

STATE OF INDIANA)	IN THE MORGAN COUNTY SUPERIOR COURT
)SS:	
COUNTY OF MORGAN)	CAUSE NO. 55-D02-0604-MR-87
)	
STATE OF INDIANA,)	
)	
Plaintiff,)	
)	
vs.)	
)	
JOHN R. MYERS, II,)	
)	
Defendant.)	

FILED
 SEP 25 2006
 MORGAN SUPERIOR COURT 2

DEFENDANT’S MOTION TO FILE BELATED NOTICE OF ALIBI

Comes now Defendant, John R. Myers, II, by counsel, Patrick V. Baker, and files Defendant’s Motion to File Belated Notice of Alibi. In support of this motion, the Defendant asserts the following:

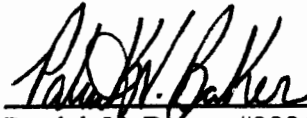
1. That the Defendant, John R. Myers, II was charged in this matter on or about April 11, 2006.
2. That Defense counsel received a copy of the Grand Jury Transcript on or about May 3, 2006. That the Grand Jury Transcript is 6185 pages and defense counsel continued in an extensive review of such testimony, as well as other voluminous discovery materials, up to the time of the taking of depositions.
3. That on June 29, 2006, six witnesses were deposed, on July 6, 2006, three witnesses were deposed, on July 7, 2006, one witness was deposed, on July 14, 2006, two witnesses were deposed, on August 11, 2006, four witnesses were deposed, on September 13, 2006, two witnesses were deposed and on September 15, 2006, four witnesses were deposed.

4. On August 11, 2006, defense counsel took the deposition of _____ and her testimony prompted further inquiry concerning telephone records to which she testified.
5. After _____ deposition was taken, defense counsel and the Prosecutor had discussions regarding acquiring of relevant telephone records.
6. On August 30, 2006, defense counsel and prosecutor corresponded through e-mail concerning requests for telephone records.
7. That on August 30, 2006, defense counsel sent Third Party Request to Smithville Telephone Company for the telephone records of John R. Myers, II, and on August 31, 2006, defense counsel sent Third Party Request to Centurytel of Tennessee for the telephone records of _____
8. On September 20, 2006, defense counsel received a fax copy of John R. Myers, II telephone records from Smithville Telephone Company. On September 22, 2006, defense counsel's paralegal drove to Smithville and picked up the certified copies of the telephone records of John R. Myers, II.
9. Defendant was unable to file his Notice of Alibi in a timely fashion because of the facts listed above in paragraphs 1 through 8.
10. The State will not be prejudiced if the Court allows the Defendant to file his Notice of Alibi attached hereto as Exhibit A. The State has spent thousands of hours, at huge expense to the public, investigating this case, including the whereabouts of the Defendant at the relevant times on May 31, 2000.
11. It can be presumed that the State has investigated these telephone records of the _____

Defendant, and has either intentionally withheld them from defense counsel, or failed to provide them through gross negligence. Such conduct violates the Court's sweeping Discovery Order.

WHEREFORE, Defendant, by counsel, Patrick V. Baker, prays this Court to Order that the Defendant may immediately file his Notice of Alibi, and for all other relief just and proper in the premises.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Patrick V. Baker", written over a horizontal line.

Patrick V. Baker, #22266-49
Attorney for Defendant

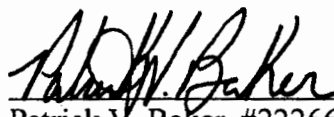
BAKER PITTMAN & PAGE
Patrick V. Baker
333 East Ohio Street, Ste. 200
Indianapolis, IN 46204

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the following by

United States First-Class Mail, postage prepaid, this 25th day of September 2006:

Steven Sonnega
Morgan County Prosecutor
Courthouse
10 E. Washington Street
Martinsville, IN 46151



Patrick V. Baker, #22266-49

BAKER PITTMAN & PAGE
Patrick V. Baker
333 East Ohio Street, Ste. 200
Indianapolis, IN 46204