

STATE OF INDIANA            )     IN THE CARROLL CIRCUIT COURT  
                                      ) ss:  
COUNTY OF CARROLL    )     CAUSE NO. 08C01-2210-MR-1

STATE OF INDIANA            )  
    Plaintiff                    )  
    v.                            )  
                                      )  
RICHARD ALLEN,                )  
    Accused

**MOTION TO SUPPRESS THE ACCUSED’S SECOND STATEMENT**

Comes now the accused, Richard Allen, by and through counsel and moves this Court to suppress all statements from his October 26, 2022 interrogation at the hands of law enforcement Jerry Holeman who failed to read Rick Allen his Miranda rights, while yelling and swearing at Rick Allen, lying to Rick Allen and attempting to intimidate Rick Allen behind a closed door in a tiny interrogation room at the Lafayette Police Post. Additionally, a key portion of the videotaped interrogation provided to the defense is missing. The missing portion of that video is the beginning of the interrogation when Miranda should have been read.

In support of said motion, the accused states the following:

**First interrogation**

1. Law enforcement officers requested Rick Allen to appear at the Delphi Police Station to answer questions and on October 13, 2022, Allen voluntarily went to the station and sat down with police thinking he was assisting them in solving the Delphi murders since he had been on the trails earlier on the day that the victims disappeared. Rick wanted to help out any way he could and that is clear in the video. This video was previously provided to the Court on September 18, 2023. The October 26, 2017 interview is being sent to the Court overnight via certified mail for the Court’s review.

2. The two officers that interviewed Rick Allen on that day were Tony Liggett and Steve Mullin.
3. Rick was read his Miranda rights and signed an advisement of rights form, which is normal protocol for law enforcement before an interrogation begins.
4. For the first roughly three-quarters of the interview, it is apparent from the interview, Rick believed he was assisting the police in their investigation and search for those that murdered the victim in the Delphi case.
5. However, eventually when it became obvious that Liggett and Mullin were actually pointing the finger at Rick Allen as the killer. At one point in the interview Rick said: "I don't want to be somebody's fall guy, and we're going to try to make pieces of a puzzle fit somewhere they don't fit so we can close this thing...I'm not saying you guys – please don't think I'm questioning your integrity. That...that's not what I'm saying."
6. However, when the Liggett and Mullin amped up the intensity of their questioning, (even positioning their bodies closer to Rick), Rick said the following: "It's over. I was perfectly fine. I was cooperating. I was going to give you my phone and then, you know, when you started reading all these documents – that's at the – here's my thing is. I feel like you guys think I done this. So, I'm done. You do what you need to do. It's your job. I understand that, but you better fucking leave my reputation out if it. So you do what you need to do, and then, like I said, when you do find this guy, I'll expect the apology." Rick then described how police were trying to ruin his reputation by accusing him of the murders in public, even groping him as they patted him down in the street. Rick was expressing that the mere act of mentioning his name as a possible killer or patting him down on a public street as if he were a criminal would ruin his reputation and was greatly upsetting.
7. Liggett and Mullin did read Rick Allen his Miranda rights before they began their interrogation, and additionally Rick Allen was aware that he had freedom of movement as he (Rick) ultimately stood up and walked out of the interrogation room.
8. However, at the end of the interview (that turned into an aggressive interrogation) Rick made it clear that he no longer wanted to talk to law enforcement.

9. Within hours of the first interrogation, Liggett drafted an affidavit for search warrant. Judge Diener then signed the warrant to search Rick's home and vehicle. On that day, Rick Allen's vehicle was also seized.
10. The defense will not be seeking this first interrogation to be suppressed.

