

IN THE  
COURT OF APPEALS OF INDIANA

No. 25A-CR-591

RICHARD ALLEN,  
*Appellant-Defendant,*

v.

STATE OF INDIANA,  
*Appellee-Plaintiff.*

Appeal from the  
Carroll Circuit Court,

No. 08C01-2210-MR-1,

The Honorable Francis Gull,  
Special Judge.

**STATE'S BRIEF OF APPELLEE**

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### **STATEMENT OF THE ISSUES**

- I. Whether the admission of evidence seized from Allen's home constituted fundamental error.
- II. Whether the trial court properly admitted Allen's confessions.
- III. Whether the trial court properly excluded and admitted various pieces of evidence.
- IV. Whether the trial court properly denied Allen's motion to correct error.

### **STATEMENT OF THE CASE**

On October 28, 2022, the State charged Richard Allen with two counts of felony murder (App. II 101). The information was amended on March 22, 2024, to add two counts of murder (App. V 92-102; VII 77-78). Following a jury trial between October 14 and November 11, 2024, the jury found Allen guilty as charged (App. XI 81-86; Tr. XXI 245). On December 20, 2024, the trial court vacated the felony murder convictions and imposed consecutive 65-year sentences on Allen's two murder convictions (App. XI 169-73; Tr. XXII 30-32).

Allen filed a motion to correct error on January 20, 2025, to which the State timely responded (App. XI 197-250; XII 2-26, 36-68). On February 14, 2025, the trial court denied the motion (App. XII 98). Allen filed his notice of appeal on March 11, 2025 (Docket).

## STATEMENT OF THE FACTS

On the afternoon of Monday, February 13, 2017, Allen killed 14-year-old L.G. and 13-year-old A.W. in a remote wooded area north of the Monon High Bridge trail in Delphi (Tr. X 7, 110, 186; XIII 180; XVII 98-107; XXI 245; Ex. X 114, 131-50; XI 70-75; XII 46, 80-81; XIII 18; Ex. 200, 290 (15:28:31, 16:12-16:40)).<sup>1</sup>

The Monon High Bridge trail spans from Freedom Bridge over the Hoosier Heartland Highway on the northwest side and ends at the Monon High Bridge to the southeast (Tr. X 126-28, 169-70; Ex. X 117; Ex. 4-6).<sup>2</sup> The High Bridge is an abandoned, dilapidated railroad track that spans 852 feet and is 65 feet high over Deer Creek (Tr. X 41-42, 128-29, 186; XIX 26-30; Ex. X 166-67, 186; Ex. 4-6). Wooden platforms extending out from the sides of the track occur periodically along the bridge; the first platform was approximately 50 feet out from the start of the bridge (Tr. X 89, 180; XII 163; XIX 30; Ex. 4 (3:55–5:20)). The trail dead-ends at the far side of the bridge, where both sides slope sharply downhill (Tr. X 2-4; Ex. X 9-13). Parking to access the trail is located both near Freedom Bridge and farther east at a side entrance on County Road 300 North, known as the “Mears” entrance

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<sup>1</sup> Due to the voluminous pre-trial and trial exhibits, the State refers to the documentary exhibits by exhibit volume and pdf page number. The conventional trial exhibits are referred to by exhibit number/letter and time stamp, if relevant. Conventional pretrial exhibits also contain a hearing date where needed for clarity. Exhibits tendered in connection with the *Franks* motion and the motion to correct error are designated “Supp. Ex.”

<sup>2</sup> Exhibit 6 is drone video of the current-day trail with vast improvements to the trail and the first section of the High Bridge (Tr. X 175-82; Ex. 6).

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(Tr. X 45-50, 101; XI 109; Ex. X 117). It takes about ten minutes to walk the trail from bridge to bridge (Tr. X 78, 190; Ex. 6).

On February 13, 2017, Delphi schools were closed, and the weather was unseasonably warm (Tr. X 8; XI 78; XII 114-20, 147; XIX 30). Delphi High School sophomores Breann Wilber and Raily Voorhies, along with Voorhies' two younger sisters, arrived at the Monon High Bridge trail around 12:25 p.m.; by 12:43 p.m., the group had walked from Freedom Bridge to High Bridge (Tr. XII 114-20, 143-45; XXI 86-89; Ex. XI 112-14; XIII 172).

Allen, who lived in Delphi and was familiar with the area, also went to the trail that afternoon (Tr. XIII 180-81; Ex. 290 (12:34, 15:28-16:40, 22:05–22:40)). Surveillance video captured Allen's black 2016 Ford Focus driving westbound on CR 300 North toward the Freedom Bridge side at 1:27 p.m.; he parked at the old CPS building and walked onto the trail (Tr. XIII 229-36; Ex. XII 84-94; Ex. 290 (17:23-17:42, 30:27)).

On their return, as they neared Freedom Bridge about 1:30 p.m., the group of girls encountered Allen as he walked in the opposite direction toward High Bridge (Tr. XII 120-22, 135-39, 147-50; XXI 86; Ex. XI 110; Ex. 290 (25:03-25:16)). Allen noticed the girls as he walked past them without speaking (Tr. XII 121; XIII 180-80; Ex. XII 80-81; Ex. 290 (21:18, 40:21-40:31, 41:03-41:18)). Neither Voorhies nor Wilber saw another man on the trail who looked like him (Tr. XII 137-39, 154). After reaching High Bridge, Allen walked out to the first platform (Ex. 290 (32:25–33:20)).

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Betsy Blair also went to the trail that afternoon to walk (Tr. XII 157-64).

Surveillance video showed her car driving eastbound on CR 300 North at 1:46 p.m.; she parked at the Mears entrance and entered the trail there (Tr. XII 178-82; Ex. XI 2).

Just before 1:49 p.m., L.G.'s older sister, Kelsi, dropped L.G. and A.W. off at the Mears entrance of the trail; both girls were familiar with the trail (Tr. X 12-17, 41-51, 84, 113; XII 180; XIII 69-70; Ex. X 114; XII 3). L.G.'s father, Derrick, planned to pick them up later that afternoon (Tr. X 10-11, 84-85). As the two walked toward High Bridge, L.G. sent a Snapchat message to Wilber asking if she was still at High Bridge; Wilber responded that they had left about 10 minutes earlier (Tr. XII 147-48).

When Blair reached High Bridge around 2:00 p.m., she saw a man (now known to be Allen) standing on the first platform of the bridge (Tr. XII 158-64; Ex. XI 110; Ex. 290 (32:28-33:07)). As Blair circled back to the Mears entrance, she passed by L.G. and A.W. as they walked toward High Bridge (Tr. XII 158, 165). Blair did not see anyone else on the trail (Tr. XII 158).

L.G. and A.W. proceeded onto High Bridge and walked toward the southeast end; L.G. took a photo of A.W. on the bridge at 2:07 p.m. (Tr. X 75-77; XIII 63, 97; Ex. XII 46). At 2:13 p.m., L.G. took a 43-second video from the far end of the bridge showing A.W. cautiously walking toward L.G. and a man, initially denominated "Bridge Guy" by police (now known to be Allen), following behind her (Tr. XII 50-54, 64-65, 82; XIII 70-71, 85-88; XVII 106-07; Ex. XI 70-74, 84-85; XIII 18; XIV 164; Ex.

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200, 246). “Bridge Guy” wore a blue jacket, blue jeans, a brown hat or hood on his head, and sneakers or boots (Ex. 246). The audio captured the following:

A.W.: “Is he right there – is he right there?”

A.W.: “Don’t leave me up here.”

L.G.: “See this is the path.”

L.G.: (whispering) “That [is] a gun.”

L.G.: “There’s no path here, we have to go down here.”

Allen: “Guys.”

L.G.: “Hi.”

Allen: “Down the hill.”

(Tr. XII 110; XIV 17-19; XVII 107; Ex. XIII 18, 64-65; Exs. 200, 207, 246).

Seven seconds after the video ended, either L.G. or A.W. tried unsuccessfully to biometrically unlock the cell phone (Tr. XIII 59-60, 71). L.G.’s Apple Health App captured the girls’ movements (Tr. XIII 61-65, 99-100; XXI 20-21, 32; Ex. XII 32-76). Allen brought the girls down the steep incline toward Deer Creek, where, he later confessed, he intended to rape them (Tr. XI 2, 8, 18-19, 63-64; XVII 90, 107; Ex. X 119-23, 168-69; XIII 18).

Between High Bridge and Deer Creek was a single dirt driveway at the end of County Road 625 West that led to the Weber property (Tr. X 132-35; XVII 244; Ex. 5). Allen saw a van—Brad Weber driving home from work—along that driveway, which scared him and changed his plans (Tr. XVII 107, 246-47; XX 88, 95; Ex. XIII 18). Allen ordered the girls to cross the 100-foot-wide creek (Tr. X 201; XI

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116-20; XVII 107; Ex. XI 44-46; XIII 18). At some point, Allen ordered the girls to undress, and various pieces of the girls' clothing were discarded in the creek: L.G.'s tie-dyed shirt and camisole, one of L.G.'s Nike tennis shoes, A.W.'s jeans and underwear (together but turned inside out), A.W.'s gray hooded sweatshirt, and a sock (Tr. X 199-200; XI 9-10, 182-92, 220-21; Ex. X 188-99, 247-50; XI 2-5).

Allen took the girls north of the steep creek bed to a secluded valley area that was difficult to see from the creek, the steep hillside to the north, and the Weber property to the south (Tr. X 186-90, 211, 232-36; XI 11-13, 20-24, 38, 43-46, 163; Ex. X 121-24). L.G. was naked, while A.W. was clothed, partially in her own clothing but wearing L.G.'s wet jeans and L.G.'s sweatshirt (Tr. XI 44-45, 67; XII 239-46; Ex. X 146-47). A.W.'s tennis shoes were wet and dirty, consistent with the creek bottom (Tr. XI 207-08; Ex. X 225-26).

Allen cut both girls' necks with a box cutter (Tr. XIII 17-19; XVII 11, 88-90, 107; Ex. XII 249; XIII 18). A.W. sustained one partial transection of her left exterior jugular vein (Tr. XII 239-40, 246; XIII 4; Ex. X 235-38; XII 9-10). L.G. sustained "at least" three separate injuries: a partial transection of her right common carotid artery, and complete transections of both her left common artery and her exterior jugular vein (Tr. XII 246-48; XIII 4-15; XVII 11, 88-90, 107; Ex. X 242-47; XII 249; XIII 18). Allen placed tree branches and sticks on their bodies (Tr. XI 76-77, 151, 194-95, 244-45; XV 138-39, 148; XVII 107; Ex. X 204; XIII 18). L.G.'s cell phone registered no movement after 2:32 p.m. (Tr. XIII 65, 71; XXI 33-35; Ex. XII 47-76).

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At 3:11 p.m., L.G. was not answering phone calls from her father (Tr. X 85-87, 102). Derrick walked to the Freedom Bridge trailhead, where he encountered Dave McCain coming from the High Bridge side (Tr. X 86-87, 102; XIX 29-30, 36). McCain had not seen the two girls (Tr. X 86-87; XIX 36). Derrick alerted family that the girls were not at the trailhead and that L.G. was not answering her phone (Tr. X 20, 88). Family quickly assembled and searched the Monon High Bridge trail and in Delphi (Tr. X 20-29, 53-58, 73, 88-95).

As he left the scene, Allen kept off the trail to avoid being seen (Tr. XVII 107; Ex. XIII 18). About 4:00 p.m., Sarah Carbaugh saw a man (now known to be Allen) walking along the north side of CR 300 North as she was driving eastbound (Tr. XII 190-97, 201; Ex. XII 5-6). He was hunched forward with his hands in his pockets, much like on L.G.'s video (Tr. XII 209-10; Ex. 200, 246). She noted that he was covered in mud and had fresh blood spatters on his light-colored jeans (Tr. XII 191-94, 211-14, 219; Ex. XII 7).

Around 5:00 p.m., law enforcement and A.W.'s mother were notified that the girls were missing (Tr. X 20-26, 118, 130-31, 162-63). Search teams scoured the trail and areas near High Bridge until 2:00 a.m., when the search was called off for the night (Tr. X 29, 34, 52-58, 73, 89-95, 100, 166, 216-22, 248-50). Law enforcement also checked in with Brad Weber, who allowed a deputy to look around his property for the girls (Tr. X 135-38, 146; XX 99, 108).

The search resumed the next morning, February 14th (Tr. X 30-32, 67-68, 95-97, 167-68, 194-95, 224-26). About noon, searchers along the south side of Deer

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Creek found some of the girls' clothing tangled in branches in the water (Tr. X 199-209; XI 188-92; Ex. X 118, 188-99; XI 45-46). Searchers were directed to the north side of the creek; access was made by going down the steep hill that ran south of the cemetery on CR 300 North (Tr. X 172, 186, 227-36; XI 13, 20-24, 38; XVI 42; Ex. X 117, 128-29). The girls' bodies were discovered behind mature trees north of the creek (Tr. X 205-06, 227-29; XI 12, 24, 41-45; XIV 33; Ex. X 130-39).

Blood pooling on the ground, blood transfer patterns, and DNA testing indicated that L.G.'s injuries were inflicted next to a small tree to the west of the girls' bodies (Tr. XV 177, 202; XVI 25-32, 45, 65; Ex. X 130, 148; XII 199). After touching the tree with her bloody hand and/or arm and creating an inverted "L" shape in blood, L.G. walked toward A.W. and sat or kneeled on the ground, where she either fell unconscious or died in a large pool of blood (Tr. XI 51-52; XVI 29-39, 56-65; Ex. X 148-53, 158-63). Allen then dragged L.G.'s body by her left arm to her final resting place behind the large tree (Tr. XV 133-34; XVI 39-47, 57; Ex. X 213). Although some of the blood flow on A.W.'s face suggested her head had been moved or turned, she was injured and died where she was found; A.W. was already clothed when the fatal injury was inflicted (Tr. XV 180-81; XVI 40-49, 58; Ex. X 214-17; XII 200). Neither girl showed defensive wounds or outward signs of sexual assault (Tr. XII 17, 242-44; XIII 11). A small amount of male DNA—perhaps simply from environmental factors—was detected in the external genital swabs of both A.W. and L.G. and from fingernail scrapings from both girls, but it was an insufficient amount of DNA for analysis (Tr. XV 171-73).

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L.G.'s cell phone and her other tennis shoe were discovered underneath A.W.'s body; the video of their kidnapping was found on the phone (Tr. XI 219-20; XII 50-56, 125; XIV 16; Ex. X 229-31; Ex. 200, 246). The phone had condensation and moisture on the screen, had connected on and off from the cell tower all afternoon on the 13th, but lost cell tower connection between 5:45 p.m. on the 13th and 4:33 a.m. on the 14th, when it momentarily reconnected before it powered off (Tr. XI 209-10; XIII 91-95; XXI 9, 14-19, 34-39, 42; Ex. X 229-31).

An unfired Winchester-brand .40 caliber cartridge was found in the leaves between the girls' bodies (Tr. XI 139-41, 199-200; Ex. X 183-85, 209-12; XI 10). Later ballistic testing showed that cartridge had been cycled through Allen's Sig Sauer Model P226 .40 caliber handgun (Tr. XIV 89, 145-50, 161-85, 192-94; Ex. XII 114-17, 133-81; Ex. 291 (10:45)).

On February 14, 2017, Voorhies, Wilber, and Blair told police about seeing a man on the trail/platform the previous afternoon and, after seeing the "Bridge Guy" photograph from L.G.'s phone that was released to the media, they immediately identified "Bridge Guy" as the man they had seen that day (Tr. XII 123-30, 147-50, 160-64; Ex. XI 110). Carbaugh also came forward a few weeks after seeing the picture of "Bridge Guy" and identified him as the muddy and bloody man she had seen on the road on February 13th (Tr. XII 191-96; Ex. XI 110). On February 16, 2017, Allen reported to police that he was on the trail on February 13th between 1:30 p.m. and 3:30 p.m. and walked past a group of three girls as he entered the trail near Freedom Bridge and walked to High Bridge (Tr. XIII 153-56, 180-82; Ex.

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XII 77-81; Ex. 290 (02:57, 22:59)). Allen said that he saw no one else on the trail (Tr. XIII 180; Ex. 290 (41:30, 1:18:42)). Allen's report was misfiled under "Richard Allen Whiteman" and mistakenly marked "cleared" (Tr. XIII 156-57; Ex. XII 77-78).

In September 2022, Allen's report was discovered in a box, and law enforcement began investigating him for the first time (Tr. XIII 154-58, 227-36; XIV 12-13). On October 13, 2022, Allen met with Detective Tony Liggett and Investigator Stephen Mullin (Tr. XIII 236-43; XIV 19-23; Ex. 290). Allen confirmed that he walked to High Bridge on February 13, 2017, saw three girls—one older and two similar-looking younger ones who were possibly sisters—as he entered the trailhead, and then went out to the first platform on High Bridge to watch the fish (Ex. 290 (14:30-16:40, 25:03-25:16, 1:18:40, 1:22:31)). Allen now claimed that he was on the trail earlier, from 12:00 p.m. to 1:00-1:30 p.m. (Tr. XIV 74; Ex. 290 (16:08, 24:41-24:58, 1:01:32-1:01:49)). He said that he probably was driving his 2016 black Ford Focus (Ex. 290 (36:13, 40:10, 1:17:00)). Allen said he did not see anyone else on the trail that day, specifically not Bridge Guy (Ex. 290 (25:35, 40:42-40:47, 42:53, 01:18:42)). Allen said he was probably wearing a dark Carhartt jacket with a hood, blue jeans, either tennis shoes or work boots, and had a hat with him (Ex. 290 (43:39-45:05, 1:15:00-1:15:20, 1:23:51-1:24:20)). He indicated that he might still have his cell phone from 2017 (Ex. 290 (49:55)). When confronted with the picture of "Bridge Guy," Allen stated that "if it was taken with the girls' phone, there's no way it could be [me]" (Ex. 290 (1:13:00-1:14:00, 1:20:37-1:20:43)).

