek to a spot in the woods, a secluded spot, and he kills them, he cuts their neck.

Id.

Weber's testimony was false, and the State knew it. Specifically, security camera footage from Weber's neighbor, showed him arriving home around 2:44. Id., 233-239. And an FBI report showed Weber's cellphone arriving home around 2:50p.m. Id., 240.

The error was constitutional and requires reversal. A Napue/Glossip error requires reversal if it "could have contributed to the verdict." Glossip, supra (Chapman, supra). Here, the false evidence, if corrected, would shown that Weber's arrival home was *inconsistent* with that State's murder timeline. He arrived home twenty-five minutes after the pause in movement on L.G.'s phone and nearly fifteen minutes *after* L.G.'s phone was on the other side of the creek and hundreds of yards away from Weber's home. App. 11, 204-09. Thus, Allen's statements to Wala are inconsistent with the truth and suggest he was delirious. The error requires reversal.

G. The trial court committed reversible error when it excluded Allen's evidence explaining this murder as a ritual killing.

The trial court prohibited Allen from explaining the murder scene as a ritual killing. This was reversible error.

Evidence which tends to show that someone else committed the crime logically makes it less probable that the defendant committed the crime and thus meets the definition of relevance in Rule 401. Joyner, supra.

Here, Allen tendered Dawn Perlmutter, a recognized expert in ritualistic killings and atypical homicides, to explain the elements of ritual killings. Tr. VI, 79. Rituals killings commonly occur outdoors, in wooded areas, and near bodies of water. Id., 69-71. They occur on holidays significant to the group, and commonly often involve the use of ceremonial knives. Id., 76-77. There will be symbolism at the scene. And with Norse pagan rituals, the symbolism will likely involve runes, arranging natural objects in a specific way, and perhaps

combining the runes with blood, i.e., "blooding the runes" Id., 74-75, 78. "You don't get bullet wounds" with ritual murders. Id. 77. Rather, there is usually throat slitting, blood loss, and perhaps torture. Id., 81-82. You would expect the sacrifice to be displayed or arranged at the scene in a manner that is significant to the group. Id., 78-79. And finally, you would expect to see an atypical or symbolic blood pattern at a ritual killing. Id., 93-94.

According to Perlmutter, this murder scene included *all* these elements. The murders occurred outdoors, in a clearing, and near a large creek. Id., 76, 80; Ex. VII, 56. The murders coincided with The Nordic holiday, Valisblot, which honor's Odin's son, Vali. Tr. VI, 81. The girls' throats were cut with a knife, and they bled extensively. Id.

Perlmutter found the sticks to be *obvious* symbolism, Tr. VI, 87-88, and difficult to explain in any other way. Tr. VI, 118. In her opinion, the stick arrangement on A.W. mirrored the Norse rune "gebo." Id., 84-86; Ex. VII, 77-78. And the stick formation on L.G. looked like a Nordic "bind rune." Tr. VI, 85, 88-89; Ex. VII, 80.

Perlmutter also explained that the bodies were arranged in a manner consistent with a pagan ritual. An upside-down hanging body is an important element of Norse Paganism because Odin hung from a tree for nine days before discovering runes. Id., 92. And Odin's leg is often displayed with one leg bent behind the other. Id.

Here, the blood patterns on the girls' faces suggested a person lifted their bodies and articulated their torsos and necks above their chins. Tr. XVI, 57-58. A.W.'s leg was bent behind the other, mirroring the classic image of Odin. Id. And the blood pattern on the tree appeared to look like a Norse pagan Fehu rune. Id., 93-94; Ex. VII, 82.

Perlmutter had the knowledge, skill, and experience to offer this testimony. Expert testimony should be admitted if (1) the expert is qualified "by knowledge, skill, experience, training, or education," and (2) the testimony "will help the trier of fact to understand the evidence or to determine a fact in issue" and Evid. R. 702. Here, Perlmutter is an expert in ritualistic killings and a recognized federal subject-matter expert on atypical homicide and ritualistic crime investigation. Tr. VI, 69-71; Ex. VII, 52. And she is the author of *Ritualistic Crime Scene Investigation*, a field guide for law enforcement officers investigating ritually motivated crimes. Tr. VI, 64-65. She teaches about ideological and ritualistic killings, and she is familiar with the practice of Norse paganism or Odinism. Tr. VI, 66-69. She was qualified to offer her testimony.

Perlmutter's testimony was not conjecture. There was "always a discussion" among law enforcement that this may be a ritual murder and that the sticks were Nordic runes. Ex. VII, 170-71. The BAU declined to exclude pagan ritual as a plausible explanation for the murder scene. Ex. IV, 245. A consulting professor found it "quite plausible" the stick markings "constitute an instruction inspired by Norse runes (or modern recreations thereof) . . . ."

