

STATE OF INDIANA	)	IN THE DEARBORN SUPERIOR COURT II
	)	
COUNTY OF DEARBORN	)	GENERAL TERM 2017
	)	
DANIEL P. BREWINGTON	)	CAUSE NO. 15D02-1702-PC-0003
	)	
Petitioner,	)	
	)	
V.	)	
	)	
STATE OF INDIANA	)	
	)	
Respondent.	)	

REQUEST FOR ORDER COMPELLING PRODUCTION OF GRAND JURY

RECORD

Petitioner, Daniel Brewington (“Brewington”), files this REQUEST FOR ORDER COMPELLING PRODUCTION OF GRAND JURY RECORD and states the following:

In the case that this Court should not grant Brewington’s Motion for Summary Judgment, the complete release of the grand jury record is necessary if Brewington bears the burden to demonstrate the degree of fundamental error associated with the court staff of the Dearborn Superior Court II assisting the Office of the Dearborn County Prosecutor in obstructing Brewington’s access to indictment information prior to trial.

RECENT HISTORY OF THIS CASE

- 1) On March 31, 2017, Brewington filed his Motion for Summary Judgment demonstrating that the record of the grand jury proceedings was altered; thus,

depriving Brewington the ability to subject the prosecution's case to any meaningful adversarial testing and entitling Brewington to judgment as a matter of law.

2) On May 3, 2017, the Office of the Dearborn County Prosecutor filed the STATE'S MOTION FOR EXTENSION OF TIME TO RESPOND TO PETITIONER'S MOTION FOR SUMMARY JUDGMENT.

3) On May 12, 2017, this Court granted the State's motion and gave the State until 3pm on June 8, 2017 to file a response.

#### FACTS OF THE CASE

4) On March 7, 2011, Dearborn County Prosecutor F. Aaron Negangard<sup>1</sup> filed the State's PRAECIPE directing the Court Reporter of the Dearborn Superior Court II "to prepare and certify *a full and complete*" [emphasis added] transcript from the grand jury proceedings occurring on February 28, 2011, March 1, 2011, and March 2, 2011. [See attached "EXHIBIT A"]

5) During a pretrial hearing on July 18, 2011, when questioned about the State's vague indictments, Deputy Prosecutor Joeseeph Kisor instructed Brewington's public defender to rely on the complete transcription of the grand jury proceedings for an understanding of the State's case against Brewington. [See pages no. 20-21 of transcript attached as "EXHIBIT B"]

6) Brewington encourages this Court to take special notice of page no. 17 of EXHIBIT B and pages 4-8 from the Chronological Case Summary ("CCS") in this

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<sup>1</sup> Negangard currently serves as Chief Deputy to Indiana Attorney General Curtis Hill.

case to see how Judge Brian Hill<sup>2</sup> (“Hill”) played an active role in denying Brewington’s ability to obtain charging information prior to trial. [CCS attached as “EXHIBIT C”] A history of the events surrounding the grand jury transcript is as followed:

- 6/1/11 - Hill assumes jurisdiction of Brewington’s criminal case.
- 6/3/11 - Hill sets hearing for 6/17/11 on public defender’s motion to withdraw.
- 6/17/11 - Hill sets case for jury trial on 8/16/11.
- 7/18/11 - Bryan Barrett<sup>3</sup> files appearance as Brewington’s new public defender.
- 7/18/11 - Barrett said he nor Brewington understood the nature of the indictments.
- 7/18/11 - Kisor instructs Barrett to rely on “complete” transcript of grand jury.<sup>4</sup>
- 7/21/11 - Hill sets Bond Reduction hearing for 8/3/11
- 8/4/11 - Motion to vacate 8/3/11 bond reduction hearing<sup>5</sup>
- 8/4/11 - Order vacating 8/3/11 bond reduction hearing.
- 8/4/11 - Hill signs Voir Dire Order on Hill’s own motion.
- 8/11/11 - State files Motion to Release Grand Jury Exhibits.
- 8/16/11 - Original date of Brewington’s jury trial.
- 8/17/11 - Order Vacating 8/16/11 Jury Trial filed on the court’s own motion.
- 8/23/11 - Order to Release Grand Jury Exhibits (signed 8/17/11)

7) Immediately after assuming jurisdiction of the case, Hill scheduled Brewington’s jury trial approximately two months after the hearing on the Motion to Withdraw filed by Brewington’s first public defender and less than one month after Brewington’s second public defender filed an appearance. Hill observed Deputy Kisor instructing Barrett to rely on a complete transcription of the grand jury proceedings for an explanation of the general indictments. Despite vacating the

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<sup>2</sup> Brian Hill serves as Superior Court Judge in Rush County, Indiana.