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Based on witness information and Allen's statement, a search warrant was obtained to search Allen's home (Tr. XIII 243; XIV 23-26, 34-35). Officers recovered Allen's Sig Sauer Model P226 .40 caliber handgun, Blazer .40 caliber ammunition, one unfired Winchester-brand .40 caliber cartridge in a keepsake box, a blue Carhartt jacket, several knives and box cutters, and photos showing Allen on the High Bridge in 2016 (Tr. XIV 72, 85-91; Ex. XII 101-26). Allen still owned his 2016 black Ford Focus (Tr. XIV 86; Ex. XII 99-100). Although Allen had 12 other old cell phones in the master bedroom closet, Allen's cell phone from 2017 was not found (Tr. XIII 121-22, 182, 204; XIV 98; Ex. XII 105-06). Allen told ISP Lieutenant Jerry Holeman more than once during the search, "It's over" (Tr. XIV 105-06).

Allen gave a second interview on October 26, 2022 (Tr. XV 78-101; Ex. 291). Allen said that he did not have his handgun with him at the trail on February 13, 2017, and denied loaning it to anyone else (Ex. 291 (03:49, 04:19-04:22, 30:18, 30:25)). If he carried it, he would have the handgun in a side holster and a round chambered (Ex. 291 (43:48, 52:48, 53:12)). Allen had no explanation for how a cartridge cycled through his handgun could have ended up at the scene and denied the possibility that any cartridge at the scene could have come from his gun (Ex. 291 (05:36, 08:15, 10:23, 25:22-25:26)). Allen was arrested (Tr. XV 103).

In early November, following the filing of charges, the trial court ordered Allen to be transferred to the Department of Correction for safekeeping due to media and safety concerns (App. II 116-18; V 92-102; VII 77-78; Tr. XVIII 195-97). DOC placed Allen at Westville Correctional Facility ("WCF") in A Pod, cell A-1107,

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a single-man cell in the restrictive housing unit (Tr. XVI 95-96, 105; XVIII 188-89, 199; XXI 100-01; Ex. XIII 174-250). The 12x8 cell had a bed, a toilet, a sink, a slot in the door through which his meals were served, and a narrow window for daylight (Tr. XVI 95-96, 112-13, 117-20; XXI 107). After Allen complained that scratches in the window made it hard to see out, DOC replaced the window (Tr. IV 247-48; V 85; XVI 118; XVII 49; XIX 236-37). Allen was given: showers (three per week); out-of-cell recreation time (five times per week); three sets of clothing and weekly laundry service; books and puzzles; and an electronic tablet that he could use to communicate with family, listen to music, download movies, and play games (Tr. II 190-92; XVI 97-98, 121-27, 238; XVII 84). When his first tablet broke, Allen did not have to pay the usual fee for a replacement tablet (Tr. II 192-93; IV 248-49). Allen was offered a television for his cell but declined it (Tr. V 16). Allen could dim the cell's overhead lights (Tr. XVI 117-18). Allen was granted in-person visits with his wife, which is generally not permitted for restricted-housing convicts (Tr. II 124-28, 196-98; IV 249-50; XVI 98, 130, 200-01). Allen had access to weekly chaplain visits upon request and received regular checks by medical staff (Tr. II 193-94; V 32-33). Although shackled while being transported outside his cell, Allen's shackles were removed during his sessions with Dr. Wala (the DOC psychologist) and his meetings with his wife and attorneys (Tr. IV 214-18; V 2; XVI 130-31; XVII 78, 170-71; XXI 109).

Although placed in the same kind of physical environment as convicted offenders in that unit, Allen was treated better, and the primary goal was to keep

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him safe from himself and the general population (Tr. XVI 133-38, 151, 175; XVIII 196-97, 211-12; XXI 107). The administrative and medical team met to discuss how to make Allen more comfortable (Tr. XVIII 205; XXI 108, 150-51). DOC policy restricted periods of solitary confinement to persons with serious mental illness (SMI) to 30 days, but Allen's initial diagnoses of major depressive disorder and anxiety did not meet the definition of SMI (Tr. XVII 200-05; XVIII 199-200, 208, 216).

Because he entered WCF on constant suicide watch with prior mental health diagnoses, the cell Allen was placed in was the "suicide cell" with 24-hour video monitoring, and he was observed by suicide companions (Tr. XVI 112-17, 129-32, 139-40, 151; XVII 82-83, 150; XVIII 195-98; XXI 109). Allen met with Dr. Wala daily, usually in a nearby room with a metal grate partition between them, and otherwise at his cell door (Tr. V 73-74, 105; XVI 211; XVII 77-86, 121, 169-71; Ex. XIII 7-157). Allen was offered the opportunity to meet with Dr. Wala out of his cell at least once a week (Tr. V 75). During a session in early November, Dr. Wala advised Allen not to talk about his case with anyone, and she did not ask him questions about it during their sessions (Tr. XVII 86, 121; Ex. XIII 50).

By December 2022, Allen was removed from constant suicide watch and placed on close observation (Tr. XVII 82-84; XXI 112; Ex. XIII 63). He was observed every 15 minutes, and Allen met with Dr. Wala once a week (Tr. XVII 82-83). Allen did well in the first months of 2023 (Tr. XVII 212; XXI 112-14; Ex. XIII 67-68). Allen found Jesus and accepted God into his heart in late March 2023 and became

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increasingly concerned with religious matters (Tr. V 188-90, 234-35; XVII 90-93; XVIII 27; Ex. II 124-25; XIII 6-7). In late March and early April, Allen began receiving his legal discovery, and he had a visit with his attorneys on April 3rd or 4th (Tr. V 186-88; XVII 124-25, 161; Ex. II 124).

In early April 2023, corresponding with those events, Allen's mental health quickly deteriorated (Tr. V 186-88; XVI 248; XVII 83, 124-25, 212; XVIII 199, 205; XX 148-49, 152-53; Ex. XIII 6; Ex. DDD – files 1-2). Allen started to refuse meals and act out (Tr. XVI 248; XVII 124-27, 160-61, 212; Ex. 313-call 4/2/23). On April 3rd, Allen told his wife, "I did it," "I killed [A.W.] and [L.G.]" (Ex. 313-call 4/3/23). The next day, Dr. Wala upgraded Allen back to constant suicide watch; correctional officers were assigned to observe Allen, and Dr. Wala met with him every day (Tr. XVI 142, 150, 160, 172; XVII 83-84; Ex. XIII 6).

On April 5th, Allen confessed to Dr. Wala and in a written note to the warden that he had killed L.G. and A.W. (Tr. XVI 155-57; XVII 88-96; Ex. II 112-13, 125; XII 226-27; XIII 6-8).<sup>3</sup> He told Dr. Wala he acted alone and his intentions were sexual in nature (Tr. XVII 88-90; Ex. XIII 7). Dr. Wala warned Allen again that it was not in his best interest to talk about his case (Tr. XVII 122-23; Ex. XIII 84). Two days later, on April 7th, Allen said that he killed L.G. and A.W. by himself and that he was just acting like he was crazy (Tr. XVI 169-70, 186; Ex. XII 229-30). On

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<sup>3</sup> Although Warden Galipeau testified he was given the note on March 5 (Tr. XVI 100-03), the suicide companion's testimony and log and the DOC chain-of-custody-form show Allen delivered the note on April 5 (Tr. XVI 156-57; Ex. II 112-13; XII 226-27).

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April 8th, 9th, and 10th, Allen made statements that he killed the girls and expressed remorse (Tr. XVI 222, 244-45; XVII 2-3, 28; Ex. XII 237, 240-42, 245).

During the ensuing days, Allen's behavior became increasingly bizarre, including drinking toilet water, smearing feces on himself and in his cell, and eating his own feces (Tr. XVI 225-26, 245; XVII 31, 123-25; Ex. XIII 88; Ex. III (4/12/23 video)).

Allen shifted quickly back to normal behavior if he wanted something, or he would behave outrageously to get attention (Tr. XVI 179-80, 188-89, 223-24, 228-32; XVII 3, 19-20, 123, 126; XVIII 72-73).

By April 13th, Allen's behavior was deemed severe enough to warrant medical intervention (Tr. XVII 190, 210; XVIII 124-27; XIX 209-12, 226, 243; XX 9, 155, 159-60; Ex. II 129-32; XIII 88, 91, 94). The next day, Dr. Martin presented Allen's case to a treatment review committee, which agreed that Allen was exhibiting psychotic symptoms that warranted an involuntary injection of Haldol, an anti-psychotic medication (Tr. XVII 127, 131, 227-27; XVIII 200-02, 209-10; XXI 117-19; Ex. XIII 104, 109-10). Psychosis ebbs and flows, and a person can slip in and out of psychosis in a 24-hour period (Tr. XVII 223-24; XX 10-11; XXI 138, 166). Allen was administered an injection of short-acting Haldol for four days (April 14-17) and monitored for side effects (Tr. XXI 120). He received long-acting Haldol injections on April 18th, May 18th, and June 16th (Tr. XVII 191; XXI 141-42, 164).

Between April 14th and May 2nd, Allen's psychotic symptoms slowly improved (Tr. V 198; XVII 127-35; XXI 121-24; Ex. XIII 111-34). He continued to confess during that period, including an admission on April 29th that he had used a

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box cutter he stole from CVS to kill A.W. and L.G. (Tr. XVI 187; XVII 11-12, 15-16, 28; Ex. XVII 233-34, 246, 248-49). By May 2nd and May 3rd, he had returned to baseline and no longer exhibited any significant psychosis (Tr. V 199-200; XVII 100-02, 109, 115; XXI 124-28, 160; Ex. II 134-36, 142, 147-48; XIII 136-37, 141, 146, 208). Allen was diagnosed as having suffered a “brief psychotic disorder with marked stressors” (Tr. V 146; XVII 104; Ex. II 137; XIII 16).

On May 3rd, Allen gave his most detailed confession to the offenses to Dr. Wala (Tr. XVII 107-09; Ex. XIII 18). This was the first time he mentioned that seeing a van was what scared him and caused him to forgo raping the girls (Tr. XVII 106-07; Ex. XIII 18). This new piece of information that a van had driven by, which only Bridge Guy would know, led investigators back to Brad Weber (Tr. XVIII 37-39, 84). Weber’s work records showed that he clocked out of the Subaru plant in Lafayette at 2:02 p.m. on February 13th (Tr. XVIII 39-50, 68; Ex. XIII 168). Weber confirmed that he had driven his van to work that day and went straight home, which would have placed the van on his driveway near High Bridge and the creek shortly after the girls were kidnapped (Tr. XVII 245-46; XVIII 46-47, 109; XX 88-98, 107-09). Allen continued to confess many more times to Dr. Wala, watch companions, and his family through May and June, and even as late as February 2024 (Tr. XVI 187; XVII 11-12, 43, 112-16; Ex. XII 230, 247-8; XIII 34-43; Ex. 313-calls 5/10/23; 5/17/23; 6/5/23; 6/11/23). Additional facts will be provided as necessary to the issues.

## SUMMARY OF THE ARGUMENT

I. Allen's *Franks* claim is waived in several respects. And it is meritless: Liggett did not include false statements or omit material information from the probable cause affidavit, and the affidavit still establishes probable cause even if the challenged statements/omissions are excluded/included.

II. Allen's challenge to his confessions is waived. Regardless, his confessions were voluntary. The requisite State coercion is absent, and the conditions of his confinement did not rise to the level necessary to constitute coercion. Allen also has not shown that the conditions caused his confessions, as the record provides other explanations for his desire to confess, and he confessed both before and after his period of psychosis. Allen's other state constitutional challenges are meritless. Allen's challenge to the exclusion of the IPAS settlement at the suppression hearing is moot, and he has not raised any challenge to its exclusion at trial. Regardless, Allen was allowed to present evidence of DOC policy regarding SMI prisoners in restricted housing, and any minimal probative value of the settlement agreement from an earlier, unrelated lawsuit was outweighed by the danger of prejudice and confusion of the issues. Its exclusion is, at most, harmless error.

III. The trial court properly excluded inadmissible evidence. Blair's investigatory sketch of Bridge Guy was not relevant because she did not identify Allen; it was unduly prejudicial; and it was inadmissible hearsay. Tobin's testimony was not relevant because it went to the admissibility of firearm

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identification evidence as a science, not to witness credibility, and firearm identification evidence is admissible in Indiana. The audio of Allen's movement videos was hearsay. His two jail calls on April 3, 2023, did not fall under the doctrine of completeness. Dr. Grassian's opinion that Allen's confessions were false was impermissible vouching evidence. Perlmutter's third-party-motive testimony opining this was a ritual killing was properly excluded under Evidence Rule 403; it was impermissibly speculative, unsupported by any Odinit who could be connected to the crimes, and based on inaccurate or highly disputed contentions about the crime scene. Allen's proffered third-party suspects were unduly speculative and did not tend to show Allen had not committed the murders. Holder had a confirmed alibi, making it impossible for him to have committed the crimes, and Allen never contended that Westfall, whose sole alleged connection to the crimes was his Odinism, could have committed the crimes by himself.

Any error in the exclusion of any of this evidence was harmless beyond a reasonable doubt based on the eyewitness testimony and Allen's statement placing himself at the scene (which combined to identify Allen as Bridge Guy), the presence of a .40 caliber cartridge cycled through his gun at the scene, and his numerous confessions.

The admission of the Google search for an alternative theory explaining the cell phone's audio output code was harmless error. None of the theories for that code made it more or less likely that Allen killed the victims.

IV. The trial court properly denied Allen’s motion to correct error. Allen did not show that the State offered demonstrably false testimony because he did not verify the date and time stamp on the surveillance video, nor did he establish a foundation for the FBI “ping” evidence. Allen had an adequate opportunity to impeach the witness with this evidence, but he strategically chose not to. Last, this evidence would not have impeached Allen’s confession to seeing the van. This Court should affirm Allen’s murder convictions.

## ARGUMENT

### I.

#### **The court properly admitted evidence found pursuant to a valid warrant search of Allen’s house.**

The search warrant for Allen’s house validly established probable cause; therefore, the court properly admitted evidence found in that search: the gun, a .40 caliber cartridge found in the bedroom, a blue Carhartt jacket, and knives.<sup>4</sup> Because this appeal follows a completed trial, the issue is whether the evidence was properly admitted at trial, and the ruling is reviewed for an abuse of discretion. *Sloan v. State*, 224 N.E.3d 362, 367 (Ind. Ct. App. 2023), *trans. denied*. But to the extent admissibility turns on the constitutionality of a search uncovering the evidence, that question is reviewed *de novo*. *Jacobs v. State*, 76 N.E.3d 846, 849 (Ind. 2017).

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<sup>4</sup> The vast majority of Allen’s first *Franks* motion/memo and all of his subsequent *Franks* motions are addressed to arguments about the warrant affidavit’s validity that Allen has abandoned on appeal. The relevant portion of the *Franks* memo asserting the argument raised on appeal is found at Appendix IV 50-63.

**A. Allen did not preserve this issue for appeal.**

Allen’s Fourth Amendment challenge to the admission of this evidence suffers from multiple issue-preservation problems. First, Allen waived this issue entirely by failing to object to the evidence at trial. A pretrial motion to suppress is insufficient to preserve an issue for appeal.<sup>5</sup> *Brown v. State*, 929 N.E.2d 204, 207 (Ind. 2010). To preserve a claim of error, the defendant must contemporaneously object to the admission of the challenged evidence at trial. *Id.* Allen did not object when the State elicited testimony pertaining to the search of his house and affirmatively stated he had “no objection” to the admission of the gun and cartridge and to the photographs of the Carhartt jacket and knives (Tr. XIV 23-25, 83-92, 103-08, 165-67). By failing to reassert his Fourth Amendment challenge at trial and instead stating that he had “no objection” when the evidence was proffered, Allen has waived appellate review of his challenge to the warrant. *Id.*; see *Halliburton v. State*, 1 N.E.3d 670, 679 (Ind. 2013) (stating that defendant may not affirmatively “state at trial that he has no objection to the admission of evidence” and then “claim such admission to be erroneous” on appeal).

Allen, who does not acknowledge his waiver, makes no argument that the admission of this evidence constituted fundamental error (Appellant’s Br. 59-67). He has therefore waived any claim of fundamental error. See *Curtis v. State*, 948

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<sup>5</sup> The recent amendment to Evidence Rule 103(b), which is not effective until July 1, 2026, allowing preservation through pretrial rulings was not in effect at the time of Allen’s trial and is therefore inapplicable to this case. See *Dickey v. State*, 999 N.E.2d 919, 922 n.2 (Ind. Ct. App. 2013).

N.E.2d 1143, 1148 (Ind. 2011). Moreover, Fourth Amendment issues generally are not subject to fundamental error review because they do not undermine guilt.

