Filed: 6/4/2018 4:05 PM
Dearborn Superior Court 1
Dearborn County, Indiana

DANIEL BREWINGTON, Plaintiff, v. DEARBORN SUPERIOR COURT II/ JUDGE SALLY MCLAUGHLIN, JUDGE BRIAN HILL, COURT REPORTER BARBARA RUWE Defendants.	)	IN THE SUPERIOR COURT II DEARBORN COUNTY, INDIANA SS: CAUSE NO 15D01-1702-PL-00013

EMERGENCY MOTION TO CONTINUE HEARING AND REQUEST FOR ORDER COMPELLING ADMISSIONS

Plaintiff, Daniel Brewington, requests this Court to continue the hearing in this matter, presently scheduled for June 8, 2018, and issue an order compelling Defendant Judge Brian Hill to provide answers to Plaintiff's Request for Admissions to Defendant Judge Brian Hill that comply with Indiana Trial Rule 36 and in support of Brewington states as followed:

INTRODUCTION

The actions of Defendant Judge Brian Hill and the Office of Indiana Attorney General Curtis T. Hill Jr. necessitate continuing the June 8, 2018 hearing in this matter. Judge Hill failed to cooperate with simple discovery requests, while using the prestige of the judiciary to place Brewington in harm's way in retaliation for

Brewington bringing this action. The Office of Attorney General Curtis T. Hill represents clients in two legal cases against Brewington. In *Brewington v. State*, Case No. 15A04-1712-PC-02889, the Attorney General represents the State of Indiana. In the current case, Curtis Hill's office represents defendants Judge Brian Hill and the Dearborn Superior Court under Judge Sally McLaughlin. In Brewington's appeal, the Indiana Attorney General argues the Dearborn Superior Court II altered grand jury records to help former Dearborn County Prosecutor Negangard convict Brewington. (Former Dearborn County Prosecutor F. Aaron Negangard now serves as Chief Deputy to Indiana Attorney General Curtis T. Hill). In the present case, the Indiana Attorney General argues the Defendants in this case *did not* conspire to alter grand jury audio. This Court cannot overlook the appellee arguments by the Office of the Indiana Attorney General that the Defendants conspired to alter grand jury records, while allowing the Attorney General to argue the opposite in this case; especially without requiring Judge Hill to comply with simple discovery so Brewington may have the ability to prove which legal argument by the Attorney General is false.

DISCUSSION

1) On April 26, 2018, Brewington served Judge Hill with Brewington's Request for Admissions. [Attached as Exhibit A]

2) On May 24, 2018, Judge Hill, by counsel Deputy Attorney General Marley Hancock, signed and mailed Defendant's Response to Plaintiff's Request for

Admissions to Defendant Brian Hill. [Defendant's Response attached hereto as Exhibit B]

3) Rather than continue to utilize the IEFS for efficient and *free* electronic service, counsel delivered Judge Hill's responses via USPS ON March 24, 2018, just prior to Memorial Day Weekend. As such, the Defendant's Response was not physically delivered until the evening of May 29, 2018; less than two weeks before the scheduled hearing.

4) Deputy Attorney General Marley Hancock signed the defendant's response, under penalties of perjury, on behalf of Judge Hill.

5) Judge Hill, and/or Deputy Hancock copied and pasted the following general objection in response to questions 1, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20 of Brewington's Request for Admissions:

> Objection. Defendant objects to this request as it falls outside the scope of lnd. Trial Rule 26(B)(1) as it is not relevant to the subject-matter involved in the pending action, which stems from an APRA [request].

6) Judge Hill's responses make no claim to have "made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny or that the inquiry would be unreasonably burdensome." (*General Motors Corp., Chevrolet Motor Div. v. Aetna Cas. & Sur. Co.*, 573 N.E.2d 885, (1991)

7) In response to question 23, Judge Hill dodges the heart of Brewington's request for admission by failing to admit or deny whether Judge Hill rendered prior

requests for grand jury audio as being "moot," which would demonstrate that Judge Hill intentionally avoided ruling on the requested material.

8) In Judge Hill's objection to question 29, Judge Hill alleges he was the target of harassing conduct by Brewington:

> Defendant objects to the term "excuses" as the term is derogatory and its use is intended to harass Defendant. Defendants further object to the term "excuses" as it fails to adequately and specifically describe the subject matter sought and is vague and ambiguous and, therefore, requires Defendant to engage in conjecture as to their meaning. As such, it is difficult to discern what Plaintiff is asking Defendant to admit or deny.

Judge Hill's harassment allegation is retaliatory in nature and meant to improperly influence this Court and cause harm to Brewington. The Attorney General knows any reason for denying the release of the grand jury audio is simply a bad excuse by Judge Hill to coverup a conspiracy to alter grand jury records by the Dearborn Superior Court II. Nothing in Brewington's following admission request bears any resemblance of an intent "*to subject persistently and wrongfully to annoying, offensive, or troubling behavior*"[1]:

> (29) Admit that in an opinion dated April 14, 2016, the Indiana Public Access Counselor deemed Hill's excuses for withholding the grand jury audio to be invalid.

Judge Brian Hill and the Attorney General understand a judicial allegation of

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[1] Legal definition of "harass" https://www.merriam-webster.com/dictionary/harass

harassing a civil defendant could prompt a criminal investigation against Brewington. This is another bell that cannot be un-rung. Brewington's single use of the word "excuses" has no harassing undertones. Judge Hill cannot arbitrarily render "Christmas" to be a derogatory term and then cry harassment because Brewington said "Merry Christmas." Hill's actions are an attempt to place Brewington in fear of another unconstitutional arrest and trial in Dearborn County, Indiana in retaliation for Brewington bringing this action. Hill's false harassment allegation serves as a rallying cry for Dearborn County officials to take criminal action against Brewington rather than address the fallout from a corrupt grand jury process.

The entire basis for Judge Hill's objection to responding to the admission revolves around Brewington's singular use of the word "excuses". Labeling the word "excuses" as being derogatory does not relieve Judge Hill from the responsibility of responding to the admission request. If Brewington would have used the word "reasons" instead of "excuses", Judge Hill would have had no grounds to object to Brewington's admission request because the word "reasons" is neither derogatory, vague, nor ambiguous. Judge Hill cannot now argue the substitution of "excuses" with "reasons" would not rectify the vague, and/or ambiguous nature of Brewington's admission request, because it would confirm that the word "excuses" was irrelavant to Hill's "vague" or "ambiguous" arguments. As such, Judge Hill's attempts to criminalize the use of "excuses" was nothing more than a willful

attempt to cause harm to Brewington. If not addressed by this Court, the continued use of the term "excuse[s]" in this pleading could be deemed a pattern of illegal activity by Judge Hill and the Office of the Indiana Attorney General and subject Brewington to additional criminal prosecution. This Court should not overlook the violations of the Indiana Code of Judicial Conduct or Indiana's perjury statute I.C. § 35-44.1-2-1 because Judge Hill made the false harassment allegation under oath, while "knowing the statement to be false or not believing it to be true."

9) In response to questions 34 and 35, Judge Hill entered denials stating:

> (34) Defendant did not personally prepare the grand jury audio for Plaintiff and therefore has no personal knowledge to rely on in answering this request.
>
> (35) Defendant did not personally prepare the grand jury audio, or the transcription of said audio, for Plaintiff and therefore has no personal knowledge to rely on in answering this request.

The fact that Judge Hill did not personally prepare a written or audio record does not relieve Judge Hill of the responsibility of properly answering the request for admission. Such a contention would provide an escape hatch for the head of any public agency to dodge questions concerning document preparation performed by various staff members. This was one of the reasons Brewington originally listed court reporter Barbara Ruwe as a defendant in this case. Posing the same question to Defendant Dearborn Superior Court II, via Judge McLaughlin, would likely demonstrate that Judge McLaughlin also did not personally prepare the written or audio record of the grand jury proceedings.

10) In response to question 36, Judge Hill stated:

> As the dispute over the grand jury audio began more than five years ago, Defendant is unable to recall the specifics of the transcription or audio. Defendant, therefore, has no personal knowledge to rely on in answering this request.

Judge Hill made no effort to refresh his memory to respond to Brewington's admissions. Prior Indiana rulings prohibit Judge Hill from making the above defense in refusing to make a diligent attempt to respond to admissions. In *ESPN, Inc. v. University of Notre Dame Police Dept.*, 62 N.E.3d 1192, (2016) the Court wrote:

> An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny or that the inquiry would be unreasonably burdensome.

Judge Hill's logic is misplaced as Judge Hill and the Dearborn Superior Court II are directly responsible for the extended duration of the matter concerning the release of the grand jury audio. Now Judge Hill claims the years-long delay is responsible for his memory loss. Judge Hill seeks to be relieved from the alleged time-related burdens associated with the problem the Defendants created.

11) Judge Hill's response to number 32 in Brewington's request for admissions is another attempt to sidestep responding to Brewington's admissions. Brewington requested Judge Hill to admit or deny the following:

> Admit that Hill's April 20, 2016, order raised a new allegation of "four to five" other grand jury investigations

> being intertwined with the record of the grand jury investigation of Daniel Brewington.

Judge Hill responded:

> Objection. Defendant objects as this request calls for a legal conclusion.

Prior to Judge Hill's April 20, 2016 order, there is no record or mention of the alleged "four to five" other grand jury investigations alleged by Hill. Judge Hill was the first to raise the issue. If Judge Hill did not engage in an independent investigation leading to Judge Hill's discovery of the additional grand jury investigations, then someone contacted Judge Hill with the ex parte information and Judge Hill issued a ruling on the ex parte information without Brewington's participation.

If four to five other grand jury proceedings *do not* intertwine and/or interfere with the recording of the grand jury investigation of Brewington, then Judge Hill's order gave the Dearborn Superior Court II the latitude to alter grand jury audio to omit all of Negangard's statements to the grand jury prior to witness testimony in Brewington's grand jury investigation. Even setting aside the conspiracy to alter grand jury records, Brewington's request for Judge Hill to admit or deny whether Hill's order made the first mention of intertwining grand jury proceedings does not require a legal conclusion.

12) In Brewington's pending appeal of the post-conviction order out of the Dearborn Superior Court II, the Office of Indiana Attorney General Curtis T. Hill Jr. argues the Dearborn Superior Court II conspired to alter grand jury records.

Attached hereto as "Exhibit C" is the Brief of the Appellee, filed by Indiana Deputy Attorney General Stephen Creason, in the case of *Brewington v. State*, Case No. 15A04-1712-PC-02889. In the State's Appellee Brief, filed May 10, 2018, the State of Indiana acknowledges the staff of the Dearborn Superior Court II conspired to alter grand jury records. The State's brief mentioned four of the twenty grounds raised in Brewington's post-conviction petition:

> 1) he received ineffective assistance of trial counsel because counsel allegedly did not communicate well enough with him about the charges and evidence;
>
> 2) trial court staff allegedly manipulated the record of the grand jury proceeding as part of a conspiracy against him
>
> 3) the grand jury indictments were unconstitutional because they were allegedly not sufficiently detailed to notify Brewington of what criminal acts he committed; and
>
> 4) prosecutors allegedly committed misconduct at trial, particularly in argument before the jury.

In the State's brief, Deputy Creason argues summary dismissal under P-C.R. 1(4)(g)[2] of Brewington's entire post-conviction action was proper, thus requiring the State to accept the above four of Brewington's claims as being true in addition to any other material facts pertaining to the remaining grounds raised in Brewington's post-conviction action. Deputy Creason argued Brewington's findings of material

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[2] Summary Disposition under Post-Conviction Remedy 1(4)(g) is only available when "there is no genuine issue of material fact"

fact are true but claimed Brewington waived his ability to seek relief from the fundamental errors. Brewington's Reply Brief [Attached as Exhibit D] addresses the absurdity of Deputy Creason's arguments that procedural waiver can bar a person from seeking relief from convictions in a conspiracy by the trial court to alter records to assist the prosecution obtain indictments. This is an example of the conflict of interest that Brewington expressed concerns about in previous pleadings to this Court. The Defendants have previously argued that the interests of the State in Brewington's appeal would be similar to the interests of the Defendants in this case. Now they are diametrically opposed, because Deputy Creason's arguments for the State in Brewington's appeal require the Dearborn Superior Court II to have altered grand jury records in a conspiracy to interfere with Brewington's right to a fair criminal trial. For the Defendants to overcome this presumption, Deputy Attorney General Marley Hancock must argue otherwise, thus driving a dagger into the heart the Appellee Brief filed by Deputy Creason. The Dearborn Superior Court II altered grand jury records, or it did not. The Office of the Indiana Attorney General cannot have both. This Court should not allow the Indiana Attorney General to alter the state of facts for the convenience of a particular client whose interests oppose Brewington.

13) Judge Hill's failure to cooperate with Brewington's admission requests is similar to the situation explained in *Hyundai Motor Co. v. Stamper*, 651 N.E.2d 803, (1995)

> "[T]he requests for admissions by [the Stampers] were relatively straight forward and uncomplicated and could be easily answered by either admitting or denying. The court further finds that [Hyundai] first objected and that the court overruled the objections and ordered [Hyundai] to respond. [Hyundai] responded by denying the admissions. The [Stampers] were then put to the expense and the trouble of arranging for depositions, submitting additional interrogatories and otherwise verifying as true the admissions that were wrongly denied by [Hyundai]."

The above case helps shed light on the real dangers associated with Judge Hill's retaliatory harassment allegation. Brewington only provided Judge Hill with a list of thirty-six (36) "admit" or "deny" questions. Rather than comply with Brewington's uncomplicated request for admissions, Judge Hill accused Brewington of harassing a defendant in a civil proceeding. Judge Hill and Deputy Hancock understood the criminal implications of the harassment allegation and how the harassment claim served as a less than subtle threat to deter Brewington from engaging in any other discovery in this matter. The only way Brewington can determine whether his personal safety is at risk is to appear for the June 8, 2018 hearing. Brewington's appearance is the only means to determine whether an arrest warrant, stemming from Judge Hill's accusation that Brewington harassed an opposing civil litigant, is waiting for Brewington in the lobby of the Dearborn County Courthouse. Brewington has been stripped of the ability for a fair legal process in the current case because Judge Hill instilled the fear in Brewington that any further discovery would subject Brewington to additional retaliation by Judge Hill and/or the Office of the Indiana Attorney General Curtis T. Hill Jr.

CONCLUSION

The Defendants and the Office of the Indiana Attorney General have backed themselves into a metaphorical checkmate. It is absurd to suggest this checkmate is a product of Brewington's legal prowess. The problems plaguing this case stem from a years-long effort to ignore and protect F. Aaron Negangard's mission to prosecute and punish Daniel Brewington for speaking out against the Indiana Court System. The only thing Brewington has done is refuse to allow the misconduct to go unchecked. A seemingly endless supply of hubris and misconduct by bad actors created the current situation.

Brewington's case has been a constitutional nightmare from the time Negangard convened a grand jury to investigate Brewington's "over-the-top" and "unsubstantiated statements" about Dearborn Circuit Judge James D. Humphrey. Since early 2011, Brewington has been subjected to a judicial system where the trial court, the Indiana Court of Appeals, the Indiana Supreme Court, and the post-conviction court all ignored the fact Judge Hill ignored Brewington's requests for indictment information, evidence, and the assistance of counsel just prior to trial. To fully grasp the extent of the conflict and controversy, this court need only to look under the line stating "Respectfully submitted" appearing at the end of the filings in both this case and Brewington's case before the Indiana Court of Appeals. The first name listed is:

CURTIS T. HILL JR.

The office of *CURTIS T. HILL JR.* cannot appear on diametrically opposed arguments in separate legal cases where the success of one client requires the failure of the other client represented by the Office of Curtis T. Hill. If Deputy Marley Hancock argues the Dearborn Superior Court II did not alter grand jury records, it creates an issue of material fact, which completely decimates the State's entire Appellee Brief in Brewington's post-conviction appeal. Defendants and the Indiana Attorney General accidently fell into the web they spun. This may offer insight behind Judge Hill's baseless attacks on Brewington.

Judge Hill's allegation that Brewington's single use of the word "excuses" was harassing to Hill is a proverbial cry for help or a white flag. Every party and attorney involved in this case, Brewington's criminal trial, Brewington's direct appeal, Brewington's post-conviction action, and post-conviction appeal, is aware of the constitutional atrocities in Brewington's criminal proceedings. Indiana courts and State attorneys refer to particular portions of the record of Brewington's case to rationalize ruling against Brewington, while refusing to comment on plainly egregious misconduct. On many occasions, Brewington has included the transcription of the opening moments of Brewington's criminal trial, in filings to this and other courts. The trial transcripts demonstrate how Judge Hill only gave Brewington the option of self-representation after Brewington said he had received no assistance in preparing for trial. Brewington has done the same with Negangard's admission to the trial jury that Brewington's criminal trial was never

about the victims, rather that the prosecution was being used to prevent Brewington from perverting the Indiana "system of justice." This Court has already reviewed Deputy prosecutor Kisor's remarks to the trial jury, explaining the jurors could be in immediate danger because Kisor suggested that Brewington could have smuggled a .357 Magnum handgun into the courtroom during Brewington's criminal trial. Now Judge Hill is claiming the word "excuses" is "derogatory" and Brewington's one-time use of the word, in referring to the various invalid reasons Judge Hill gave for denying the release of the grand jury audio, was a malicious plot to harass Judge Hill. While ignoring all of the above misconduct, Indiana officials continue to refuse address the question of why the Dearborn Superior Court II omitted Negangard's statements to the grand jury prior to witness testimony.