Id., 225. And an undercover law enforcement officer familiar with runes, also found pagan symbolism at the scene. Supp. Ex. V, 101-07.

Perlmutter's testimony would be helpful to the jury. Although motive is not an element of murder, juries want an explanation for the crime. Kiefer v. State, 761 N.E.2d 802, 806 (Ind. 2002). And when motive is unclear or inconsistent with the defendant's guilt, juries are more likely to acquit. See, id. Similarly, when a murder scene is complex or unusual, it is important the jury receive an explanation. Munoz v. State, 262 N.E.3d 905 (Ind. Ct. App.), trans. denied (unpub.).

Here, the murder scene was complex and unusual, and the jury would naturally want an explanation. The sticks immediately stand out to any rational person as unusual and warranting and explanation. Perlmutter's testimony provides an answer, explains the scene, and offers a motive. Her testimony would be helpful to a jury.

Excluding Perlmutter violated the constitution. A defendant is entitled to answer the prosecution's case with his "version of the facts" so the jury "may decide where the truth lies." Washington, supra. And a judge cannot infringe upon this right through the arbitrary, disproportionate, or mechanistic application of the rules of evidence. See Holmes, supra; Rock v. Arkansas, 483 U.S. 44, 61 (1987). Accordingly, if the state offers an inculpatory explanation for the evidence, trial courts cannot use the rules of evidence to prohibit the defendant from offering an exculpatory explanation. Saylor v. State, 559 N.E.2d

332, 335 (Ind. Ct. App. 1990); Turney v. State, 759 N.E.2d 671, 677 (Ind. Ct. App. 2001); Moore v. State, 440 N.E.2d 1092 (Ind. 1982).

By excluding Perlmutter's testimony, the trial court allowed the State to offer an inculpatory explanation for the murder scene, while denying Allen his constitutional right to offer an exculpatory explanation. This arbitrarily and disproportionately denied Allen his constitutional right to present a defense.

The error was not harmless. The State told the jury repeatedly this case was about a "brutal" murder and it explained the evidence in a manner that incriminated Allen. The jury received a one-sided explanation for the crime, without Allen being able to counter it. The error affected Allen's substantial rights and altered the jury's decision.

H. The trial court denied Allen his right to show the State's investigation was incomplete, overlooked plausible leads, and mishandled evidence relating to third-party guilt.

The trial court prohibited Allen from presenting *any* evidence regarding the manner, quality, and thoroughness of the investigation into this murder as a ritual killing.

A defendant is entitled to have his case proved beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364 (1970). And the accused can create doubt by showing that the investigation was incomplete, overlooked plausible leads, or that law enforcement mishandled evidence relating to a third-party's guilt. Alvarez v. Ercole, 763 F.3d 223, 230 (2d Cir. 2014); Prewitt v. State, 819 N.E.2d 393, 407 (Ind. Ct. App. 2004); United States v. Sager, 227 F.3d 1138,

1145 (9th Cir. 2000); Hyser, supra; Bowlds v. State, 834 N.E.2d 669, 676 (Ind. Ct. App. 2005).

Here, Allen presented evidence that the State's performed an incomplete investigation, mishandled and destroyed evidence, and overlooked plausible third-party leads connected to pagan rituals. After examining the scene, several officers believed it was too complex for just one person to be involved. Tr. XIX, 128; Nov. Ex. III, 74-75; Tr. VI, 155-56. And the Carroll County sheriff immediately thought the sticks related to "pagan rituals." Ex. VIII, 7-8; Ex. VII, 170-171. The day the girls went missing, law enforcement learned that A.W. was having secret relationship with L.H., the son of Brad Holder. That week, Law enforcement interviewed Holder and his friend Patrick Westfall.

Holder reported being involved in a pagan "tribe", Ex. V, 154, and spending "every weekend" in Delphi, engaging in pagan rituals with Westfall and five or six others, including women. Id.; Ex. II, 86. These rituals involved animal sacrifice and human bloodletting. Ex. III, 36; Tr. VI, 146. Holder told police he owned a .40 caliber gun, but officers did not examine or collect the weapon, nor did they search his phone. Holder told police he was at work at Liberty Landfill when the girls went missing. Ex. V, 154. Law enforcement recorded over Holder's interview, permanently deleting it.

In his interview, Westfall told law enforcement he knew the woods where the girls were murdered "very well." Ex. II, 86. He reported knowing the girls but denied ever meeting them. Id. He also reported being a religious leader for

local pagans, and he wore a neckless to the interview representing his efforts to pledge the "Vinlanders," id., a pagan "social club." Ex. V, 206; Tr. II, 249.

Law enforcement neglected to record Westfall's interview. And when asked for an alibi, Westfall claimed he was home with his minor son. Ex. II, 86-87. In the 5.5 years between Westfall's interview, and Allen's arrest, Law enforcement took no further action.

