

OBJECTION AND RESPONSE TO STATE'S MOTION TO COMPEL

Comes now the Defendant, by counsel, and respectfully responds to the State's Motion to Compel.

1. On September 28, 2011, the State of Indiana filed a Motion to Compel asking for the Court to order the Defendant to disclose any defense(s) that he plans on asserting at any hearing or at trial pursuant to Marion County Local Rule 49-CR00-107(3)(a)(1).
2. The Court ordered the Defendant to file any response on or before October 7, 2011.
3. Under Indiana Code, Defendant is required to provide notice of certain defenses: effects of battery, Ind. Code 35-41-3-11; insanity, Ind. Code 35-36-2-1; and alibi, Ind. Code 35-36-4-1. Defendant has not provided notice for any of these defenses. Should Defendant intend to utilize one of the aforementioned defenses, Defendant will comply with the statute(s) and provide notice to the State.
4. The State of Indiana has filed charges against Defendant. The Defendant has entered a plea of Not Guilty to the charges. The State of Indiana has the burden of proving those charges beyond a reasonable doubt. The Defendant has an absolute right under the Fifth Amendment to the United States Constitution and Article 1, Sections 13 and 14 of the Indiana Constitution to remain silent at all stages of the proceedings.
5. The Defendant is not required to present any defense at all, and has the right to make the decision of whether to present or not present a defense until after the State of Indiana has rested. To require disclosure of defenses and/or theories of defense prior to trial would unduly shift the burden of proving Defendant guilty from the State to the Defendant and create an impermissible standard of requiring Defendant to commit to a

defense before the State's presentation of evidence. This would violate the Due Process provisions of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article 1, Sections 12 and 13 of the Indiana Constitution.

6. Furthermore, Defendant's theory of defense is protected work product. Marion County Local Rule 49-CR00-107(4)(c)(1) does not require the disclosure of work product. The State "is never entitled to the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of the party concerning the litigation..." Such material, often called opinion work product, is entitled to absolute protection from discovery." *Penn. Cent. Corp. v. Buchanan*, 712 N.E.2d 508, 516 (Ind.App. 1999), citing *National Engineering & Contracting Co., Inc. v. C & P Engineering & Mfg. Co., Inc.*, 676 N.E.2d 372, 376 (Ind. App. 1997); *See also* Indiana Rule of Trial Procedure 26(B)(3).
7. Additionally, the Defendant's theory of defense may be based on information gained from private conversations between Defense counsel and Defendant and would therefore be protected by the Attorney-Client Privilege. *Colman v. Heidenreich*, 269 Ind. 419, 381 N.E.2d 866 (Ind. 1978);
8. Therefore, while the Defendant believes pursuant to the Indiana and United States Constitutions that he cannot be compelled to disclose his defense, other than the affirmative defenses enumerated above, the Defendant hereby informs the State that he will use any and all applicable defenses to include but not limited to the following:
 1. The State cannot prove the charges in this matter beyond a reasonable doubt;

2. Self-defense;
3. Mistake of fact;
4. Profiling;
5. Didn't do it;
6. Someone else it did it;
7. State got the wrong guy;
8. Directed verdict;
9. Doesn't meet the elements of the crime;
10. Actual innocence;
11. Black Rage;
12. Castle Doctrine;
13. Consent;
14. Diminished responsibility;
15. False evidence;
16. Matrix Defense;
17. Sleepwalking;
18. Homeless;
19. The Idiot Defense;
20. Irresistible Impulse;
21. Selective Prosecution;
22. Outrageous government conduct;
23. Frame-up;
24. Impossibility defense;

25. Necessity;
26. Duress;
27. Automatism;
28. Infancy;
29. Restraint;
30. Entrapment;
31. Legitimate purposes;
32. Double jeopardy;
33. Defense of legal conflict (aka legal dilemma);
34. If it doesn't fit, you must acquit defense;
35. False affluenza;
36. Black Lives Matter Defense.

Respectfully submitted,