<sup>3</sup> Hill appointed Barrett who is the Chief Public Defender in Rush County, IN.

<sup>4</sup> During the hearing on 7/18/11, Barrett claimed to be in possession of the grand jury transcript despite not being release by the Court. If Barrett did possess the transcript at that time, Hill knew Barrett withheld charging information from Brewington from 7/18/11 until less than two weeks before the trial on 10/3/11.

<sup>5</sup> Certificate of Service states a copy was provided to prosecutor on 8/3/11.

hearing scheduled for 8/3/11 due to Barrett's personal matters<sup>6</sup>, Hill still filed Voir Dire Order knowing Barrett had absolutely no idea about the State's case against Brewington because Hill did not release the grand jury records until Negangard admitted them during Brewington's bond reduction hearing on 8/17/11. If not for Barrett's family emergency, Hill would have allowed Brewington to face a jury trial knowing neither Barrett nor Brewington had access to the indictment information allegedly contained in the grand jury transcript. Barrett's lack of objection to the trial being scheduled prior to the State releasing the grand jury transcript/indictment information serves as an early indicator that Barrett never intended to provide Brewington with competent legal representation. Hill denied Brewington's request for a lower bond knowing Brewington and Barrett still had no idea why Brewington had been detained since 3/11/11.<sup>7</sup> The transcripts from the final pretrial hearing on 9/19/11 show Hill acknowledging that neither Barrett nor Brewington had yet to receive the grand jury transcripts. The transcripts from the 9/19/11 hearing also show Negangard making the following statement about Barrett's representation:

"Now in October, now in September where we are two (2) weeks from the jury trial, now he's um mad that his attorney hasn't talked to him enough as far as I can tell." Tr. 78 at 6-9

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<sup>6</sup> Barrett's mother passed around that period of time.

<sup>7</sup> The record of Brewington's 8/17/11 bond reduction hearing is void of any mention of Brewington's actions related to the indictments.

The CCS shows three pro se filings made by Brewington on the first day of trial, 10/3/11: Motion to Dismiss for Ineffective Assistance of Counsel, Motion to Disqualify F. Aaron Negangard and Appointment of a Special Prosecutor, and Motion to Dismiss. Brewington's pro se motions challenged, among many things, the fact that Barrett never met with Brewington to ask about, review, or explain the criminal case to Brewington, while Barrett denied Brewington any opportunity to participate in the preparation of Brewington's own defense. Hill's reasoning for denying Brewington's pro se motions was that Brewington had legal representation; the same representation Negangard acknowledged had yet to meet with Brewington just two weeks prior.

8) The record of Brewington's criminal case is void of any order or directive instructing the court reporter to deviate from the State's PRAECIPE.

9) It was well after Brewington's release from prison when Brewington discovered the grand jury transcript was incomplete.

10) Chief Court Reporter Barbara Ruwe omitted portions of the grand jury proceedings from the transcription of the grand jury audio, yet still certified the transcript as being "full, true, correct and complete."

11) The transcription of the grand jury record in the investigation of Brewington is void of any record of the proceedings occurring prior to witness testimony. [Digital copy of grand jury transcript attached hereto as "EXHIBIT D."]

12) It was the latter part of 2016 when Brewington discovered that the Dearborn Superior Court II altered the audio of the grand jury record.

13) The audio record of the grand jury investigation of Brewington is incomplete as the audio is also void of any record of the proceedings prior to witness testimony.

[Exact copy of Grand Jury audio provided to Brewington attached as “EXHIBIT E.”]

14) IC 35-34-2-3(d) mandates that “the evidence and proceedings shall be recorded in the same manner as evidence and proceedings are recorded in the court that impaneled the grand jury.”

