

IN THE
INDIANA SUPREME COURT

Cause No. 15A01-1110-CR-00550

DANIEL BREWINGTON,)
) Appeal from Dearborn Superior Court II
Appellant,)
) Cause No. 15D02-1103-FD-00084
v.)
) The Honorable Brian D. Hill,
) Special Judge
STATE OF INDIANA,)
)
Appellee.)

APPELLANT’S MOTION FOR EXTENDED ORAL ARGUMENT

Appellant, Daniel Brewington, by counsel, respectfully requests that this Court grant the parties a total of one (1) hour for oral argument (30 minutes per side), and in support of this request would show:

1. This matter is to be scheduled for oral argument on September 12, 2013, at 9:00 a.m.
2. The Court has not yet ruled on Appellant’s Petition to Transfer.
3. This case raises issues of first impression concerning the intersection of the constitutional protections for free speech—both under the First Amendment to the U.S. Constitution and Article I, § 9 of the Indiana Constitution—and the Indiana statutes criminalizing intimidation (Ind. Code § 35-45-2-1) and obstruction of justice (Ind. Code § 35-44-3-4).
4. Much of the evidence the State relied on in prosecuting Brewington for intimidation and attempted obstruction of justice consisted of Brewington’s Internet writings criticizing Judge Humphrey and Dr. Connor. These writings consisted largely of Brewington

expressing anger and frustration at what he perceived to be unfair treatment by the family court system.

5. Such speech lies at the heart of the First Amendment’s protection. There is a “profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.” *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). “[S]peech may not be prohibited because it concerns subjects offending our sensibilities.” *Ashcroft v. Free Speech Coalition*, 515 U.S. 234, 245 (2002).
6. Thus, this case affects not only Brewington, but all Hoosiers who speak out about government affairs in the largest public arena, the Internet.
7. Brewington believes that the Court would benefit from extended oral argument from the parties due to the number of, complexity of, and importance of the issues before the Court:
 - a. As noted above, the argument in this matter will address whether to grant Brewington’s petition to transfer as well as the merits of Brewington’s claims of error.
 - b. Brewington’s Petition raises issues regarding protections under the First Amendment to the U.S. Constitution and Article I § 9 of the Indiana Constitution, as well as issues of prosecutorial misconduct at grand jury proceedings.
 - c. This Court must conduct a more thorough review of the evidence than is normally required in criminal appeals: When a case raises a First Amendment issue, “an appellate court has an obligation to ‘make an independent examination of the

whole record’ in order to make sure that ‘the judgment does not constitute a forbidden intrusion on the field of free expression.’” *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 16 (1990) (quoting *Bose Corporation v. Consumers Union of United States, Inc.*, 466 U.S. 485, 499 (1984)). See *Journal-Gazette Co. Inc. v. Bandido’s, Inc.*, 712 N.E.2d 446, 454-56 (Ind. 1999) (holding that this requirement is binding on Indiana Appellate Courts). The Court will therefore need to conduct a close review of the evidence presented at trial, and may wish to ask questions concerning the record as well as the legal issues raised in Appellant’s Petition.

d. Earlier this year, after briefing on the Petition to Transfer was complete, the General Assembly amended the intimidation statute to increase its scope. See Senate Enrolled Act No. 361. These amendments, which go into effect on July 1, 2013, increase the penalties for certain types of communication, and broaden the scope of conduct which gives rise to criminal liability. The intimidation statute has become more restrictive of speech.

8. Brewington believes that 40 minutes will be insufficient for the parties to fully address the questions the Court may have about these issues.

WHEREFORE, Appellant respectfully requests that this Court schedule this matter for one hour of oral argument (30 minutes per side).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon the following counsel of record *via* first class U.S. Mail, postage pre-paid this 11th day of June, 2013:

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