*Brown*, 929 N.E.2d at 207. Fundamental error review is available only when a defendant claims “fabrication of evidence or willful malfeasance” by the investigating officers. *Id.* There is no claim of fabricated evidence here. And Allen’s assertion that Detective Liggett “recklessly” made false statements or material omissions is not a claim of *willful* malfeasance (Appellant’s Br. 64). Only deliberate lies or intentionally misleading omissions could constitute *willful* malfeasance.<sup>6</sup> See [www.merriam-webster.com/dictionary/willful](http://www.merriam-webster.com/dictionary/willful) (defining “willful” as “done deliberately,” “intentional”). For both of these reasons, Allen’s waived *Franks* challenge is also not subject to fundamental error review.

Second, even if the entire issue were not waived, the fourth way in which Allen alleges the magistrate was misled—Allen’s description of his clothing that day and his wife’s confirmation that he owned a blue Carhartt (Appellant’s Br. 63-64)—is raised for the first time on appeal. Allegations of error raised for the first time on appeal are waived. *Washington v. State*, 808 N.E.2d 617, 625 (Ind. 2004). “[A] trial court cannot be found to have erred as to an issue or argument that it never had an

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<sup>6</sup> The only statements/omissions Allen claims showed “more than reckless disregard for the truth” are the two statements pertaining to a blue jacket (Appellant’s Br. 65). One of those statements—Allen’s description of the clothes he was wearing—is not properly before this Court at all, as will be argued below. That leaves only Carbaugh’s description of the coat available for fundamental error review. Excising that sole statement from the affidavit does not undermine the existence of probable cause and thus the validity of the warrant, much less undermine the fundamental fairness of Allen’s trial.

opportunity to consider.” *Id.* And a defendant may not object on one ground at trial and then raise a different ground on appeal. *Houser v. State*, 823 N.E.2d 693, 698 (Ind. 2005). Below, the only false statements or material omissions identified by Allen were Blair’s description of Bridge Guy (and her disagreement with the Carbaugh sketch), Blair’s description of the car parked at the CPS building, and Carbaugh’s description of the man she saw walking (App. IV 50-63). Allen did not identify Liggett’s recitation of Allen’s description of the clothes he was wearing and his wife’s confirmation of his ownership of a blue Carhartt as false/misleading statements or omissions supporting his *Franks* challenge (App. IV 50-63). Because Allen’s reliance on these statements is an improper appellate attempt to supplement his *Franks* challenge, this Court should limit any consideration of this issue to only the first three ways that Allen contends the affidavit is misleading, as those were the only allegations the trial court had an opportunity to consider. *See Darring v. State*, 101 N.E.3d 263, 269 (Ind. Ct. App. 2018) (finding alleged omissions from the affidavit waived because Darring did not raise them in the trial court and “limit[ing] our discussion to the omissions raised in Darring’s memorandum to the trial court in support of his motion to suppress”).

Finally, to the extent Allen suggests that success on this issue results in suppression of his confessions (Appellant’s Br. 66), that claim is doubly waived. First, although Allen challenged the admission of his confessions below on other grounds, he did not raise any Fourth Amendment challenge to their admission or object on the basis that they were the fruit of an unlawful search (App. VII 190-202;

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Tr. IX 92-93; XVII 67; XVIII 11-17). A defendant may not object on one ground at trial and then raise a different ground on appeal. *Houser*, 823 N.E.2d at 698.

Because Allen did not object to admission of the statements on Fourth Amendment grounds in the trial court, he is precluded from challenging their admission on that basis for the first time on appeal.

Second, Allen’s bare assertion that his statements are a suppressible “fruit” of the search is unsupported by cogent argument (Appellant’s Br. 66). All arguments must be “supported by cogent reasoning” and citation to authorities, and the failure to make a cogent argument waives a claim for appellate review. Ind. Appellate Rule 46(A)(8)(a); *Miller v. Patel*, 212 N.E.3d 639, 657 (Ind. 2023). To be a suppressible fruit of the search of the house, Allen’s confessions must constitute evidence derivatively gained as a result of information learned during the search, rather than through a means sufficiently distinguishable as to be purged of any taint from the search. *See McCollum v. State*, 63 N.E.3d 5, 14 (Ind. Ct. App. 2010). Allen does not explain how volunteered statements made to family, doctors, and correctional staff more than five months after the search of his house (and after he had been advised of his rights, appointed counsel, and a court found probable cause to support his arrest) could constitute a fruit of that search. *See id.* (listing as relevant factors in this analysis the amount of time elapsed between the illegal search and the acquisition of the evidence at issue, the presence of intervening circumstances, and the purpose and flagrancy of the official misconduct). It is not this Court’s province to develop an argument on Allen’s behalf. *See Miller*, 212

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N.E.3d at 657; *Thomas v. State*, 965 N.E.2d 70, 77 n.2 (Ind. Ct. App. 2012). By failing to present cogent argument on this point, Allen has waived any claim that his confessions are suppressible due to the alleged invalidity of the search warrant.

**B. Allen has not shown that probable cause for the search warrant was predicated on false statements or material omissions.**

Waiver notwithstanding, Allen has not established a *Franks* violation. Probable cause exists to issue a warrant when the totality of the circumstances set forth in the affidavit demonstrates a “fair probability” that evidence of a crime will be found in the location. *Illinois v. Gates*, 462 U.S. 213, 238 (1983); *Darring*, 101 N.E.3d at 268. Search warrants are presumptively valid, and in assessing whether an affidavit established probable cause, “doubtful cases should be resolved in favor of upholding the warrant.” *Albrecht v. State*, 185 N.E.3d 412, 420 (Ind. Ct. App. 2022), *trans. denied*.

A defendant may invalidate a warrant by proving “by a preponderance of the evidence that the affidavits used to obtain the warrant contain perjury by the affiant, or a reckless disregard for the truth by him, and the rest of the affidavit does not contain materials sufficient to constitute probable cause.” *Jones v. State*, 783 N.E.2d 1132, 1136 (Ind. 2003); *see Franks v. Delaware*, 438 U.S. 154, 155-56 (1978). A defendant does not even receive a *Franks* hearing unless he first makes a “substantial preliminary showing” both that the affiant knowingly or intentionally, or with a reckless disregard for the truth, made false statements in the affidavit and that those false statements were necessary to the finding of probable cause. *Franks*, 438 U.S. at 155-56; *Keeylen v. State*, 14 N.E.3d 865, 872 (Ind. Ct. App.

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2014), *aff'd on reh'g*, 21 N.E.3d 840 (2014), *trans. denied*. “[M]istakes and inaccuracies of fact stated in a ... warrant affidavit will not vitiate the reliability of the affidavit[] so long as such mistakes were innocently made.” *Utley v. State*, 589 N.E.2d 232, 236-37 (Ind. 1992); *see Franks*, 438 U.S. at 171 (“Allegations of negligence or innocent mistake are insufficient.”). The burden to prove deliberate falsehoods or reckless disregard for the truth, as opposed to innocent or negligent mistakes, is a “high bar.” *Wainscott v. State*, 210 N.E.3d 853, 857 (Ind. Ct. App. 2023), *trans. denied*. The presence of intentional or reckless inaccuracies alone is insufficient to invalidate the warrant; probable cause must no longer exist after those inaccuracies are excised from the affidavit. *Keeylen*, 14 N.E.3d at 872.

Although “it is not practical for police to include every piece of information relating to an investigation in a probable cause affidavit,” an affidavit should include “all material facts,” which includes those that “cast doubt on the existence of probable cause.” *Ware v. State*, 859 N.E.2d 708, 718 (Ind. Ct. App. 2007) (quoting *Query v. State*, 745 N.E.2d 769, 772 (Ind. 2001)), *trans. denied*. Therefore, a defendant may also challenge a warrant by claiming the affidavit omitted material information (a “reverse-*Franks*” claim). *Id.* at 718-19; *see Keeylen*, 14 N.E.3d at 872. To invalidate a warrant based on alleged omissions, the defendant must show that: (1) the police “omitted facts with the intent to make, or in reckless disregard of whether they thereby made, the affidavit misleading,” and (2) inclusion of the omitted information renders the affidavit insufficient to establish probable cause. *Ware*, 859 N.E.2d at 718; *see Keeylen*, 14 N.E.3d at 872. “*Franks* protects only

against omissions that are ‘designed to mislead, or that are made in reckless disregard of whether they would mislead, the magistrate.’” *Keeylen*, 14 N.E.3d at 872 (quoting *United States v. Colkley*, 899 F.2d 297, 301 (4th Cir. 1990)).

**1. The affidavit did not contain false statements.**

Liggett’s representation that Sarah Carbaugh reported seeing a “muddy and bloody” man who was wearing a “blue colored jacket” and blue jeans was not a false statement (App. III 120), much less one made knowingly, intentionally, or with reckless disregard for its truth. Allen’s claim of falsity rests on the video of Carbaugh’s June 7, 2017, interview, where she is only heard describing the man as “muddy,” not “bloody,” and she said he wore a “tan” or lighter color coat with a dark hoodie or sweater underneath it (Supp. Ex. 115 (5:00–12:30, 37:40)). But Carbaugh was interviewed three times, all before the warrant affidavit was prepared, and Allen ignores Carbaugh’s description of the man in her second and third interviews, which show that neither representation was false.

In those interviews, Carbaugh described the man as “bloody” as well as muddy (Tr. XII 199-202, 211-15; XIV 45; Supp. Ex. II 192).<sup>7</sup> Allen acknowledged at trial that she described the man as bloody 16 times in her third interview and said he looked like he had slaughtered a pig (Tr. XII 202). She even marked where she saw the blood spatter on a picture of Bridge Guy during an interview (Tr. XII 211-

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<sup>7</sup> Carbaugh believed that she used the term “bloody” once in the first interview but that it could not be heard on the video because she was mumbling (Tr. XII 198). She also explained that at least one hour of her second interview with police was not recorded (Tr. XII 199-200, 211).

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14; Ex. XII 7). Liggett’s representation that Carbaugh said the man was “bloody” was not false. Similarly, in Carbaugh’s second interview, she corrected her previous “inaccurate” statement that the coat was tan; in that interview, she said that the man wore a blue coat with a brown or tan sweater or hoodie underneath it (Tr. XII 203-04, 208). Carbaugh also told police that the man in the Bridge Guy photo was the same man she saw on the road (Tr. XII 212; Supp. Ex. 115 (9:00–9:30)), and Bridge Guy was wearing a blue coat (Exs. 200, 246). Liggett’s representation that Carbaugh said the man was wearing a blue coat was not false. Allen cannot prove falsity by cherry-picking isolated statements and ignoring the totality of what Carbaugh said.

Nor can Allen meet his high burden to show deliberate or reckless conduct merely by the fact that Liggett’s affidavit related the information from Carbaugh’s more recent statements to police, which she had never repudiated, rather than her first statement. That is particularly true in the context of an investigation this large and spanning so many years. Law enforcement interviewed huge numbers of witnesses, in many cases more than once, and many of those interviews, including specifically the interviews of Carbaugh, took place years before Liggett was preparing his affidavit. He may not even have remembered that, five years earlier, Carbaugh had once described the coat as tan or that she had not said “bloody” in the first interview, given her overall certainty that she saw Bridge Guy and he was bloody. *See Utley*, 589 N.E.2d at 237 (finding Utley “failed to demonstrate purposeful misrepresentation” in the inclusion of several inaccurate or mistaken

statements because the detective “was in charge of an extensive investigation involving many officers and information coming from many sources”). And as will be shown in Subsection 2 below, Carbaugh’s information is not necessary to the existence of probable cause. Therefore, even if the allegedly false statements were “corrected” as Allen suggests, probable cause would still exist.

**2. Material information defeating probable cause was not omitted from the affidavit.**

Allen also claims the affidavit omitted material information by failing to include details of Blair’s description of the car she saw parked at the old CPS building that were inconsistent with Allen’s Ford Focus and details of Blair’s description of the man she saw on the bridge that were inconsistent with Allen’s appearance.<sup>8</sup> Allen did not show that these omissions were designed to mislead or made with reckless disregard about whether they would mislead, nor did he show that the inclusion of this information would have defeated probable cause.

The requisite intent to mislead cannot be established merely by showing the fact of the omission itself. *State v. Allen*, 187 N.E.3d 221, 230 (Ind. Ct. App. 2022), *trans. denied*. But Allen points to nothing beyond the omissions themselves as proof that Liggett was being intentionally or recklessly misleading (Appellant’s Br. 64-65). *See id.* at 230 & n.3 (failure to present evidence showing the omission of the defendant’s exculpatory statement was a deliberate attempt to mislead was “fatal”

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<sup>8</sup> Specifically, that the man appeared youthful, in his 20’s or 30’s, and had “poofy” hair, and that the car was shaped like a 1965 Comet and was a “non-descript,” “dark” color but was not black, white, or red (Supp. Ex. I 145-46, 215; Supp. Ex. 107 (1:10–3:00, 6:30–7:25, 11:45)).

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to his reverse-*Franks* challenge); *Darring*, 101 N.E.3d at 269-70 (rejecting reverse-*Franks* claim in part because, “[a]side from noting these factual omissions,” the defendant “makes no attempt to establish” that they were made deliberately to mislead or with reckless disregard). And other evidence refutes the suggestion this was done to mislead. For example, Liggett included the information that a second witness (Terry Wilson) who saw a car parked there only minutes before Blair did described the car as a “purple PT Cruiser or a small SUV type vehicle” (App. III 120). Purple is not black, and neither a PT Cruiser nor an SUV looks like a Ford Focus. Were Liggett attempting to create an impression that the witnesses had given descriptions consistent with Allen’s Focus, then he would not have included those inconsistent details from the second witness. Indeed, had Liggett included Blair’s description, it would only have emphasized that the probative value of the information was not that the witnesses had given a reliable description of the car’s appearance; their descriptions, after all, were not consistent with each other either. Rather, the information was probative because both witnesses had seen a single car parked in a suspicious manner at this location, at a time when *other* evidence established reason to believe it was Allen’s car parked there. Similarly, Blair had told police that she recognized Bridge Guy as the man she saw primarily based on his clothing, which was a “match” (Supp. Ex. I 145; Supp. Ex. 107 (3:15–3:45)), not on some characteristic of his physical appearance. It is therefore understandable, not suspiciously misleading, that Liggett’s affidavit focused on that aspect of her description.

More fundamentally, given the construction of the State's probable cause, neither challenged aspect of Blair's information was material to the existence of probable cause, which explains both why there was no intent to mislead or recklessly misleading effect in its omission, and why its inclusion does not defeat probable cause. The video from L.G.'s phone established probable cause to believe that Bridge Guy was the murderer. However, the probable cause to believe Allen was Bridge Guy did not depend on the accuracy of Blair's description of the man or the car or the extent to which those descriptions matched Allen. And the probable cause affidavit did not create any misleading impression that Blair had identified Allen as the man she saw or Allen's Focus as the car she saw.

Probable cause to believe Allen was Bridge Guy rested on the following facts. Bridge Guy encountered A.W. and L.G. on the High Bridge at 2:13 p.m. (App. III 118; Exs. 200, 246). Around or shortly after 1:30 p.m., a group of girls passed a single man on the trail walking toward High Bridge; Breann Wilber identified the picture of Bridge Guy as the man they passed, Anna Spath similarly identified the man as wearing a blue coat, and the girls said that the man said nothing to them although Raily Voorhees said "hi" to him (App. III 118-19; Tr. XVII 120-26, 146-50).<sup>9</sup> Blair was walking the trail to High Bridge and back between 1:46 and 2:15

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<sup>9</sup> Because no *Franks* hearing was held, the State did not have an opportunity to present evidence in response to the motion. Where the State cites to the trial record in this discussion, it is consistent with the information contained in the probable cause affidavit and thus is reasonably deemed to be evidence that was known by police at the time the affidavit was prepared. Although not mentioned in the probable cause affidavit, Voorhies testified at trial that she also immediately

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p.m.; when she reached High Bridge, she saw the man in the Bridge Guy photograph standing on the first platform of the bridge, and she passed A.W. and L.G. walking toward High Bridge as she was walking back to the trail entrance (App. III 119-21; Tr. XVII 156-69; Supp. Ex. I 145-46; Supp. Ex. 107 (3:15–4:35, 8:45–10:15)). None of these witnesses saw any other male on the trail during this time frame who could have been Bridge Guy (Tr. XVII 137-38, 154; Supp. Ex. I 145; Supp. Ex. 107 (4:00–4:35)). And none of these witnesses were represented in the affidavit as having identified Allen as the man they saw (App. III 118-22).

It was Allen himself who provided the reasonable ground for believing he was the man these witnesses saw and thus that he was Bridge Guy. Allen originally told police that he was on the trail between 1:30 and 3:30 p.m.<sup>10</sup> (Ex. XII 78-79; Supp. Ex. I 227; Supp. Ex. III 23); he said that he passed a group of girls without speaking to them as he walked toward High Bridge, that he went out onto the first

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recognized the picture of Bridge Guy as the man the girls encountered on the trail (Tr. XII 125-26, 138).

