

STATE OF MINNESOTA
COUNTY OF WASHINGTON

DISTRICT COURT
TENTH JUDICIAL DISTRICT

Court File No. 82-CR-17-242

State of Minnesota,

Plaintiff,

vs.

AFFIDAVIT OF KEVIN W. DEVORE

Stephen Carl Allwine,

Defendant.

STATE OF MINNESOTA)
) ss.
COUNTY OF WASHINGTON)

Kevin W. DeVore, being first duly sworn upon oath, deposes and states as follows:

1. I am the attorney who represented Stephen Carl Allwine in the case of State of Minnesota vs. Stephen Carl Allwine, Court File No. 82-CR-17-242.
2. I have prepared this Affidavit in response to Mr. Allwine's postconviction relief request alleging that he received ineffective assistance of counsel, namely at paragraph IV.1.
3. As to the allegation that I failed to challenge the grand jury indictment, after reviewing the transcripts of the grand jury proceedings, I did not find any areas of the grand jury process that appeared to violate Mr. Allwine's constitutional rights, nor did I find that the charging document was lacking pursuant to Rule 17.06, subd. 2 of the Minnesota Rules of Criminal Procedure.
4. In response to the allegation that trial counsel did not contest any omnibus issues, there were none. The police were summoned by the defendant himself; and they entered and searched the house at his request. Mr. Allwine then met with investigators on his own. The defendant voluntarily gave a statement that night. He was not in custody and he was allowed to leave afterward. His position was that he had nothing to do with this and he was more than willing to assist the investigators in order to figure out what happened to his wife. The seizure of the computers and electronic devices was accomplished with valid search warrants. As part of his ongoing trial strategy and defense of the case, Mr. Allwine gave a second statement with counsel present. Again, this was a voluntary statement. In trial counsel's opinion, there were no legitimate omnibus issues.

5. Trial counsel did file motions *in limine* to exclude evidence that the defendant viewed as prejudicial and inadmissible. Those matters were litigated, briefed and decided prior to trial.
6. I am not certain what Mr. Allwine is referring to with respect to a “chain of custody” allegation because this paragraph refers to information that was obtained from electronic devices and a bitcoin account. I do not believe there is a chain of custody issue with this evidence. Even if there was a chain of custody issue, the State’s expert Mark Lanterman testified as to the discovery of this evidence and the connection with Mr. Allwine and his electronic devices. Moreover, there is evidence in the police reports that support the trail that the investigators used to link up the information.
7. On the basis for not moving for a mistrial or alternatively accepting a one-week continuance allowed by the court after the court admitted the state’s late discovered evidence, this was a matter of trial strategy. We vigorously argued the point and the court ruled against us by allowing the evidence to come in. All of the arguments were done outside of the presence of the jury.
8. Regarding the photograph, it was not difficult to understand and a one-week delay would not have made a difference. The BCA expert was not going to testify that the footprint was that of the defendant. Rather, the testimony was only going to be that there appeared to be a footprint. In discussing the matter with Mr. Allwine, it was decided that we would wait and see if the state actually introduced the late discovered photograph, which they did not. Had the state presented the photograph and related testimony to the jury it would have raised an issue on appeal for the defendant or would have provided the basis for a mistrial. As it turned out, the state never introduced the evidence, the jury never knew about it, and the issue became moot.
9. On the basis of not hiring experts to rebut and testify against the state’s evidence concerning ballistics, blood splatter, DNA, gunshot residue, foot-print pattern, digital forensics evidence and/or medical examiner or forensic pathologist, trial counsel did in fact hire experts to assist in his preparation and defense of this case.
10. Trial counsel hired James Fleming to analyze the gunshot residue and other ballistics evidence and Mr. Fleming provided his findings and opinions to trial counsel, which was shared with the defendant. This information from Mr. Fleming allowed trial counsel to better understand the science behind these particular matters. Mr. Fleming was not called as a witness to testify, because his testimony would not have contradicted or been inconsistent with the state’s expert witnesses testimony. In other words, Mr. Fleming’s findings would not have been helpful to the defendant’s case.
11. Defense counsel also hired two digital forensic experts to analyze the electronic forensic evidence. Defense counsel hired John Carney and Jeff Wold. Both Mr. Carney and Mr. Wold reviewed the evidence and provided trial counsel with information that was used by trial counsel to better understand the electronic forensic evidence. Moreover, Mr. Carney actually attended the trial and provided trial counsel with ongoing advice and insight

during the trial. Mr. Carney also helped prepare the cross examination questions asked by trial counsel of the state's expert, Mark Lanterman.

12. Trial counsel did not call Mr. Carney to testify because his testimony would not have contradicted the state's experts and would only serve to bolster and enforce the opinion of Mark Lanterman. On cross examination, Mr. Carney would have to admit that he could not dispute Mr. Lanterman's findings. Therefore, as a trial strategy it did not seem fruitful to put a defense witness on that would agree with the analysis of the state's witness.
13. Trial counsel did not hire an expert to analyze the blood splatter, DNA, foot-print pattern, and/or medical examiner or forensic pathologist, because of the type of defense that trial counsel and the defendant were presenting to the jury. The defense of Mr. Allwine was that he was not present at the time of his wife's death. As a result, Mr. Allwine would not be in a position to challenge this evidence, nor would he have a reason to challenge it because he wasn't there. It was too much of a risk at trial for the defendant to argue over blood spatter and cause of death because he was a grieving widower who had an alibi for his whereabouts. Moreover, the state did not present the DNA, blood spatter or cause of death evidence as direct evidence against the defendant. Instead, this evidence was introduced to show that someone other than Amy Allwine did or could have done this. It was the testimony of Mark Lanterman that the state used to connect the defendant to the death of Amy Allwine.
14. The defense did not dispute that some of the footprints could have been made by the defendant because it was undisputed that he walked throughout the house on the evening when he found his wife. He told the 911 dispatch operator that he and his son walked through the house when they found Amy Allwine. In fact, the 911 dispatch operator told him to check on her which required him to walk in the house.
15. Regarding the allegation that trial counsel did not investigate alternative perpetrator Mr. Alvin Andrew and Kristin Elmquist, this is not true. Trial counsel did in fact investigate both of these individuals. Based on said investigation, it was clear that neither of these people were responsible for the death of Amy Allwine.

FURTHER YOUR AFFIANT SAYETH NOT.

Kevin W. DeVore, #267302

Subscribed and sworn to before me this
day of May 4, 2020.

Notary Public

My commission expires 01/30/25