### **Second interrogation**

11. On October 13, 2022, Kathy Allen (Rick's wife) and Rick Allen asked the State Police when they could pick up their vehicle that had been seized. They were told that they could pick it up in a couple of days.
12. On October 17, 2022, either Kathy or Rick contacted the State Police to determine how and when they could get their vehicle back that had been seized, as they were in need of that vehicle as Kathy and Rick were having difficulty sharing only one vehicle as they worked in two different places and needed two vehicles.
13. After a few phone calls with State Police, finally on October 26<sup>th</sup>, Rick and Kathy were scheduled to arrive at the State Police Post in West Lafayette at 9 am to pick up their vehicle.
14. On October 26, 2022, Rick Allen drove with Kathy to the West Lafayette Police post to retrieve their vehicle that had been seized 13 days earlier by law enforcement.
15. State Police had told Rick and Kathy that upon arrival their car would be released, but never mentioned anything about additional questioning.
16. When Rick and Kathy arrived at the station, Holeman met them at the front and said he just had a few things he wanted to clear up before he released the vehicle. Holeman requested Rick to follow him to the interrogation room without Kathy. Rick complied.
17. Kathy was not allowed to participate in the questioning. She was told she could wait in the lobby.
18. Rick arrived with Holeman into the interview room.

19. However, for unknown reasons the video provided to the defense is missing the beginning portion of the interview when procedural matters are typically handled by law enforcement, such as the reading of Miranda, advisement of rights and confirming with the suspect that he is free to leave, if in fact the suspect is free to leave.
20. In this case, either (a) the camera was only turned on after they (Holeman and Rick) were already minutes into the interview because the video provided to the defense does not show Holeman and Rick entering the room, sitting down and beginning the interrogation or (b) the camera was recording the entire time, but the beginning of the interview was later edited out before being turned over to the defense in February 2024.
21. *Either way, the beginning of the interaction between Holeman and Rick in the interrogation room when introductions are typically made and Miranda rights are always reviewed is missing.* In the 70+ years of experience between co-counsels, this is highly unusual, especially on a high-profile case of this nature.
22. The defense has not been provided with any report explaining this missing part of the video.
23. To make matters more suspicious, Holeman claims in his November 1, 2022, report (memorializing his October 26 interrogation of Rick Allen) the following: “I asked Mr. Allen if he remembered the other detectives reading him his Miranda rights and he said yes. I told him he was free to go at anytime and that the door was unlocked.”
24. Holeman’s report doesn’t identify who the other investigators are that purportedly reviewed Miranda with Rick.
25. Holeman’s report doesn’t detail when, where or how these purported investigators purportedly reviewed Miranda with Rick.
26. Holeman’s words quoted in paragraph 23 above appear nowhere on video. In other words, Holeman is not shown asking Rick Allen about his rights, nor is Holeman viewed telling Rick Allen that he is free to leave.
27. In his report, Holeman indicates that those words were stated to Rick Allen at the very beginning of the interview. The beginning of the interview is missing.

28. The defense has diligently searched through the discovery for any Miranda/Waiver of Rights form signed by Rick Allen on October 26, 2022. The defense has found none.
29. The defense has diligently searched through the discovery for any reports by State Troopers who were on duty that day (such as Jay Harper and David Vido) who would have potentially read Rick his Miranda rights on October 26, 2022. The defense has found no such reports.
30. Just as Brad Holder's February 17, 2017 interview is missing; just as the mimicked crime scene found on Holder's social media page is missing and still has not been turned over to the defense (but the defense thankfully located in Georgia); and just as Rick's original taped statement to Dan Dulin in front of a grocery store in February 2017 is missing, the beginning portion of Holeman's interview with Rick Allen is also missing.
31. The defense has diligently searched through the discovery for audio or video by any law enforcement from October 26, 2022, in which it can be seen or heard that Rick Allen was read his Miranda rights or told that he was free to leave. The defense has found none.
32. Therefore, at this time, it appears to the defense that Jerry Holeman's claims in his report that Rick Allen was asked about his Miranda rights and told he was free to leave are false and that key video evidence that would prove as much is missing.
33. The following are true and accurate depictions of what occurred at Allen's October 26, 2022, interrogation, as shown on the videotape of said interrogation that was not missing or deleted but was actually provided to the defense:
  - a. On video, Holeman never read Rick Allen his Miranda rights, nor mentioned them to Rick Allen.
  - b. Rick Allen was placed in a tiny, confined room without windows.
  - c. Rick Allen was placed in a tiny, confined room and Holeman shut the door.
  - d. Rick Allen was placed in a tiny, confined room with Jerry Holeman while the door was shut.