<sup>10</sup> The Freedom Bridge entrance, where Allen entered and the group of girls exited, is farther west (i.e., farther away from High Bridge) than the Mears entrance, where Blair entered (Ex. X 117). Thus, although Allen began walking the trail approximately 15 minutes before Blair did, he would have walked past the Mears entrance approximately 10 minutes before Blair entered and thus would have been only a few minutes ahead of her on the trail. A.W. and L.G. were dropped off at the Mears entrance no more than three minutes after Blair entered and thus were only minutes behind her on the trail. Therefore, Allen's contention that the evidence showed only that he was on the trail "within the same two hours the girls were abducted" is incorrect (Appellant's Br. 65). The timeline is far more compressed than that. It leaves only a few minutes in which Allen theoretically could have left the platform and been replaced there by Bridge Guy in time for Bridge Guy to be seen by Blair, which is highly improbable given that Blair encountered no other man on the trail who could have been either Allen or Bridge Guy.

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platform on the bridge, and that he did not see “Bridge Guy” while he was there (App. III 119-21; Ex. XII 78-79; Supp. Ex. I 227; Supp. Ex. 110 (ch. 1 first file 16:10–16:40, 25:00–42:10) (ch. 1 second file 0:38–1:00)). Thus, Allen had placed himself on the trail and on the High Bridge platform at the same time the witnesses saw Bridge Guy there. Moreover, although he could not recall with certainty by the time he was interviewed in 2022, Allen told police that he was probably wearing blue jeans and a blue or black Carhartt jacket that day (App. III 121; Supp. Ex. 110 (ch. 1 first file 43:35–45:40, 1:15:35–1:15:45)), which was consistent with the clothing Blair saw and Bridge Guy was wearing.

This created a reasonable probability that Allen was Bridge Guy, and therefore the murderer, regardless of any discrepancies between Blair’s description of the man she saw and Allen. Blair’s description of the man was not the foundation on which Allen’s identification as Bridge Guy rested. And the affidavit did not need to remove all doubt or definitively establish that Allen was the man the witnesses saw and recognized as Bridge Guy for probable cause to exist. Probable cause is not proof beyond a reasonable doubt; it is not even proof by a preponderance of the evidence. *Gates*, 462 U.S. at 235; *United States v. Watson*, 423 U.S. 411, 431 n.4 (1976). Probable cause requires only a reasonable probability, not a *prima facie* showing, of connection to the crime. *Gates*, 462 U.S. at 235; see *Maryland v. Pringle*, 540 U.S. 366, 377 (2003) (describing probable cause as “a reasonable ground for belief of guilt”). Allen placed himself on the trail passing the girls and on the High Bridge platform at the time Blair saw a man there, and those

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witnesses identified Bridge Guy as the man they encountered—that creates a reasonable basis to believe Allen was Bridge Guy.

In this context, it is not particularly significant that Blair thought Bridge Guy looked younger than Allen's age or had longer hair than Allen. Had Allen not placed himself on the bridge at the same approximate time that Blair saw Bridge Guy there, those discrepancies between Blair's description and Allen's appearance might be significant to the existence of probable cause. Then her description of the man would be the sole foundation on which Allen's identification as Bridge Guy rested. But Allen's statement placing himself on the bridge at the right time to be the man Blair saw there by itself creates a solid foundation to reasonably believe he might be Bridge Guy regardless of any discrepancies in the description of his age or hair. After all, Blair only saw the man briefly from 50 feet away (Tr. XVII 163; Supp. Ex. 107 (8:45)). It stands to reason that her perception of his clothing might be more accurate than her perception of his age (a characteristic open to subjective interpretation) or the length of his hair. And, again, it was not necessary to eliminate all possible doubt that Allen was the man she saw for probable cause to exist, so it was immaterial if her description purportedly allowed for some doubt. *See Darring*, 101 N.E.3d at 269-70 (omission of information that police smelled odor of marijuana throughout the neighborhood and specifically along a neighbor's fence line, where they also found marijuana shake, was not material to probable cause given fact that officers also smelled marijuana odor coming from inside the defendant's house); *Ware*, 859 N.E.2d at 717-20 (omission of information that

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eyewitness identified different person as the perpetrator with 100% confidence was not misleading or material to probable cause because police investigation had sufficiently cleared that person as a suspect); *see also Stephens v. State*, No. 22A-CR-2051, slip op. at \*12-15 (Ind. Ct. App. June 26, 2023) (mem.) (omission of defendant’s denial of alcohol consumption and asserted lack of sleep as alternative explanation for crash were not material to evaluation of probable cause to believe he operated while intoxicated).

Similarly, it was Allen himself who provided probable cause to believe it was his car parked at the old CPS building between 1:30 and 3:30 p.m. because he told police that was where he had parked and that no other car was parked there (App. III 119-20; Ex. XII 79; Supp. Ex. 110 (ch. 1 first file 17:20–17:45, 19:00–20:30, 29:58–32:20, 42:10–42:40)).<sup>11</sup> This was corroborated by the Hoosier Harvestore video, which showed a car matching Allen’s Focus driving toward the CPS building at 1:27 p.m. (App. III 120; Tr. XIII 229-36; Ex. XII 84-94; Supp. Ex. 110 (ch. 1 first file 1:12:30–1:12:50); Supp. Ex. II 44-46), and was consistent with his wife’s information that they usually parked at that location when they walked the trail (Supp. Ex. I 160-61). That reasonable probability remains even if every witness who drove past gave an inconsistent description of the car they briefly saw because the pertinent question is not whether the information excludes all doubt that the

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<sup>11</sup> Although Allen called it the “old Farm Bureau building,” there was no such building in the area, and he showed police on a photograph where the building was located, which allowed them to conclude he was referring to the CPS building (Supp. Ex. 110 (ch. 1 first file 19:00–20:30)).

car was Allen's. The significance of the information from Blair and Wilson was not that they had identified the car as Allen's, nor did the affidavit misleadingly suggest that they had. Rather, the significance was two-fold: (1) between 2:10 and 2:15 p.m., the time when Bridge Guy was encountering A.W. and L.G. on High Bridge and Allen said he was parked at this location, there was no other car parked there, thereby reducing the likelihood that someone other than Allen was also on the trail at that time; and (2) the car was backed-in right next to the building, suggesting an attempt to conceal the car's presence or identity. Consideration of the omitted information does not remove probable cause.<sup>12</sup> The search warrant was valid, and the evidence was properly admitted.

## **II. The court properly admitted Allen's confessions.**

Although Allen did not preserve this issue, the trial court properly admitted confessions Allen made to his family, Dr. Wala, and correctional staff (Tr. XVI 100-02, 155-245; XVII 9-43, 87-117; XVIII 24-31; Ex. XII 226-48; XIII 6-44; Ex. 313). The confessions were voluntary, not the product of State coercion, and therefore did not violate his due process right against self-incrimination under either the Fifth and Fourteenth Amendments or Article 1, Section 14 of the Indiana Constitution.

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<sup>12</sup> To the extent Allen requests in the alternative remand to hold a *Franks* hearing (Appellant's Br. 66-67), he does not cite to authority for the proposition that such a hearing can be held post-trial while an appeal pends. He also has not identified any evidence he could present at a hearing beyond the 133 exhibits he already submitted to the trial court in support of his motion. He had a full and fair opportunity to create an evidentiary record to support his claim, and this Court has sufficient information to conclude that Allen cannot meet his burden of proof.

His other state constitutional claims are meritless. And the trial court properly excluded the IPAS settlement, which was not relevant to the voluntariness inquiry.

This issue is unpreserved. Although Allen renewed his pretrial objections to the confessions before the correctional officers and Dr. Wala testified, he did not request a continuing objection (Tr. XVI 92-94; XVII 67) or contemporaneously object to testimony about the confessions (Tr. XVI 100–XVIII 37). *See Brown*, 929 N.E.2d at 207 (absence of contemporaneous objection to admission waives issue). More importantly, he affirmatively stated he had “no objection” to the documents memorializing his confessions to correctional staff and Dr. Wala (Tr. XVI 100-01, 155-56, 169, 185, 221, 243-44; XVII 9-10, 27, 41-42, 79), and he objected only on a different basis to recordings of his confessions to family (Tr. XVIII 11-17). *See Halliburton*, 1 N.E.3d at 679 (defendant may not affirmatively “state at trial that he has no objection to the admission of evidence” and then “claim such admission to be erroneous” on appeal). And he does not argue fundamental error (Appellant’s Br. 68-86), thereby waiving that claim. *Curtis*, 948 N.E.2d at 1148. This Court should find the issue waived.

**A. Allen’s confessions were voluntary.**

Both the federal and the state constitutions prohibit the admission of involuntary confessions. *Colorado v. Connelly*, 479 U.S. 157, 163-64 (1986); *Pruitt v. State*, 834 N.E.2d 90, 114-15 (Ind. 2005). A confession is involuntary when a person’s free will has been overborne by violence, threats, promises, or other improper influences. *Schneckloth v. Bustamonte*, 412 U.S. 218, 225-26 (1973);

*Wilkes v. State*, 917 N.E.2d 675, 680 (Ind. 2009). Voluntariness is assessed under the totality of the circumstances. *Wilkes*, 917 N.E.2d at 680.

Under the federal constitution, the State must prove voluntariness by a preponderance of the evidence, and the ultimate determination of voluntariness is reviewed *de novo*, though underlying factual determinations are reviewed only for clear error. *United States v. D.F.*, 115 F.3d 413, 417-19 (7th Cir. 1997); *Pruitt*, 834 N.E.2d at 114-15. Under the state constitution, voluntariness must be proven beyond a reasonable doubt, but the trial court's determination of voluntariness is "reviewed as other sufficiency matters." *Weisheit v. State*, 26 N.E.3d 3, 18 (Ind. 2015) (citing *Wilkes*, 917 N.E.2d at 680); *Pruitt*, 834 N.E.2d at 114-15. An appellate court will not reweigh the evidence of voluntariness and views the evidence in the light most favorable to the trial court's ruling. *Pruitt*, 834 N.E.2d at 115. If there is substantial, probative evidence supporting the court's conclusion that the statement was voluntary, that conclusion will not be set aside. *Id.*; see *Wilkes*, 917 N.E.2d at 680.

**1. Coercive State action is a prerequisite to involuntariness under both constitutions.**

Coercive State action is a "necessary predicate" to a finding of involuntariness under the federal constitution. *Connelly*, 479 U.S. at 163-70. The constitution "is not concerned 'with moral and psychological pressures to confess emanating from sources other than official coercion.'" *Id.* at 170 (quoting *Oregon v. Elstad*, 470 U.S. 298, 305 (1985)); see *United States v. Guerro*, 983 F.2d 1001, 1004 (10th Cir. 1993) (stating that due process does not protect a defendant "from his

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own compulsions or internally-applied pressures which are not the product of police action”).

This remains true even when a defendant suffers from mental illness. “[A] defendant’s mental state is not enough to render a confession [involuntary] in the absence of coercive police activity.” *Smith v. State*, 689 N.E.2d 1238, 1248 (Ind. 1997); see *United States v. Newman*, 889 F.2d 88, 94 (6th Cir. 1989) (evidence of a defendant’s mental condition that “impaired his cognitive or volitional capacity is never, by itself, sufficient” to render a confession involuntary for purposes of due process); *Pruitt*, 834 N.E.2d at 115 (stating the “mere fact” that a defendant is “mentally ill” “does not render [his statement] inadmissible per se”). Even an actively psychotic or delusional defendant can give a voluntary confession. *Connelly*, 479 U.S. at 161-67; *Pettiford v. State*, 619 N.E.2d 925, 928 (Ind. 1993); see *People v. Rhodes*, 729 P.2d 982, 983-85 (Colo. 1986). A defendant’s mental condition is relevant to the voluntariness inquiry only insofar as it renders the defendant more susceptible to police coercion. *Connelly*, 479 U.S. at 165; *Pettiford*, 619 N.E.2d at 928.

Although Allen asserts coercive State action is not a prerequisite under the Indiana Constitution, he provides no analysis to support this assertion (Appellant’s Br. 80-81), and the Indiana Supreme Court has never held this. *Robbins v. State*, 235 N.E.2d 199, 201-03 (Ind. 1968), cited by Allen, contains only a generic reference to the state constitution, no separate constitutional analysis, and no suggestion that the definition of a voluntary statement under the state constitution differs from

that under the federal constitution. *Cf. Schneckloth*, 412 U.S. at 225 (defining a voluntary statement in essentially the same terms as *Robbins*). No other justice has ever adopted Justice DeBruler’s concurring opinion in *Linthicum v. State*, 511 N.E.2d 1026, 1031-32 (Ind. 1987), suggesting that police coercion might not be required under the Indiana Constitution. Neither *Robbins* nor Justice DeBruler identified the applicable constitutional provision—Section 14—or engaged in any analysis of it, and both cases involved statements made in response to police interrogation, not volunteered statements.<sup>13</sup>

State constitutional questions are resolved by examining the language of the text (the “first line of inquiry”), the history of its drafting and ratification, case law interpreting it, and the purpose and structure of our constitution. *Ajabu v. State*, 693 N.E.2d 921, 929 (Ind. 1998). As explained in Section B below, under the Indiana Constitution, the prohibition on the use of involuntary statements in criminal cases rests solely in Article 1, Section 14’s protection against self-incrimination.

Section 14 protects only against “compelled” testimony; it is a right “not to be forced to speak.” *Id.* at 929-30. And the compulsion it protects against is State compulsion. *Allredge v. State*, 156 N.E.2d 888, 893-94 (Ind. 1959) (Section 14

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<sup>13</sup> *State v. Banks*, 2 N.E.3d 71, 79-83 (Ind. Ct. App. 2014), *trans. denied*, also contains no analysis of the text, history, or purpose of Section 14 to support its ambiguous holding that coercive police activity is not a prerequisite to involuntariness. Regardless, *Banks* also involved statements made in response to police interrogation of a severely mentally ill suspect held in restraints and without proper *Miranda* warnings, which could be characterized as coercive State action.

protects against “compulsion by legal process” to give incriminating testimony); *see generally Zoeller v. Sweeney*, 19 N.E.3d 749, 753 (Ind. 2014) (explaining that Article 1’s bill of rights protects Hoosiers’ liberty “from the reaches of their state government”). Allen identifies nothing in history, text, or precedent that suggests Section 14 protects against a compulsion to confess that is independent of any State action or that it applies to volunteered statements not made in response to police interrogation or State-compelled questioning. Without coercive State action, there can be no compelled testimony under Section 14.<sup>14</sup>

## **2. Coercive State action is absent in this case.**

None of the usual hallmarks of police coercion are present in this case. Allen’s confessions were entirely volunteered statements; they were not made in response to any law enforcement interrogation. *See Wilkes*, 917 N.E.2d at 680 (factors to consider in the voluntariness inquiry include “the length, location, and continuity of the interrogation”); *cf. Ashcraft v. Tennessee*, 322 U.S. 143, 149-54 (1944) (confession made after continuous 36-hour interrogation with no sleep was involuntary). Allen was not subjected to torture, beatings, or physical abuse by law enforcement. *Cf. Brown v. Mississippi*, 297 U.S. 278, 280, 280-86 (1936) (confession made after repeated, brutal beatings was involuntary). He was not threatened with harm or offered any promises in exchange for his confessions. *Cf. Lynumn v.*

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<sup>14</sup> Even if coercive State action is not a necessary prerequisite, it is indisputably an important factor under the Indiana Constitution. *Wilkes*, 917 N.E.2d at 680-84; *Pruitt*, 834 N.E.2d 114-15. Based on the same facts discussed below, the totality of the circumstances shows Allen’s will was not overborne under Section 14.

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*Illinois*, 372 U.S. 528, 532-34 (1963) (confession made after defendant threatened with loss of her children unless she cooperated and promised leniency if she did was involuntary). And he was not held incommunicado and denied requested access to his family or legal counsel until he confessed. *Cf. Haynes v. Washington*, 373 U.S. 503, 504-15 (1963).

The alleged coercive State action in this case rests solely on the conditions of Allen's confinement in the restricted housing unit (Appellant's Br. 73-78). But the conditions of Allen's confinement did not rise to the level of coercive State action rendering his confessions involuntary. While the "conditions of an individual's confinement prior to confession may bear on [the] question of whether government conduct was coercive," the "mere fact that a defendant was held in disciplinary segregation or solitary confinement prior to making a statement" is not sufficient to constitute the requisite coercion. *United States v. Rivera*, 89 F. Supp. 3d 376, 423-24 (E.D.N.Y. 2015) (rejecting claim of involuntary confession based on conditions of solitary confinement); *see United States v. Giles*, 935 F.3d 553, 555-57 (7th Cir. 2019) (confession made after spending two years in solitary confinement was voluntary); *United States v. Kiendra*, 663 F.2d 349, 351 (1st Cir. 1981) (confession made after 30 days in solitary confinement was voluntary). Conditions of confinement rise to the level of psychological coercion or compulsion rendering statements involuntary only when they are so severe as to be "intolerable" circumstances that constitute "outrageous conduct by the authorities." *State v. McVay*, 617 P.2d 1134, 1137 (Ariz. 1980) (holding that the conditions of state prison

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“isolation cells” were not so “intolerable” as to constitute coercion); *see Miller v. Felton*, 474 U.S. 104, 109 (1985) (describing an involuntary confession as one “procured by means ‘revolting to the sense of justice’”) (quoting *Brown*, 297 U.S. at 286); *Brooks v. Florida*, 389 U.S. 413, 413-14 (1967) (per curiam) (holding conditions of confinement rendered confession involuntary when for two weeks the defendant had been held naked in a small cell with no window, no bed or other furnishings, and no facilities except a hole in the ground serving as a toilet, fed only 12 ounces of pea and carrot soup and eight ounces of water per day, and denied all contact with the outside world, conditions the Court deemed “a shocking display of barbarism”); *Donnell v. Myers*, 220 A.2d 376, 377-78 (Pa. Super. Ct. 1966) (confession involuntary when defendant held incommunicado for 11 days in cold, unlighted, windowless cell where he was kept chained to wall, fed bread and water, not allowed to bathe, and told he would remain there unless he confessed).<sup>15</sup>

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<sup>15</sup> Allen’s reliance on *Littlefield v. Deland*, 641 F.2d 729 (10th Cir. 1981), is misplaced (Appellant’s Br. 74). The mentally ill pretrial detainee in that case was held for two months in a “strip cell” with “no windows, no interior lights, no bunk, no floor covering, and no toilet except for a hole in the concrete floor”; was deprived of all clothes and given no bedding; was denied articles of personal hygiene; was given no opportunity for recreation outside his cell during the entire two months; and was not permitted to have any reading materials in his cell. *Id.* at 730. Although those conditions are several orders of magnitude worse than Allen’s conditions, the Tenth Circuit “d[id] not hold” that these conditions for a pretrial detainee were “per se unconstitutional”; rather, it held only that they could not be imposed without procedural due process. *Id.* at 731-32. On appeal, Allen has not challenged the safekeeping order or the denials of his motion to vacate it or otherwise raised any claim of procedural-due-process denial with respect to his placement in the restricted housing unit.