The facts are before this Court. The record of the grand jury is incomplete. In Brewington's pending appeal, the Indiana Attorney General acknowledges the Dearborn Superior Court II altered grand jury records. In this case, The Indiana Attorney General argues the Dearborn Superior Court II did not alter grand jury records. Brewington has been consistent in arguing that the Dearborn Superior Court II altered grand jury records in both this proceeding and in Brewington's post-conviction action and subsequent appeal. The case presented by Deputy Stephen Creason *cannot* argue the contrary to Brewington's claim. The case presented by Deputy Marley Hancock *must* argue the contrary. As such, this Court is placed in the position of deciding whether to protect the integrity of the Indiana

Judiciary, or to just protect the Indiana Judiciary.

This Court knows Negangard did not begin Brewington's grand jury investigation at witness testimony. Defendants even argued against Brewington's motion to disqualify the Office of the Indiana Attorney General in this case. The Defendants now cannot cry "foul" because Deputy Creason filed the Brief of the Appellee, where the State's entire appellate case relies on the fact that the Dearborn Superior Court II conspired to alter grand jury records. For additional perspective on Defendants' egregious conduct, Brewington attaches Appellant Daniel Brewington's Motion for Oral Argument, filed May 31. 2018, which includes a copy of Judge Hill's admission response accusing Brewington of harassing conduct [Attached as "Exhibit E"].

Judge Hill's reasoning in claiming the word "excuse" somehow equates to harassing activity indicates that the walls appear to be closing in on Judge Hill. Brewington fears this will increase the likelihood that Hill and others will try to inflict additional harm on Brewington, rather than face responsibility for their actions. As such, Brewington believes it is necessary for this Court to grant Brewington's Emergency Motion to Continue the hearing set for June 8, 2018 so this Court can address Judge Hill's malicious harassment allegation against Brewington, and compel Judge Hill to answer the following requests in Brewington's Request for Admissions:

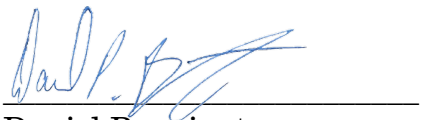
1, 3-20, 23, 29, 32, 33, 34-36

In reviewing the facts presented before this Court, Summary Judgment is the only remedy to resolve this case. This Court cannot dismiss the Attorney General's argument in *Brewington v. State*, Case No. 15A04-1712-PC-02889, in order to reward the Attorney General's client in this case. Only an order to release the entire unedited audio record of Brewington's grand jury proceedings can resolve the conflicting arguments by the Office of the Attorney General as to whether the Dearborn Superior Court II altered grand jury records. In the event this Court should deny Brewington's emergency request to continue the hearing, Brewington requests this Court to enter a finding of default judgment in favor of Brewington if the Defendants do not personally appear for the hearing scheduled for June 8, 2018.

In considering the rescheduling of the June 8, 2018 hearing, Brewington notes that he will be on vacation from June 17, 2018 until June 24, 2018.

WHEREFORE, Brewington requests this Court to grant Brewington's Emergency Motion to Continue the hearing set for June 8, 2018, compel Defendant Judge Hill to provide responses to the aforementioned admissions listed above, and issue a finding that deems Judge Hill's claim of harassment to be improper and without merit, and for all other proper relief.

Respectfully Submitted,



Daniel Brewington
Plaintiff, Pro se

CERTIFICATE OF SERVICE

I certify that on June 4, 2018, I electronically filed the foregoing document using the Indiana E-Filing System (IEFS).

I also certify that on June 4, 2018, the foregoing document was served upon the following via IEFS:

Curtis T. Hill, Indiana Attorney General
efile@atg.in.gov

Deputy Marley Hancock
marley.hancock@atg.in.gov

Daniel P. Brewington
Plaintiff, pro se

DANIEL BREWINGTON, Plaintiff, v. DEARBORN SUPERIOR COURT II/ JUDGE SALLY MCLAUGHLIN, JUDGE BRIAN HILL, COURT REPORTER BARBARA RUWE Defendants.	)))SS:)))))	IN THE SUPERIOR COURT II DEARBORN COUNTY, INDIANA CAUSE NO 15D01-1702-PL-00013

PLAINTIFF'S REQUEST FOR ADMISSIONS TO DEFENDANT BRIAN HILL

COMES NOW Daniel Brewington, Plaintiff pro se, with PLAINTIFF'S REQUEST FOR ADMISSIONS TO DEFENDANT BRIAN HILL pursuant to Indiana Trial Rule 36, requests Defendant Brian Hill ("Hill") to admit or deny, and if denied, to detail the reason for the denial of the following matters.

DEFINITIONS

For purposes herein "Brewington" means plaintiff Daniel Brewington. "Defendant" and/or "Hill" means defendant Brian Hill, Special Judge to the Dearborn Superior Court II. Any mention of "grand jury", "criminal trial", "trial", etc., relates to the case of State of Indiana v. Daniel Brewington, Cause No. 15D02-1103-FD-000084. "Negangard" means F. Aaron Negangard in any capacity as former Dearborn County Prosecutor and/or current Chief Deputy Attorney General, Negangard's role as head of the Dearborn County Special Crimes Unit, Negangard's role in convening and conducting a grand jury investigation of Brewington, and/or

PLAINTIFF'S EXHIBIT
A

Negangard's role in prosecuting Brewington. "Court Staff" means any agent/employee of Defendant Dearborn Superior Court II. Failure to respond within thirty [30] days after service will serve as an admission to the matters.

ADMISSIONS

1) Admit that on March 7, 2011, former Dearborn County Prosecutor F. Aaron Negangard filed the State's Praecipe directing "the Court Reporter of the Dearborn Superior Court II to prepare and certify a full and complete transcript of the grand jury proceedings" pertaining to the grand jury investigation of Daniel Brewington.

ANSWER:

2) Admit that F. Aaron Negangard now serves as the Chief Deputy Attorney General in the State of Indiana.

ANSWER:

3) Admit there is no record of any motion, order, or directive compelling the Court Staff to omit portions of the grand jury record occurring prior to witness testimony.

ANSWER:

4) Admit that on or about June 3, 2011, Rush Superior Court Judge Brian Hill was appointed to serve as Special Judge to the Dearborn Superior Court II in the case of State of Indiana v. Daniel Brewington, Cause No. 15D02-1103-FD-000084.

ANSWER:

5) Admit that on July 18, 2011, after being appointed by Hill, Rush County Public Defender Bryan Barrett filed an appearance to represent Daniel Brewington in Cause No. 15D02-1103-FD-000084

ANSWER:

6) Admit that during a pretrial hearing on July 18, 2011, the State instructed Barrett to rely on the "complete" transcription of the grand jury investigation of Daniel Brewington for an explanation as to which of Brewington's actions required defending.

ANSWER:

7) Admit that Hill originally scheduled the jury trial in Cause No. 15D02-1103-FD-000084 to commence on August 16, 2011.

ANSWER:

8) Admit that Hill vacated the August 16, 2011 jury trial citing public defender Bryan Barrett having a family emergency.

ANSWER:

9) Admit that during a final pretrial hearing on September 19, 2011, Hill acknowledged Brewington had yet to receive a copy of the transcription of the grand jury investigation of Daniel Brewington.

ANSWER:

10) Admit that during the opening of Brewington's October 3, 2011 criminal trial, Brewington stated he did not receive a copy of the grand jury transcripts until September 23, 2011.

ANSWER:

11) Admit that during the opening of Brewington's October 3, 2011 criminal trial, Brewington stated Bryan Barrett never met with Brewington to review the grand jury transcripts.

ANSWER:

12) Admit that there is no record of Hill or F. Aaron Negangard ever questioning Barrett about withholding the grand jury transcripts from Brewington until less than two weeks before trial.

ANSWER:

13) Admit that neither Hill nor F. Aaron Negangard questioned Barrett about Brewington's October 3, 2011 claim that Barrett did not review the grand jury transcripts with Brewington

ANSWER:

14) Admit that Hill began the criminal trial despite Brewington stating "I have absolutely no idea what's going on in my case."

ANSWER:

15) Admit that neither Hill, F. Aaron Negangard, nor Barrett made any attempt help Brewington understand what actions formed the basis of the State's prosecution against Brewington.

ANSWER:

16) Admit that *at least* some aspects of the State's prosecution against Brewington were unconstitutional because F. Aaron Negangard sought convictions under a "plainly impermissible" criminal defamation argument. [see *Brewington v. State*, 7 N.E.3d 946, (2014)]

ANSWER:

17) Admit that *at least* some aspects of F. Aaron Negangard's grand jury investigation of Daniel Brewington were unconstitutional because Negangard sought criminal indictments against Brewington under a "plainly impermissible" criminal defamation argument.

ANSWER:

18) Admit that both the written and audio records of the grand jury investigation of Daniel Brewington are void of any accusation or instruction from F. Aaron Negangard that Brewington made any direct and/or veiled threats of violence to any of the alleged victims in the case.

ANSWER

19) Admit that both the written and audio records of the grand jury investigation of Daniel Brewington are void of any accusation or instruction from F. Aaron Negangard that Brewington presented any imminent threat to the alleged victims.

ANSWER:

20) Admit that former Dearborn County Prosecutor F. Aaron Negangard made no objections in prosecuting Brewington despite Brewington's aforementioned trial claims of having no idea what actions Brewington was required to defend.

ANSWER:

21) Admit that on or about January 13, 2012, Hill issued an order releasing the audio from the grand jury investigation of Daniel Brewington.

ANSWER:

22) Admit that on or about January 24, 2012, Hill issued another order to release the audio from the grand jury investigation of Daniel Brewington.

ANSWER:

23) Admit that on or about February 2, 2012 Hill issued an amended order deeming the previous requests for the grand jury audio as being "moot," because Hill claimed the audio was not admitted as evidence.

ANSWER:

24) Admit that in the same February 2, 2012 order, Hill claimed the July 18, 2011 pretrial hearing, where the State discussed the grand jury transcript, never took place.

ANSWER:

25) Admit that in an order dated February 4, 2016, Hill denied Brewington's public record request for the grand jury audio claiming "there's been no sufficient reason set forth which would necessitate the release of said audio recordings."

ANSWER:

26) Admit that in a letter to the Indiana Public Access Counselor ("PAC"), dated March 8, 2016, Hill stated he denied prior requests for the grand jury audio "simply because [Hill] did not preside over those proceedings."

ANSWER:

27) Admit that Hill's March 8, 2016 letter to the PAC stated, "I am aware that the statute allows the judge who presided over the criminal trial to make decisions as to the release of grand jury information related to the criminal charges, however, I did not feel it was appropriate in this case."

ANSWER:

28) Admit that Hill's March 8, 2016 letter to the PAC stated, "I didn't feel that [Brewington's] latest allegation of a conspiracy between the prosecuting attorney and court reporter was sufficient justification to release an audio record that he already has the transcript to."

ANSWER:

29) Admit that in an opinion dated April 14, 2016, the Indiana Public Access Counselor deemed Hill's excuses for withholding the grand jury audio to be invalid.

ANSWER:

30) Admit the PAC deemed the audio from the grand jury investigation of Daniel Brewington to be a releasable public record.

ANSWER:

31) Admit that in an order dated April 20, 2016, Hill ordered the release of the audio from the grand jury investigation of Daniel Brewington.

ANSWER:

32) Admit that Hill's April 20, 2016 order raised a new allegation of "four to five" other grand jury investigations being intertwined with the record of the grand jury investigation of Daniel Brewington.

ANSWER:

33) In reviewing Hill's order dated April 20, 2016, Admit that Hill engaged in some form of independent investigation of the grand jury record prior to issuing Hill's April 20, 2016 order: "It is the Court's understanding that the Grand Jury impaneled for this matter also heard evidence in four to five other Grand Jury proceedings during this time, often going back and forth between all of the cases."

ANSWER:

34) Admit that the version of the grand jury audio that the Dearborn Superior Court II prepared for Brewington was completed on or before April 27, 2016.

ANSWER:

35) Admit that the grand jury audio prepared by the Dearborn Superior Court II contains less information than the transcription of the grand jury investigation of Daniel Brewington.

ANSWER:

36) Admit that both the transcription and the audio of the grand jury investigation of Daniel Brewington lack any introduction, instruction, or explanation as to scope or nature of the grand jury investigation, or any other record of the grand jury proceedings occurring prior to F. Aaron Negangard calling witness to testify before the grand jury.

ANSWER:

CERTIFICATE OF SERVICE

I certify that on April 26, 2018, PLAINTIFF'S REQUEST FOR ADMISSIONS TO DEFENDANT BRIAN HILL was served through counsel via IEFS and USPS:

Indiana Attorney General Curtis Hill
Marley Hancock
Indiana Government Center South, 5th Floor
302 West Washington Street
Indianapolis, IN 46204-2770

Daniel P. Brewington
Plaintiff, pro se

STATE OF INDIANA

OFFICE OF THE ATTORNEY GENERAL
302 WEST WASHINGTON STREET, IGCS 5TH FLOOR
INDIANAPOLIS, INDIANA 46204

CURTIS T. HILL, JR.
ATTORNEY GENERAL

May 24, 2018

Daniel P. Brewington
[redacted]

Re: *Daniel Brewington v. Dearborn Superior Court II, Judge Sally McLaughlin, Judge Brian Hill, Court*
Cause No. 15D01-1702-PL-00013

Dear Sir:

Enclosed please find the *Defendant's Response to Plaintiff's Request for Admission to Defendant Brian Hill* in the above referenced case.

Respectfully,

Lyndsey West-McVey

Lyndsey West-McVey
Paralegal to
Marley G. Hancock
Deputy Attorney General

/lmwm
Enclosure

PLAINTIFF'S EXHIBIT
B

STATE OF INDIANA	)	IN THE DEARBORN SUPERIOR COURT
	) SS:	
COUNTY OF DEARBORN	)	CAUSE NO. 15D01-1702-PL-00013

DANIEL BREWINGTON,

Plaintiff,

v.

DEARBORN SUPERIOR COURT II, JUDGE SALLY MCLAUGHLIN, JUDGE BRIAN HILL, COURT

Defendants.

DEFENDANT'S RESPONSE TO PLAINTIFF'S REQUEST FOR ADMISSION TO DEFENDANT BRIAN HILL

Defendant, Judge Brian Hill, by counsel, Marley G. Hancock, Deputy Attorney General, responds to Plaintiff's Request for Admission to Defendant Brian Hill as follows:

REQUEST FOR ADMISSIONS

1. Admit that on March 7, 2011, former Dearborn County Prosecutor F. Aaron Negangard filed the State's Praecipe directing "the Court Reporter of the Dearborn Superior Court II to prepare and certify a full and complete transcript of the grand jury proceedings" pertaining to the grand jury investigation of Daniel Brewington.

RESPONSE: Objection. Defendant objects to this request as it falls outside the scope of Ind. Trial Rule 26(B)(1) as it is not relevant to the subject-matter involved in the pending action, which stems from an Indiana Access to Public Records Act ("APRA") request. Without waiving, and subject to, the objection, the State's Praecipe speaks for itself.

2. Admit that F. Aaron Negangard now serves as the Chief Deputy Attorney General in the State of Indiana.

RESPONSE: Defendant admits that Aaron Negangard currently serves as the Chief Deputy.

3. Admit there is no record of any motion, order, or directive compelling the Court Staff to omit portions of the grand jury record occurring prior to witness testimony.

RESPONSE: Objection. Defendant objects to this request on the basis that it is vague, fails to specifically describe the subject matter sought and is not limited in time and scope. As such, it is difficult to discern what Plaintiff is asking Defendant to admit or deny. This request is therefore denied.

4. Admit that on or about June 3, 2011, Rush Superior Court Judge Brian Hill was appointed to serve as Special Judge to the Dearborn Superior Court II in the case of State of Indiana v. Daniel Brewington, Cause No. 15D02-1103-FD-000084.

RESPONSE: Objection. Defendant objects to this request as it falls outside the scope of Ind. Trial Rule 26(B)(1) as it is not relevant to the subject-matter involved in the pending action, which stems from an APRA. Without waiving, and subject to, the objection, the docket in Cause No. 15D02-1103-FD-000084 speaks for itself.

5. Admit that on July 18, 2011, after being appointed by Hill, Rush County Public Defender Bryan Barrett filed an appearance to represent Daniel Brewington in Cause No. 15D02-1103-FD-000084.

RESPONSE: Objection. Defendant objects to this request as it falls outside the scope of Ind. Trial Rule 26(B)(1) as it is not relevant to the subject-matter involved in the pending action, which stems from an APRA request. Without waiving, and subject to, the objection, the docket in Cause No. 15D02-1103-FD-000084 speaks for itself.

6. Admit that during a pretrial hearing on July 18, 2011 the State instructed Barrett to rely on the "complete" transcription of the grand jury investigation of Daniel Brewington for an explanation as to which of Brewington's actions required defending.

RESPONSE: Objection. Defendant objects to this request as it falls outside the scope of Ind. Trial Rule 26(b) as it is not relevant to the subject-matter involved in the pending action, which stems from an APRA request. Without waiving, and subject to, the objection, the docket in Cause No. 15D02-1103-FD-000084 speaks for itself

7. Admit that Hill originally scheduled the jury trial in Cause No. 15D02-1103-FD-000084 to commence on August 16, 2011.

RESPONSE: Objection. Defendant objects to this request as it falls outside the scope of Ind. Trial Rule 26(B)(1) as it is not relevant to the subject-matter involved in the pending action, which stems from an APRA request. Without waiving, and subject to, the objection, the docket in Cause No. 15D02-1103-FD-000084 speaks for itself.

8. Admit that Hill vacated the August 16, 2011 jury trial citing public defender Bryan Barrett having a family emergency.

