

DEFENDANT'S MOTION FOR LEAVE OF COURT
TO FILE BELATED ALIBI DEFENSE

COMES NOW the Defendant, by counsel, and in support of Defendant's Motion for Leave of Court to File Belated Alibi Defense, would state as follows:

1. The Defendant was previously charged with this murder on December 31, 2007 under cause number []. The charges were dismissed on June 2, 2009. The charges were refiled under this cause number on July 2, 2014, over five years later.
2. During the pendency of first case, the Defendant filed a Notice of Alibi on February 27, 2008. (Exhibit A). The Defendant's alibi witness is [name].
3. The Defendant was only recently able to locate [name] [or describe other reasons for delay].
4. The date by which any Notice of Alibi is to be filed has passed.
5. However, the State is well aware of this alibi given the prior notice and the statement taken of [name] by the Detective on January 2, 2008. Counsel is filing the instant motion as soon as practicable after finally locating the witness.
6. The alibi defense and alibi witness are essential in order for the Defendant to receive a fair trial and fundamental error, under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article 1, Section 13 of the Indiana State Constitution, would be committed if the Defendant were precluded from offering this alibi and this witness in his case-in-chief.
7. The objective of the alibi statute "is prevention of fabrication and surprise, not punishment of the accused for technical errors." *Baxter v. State*, 522 N.E.2d 362,

369 (Ind. 1988). “Where the defendant or defense counsel files a tardy or inadequate notice of alibi simply because neither has aggressively pursued the defense and their failure does not deprive the State of sufficient time and information to investigate and respond,” *Id.*, the State is not prejudiced by the late filing.

8. The Defendant has already informed the State by email that the witness has been located and a taped statement has already been scheduled.
9. That this motion is not meant for purposes of delay.

WHEREFORE, Counsel for Defendant prays this Court grant the Defendant’s Motion for Leave of Court to File Belated Alibi Defense and for any other relief, just and proper in the premises.

Respectfully submitted,