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Allen's confinement conditions were not outrageous or barbaric. Although small, his cell was the same size as the other restricted-housing cells and was furnished with a mattress in a bed frame, a toilet, and a sink (Tr. II 150, 187-89; IV 208-10, 241-43; XVI 95-97). It had a window to the outside; when Allen complained the window was scratched, the DOC replaced it (Tr. IV 211-12; V 22-23, 85; XVI 118). He could dim the light in his cell (Tr. IV 247; XVI 117; Ex. XII 227), and he has never claimed that the temperature in his cell was oppressively hot or cold. It is undisputed that Allen was offered regular, nutritionally sufficient food<sup>16</sup> and drink and was given all prescribed medications. He also had access to commissary (Tr. II 191; XVII 84, 238). He was provided with laundry service and clean sets of clothes every week; even when on constant suicide watch, he was provided with a suicide smock to wear (Tr. II 190, 215, 220; XVI 97; Ex. XIII 13-14). He could shower three times per week (Tr. II 190; XVI 97). Except when precluded by suicide-watch status, he received one hour of recreation time five days a week in indoor and outdoor exercise areas (Tr. II 191, 216; IV 212-13; V 81, 193; XVI 98, 124-26). He was allowed to have a Bible, other books and reading material, and crossword puzzles in his cell (Tr. V 109; XVI 238; XVII 86; Ex. XII 227; XIII 6, 9, 13-14, 51-52, 74-75). And he was offered a television for his cell but declined the offer (Tr. V 16; XVII 104).

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<sup>16</sup> Although Allen sometimes refused meals, he never refused more than four in a row because he knew that would classify him as a hunger-striker (Tr. V 198; XVII 120, 224-25).

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Allen was never held incommunicado. He was appointed legal counsel and received both in-person visits and private phone conversations with his attorneys (Tr. II 197-99; XVI 98, 127). He received at least two in-person visits with his wife, a privilege afforded no other inmate in restricted housing (Tr. II 196-98; IV 249-50; XVI 98, 130). He could receive weekly visits from a chaplain upon request (Tr. V 33; XVI 189). Allen had a tablet in his cell that he could use to make phone calls to family and others (Tr. II 192-93; V 30-31, 245-46; XVI 97-98, 127; XVII 84; Ex. XIII 51; 7/31/24 Ex. CC (phone calls)). When he broke his first tablet, he was given a second one free of charge, also a privilege afforded no other inmate (Tr. IV 248-49; XVI 97-98, 127). Allen could listen to music, watch movies, play games, and send written messages on the tablet (Tr. II 192; V 245-46; XVI 97-98, 127).

Allen also received regular medical and mental health care. He was checked regularly by medical staff, including daily checks while on suicide watch (Tr. II 194, 200; V 32; XVI 98). He also received daily checks by Dr. Wala or other mental health professionals while on constant suicide watch and weekly checks otherwise, and he was offered at least one out-of-cell session with Dr. Wala every week (Tr. II 200; V 32, 73-75; XVII 76-83, 158; Ex. XIII 6-160).<sup>17</sup>

Thus, all of Allen's basic needs were met. He was given food, clothing, shelter from the elements, access to sunlight, basic hygiene, medical care, mental health care, opportunity for exercise, opportunity for intellectual stimulation, opportunity

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<sup>17</sup> Although Allen was shackled and handcuffed while taken to and from meetings with his attorneys, his wife, and Dr. Wala, those restraints were removed during the meetings (Tr. IV 214-18; V 2; XVII 78, 170-71).

for spiritual care, contact with loved ones, and contact with his attorneys. These conditions were not so barbaric as to overcome a person's will. *See, e.g., Rivera*, 89 F. Supp. 3d at 424 (conditions of confinement not “so harsh as to be coercive” when defendant was fed, permitted to shower and exercise regularly, could make phone calls, and could receive visits); *McVay*, 617 P.2d at 1137 (conditions of confinement not coercive when defendant could shower and exercise three times per week and was fed). Moreover, except for the several ways in which he received more favorable treatment and the video-only camera in his cell, Allen's confinement conditions were identical to any inmate in restricted housing (Tr. II 150, 191, 201; IV 244-47). Under the logic of Allen's argument, then, no statements made by inmates in restricted housing, such as their jail phone calls or Mirandized interviews, could ever be admissible, but he cites to no authority—and the State is aware of none—that supports such a novel proposition. That is because the conditions of restricted housing, while undesirable, are a far cry from what is necessary to create an involuntary confession.

**3. Allen's confessions were not caused by the allegedly coercive conduct.**

For a confession to be involuntary, the coercive State action must be “causally related to the confession.” *Connelly*, 479 U.S. at 164; *id.* at 165 (emphasizing the “essential link between” the coercive State action and the “resulting confession”). Allen's argument assumes that the conditions of his confinement caused his brief period of psychosis and that his psychosis caused his confessions, but both premises are belied by the record. Moreover, the State did not attempt to deliberately exploit

Allen's confinement or mental illness to procure a confession. *See id.* at 164-65 (explaining that a defendant's mental condition is relevant to involuntariness only when the police seek to "exploit[] this weakness" through "coercive tactics").

The confinement conditions did not cause Allen's confessions. The conditions did not become more oppressive before the confessions began nor did they become more benign before Allen stopped confessing. And the State never made any threats or promises regarding those conditions predicated on his cooperation or willingness to confess. Moreover, the confessions were not coextensive with Allen's period of psychosis. He began confessing before he was psychotic, and he continued confessing after he was no longer psychotic. Allen was already confessing in early April 2023 (Tr. XVI 100-03, 157, 186; XVII 87-96; Ex. XII 226, 228-29; Ex. 313 (4/3/23 call); 7/31/24 Ex. CC (suicide companion logs)), but it was not until April 13th that Allen became "gravely disabled" and April 14th that his psychosis and manic behavior became "significant" and he was involuntarily started on an antipsychotic medication (Tr. XXI 114-24; Ex. XIII 6-10, 81, 85, 88, 91, 93-110). By May 2 and 3, 2023, Allen no longer exhibited significant symptoms of psychosis, manic behavior, or lack of impulse control<sup>18</sup> (Tr. V 199-200; XVII 100-09; XXI 124, 160; Ex. XIII 14, 19), and he never thereafter presented any significant symptoms of

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<sup>18</sup> On May 3rd, Dr. Wala added a diagnosis of "brief psychotic disorder with marked stressor(s)" to his record for his presentation "within the last month" (Tr. V 146; XVII 104-06; Ex. XIII 16). This diagnosis applies when a person exhibited one or more symptoms of psychosis (not better explained by another diagnosis) that lasted more than one day but less than one month in reaction to an event that would be markedly stressful to anyone in the circumstances (Ex. XIII 16).

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psychosis or mania (Tr. XXI 124-29; Ex. XIII 31, 35, 39, 43, 137, 141, 146, 150, 153-54, 158-59), but he continued confessing (Tr. XVI 187; XVII 16-17, 42-43, 98-115; 7/31/24 Ex. CC (5/18/23 and 2/4/24 suicide companion logs)). Allen's most detailed confessions to Dr. Wala occurred on April 5 and May 3 (Tr. XVII 87-90, 106-07), before and after his psychosis.<sup>19</sup> His desire to confess was not correlated to either a change in his confinement conditions or the onset of psychosis.

Moreover, the record provides a reason why Allen began confessing in early April 2023 that has nothing to do with the conditions of confinement or their impact on his mental health. First, Allen experienced a markedly stressful event around the beginning of April. He received his legal discovery at the end of March/beginning of April, and he had a meeting with his attorneys on April 3, 2023 (Tr. V 186-88; XVI 135; XVII 124-25, 161; Ex. XIII 6-8, 72-73). His behavior began to change and worsen immediately after these two events (Tr. V 186-88; XVI 99; XVII 124-25, 161, 212; Ex. XIII 6-8, 72-73). The discovery materials forced Allen to face the horrifying evidence of what he did to A.W. and L.G.—images and events he had been able to ignore and repress over the five years in which his guilt had gone undiscovered. He was also confronted by the realization that the State had sufficient evidence for a jury to convict him and that he was likely going to spend

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<sup>19</sup> Even if this Court finds the confessions made during the period of psychosis between April 13 and May 1 to be involuntary, they were merely cumulative of the numerous admitted confessions made outside that period (Tr. XVI 100-02, 155-86, 187, 221-45; XVII 16-17, 28, 41-43, 87-117; XVIII 26-31), and the erroneous admission of cumulative evidence is harmless. *Boner v. State*, 243 N.E.3d 354, 362 (Ind. Ct. App. 2024).

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the rest of his life in prison. And he had to confront the realization that his family would be seeing these graphic images of what he had done (Tr. V 239; 7/31/24 Ex. CC (4/3/23 suicide companion log)). These realizations would be stressful regardless of whether one was already in pretrial detention, the conditions of that detention, or one's mental health.

Second, after spending time in Bible study, Allen said he found Jesus and accepted God into his heart on March 21, 2023 (Tr. V 188-90, 234-35; XVII 90-93; XVIII 27; Ex. XIII 6-7; Ex. 313 (4/2/23 call)). He became preoccupied with religious matters and increasingly concerned about whether he would be reunited with his family in heaven and whether they would still love him if he had committed these crimes (Tr. V 234-38; XVII 92; Ex. XII 227; XIII 7). Acknowledgment and repentance of sin is an important teaching in the Christian faith. A new convert's fresh concern with the status of his soul and the will of his God would lead to a desire to confess his sins, particularly when the conversion happened in close proximity to the inescapable confrontation with the sin through the legal discovery. It is at least as plausible, if not more so, that the combined effect of his religious conversion and his receipt of discovery with its concomitant realities to be faced is what caused his confessions, not the conditions of his confinement or his mental health.

In addition to undermining any causal connection between the conditions of confinement and the confessions, the record also shows the State did not seek to exploit Allen's mental status to induce a confession. The purpose of his placement

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was not exploitive. Allen was validly transferred to the DOC as a safekeeper (App. II 116-18), *see* Ind. Code § 35-33-11-1, and placed in a restricted housing cell out of concern for his own safety, both from other inmates and from himself.<sup>20</sup> This placement gave him significantly greater access to mental health professionals to help his pre-existing depression and anxiety problems than he would have had in the county jail (Tr. II 163). The State sought to offset the problems of social isolation by providing Allen with access to mental health professionals and a chaplain, regular exercise, regular contact with family, reading material, movies, music, and an offered television. In addition to Allen's access to legal counsel, Dr. Wala advised him that he should not talk about his case with anyone other than his attorneys and assured him that he did not have to talk about the case to receive mental health help from her (Tr. V 177-78; XVII 121-23; Ex. XIII 50). The State made no attempt to interrogate Allen after his mental health began declining. When he became psychotic, the State did not ignore that condition while he continued to confess, but instead promptly initiated antipsychotic medication to restore Allen to his baseline mental health (Ex. XIII 94, 104-10).

Viewed as a sufficiency matter, the evidence supporting the trial court's ruling proves voluntariness beyond a reasonable doubt under the Indiana

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<sup>20</sup> Because he was a safekeeper, he was not subject to DOC's policy regarding placement length in restrictive housing (Tr. V 130-31). And had he remained in the county jail, he still would have lived in a similar cell with constant video surveillance and minimal interaction with other inmates during comparable recreation time, but with no in-person visits with family or legal counsel (Tr. II 160-64).

Constitution. Even reviewed *de novo*, the preponderance of the evidence proves voluntariness under the federal constitution.

**B. Allen’s other state constitutional challenges are meritless.**

The admission of Allen’s confessions did not violate the “due course of law” provision in Article 1, Section 12 (Appellant’s Br. 81-82). Criminal defendants do not have any general due process rights under Section 12; the “due course of law” provision of Section 12 applies only to civil cases. *Church v. State*, 180 N.E.3d 580, 592-93 (Ind. 2022); *Harris v. State*, 165 N.E.3d 91, 98 n.1 (Ind. 2021). Due process in criminal cases is protected only through the specific rights guaranteed by other provisions of Article 1. *Church*, 180 N.E.3d at 593. Thus, under the state constitution, the use of involuntary confessions is prohibited only through the Section 14 privilege against self-incrimination.

Allen has waived his claim under Article 1, Section 15 because he raises it for the first time on appeal (Appellant’s Br. 82-83). In his motion to suppress and at the pretrial hearing, Allen alleged violations only under Sections 12, 13, and 14 of the Indiana Constitution; he did not allege a violation under Section 15 (App. VII 190-91; Tr. IV 186-87). At trial, he merely incorporated his arguments from the pretrial hearing (Tr. XVI 92-94). Constitutional claims raised for the first time on appeal are waived, *In re N.G.*, 51 N.E.3d 1167, 1173 (Ind. 2016), and appellate consideration in the first instance is particularly inappropriate when the constitutional claim is “dependent on potentially disputed facts.” *Layman v. State*,

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42 N.E.3d 972, 975-76 (Ind. 2015); *see Ajabu*, 693 N.E.2d at 928 n.5 (declining to address Section 15 claim raised for first time on appeal).

Regardless, our Supreme Court has “specifically declined to interpret Article 1, Section 15 as prohibiting anything more than physical abuse.”<sup>21</sup> *Kelly v. State*, 257 N.E.3d 782, 802 (Ind. 2025) (declining to reconsider this interpretation); *see Ratliff v. Cohn*, 693 N.E.2d 520, 541 (Ind. 1998) (recognizing that Section 15 violations are limited to “torture” and beatings of prisoners). Section 15 “is not a catch-all provision applicable to every adverse condition accompanying confinement.” *Kelly*, 257 N.E.3d at 802 (quoting *McQueen v. State*, 711 N.E.2d 503, 505 (Ind. 1999)). Allen has not contended, either in the trial court or on appeal, that he was subjected to physical torture or beatings by correctional staff. His complaints about the conditions of his confinement do not present a viable Section 15 claim. *See id.*; *see Moore v. State*, 771 N.E.2d 46, 55 (Ind. 2002) (refusing to extend Section 15 to claims of “emotional abuse” inflicted by incarceration);

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<sup>21</sup> Allen erroneously cites *Helton v. Miller*, 14 Ind. 577, 585 (1860) for the proposition that the Indiana Supreme Court has held that Section 15 applies to solitary confinement (Appellant’s Br. 82). First, the language Allen quotes on page 585 is not part of the opinion of the Court. *See id.* at 582 (pronouncing the judgment of the Court, ending the opinion). The quoted language is from the brief of Mr. Crawford, the attorney for the appellants, which follows the opinion in the reporter. *See id.* (“Mr. Crawford submitted the following argument.”); *see also id.* at 589 (“The brief for the appellee is lost.”). At that time, the Court sometimes appended verbatim recitations of the parties’ arguments to the end of its opinions. *See, e.g., McQuigg v. McQuigg*, 13 Ind. 294, 296-317 (1859). Second, the Court’s opinion does not address or even mention Article 1, Section 15, nor does the issue decided in the case have anything to do with the constitutionality of solitary confinement. *Helton*, 14 Ind. at 577-82 (deciding whether the “statutory law of this state” allowed convicts in the state penitentiary to be sent outside the prison walls to work).

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*McQueen*, 711 N.E.2d at 505 (extended pretrial incarceration does not implicate Section 15); *Ratliff*, 693 N.E.2d at 541 (incarcerating 14-year-old juvenile in adult women’s prison did not violate Section 15).

### **C. Harmless error**

Even if all the confessions were involuntary, their admission into evidence is harmless. The erroneous admission of an involuntary confession is subject to harmless error review. *Arizona v. Fulminante*, 499 U.S. 279, 285, 295, 308-12 (1991). Constitutional errors must be harmless beyond a reasonable doubt, meaning that they “did not contribute to the verdict.” *Hall v. State*, 36 N.E.3d 459, 467-68 (Ind. 2015).