15) In comparing the file structure of official audio in proceedings in the Dearborn Superior Court II, the court staff converted the format of the audio files in Brewington’s grand jury record from Waveform Audio File format (.wav) to a Windows Media Audio format (.wma) in addition to modifying file names. [See comparison of audio files in Dearborn Superior Court II attached as “EXHIBIT F.”]

16) The grand jury audio contains *less* content than that of what was supposed to be a “full, true, correct and complete” transcription of that same audio. [Examples of missing attached hereto as “EXHIBIT G.”]

17) In *Brewington v State*, the Indiana Supreme Court wrote:

Specifically, the prosecutor argued two grounds for Defendant's convictions, one entirely permissible (true threat) and one plainly impermissible (“criminal defamation” without actual malice). See Tr. 455-56. Then, the jury was instructed on all eight alternative forms of “threat” under Indiana Code section 35-45-2-1(c), App. 16, without any instruction that for these particular victims, threats of “criminal defamation” under (c)(6) and (7) also require “actual malice.” *Brewington v. State*, 7 N.E.3d at 973

18) Court Reporter Ruwe omitted the “entirely permissible (true threat)” ground from the grand jury transcript in addition to “all eight alternative forms of “threat”

under Indiana Code section 35-45-2-1(c)” that Negangard provided to the grand jury.

19) Ruwe omitted Negangard’s instruction to the grand jury indicating which of Brewington’s statements constituted perjury and Negangard’s instruction to the grand jury indicating what grand jury information Brewington allegedly leaked.

20) Ruwe’s transcription included only Negangard’s “plainly impermissible (‘criminal defamation’ without actual malice)” instruction to the grand jury.

21) Ruwe’s transcription is void of Negangard providing any explanation as to how any of Brewington’s actions violated Indiana law.

### CONCLUSION

The opinion in *Brewington v. State* argued former Dearborn County Prosecutor F. Aaron Negangard provided both a permissible “true threat” ground and an impermissible “criminal defamation” ground for Brewington’s convictions of intimidation/attempted obstruction of justice, but the record of the grand jury is void of a constitutionally permissible “true threat” instruction. As the record of the grand jury currently stands, Negangard convened the grand jury in the absence of a crime. The format and names of the audio files representing the grand jury have been edited and the audio contains less content than the transcription. Any attempt by Judge Sally McLaughlin to defend her staff at the Dearborn Superior Court II should fall on deaf ears because McLaughlin’s staff did not “prepare and certify a *full and complete*” transcription of the grand jury proceedings as directed by the State’s Praeceptum and then McLaughlin’s staff altered the grand jury audio several


years later, which fails to match the transcription. As such, Brewington would request that Honorable Special Judge Coy include Brewington in any communications with Dearborn Superior Court II Judge Sally McLaughlin, the court staff of the Dearborn Superior Court II, and/or the Office of the Dearborn County Prosecutor in any matter regarding the record of this case. The facts of this case are clear; the prosecution instructed Brewington to rely on a *full and complete* [emphasis added] transcription of the grand jury proceedings to prepare a defense for trial and the staff of the Dearborn Superior Court II failed to prepare such and Negangard provided Brewington with an incomplete transcription of the grand jury record, which was void of Negangard providing any constitutionally permissible ground for Brewington's indictments. Any claim by the State that Brewington's right to indictment information was waived by Barrett's non-objection requires immediate reversal of Brewington's convictions under *Cronic*. The deprivation of Brewington's "meaningful opportunity to subject the State's evidence to adversarial testing," *Ward v. State*, 969 N.E.2d 46 (2012), was a direct result of Barrett's non-objection to the prosecution's non-disclosure of indictment information, which made it impossible for Barrett to subject the State's case to the "adversarial testing" required under *United States v. Cronic*, 104 S.Ct. 2039, 466 U.S. 648, 80 L.Ed.2d 657 (1984). Though the Indiana Supreme Court denied Brewington relief from Negangard's criminal defamation instruction by claiming Barrett invited the "error" by strategically not challenging Negangard's unconstitutional criminal defamation ground for Brewington's conviction, Barrett cannot invite the error associated with



