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COUNTY OF CARROLL    )  
  
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RICHARD ALLEN            )

IN THE CARROLL CIRCUIT COURT  
CAUSE NO. 08C01-2210-MR-000001

**BRIEF IN RESPONSE TO PROSECUTION’S MOTION IN  
LIMINE REGARDING COMPOSITE SKETCHES**

Comes now the accused, Richard Allen, by counsel, and for his response to the prosecution’s Motion in Limine Regarding Sketches, states as follows:

1. The prosecution argues that composite sketches are inadmissible due to the fact that they were intended as an “investigative tool to generate leads to identify a suspect and in fact these sketches were not related to the identification as a suspect; therefore, the sketches would not be relevant under Ind. R. Evid. 401”. *State’s Motion in Limine Regarding Composite Sketches, p. 1.*
2. At the hearing, the prosecution argued that the composite sketches of the suspect are not relevant because they are infused with subjectivity both by the forensic artist and the witness.
3. The fact that there may be subjective input in a sketch does not make the sketch irrelevant; rather said subjectivity should go to the weight given it by the jury and not to issues regarding admissibility.
4. Evidence is relevant when it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Ind. Evid. Rule 401; *Joyner v. State*, 678 N.E.2d 386, 389 (Ind. 1997).

5. The composite sketches in this matter are images of individuals the witnesses saw on the bridge prior to the victim's disappearance and on C.R. 300 N. after the murders.
6. To the extent that the sketches do not resemble Richard Allen, they are highly relevant.
7. Evidence which tends to show that someone else committed the crime logically makes it less probable that the defendant committed the crime, and thus meets the definition of relevance in Rule 401. *Joyner v. State*, 678 N.E.2d 386, 389 (Ind. 1997).
8. The prosecution argues that the composite sketches are inadmissible because they are "investigative tools"; however, this does not make the sketches irrelevant and inadmissible. Investigative reports by police and other law enforcement personnel are admissible under Ind. R. Evid. 803(8) when offered by the accused in a criminal case. *Wisehart v. State*, 693 N.E.2d 23, 34, f.n. 7 (Ind. 1998).
9. Since 1974, the Indiana Supreme Court has held that composite sketches do not violate the hearsay rule when the witness and officer creating the sketch testify and are available for cross examination. *Rowe v. State*, 314 N.E.2d 745, 749 (Ind. 1974).
10. While *Rowe* was decided prior to the codification of the Indiana Rules of Evidence, the *Rowe* Court relied on the reason for hearsay rule, stating that "the principle reasons for the exclusion of hearsay evidence are that the out-of-court declarant was not under oath, not subject to confrontation by the trier-of-fact, and most importantly, not subject to cross examination by the accused." *Id.*
11. The purpose behind the hearsay rule did not change and was not modified upon the codification of the Indiana Rules of Evidence.

12. Since the Indiana Rules of Evidence were codified, courts continue to acknowledge that the fundamental purpose of the hearsay rule is to preserve the right to cross examine the declarant. *Powell v. State*, 714 N.E.2d 624 (Ind. 1999).
13. To the extent the prosecution is arguing that, due to the subjective nature of the sketches, there is some blanket rule that composite sketches are not relevant because they are investigative reports, this is simply untrue. Indeed, composite sketches have long been admitted in criminal cases in Indiana. *Rowe*, 314 N.E.2d at 749; *Johnson v. State*, 472 N.E.2d 892, 909 (Ind. 1985); *Kucki v. State*, 483 N.E.2d 788 (Ind. Ct. App. 1985); *Gregory-Bey v. Hanks*, 332 F.3d 1036, 1045 (7<sup>th</sup> Circ. Ct. App. 2003); *U.S. v. Farmer*, 2024 WL 2372780 (U.S.D.C, N.D. Ind. 2024).
14. Former Special Agent Plantz also admitted that the Standards and Guidelines for Forensic Art and Facial Identification promulgated by the International Association for Identification contain the best practices for forensic artists.
15. Former Special Agent Plantz further testified that it is the best practice that “the witness may be instructed that his signature will be the feature that allows him to **identify the image in court**, if necessary.” (emphasis added”). There would be no reason for a witness to sign a sketch in order to identify it in court if composite sketches are subjective, investigative tools to generate leads and not to identify suspects.
16. The prosecution further argues that the “witnesses who assisted in the preparation of composite sketches of the Bridge Guy would testify that they did not see the person depicted in their sketch for a sufficient length of time to allow them to positively identify the defendant. This argument fails as the state offered no evidence at the

- hearing as to the amount of time any witnesses who assisted in the creation of composite sketches viewed the suspect.
17. The prosecution further argues that if the composite sketches are relevant, the probative value is substantially outweighed by the unfair prejudice, confusing the issues and misleading the jury, and therefore should be excluded under Ind. R. Evid. 403.
  18. At the hearing, the prosecution argued that composite sketches are inadmissible in that, because they are renderings used in the investigation process for recognition and not identification of a suspect. However, if a sketch is used to recognize a suspect, and that sketch does not resemble the accused, this is highly relevant and implicates Mr. Allen's right to confront and cross examine witnesses under the 5<sup>th</sup> Amendment of the United States Constitution and Article 1, Section 13(a) of the Indiana Constitution to meet every witness against him face to face.
  19. Former Special Agent Plantz testified that witnesses often provide a rating for the sketch on a scale of 1 to 10, with 1 not resembling the suspect and 10 being an exact replica of the suspect.
  20. While it is conceivable that a sketch that was produced and to which a witness applied a low score to the sketch could be misleading and confusing, a sketch with a high score that highly resembles a suspect would not be confusing or misleading. Furthermore, any confusion could easily be dealt with on direct or cross examination.
  21. The prosecution concedes that these sketches were used for recognition of leads in the investigatory stage of this matter. The sketches were widely disseminated across the state for years. Richard Allen has the right under the 5<sup>th</sup> Amendment of the United

States Constitution and Article 1, Section 13 (a) of the Indiana Constitution to meet the proponents of the sketches and to cross examine them as to the identifying characteristics of the sketches.

WHEREFORE, the accused, Richard Allen, by counsel, respectfully requests the Court deny the State's Motion in Limine Regarding Composite Sketches, and for all other just and proper relief in the premises.

Respectfully Submitted,

/s/ Jennifer Auger  
Jennifer Auger, #21684-41

**CERTIFICATE OF SERVICE & COMPLIANCE**

I hereby certify that the foregoing document complies with the requirements of Trial Rule 5(G) with regard to information excluded from public record by administrative rule 9(G). I further certify that a copy of the foregoing has been provided to the following by IEFS and e-mail on October 17, 2024: Nicholas McLeland; Stacey Diener; James David Luttrull; Bradley Rozzi; Andrew Baldwin.

/s/ Jennifer Auger  
Jennifer Auger

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