

STATE OF INDIANA) IN THE CARROLL CIRCUIT COURT
)ss:
COUNTY OF CARROLL) CAUSE NO. 08C01-2210-MR-000001

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

EMEGENCY MOTION TO MODIFY SAFEKEEPING ORDER

Comes now the Defendant, Richard M. Allen, by and through his Attorney, Bradley A. Rozzi, and respectfully requests that this Court modify the Court Order (“Safekeeping Order”) entered on November 3, 2022, in this cause. In support of said Motion, Attorney Rozzi states as follows:

1. On or about October 28, 2022, Mr. Allen was charged with two (2) Counts of Murder. Mr. Allen’s bond was set in the amount of 20 million dollars;
2. On November 3, 2022, prior to Counsel being assigned to Mr. Allen, the Carroll County Sheriff, via formal Motion, filed his *Request by the Sheriff of Carroll County, Indiana, to Transfer Inmate from the Custody of the Sheriff to the Custody of the Indiana Department of Corrections for Safekeeping*;
3. On the same day, November 3, 2022, the Honorable Benjamin A. Diener, Judge of the Carroll Circuit Court, executed a Court Order granting the Sheriff’s request and further ordered the Carroll County Sheriff to transfer Mr. Allen to a facility, within the Indiana Department of Corrections, as designated by the Commissioner of the Department of Corrections, suitable for Mr. Allen’s safekeeping. All decisions regarding Mr. Allen’s detention circumstances were made prior to Counsel being assigned to Mr. Allen to speak on his behalf. No formal hearing regarding the Sheriff’s safekeeping request have been conducted as of the date of filing of this motion;
4. Mr. Allen is currently incarcerated in the Westville Correctional Facility where he has been detained since November, 2022;

HILLIS, HILLIS,
ROZZI & DEAN, LLC
ATTORNEYS AT LAW
200 FOURTH ST.
LOGANSPORT, IN 46947
(574) 722-4560
FAX (574) 722-2659

JOHN R. HILLIS
I.D. #7533-09
BRADLEY A. ROZZI
I.D. #23365-09
BRADEN J. DEAN
I.D. #31041-34

5. The Westville Correctional Facility is a maximum-security prison operated by the Indiana Department of Corrections wherein thousands of individuals convicted of the most serious crimes such as murder, rape, robbery and child molesting are confined as a result of their convictions. To the best of Counsel's knowledge, Westville Correctional Facility does not routinely house offender's awaiting trial, who are presumed innocent, as the presumption should be with Mr. Allen;

6. It is further noteworthy that Mr. Allen has been continuously assigned to a separate maximum security segregation unit within the Westville Correctional Facility wherein the most dangerous offenders are held. Counsel has investigated and confirmed with prison officials, that said unit routinely houses individuals serving sentences of life without parole and others who have committed some of the most heinous crimes known to our society or have been transferred to this unit after committing further crimes within the Department of Corrections. Counsel was informed by prison employees that said employees were not aware of any other circumstance wherein a human, facing trial under circumstances such as these, has been housed in said facility. Finally, Counsel has discovered that Westville Correctional Facility has been the center of much attention, in the recent past, in matters involving unequal and inhumane treatment of offenders. ¹;

7. "The requirement of equal protection dictates, as appellees here agree, that pretrial detainees may not be treated less favorably than convicted persons, unless the difference in treatment is justified by a legitimate government interest. Brief of appellees at 43. As the Second Circuit indicated in Rhem v. Malcolm, 507 F.2d 333 (2d Cir. 1974), "The demands of equal protection of the laws and of due process ... prevent unjustifiable confinement of detainees under worse conditions than convicted prisoners." Id. at 336. See also, Inmates of Suffolk Co. Jail v. Eisenstadt, 360 F.Supp. 676, 686 (D.Mass.1973) aff'd 494 F.2d 1196 (1st Cir.), cert. denied sub nom. Hall v. Inmates of Suffolk County Jail, 419 U.S. 977, 95 S.Ct. 239, 42 L.Ed.2d 189 (1974); Jones v. Wittenberg, 323 F.Supp. 93, 99-100 (N.D.Ohio 1971), aff'd sub nom. Jones v. Metzger, 456 F.2d 854 (6th Cir. 1972); Brenneman v. Madigan, 343

¹ [Inmate kept in solitary will get \\$400K from state, lawyers say \(indystar.com\)](#).