The timeline/eyewitness evidence, including Allen’s initial statements to police, alone creates an overwhelming certainty that Allen was Bridge Guy (and thus the murderer). Allen admitted he parked near the Freedom Bridge entrance and began walking the trail about 1:30 p.m., which was corroborated by the surveillance video capturing a car matching the appearance of his Focus driving toward the Freedom Bridge entrance at 1:27 p.m. (Tr. XIII 153-56, 180-82, 229-36; XIV 22; Ex. XII 77-81, 84-94; Ex. 290 (15:45–25:30, 34:00–40:10)). He admitted he was likely wearing a dark Carhartt jacket with a hood, blue jeans, either tennis shoes or work boots, and had a hat with him (Tr. XIII 241; Ex. 290 (43:35–45:15, 1:15:05–1:15:20, 1:23:32–1:14:20)), which matched the clothing worn by Bridge Guy (Exs. 200, 246). Allen identified himself as the man who walked past the Wilber/Voorhies group on the trail around 1:30 p.m. (Tr. XII 120-24, 137-38, 147-51;

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Tr. XIII 238-42; Ex. XII 77-81; Ex. 290 (25:00–25:30, 42:20–42:30)). Wilber and Voorhies both immediately recognized the picture of Bridge Guy as the man who had walked past them (Tr. XII 125-26, 138, 149-50; Ex. XI 110). Allen also admitted that when he reached High Bridge, he walked out to the first platform and stayed there for a few minutes (Tr. XIII 238; XIV 23; Ex. 290 (14:30–16:40, 32:25–33:20, 1:18:45–1:22:45)). Blair entered the trail at the Mears entrance at or just after 1:46 p.m. and when she reached High Bridge, she saw a man on the platform, whom she immediately recognized as Bridge Guy (Tr. 156-64, 168-69; Ex. XI 110). Neither Blair, Wilber, nor Voorhies saw anyone else on the trail who could have been Bridge Guy (or Allen), and Allen acknowledged seeing no one else who could have been Bridge Guy (Tr. XII 137-38, 154, 164; XIV 22; Ex. 290 (25:34–25:36, 40:30–41:45, 1:18:38–1:18:43)). As she walked back toward the entrance, Blair passed A.W. and L.G. on their way to High Bridge, and by 2:13 p.m., the man Blair, Wilber, and Voorhies saw—the man Allen had effectively identified himself as being—was following A.W. and L.G. across High Bridge and ordering them “down the hill” while armed with a gun (Tr. XII 159-60; Exs. 200, 207, 246).

By 2:32 p.m., L.G.’s phone had stopped moving, and by 3:11 p.m., L.G. was not answering the phone when her father called, and she and A.W. had failed to meet him when he arrived to pick them up (Tr. X 84-88; XIII 65, 71; XXI 33-35; Ex. XII 47-76). Shortly before 4:00 p.m., Carbaugh saw a man she recognized as Bridge Guy walking westbound on CR 300 North, *i.e.*, toward where Allen had admitted he had parked his car (Tr. XII 190-94, 201; Ex. XII 5-6, 79; Ex. 290 (19:00–20:30,

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30:20–30:35)). His clothes were covered in mud and fresh blood spatter (Tr. XII 191-94, 211-14, 219; Ex. XII 7). Given Allen’s admissions placing him on the trail and on the High Bridge platform at the right times to be the man seen by Blair, Wilber, and Voorhies, their certainty that the man they saw was Bridge Guy, the absence of anyone else on the trail who could have been Allen or Bridge Guy, and the tight timeline this combined evidence created in connection to the abduction and murders, the only reasonable conclusion to be drawn was that Allen was Bridge Guy, the person who murdered A.W. and L.G.

Other evidence corroborated this conclusion. Most significantly, the unfired Winchester .40 caliber cartridge found by the girls’ bodies was forensically matched as having been cycled through Allen’s .40 caliber handgun (Tr. XI 139-41, 199-200; XIV 89, 145-50, 161-85, 192-94; Ex. X 183-85, 209-12; XII 114-17, 133-81; Ex. 291 (10:45)). Allen had an identical unfired cartridge—the only piece of Winchester ammunition found in his house—in a keepsake box (Tr. XIV 72-74, 89-91; Ex. XII 119-23). Allen had no possible innocent explanation for how a cartridge that had been in his gun could have ended up at the murder scene (Ex. 291). Bridge Guy had a gun and used it to compel A.W. and L.G. to go down the hill (Tr. XIV 17-19; XVII 107; Ex. XIII 18; Exs. 240, 246). An ISP trooper who had listened to over 700 of Allen’s phone calls opined that it was Allen’s voice heard on the video saying “down the hill” (Tr. XVIII 48; Exs. 200, 207, 246). Although Allen had 12 old cell phones in his bedroom closet, he did not have the cell phone he had told police he had with him on the trail in 2017 (Tr. XIII 121-22, 182, 204; XIV 98; Ex. XII 105-06), creating

a reasonable inference that he destroyed the phone because he knew it contained evidence of his guilt.

Allen also displayed consciousness of guilt by lying to police. Although he originally told police he was at the trail from 1:30 to 3:30 p.m. (and the testimony of Wilber and Voorhies proves that he was arriving at the trail, not leaving it, at 1:30 p.m.), when the police re-interviewed him in October 2022, Allen claimed he was at the trail much earlier, from 12:00 p.m. to 1:00–1:30 p.m. (Ex. XII 77-80; Ex. 290), showing he understood the damning implication of the initial timeline he had admitted. While police executed the search warrant at his house, Allen said multiple times, “it’s over” (Tr. XIV 105-06). In the face of this powerful evidence of guilt, the jury did not need to rely on the confessions at all to return its verdicts.

**D. The order and settlement agreement from an unrelated lawsuit against the DOC was properly excluded.**

Just as the ultimate ruling at a pretrial suppression hearing is no longer at issue following a completed trial, *Sloan*, 224 N.E.3d at 367, so also are subsidiary evidentiary rulings made during the course of the pretrial suppression hearing. The available issue now is the evidentiary rulings made during the trial, but Allen challenges only the exclusion of the IPAS order/settlement agreement at the suppression hearing (Appellant’s Br. 71). He cites no authority to support the contention that this is a live issue for appellate review, and he makes no cogent argument addressed to the IPAS ruling at the trial (Appellant’s Br. 71-72). This Court should find the issue moot or waived.

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Regardless, at both the suppression hearing and at the trial, Allen was allowed to elicit evidence regarding DOC's policy limiting offenders with SMI to 30 days in restricted housing, the reason for that policy (the detrimental effect to mental health caused by social isolation), the undisputed facts that Allen had diagnosed mental health conditions upon entry to the DOC and met the definition of SMI in April 2023, and that he remained in restricted housing for approximately 13 months (Tr. IV 92-93; V 89-94, 117-21, 128-34, 171-74, 195-96; IX 175-77; XVII 126-31, 150-52, 156-57, 162-63, 189-90; XVIII 195-206, 209-11; XXI 102, 107, 114-24, 137-38, 140-42; Ex. II 116-19, 130; VII 25-49). He was also permitted to present expert evidence regarding his mental health and the impact of social isolation on mental health (Tr. XVII 204-05; XIX 199-26; XX 148-56, 160; XXI 107, 138). The only thing excluded was the court order and settlement agreement from an unrelated civil lawsuit that was the original genesis of the DOC policy (Tr. V 134-49; IX 170-77; XVIII 206-07, 213-15; Ex. VI 153-216).

Thus, Allen was able to introduce the evidence relevant to his voluntariness challenge. Current DOC policy in effect during Allen's pretrial incarceration was relevant and was not excluded; a settlement agreement from an earlier, unrelated civil lawsuit, which appeared to have expired before Allen's arrest (App. X 194; Tr. IX 171; Ex. VI 214), was not relevant. And any minimal probative value it might have possessed was outweighed by the dangers of unfair prejudice and confusion of the issues. *See* Ind. Evidence Rules 401, 403. Allen acknowledged there were a "lot of things in the IPAS settlement ... that don't have anything to do with this

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particular case” (Tr. IX 173), and that he wanted to use the IPAS documents to attack the DOC’s history of treating mentally ill offenders (Tr. IX 175-76). This criminal trial was not the proper forum to litigate a civil rights challenge to the way mentally ill individuals are treated in the DOC. The DOC was not on trial here, and the court properly refused to allow Allen to attempt to confuse the issue the jury was to decide.

Finally, any error was harmless. Ind. Appellate Rule 66(A). Given the nature of the evidence Allen was allowed to present and the lack of any coercive State action, the Court can be confident that the IPAS lawsuit documents would have made no difference to either the trial court’s ruling that the confessions were voluntary or to the jury’s evaluation of the weight to give those confessions.

**III.**  
**The trial court made proper evidentiary rulings.**

The trial court’s evidentiary rulings were correct and did not deprive Allen of his right to present a defense. Trial judges are better at making evidentiary calls than appellate judges; therefore, trial courts are given “wide deference” in this area. *Snow v. State*, 77 N.E.3d 173, 177 (Ind. 2017). In “many cases,” a court could “admit *or* exclude evidence, and [an appellate court] won’t meddle with that decision on appeal.” *Id.* Evidentiary rulings are reviewed only for a “manifest abuse of discretion.” *Fugett v. State*, 812 N.E.2d 846, 848 (Ind. Ct. App. 2004). An erroneous evidentiary ruling is harmless if, given all the evidence in the case, the error’s probable impact does not undermine confidence in the outcome. *Hayko v. State*, 211 N.E.3d 483, 492 (Ind. 2023). Federal constitutional errors must be harmless beyond

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a reasonable doubt, meaning that they “did not contribute to the verdict.” *Hall*, 36 N.E.3d at 467-68.

The constitutional right to present a defense “is not absolute.” *Crossland v. State*, 256 N.E.3d 517, 528 (Ind. 2025). Defendants must comply with well-established rules of evidence “to assure both fairness and reliability in the ascertainment of guilt and innocence.” *Id.* (quoting *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973)). The right to present a defense trumps an evidentiary rule only when the rule is “arbitrary” or “disproportionate to the purposes [it is] designed to serve.” *Holmes v. South Carolina*, 547 U.S. 319, 324-25 (2006). Evidence Rule 403 and hearsay rules do not unconstitutionally limit the right to present a defense. *Id.* at 326-27; *Crossland*, 256 N.E.3d at 528.

**A. The trial court properly excluded inadmissible evidence.**

**1. The investigatory sketch of Bridge Guy**

Allen has waived this issue. The trial court granted the State’s motion in limine to exclude the police sketch drawn from Blair’s description of the man she saw on the bridge (App. X 191-93, 211-15; XI 10; Tr. IX 109-54, 210; Supp. Ex. I 144). Rulings on motions in limine do not preserve errors for appeal. *Swaynie v. State*, 762 N.E.2d 112, 113 (Ind. 2002). Allen did not attempt to introduce Blair’s sketch at trial (Tr. IX 147; XII 155-72; XX 131-39), so he has waived this issue.

Waiver notwithstanding, Blair’s police sketch was inadmissible. Allen sought to admit Blair’s sketch as substantive evidence that Blair did *not* see Allen

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on the bridge (App. X 211-15).<sup>22</sup> But the sketch was not relevant for this purpose because, as the trial court noted and Allen concedes, Blair did not make an eyewitness identification of Allen as the man on the bridge (Tr. IX 150; Appellant's Br. 88). Blair identified Bridge Guy as the man she saw on the platform of the bridge; she did not identify Allen as Bridge Guy (Tr. XII 158-64; Ex. XI 110). *See* Evid. R. 401. Allen's identification as Bridge Guy came from Allen identifying himself as the man Wilber and Voorhies saw (and identified as Bridge Guy) and placing himself on the platform at the right time to be the man Blair saw there (Tr. XII 120-26, 147-50; XIII 180; Ex. XII 80-81; Ex. 290).

Further, any slight probative value was substantially outweighed by the danger of unfair prejudice and confusion. *See* Evid. R. 403. It was undisputed that composite sketches are used as an investigatory tool to generate leads and are not used to identify or exclude a suspect (Tr. IX 126-29, 147-48). Blair's sketch was an artist's interpretation of her description of Bridge Guy, and it was impossible to remove artist bias (App. X 191-93; Tr. IX 129-30).<sup>23</sup> The danger of unfair prejudice was two-fold: 1) the jury could misuse the unreliable sketch as substantive evidence; and 2) the jury could misuse the sketch to exclude Allen when Blair had not

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<sup>22</sup> Allen's additional arguments, that Blair's sketch would impeach Carbaugh's identification or show bias in the investigation (Appellant's Br. 89), are waived because he did not make those arguments below (App. X 211-15; Tr. IX 146-47). *See Washington*, 808 N.E.2d at 625.

<sup>23</sup> Allen did not offer any foundation from Blair's sketch artist for admission of this sketch.

purported to identify Allen (Tr. IX 111-41). Allen's use of the sketch would have misled and confused the jury.

The sketch was also inadmissible hearsay (Tr. IX 147-48).<sup>24</sup> Evidence Rule 801(d)(1)(C) allows a prior statement of identification because these statements are believed to be reliable.<sup>25</sup> *Robinson v. State*, 682 N.E.2d 806, 811 (Ind. Ct. App. 1997). Blair's sketch was not a prior identification of Allen, so he could not use it as substantive evidence that she did not identify him. *See Blount v. State*, 22 N.E.3d 559, 565 (Ind. 2014). The rule is a means of positive identification shortly after perceiving the person; it would not apply to a prior identification of a different person.

Allen's new claim that the sketch was impeachment evidence is waived (Appellant's Br. 89); he did not offer it for that reason or attempt to impeach Blair with it (Tr. XII 164-69). Moreover, it would have been cumulative. On cross-examination, Blair testified that she had described the man she saw as a young, boyish man in his 20's or 30's, of average height, with brown "poofy" hair and no visible facial hair or hat (Tr. XII 165-69). The jury could compare this description with Bridge Guy and with Allen (Ex. XI 110; Ex. 200, 246). Allen makes no

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<sup>24</sup> Allen's arguments on appeal that the sketch was admissible because it was not a "statement" under the hearsay rule and that it was an adoptive admission by the Indiana State Police are waived because he did not raise these arguments for admission below (Appellant's Br. 90) (App. X 211-15; Tr. IX 147, 149-50). *See Washington*, 808 N.E.2d at 625.

<sup>25</sup> Allen's reliance on *Rowe v. State*, 314 N.E.2d 745 (Ind. 1974), is misplaced. There, the sketch was admitted to impeach the identifying witness's identification of the defendant. *Id.* at 749. Here, Blair did not identify Allen, so there was no identification of the defendant to impeach.

persuasive argument that the sketch would have been any more impeaching than Blair's description of the person. *See Weedman v. State*, 21 N.E.3d 873, 891 (Ind. Ct. App. 2014) (exclusion of cumulative evidence is harmless error), *trans. denied*. And, as argued in Section B below, any error was harmless due to the overwhelming evidence of guilt.

## **2. Tobin's testimony**

Tobin's testimony was inadmissible because it was not relevant to an issue before the jury. Tool mark identification has at least two subdisciplines: metallurgy and firearms identification (Tr. IX 180-81). ISP forensic firearms examiner Melissa Oberg testified that she used the Association of Firearm and Tool Mark Examiners' (AFTE) toolmark identification methodology and opined that there were three different toolmark areas of significant agreement to show that the cartridge at the scene had been cycled through Allen's Sig Sauer Model P226 .40 caliber handgun (Tr. XIV 117-250; XV 2-64; Ex. XII 127-32). Defense expert Eric Warren, also a forensic firearms examiner who uses the AFTE methodology, testified that he reviewed Oberg's report, did not agree with her process of comparing a cycled cartridge with a fired cartridge, and found insufficient documentation to support her opinion (Tr. XX 163-234; Ex. XV 70-75). This was the battle of the experts.

Allen also proffered William Tobin, an expert in metallurgy (App. X 108-10, 163-66; Tr. IX 177-98; Ex. IX 231-39). Tobin is an open critic of the AFTE and all firearms identification methodology; he believes the discipline is unreliable and should not be admitted in court (Tr. IX 177-80, 184-93; Ex. X 70-110). The trial

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court properly excluded this testimony because it was not relevant to an issue before the jury (App. X 238). *See* Evid. R. 401. Tobin's proffered testimony went to the reliability and admissibility of the firearms identification evidence (App. X 163-66). *See, e.g., Abruquah v. State*, 296 A.3d 961, 983 (Md. 2023) (noting Tobin's testimony discrediting the reliability of firearms identification generally and the AFTE Theory specifically in a *Frye* hearing). The trial court, not the jury, determines whether expert scientific testimony is admissible under Evidence Rule 702(b) because the scientific principles upon which it rests are reliable. *See Turner v. State*, 953 N.E.2d 1039, 1050 (Ind. 2011). Allen never offered Tobin's testimony to exclude the firearms evidence as based on unreliable scientific principles under Rule 702(b) (App. III 96-102; Tr. XIV 172).

Because the trial court found the firearms identification evidence admissible, it was for the jury to determine the credibility of Oberg and Warren and assign weight to the evidence (App. II 35). *See* Evid. R. 702(a). Tobin's proffered testimony was not relevant to credibility. Tobin is not trained in forensic firearms identification, does not do firearms examinations, and did not examine the evidence (Tr. IX 177-80; Ex. IX 231-39). *See Prewitt v. State*, 819 N.E.2d 393, 410 (Ind. Ct. App. 2004) (stating that an expert in one field of expertise cannot offer opinions in other fields absent a showing of competency in the other area), *trans. denied*. Tobin was not qualified to offer testimony against the weight or credibility of the forensic identification evidence. *See Turner*, 953 N.E.2d at 1053.