RESPONSE: Objection. Defendant objects to this request as it falls outside the scope of Ind. Trial Rule 26(B)(1) as it is not relevant to the subject-matter involved in the pending action, which stems from an APRA request. Without waiving, and subject to, the objection, the docket in Cause No. 15D02-1103-FD-000084 speaks for itself.

9. Admit that during a final pretrial hearing on September 19, 2011, Hill acknowledged Brewington had yet to receive a copy of the transcription of the grand jury investigation of Daniel Brewington.

RESPONSE: Objection. Defendant objects to this request as it falls outside the scope of Ind. Trial Rule 26(b) as it is not relevant to the subject-matter involved in the pending action, which stems from an APRA request. Without waiving, and subject to, the objection, the docket in Cause No. 15D02-1103-FD-000084 speaks for itself.

10. Admit that during the opening of Brewington's October 3, 2011 criminal trial, Brewington stated he did not receive a copy of the grand jury transcripts until September 23, 2011.

RESPONSE: Objection. Defendant objects to this request as it falls outside the scope of Ind. Trial Rule 26(b) as it is not relevant to the subject-matter involved in the pending action, which stems from an APRA request. Without waiving, and subject to, the objection, the docket in Cause No. 15D02-1103-FD-000084 speaks for itself.

11. Admit that during the opening of Brewington's October 3, 2011 criminal trial, Brewington stated Bryan Barrett never met with Brewington to review the grand jury transcripts.

RESPONSE: Objection. Defendant objects to this request as it falls outside the scope of Ind. Trial Rule 26(b) as it is not relevant to the subject-matter involved in the pending action, which stems from an APRA request. Without waiving, and subject to, the objection, the docket in Cause No. 15D02-1103-FD-000084 speaks for itself.

12. Admit that there is no record of Hill or F. Aaron Negangard ever questioning Barrett about withholding the grand jury transcripts from Brewington until less than two weeks before trial.

RESPONSE: Objection. Defendant objects to this request as it falls outside the scope of Ind. Trial Rule 26(b) as it is not relevant to the subject-matter involved in the pending action, which stems from an APRA request. Without waiving, and subject to, the objection, the docket in Cause No. 15D02-1103-FD-000084 speaks for itself.

13. Admit that neither Hill nor F. Aaron Negangard questions Barrett about Brewington's October 3, 2011 claim that Barrett did not review the grand jury transcripts with Brewington.

RESPONSE: Objection. Defendant objects to this request as it falls outside the scope of Ind. Trial Rule 26(b) as it is not relevant to the subject-matter involved in the pending action, which stems from an APRA request. Without waiving, and subject to, the objection, the docket in Cause No. 15D02-1103-FD-000084 speaks for itself.

14. Admit that Hill began the criminal trial despite Brewington stating "I have absolutely no idea what's going on in my case."

RESPONSE: Objection. Defendant objects to this request as it falls outside the scope of Ind. Trial Rule 26(b) as it is not relevant to the subject-matter involved in the pending action, which stems from an APRA request. Without waiving, and subject to, the objection, the docket in Cause No. 15D02-1103-FD-000084 speaks for itself.

15. Admit that neither Hill, F. Aaron Negangard, nor Barrett made any attempt help Brewington understand what actions formed the basis of the State's prosecution against Brewington.

RESPONSE: Objection. Defendant objects to this request as it falls outside the scope of Ind. Trial Rule 26(b) as it is not relevant to the subject-matter involved in the pending action, which stems from an APRA request. Without waiving, and subject to, the objection, the docket in Cause No. 15D02-1103-FD-000084 speaks for itself.

16. Admit that *at least* some aspects of the State's prosecution against Brewington were unconstitutional because F. Aaron Negangard sought convictions under a "plainly

impermissible" criminal defamation argument. [see *Brewington v. State*, 7 N.E.3d 946, (2014]

RESPONSE: Objection. Defendant objects to this request as it falls outside the scope of Ind. Trial Rule 26(b) as it is not relevant to the subject-matter involved in the pending action, which stems from an APRA request. Defendant further objects as this request calls for a legal conclusion.

17. Admit that *at least* some aspects of F. Aaron Negangard's grand jury investigation of Daniel Brewington were unconstitutional because Negangard sought criminal indictments against Brewington under a "plainly impermissible" criminal defamation argument.

RESPONSE: Objection. Defendant objects to this request as it falls outside the scope of Ind. Trial Rule 26(b) as it is not relevant to the subject-matter involved in the pending action, which stems from an APRA request. Defendant further objects as this request calls for a legal conclusion.

18. Admit that both the written and audio records of the grand jury investigation of Daniel Brewington are void of any accusation or instruction from F. Aaron Negangard that Brewington made any direct and/or veiled threats of violence to any of the alleged victims in the case.

RESPONSE: Objection. Defendant objects to this request as it falls outside the scope of Ind. Trial Rule 26(B)(1) as it is not relevant to the subject-matter involved in the pending action, which stems from an APRA request. Without waiving, and subject to, the objection, the docket in Cause No. 15D02-1103-FD-000084 speaks for itself, as does the written and audio records of the grand jury investigation.

19. Admit that both the written and audio records of the grand jury investigation of Daniel Brewington are void of any accusation or instruction from F. Aaron Negangard that Brewington presented any imminent threat to the alleged victims.

RESPONSE: Objection. Defendant objects to this request as it falls outside the scope of Ind. Trial Rule 26(B)(1) as it is not relevant to the subject-matter involved in the pending action, which stems from an APRA request. Without waiving, and subject to, the objection, the docket in Cause No. 15D02-1103-FD-000084 speaks for itself, as does the written and audio records of the grand jury investigation.

20. Admit that Dearborn County Prosecutor F. Aaron Negangard made no objections in prosecuting Brewington despite Brewington's aforementioned trial claims of having no idea what actions Brewington was required to defend.

RESPONSE: Objection. Defendant objects to this request as it falls outside the scope of Ind. Trial Rule 26(B)(1) as it is not relevant to the subject-matter involved in the pending action, which stems from an APRA request. Without waiving, and subject to, the objection, the docket in Cause No. 15D02-1103-FD-000084 speaks for itself.

21. Admit that on or about January 14, 2012, Hill issued an order releasing audio from the grand jury investigation of Daniel Brewington.

RESPONSE: Defendant admits that, on January 12, 2012, Defendant issued an order releasing audio copies to Sue A. Brewington.

22. Admit that on or about January 24, 2012, Hill issued another order to release the audio from the grand jury investigation of Daniel Brewington.

RESPONSE: Defendant admits that, on January 24, 2012, Defendant issued an order releasing audio copies to Matthew P. Brewington.

23. Admit that on or about February 2, 2012 Hill issued an amended order deeming the previous requests for the grand jury audio as being "moot," because Hill claimed the audio was not admitted as evidence.

RESPONSE: Defendant admits that, in an order dated January 27, 2012, and filed February 2, 2012, Defendant noted that the no audio recordings of the grand jury proceedings for February 28, 2011, March 1, 2011, and March 2, 2011 were entered into evidence in cause no. 15D02-1103-FD-084.

24. Admit that in the same February 2, 2012 order, Hill claimed the July 18, 2011 pretrial hearing, where the State discussed the grand jury transcript, never took place.

RESPONSE: Defendant admits that, in an order dated January 27, 2012, and filed February 2, 2012, Defendant noted that "[t]he Final Pretrial Conference/Bond Reduction Hearing which had originally been set on July 18, 2011 was continued on the State's Motion and no hearing took place."

25. Admit that in an order dated February 4, 2016, Hill denied Brewington's public record request for the grand jury audio claiming "there's been no sufficient reason set forth which would necessitate the release of said audio recordings."

RESPONSE: Defendant admits, and the record reflects, that in an order dated February 4, 2016, Defendant declined to grant the request for audio recordings from the Grand Jury proceedings occurring on February 28, 2011 March 1, 2011, and March 2, 2011 as, though Mr. Brewington alleged they were admitted into evidence at his criminal trial, they were not and there had been no sufficient reason set forth which would necessitate the release of said audio.

26. Admit that in a letter to the Indiana Public Access Counselor ("PAC") dated March 8, 2016, Hill stated he denied prior requests for the grand jury audio "simply because [Hill] did not preside over those proceedings."

RESPONSE: Defendant admits that, in a letter to the PAC dated March 8, 2016, one of the many reasons Defendant gave for denying Brewington's request as to the audio recordings of the requested grand jury proceedings was "simply because I did not preside over those proceedings."

27. Admit that Hill's March 8, 2016 letter to the PAC stated, "I am aware that the statute allows the judge who presided over the criminal trial to make decisions as to the release of grand jury information related to the criminal charges, however, I did not feel it was appropriate in this case."

RESPONSE: Defendant admits that, in a letter to the PAC dated March 8, 2016, Defendant stated that he was "aware that the statute allows the judge who presided over the criminal trial to make decisions as to the release of grand jury information related to criminal charges, however, I did not feel it was appropriate in this case.

28. Admit that Hill's March 8, 2016 letter to the PAC stated, "I didn't feel that [Brewington's] latest allegation of a conspiracy between the prosecuting attorney and the court reporter was sufficient justification to release an audio record that he already has the transcript to."

RESPONSE: Defendant admits that, in a letter to the PAC dated March 8, 2016, Defendant stated that he "didn't feel that [Brewington's] latest allegation of a conspiracy between the prosecuting attorney and court reporter was sufficient justification to release an audio recording that he already has the transcript to."

29. Admit that in an opinion dated April 14, 2016, the Indiana Public Access Counselor deemed Hill's excuses for withholding the grand jury audio to be invalid.

RESPONSE: Objection. Defendant objects to the term "excuses" as the term is derogatory and its use is intended to harass Defendant. Defendants further object to the term "excuses" as it fails to adequately and specifically describe the subject matter sought and is vague and ambiguous and, therefore, requires Defendant to engage in conjecture as to their meaning. As such, it is difficult to discern what Plaintiff is asking Defendant to admit or deny. This request is therefore denied.

30. Admit the PAC deemed the audio from the grand jury investigation of Daniel Brewington to be a releasable public record.

RESPONSE: Denied. The Indiana Public Access Counselor stated that "[b]ecause the case has been adjudicated and the transcript released, it stands to reason that providing you an audio copy of the proceeding would neither prejudice the operation of the court, nor compromise the grand jury proceedings." Under recommendation, the Indiana Public Access Counselor further noted "that because the transcript of the grand jury proceedings have previously been provided to you, a copy of the audio recordings of said proceedings should be released as well." The Indiana Public Access Counselor did not globally state that the audio from the grand jury investigation was, in fact, a releasable public record.

31. Admit that in an order dated April 20, 2016, Hill ordered the release of the audio from the grand jury investigation to Daniel Brewington.

RESPONSE: Defendant admits that in an order dated April 20, 2016, Defendant ordered the Court Reporter to prepare a compact disc of audio recordings of the Grand Jury proceedings regarding this matter conducted on February 28, 2011, March 1, 2011, and March 2, 2011.

32. Admit that Hill's April 20, 2016, order raised a new allegation of "four to five" other grand jury investigations being intertwined with the record of the grand jury investigation of Daniel Brewington.

RESPONSE: Objection. Defendant objects as this request calls for a legal conclusion.

33. In reviewing Hill's order dated April 20, 2016, Admit that Hill engaged in some form of independent investigation of the grand jury record prior to issuing Hill's April 20, 2016 order. "It is the Court's understanding that the Grand Jury impaneled for this matter also heard evidence in four to five other Grand Jury proceedings during this time, often going back and forth between all of the cases."

RESPONSE: Objection. Defendant objects to the terms "independent investigation" as the term is overbroad and vague. As framed, the request requires Defendant to engage in conjecture as to the response sought. As such, it is difficult to discern what Plaintiff is asking Defendant to admit or deny. This request is therefore denied.

34. Admit that the version of the grand jury audio that the Dearborn Superior Court II prepared for Brewington was completed on or before April 27, 2016.

RESPONSE: Denied. Defendant did not personally prepare the grand jury audio for Plaintiff and therefore has no personal knowledge to rely on in answering this request.

35. Admit that the grand jury audio prepared by the Dearborn Superior Court II contains less information than the transcription of the grand jury investigation of Daniel Brewington.

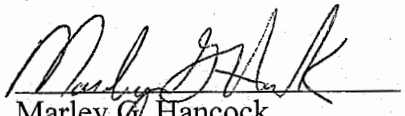
RESPONSE: Denied. Defendant did not personally prepare the grand jury audio, or the transcription of said audio, for Plaintiff and therefore has no personal knowledge to rely on in answering this request.

36. Admit that both the transcription and the audio of the grand jury investigation of Daniel Brewington lacked any introduction, instruction, or explanation as to scope or nature of the grand jury investigation, or any other record of the grand jury proceedings occurring prior to F. Aaron Negangard calling witness to testify before the grand jury.

RESPONSE: Denied. As the dispute over the grand jury audio began more than five years ago, Defendant is unable to recall the specifics of the transcription or audio. Defendant, therefore, has no personal knowledge to rely on in answering this request.

Acknowledgement

I affirm, under the penalties of perjury, that the foregoing representations are true and correct to the best of my knowledge and belief.

By: 

Marley G. Hancock
Deputy Attorney General
Attorney No. 34617-32

CERTIFICATE OF SERVICE

I hereby certify that on May 24, 2018, a copy of the foregoing was sent by prepaid U.S. mail on the following party:

Daniel P. Brewington
[redacted]
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IN THE
INDIANA COURT OF APPEALS

No. 15A04-1712-PC-2889

DANIEL BREWINGTON, *Appellant-Petitioner*, v. STATE OF INDIANA, *Appellee-Respondent*.	Appeal from the Dearborn Superior Court 2, No. 15D02-1702-PC-3, The Honorable W. Gregory Coy, Special Judge.

STATE'S BRIEF OF APPELLEE

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STATEMENT OF THE ISSUES

I. Post-Conviction Rule 1(4)(f) provides in part that a court may deny a petition for post-conviction relief without further proceedings "[i]f the pleadings conclusively show that petitioner is entitled to no relief." Brewington raises claims that are procedurally barred or conclusively lack merit given the Supreme Court's direct appeal opinion. Did the post-conviction court properly deny Brewington's petition on the pleadings?

II. A petitioner must first request a change of judge below in order to preserve a judicial bias claim for appeal, and a rational inference of bias or prejudice is not established because a judicial officer rules against a party. Brewington did not move for a change of judge, and he now alleges judicial bias because the judge denied the petition. Has Brewington waived his judicial bias argument for appeal?

III. Have the totality of Brewington's trial and post-conviction review proceedings violated his rights to due process and equal protection of the laws generally?

STATEMENT OF THE CASE

Brewington appeals the denial of his petition for post-conviction relief from his convictions for intimidation of a judge, attempted obstruction of justice toward a witness, and perjury to a grand jury.

On February 22, 2017, Brewington filed a petition for post-conviction relief from his 2011 convictions for intimidation, obstruction of justice, and perjury (App.

Vol. II 5, 15–86). He moved for a change of judge on March 3, 2017, which was granted on March 9, 2017 (App. Vol. II 5, 87–100, 101). Judge Coy accepted appointment as special judge on March 29, 2017 (App. Vol. II 6).

The State answered the petition on March 23, 2017 (App. Vol. II 6, 103–04). On April 3, 2017, Brewington moved for summary judgment, which he later requested be treated as a motion for summary disposition (App. Vol. II 6, 105–09, 110–28; Vol. IV 15–42). The State responded to this motion on June 8, 2017 (App. Vol. II 6; Vol III 2, 3–11). The post-conviction court denied Brewington's motion but granted judgment in favor of the State in a September 25, 2017, order that was entered onto the CCS on October 4, 2017 (App. Vol. II 7, 9, 10–12). The post-conviction court denied Brewington's motion to correct errors on November 6, 2017 (App. Vol. II 7, 14; Vol. IV 65–77). Brewington timely filed a notice of appeal on December 4, 2017.

STATEMENT OF THE FACTS

Brewington was a divorce litigant who was dissatisfied about how that case was unfolding, so he used a blog to threaten, harass, intimidate, and coerce the judge assigned to the case, the judge's wife, and an expert witness. When a grand jury investigated his conduct, he then gave false testimony in an attempt to mislead the panel. The Indiana Supreme Court summarized the specific facts of Brewington's crimes in its opinion on direct appeal. *Brewington v. State*, 7 N.E.3d 946, 955–57 (Ind. 2014) (*Brewington II*), *reh'g denied*, *cert. denied*. A jury found Brewington guilty of intimidation of the judge, judge's wife, and expert witness;

attempted obstruction of justice as to the expert witness; and perjury to the grand jury. *Id.* at 954. It also acquitted him of a charge of unlawful disclosure of grand jury proceedings. *Id.*

On appeal, Brewington challenged his convictions on a number of grounds:

- the empaneling of an anonymous jury,
- admission of certain evidence,
- double jeopardy violation as to the intimidation and obstruction of justice convictions related to the expert witness,
- sufficiency of the evidence as to the obstruction and all of the intimidation convictions given First Amendment free speech protections,
- sufficiency of the evidence as to the perjury conviction,
- erroneous jury instructions, and
- ineffective assistance of trial counsel.

Brewington v. State, 981 N.E.2d 585, 590 (Ind. Ct. App. 2013) (*Brewington I*), *aff'd in part by Brewington II*, 7 N.E.3d at 955.

This Court affirmed in part and reversed in part; it affirmed the perjury, intimidation of the judge, and attempted obstruction convictions, but reversed the for intimidation of the judge's wife conviction on First Amendment grounds and the intimidation of the expert witness conviction on double jeopardy grounds. *Brewington I*, 981 N.E.2d at 610. After granting transfer, the Supreme Court affirmed the convictions for intimidation of a judge and attempted obstruction of justice for different reasons than did this Court, but summarily affirmed this

Court's decision as to the perjury, intimidation of the judge's wife and intimidation of the expert witness convictions. *Brewington II*, 7 N.E.3d at 954–55, *aff'g in part Brewington I*, 981 N.E.2d at 599, 602–03.