- e. A considerable size difference existed between Rick Allen and Jerry Holeman.
- f. A power differential existed as Holeman was a State Trooper in his home court (Lafayette Police Post) while Rick Allen was a CVS worker from Delphi who had only driven to West Lafayette to pick up a vehicle he and his wife needed for transportation.
- g. Rick Allen was never told that he was being videotaped.
- h. When Jerry Holeman would leave the room, he told Rick Allen to “sit tight” (at the 9:25 and 45:20 marks) or “hang on one second” (at the 16:40 mark). In other words, Jerry Holeman told Rick Allen that he (Allen) could not leave.
- i. When Jerry Holeman would leave the room and tell Rick to “sit tight”, he (Holeman) would shut the door.
- j. Jerry Holeman lied to Rick Allen during the interrogation several times, including the following:
  - i. At the 7:10 mark, Jerry Holeman told Rick Allen that “We have experts that say that’s you on the bridge and that’s your voice on the video.” **(There is no evidence that supports this statement; Jerry Holeman lied to Rick Allen).**
  - ii. At the 15:25 mark, Holeman told Rick Allen that “Experts are saying that’s you on the video” and “Experts are saying you said “Down the Hill”. **(There is no evidence that supports this statement; Jerry Holeman lied to Rick Allen).**
  - iii. At the 15:07 mark, Holeman tells Rick that witnesses saw a gun in his pocket. **(There is no evidence that anyone claims to have seen a gun in Rick’s pocket. Holeman lied to Rick Allen)**
  - iv. At the 39:05 mark Holeman states: “I’m not lying to you about anything. Everything I’m telling you is fact. The experts say you said ‘go down the hill’.” **(Holeman was**

lying to Rick about many things, and not everything Holeman told Rick was a fact)

v. At the 42:33 mark, Holeman said “I’m not lying to you, Rick. That’s unethical. **(Holeman had been lying to Rick)**”

- k. Jerry Holeman told Rick Allen in what was supposed to be an exploratory interview: “the prosecutor and the other investigators...they want to see you...lock you up and throw away the key.”
- l. Jerry Holeman barked at Rick Allen in what was supposed to be an exploratory interview: “If you don’t tell me, you’re going down for this.”
- m. Jerry Holeman told Rick Allen in what was supposed to be an exploratory interview: “Do you realize the death penalty is on the table for this?”
- n. At various times, Jerry Holeman yelled at Rick Allen, including using profanity-laced language while accusing Rick Allen of the murders.
- o. Rick Allen asked Holeman to stop the interview. Rick said “I’m done” early into the interrogation at the 12:05 mark, but Holeman continued his interrogation.
- p. The State Police never turned over the vehicle to Kathie Allen after Rick Allen was arrested. Returning the vehicle to Rick and Kathy was merely a subterfuge to get Rick to the police post to be interrogated.

## The Law

- 34. The Indiana Supreme Court dealt with a very similar fact pattern in *State v. E.R.*, 123 N.E.3<sup>rd</sup> 675 (2019) which reversed the Indiana Appellate Court, holding that E.R.’s constitutional rights had been violated, therefore suppressing his statements.
- 35. In *State v. E.R.*, the accused had voluntarily driven to the police station at the request of the police to answer question concerning an allegation of inappropriate touching.