HILLIS, HILLIS,
ROZZI & DEAN, LLC
ATTORNEYS AT LAW
200 FOURTH ST.
LOGANSPORT, IN 46947
(574) 722-4560
FAX (574) 722-2659

JOHN R. HILLIS
I.D. #7533-09
BRADLEY A. ROZZI
I.D. #23365-09
BRADEN J. DEAN
I.D. #31941-34

F.Supp. 128, 138 (N.D.Cal.1972); Seale v. Manson, 326 F.Supp. 1375 (D.Conn.1971); Tyler v. Ciccone, 299 F.Supp. 684 (W.D.Mo.1969).”;

8. Counsel recently visited the prison and was denied of his request to inspect his client’s cell block and living circumstances. Despite this, Counsel has reason to believe that Mr. Allen has been required to endure the following conditions, over the course of his five-plus month detainment at the facility:

- a. Mr. Allen’s has been entombed in a cell as small as a 6ft in width by 10ft in length, a space no larger than that of a dog kennel.
- b. Mr. Allen is sleeping on a pad on a concrete floor.
- c. Mr. Allen is afforded showers only one to two times per week.
- d. Mr. Allen is required to wear the same clothes, including underwear, for days and days on end, all of which are soiled, stained, tattered and torn.
- e. Mr. Allen, who is a constitutionally innocent man and maintains his factual innocence as well, has not been afforded any opportunity to visit his Wife or other family members during the last 5 months of incarceration during which time he has been subjected to conditions akin to those of a prisoner of war.
- f. Mr. Allen is allowed only an electronic tablet through which he can make calls to family members, all of which is monitored by prison officials, with the cost of all phone calls being borne by Rick and his family.
- g. Mr. Allen is routinely supervised by other inmates (“companions” as referred to within the confines of the prison) who sit on watch outside of his cell door on a daily basis.
- h. Mr. Allen is afforded very little, if any, recreation time outside of his cold, concrete, and metal quarters.
- i. Attorneys for Mr. Allen delivered nearly 1,000 pages of police reports to Mr. Allen on Friday, March 24, 2023, with the intention of seeking their client’s cooperation in his own defense. As of Monday, April 3rd, 2023, said information has yet to be provided to Mr. Allen;

9. The location of Mr. Allen’s detention is such that he is isolated geographically, not only from his family but also from his Attorneys, who are required

HILLIS, HILLIS,
ROZZI & DEAN, LLC
ATTORNEYS AT LAW
200 FOURTH ST.
LOGANSPORT, IN 46947
(574) 722-4500
FAX (574) 722-2659

JOHN R. HILLIS
I.D. #7533-09
BRADLEY A. ROZZI
I.D. #23365-09
BRADEN J. DEAN
I.D. #31841-34

to travel for hours to speak with him in confidence regarding his case. Said visits also require making logistical arrangements with prison officials in advance of visits.²;

10. It is difficult, if not impossible, for Mr. Allen's Attorneys to share confidential and sensitive information with Mr. Allen due to the logistical challenges associated with Mr. Allen's segregation and isolation to the extent that Mr. Allen is being deprived of his constitutional right to assist in his defense. In contrast, the State of Indiana, through its prosecutorial and law enforcement divisions, sit in the comfort of their own command center planning and preparing to prosecute Mr. Allen to the fullest extent of the law;

11. In sum, Mr. Allen is being treated far less favorably than a convicted person, many of which are housed in less secure areas of the prison, are offered programming, therapy, and mental health services, routine recreation, and contact visits with family and friends;

12. To further complicate matters, Mr. Allen has suffered from depression dating back to his early years. Upon his incarceration, Mr. Allen was presumably evaluated and medicated by prison medical staff. Up until a visit with Mr. Allen on April 4, 2023, counsel for Mr. Allen found him to be polite, communicative with great eye contact, generally responsive to our questions and exhibiting a good sense of humor on occasion in spite of his false arrest and circumstances. However, Mr. Allen's deteriorating physical condition has been observed by Counsel dating back to the beginning of the new year.