SUMMARY OF THE ARGUMENT

This Court should affirm the post-conviction court's entry of judgment against Brewington without an evidentiary hearing because all of the claims that Brewington raises in this appeal are conclusively barred by res judicata and procedural default. Post-Conviction Rule 1(4)(f) permits judgment on the pleadings when the pleadings conclusively establish there is no possibility that the petitioner is entitled to relief. As to the claims that Brewington raises in his Brief of Appellant, all of them were either raised on direct appeal (in the case of his ineffective assistance of trial counsel arguments) or available on direct appeal but not raised (in the case of his grand jury, prosecutorial misconduct, and judicial bias arguments). There is no possibility that Brewington can obtain relief on his claims, and so post-conviction relief was properly denied on the pleadings.

Brewington fails to make a cogent argument as to his judicial bias arguments and his vague invocation of equal protection and due process generally. He also waived his judicial bias arguments by not moving for a change of judge. But in any event, the bias claims lack merit because, in explaining how he thinks the judges have conspired against him, Brewington only points to select rulings against him made by these judges. Such rulings are insufficient as a matter of law to state a claim of judicial bias.

ARGUMENT

I.
The post-conviction court properly denied Brewington's petition on the pleadings because his claims are procedurally barred or conclusively lack merit.

Brewington mistakenly argues that four of his post-conviction claims should have at least survived through to an evidentiary hearing,[1] if not formed the basis for summary disposition in his favor:

1) he received ineffective assistance of trial counsel because counsel allegedly did not communicate well enough with him about the charges and evidence;

2) trial court staff allegedly manipulated the record of the grand jury proceeding as part of a conspiracy against him;

3) the grand jury indictments were unconstitutional because they were allegedly not sufficiently detailed to notify Brewington of what criminal acts he committed; and

4) prosecutors allegedly committed misconduct at trial, particularly in argument before the jury.

[1] Any potential arguments that the post-conviction court should not have denied his myriad other claims that were asserted in his post-conviction relief petition have been waived by Brewington's decision to abandon them on appeal and his failure to argue why those claims should not have been denied. *Bunch v. State*, 778 N.E.2d 1285, 1290 (Ind. 2002) (to be available on appeal, a petitioner must include all of his claims in his principal brief; if he does not, then they are waived). Should he attempt to revive them in a reply brief, he cannot do so. *Id.*

Brewington's ineffective assistance of trial counsel claim was raised and adjudicated on direct appeal, but the other claims were not despite being available.

"In post-conviction proceedings, complaints that something went awry at trial are generally cognizable only when they show deprivation of the right to effective counsel or issues demonstrably unavailable at the time of trial or direct appeal." *Sanders v. State,* 765 N.E.2d 591, 592 (Ind. 2002). But because Brewington raised ineffective assistance of trial counsel on direct appeal, he cannot raise it again on post-conviction review. *Brewington II*, 7 N.E.3d at 978. Brewington's claims are therefore conclusively barred by res judicata and procedural default, so the post-conviction court properly denied relief without further evidentiary development. Given the conclusive barriers to post-conviction relief that exist in his case, Brewington does not—because he cannot—meet the appropriate standard. This Court should affirm.

A. The Post-Conviction Rules permitted disposing of Brewington's petition without a hearing.

The post-conviction court properly denied Brewington's petition without a hearing notwithstanding the fact that it was Brewington, and not the State, who moved for summary disposition of the petition. The post-conviction court did not specify whether it was denying relief under Post-Conviction Rule 1(4)(f), which allows for judgment on the pleadings, or Post-Conviction Rule 1(4)(g), which permits summary disposition without an evidentiary hearing and allows for the court to consider other materials than just the pleadings and the law (App. Vol. II 11–12). *See Binkley v. State*, 993 N.E.2d 645, 649–50 (Ind. Ct. App. 2013) (discussing *Allen*

v. State, 791 N.E.2d 748, 752–53 (Ind. Ct. App. 2003) (explaining the different applications of subsections (f) and (g) to Post-Conviction Rule 1(4))). Although the court denied Brewington's motion for summary judgment/disposition under Rule 1(4)(g), the court's order also suggests that in denying the petition for post-conviction relief itself, the Court acted pursuant to Rule 1(4)(f):

> Even though the State did not move for summary judgment, based on the undersigned judge's reading of the pleadings and the appellate cases mentioned above, judgment should be entered without a hearing.

(App. Vol. II 12).

In this case, it does not matter which subsection the court below acted under because the claims that Brewington presses on appeal are conclusively procedurally barred under the doctrines of res judicata and procedural default. On appeal, Brewington cannot prevail under either of the standards of review that apply to the appellate review of those judgments, so there is no need for this Court to decide whether the post-conviction court could have granted summary disposition against Brewington in the absence of a motion from the State.

1. Judgment on the pleadings under Rule 1(4)(f) was proper.

Post-conviction courts may deny petitions for post-conviction relief whenever "the pleadings conclusively show that [the] petitioner is entitled to no relief." Post-Conviction R. 1(4)(f); *Osmanov v. State*, 40 N.E.3d 904, 908 (Ind. Ct. App. 2015). The post-conviction court is limited to considering the pleadings when proceeding under Rule 1(4)(f), *id.* at 909, which the post-conviction court did (App. Vol. II 12). The court below properly compared the pleadings to the applicable law—including the

Supreme Court's direct appeal decision—to determine the viability of Brewington's claims. These sources established the procedural barriers to Brewington's claims and "conclusively show[ed] that petitioner is entitled to no relief."

The post-conviction court's order does not reflect consideration of any information outside of the pleadings and law. Based solely on the stated claims and information provided in the petition and answer, the post-conviction court properly applied the law and determined that Brewington's ineffective assistance of trial counsel claim was raised on direct appeal and is now barred by res judicata (App. Vol. II at 20–70, 73, 79–84), as well as confirming that all other freestanding claims of error were barred by either procedural default or res judicata because they were required to have been raised on direct appeal and are unavailable for post-conviction review. *See Allen*, 791 N.E.2d at 754–55 (partially affirming judgment on the pleadings in a post-conviction action as to two freestanding claims of trial error that were procedurally barred, but remanding for further factual development an ineffective assistance of counsel claim that was not procedurally barred). Unlike in *Allen*, where that petitioner did not raise an ineffectiveness claim on direct appeal, *id.* at 755, this petitioner did, *Brewington*, 7 N.E.3d at 977–78. The Supreme Court specifically found on direct appeal that his future trial counsel arguments will be barred. *Id.* at 978. Given that instruction, the post-conviction court was required to deny relief and judgment under Post-Conviction Rule 1(4)(f) was appropriate.

2. Summary disposition under Rule 1(4)(g) was also appropriate.

The post-conviction court was also authorized to dispose of the petition under Post-Conviction Rule 1(4)(g). Brewington's motion for summary disposition was intentionally limited to his allegations related to the grand jury (App. Vol. II 122, ¶7; App. Vol. III 2–11), but both parties submitted additional materials in support of their briefing (*see* App. Vol. II at 129–42, Vol. III at 12–60). The post-conviction court was permitted to consider those materials in addition to the pleadings when determining whether summary disposition was appropriate. *Binkley*, 993 N.E.2d at 649–50. In *Binkley*, neither party formally moved for summary disposition under Rule 1(4)(g), but they still asked the court to consider other materials in addition to the pleadings when deciding whether judgment should issue before an evidentiary hearing. *Id.* at 650. This Court found that Rule 1(4)(g) permitted review beyond just the pleadings, and it would govern review of the post-conviction court's order. *Id.* Indeed, there is every reason to read the post-conviction rules as giving judges this authority in order to efficiently dispose of petitions that have been fully factually developed according to the petitioner, yet still have zero chance of success given those unquestioned facts.

Brewington asked the post-conviction court to consider his materials and determine if summary disposition was appropriate. Those materials showed, and the petition conceded, what was litigated on direct appeal and what was not. He does not even challenge those facts in this appeal. And so the post-conviction court did the review Brewington asked for, just not with the result Brewington expected.

Under *Binkley*, he cannot be heard to complain of that procedure now. Nor does it matter because the State was entitled to judgment as a matter of law under both subsections given the insurmountable procedural bars to Brewington's claims.

3. Regardless of which subsection applies in this case, both of the respective standards of review require affirmance.

On appeal, Brewington has the burden of proving that the post-conviction court erred. *Allen*, 791 N.E.2d at 753 (under P-C. R. 1(4)(f)); *Hough v. State*, 690 N.E.2d 267, 270 (Ind. 1997) (under P-C.R. 1(4)(g)). A judgment on the pleadings should be reversed if the pleadings do not conclusively show that petitioner is entitled to no relief. *Osmanov*, 40 N.E.3d at 909. In that review, courts "should accept the well-pled facts as true and determine whether the post-conviction petition raises an issue of possible merit." *Id.* (quoting *Allen*, 791 N.E.2d at 756). So while petitions should not be denied on the pleadings "even though the petitioner has only a remote chance of establishing his claim[s]," *id.*, the claims that Brewington now argues should not have been dismissed have no possible merit because they are conclusively foreclosed by his direct appeal.

In cases with conclusive procedural bars such as this one, the same result follows under the standard for reviewing summary dispositions. A judgment under Post-Conviction Rule 1(4)(g) is reviewed the same as a motion for summary judgment, that is it "should only be granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Hough*, 690 N.E.2d at 269. "Any doubts about the existence of a fact or the inferences to be drawn therefrom are to be resolved in favor of the nonmoving

party." *Id.* at 270. In Brewington's case, he ignored the fact that he was required to have raised on direct appeal all of his freestanding claims of trial error and also that the fact that he litigated a claim of ineffective assistance of counsel on direct appeal foreclosed future trial counsel claims for post-conviction review.

B. The ineffective assistance argument is barred by res judicata.

On direct appeal, Brewington argued that his trial counsel rendered ineffective assistance of counsel, and the Supreme Court addressed and rejected it on the merits. *Brewington*, 7 N.E.3d at 974–78. Having raised ineffective assistance at that time, he is barred under the doctrine of res judicata from raising the claim again through a petition for post-conviction relief. *Sims v. State*, 771 N.E.2d 734, 742 (Ind. Ct. App. 2002) (*citing Woods v. State*, 701 N.E.2d 1208 (Ind. 1998)). This is true whether he wants to reargue his direct appeal allegations or assert other ways in which he thinks that counsel was ineffective at trial. *Id*. So as to leave no room for doubt, the Supreme Court specifically said so in Brewington's direct appeal. *Brewington II*, 7 N.E.3d at 978.

Nevertheless, Brewington tries both approaches in his invitation for this Court to revisit the Supreme Court's resolution of his claims: he argues both that the Supreme Court was wrong and that his counsel's performance qualifies for relief under *United States v. Cronic*, 466 U.S. 648 (1984) (explaining that certain types of deficient performance are so inherently prejudicial that the Sixth Amendment does not require a separate showing of prejudice as is ordinarily required under *Strickland v. Washington*, 466 U.S. 668 (1984)). But neither the post-conviction

court nor this Court can entertain his arguments under the doctrine of res judicata, *Brewington II*, 7 N.E.3d at 978, so the Court should affirm the judgment below.[2]

C. Procedural default bars the remaining arguments because Brewington did not raise them on direct appeal.

It is well-established that claims that are available at the time of direct appeal must be raised then or they are forfeited. The doctrine of procedural default bars Brewington's claims about the completeness of grand jury transcripts, legal sufficiency of the indictments, and any instances of alleged prosecutorial misconduct because these claims were available on direct appeal, but not presented. *Morales v. State*, 19 N.E.3d 292, 295 n.3 (Ind. Ct. App. 2014) (citing *Bunch*, 778 N.E.2d at 1289). To the extent that Brewington now claims that these are fundamental errors, that doctrine is unavailable on post-conviction review to excuse these types of procedural defaults.[3] *Bunch*, 778 N.E.2d at 1289. These are applications of the basic principle that post-conviction proceedings do not afford the opportunity for a super-appeal, *id.*, which is precisely how Brewington treats this

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[2] In this appeal, Brewington does not claim ineffective assistance of appellate counsel, so he has waived for further review any later assertion of it. *French v. State*, 778 N.E.2d 816, 825–26 (Ind. 2002) (in post-conviction appeals, ineffective assistance arguments are waived when not raised in principal brief). *See also Bunch*, 778 N.E.2d at 1290 (same); *Curtis v. State*, 948 N.E.2d 1143, 1148 (Ind. 2011) (cannot assert fundamental error if not raised in the principal brief); *Jones v. State*, 22 N.E.3d 877, 881 n.4 (Ind. Ct. App. 2014) (alternative arguments are waived on appeal if raised for the first time in a reply brief).

[3] Throughout his brief, Brewington sprinkles references to the fundamental error doctrine, although it is not clear whether he uses it as a legal term of art to suggest that a waiver should be excused or in a more colloquial manner to illustrate how he views the claims as particularly serious. Neither way excuses his procedural default at this time.

proceeding. Finally, Brewington has never claimed that his appellate counsel was ineffective for having not presented these arguments, so he cannot now try to revive them under that standard. The post-conviction court properly understood that these claims were conclusively barred and denied relief. This Court should affirm.

D. If summary disposition was inappropriate, then remand for further evidentiary development is the appropriate remedy.

The procedural bars to Brewington's claims are heavy, and the post-conviction court properly found that Brewington is conclusively not entitled to relief. But if the judgment below was in error, then the proper remedy is not summary disposition in Brewington's favor, as he argues. First, Brewington specifically did not include his ineffective assistance and prosecutorial misconduct claims in his motion for summary judgment (App. Vol. II 122 ¶7), so he cannot now insist that he is entitled to summary disposition on those claims. Second, if there are no procedural bars that permit judgment on the pleadings, then Brewington needs to support his allegations with actual evidence. His assertions of fact will remain mere assertions unless and until he can prove them with evidence that the post-conviction court finds persuasive. So if this Court determines that the procedural deficiencies in Brewington's claims are not bars to relief, then the proper remedy if to remand with instructions to allow Brewington the opportunity to prove his claims with evidence submitted by affidavit under Post-Conviction Rule 1(9)(b), or an evidentiary hearing under Post-Conviction Rule 1(5). The choice between these options should remain within the post-conviction court's sound discretion.

Nonetheless, this Court should affirm the post-conviction court's judgment because Brewington's claims are barred from post-conviction review.[4]

II.
The judicial bias claims are waived and lack merit.

It is not clear which judges Brewington intends to allege bias against, or even what the nature of that bias is other than how he perceives the Indiana judiciary engaged in a conspiracy against him. Given the vague nature of his claim, Brewington has waived it for appellate review by not providing cogent argument. *Howard v. State*, 32 N.E.3d 1187, 1195 n.12 (Ind. Ct. App. 2015). If Brewington intends to claim that Judge Coy was biased against him during the post-conviction relief proceeding, Brewington has also waived review by not having moved for a change of judge from Judge Coy under Post-Conviction Rule 1(4)(b),[5] or by otherwise challenging the impartiality of the post-conviction court prior to appeal. *Flowers v. State*, 738 N.E.2d 1051, 1059–60 (Ind. 2000); *Sisson v. State*, 985 N.E.2d 1, 18 (Ind. Ct. App. 2012). And finally, to the extent that Brewington claims that Judge Hill was biased against him during the trial proceedings, that claim is barred

[4] Although not strictly relevant to the resolution of this appeal, the State notes that federal habeas corpus review will not be available to Brewington. Federal courts lack habeas corpus jurisdiction over petitioners who are not "in custody" pursuant to a state court judgment, and Brewington's sentence has been fully served. *See, e.g., Kelley v. Zoeller*, 800 F.3d 318, 324 (7th Cir. 2015), *reh'g en banc denied*. Moreover, Brewington's claims would be time-barred because he waited well over one year from the end of his direct appeal to file the instant petition. *See, e.g., Powell v. Davis*, 415 F.3d 722, 726 (7th Cir. 2005).

[5] Brewington did seek, and receive, a change of judge from Judge Hill at the outset of his post-conviction relief action (App. Vol. II 87-101)

by procedural default because it was available to him on direct appeal, but he did not raise it. *Morales*, 19 N.E.3d at 295 n.3.

Procedural bars notwithstanding, his claim lacks merit. Brewington complains of bias by pointing only to actions by these judges taken during the pendency of his case. An adverse ruling alone is insufficient to show bias or prejudice, rather the record must show *actual* bias or prejudice, such as an undisputed claim or where a judge expressed an opinion of the controversy. *Massey v. State*, 803 N.E.2d 1133, 1138–39 (Ind. Ct. App. 2004). At most, Brewington points to ways in which judges sometimes ruled against him—to which he adds mere speculation and conspiratorial reasoning—and that is insufficient as a matter of law to warrant a change of judge. *Voss v. State*, 856 N.E.2d 1211, 1217 (Ind. 2006). This Court should affirm the post-conviction court's judgment.

III.
Freestanding equal protection and due process claims are barred.

Brewington appears to attempt to constitutionalize all of his claims by vaguely invoking principles of equal protection and due process, but these statements, to the extent they are claims, are waived for a lack of cogent argument. Brewington does not cite or discuss relevant caselaw to explain how his claims state a violation of the Fourteenth Amendment or similar Indiana constitutional protections beyond what is necessarily part of the original claim (e.g., prosecutorial misconduct or judicial bias). *Howard*, 32 N.E.3d at 1195 n.12. Moreover, to the extent that these are independent claims for relief, they were not raised in his petition below and are waived now. *Id.* at 1195. Should the Court remand for

further proceedings for another reason, then Brewington may pursue whatever claim he attempts to state here.