Allen's claim that Tobin's testimony was offered to impeach Oberg's credibility is incorrect (Appellant's Br. 93-94). Allen offered Tobin's criticism to discredit the accepted, established methodology under the AFTE (App. X 163-66; Tr. IX 180-95). This criticism had nothing to do with Oberg's work specifically and her credibility as an expert. Moreover, Allen extensively cross-examined Oberg, and he offered Warren's expert testimony to counter Oberg's opinion (Tr. XIV 195-50; XV 2-45; XX 163-95; Appellant's Br. 94). Both Oberg and Warren acknowledged the criticism and ongoing debate in the firearms identification field by the President's Council on the Advancement of Science and Technology and the National Academy of Sciences (Tr. XIV 214-20; XX 168-69). Thus, much of Tobin's proffered testimony criticizing firearms identification evidence was presented to the jury. For this reason, and due to the overwhelming evidence of guilt discussed in Section B below, any error in the exclusion of Tobin's testimony was harmless.

### **3. Audio of Allen's movement videos in DOC**

Allen presented 15 videos of his movement within the DOC during April through June 2023, to show how the environmental conditions affected his mental health, which impacted the credibility of his confessions (Tr. XVIII 237-45; XIX 2-11, 159-70, 176-79; Exs. DDD, EEE). The trial court sustained the State's hearsay objection to the audio of Allen's statements, so the jury saw Allen but did not hear what he said during those movement periods outside his cell (Tr. XVIII 241-44; XIX

11; Ex. DDD).<sup>26</sup> Only the video, not the audio, was relevant to present his environmental conditions. Allen’s sole argument on appeal is that his statements were not hearsay under Evidence Rule 801(c) because the statements showed his state of mind (Appellant’s Br. 98). But Allen’s statements do not facially pertain to his state of mind (Ex. DDD), and Allen’s attempt to use them for that purpose shows that he was offering them for their truth. He wanted the jury to accept the substance of his statements as true reflections of the contents of his mind (Appellant’s Br. 97).

A defendant who does not testify during trial “cannot introduce exculpatory statements made outside of court in order to enhance his credibility” because the statements are self-serving, generally untrustworthy, and not subject to cross-examination. *Sweeney v. State*, 704 N.E.2d 86, 110 (Ind. 1998). Allen also makes no argument to show the admissibility of others’ statements in the videos, although he clearly relies on those statements for the truth as well (Appellant’s Br. 98-99).

Further, Allen had adequate other means to impeach Dr. Wala’s testimony, including cross-examination and his own expert witnesses (Appellant’s Br. 98). But it would not impeach Dr. Wala’s testimony about Allen’s presentation on a particular day with videos of him on different days, even if audio was presented to the jury, because psychosis is fluid (Appellant’s Br. 98; Tr. XVII 223-24; XX 10-11; XXI 138, 166; Ex. DDD). This evidence was thus unlikely to have an impeaching

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<sup>26</sup> The exhibit itself has audio, but Allen muted the sound when it was published (Tr. XIX 2).

effect. The jury was able to view Allen's environmental conditions and his behavior in the movement videos, from April 5th to June 20th, 2023, in light of his expert witnesses' testimony of his psychosis and delirium (XIX 162-69, 176-78, 185-250; XX 2-11, 145-62).

Any error in the exclusion of the audio was harmless as explained in Section B below.

#### **4. Allen's other two phone calls on April 3, 2023**

The State presented one jail call by Allen on April 3, 2023, at 5:14 a.m., over Allen's objection that two other phone calls that day, at 3:12 a.m. and 8:45 a.m., also had to be admitted under Evidence Rule 106, the doctrine of completeness (Tr. XVIII 11-19, 25-31, 79-83; Ex. 313). The trial court's ruling that each call, in full, met the doctrine of completeness was correct (Tr. XVIII 17). Allen cites to no authority showing otherwise (Appellant's Br. 99-100). App. R. 46(A)(8)(a); *Miller*, 212 N.E.3d at 657 (failure to make cogent argument supported by citation to authority waives issue).

The doctrine of completeness does not mean that once the State presents one full statement by a defendant, the defendant is entitled to put in any other statements he made at different times. *See Hawkins v. State*, 884 N.E.2d 939, 948 (Ind. Ct. App. 2008) (rejecting defendant's Rule 106 argument that because the State had presented some entire jail phone calls made by the defendant, she was entitled to present other jail phone calls she had made), *trans. denied; Lieberenz v. State*, 717 N.E.2d 1242, 1246-47 (Ind. Ct. App. 1999) (holding State's presentation of

one police interview did not entitle the defendant to present another statement he made to police), *trans. denied*. “Evidence Rule 106 is limited by ‘fairness,’” and where distinct conversations are involved, “[f]airness [does] not require that the trial court allow admission of otherwise inadmissible hearsay.” *Hawkins*, 884 N.E.2d at 948.

Regardless, any error was harmless as explained in Section B below.

**5. Dr. Grassian’s testimony that Allen’s confessions were false**

Dr. Grassian testified to the effects of solitary confinement, the symptoms of delirium, and that he saw Allen exhibit symptoms consistent with delirium and false memories (Tr. XX 148-49, 152-56). The trial court sustained the State’s objection to Dr. Grassian’s testimony that Allen’s confessions were false (Tr. XX 146-48).<sup>27</sup> The trial court ruled: 1) the witness could not testify to whether Allen’s statements were consistent with the facts of the case because the witness did not know the facts; and 2) it was for the jury to decide if Allen’s confessions were false (Tr. XX 146-48).

None of the three bases Allen argues for admission were offered below, so he has waived these arguments (Appellant’s Br. 100-01; Tr. XX 146-48). *See Washington*, 808 N.E.2d at 625. The only basis offered below was that Dr. Grassian knew the facts because he had “reviewed all kinds of stuff” (Tr. XX 147), but this

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<sup>27</sup> If Allen wished to elicit anything more from Dr. Grassian than his opinion that Allen made false confessions, he failed to make an offer of proof regarding any such additional testimony and has waived the claim (Tr. XX 146-56). *Dylak v. State*, 850 N.E.2d 401, 407-08 (Ind. Ct. App. 2006) (failure to make offer of proof regarding excluded expert testimony waived issue), *trans. denied*.

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would be an insufficient foundation for an opinion. Further, Evidence Rule 704(b) provides that “[w]itnesses may not testify to opinions concerning intent, guilt, or innocence in a criminal case; the truth or falsity of allegations; whether a witness has testified truthfully; or legal conclusions.” Allen sought to present testimony from Dr. Grassian that Allen’s statements in his confessions were false, which was impermissible under the rule. *See Kincaid v. State*, 171 N.E.3d 1036, 1039-41 (Ind. Ct. App. 2021) (expert may testify generally about false confessions but may not testify as to the truth or falsity of the defendant’s confession), *trans. denied*; *Shelby v. State*, 986 N.E.2d 345, 368-70 (Ind. Ct. App. 2013) (same), *trans. denied*.

Dr. Grassian testified that Allen’s behavior and statements were consistent with delirium, so he was not denied an opportunity to present this evidence (Tr. XX 152-55). Allen’s combination of the three alleged errors—all of which centered on the admission of his own statements—to claim a systemic violation of due process is unpersuasive (Appellant’s Br. 101). Allen fully and completely described the environmental, physical, and mental health conditions leading up to his confessions, as well as expert testimony on both the effects of Allen’s confinement and his mental health. But neither Allen nor the State could present opinion evidence that Allen’s confessions were true or false. That is not an unconstitutional infringement on the right to present a defense.

As discussed in Section B below, any error was also harmless.

**6. Perlmutter’s testimony that the murders were ritualistic**

The trial court properly excluded Perlmutter’s testimony opining this was a ritual killing (Tr. VI 62-126), proffered in support of Allen’s theory that this was a ritual killing committed by Odinists.<sup>28</sup> Expert opinion testimony is admissible only when it “will help the trier of fact.” Ind. Evidence Rule 702. Rule 702 is restricted by Evidence Rule 403, which permits the exclusion of evidence that will confuse the issues or mislead the jury. *Buzzard v. State*, 669 N.E.2d 996, 999 (Ind. Ct. App. 1996). Third-party-motive evidence must establish more than a speculative connection to the crime to be admissible. *Pelley v. State*, 901 N.E.2d 494, 505-06 (Ind. 2009); *McIntyre v. State*, 717 N.E.2d 114, 123-24 (Ind. 1999); see *Ruiz v. State*, 926 N.E.2d 532, 535-37 (Ind. Ct. App. 2010) (exclusion of expert at bench trial was harmless because his proffered testimony was speculative).

Perlmutter’s opinion that this was a ritual killing—an opinion she reached before seeing any evidence in the case (Tr. VI 121-22; 3/18/24 Ex. U (26:10–27:00))—was too speculative to be admissible as third-party-motive evidence. It was a motive in search of a suspect; as discussed Subsection 7 below, no evidence connected any Odinist to the murders or placed them at the crime scene. See *Pelley*, 901 N.E.2d at 505-06 (evidence theorizing alternative motive for crimes that was unmoored from any identified third-party suspect connected to the crimes was properly excluded). It was a speculative motive. There is no history of ritual human sacrifice in Odinism (Ex. IV 213-14, 240; Supp. Ex. II 208), and according to

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<sup>28</sup> Perlmutter is not an expert on Odinism (Tr. VI 69).

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an Odinist, the sacrifice of children would be contrary to the principles of the religion (Tr. VI 142-50). Even Perlmutter acknowledged that, apart from this case, she had knowledge of only one other Odinist ritual killing—and that case remained an open investigation, with no confirmation of a perpetrator or a motive (Tr. VI 105), which means she actually could not identify any other example of an Odinist ritual killing. Perlmutter also acknowledged that outdoor killings committed with a knife are not necessarily ritual killings (Tr. VI 103). *See McIntyre*, 717 N.E.2d at 123-24 (excluding alternate-motive evidence that was “speculative”).

And it was a motive based on inaccuracies with respect to the alleged symbolism at the crime scene. There was no “F” in blood on the tree; that was a misapprehension caused by the reddish tints in the tree bark (Tr. VII 41-42; XVI 65; Ex. IV 34). When a chemical was applied that turned the blood white, it was apparent there was no second horizontal line necessary to form an “F” (Tr. VII 41-42; XI 58-59; XVI 65; Ex. V 2; X 162). The blood formed only an upside-down “L” (Tr. VII 41-42; XVI 29-31; Ex. V 2; X 162), and neither Perlmutter nor Allen have ever contended that an upside-down “L” is a rune or Odinist symbol. *Cf.* Ex. V 2 *with* Ex. IV 231-34 (depicting runic alphabets). The blood patterns on the bodies and on the ground were inconsistent with the bodies having been hung upside-down (Tr. VII 39-66; XVI 27-50, 55-56, 63-64; Ex. X 200-29), as Odin is typically depicted (Supp. Ex. I 44-45). The sticks on the bodies were “fundamentally ambiguous” (Ex. IV 176). Professor Turco found it equally plausible they were not attempted runes at all (Ex. IV 167, 176-79, 210) and could offer only “conjecture” as to their meaning

if it was assumed *arguendo* that they were intended to be runes, as the arrangement of the sticks “d[id] not in any obvious way spell a word” (Ex. IV 188-89, 211-12, 225). As seen in the crime scene photographs, the sticks were “much less suggestive” of runes than in the police sketch he was initially shown (Ex. IV 193-95). With respect to the sticks on L.G., even Perlmutter could say only that she believed they had “specific meaning to the offender”; she could not identify any rune or symbol they purportedly formed (Tr. VI 87, 118).<sup>29</sup> The FBI’s Behavioral Analysis Unit was “unable to verify or find support for” the theory this was an Odinist killing, determining that neither the blood on the tree nor the sticks on the bodies “clearly depict, capture, or present known aspects of Odinism or its symbology” (Ex. IV 241).

Particularly in the absence of any evidence placing any Odinist at the crime scene or directly connecting one to the crime, the trial court acted well within its discretion in declining to admit evidence of a speculative alternative motive that would have confused the issues, turning the trial into a sideshow debate over disputed claims of Odinic symbology, and distracted the jury from the issue before it, namely whether the evidence proved Allen committed these murders. That is especially true because motive was not a basis through which the State purported to

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<sup>29</sup> Contrary to Allen’s representation (Appellant’s Br. 104), Perlmutter testified that the sticks on A.W. (not the sticks on L.G.) were the “bind rune,” which she theorized combined a “gebo” rune and an “isa” rune based on a Facebook posting and picture by Brad Holder (Tr. VI 84-86; Ex. VII 77-78). Perlmutter’s ritual-killing opinion was inextricably intertwined with her assessment of things depicted on Holder’s social media (Tr. IV 82-89; 3/18/24 Ex. U (26:10–27:00)), but, as shown below, Holder was definitively cleared as a suspect.

identify Allen as the perpetrator (Tr. XXI 179-97, 225-28). Because motive was not a significant factor in the proof of guilt, the probative value of evidence of an alternative motive was correspondingly low and easily outweighed by the dangers of confusing the issues and misleading the jury. *See Holmes*, 547 U.S. at 326-28 (requiring proffered third-party evidence to survive Evidence Rule 403's balancing analysis does not violate the constitutional right to present a defense).

As discussed in Section B below, any error was harmless.

### **7. Evidence of two third-party suspects**

The trial court properly excluded Allen's proffered alternate-suspect evidence pertaining to Brad Holder and Patrick Westfall.<sup>30</sup> Allen was permitted to present evidence challenging the quality of the police investigation and their long-term suspicion that more than one individual had been involved in the crime (Tr. XIX 77-95, 128-32). But the court excluded his specific third-party-suspect evidence because Allen failed to establish any nexus between those individuals and the crimes (App. X 60-61; Tr. XIX 143; XX 119-20; XXI 170-73).

To be admissible, evidence must be relevant: it must tend to make a fact of consequence more or less probable than it would otherwise be. Evid. R. 401.

“Evidence which tends to show that someone else committed the crime logically

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<sup>30</sup> Below, Allen asserted that several other individuals acted in concert with Holder and Westfall to commit a ritual killing (App. III 247-50; IV 2-49; Supp. Ex. I 62-73, 96-113; Supp. Exs. 54, 92-93, 100-02); he never claimed below that Holder and Westfall had acted alone. On appeal, he has abandoned any claim that evidence pertaining to those other individuals should have been admitted (Appellant's Br. 107-11).

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makes it less probable that the defendant committed the crime, and thus meets the definition of relevance in Rule 401.” *Joyner v. State*, 678 N.E.2d 386, 389 (Ind. 1997). Relevant evidence may be excluded if its probative value is outweighed by unfair prejudice, confusion of issues, or the potential to mislead the jury, Evid. R. 403, or by its failure to satisfy any other evidence rule, Ind. Evidence Rule 402. Third-party-suspect evidence is excludable under Rule 403 unless the defendant shows “some connection between the third party and the crime.” *Pelley*, 901 N.E.2d at 505 (referring to this as a “widely-accepted principle”) (citing *Holmes*, 547 U.S. at 327); see *McIntyre*, 717 N.E.2d at 123-24 (upholding exclusion of alternate-suspect evidence because it was “speculative” and “inadmissible as hearsay”); *Tibbs v. State*, 59 N.E.3d 1005, 1013 (Ind. Ct. App. 2016) (evidence that “failed to establish any direct, material connection between” the third party and the murder properly excluded).

The police investigated Holder and Westfall and never found any evidence connecting them (or any other alleged Odinist conspirator) to the murders or placing them at the High Bridge trail that afternoon (Tr. IV 9-23, 121-22, 160-64; VI 173-77, 191-96, 233-37; Ex. II 40-42; III 35-39; Supp. Ex. III 82). And Allen’s proffered evidence—amounting largely to evidence that they were adherents of Odinism and that sticks placed on the girls’ bodies were purportedly in configurations similar to “runes” on Holder’s social media (Appellant’s Br. 108-11)—falls far short of creating a non-speculative connection to the crime.

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Holder had a confirmed alibi that made it impossible for him to have kidnapped or murdered the girls shortly after 2:00 p.m. on February 13, 2017.<sup>31</sup> “[O]pportunity is the one logically *essential* type” of evidence “a defendant must produce in order to have any chance” of admitting third-party-suspect evidence. David McCord, *“But Perry Mason Made it Look so Easy!”: The Admissibility of Evidence Offered by a Criminal Defendant to Suggest that Someone Else is Guilty*, 63 Tenn. L. Rev. 917, 940 (1996) (explaining that if the crime “occurred in Miami” and evidence “demonstrably” showed the alternate suspect was “in Seattle at the time,” evidence regarding that suspect could not make it less likely the defendant was the perpetrator); *see Lush v. State*, 783 N.E.2d 1191, 1195 (Ind. Ct. App. 2003) (third-party-suspect evidence properly excluded because third party had no opportunity to commit crime). When he was interviewed by police on February 17, 2017, Holder said he was at work on February 13 and then went to his gym in Logansport, where he lived (Ex. II 61). Holder worked at a landfill in Buffalo, Indiana (Ex. III 223-24).<sup>32</sup> His work records confirmed that he was at work on February 13th from 4:55 a.m. to 2:45 p.m. (Ex. III 40-41). And his gym record showed that he checked in there at 4:08 p.m. on February 13th (Ex. III 42).