As recently as Friday, April 24th, 2023, Attorney Andrew Baldwin met with Mr. Allen with optimistic news about the direction of the case, and Mr. Allen was inquisitive about the information, was thankful about the information and optimistic about the information. Only ten days later (April 3, 2023), Attorneys for Mr. Allen observed a steep decline in Mr. Allen's demeanor, ability to communicate, ability to comprehend and ability to assist in his defense. Simply put, this version of Richard

² Counsel would note that Westville prison officials have been more than accommodating and courteous to counsel during visits with Mr. Allen (other than the recent denial of our request to visit Allen's cell), despite the harsh and unreasonable conditions under which Mr. Allen is currently detained.

Allen was a very different version than counsel for Mr. Allen had interacted with over the past five months. Mr. Allen appeared to be suffering from various psychotic symptoms which counsel would describe as schizophrenic and delusional. Counsel further believes that in our April 4, 2023 interaction, Mr. Allen seems to be suffering from memory loss and is demonstrating an overall inability to communicate rationally with counsel and family members. Counsel experienced, these symptoms, firsthand, upon visiting Mr. Allen on Monday, April 4th, 2023;

13. Mr. Allen's physical condition is deteriorating rapidly. Attached Exhibit "A" is a photo of Mr. Allen, taken by Counsel at the correctional facility, on April 4th, 2023. Said photo reflects the significant toll of his current incarceration on his physical person and by extension, his mental capacity. By contrast, see attached Exhibit "B" which reflects his condition a year or two prior to his incarceration. The conditions under which Mr. Allen has been forced to endure are akin to that of a prisoner of war;

14. The test for determining the constitutionality of treatment of pretrial detainees alleged to deprive them of liberty without due process of law is "whether those conditions amount to punishment of the detainee."6 Bell v. Wolfish, 441 U.S. 520, 535, 99 S.Ct. 1861, 1872, 60 L.Ed.2d 447 (1979). Here, Mr. Allen is being punished to the fullest extent of the law. The conditions he is currently enduring have been thrust upon him without any judicial analysis of the need for such a deprivation of his liberty. Further, counsel is unaware of any facts, outside of those generally alleged in the Sheriff's safekeeping petition which support the need to detain Mr. Allen on what could casually be referred to as "death row.";

15. Approximately 2 months prior to the filing of this Petition, Attorney Rozzi was able to secure a more traditional bed space in the Cass County Jail, a newly erected modern jail facility with the most advanced security measures, located directly across the street from Attorney Rozzi's office and only approximately 20 miles from the Carroll County Courthouse. Said modification of Mr. Allen's incarceration would result in a more humane living environment in which Mr. Allen would be afforded immediate access to his attorneys and more importantly, would allow Mr. Allen to have regular contact visits with his family, i.e., this detention circumstance would afford Mr.

HILLIS, HILLIS,
ROZZI & DEAN, LLC
ATTORNEYS AT LAW
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LOGANSPORT, IN 46947
(574) 722-4560
FAX (574) 722-2659

JOHN R. HILLIS
I.D. #7533-09
BRADLEY A. ROZZI
I.D. #23365-09
BRADEN J. DEAN
I.D. #31941-34

Allen due process of law. Under these circumstances, Mr. Allen would be treated like other inmates awaiting trial in the criminal justice system, as opposed to being punished based only on the merits of untested charging information and probable cause affidavit;

16. In the process of facilitating Mr. Allen's removal from Westville Correctional Facility, Attorney Rozzi communicated with Prosecutor, Nicholas McLeland, who articulated that he had no objection to a modification of Mr. Allen's detention circumstances to a facility closer to Carroll County;