CONCLUSION

This Court should affirm the post-conviction court's judgment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on May 10, 2018, the foregoing document was electronically filed using the Indiana E-filing System ("IEFS"). I also certify that the foregoing was served upon Daniel Brewington via IEFS at the time of electronic filing.

/s/ Stephen R. Creason
Stephen R. Creason

IN THE
INDIANA COURT OF APPEALS

Case No. 15A04-1712-PC-02889

DANIEL BREWINGTON, _____ Appellant,	)	Appeal from Dearborn County Superior Court II
v.	)	Case No. 15D02-1702-PC-0003
STATE OF INDIANA _____ Appellee.	)	Hon. W. Gregory Coy, Special Judge

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APPELLANT'S REPLY BRIEF

Daniel P. Brewington
[redacted]
Pro Se Filing Party

PLAINTIFF'S EXHIBIT
D

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SUMMARY OF ARGUMENT

The Brief of Appellee defies logic and law. Despite the absence of any hearing, the State argues that the sua sponte summary judgment in favor of the non-movant State, which dismissed of all twenty grounds raised in Brewington's Verified Petition for Post-Conviction Relief, was proper under P-C.R. 1(4)(g). The State makes an unsupported claim that Special Judge W. Gregory Coy *may* have dismissed Brewington's post-conviction claims under P-C.R. 1(4)(f). The State, by Deputy Attorney General Stephen Creason, also preemptively argued procedural and time constraints would preclude Brewington from seeking federal habeas corpus relief, which acknowledges Brewington has a valid constitutional claim, thus barring summary dismissal under both P-C.R. 1(4)(g) and P-C.R. 1(4)(f). As summary judgment/disposition/dismissal under P-C.R. 1(4)(g) carries the requirement that no issues of material fact exist, the State accepts Brewington's material facts as being true, thus waiving the State's ability to argue otherwise on remand or oral arguments in this case. The State's attempt to have this Court review Judge Coy's post-conviction order as summary dismissal under P-C.R. 1(4)(f) appears to be an attempt by the State to argue all Brewington's claims are defaulted in procedural or time waiver. Such a claim only raises further uncertainties as to Judge Coy's reasoning in Judge Coy's vague order summarily dismissing Brewington's PCR action. Adding another layer of complexity to this case is the fact the State concedes to Brewington's claims of material fact. The

State's admission of material fact include Brewington's claims that the court staff of the Dearborn Superior Court II conspired to alter grand jury records, and that trial Judge Brian Hill ignored Brewington's complaints of how Brewington's public defender, Bryan Barrett, refused to speak to Brewington outside of a courtroom or provide any legal assistance to Brewington in preparing for trial. As the State has acknowledge the Dearborn Superior Court II engaged in a criminal conspiracy against Brewington's civil rights, and that Brewington had no real assistance of counsel, the reversal of Brewington's convictions is appropriate. Remanding the case back to the trial court places Brewington in grave danger as it exposes Brewington to the same individuals that conspired to strip Brewington of constitutional protections. Further evidentiary hearings are unnecessary. Brewington need not prove the extent of the conspiracy involving the trial court because the Brief of the Appellee specifically acknowledges the conspiracy by the trial court is not a contested issue of material fact. Chief Deputy Attorney General F. Aaron Negangard initiated this action against Brewington in retaliation for Brewington's public statements alleging corruption in the Dearborn County Courts. The fact the State concedes that the Dearborn Superior Court II conspired to alter grand jury records in assisting Negangard's prosecution of Brewington only serves to strengthen Brewington's prior claims of corruption.

ARGUMENTS

1. THE STATE'S CASE IMMEDIATELY HITS A FATAL FLAW BY ACKNOWLEDGING THE COURT STAFF OF THE DEARBORN SUPERIOR COURT II VIOLATED TITLE 18, U.S.C., SECTION 241, CONSPIRACY AGAINST CIVIL RIGHTS

The State's arguments that dismissal is proper under either P-C.R. 1(4)(g) or P-C.R. 1(4)(f) cannot exist without the State acknowledging the Dearborn Superior Court II engaged in a federal conspiracy against Brewington's civil rights by altering grand jury records to assist Dearborn County Prosecutor F. Aaron Negangard[1] obtain criminal convictions.

In *Osmanov v. State*, 40 N.E.3d 904, (2015), the Court states:

> [W]e have previously explained that Post-Conviction Rule 1(4) provides two different subsections under which a post-conviction court may deny a petition without a hearing--subsection (f) and subsection (g)--and that each one has a different applicable standard of review. See *Binkley v. State*, 993 N.E.2d 645, 649-50 (Ind.Ct.App. 2013) (citing *Allen v. State*, 791 N.E.2d 748, 752-53 (Ind.Ct.App. 2003), trans. denied). Subsection (f) provides that a post-conviction court "may deny the petition without further proceedings" if "the pleadings conclusively show that [the] petitioner is entitled to no relief[.]" Ind. Post-Conviction Rule 1(4)(f) (emphasis added). Subsection (g) provides that a post-conviction court:
>
> may grant a motion by either party for summary

[1] Negangard is now Chief Deputy to Indiana Attorney General Curtis T. Hill.

> disposition of the petition when it appears from the pleadings, depositions, answers to interrogatories, admissions, stipulations of fact, and any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

The Brief of Appellee requires reversal of Brewington's criminal convictions because it is impossible for summary judgment to a non-moving party to be proper under *both* P-C.R. 1(4)(g)[2] *and* P-C.R. 1(4)(f). The State's Appellee Brief argues:

> 1. Judgment on the pleadings under Rule 1(4)(f) was proper
>
> 2. Summary disposition under Rule 1(4)(g) was also appropriate
>
> 3. Regardless of which subsection applies in this case, both of the respective standards of review require affirmance

P-C.R. 1(4)(g) gives a court the authority to grant a motion for summary disposition when "there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Page ten of the Brief of Appellee lists four of Brewington's twenty post-convictions claims:

> 1) he received ineffective assistance of trial counsel because counsel allegedly did not communicate well enough with him about the charges and evidence
>
> 2) trial court staff allegedly manipulated the record of the grand jury proceeding as part of a conspiracy against him;

---

[2] The State provides no statute or case law suggesting that Judge Coy had any authority to grant summary judgment to a non-moving party.

> 3) the grand jury indictments were unconstitutional because they were allegedly not sufficiently detailed to notify Brewington of what criminal acts he committed; and
>
> 4) prosecutors allegedly committed misconduct at trial, particularly in argument before the jury.

Arguing that P-C.R. 1(4)(g) is proper in the present case carries the requirement that no issues of material fact can exist. As such, State accepts Brewington's above claims as being fact. Nothing in Brewington's above claims entitles the State "to judgment as a matter of law," especially as the State never petitioned the trial court for summary disposition. The State's admission to Brewington's facts also dooms the State's case under P-C.R. 1(4)(f):

> "If the pleadings conclusively show that petitioner is entitled to no relief, the court may deny the petition without further proceedings."

The Brief of Appellee does not dispute Brewington's material facts, rather the State argues Brewington's claims are barred by waiver and/or res judicata. The case of *Ben-Yisrayl v. State*, 738 N.E.2d 253, (2000) explains how the error in this case may be reviewed at any time:

> An otherwise forfeited claim may be reviewed when we find blatant violations of basic principles, the harm or potential for harm is substantial, and the resulting error denied the defendant fundamental due process. *Baird v. State*, 688 N.E.2d 911, 917 (Ind.1997).

First it is noteworthy that there is no evidence that res judicata or other waiver played any role in Judge Coy's decision to grant summary judgment to the State under P-C.R. 1(4)(g). Brewington stated the Dearborn Superior Court II

altered grand jury records and the State agrees. The fundamental damage is irrefutable. This does not account for the other nineteen (19) grounds in Brewington's Verified Petition for Post-Conviction Relief, which the State also acknowledges to be true. Even the State's waiver argument is fatally flawed. As both Indiana and federal law provide loopholes for "otherwise forfeited claims," res judicata and other procedural bars are not absolute. The issue becomes whether "the resulting error denied the defendant fundamental due process." Normally the question of the magnitude of the constitutional errors in a criminal proceeding, and whether those constitutional errors denied a defendant fundamental due process, would be a debatable material fact that cannot be decided in the absence of an evidentiary hearing. This is not a normal situation. The United States Constitution does not allow an acceptable level of conspiratorial actions by a trial court. Any argument to the contrary creates an issue of material fact; further proving Judge Coy's ruling to be erroneous. The subjectivity of procedural waiver alone eviscerates the State's entire argument that dismissal was proper under either P-C.R. 1(4)(g) or P-C.R. 1(4)(f)

2. STATE IS BARRED FROM ARGUING ISSUES OF MATERIAL FACT

On page 18 of the Brief of Appellee, Deputy Creason provides a "backup" argument for the State:

> D. If summary disposition was inappropriate, then remand for further evidentiary development is the appropriate remedy.

Creason's above argument is problematic because no evidentiary

development is needed. Creason argues dismissal under P-C.R. 1(4)(g) was proper, thus barring the State from raising issues of material fact. The State cannot argue that dismissal under P-C.R. 1(4)(f) is proper because res judicata and other procedural waiver is not absolute, thus leaving the question of whether the trial court's conspiracy to alter grand jury records deprived Brewington of fundamental due process. The State's last-resort request for remand further demonstrates the need for reversal. As Ind. Post-Conviction Rule 1(4)(b) states "No change of venue from the county shall be granted," so the Dearborn Superior Court II would be responsible for deciding whether the conspiracy to alter grand jury records by court's own staff rose to the level of "blatant violations of basic principles."

3. MATERIAL FACTS ARE NOT SUBJECTIVE

Brewington emphasizes that material facts are not subjective. Any attempt to dispute Brewington's assertion of material fact negates the State's argument that dismissal was proper under either P-C.R. 1(4)(g) or P-C.R. 1(4)(f).

4. STATE'S ARGUMENTS CANNOT OVERRIDE LAW

> "There is no factual basis to support any of Brewington's claims and/or allegations against the judges and attorneys involved in his case."

The above reasoning by Judge Coy in summarily dismissing all twenty grounds in Brewington's post-conviction action under P-C.R. 4(g), requires the reversal of Judge Coy's order. In *Tooley v. State*, 156 Ind.App. 636, 297 N.E.2d 856, (1 Dist. 1973), the Court found Summary Judgment is not available when it is

necessary to weigh the evidence:

> 'Summary judgment cannot be granted, however, when it is necessary to weigh the evidence contained in the supporting affidavits, draw conclusions of fact from that evidence, and thereby determine a preponderance of the evidence. In ruling on motions for summary judgment, the court may not decide questions of fact, but is limited to the sole determination of whether or not a factual controversy exists. In short, summary judgment is not a procedure for trying facts and determining the preponderance of the evidence. Rather, it is a procedure for applying the law to the facts when no factual controversy exists.'

Judge Coy had no authority to independently try facts nor make any independent findings of fact. As the State now contends no issues of material fact exist, no factual controversies exist in any of the twenty grounds raised in Brewington's Verified Petition for Post-Conviction.

5. THE STATE'S DOUBLE STANDARD

The State argues that Brewington should be held to the most stringent of standards, while ignoring the fact Judge Coy raised a non-existent distinction between summary judgment under T.R. 56(c) and summary disposition under P-C.R. 1(4)(g). In denying Brewington's Motion for Summary Judgment, Judge Coy stated:

> The State argues that summary judgment is not available in a post conviction relief claim; this court agrees, but does find that summary disposition is still available pursuant to Indiana Rule PC 1 Sec. 4(g).

State v. Gonzalez-Vazquez, 984 N.E.2d 704, (2013) demonstrates Judge Coy's ruling is unequivocally erroneous:

> In *Hough v. State*, 690 N.E.2d 267, 269 (Ind.1997), an appeal from a grant of summary judgment to the State in post-conviction proceedings, our Supreme Court has stated: "The summary judgment procedure that is available under Indiana Post-Conviction Rule 1(4)(g) is the same as under Trial Rule 56(C)." Under both rules, summary judgment is to be granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Id. (citing Ind. Post-Conviction Rule 1(4)(g); Ind. Trial Rule 56(C)).

As mentioned earlier, the record is void of Judge Coy mentioning P-C.R. 1(4)(f). The State does not give any evidence that Judge Coy's ruling was premised upon P-C.R. 1(4)(f).

6. THE COURT OF APPEALS CAN REVIEW ALL TWENTY GROUNDS RAISED IN BREWINGTON'S VERIFIED PETITION FOR POST-CONVICTION RELIEF

> When a "clearly erroneous" judgment results from an application of the wrong legal standard to properly found facts, we do not defer to the trial court. *Van Cleave*, 674 N.E.2d at 1296. We are not bound by the trial court's characterization of its results as "findings of fact" or "conclusions of law," but look to the substance of the judgment and review a legal conclusion as such even if the judgment wrongly classifies it as a finding of fact. Id. (citing *Indiana State Bd. of Public Welfare v. Tioga Pines Living Ctr., Inc.*, 575 N.E.2d 303, 306 & n. 1 (Ind.Ct.App.1991)). (*Ben-Yisrayl v. State*, 738 N.E.2d at 259)

Judge Coy misrepresented summary judgment under T.R. 56(c) as not being available to Brewington in post-conviction proceedings then immediately awarded summary judgment to the State. Judge Coy failed to provide any "findings of fact" or "conclusions of law" as procedurally required, while independently trying the

facts of Brewington's petition. As such, Judge Coy's order is "clearly erroneous." Due to the State's claim that dismissal under P-C.R. 1(4)(g) is proper, this Court may consider the twenty grounds in Brewington's petition to be factually accurate when reviewing both the denial of Brewington's Motion for Summary Judgment and the summary dismissal of Brewington's Verified Petition for Post-Conviction Relief.

7. BREWINGTON DID NOT WAIVE CLAIM OF INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

Brewington cannot involuntarily waive his right to counsel. In footnote 2 on page 17 of the Brief of the Appellee, Creason wrote:

> In this appeal, Brewington does not claim ineffective assistance of appellate counsel, so he has waived for further review any later assertion of it. *French v. State*, 778 N.E.2d 816, 825–26 (Ind. 2002) (in post-conviction appeals, ineffective assistance arguments are waived when not raised in principal brief).

Judge Coy's order summarily dismissing Brewington's entire post-conviction action consists of two rulings; 1) Judge Coy's improper dismissal of Brewington's Motion for Summary Judgment, and, 2) Judge Coy dismissed Brewington's entire action via unspecified sua sponte action in favor of the State. As such, Brewington raised three main issues on appeal; 1) Summary Dismissal was erroneous, 2) Brewington is entitled to Summary Judgment, and, 3) a claim of Equal Protection and Due Process Violations. If the State would have petitioned the trial court for summary judgment, Brewington would have at least had a clue of the legal basis supporting Judge Coy's ruling. The record is void of any evidence that Judge Coy

even considered any specific grounds in Brewington's petition. Brewington did not directly raise ineffective assistance of appellate counsel on appeal because Judge Coy summarily dismissed Brewington's entire action without holding any hearings. Brewington would petition a federal court for relief if this Court would deny Brewington relief from the constitutional procedural errors plaguing the history of Brewington's case. Because Brewington was denied the opportunity to assemble a record supporting ineffective assistance of appellate counsel through the post-conviction process, Brewington did not want to risk the same prejudice Brewington incurred in *Brewington v. State*, 7 N.E.3d 946, (2014). The Supreme Court decision in *Brewington* demonstrates the dangers of raising an ineffective assistance of counsel claim without an established post-conviction record. After Brewington's appellate counsel raised an ineffective assistance of trial counsel claim, it allowed the Indiana Supreme Court to speculate on the trial strategy of Brewington's public defender and how that perceived strategy waived Brewington's right to relief from the unconstitutional aspects of Negangard's unconstitutional "criminal defamation" prosecution.[3][4][5] A post-conviction record would have reaffirmed Brewington's

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[3] Brewington still has trouble understanding how Brewington was precluded from speculating on trial counsel's trial strategy in the absence of any record of trial counsel's thoughts on strategy, when the Supreme Court was free to do so.

[4] In *Weedman v. State*, 21 N.E.3d 873, (2014), this Court declined to employ the same speculative trial strategy analysis as in Brewington. "Despite the language in Brewington, we believe such a 'strategy' argument is more properly addressed in the context of an ineffective assistance of trial counsel issue in post-

pretrial contentions that Barrett never met with, or called Brewington to investigate the State's allegations nor did Barrett provide any legal assistance to Brewington in preparing for trial; thus, making it impossible for Barrett to employ any reasonable trial strategy. If Brewington raised a freestanding ineffective assistance of appellate counsel claim in this appeal without an established record, the State would then argue res judicata barred Brewington from raising the issue at a federal level.

Brewington's Appellant Brief includes an ineffective assistance of appellate counsel claim in relation to Judge Coy's reasoning for the summary dismissal of Brewington's entire action: "There is no factual basis to support any of Brewington's claims and/or allegations against the judges and attorneys involved in his case (App. II 11-12)." It is self-evident that in the absence of a post-conviction hearing/procedure, it is impossible for Brewington to present a factual basis for an ineffective assistance of appellate counsel claim. This Court cannot allow the State to prop up a constitutionally inept order from the Dearborn Superior Court II, while attacking Brewington's claims because they lack legal precision in "properly"

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conviction proceedings. We simply have no information regarding Weedman's trial counsel's thoughts on his strategy."

[5] The Indiana Supreme Court never addressed the fact it was impossible for trial strategy to invite the error associated with the grand jury indictments stemming from the unconstitutional "criminal defamation" arguments Negangard made to the grand jury.

articulating the constitutional deficiencies of Judge Coy's ruling.