Negangard failing to provide a constitutional ground for Brewington's indictments and/or any errors associated with the court staff omitting such ground from the transcription of the grand jury proceedings. Reversal of Brewington's convictions does not prejudice the State. Any claim of a potential retrial would entail the prosecution having to provide Brewington with the constitutionally permissible indictment information that the the court staff of the Dearborn Superior Court II omitted from the record of the grand jury, which Brewington is currently seeking in filing this request. If the above is insufficient reason to vacate Brewington's convictions, then it is necessary for Brewington to obtain a full and complete copy of the grand jury audio in order to demonstrate the extent of how much indictment information the State withheld from Brewington.

WHEREFORE, for the reasons set forth in this REQUEST FOR ORDER COMPELLING PRODUCTION OF GRAND JURY RECORD, Brewington requests that this Court grant Brewington's Motion for Summary Judgment by vacating Brewington's convictions in Cause No. 15D02-1103-FD-00084, and/or order the Court Reporter of the Dearborn Superior Court II to prepare an unedited and complete copy of the grand jury audio from the grand jury investigation of Daniel Brewington so Brewington can make a greater showing of misconduct by Negangard and the court staff, and award Brewington any appropriate relief.

Respectfully submitted,

  
\_\_\_\_\_  
Daniel P. Brewington  
*Plaintiff, pro se*

**CERTIFICATE OF SERVICE**

I do hereby certify that a copy of the foregoing has been duly served upon parties and counsel of record listed below, by United States mail, prepaid, on May 27, 2017.



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Daniel P. Brewington  
*Plaintiff, pro se*

Dearborn County Prosecutor Lynn Deddens  
7th Judicial Circuit  
215 W. High St.  
Lawrenceburg, IN 47025

# EXHIBIT A

STATE OF INDIANA )  
COUNTY OF OHIO )  
STATE OF INDIANA )  
V. )  
DANIEL BREWINGTON )

IN THE DEARBORN SUPERIOR COURT II )  
SS: )  
GENERAL TERM, 2011 )  
CAUSE NO. 15D02-1103-FD-084 )

**FILED**  
MAR 07 2011  
*Christy D. Williams*  
CLERK OF DEARBORN CIRCUIT CO.

## PRAECIPE

Comes now the State of Indiana by F. Aaron Negangard, Prosecuting Attorney for the Seventh Judicial Circuit, and praecipes the Court Reporter of the Dearborn Superior Court II to prepare and certify a full and complete transcript of the grand jury proceedings in this cause of action.

*F. Aaron Negangard*

F. Aaron Negangard  
Prosecuting Attorney  
Seventh Judicial Circuit  
Dearborn County Courthouse  
215 West High Street  
Lawrenceburg, IN 47025  
TX (812) 537-8884  
ISB #18809-53



# **EXHIBIT B**

## **APPEARANCES**

2

3

4 **ON BEHALF OF THE STATE:**

5

6 **BRIAN JOHNSON**

7 **DEPUTY PROSECUTING ATTORNEY**

8 **AND**

9 **JOSEPH KISOR**

10 **CHIEF DEPUTY PROSECUTING ATTORNEY**

11 **215 WEST HIGH STREET**

12 **LAWRENCEBURG, IN 47025**

13

14

15 **ON BEHALF OF THE DEFENDANT:**

16 **BRYAN BARRETT**

17 **RUSH COUNTY PUBLIC DEFENDER'S OFFICE**

18 **101 EAST SECOND STREET, ROOM 315**

19 **RUSHVILLE, IN 46173**

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1 **DANIEL BREWINGTON – HEARING ON JULY 18, 2011**

2 COURT: We're here in Case No. 15D02-1103-FD-84, State  
3 of Indiana versus Daniel Brewington. Let the  
4 record reflect that the State appears by Deputy  
5 Prosecuting Attorney, Mr. Kisor, and the Defendant  
6 appears in person and by counsel, Bryan Barrett.  
7 This matter is set today for a pre-trial conference  
8 and a bond reduction hearing, however the State had  
9 file a Motion to Continue that bond reduction  
10 hearing due to the fact that a material witness for  
11 that hearing would be unavailable on today's date  
12 and while I have not signed that in writing, I have  
13 indicated telephonically both to the prosecutor's  
14 office and to defense counsel, I would be granting  
15 that motion as to the bond reduction hearing and  
16 perhaps maybe get a solid date scheduled on today's  
17 date for that and also it was indicated to me that the  
18 parties wish to have this pre-trial conference. Right  
19 now we have a jury trial setting of August 16<sup>th</sup>, to  
20 commence that trial at 8:30 a.m. on that morning.  
21 Are there any specific issues that the State wishes to  
22 address today, Mr. Kisor?