**(In this case, Allen voluntarily arrived at the station to pick up a vehicle but unlike E.R., Allen was unaware that he would be asked questions once he arrived at the Lafayette Police post)**

36. The following occurred when E.R. was interrogated, compared to when Rick Allen was interrogated:

- a. E.R. was interrogated in a small, windowless room.  
**(Rick Allen was interrogated in a small windowless room).**
- b. Law enforcement officers failed to provide Miranda warnings to E.R. **(video shows that Holeman failed to provide Rick Allen his Miranda warnings)**
- c. Multiple times law enforcement told E.R. to “sit tight”.  
**(On multiple occasions, Holeman told Rick Allen to “sit tight” when he (Holeman) would leave the interrogation room)**
- d. In E.R.’s interrogation, Law enforcement actually told E.R. that he (E.R.) was able to walk out of the interrogation room door if he wanted. E.R. was also told that he (E.R.) did not have to even talk to law enforcement if he didn’t want to. Still, the Indiana Supreme Court found that even with those particular statements by law enforcement to E.R., it was not enough to cause E.R. to feel free to leave.  
**(Contrast E.R.’s interrogation with Rick Allen’s interrogation. On video, Jerry Holeman never told Rick Allen that he was free to leave, nor did Jerry Holeman ever tell Rick that he (Rick) did not have to talk to law enforcement).**
- e. In E.R., the police “significantly undercut any initial message of freedom when they dramatically changed the interrogation atmosphere” when a second officer entered the room and became more aggressive.  
**(Although there was only one officer involved (Holeman), that officer started the interrogation in a much calmer manner before amping up the intensity, ultimately erupting with cursing and yelling at Rick Allen)**
- f. The officers did not tell E.R. that he (E.R.) wasn’t under arrest.  
**(Holeman never told Rick Allen wasn’t under arrest. In fact, when Rick Allen continually denied having anything to do with the murders, as well as words to the effect that Holeman**

had made up his mind so go ahead and “arrest me”, Holeman never told Rick, “you are not under arrest”).

- g. Police never told E.R. that he (E.R) could end the interrogation at any time.  
**(Holeman never told Rick Allen that he could end the interrogation at any time).**
- h. The officers repeatedly told E.R. to explain what happened, coaxing him to “tell us now so that we know that you’re being honest with us and not lying.”  
**(Holeman repeatedly told Rick Allen to explain what happened and attempted to coax Rick Allen to talk to him for a variety of reasons).**
- i. In E.R., “The officers were explicit that they believed E.R. had engaged in the accused conduct” and “their questions were accusatory – not exploratory...”  
**Throughout the interrogation, Holeman explicitly told Rick Allen that he (Holeman), the prosecutor and other law enforcement officers all believed that Rick Allen had engaged in the accused conduct (murder) and Holeman’s questions throughout the entire interrogation were accusatory, not exploratory. Included in the videotaped interrogation are the following exchanges that highlight the accusatory – not exploratory – nature of Holeman’s interrogation of Rick Allen:**

Jerry Holeman: You’re going to drag your fucking wife and your daughter through this because you’re too fucking bullheaded to get out in front of this and admit you made a mistake. And whatever the fuck happened out there we’ll never fucking know because you’re too big of a fucking (inaudible).

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Jerry Holeman: The evidence clearly indicates you are involved in this.

Rick Allen: No.

Jerry Holeman: It fucking does.

Rick Allen: It doesn't. I'm telling you that there is no way that a bullet from my gun was used in these murders.

Jerry Holeman: And I'm telling you that we had this fucking round on February 14, 2017, and it's been secured in a fucking laboratory, and we've tested other guns...

Rick Allen: You could have taken it from somewhere else then, because it's not possible.

Jerry Holeman: I did not take it from somewhere else. It was logged in. It was taken. It was photographed. You think we fucking took a round and threw it down by the dead girl's foot? This ain't fucking TV. This is realistic.

Rick Allen: I'm telling you I can't explain something that...

Jerry Holeman: And I'm telling you that fucking analysts explain it. You can't get past this.

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Jerry Holeman: I'm not on video

Rick: Neither am I.

Jerry Holeman: Four or five witnesses didn't see me out there.

Rick: Me either.

Jerry Holeman: My round out of my gun wasn't 6 inches away from a dead girl.

Rick: Mine neither.

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Jerry Holeman: I don't think you're a bad person.

Rick: What kind of good person kills two people?