8. TAKING ADVANTAGE OF A PRO SE LITIGANT

> "Although the court denied Brewington's motion for summary judgment/disposition under Rule 1(4)(g), the court's order also suggests that in denying the petition for post-conviction relief itself, the Court acted pursuant to Rule 1(4)(f)"

Brewington questions whether the content of the Brief of the Appellee would have been different if Brewington was someone other than a pro se litigant. Nothing about Judge Coy's order "suggests" the ruling was premised upon P-C.R. 1(4)(f). Judge Coy's order only "suggests" that Judge Coy failed to provide any finding of fact and conclusions of law, improperly ruled summary judgment under T.R. 56(c) was unavailable in post-conviction proceedings, while awarding summary disposition to the non-movant State by improperly undertaking an independent review of the factual basis behind Brewington's post-conviction claims without holding a hearing[6]. Judge Coy used a scalpel to split T.R. 56(c) from P-C.R. 1(4)(g) to create an invalid rationalization why *not* to review Brewington's request for summary judgment/disposition, and then took a wrecking ball to the rest of Brewington's claims without any regard to the finding of facts or conclusions of law requirement of P-C.R. 1(5). This is consistent with the history of Brewington's case where the State and prior Indiana courts pass off such behavior as haphazard

[6] To date, the State still has not addressed a majority of the twenty grounds raised in Brewington's Verified Petition for Post-Conviction Relief.

professional incompetence rather than view the conduct as intentional abuse of procedure. Indiana courts have a history of making excuses why not to grant Brewington relief from the malicious conduct. In rationalizing how a speculative defense strategy somehow waived Brewington's right to relief from fundamental error in Brewington's trial, the Indiana Supreme Court stated:

> "that approach sought to exploit the prosecutor's improper reliance on "criminal defamation" to the defense's advantage." *Brewington v. State*, 7 N.E.3d at 975

Rationalizing the above trial strategy waiver required the Indiana Supreme Court to overlook the fact that Negangard made Brewington the target of a grand jury investigation to investigate "criminal defamation."[7] This lends insight into the possible reasoning as to why the court staff conspired to alter grand jury records; a material fact the State does not contest. Specific unconstitutional arguments to the grand jury is the likely cause for the trial court's "editing" of the grand jury record. Creason is very familiar with the record of this case as Creason presented oral arguments before the Indiana Supreme Court in Brewington's direct appeal. Assisting Creason during oral arguments was former Dearborn County Prosecutor F. Aaron Negangard.

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[7] It is worthy to note that the Indiana Supreme Court did not issue any opinion or ruling addressing the misconduct relating to the unconstitutional criminal defamation arguments Negangard made to both the trial jury and grand jury. Though erroneous, the trial strategy/invited error argument developed by the Indiana Supreme Court only addressed the general verdict error in Brewington's trial and not the prosecutorial misconduct by Negangard and the Office of the Dearborn County Prosecutor.

Any twisting of fact or law by Deputy Creason is no accident. A review of Deputy Creason's 2015 Application for the Court of Appeals of Indiana[8] demonstrates Creason has enjoyed a nearly twenty-year tenure at the Office of the Indiana Attorney General. Creason is also an Adjunct Professor at the Indiana University Robert H. McKinney School of Law. Creason's application also asserts Creason served "as lead counsel or second chair in six capital post-conviction relief evidentiary hearings" with several judges across the state, including one of the alleged "victims" of Brewington's critical speech; Dearborn Circuit Court Judge James D. Humphrey. Creason's resume also makes specific reference to Brewington under the section "Identify the five most significant legal matters entrusted to you, whether as a judge or lawyer, and describe why you believe them to be so." Creason listed *Brewington v. State* as one of the five most significant legal matters stating:

> "The case is important, even nationally, to illustrate the limits of both criminal law and the First Amendment when it comes to threatening speech in today's world."

There is a bitter hypocrisy in Creason preaching the national importance of Brewington's case that allegedly demonstrated limits on free speech, while now arguing Brewington is procedurally barred from seeking relief from damages caused by the trial court's decision to alter grand jury records. The potential of having to update Creason's resume adds to the already existing conflict of interest facing the Office of the Indiana Attorney General, as Brewington's entire case is born out of

[8] https://www.in.gov/judiciary/jud-qual/files/jud-qual-coa2015-creason-app.pdf

the malicious prosecution brought by Creason's superior, Chief Deputy Attorney General Negangard.[9][10] In the absence of a valid claim for federal action, it would be unnecessary for Creason to dedicate a footnote explaining how waiver precludes Brewington from federal relief. Any argument that "Brewington's claims would be time-barred", only serves to reward official misconduct. The Office of the Indiana Attorney General Curtis T. Hill understands that either reversal or remand would likely have catastrophic legal consequence for Chief Deputy Attorney General F. Aaron Negangard and Dearborn County court officials.

9. APPELLEE BRIEF EMPHASIZES SECOND PRONG OF NEGANGARD'S MISCONDUCT, THUS REQUIRING REVERSAL OF BREWINGTON'S CONVICTIONS

The State's reliance on P-C.R. 1(4)(g) for dismissal requires the acceptance that no issue of material fact exist in Brewington's assertion of facts. As such, the State concedes, at least, that the "prosecutors allegedly committed misconduct at trial, particularly in argument before the jury" and that the "trial court staff allegedly manipulated the record of the grand jury proceeding as part of a

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[9] The Office of the Indiana Attorney General currently represents Dearborn Superior Court II/Judge Sally McLaughlin and Judge Brian Hill against Brewington's APRA lawsuit seeking the entire grand jury record in *Brewington v. Dearborn Superior Court II, Etl*, 15D01-1702-PL-000013.

[10] Creason argues relief through federal habeas corpus is not available to Brewington yet Creason offers no comment on other federal grounds under which Brewington may or may not seek relief.

conspiracy against Brewington." (Appellee Brief 10) The State's use of "allegedly" does not diminish the degree of misconduct. A closer review of Negangard's statements demonstrate Negangard's conduct is far more serious than it appears. The following are two examples of prosecutorial misconduct by Negangard during closing arguments:

> "As to Count II, Intimidation of a Judge, that is more serious because it involves a Judge but because it involves a Judge, we do need to look at the first amendment issues because you are allowed to criticize judges. Right? I mean, I'm not. Defense counsel's not because we are attorneys. But remember he says he's acting like an attorney so we should treat it as he's acting like an attorney. Well if he's acting like an attorney, then he needs to accountable like an attorney. He could hire his own attorney but he didn't. So you know and he has to suffer the consequences." - Trial trans page 515 (App. II 36, App. IV 59, App. IV 74)[11]

> "That would become our system of justice if we accept the Defendant's premise that these are only opinions and he was only expressing his political thought. If we accept that premise, then that is the judicial system that we will have. That will be brought on by the invention of the internet. I submit to you that that is not a judicial system we want. That's what this case is about. It isn't about Judge Humphrey. It isn't about Dr. Connor. It is about our system of justice that was challenged by Dan Brewington and I submit to you that it is your duty, not to let him pervert it, not to let him take it away and it happens if he's not held accountable." Tr. 504-505 (App. II 39)[12]

At first glance, it would appear that Negangard crafted the above arguments

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[11] Brief of Appellant, page 49
[12] Brief of Appellant, page 51

with the intention of them being "so prejudicial to the defendant's rights as to 'make a fair trial impossible.'" (*Ryan v. State*, 9 N.E.3d 663, (2014) citing *Benson v. State*, 762 N.E.2d 748, 756 (Ind. 2002)). In the first of the above two arguments, Negangard argues Brewington's self-representation in a divorce proceeding somehow placed criminal liability on Brewington's speech criticizing Dearborn Circuit Judge James D. Humphrey. Negangard's argument appears to be rooted in the Indiana Rules of Professional Conduct for attorneys, which have no criminal nor civil authority over Brewington, who isn't even a lawyer. Negangard's second argument claims Brewington's criminal trial was not about the alleged victims but rather Negangard made Brewington the target of a grand jury investigation and prosecuted Brewington to prevent Brewington from perverting "our system of justice." It is impossible for the State to dismiss the above misconduct as harmless error because the exact errors of Negangard's arguments are undefined. The following questions arise:

> *Did Negangard actually seek indictments and convictions against Brewington for violating the Indiana Rules of Professional Conduct for attorneys?*
>
> *Did Negangard actually obtain indictments against Brewington under the guise of Indiana's intimidation and obstruction statutes to prevent Brewington from trying to pervert the Indiana system of justice?*

The State does not have the luxury of claiming Chief Deputy Negangard simply lied to the trial jury, while asserting the lies were harmless error. It is axiomatic that it would have been impossible for the most competent of attorneys to

subject the State's case against Brewington if Negangard sought indictments against Brewington for the non-crime of perverting the Indiana justice system under the guise of Indiana's intimidation and/or obstruction statutes. This fails to account for Negangard's criminal defamation prosecution the Indiana Supreme Court deemed to be "plainly impermissible." Reversal of Brewington's convictions is necessary because Brewington is still unsure as to what actions were responsible for Brewington's indictments and prosecution. It is unnecessary for this Court to remand the case for further evidentiary hearings to determine the *"real"* motivations behind Negangard's decision to seek indictments and convictions against Brewington or to determine *"how much"* indictment information and evidence the Dearborn Superior Court II omitted from the record of the grand jury. Remanding the matter back for a new trial is futile because there is no evidence whether Negangard sought indictments against Brewington for intimidation, obstruction of justice, violating the Indiana Code of Professional Conduct, perverting the Indiana judicial system, criminal defamation, or any other activity that Negangard arbitrarily deemed "criminal," because the Dearborn Superior Court II omitted Negangard's opening introduction/arguments from the grand jury record.

10. WHAT ELSE DID "THEY" DO?

The fact that the State acknowledges the court staff of the Dearborn Superior Court II conspired to alter grand jury records is not as frightening as other potential

conspiratorial actions by the Dearborn officials that cannot be gleaned from the already incomplete record of Brewington's case. Brewington is unable to determine the actual identities of any additional bad actors or the extent of their attacks on Brewington's constitutional rights. If a trial court is willing to alter grand jury records in assisting the prosecution with obtaining unconstitutional indictments and convictions, then the trial court is just as likely to, at least, turn its head away from a defendant's pleas for legal counsel and an understanding of the criminal case in the moments before trial; which is exactly what Judge Brian Hill did. If Negangard is willing to make Brewington the target of an unconstitutional grand jury investigation, it should be assumed that Negangard would also be capable of tampering with the pool of grand jurors. As such, the examples of misconduct gleaned from the record, which are confirmed in the Brief of the Appellee, are not likely to represent the bottom of the iceberg.

CONCLUSION

Brewington emphasizes his post-conviction action was never about the content of his speech but rather the trial court's refusal to protect Brewington's most fundamental procedural rights. The State tries to assert that Brewington is attempting to retry the findings of prior courts. Creason provides this Court with a sugarcoated assessment of the performance of Brewington's trial counsel, claiming Brewington's public defender "did not communicate well enough with him about the charges and evidence." The facts of the case show Brewington's public defender

NEVER reviewed any evidence, specific indictment information, or trial strategy with Brewington. Judge Hill never questioned Barrett about Brewington's claims. Judge Hill only gave Brewington the choice of continuing to trial with Barrett or going to trial without any legal counsel. The State continues to downplay Brewington's claim that Barrett made no attempt "to subject the prosecution's case to meaningful adversarial testing."[13] The State cannot contest Brewington's *Cronic* claim for two reasons: 1) because the State knows raising any issues of material fact negates the State's ability to reap the benefits of summary judgment under P-C.R. 1(4)(g); and, 2) even the State does not know what actions were responsible for the indictments against Brewington.

The State's actions in trying to avoid Negangard's conduct is akin to a shady used car dealer that tricked a customer into buying a car without an engine. The State engages in a game of semantics by stating, *Brewington claims the car does not run good enough*; or, *It is obvious that the car runs downhill.* Judge Coy summarily dismissed Brewington's complaint on a technicality because Brewington used the wrong professional term in explaining the situation: *Brewington claimed the car had no "motor". As motors are electric and the vehicle is supposed to have a gas "engine"[14], the issue is moot and this Court awards summary judgment in favor of*

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[13] *United States v. Cronic*, 104 S.Ct. 2039, 466 U.S. 648, 80 L.Ed.2d 657, (1984)

[14] In understanding the above analogy, "motors" are generally powered by

the State. In the meantime, both the State and the Indiana courts require Brewington to follow the most stringent of legal protocols, while forcing Brewington to provide technical legal arguments as to why a car will not run without an engine and how the engineless car negatively impacts Brewington's rights. Brewington is forced to invest time and money in a legal action, while the State and Indiana courts refuse to pop the hood or comment on Brewington's photos of an engineless car. If that wasn't bad enough, it wasn't until long after the purchase of the engineless car that Brewington discovered that the trial court helped the State pull the car's engine prior to the State selling the car to Brewington. This analogy helps demonstrate the absurdity of Brewington's entire criminal case. Brewington met his burden when, in the opening moments of the trial record, Brewington told Judge Hill, Bryan Barrett, and F. Aaron Negangard that Brewington did not receive any legal assistance in preparing for trial and had no understanding what actions Brewington was required to defend. The State of Indiana cannot continue to punish Brewington because Judge Hill, Barrett, and current Chief Deputy Attorney General F. Aaron Negangard chose to look the other way.

Brewington is unapologetic about any cynicism expressed about the Indiana court system. Brewington spent 2.5-years behind bars[15] after the Dearborn Superior

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electricity, while "engines" generally run on combustible fuels, but the two are commonly interchanged in language concerning vehicles, i.e.: "motor oil/engine oil."

[15] Brewington spent nearly two years of his sentence in a medium security

Court II, under Judge Sally McLaughlin, altered grand jury records to assist Negangard obtain criminal convictions against Brewington. Brewington's public defender, Judge Hill, and Negangard all ignored Brewington's pretrial pleas for legal assistance and an understanding of the indictment information. Negangard maliciously prosecuted Brewington, under color of law, for perverting the Indiana justice system, criminal defamation, and violating the Indiana Rules of Professional Conduct for attorneys, under the pretense of Indiana's intimidation and obstruction statutes. It is impossible for this Court to suggest otherwise because the Dearborn Superior Court II omitted Negangard's opening arguments from the grand jury transcripts. These are facts the State does not contest. The State and this Court cannot claim Chief Deputy Attorney General F. Aaron Negangard accidently made Brewington the target of a grand jury investigation for perverting the Indiana Justice System just as the State and this Court cannot argue Negangard only lied to the trial jury about the absurd crime of perversion; not the grand jury. This Court finds itself in a precarious situation because ruling in this matter saddles the reviewing judges with the responsibility to report the misconduct under Ind. Judicial Conduct Rule 2.15: Responding to Judicial and Lawyer Misconduct:

> (A) A judge having knowledge* that another judge has committed a violation of this Code that raises a

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prison because an unknown Dearborn County official contacted the Indiana DOC and claimed Brewington's crimes were "more serious" than what they appeared; thus, barring Brewington's ability to transfer to a minimum security prison.

> substantial question regarding the judge's honesty, trustworthiness, or fitness as a judge in other respects shall inform the appropriate authority.*
>
> (B) A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate authority.
>
> (C) A judge who receives credible information indicating a substantial likelihood that another judge has committed a violation of this Code shall take appropriate action.
>
> (D) A judge who receives credible information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct shall take appropriate action.

Creason specifically mentioned how the trial court conspired to sabotage Brewington's criminal trial:

> "trial court staff allegedly manipulated the record of the grand jury proceeding as part of a conspiracy against him"

The State's reliance on P-C.R. 1(4)(g) for summary judgment requires this Court to consider the above claim as a statement of fact. This Court cannot simply ignore the fact the trial court conspired against Brewington. Deputy Creason has an advantage over Brewington regarding arguments over the grand jury record. As the Office of the Indiana Attorney General is currently representing the Dearborn Superior Court II and Judge Brian Hill in Brewington's lawsuit seeking the full audio record, Creason has access to the full content of Brewington's grand jury proceedings, including the portions of the record the Dearborn Superior Court II

withheld from Brewington. Even with Creason's familiarity with Brewington's case and Creason's full access to the grand jury record, Creason makes no attempt to dispute the existence of a criminal conspiracy against Brewington. Like the car analogy above, this topic represents the car hood nobody wants to look under. Someone instructed the court staff to *not* prepare a "complete" transcription of the proceedings as originally directed by Negangard's March 7, 2011 Praecipe (Appellant Brief, page 40). The Dearborn Superior Court II later provided Brewington with a copy of grand jury audio that contained *less* information than the transcript that was prepared for Brewington's trial. (Appellant Brief, page 45). At some point in 2011, two or more Dearborn County officials agreed to alter grand jury records with the criminal intent to deprive Brewington of a fair trial. A list of individuals with a professional responsibility to report such conduct include: Judge Brian Hill, Judge Sally McLaughlin[16], Chief Deputy Attorney General F. Aaron Negangard, attorney Bryan E. Barrett, Deputy Attorney General Stephen Creason, and any future judicial officers reviewing this case.

The case of *Fitzgerald v. State,* 254 Ind. 39, 257 N.E.2d 305, (1970) reads:

> "A heavy burden is borne by the state whenever it is claimed or alleged that a constitutional right of a

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[16] Not only did Judge Sally McLaughlin permit her staff to alter grand jury records, on March 11, 2011, Judge McLaughlin set Brewington's bond at $100,000 cash and $500,000 surety in the absence of any evidence of criminal activity, despite Brewington voluntarily surrendering to Dearborn County officials. A few days later, McLaughlin recused herself from Brewington's case.