The operations clerk for the landfill—the only person who could make changes to the electronic time records—confirmed that she had not changed

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<sup>31</sup> Holder’s son, who had been “talking” to A.W., also had a confirmed alibi: he was in school in Logansport that day (Supp. Ex. II 156; Supp. Ex. III 109).

<sup>32</sup> Buffalo is located 25 miles from Delphi. It takes 30-35 minutes to drive from Buffalo to the High Bridge area of Delphi (Tr. IV 161).

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Holder's record (Ex. II 84; IV 6), and she confirmed that it would not be possible for him to be absent while his time card showed he was present (Ex. III 209-34; IV 2-13). Only a small number of people worked each shift, and it would be immediately noticed if someone was absent or left early, or if a stranger was there (Ex. III 179-81, 219-22; IV 2-3). The equipment ran continuously, and if one person ceased working, it would affect the entire operation (Ex. III 232; IV 2-3). Specialized training was needed to operate the equipment, further precluding the possibility that Holder could have sent someone to take his place at work that day (Ex. III 179-81; IV 7-13). Because Holder could not have committed the crimes, no evidence about his Odinism or his social media could have any tendency to decrease the probability that Allen committed the crimes. *See Moore v. State*, No. 22A-CR-3027, slip op. at 10-13 (Ind. Ct. App. 2023) (mem.) (hearsay evidence of third-party confession properly excluded because third party had established alibi).

Without Holder, the theorized connection to Westfall necessarily fails. It was a central tenant of Allen's ritual-killing theory that the crimes were not committed by one person (App. III 220, 226-37); he never contended below that Westfall committed the crimes by himself. Westfall's alibi—that he was with his son that afternoon—was corroborated by his son (Ex. III 35-37). Holder's ex-wife's statements that Holder said Westfall murdered A.W. or was involved in the murders (Tr. VI 141-43)—statements Holder denied making (Ex. III 116-17, 119-21)—were inadmissible hearsay. Evid. R. 801, 802. Apart from that, Allen points to nothing other than the fact that Westfall was an Odinist (Appellant's Br. 108-11).

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At best, this is weak, speculative motive evidence predicated on a speculative and inaccurate reading of the crime scene. *See McCord, supra*, at 952-59 (surveying caselaw to conclude that weak motive evidence, without more, does not support admitting third-party-suspect evidence).

This speculative theorizing, lacking any admissible evidence directly connecting either man to the crimes, does not rise to the level of admissible third-party evidence. *See Pelley*, 901 N.E.2d at 504-06 (evidence about victim's connection to money-laundering bank in Florida and hearsay statements about limousine with Florida license plate seen in area properly excluded as "too speculative"); *Smith v. State*, 754 N.E.2d 502, 504-05 (Ind. 2001) (victim's threats to third parties, proffered as third-party-motive evidence, properly excluded); *Cook v. State*, 734 N.E.2d 563, 567-68 (Ind. 2000) (victim's prior work as confidential informant, proffered as evidence of third-party motive, properly excluded as "mere speculation"); *McIntyre*, 717 N.E.2d at 123 (witness statements about suspicious cars in neighborhood and hearsay threats against victims properly excluded as too "speculative"); *McGaha v. State*, 926 N.E.2d 1050, 1053-55 (Ind. Ct. App. 2010) (evidence about victim's drug dealer "Sam" properly excluded in absence of any evidence connecting "Sam" to the murder), *trans. denied*. *Cf. Joyner*, 678 N.E.2d at 389-90 (when forensic evidence connected third party to scene and excluded defendant, it was error to exclude evidence that third party worked with and was having affair with victim, was with victim on night of murder, was late to work next day, and falsified time card to hide tardiness).

As discussed in Section B below, any error was harmless.

**B. Harmless error**

Any of these alleged errors, individually or collectively, is harmless given the powerful independent evidence of guilt. The timeline and eyewitness evidence, including Allen's initial statements to police, creates an overwhelming certainty that Allen was Bridge Guy (and thus the murderer). Allen admitted he parked near the Freedom Bridge entrance and began walking the trail about 1:30 p.m., which was corroborated by the surveillance video capturing a car matching the appearance of his Focus driving toward the Freedom Bridge entrance at 1:27 p.m. (Tr. XIII 153-56, 180-82, 229-36; XIV 22; Ex. XII 77-81, 84-94; Ex. 290 (15:45-25:30, 34:00-40:10)). He admitted he was wearing a dark Carhartt jacket with a hood, blue jeans, either tennis shoes or work boots, and had a hat with him (Tr. XIII 241; Ex. 290 (43:35-45:15, 1:15:05-1:15:20, 1:23:32-1:14:20)), which matched the clothing worn by Bridge Guy (Exs. 246). Allen identified himself as the man who walked past the Wilber/Voorhies group on the trail around 1:30 p.m. (Tr. XII 120-24, 137-38, 147-51; Tr. XIII 238-42; Ex. XII 77-81; Ex. 290 (25:00-25:30, 42:20-42:30)). Wilber and Voorhies both immediately recognized the picture of Bridge Guy as the man who had walked past them (Tr. XII 125-26, 138, 149-50; Ex. XI 110). Allen also admitted that when he reached High Bridge, he walked out to the first platform and stayed there for a few minutes (Tr. XIII 238; XIV 23; Ex. 290 (14:30-16:40, 32:25-33:20, 1:18:45-1:22:45)). Blair entered the trail at the Mears entrance at or just after 1:46 p.m. and when she reached High Bridge, she saw a man on the

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platform, who she immediately recognized as Bridge Guy (Tr. XVII 156-64, 168-69; Ex. XI 110). Neither Blair, Wilber, nor Voorhies saw anyone else on the trail who could have been Bridge Guy (or Allen), and Allen acknowledged seeing no one else who could have been Bridge Guy (Tr. XII 137-38, 154, 164; XIV 22; Ex. 290 (25:34–25:36, 40:30–41:45, 1:18:38–1:18:43)). As she walked back toward the entrance, Blair passed A.W. and L.G. on their way to High Bridge, and by 2:13 p.m., the man Blair, Wilber, and Voorhies saw—the man Allen had effectively identified himself as being—was following A.W. and L.G. across High Bridge and ordering them “down the hill” (Tr. XII 159-60; Exs. 200, 207, 246).

By 2:32 p.m., L.G.’s phone had stopped moving, and by 3:11 p.m., L.G. was not answering the phone when her father called, and she and A.W. had failed to meet him when he arrived to pick them up (Tr. X 84-88; XIII 65, 71; XXI 33-35; Ex. XII 47-76). Shortly before 4:00 p.m., Carbaugh saw a man she recognized as Bridge Guy walking westbound on CR 300 North, *i.e.*, toward where Allen had admitted he had parked his car (Tr. XII 190-94, 201; Ex. XII 5-6, 79; Ex. 290 (19:00–20:30, 30:20–30:35)). His clothes were covered in mud and fresh blood spatter (Tr. XII 191-94, 211-14, 219; Ex. XII 7). Given Allen’s admissions placing him on the trail and on the High Bridge platform at the right times to be the man seen by Blair, Wilber, and Voorhies, their certainty that the man they saw was Bridge Guy, the absence of anyone else on the trail who could have been Allen or Bridge Guy, and the tight timeline this combined evidence created in connection to the abduction

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and murders, the only reasonable conclusion to be drawn was that Allen was Bridge Guy, the person who murdered A.W. and L.G.

Other evidence corroborated this conclusion. The .40 caliber cartridge found by the girls' bodies was forensically matched as having been cycled through Allen's .40 caliber handgun (Tr. XI 139-41, 199-200; XIV 89, 145-50, 161-85, 192-94; Ex. X 183-85, 209-12; XII 114-17, 133-81; Ex. 291 (10:45)). Allen had an identical unfired cartridge—the only piece of Winchester ammunition found in his house—in a keepsake box (Tr. XIV 72-74, 89-91; Ex. XII 119-23). Allen had no possible innocent explanation for how a cartridge that had been in his gun could have ended up at the murder scene (Ex. 291). Bridge Guy had a gun and used it to compel A.W. and L.G. to go down the hill (Tr. XIV 17-19; XVII 107; Ex. XIII 18; Exs. 200, 246). An ISP trooper who had listened to over 700 of Allen's phone calls opined that it was Allen's voice heard on the video saying "down the hill" (Tr. XVIII 48; Ex. 200, 207, 246). Although Allen had 12 old cell phones in his bedroom closet, he did not have the cell phone he had told police he had with him on the trail in 2017 (Tr. XIII 121-22, 182, 204; XIV 98; Ex. XII 105-06), creating a reasonable inference that he destroyed the phone because he knew it contained evidence of his guilt.

Allen also displayed consciousness of guilt by lying to police. Although he originally told police he was at the trail from 1:30 to 3:30 p.m. (and the testimony of Wilber and Voorhies proves that he was arriving at the trail, not leaving it, at 1:30 p.m.), when the police re-interviewed him in October 2022, Allen claimed he was at the trail much earlier, from 12:00 p.m. to 1:00–1:30 p.m. (Ex. XII 77-80; Ex. 290),

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showing he understood the damning implication of the initial timeline he had admitted. While police executed the search warrant at his house, Allen said multiple times, “it’s over” (Tr. XIV 105-06).

Allen confessed to killing A.W. and L.G. multiple times (Tr. XVI 100-02, 155-87, 221-22, 245; XVII 2-3, 11-12, 27, 43, 88-96, 107-16; Ex. XII 226-27, 230, 237, 245, 247-48; XIII 6-10, 18, 34-43; Ex. 313). He explained that he was frightened by a van driving past, causing him to abort the intended rapes and kill the girls, a detail only the killer would know that was corroborated by Weber’s testimony that he arrived home from work in his van shortly after the time the girls were forced down the hill (Tr. XVII 37-50, 68, 84, 106-07, 245-46; XVIII 46-47, 109; XX 88-98, 107-09; Ex. XIII 18, 168). The evidence of guilt was conclusive and irrefutable.

Moreover, as has been referenced throughout, Allen subjected the State’s case to adversarial testing by presenting evidence of: inconsistencies between eyewitness descriptions of Bridge Guy and Allen’s appearance and between eyewitness descriptions of the car parked at the CPS building and Allen’s Focus; expert testimony challenging the validity of the ballistics match; the length of time Allen was held in restrictive housing, DOC policy on restrictive housing and its effects on mental health, expert and lay testimony regarding Allen’s mental health at the time of the confessions, and video evidence of Allen’s behaviors around the time of the confessions; and evidence that L.G.’s phone data showed a headphone connection in the audio output during the evening of the 13th that was not explained by the State’s theory of the crimes. If those attacks failed to cause even one juror to have

reasonable doubt, then this Court can be confident that none of the comparatively insignificant pieces of excluded evidence complained about here would have made any difference to the verdict either.

**C. Admission of a possible explanation for a cell phone code was harmless.**

The admission of the Google search was, at most, harmless. Defense witness Stacy Eldridge opined that between 5:45 p.m. and 10:32 p.m., L.G.'s cell phone registered a code in the "knowledgeC" database of an "audio output start," which indicated that headphones or an aux cable was plugged into the phone (Tr. XXI 21-27; Ex. TTT). She opined that this event required human interaction (Tr. XXI 26, 37, 44), which Allen offered to suggest that someone else committed the murders because Carbaugh saw him leave the scene by 4:00 p.m. (Appellant's Br. 95).

There was water and debris on the phone when it was found (Tr. XI 209-10; Ex. X 230). To Eldridge's knowledge, water would not affect the plug-in data (Tr. XXI 49). The State's two cell phone experts (Christopher Cecil and Brian Bunner) testified that they did not know what "audio output start" meant (Tr. XXI 53-55, 60). On cross-examination, the State asked Cecil if he had done a Google search to determine if water damage could cause the audio output code (Tr. XXI 55). Allen unsuccessfully objected on hearsay grounds (Tr. XXI 55-56). Cecil testified that he found, through that search, that water damage or dirt within the headphone plug-in could cause the phone to register an audio output (Tr. XXI 56). Cecil acknowledged that he does not normally do Google research and that information on the internet can be wrong (Tr. XXI 56-58).

This information was proffered as an alternate theory of the cause of the audio output code (Tr. XXI 3; Ex. TTT). But neither of the theories made it more or less probable that Allen committed the murders. As argued above, Allen's identity was proven through eyewitness testimony, Allen's statements to police, the cartridge from his gun found between the bodies, and his confessions. The health app data showed the phone did not move after 2:32 p.m. (Tr. XIII 65-66, 71; XXI 32-34), defeating any suggestion that the phone was returned to the crime scene after 10:30 p.m. (which, in any event, would not preclude Allen being the perpetrator). And any suggestion that another person was present at the murder scene at 5:45 p.m. and 10:32 p.m.—during the height of the search for the girls—inserting/unplugging headphones from the phone was implausible. This evidence had no bearing on the verdicts and was harmless error.

#### IV.

##### **The trial court properly denied Allen's motion to correct error.**

The trial court properly denied Allen's motion to correct error because the State did not knowingly present false testimony through Weber in violation of *Napue v. Illinois*, 360 U.S. 264 (1959) (App. XI 204-09, 233-39; XII 12-16, 40-41, 98). A conviction obtained through the use of evidence that the State knows is false and does not attempt to correct violates a defendant's Fourteenth Amendment due process rights. *Napue*, 350 U.S. at 269; *Smith v. State*, 34 N.E.3d 1211, 1219 (Ind. 2015). To make a claim under *Napue*, the defendant must establish that: there was false testimony, the government knew or should have known it was false, and there

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is a reasonable likelihood that the false testimony affected the judgment of the factfinder. *United States v. Freeman*, 650 F.3d 673, 678 (7th Cir. 2011).

Allen failed to show that the State presented false testimony through Weber. Allen's argument is predicated on surveillance video he claims shows Weber's van arriving home at 2:44 p.m. (Supp. Ex. 3A). But Allen did not present any verification that the date and time stamp on that video was accurate (App. XII 12-16). It is common for time stamps on surveillance videos to be inaccurate by minutes or hours; for example, the Hoosier Harvestore surveillance video was 54 minutes fast (Tr. XII 176). Allen admitted that the camera's timestamp was inaccurate as it showed bright daylight when the timestamp indicated the middle of the night (App. XII 13; Supp. Ex. 3A). There is no basis to assume, as Allen does in his argument, that the only inaccuracy was a precise 12-hour difference or that it was 12 hours slow rather than fast. Absent verification of date and time, and absent proof that the vehicle on the video is Weber's van, Allen cannot show that Weber's testimony that he drove straight home in his white van after clocking out of work at 2:02 p.m. was demonstrably false (Tr. XVII 246-47; Ex. XIII 168-70). Allen also offered no foundation to support the "ping" evidence in the FBI report (App. XI 240; XII 15). Without any evidence as to whether or when Weber had his cell phone turned on, the absence of a "ping" earlier does not prove he was not home earlier. Allen did not show that Weber's testimony was demonstrably false in support of his *Napue* claim.

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Allen's claim also fails on the third step of the *Napue* claim. In this step, reviewing courts will consider whether the defendant had an adequate opportunity to expose the false testimony on cross-examination. *Freeman*, 650 F.3d at 678, 681. The State had disclosed the surveillance video from Weber's neighbor and the FBI "ping" report to the defense prior to trial (App. XI 205 (Ex. 3E); XII 15, 40-41; Supp. Ex. 3A). Despite having the surveillance video at trial, Allen never asked Weber to identify his van on that video to expose his allegedly false testimony or even to impeach him (Tr. XVII 250; XVIII 2; XX 87-106, 110). This was presumptively a matter of trial strategy. *See Davis-Martin v. State*, 116 N.E.3d 1178, 1191 (Ind. Ct. App. 2019) (finding no *Napue* violation when the defense had the police report and chose not to ask the witness about it), *trans. denied*.

The crux of Allen's claim is that if Weber's testimony was false about his time of arrival home, then Allen's May 3, 2023 confession to Dr. Wala was not credible (Appellant's Br. 103). This premise fails for two reasons. First, Weber did not testify to an exact time of arrival home (Tr. XVII 244-50; XVIII 2; XIX 114; XX 109). So Allen's evidence would not have shown that Weber's testimony was false, only at most "inconsistent" with the murder timeline (Appellant's Br. 103). Second, the credibility of Allen's confessions was challenged with a plethora of expert evidence (Tr. XVII 73-250; XVIII 2-116, 186-226; XIX 185-250; XX 2-11; XXI 96-166). The jury had ample evidence to evaluate not only Weber's credibility but the credibility of Allen's confessions. Allen was not denied due process. *See Steury v. State*, 243 N.E.3d 1108, 1117 (Ind. Ct. App. 2024) (finding no violation of due process when the

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jury was able to evaluate the witness's testimony in light of inconsistencies and effectively act as a fact-finder), *trans. denied*. This Court should affirm the denial of Allen's motion to correct error.

### CONCLUSION

This Court should affirm the trial court's judgment.

Respectfully submitted,

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### **CERTIFICATE OF WORD COUNT**

I verify that this Brief, including footnotes, contains no more than 24,000 words, as authorized by the Court’s January 16, 2026, order, according to the word count function of the Microsoft Word word-processing program used to prepare this brief.

/s/ Ellen H. Meilaender  
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### **CERTIFICATE OF SERVICE**

I certify that on March 25, 2026, the foregoing document was electronically filed using the Indiana E-filing System (“IEFS”) and that on the same date the foregoing document also was served upon opposing counsel, via IEFS, addressed as follows:

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