17. Attorney Rozzi was recently informed that the Carroll County Sheriff's Department declined Attorney Rozzi's request to have Mr. Allen removed from the harsh conditions under which he is currently detained to a more traditional County jail near Mr. Allen's Attorneys and family. Mr. Allen asserts that said denial is a deliberate attempt to impose conditions upon him that are intended to frustrate his purpose in defending against the charged allegations and create a hardship on him which would drive any human to mental breakdown. Said approach to his pre-trial detention is a direct infringement on his 6th Amendments rights under the U.S. Constitution;

18. From a practical standpoint, it is also worth noting that the raw volume of discovery offered up by the State of Indiana in this case, is overwhelming. For example, there exists nearly 3,000 pages of law enforcement reports that need to be examined in this cause. In addition, there exists thousands of hours of surveillance video and video interviews of potential suspects, witnesses, and other interested parties. The discovery suggests that law enforcement authorities have processed over 31,000 tips during the course of the investigation, all of which must be reviewed by the Defense. Reasonable access to Mr. Allen, is necessary as he is needed to assist with the process of reviewing discovery. His current detention situation does not provide this convenience;

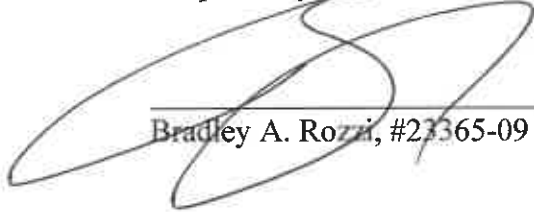
19. As a further practical matter, both co-counsel for Mr. Allen are having to drive hours away from their respective law offices in order to talk with Mr. Allen, and the time spent on the road is much more costly for Carroll County taxpayers than housing Mr. Allen in Cass County where everyone (except the Carroll County Sheriff) is on board with Mr. Allen being housed during the pendency of this case; and

**HILLIS, HILLIS,
ROZZI & DEAN, LLC**
ATTORNEYS AT LAW
200 FOURTH ST.
LOGANSPORT, IN 46947
(574) 722-4560
FAX (574) 722-2659

JOHN R. HILLIS
I.D. #7633-09
BRADLEY A. ROZZI
I.D. #23365-09
BRADEN J. DEAN
I.D. #31941-34

20. Attorney Rozzi believes an emergency exists and time is of the essence based upon the dramatic change in Mr. Allen's condition, including his change in demeanor, change in appearance, and change in his overall mental health status, and respectfully requests that this Honorable Court modify the Safekeeping Order (as permitted by I.C. 35-33-11-1) and order Richard Allen to be transported and housed at the Cass County jail or somewhere nearer to his family and lawyers, and to do so without a hearing, or (in the alternative) to conduct a hearing as soon as possible before Mr. Allen is placed in further jeopardy due to his current placement, and also so that Mr. Allen may assist his lawyers in addressing Mr. Allen's mental health concerns as well as allowing Mr. Allen to participate in the preparation of his defense, and for all other just and proper relief in the premises.

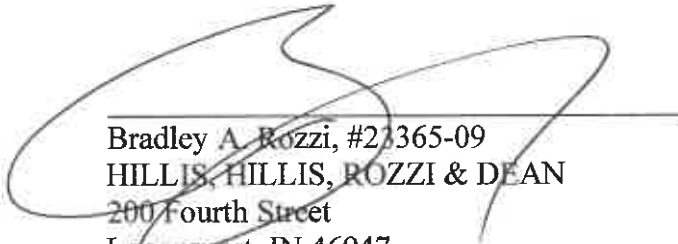
Respectfully Submitted,



Bradley A. Rozzi, #23365-09

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 and Andrew J. Baldwin the 5th day of April, 2023.



Bradley A. Rozzi, #23365-09
HILLIS, HILLIS, ROZZI & DEAN
200 Fourth Street
Logansport, IN 46947
574-722-4560

HILLIS, HILLIS,
ROZZI & DEAN, LLC
ATTORNEYS AT LAW
200 FOURTH ST.
LOGANSPORT, IN 46947
(574) 722-4560
FAX (574) 722-2659

JOHN R. HILLIS
I.D. #7533-09
BRADLEY A. ROZZI
I.D. #23365-09
BRADEN J. DEAN
I.D. #31941-34