> defendant has been waived. A silent record is not enough." Id. 257 N.E.2d at 311

Indiana courts have held the State's hand and protected the State's unconstitutional prosecution throughout the history of Brewington's case. Any speculation the Indiana Supreme Court used in rationalizing denying Brewington relief from the unconstitutional prosecution cannot override the facts of the case. Brewington stated prior to trial that he did not understand what actions he was required to defend. Post-conviction Judge W. Gregory Coy "passed the buck" by dismissing Brewington's motion for summary judgment claiming summary judgment under T.R. 56(c) was not available in post-conviction proceedings, rendered Brewington's material facts "moot," and then granted summary judgment to the non-movant State under P-C.R. 1(4)(g) claiming there was "no factual basis to support any of Brewington's claims and/or allegations against the judges and attorneys involved in his case." The State is now asking this Court to ignore a criminal conspiracy by the trial court, the complete denial of legal counsel, and Negangard's malicious prosecution, under color of law, of a multitude of non-criminal acts. The State also gives a less-than-subtle nod to this Court by arguing federal habeas corpus relief would not be available to Brewington if this Court should rule that Brewington is procedurally defaulted from obtaining relief from the fundamental procedural errors plaguing the entire history of Brewington's case. To be clear, Creason does not contest that several of Brewington's fundamental procedural rights were violated, Creason only argues Brewington is procedurally

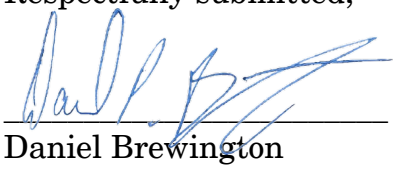
barred from seeking relief from those violations of state and federal protections. Just like the missing car engine in the above analogy, the State's entire legal argument in Brewington's appeal of the summary dismissal of Brewington's Verified Petition for Post Conviction Relief hinges on the State being able to convince this Court to issue a ruling rationalizing why this Court should *not* simply look under the hood of this case.

> "I submit to you that that is not a judicial system we want. That's what this case is about. It isn't about Judge Humphrey. It isn't about Dr. Connor. It is about our system of justice that was challenged by Dan Brewington and I submit to you that it is your duty, not to let him pervert it, not to let him take it away and it happens if he's not held accountable." Tr. 504-505 (App. II 39)

If Brewington claimed his criminal convictions were never about Judge Humphrey or Dr. Connor, but rather a malicious prosecution brought against Brewington by Chief Deputy Attorney General F. Aaron Negangard in retaliation for Brewington challenging Indiana's system of justice, this Court would quickly dismiss Brewington's claim as being a product of paranoia. In reality, it was Negangard who claimed Brewington's criminal prosecution was a retaliatory action against Brewington under color of law, because Brewington challenged the Indiana system of justice. The decision before this Court is whether it wishes to rationalize *not* granting relief to Brewington for the same conduct that Jud. Cond. R. 2.15 normally requires this reviewing panel of judges to report. As there are no procedural bars preventing this Court from reviewing Brewington's constitutional claims involving color of law violations and conspiracies against Brewington's civil rights, any

rationalization by this Court to award the misconduct of Indiana officials by *not* granting relief to Brewington from an unlawful prosecution and conspiracy against Brewington's civil rights will only serve to bolster Brewington's case to a federal court, where Brewington can seek protection of his fundamental rights guaranteed by the Constitution of the United States of America.

Respectfully submitted,



Daniel Brewington
Appellant pro se

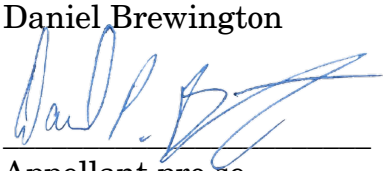
WORD COUNT CERTIFICATE

Appellant certifies that this brief, including footnotes, does not exceed, the following number of words:

Appellant's Reply Brief:

7,000 words

Daniel Brewington



Appellant pro se

CERTIFICATE OF SERVICE

I certify that on May 25, 2018, I electronically filed the foregoing document using the Indiana E-Filing System (IEFS).

I also certify that on May 25, 2018, the foregoing document was served upon the following person via IEFS:

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Daniel Brewington
Appellant, pro se

IN THE
INDIANA COURT OF APPEALS

Case No. 15A04-1712-PC-02889

DANIEL BREWINGTON, _____ Appellant,	)	Appeal from Dearborn County Superior Court II
v.	)	Case No. 15D02-1702-PC-0003
STATE OF INDIANA _____ Appellee.	)	Hon. W. Gregory Coy, Special Judge

APPELLANT DANIEL BREWINGTON'S MOTION FOR ORAL ARGUMENT

Appellant, Daniel Brewington, respectfully requests this Court to permit oral arguments in this case and in support of this request, would offer the following reasons:

1. The post-conviction court took a two-tiered approach to summarily dismissing Brewington's entire post-conviction action without a hearing.

2. Special Judge W. Gregory Coy first dismissed Brewington's Motion for Summary Judgment under T.R. 56(c) stating summary judgment under T.R. 56(c)

was not available to Brewington in post-conviction proceedings.[1]

3. Judge Coy then claimed, "There is no factual basis to support any of Brewington's claims and/or allegations against the judges and attorneys involved in his case" and granted sua sponte judgment in the favor of State.

4. Page ten of the Brief of Appellee includes four of the twenty grounds raised in Brewington's post-conviction petition:

> 1) [Brewington] received ineffective assistance of trial counsel because counsel allegedly did not communicate well enough with him about the charges and evidence.[2]
>
> 2) trial court staff allegedly manipulated the record of the grand jury proceeding as part of a conspiracy against him;
>
> 3) the grand jury indictments were unconstitutional because they were allegedly not sufficiently detailed to notify Brewington of what criminal acts he committed; and
>
> 4) prosecutors allegedly committed misconduct at trial, particularly in argument before the jury.

5. The State, by Deputy Attorney General Stephen Creason, agrees with the facts as presented in Brewington's pleadings before the post-conviction court as

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[1] Special Judge W. Gregory Coy provided no reasoning as to why Judge Coy refused to address Brewington's request to consider Brewington's motion for summary judgment under T.R. 56(c), as a request for summary "disposition" under P-C.R. 1(4)(g)

[2] The State misrepresents the communication between Brewington and public defender Bryan Barrett. The State asserts Brewington claimed Barrett "did not communicate well enough with him about the charges and evidence." The trial record is replete with examples where Brewington explained how Barrett withheld evidence and refused to provide any legal assistance to Brewington outside of a courtroom prior to trial.

the State argues that dismissal under P-C.R. 1(4)(g) is proper, where no issue of material fact may exist.

6. This case presents matters of first impression under Indiana law, namely, can procedural and/or time waivers negate a person's right to relief from a trial court conspiring to alter evidence and indictment information to derail a defendant's criminal trial?

7. Can the perceptions of the Indiana Supreme Court in *Brewington v. State*, 7 N.E.3d 946, (2014) regarding Brewington's trial strategy, ineffective assistance of counsel, the general indictments, invited error, etc., outweigh the actual facts of the record of Brewington's case, where Brewington stated Brewington had no idea about the direction of Brewington's criminal defense because Brewington's public defender refused to meet with or speak to Brewington prior to trial?

8. As Indiana Courts continue to ignore the fact that the trial record demonstrates that Special Judge Brian Hill, public defender Barrett, and former Dearborn County Prosecutor F. Aaron Negangard[3] all ignored Brewington's requests for legal assistance, evidence, and assistance understanding the nature of the alleged crimes, it is imperative that Brewington be allowed to present public oral arguments so that Brewington may argue why the State and Indiana courts

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[3] Negangard now serves as Chief Deputy to Indiana Attorney General Curtis T. Hill.

should not be allowed to continue this trend in ignoring Brewington's basic procedural rights.

9. Can Brewington waive his right not to be prosecuted for violating the Indiana Code of Professional Conduct (Appellant Brief page 49), or to protect "our system of justice that was challenged by Dan Brewington" (Appellant Brief page 51); both of which actions Negangard claimed were responsible for Brewington's indictments and prosecution?

10. This Court needs to resolve the constitutional issues regarding waiver of fundamental procedural rights. Can a person waive his right from relief from a trial court's refusal to address a defendant's claims of not understanding what actions the defendant is required to defend? Can a person waive his right from relief from a trial court's refusal to address a defendant's claims of receiving no assistance of counsel prior to trial? Barrett's refusal to provide Brewington any legal assistance to prepare for trial forced Brewington to file three motions on his own. Brewington filed the three motions to notify Special Judge Brian Hill of Brewington's objections to receiving no assistance of counsel in preparing for trial, the prosecutorial misconduct by Negangard, and for what being subjected to an unconstitutional criminal defamation trial.

11. The Indiana Supreme Court mistook Brewington's pro se motions as being trial strategy, while finding that perceived trial strategy waived Brewington's right to relief from the errors associated with the unconstitutional grounds behind

Negangard's grand jury investigation and prosecution of Brewington. As such, this Court needs to resolve how Indiana criminal defendants can effectively raise constitutional claims of receiving no assistance of counsel prior to trial without waiving their placing themselves in grave peril in the case the trial court would ignore the claims.

12. The Indiana Court of Appeals is also faced with significant First Amendment concerns, regarding Brewington's case, not yet addressed by Indiana Courts during direct appeal. Appellate counsel, Michael Sutherlin erroneously placed the focus of Brewington's direct appeal on whether Brewington's speech enjoyed constitutional protections, rather than address the obvious procedural violations plaguing Brewington's trial. Negangard told the trial jury:

> "That would become our system of justice if we accept the Defendant's premise that these are only opinions and he was only expressing his political thought. If we accept that premise, then that is the judicial system that we will have. That will be brought on by the invention of the internet. I submit to you that that is not a judicial system we want. That's what this case is about. It isn't about Judge Humphrey. It isn't about Dr. Connor. It is about our system of justice that was challenged by Dan Brewington and I submit to you that it is your duty, not to let him pervert it, not to let him take it away and it happens if he's not held accountable." Tr. 504-505 (App. II 39)

13. 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 Corp., 466 U.S. at 499). See *Journal-Gazette Co. Inc. v. Bandido 's, Inc*., 712 N.E.2d 446, 454-56 (Ind. 1999) (holding that his requirement is binding on Indiana Appellate Courts). As Negangard argued he made Brewington the target of a grand jury investigation and criminal prosecution for challenging "our system of justice," which is not a crime, this Court must consider the obvious fundamental procedural flaws in Brewington's case to be as intentional as Negangard's First Amendment retaliation against Brewington.

14. Risk to Brewington's personal safety. Brewington planned on filing this motion to set oral arguments a few days earlier but delayed the filing because of the threatening nature of statements made against Brewington by the Office of the Indiana Attorney General and/or an Indiana Judge. Brewington's original motion included the following argument about concerns about Brewington's personal safety:

> The State did not contest that the court staff of the Dearborn Superior Court II conspired to sabotage Brewington's criminal trial by altering grand jury records. The inability to prepare a defense against the State's case led to a dangerous 2.5-year prison sentence in a medium security prison. Remanding this case back to the Dearborn Superior Court II risks Brewington being subjected to the same retaliatory measures already taken against Brewington.

The above were concerns expressed in Brewington's original version of this motion. Adding fuel to Brewington's concerns for personal safety are recent statements by Rush Superior Court Judge Brian Hill. Brewington named Judge Hill and the Dearborn Superior Court II (under Dearborn Superior Court II Judge Sally

McLaughlin) as defendants in a pending APRA lawsuit seeking the audio from the same grand jury investigation that is the topic of this appeal. On April 26, 2018, Brewington served Judge Hill with Brewington's request for admissions. On Tuesday May 29, 2018, Brewington received Judge Hill's responses to Brewington's requests. [Attached as Exhibit A]. In objecting to question 29, Judge Hill maliciously accused Brewington of engaging in harassing behavior toward Judge Hill:

> Defendant objects to the term "excuses" as the term is derogatory and its use is intended to harass Defendant. Defendants further object to the term "excuses" as it fails to adequately and specifically describe the subject matter sought and is vague and ambiguous and, therefore, requires Defendant to engage in conjecture as to their meaning. As such, it is difficult to discern what Plaintiff is asking Defendant to admit or deny.

Judge Hill is the judge that presided over Brewington's criminal proceedings. As a judge, Judge Hill is not entitled to a layperson's view or opinion regarding what conduct rises to the level of harassing conduct. Judge Hill would not find someone "guilty" of criminal harassment because someone used the word "excuses" rather than "reasons" nor would Judge Hill grant a restraining order for the same conduct. Judge Hill is fully aware of damage such a claim could inflict on Brewington. Judge Hill knows it would be a crime for Brewington to harass a defendant in a civil proceeding; especially given the nature of Brewington's criminal trial that Judge Hill presided over. Judge Hill, through Deputy Attorney General Marley Hancock, threatened Brewington for pursuing public records through a civil

action. Brewington's following admission request is what Judge Hill and the Office of the Indiana Attorney General deem to be harassing:

> (29) Admit that in an opinion dated April 14, 2016, the Indiana Public Access Counselor deemed Hill's excuses for withholding the grand jury audio to be invalid.

"Excuse" bears no harassing implications and is simply a synonym for "reason". To "harass," however, is to *subject persistently and wrongfully to annoying, offensive, or troubling behavior*. Judge Hill and the Office of the Indiana Attorney General laid out the baseless harassment allegation to serve as both a warning shot to Brewington and an invitation for an Indiana prosecutor to go after Brewington because Judge Hill claimed to be a victim of Brewington's harassment. This is the real danger facing Brewington. Judge Hill fully understands the weight that his title adds to his claim.

> *Rush Superior Court Judge Brian Hill said Dan Brewington harassed him*
>
> *Dan Brewington said Judge Brian Hill falsely accused Brewington of trying to harass Judge Brian Hill.*

The above visual further demonstrates the real danger presented by Judge Hill's claims. Without specific knowledge regarding the above situation, any reasonable person would believe Judge Hill's claim. Not only does Brewington's rebuttal lack equal standing in disputing Judge Hill's claim, the fact that Brewington raised a defense only serves to strengthen Judge Hill's allegation. Judges are presumed to be fair and honest, and Judge Hill took full advantage of his professional title in trying to inflict harm on Brewington. Judge Coy refused to

believe any of Brewington's allegations against Judge Hill because Judge Hill is a judge. The scariest part to Judge Hill's malicious claim is its obvious falsity. The Office of the Indiana Attorney General made the allegation on behalf of Judge Hill. This is what F. Aaron Negangard did throughout the course of Brewington's criminal proceedings. Negangard would interject false statements without any concern of repercussions. Whether intentional or not, courts would later include some of the falsehoods in their rulings, thus rewarding the bad behavior. Regardless of intent, if this Court were to write in its opinion, "Judge Hill accused Brewington of harassing behavior," Judge Hill's allegation would be perceived as fact and that perception of fact would be chiseled on the permanent record.

The presiding judge in Brewington's APRA lawsuit likely won't do anything to correct Judge Hill's egregious behavior. Brewington assumes this Court will find a reason not to address the issue as well. What this Court should take into consideration is the fact that Judge Hill's recent claims demonstrate that the threat of retaliation against Brewington is real and oral arguments are necessary to ensure this case is not unnecessarily remanded back to the trial court that, even Deputy Attorney General Stephen Creason concedes, conspired to alter grand jury records to sabotage Brewington's original criminal trial.

CONCLUSION

The Office of the Indiana Attorney General does not contest that Dearborn County officials conspired to indict and convict Brewington under the guise of

legitimate law. Deputy Stephen Creason only argues that procedural waiver bars Brewington from obtaining relief from the unconstitutional grand jury indictments, unconstitutional criminal trial, and a total lack of legal assistance prior to trial. Brewington therefore requests oral argument so that there is no question of fact in the case and so the parties may answer any questions necessary to protect Brewington from further unlawful prosecution in the State of Indiana and as well as protecting the integrity of both the constitutions of the State of Indiana and the United States of America.

WHEREFORE, Appellant Daniel Brewington respectfully requests that the Court set this matter for oral argument.

Respectfully submitted,

Daniel Brewington
Appellant pro se

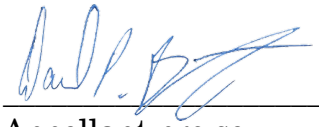
WORD COUNT CERTIFICATE

Appellant certifies that this brief, including footnotes, does not exceed, the following number of words:

Motion for Oral Arguments:

4,000 words

Daniel Brewington



Appellant pro se

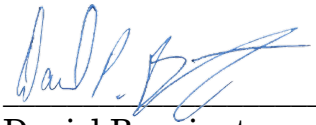
CERTIFICATE OF SERVICE

I certify that on May 31, 2018, I electronically filed the foregoing document using the Indiana E-Filing System (IEFS).

I also certify that on May 31, 2018, the foregoing document was served upon the following person via IEFS:

Curtis T. Hill, Indiana Attorney General
efile@atg.in.gov

Stephen R. Creason, Deputy Indiana Attorney General
Steven.Creason@atg.in.gov



Daniel Brewington
Appellant, pro se

STATE OF INDIANA

OFFICE OF THE ATTORNEY GENERAL
302 WEST WASHINGTON STREET, IGCS 5TH FLOOR
INDIANAPOLIS, INDIANA 46204

CURTIS T. HILL, JR.
ATTORNEY GENERAL

May 24, 2018

Daniel P. Brewington
[redacted]

Re: *Daniel Brewington v. Dearborn Superior Court II, Judge Sally McLaughlin, Judge Brian Hill, Court*
Cause No. 15D01-1702-PL-00013

Dear Sir:

Enclosed please find the *Defendant's Response to Plaintiff's Request for Admission to Defendant Brian Hill* in the above referenced case.

