

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

STATE OF INDIANA)
)
Plaintiff,)
)
v.)
)
RICHARD M. ALLEN,)
)
Defendant.)

MOTION TO QUASH SUBPOENA OR ENTER PROTECTIVE ORDER

The Indiana Department of Correction, a non-party, by counsel, respectfully requests the Court to quash the subpoena commanding DOC to permit attorneys Bradley A. Rozzi, Andrew J. Baldwin, and their agent to enter Westville Correctional Facility for the purpose of inspecting, measuring, surveying, and photographing the facility. Quashing the subpoena is appropriate because permitting the broad access requested would introduce significant security risks at the facility, rendering the request unreasonable and oppressive under the circumstances.

If the Court should deny DOC's motion to quash the subpoena in its entirety, DOC would respectfully request a protective order strictly limiting the inspection to the specific cells and cellblock(s) where Mr. Allen has been housed and prohibiting access to the rest of Westville Correctional Facility.

BACKGROUND

1. Defendant Richard M. Allen is charged in this cause with Count 1: murder, a felony; Count 2: murder, a felony.

2. The probable cause affidavit does not allege any factual connection to Westville Correctional Facility.

3. Following a request by the Carroll County Sheriff, the Honorable Benjamin A. Diener ordered Mr. Allen transferred to a suitable facility within the Department of Correction.

4. Mr. Allen is currently housed at Westville Correctional Facility.

5. Westville Correctional Facility is situated on 411 acres of land—85 acres of which are enclosed by fence. The facility has a capacity of over 3,000 inmates and employs approximately 750 people. Westville Correctional Facility: Facts and Figures — 2020, Indiana Department of Correction, <https://www.in.gov/idoc/files/WCC-Facts-and-Figures-Brochure.pdf>.

Request to Inspect Westville Correctional Facility

6. On May 19, 2023, counsel for Mr. Allen issued to DOC a subpoena and request for production demanding to enter Westville Correctional Facility “for the purpose of inspecting, measuring, surveying, and photographing the individual cell block(s), and surrounding facility” where Mr. Allen has been housed since November 2022. A true and accurate copy of the subpoena and request for production are attached as Exhibit A.

7. DOC objects to Mr. Allen’s request for inspection—in particular the request to inspect the “surrounding facility”—because permitting such an inspection would introduce unacceptable security risks at the facility and unduly burden DOC staff to accommodate such a request.

LEGAL STANDARD

8. A court may quash a subpoena that is unreasonable and oppressive. See Criminal Rule 2; Trial Rule 45(B)(1); *Newton v. Yates*, 170 Ind.App. 486, 353 N.E.2d 485, 500 (1976).

Scope of Discovery

9. A party may serve upon a non-party a request “to permit entry upon designated land or other property in the possession or control of” the non-party “for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon.” T.R. 34(A) (applicable to non-parties through Trial Rule 34(C)(1)). But that request must fall within the scope of Trial Rule 26(B).

10. Trial Rule 26(B)(1) limits discovery to matters “relevant to the subject-matter involved in the pending action” including the claims and defenses of the parties and “the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter.”

Unreasonable and Oppressive Request for Inspection

11. Here, the request that Mr. Allen’s attorneys be permitted to inspect, survey, measure and photograph Westville Correctional Facility—not just the cellblocks, but the “surrounding facility”—is not “reasonably calculated to lead to the discovery of admissible evidence.” T.R. 26(B)(1). In particular, such an inspection does not reasonably relate any cognizable claim or defense. The probable cause affidavit does not allege that there is any connection whatsoever between the

murder charges and Westville Correctional Facility. Such an inspection would shed no light on “the existence, description, nature, custody, condition and location of any books, documents, or other tangible things” related to the charges or, other than Mr. Allen himself, “the identity and location of persons having knowledge of any discoverable matter.” T.R. 26(B)(1).

12. This request poses a strong security risk as it could compromise facility security should Defendant’s counsel be permitted to inspect, survey, measure and photograph the cell blocks and the surrounding facility.

13. Because Mr. Allen’s request for inspection is beyond the scope of appropriate discovery and imposes significant safety risks to the DOC, the subpoena should be quashed.

Alternative Relief: Protective Order

14. If the Court should deny DOC’s motion to quash the subpoena, it should enter a protective order to strictly limit the inspection to the cells and cellblocks where Mr. Allen has been housed.

15. Trial Rule 26(B) permits the Court to limit discovery when “the burden or expense of the proposed discovery outweighs its likely benefit.”

16. Trial Rule 26(C) permits the court to protect against oppression, undue burden and expense by requiring that discovery be conducted “on specified terms and conditions.”

17. Here, the risk to DOC, its employees, and the offenders in its custody greatly outweighs any benefit to Mr. Allen of allowing an inspection of the

“surrounding facility” encompassing Mr. Allen’s cellblock. Accordingly, a protective order would be warranted.

18. DOC would propose a protective order that establishes that any fruits of the inspection be limited to this case, and that any inspection be limited to Mr. Allen’s cell and cellblock and related recreational area, bathing facility, therapy room, and public visitation area.

WHEREFORE, non-party Department of Correction respectfully requests the Court to quash the subpoena commanding it to permit the inspection demanded by Mr. Allen, or alternatively, for a protective order reasonably limiting the areas for inspection.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on June 19, 2023, the foregoing document was served upon the following person(s) via IEFIS, if Registered Users, or by depositing the foregoing document in the U.S. Mail, first class, postage prepaid, if exempt or non-registered user.

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