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Rick Allen: You're gonna pay for what you've done to my wife. You want to fuck with me, fuck with me but you leave my wife out of this. Fuck. Leave me out of this.

Jerry Holeman: No. You're involved in this. Your fucking round is is there Rick.

Rick Allen: No. It's not.

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Jerry Holeman: You're guilty of something. You're guilty and I know it and I'm gonna fucking prove it.

- j. Police questioning of E.R. was prolonged, lasting almost an hour. The questioning was "sustained and relatively drawn out, especially compared to roadside traffic-stop questioning." **(Holeman's questioning of Rick Allen was nearly three times longer than law enforcement questioned E.R.. Holeman's prolonged questioning lasted two hours and 41 minutes. Of course, that represents the length of the questioning that was actually videotaped. Since there is missing videotape, the entire length of questioning is unknown. The questioning was sustained and drawn out over that time, especially when compared to roadside traffic-stop questioning)**
- k. The officers continued the interrogation of E.R. past the time he (E.R.) was supposed to pick up his daughter. **(Rick went to the station to pick up his vehicle, but Holeman never mentioned anything about where or how Rick or his wife were to pick up the car)**
- l. At the conclusion of the interrogation, E.R. was allowed to leave and return home. This fact is mentioned in the Court of Appeals opinion, but not the Supreme Court opinion.

**(Rick Allen was not free to leave as he was handcuffed and arrested on camera after over 2 hours and 40 minutes of denying involvement in the murders.**

37. The facts involving Holeman's handling of Rick Allen's interrogation are more egregious than those facts in E.R. in several ways.
38. For example, the Indiana Supreme Court found that E.R.'s constitutional rights had been violated even when E.R. had been allowed to leave the police station, while in the case at hand, Holeman knew the entire time that he was interrogating Rick Allen that at the end of the interview he (Holeman) would be arresting Rick Allen as Allen did not make any statements to Holeman that were not already known. The entire interview was Holeman accusing... and Rick denying.
39. Law enforcement clearly knew ahead of Rick Allen's interrogation that they would be arresting Allen for the murders. However, rather than arrest Rick Allen at his home or work or after pulling him over, Holeman waited until he had one more opportunity to interrogate Rick Allen without Miranda.
40. Holeman knew that Rick had walked out of the October 13, 2022 interrogation with Mullin and Liggett and therefore it was unlikely that Rick would answer any more questions with Holeman unless Rick felt he was not allowed to leave. Miranda would be a nuisance that would likely cause Rick to walk out on Holeman, the way that Rick walked out on Liggett and Mullin. If so, Holeman would not be able to secure a confession that he (Holeman) clearly wanted to secure on his own.
41. According to *State v. E.R.*, a defendant is required to show by a preponderance of the evidence that he was subjected to custodial interrogation.
42. The videotaped interrogation of Rick Allen shows by a preponderance of the evidence that Rick Allen was subjected to a custodial interrogation.
43. Additionally, the defendant is required to allege custodial interrogation in the absence of Miranda warnings.

44. The videotaped interrogation of Rick Allen shows that Holeman did not provide Rick Allen with Miranda warnings and then subjected Rick Allen to a custodial interrogation.
45. Furthermore, E.R. is required to point “to some evidence that his statements were made in violation of his constitutional rights.”
46. The videotaped statement of Rick Allen provides a whole host of evidence (as detailed herein) that statements made by Rick Allen on the day in question violated both his state and federal constitutional rights against self-incrimination.

WHEREFORE, the accused, Rick Allen, requests this Court to suppress all statements made by Rick Allen at his October 26, 2022 interrogation and to issue a finding that Jerry Holeman and the State Police violated Rick Allens Constitutional Rights.

Respectfully submitted,

/s/ Andrew J. Baldwin  
Andrew J. Baldwin, #17851-41

#### CERTIFICATE OF SERVICE

I certify that I have served a copy of this document by the County e-filing system upon the Carroll County Prosecutor’s Office on 15th day of April, 2024.

/s/ Andrew J. Baldwin  
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