Respectfully,

Lyndsey West-McVey

Lyndsey West-McVey
Paralegal to
Marley G. Hancock
Deputy Attorney General

/lmwm
Enclosure

EXHIBIT A

TELEPHONE (317) 232-6201 - FAX (317) 232-7979

STATE OF INDIANA	)	IN THE DEARBORN SUPERIOR COURT
	) SS:	
COUNTY OF DEARBORN	)	CAUSE NO. 15D01-1702-PL-00013

DANIEL BREWINGTON,

Plaintiff,

v.

DEARBORN SUPERIOR COURT II, JUDGE SALLY MCLAUGHLIN, JUDGE BRIAN HILL, COURT

Defendants.

DEFENDANT'S RESPONSE TO PLAINTIFF'S REQUEST FOR ADMISSION TO DEFENDANT BRIAN HILL

Defendant, Judge Brian Hill, by counsel, Marley G. Hancock, Deputy Attorney General, responds to Plaintiff's Request for Admission to Defendant Brian Hill as follows:

REQUEST FOR ADMISSIONS

1. Admit that on March 7, 2011, former Dearborn County Prosecutor F. Aaron Negangard filed the State's Praecipe directing "the Court Reporter of the Dearborn Superior Court II to prepare and certify a full and complete transcript of the grand jury proceedings" pertaining to the grand jury investigation of Daniel Brewington.

RESPONSE: Objection. Defendant objects to this request as it falls outside the scope of Ind. Trial Rule 26(B)(1) as it is not relevant to the subject-matter involved in the pending action, which stems from an Indiana Access to Public Records Act ("APRA") request. Without waiving, and subject to, the objection, the State's Praecipe speaks for itself.

2. Admit that F. Aaron Negangard now serves as the Chief Deputy Attorney General in the State of Indiana.

RESPONSE: Defendant admits that Aaron Negangard currently serves as the Chief Deputy.

3. Admit there is no record of any motion, order, or directive compelling the Court Staff to omit portions of the grand jury record occurring prior to witness testimony.

RESPONSE: Objection. Defendant objects to this request on the basis that it is vague, fails to specifically describe the subject matter sought and is not limited in time and scope. As such, it is difficult to discern what Plaintiff is asking Defendant to admit or deny. This request is therefore denied.

4. Admit that on or about June 3, 2011, Rush Superior Court Judge Brian Hill was appointed to serve as Special Judge to the Dearborn Superior Court II in the case of State of Indiana v. Daniel Brewington, Cause No. 15D02-1103-FD-000084.

RESPONSE: Objection. Defendant objects to this request as it falls outside the scope of Ind. Trial Rule 26(B)(1) as it is not relevant to the subject-matter involved in the pending action, which stems from an APRA. Without waiving, and subject to, the objection, the docket in Cause No. 15D02-1103-FD-000084 speaks for itself.

5. Admit that on July 18, 2011, after being appointed by Hill, Rush County Public Defender Bryan Barrett filed an appearance to represent Daniel Brewington in Cause No. 15D02-1103-FD-000084.

RESPONSE: Objection. Defendant objects to this request as it falls outside the scope of Ind. Trial Rule 26(B)(1) as it is not relevant to the subject-matter involved in the pending action, which stems from an APRA request. Without waiving, and subject to, the objection, the docket in Cause No. 15D02-1103-FD-000084 speaks for itself.

6. Admit that during a pretrial hearing on July 18, 2011 the State instructed Barrett to rely on the "complete" transcription of the grand jury investigation of Daniel Brewington for an explanation as to which of Brewington's actions required defending.

RESPONSE: Objection. Defendant objects to this request as it falls outside the scope of Ind. Trial Rule 26(b) as it is not relevant to the subject-matter involved in the pending action, which stems from an APRA request. Without waiving, and subject to, the objection, the docket in Cause No. 15D02-1103-FD-000084 speaks for itself

7. Admit that Hill originally scheduled the jury trial in Cause No. 15D02-1103-FD-000084 to commence on August 16, 2011.

RESPONSE: Objection. Defendant objects to this request as it falls outside the scope of Ind. Trial Rule 26(B)(1) as it is not relevant to the subject-matter involved in the pending action, which stems from an APRA request. Without waiving, and subject to, the objection, the docket in Cause No. 15D02-1103-FD-000084 speaks for itself.

8. Admit that Hill vacated the August 16, 2011 jury trial citing public defender Bryan Barrett having a family emergency.

RESPONSE: Objection. Defendant objects to this request as it falls outside the scope of Ind. Trial Rule 26(B)(1) as it is not relevant to the subject-matter involved in the pending action, which stems from an APRA request. Without waiving, and subject to, the objection, the docket in Cause No. 15D02-1103-FD-000084 speaks for itself.

9. Admit that during a final pretrial hearing on September 19, 2011, Hill acknowledged Brewington had yet to receive a copy of the transcription of the grand jury investigation of Daniel Brewington.

RESPONSE: Objection. Defendant objects to this request as it falls outside the scope of Ind. Trial Rule 26(b) as it is not relevant to the subject-matter involved in the pending action, which stems from an APRA request. Without waiving, and subject to, the objection, the docket in Cause No. 15D02-1103-FD-000084 speaks for itself.

10. Admit that during the opening of Brewington's October 3, 2011 criminal trial, Brewington stated he did not receive a copy of the grand jury transcripts until September 23, 2011.

RESPONSE: Objection. Defendant objects to this request as it falls outside the scope of Ind. Trial Rule 26(b) as it is not relevant to the subject-matter involved in the pending action, which stems from an APRA request. Without waiving, and subject to, the objection, the docket in Cause No. 15D02-1103-FD-000084 speaks for itself.

11. Admit that during the opening of Brewington's October 3, 2011 criminal trial, Brewington stated Bryan Barrett never met with Brewington to review the grand jury transcripts.

RESPONSE: Objection. Defendant objects to this request as it falls outside the scope of Ind. Trial Rule 26(b) as it is not relevant to the subject-matter involved in the pending action, which stems from an APRA request. Without waiving, and subject to, the objection, the docket in Cause No. 15D02-1103-FD-000084 speaks for itself.

12. Admit that there is no record of Hill or F. Aaron Negangard ever questioning Barrett about withholding the grand jury transcripts from Brewington until less than two weeks before trial.

RESPONSE: Objection. Defendant objects to this request as it falls outside the scope of Ind. Trial Rule 26(b) as it is not relevant to the subject-matter involved in the pending action, which stems from an APRA request. Without waiving, and subject to, the objection, the docket in Cause No. 15D02-1103-FD-000084 speaks for itself.

13. Admit that neither Hill nor F. Aaron Negangard questions Barrett about Brewington's October 3, 2011 claim that Barrett did not review the grand jury transcripts with Brewington.

RESPONSE: Objection. Defendant objects to this request as it falls outside the scope of Ind. Trial Rule 26(b) as it is not relevant to the subject-matter involved in the pending action, which stems from an APRA request. Without waiving, and subject to, the objection, the docket in Cause No. 15D02-1103-FD-000084 speaks for itself.

14. Admit that Hill began the criminal trial despite Brewington stating "I have absolutely no idea what's going on in my case."

RESPONSE: Objection. Defendant objects to this request as it falls outside the scope of Ind. Trial Rule 26(b) as it is not relevant to the subject-matter involved in the pending action, which stems from an APRA request. Without waiving, and subject to, the objection, the docket in Cause No. 15D02-1103-FD-000084 speaks for itself.

15. Admit that neither Hill, F. Aaron Negangard, nor Barrett made any attempt help Brewington understand what actions formed the basis of the State's prosecution against Brewington.

RESPONSE: Objection. Defendant objects to this request as it falls outside the scope of Ind. Trial Rule 26(b) as it is not relevant to the subject-matter involved in the pending action, which stems from an APRA request. Without waiving, and subject to, the objection, the docket in Cause No. 15D02-1103-FD-000084 speaks for itself.

16. Admit that *at least* some aspects of the State's prosecution against Brewington were unconstitutional because F. Aaron Negangard sought convictions under a "plainly

impermissible" criminal defamation argument. [see *Brewington v. State*, 7 N.E.3d 946, (2014]

RESPONSE: Objection. Defendant objects to this request as it falls outside the scope of Ind. Trial Rule 26(b) as it is not relevant to the subject-matter involved in the pending action, which stems from an APRA request. Defendant further objects as this request calls for a legal conclusion.

17. Admit that *at least* some aspects of F. Aaron Negangard's grand jury investigation of Daniel Brewington were unconstitutional because Negangard sought criminal indictments against Brewington under a "plainly impermissible" criminal defamation argument.

RESPONSE: Objection. Defendant objects to this request as it falls outside the scope of Ind. Trial Rule 26(b) as it is not relevant to the subject-matter involved in the pending action, which stems from an APRA request. Defendant further objects as this request calls for a legal conclusion.

18. Admit that both the written and audio records of the grand jury investigation of Daniel Brewington are void of any accusation or instruction from F. Aaron Negangard that Brewington made any direct and/or veiled threats of violence to any of the alleged victims in the case.

RESPONSE: Objection. Defendant objects to this request as it falls outside the scope of Ind. Trial Rule 26(B)(1) as it is not relevant to the subject-matter involved in the pending action, which stems from an APRA request. Without waiving, and subject to, the objection, the docket in Cause No. 15D02-1103-FD-000084 speaks for itself, as does the written and audio records of the grand jury investigation.

19. Admit that both the written and audio records of the grand jury investigation of Daniel Brewington are void of any accusation or instruction from F. Aaron Negangard that Brewington presented any imminent threat to the alleged victims.

RESPONSE: Objection. Defendant objects to this request as it falls outside the scope of Ind. Trial Rule 26(B)(1) as it is not relevant to the subject-matter involved in the pending action, which stems from an APRA request. Without waiving, and subject to, the objection, the docket in Cause No. 15D02-1103-FD-000084 speaks for itself, as does the written and audio records of the grand jury investigation.

20. Admit that Dearborn County Prosecutor F. Aaron Negangard made no objections in prosecuting Brewington despite Brewington's aforementioned trial claims of having no idea what actions Brewington was required to defend.

RESPONSE: Objection. Defendant objects to this request as it falls outside the scope of Ind. Trial Rule 26(B)(1) as it is not relevant to the subject-matter involved in the pending action, which stems from an APRA request. Without waiving, and subject to, the objection, the docket in Cause No. 15D02-1103-FD-000084 speaks for itself.

21. Admit that on or about January 14, 2012, Hill issued an order releasing audio from the grand jury investigation of Daniel Brewington.

RESPONSE: Defendant admits that, on January 12, 2012, Defendant issued an order releasing audio copies to Sue A. Brewington.

22. Admit that on or about January 24, 2012, Hill issued another order to release the audio from the grand jury investigation of Daniel Brewington.

RESPONSE: Defendant admits that, on January 24, 2012, Defendant issued an order releasing audio copies to Matthew P. Brewington.

23. Admit that on or about February 2, 2012 Hill issued an amended order deeming the previous requests for the grand jury audio as being "moot," because Hill claimed the audio was not admitted as evidence.

RESPONSE: Defendant admits that, in an order dated January 27, 2012, and filed February 2, 2012, Defendant noted that the no audio recordings of the grand jury proceedings for February 28, 2011, March 1, 2011, and March 2, 2011 were entered into evidence in cause no. 15D02-1103-FD-084.

24. Admit that in the same February 2, 2012 order, Hill claimed the July 18, 2011 pretrial hearing, where the State discussed the grand jury transcript, never took place.

RESPONSE: Defendant admits that, in an order dated January 27, 2012, and filed February 2, 2012, Defendant noted that "[t]he Final Pretrial Conference/Bond Reduction Hearing which had originally been set on July 18, 2011 was continued on the State's Motion and no hearing took place."

25. Admit that in an order dated February 4, 2016, Hill denied Brewington's public record request for the grand jury audio claiming "there's been no sufficient reason set forth which would necessitate the release of said audio recordings."

RESPONSE: Defendant admits, and the record reflects, that in an order dated February 4, 2016, Defendant declined to grant the request for audio recordings from the Grand Jury proceedings occurring on February 28, 2011 March 1, 2011, and March 2, 2011 as, though Mr. Brewington alleged they were admitted into evidence at his criminal trial, they were not and there had been no sufficient reason set forth which would necessitate the release of said audio.

26. Admit that in a letter to the Indiana Public Access Counselor ("PAC") dated March 8, 2016, Hill stated he denied prior requests for the grand jury audio "simply because [Hill] did not preside over those proceedings."

RESPONSE: Defendant admits that, in a letter to the PAC dated March 8, 2016, one of the many reasons Defendant gave for denying Brewington's request as to the audio recordings of the requested grand jury proceedings was "simply because I did not preside over those proceedings."

27. Admit that Hill's March 8, 2016 letter to the PAC stated, "I am aware that the statute allows the judge who presided over the criminal trial to make decisions as to the release of grand jury information related to the criminal charges, however, I did not feel it was appropriate in this case."

RESPONSE: Defendant admits that, in a letter to the PAC dated March 8, 2016, Defendant stated that he was "aware that the statute allows the judge who presided over the criminal trial to make decisions as to the release of grand jury information related to criminal charges, however, I did not feel it was appropriate in this case.

28. Admit that Hill's March 8, 2016 letter to the PAC stated, "I didn't feel that [Brewington's] latest allegation of a conspiracy between the prosecuting attorney and the court reporter was sufficient justification to release an audio record that he already has the transcript to."

RESPONSE: Defendant admits that, in a letter to the PAC dated March 8, 2016, Defendant stated that he "didn't feel that [Brewington's] latest allegation of a conspiracy between the prosecuting attorney and court reporter was sufficient justification to release an audio recording that he already has the transcript to."

29. Admit that in an opinion dated April 14, 2016, the Indiana Public Access Counselor deemed Hill's excuses for withholding the grand jury audio to be invalid.

RESPONSE: Objection. Defendant objects to the term "excuses" as the term is derogatory and its use is intended to harass Defendant. Defendants further object to the term "excuses" as it fails to adequately and specifically describe the subject matter sought and is vague and ambiguous and, therefore, requires Defendant to engage in conjecture as to their meaning. As such, it is difficult to discern what Plaintiff is asking Defendant to admit or deny. This request is therefore denied.

30. Admit the PAC deemed the audio from the grand jury investigation of Daniel Brewington to be a releasable public record.

RESPONSE: Denied. The Indiana Public Access Counselor stated that "[b]ecause the case has been adjudicated and the transcript released, it stands to reason that providing you an audio copy of the proceeding would neither prejudice the operation of the court, nor compromise the grand jury proceedings." Under recommendation, the Indiana Public Access Counselor further noted "that because the transcript of the grand jury proceedings have previously been provided to you, a copy of the audio recordings of said proceedings should be released as well." The Indiana Public Access Counselor did not globally state that the audio from the grand jury investigation was, in fact, a releasable public record.

31. Admit that in an order dated April 20, 2016, Hill ordered the release of the audio from the grand jury investigation to Daniel Brewington.

RESPONSE: Defendant admits that in an order dated April 20, 2016, Defendant ordered the Court Reporter to prepare a compact disc of audio recordings of the Grand Jury proceedings regarding this matter conducted on February 28, 2011, March 1, 2011, and March 2, 2011.

32. Admit that Hill's April 20, 2016, order raised a new allegation of "four to five" other grand jury investigations being intertwined with the record of the grand jury investigation of Daniel Brewington.

RESPONSE: Objection. Defendant objects as this request calls for a legal conclusion.

33. In reviewing Hill's order dated April 20, 2016, Admit that Hill engaged in some form of independent investigation of the grand jury record prior to issuing Hill's April 20, 2016 order. "It is the Court's understanding that the Grand Jury impaneled for this matter also heard evidence in four to five other Grand Jury proceedings during this time, often going back and forth between all of the cases."

RESPONSE: Objection. Defendant objects to the terms "independent investigation" as the term is overbroad and vague. As framed, the request requires Defendant to engage in conjecture as to the response sought. As such, it is difficult to discern what Plaintiff is asking Defendant to admit or deny. This request is therefore denied.

34. Admit that the version of the grand jury audio that the Dearborn Superior Court II prepared for Brewington was completed on or before April 27, 2016.

RESPONSE: Denied. Defendant did not personally prepare the grand jury audio for Plaintiff and therefore has no personal knowledge to rely on in answering this request.

35. Admit that the grand jury audio prepared by the Dearborn Superior Court II contains less information than the transcription of the grand jury investigation of Daniel Brewington.

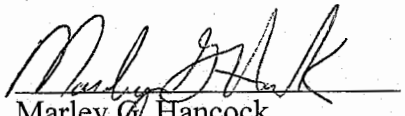
RESPONSE: Denied. Defendant did not personally prepare the grand jury audio, or the transcription of said audio, for Plaintiff and therefore has no personal knowledge to rely on in answering this request.

36. Admit that both the transcription and the audio of the grand jury investigation of Daniel Brewington lacked any introduction, instruction, or explanation as to scope or nature of the grand jury investigation, or any other record of the grand jury proceedings occurring prior to F. Aaron Negangard calling witness to testify before the grand jury.

RESPONSE: Denied. As the dispute over the grand jury audio began more than five years ago, Defendant is unable to recall the specifics of the transcription or audio. Defendant, therefore, has no personal knowledge to rely on in answering this request.

Acknowledgement

I affirm, under the penalties of perjury, that the foregoing representations are true and correct to the best of my knowledge and belief.

By: 

Marley G. Hancock
Deputy Attorney General
Attorney No. 34617-32

CERTIFICATE OF SERVICE

I hereby certify that on May 24, 2018, a copy of the foregoing was sent by prepaid U.S. mail on the following party:

Daniel P. Brewington
[redacted]
Plaintiff pro se

Marley G. Hancock
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