After Holder's interview, tipsters repeatedly called and reported him as a person of interest, claiming he posted pictures of "half dead women" with "symbols out of tree branches." Nov. Ex. I, 116.

On April 13, 2017, officers visited the landfill to investigate and spoke with an employee, Susan Case, who provided a printout showing Holder swiped out of work at 2:45p.m. Ex. II, 84, 108, which was thirty minutes after the Bridge Guy video. Case invited the officers to review video to confirm the printout's accuracy, but they declined; nor did they interview other employees. Ex. II, 84; Ex. III, 234-239. Unified Command marked Holder as a "cleared" suspect. Nov. Supp. I, 129.

In April 12, 2017, shortly before taking medical leave, Trooper Winters received a call from a tipster, Ryan Boucher, who shared pictures from Holder's social media. Ex. V, 25-27, 31-34, 102. Winters found a concerning similarity between the murders and pictures posted on Holder's social media. Ex. V, 35, 44-45, 103. Those pictures depicted "young girls believed to be deceased with sticks placed over their bodies." Ex. V, 103.

Winters also noted similarity between the stick formation on A.W. and a bind rune Holder tattooed or drew on his hand. Tr. V, 103; Ex. V, 34-35; Ex. VI, 18 (Holder: "That's a bind rune [on my hand]. Basically I took a Gebo rune and an Isa Rune and I made a bind rune."); *see also* Nov. Ex. I, 80; Compare also Ex. X, 152 with Ex. VII, 77.

Holder's social media also featured him holding guns and "homemade knives." Ex. V, 103. Winters immediately recommended to his superiors that law enforcement investigate Holder further. Ex. V, 53-61, 103, which they declined to do, claiming his alibi was cleared by the FBI. Ex. V, 53-61. In 2018, Holder displayed a painting he made of Odin upside down with his right leg tucked behind his left, just like A.W.'s legs. Ex. VII, 81. Holder's painting also featured a red Fehu rune. Ex. V, 243.

Winters was not satisfied and urged the ISP to conduct its own investigation. Ex. VII, 53-61. No further action was taken. *See* Id., 60-61.

In September 2022, the State charged Allen. At Allen's insistence, law enforcement re-examined Holder. And Holder's story about A.W. began to change. Back in 2017, he told law enforcement he "never actually met [A.W.]." Ex. V, 154. But in August 2023, he told law enforcement he met A.W. once. Ex.D HHH (00:06:12-00:06:15). And during a deposition a 2024, he said he met A.W. "two times, twice." Ex. V, 173. At least one of those encounters occurred shortly before A.W.'s murder at Westfall's home. Id., 172-74.

On April 4, 2024, Allen's counsel deposed Case, the Liberty Landfill HR officer. Ex. III, 195, and found that Holder did not have exclusive control of his employee badge on the day the girls went missing. Id., 221-22.

Allen also uncovered evidence that impeached the course of investigation even further. In 2018, Holder told his wife he "had a fight" with Westfall "because [Westfall] wanted to up from animal slaughter to a different type of sacrifice. Id. 139-140. Holder then told her that "[Westfall] killed A.W." "with others," and that she needed to keep her mouth shut about it. Tr. VI, 141.

The evidence shows a shoddy, incomplete, and mishandled investigation into this murder as a ritual killing and raises a reasonable doubt that Holder and Westfall were responsible for the murders. Allen was entitled to present this evidence to the jury, and the judge committed reversible error by excluding it.

The error violated the constitution and affected the jury's decision. The constitution entitles a defendant to "attack not only the probative value of crucial physical evidence and the circumstances in which it was found, but the thoroughness and even the good faith of the investigation, as well." Kyles v. Whitley, 514 U.S. 419, 445 (1995); see also Prewitt; Alvarez; Sager; Hyser; and Bowlds, supra. Here, the omitted evidence created reasonable doubt and raised questions of the utmost importance about the manner, quality, and thoroughness of the investigation that led to Allen's arrest 5.5. years after the murders. Had the jury heard it, a different result was likely.

CONCLUSION

"The very premise of our adversary system of criminal justice is that partisan advocacy on both sides of a case will best promote the ultimate objective that the guilty be convicted and the innocent go free." Herring v. New York, 422 U.S. 853, 862 (1975). Because the trial court prohibited the jury from hearing Allen's side of the story showing how law enforcement went down the wrong path, justice could not be done. The Appellant, Richard Allen, requests this Court reverse his convictions.

Respectfully submitted,

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VERIFICATION OF WORD COUNT

I verify that this Appellant's Brief, including footnotes, contains no more than 24,000 words according to the word count function on the Microsoft word processing program used to prepare this Appellant's Brief.

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been delivered through E-service using the Indiana E-filing System to Ellen Meilaender and Angela Sanchez, Deputy Attorney Generals of Indiana, this 17st day of December, 2025.

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