23 MR. KISOR: No your honor.

24 COURT: And Mr. Barrett anything aside from scheduling that  
25 bond reduction hearing?

1 MR. BARRETT: Um, well I'm still trying to get discovery. I've been  
2 through some this morning with Mr. Brewington  
3 and I will get that from Mr. Watson I guess as soon  
4 as possible Judge but at this point, no. When is the  
5 Court looking at the bond hearing?

6 COURT: Well I just grabbed a few dates on my calendar at  
7 home before I left. If we wanted it earlier, we can  
8 get on the phone with my office and see. That first  
9 week of August, there's August 1<sup>st</sup>, I have the whole  
10 afternoon and August 3<sup>rd</sup> and August 5<sup>th</sup>, all those  
11 afternoon dates. I don't know if those may work  
12 with counsel and we don't have to have an answer  
13 right here, if we want to.

14 MR. BARRETT: The 1<sup>st</sup>, the 3<sup>rd</sup>, and the 5<sup>th</sup>? Is that what you said?

15 COURT: Yes, all in the p.m. Maybe counsel and I can  
16 discuss that after the hearing and see and make any  
17 of those a solid date.

18 MR. KISOR: That would work, what I would like to do, if we can  
19 have an opportunity to talk to the witness who is  
20 unavailable today to make sure with that much  
21 notice that whatever date we set, we would not miss  
22 the position of not having him here for that next  
23 hearing.

24 COURT: Would that be possible to do this afternoon?

25 MR. KISOR: I believe I could reach him by cell phone. I would

1 hope.

2 MR. BARRETT: I know I have a jury trial in Franklin County that's

3 currently set on the 1<sup>st</sup>. I've moved to continue that

4 but I don't know if that's been granted or not. As

5 far as I know the 3<sup>rd</sup> or the 5<sup>th</sup> would be fine, Judge.

6 COURT: Okay.

7 MR. BARRETT: Obviously my client is eager to have that hearing as

8 quickly as possible.

9 COURT: I understand that.

10 MR. BARRETT: And I think that probably has a lot to do with

11 whether or not...

12 COURT: Well and that's why, I was hoping to do this on the

13 same time...

14 MR. BARRETT: ...exactly...

15 COURT: ...but it's not going to happen but I thought maybe

16 that would have some bearing on your position as

17 far as the jury trial. As far as the discovery and

18 everything goes...

19 MR. BARRETT: I don't have any reason to believe I can't get it from

20 Mr. Watson. Obviously Mr. Brewington has a

21 substantial amount here himself but I don't, he's

22 obviously in custody so I don't actually have access

23 to that on a regular basis.

24 MR. KISOR: Your honor, we would be happy to provide a

25 duplicate copy if you want to stop down in the

1 office, I'm sure we could get this, whatever we've  
2 got, we could either reprint it or if there's something  
3 we could put on a disk for you, we would be glad  
4 to...

5 MR. BARRETT: Okay.

6 MR. KISOR: The paralegal is down there that would be able to do  
7 that and I could go down with you.

8 MR. BARRETT: Okay.

9 COURT: So aside from getting that scheduled maybe we can  
10 deal with some of the discovery after this hearing.

11 MR. BARRETT: Can I have just a minute Judge? I'm sorry.

12 COURT: Sure, go ahead.

13 MR. BARRETT: The inquiry that my client is making and obviously  
14 I'm at some disadvantage Judge as what specific,  
15 the informations in the indictments, the information  
16 and indictments are pretty general, I guess and they  
17 cover broad periods of time and I'm just obviously  
18 wondering what the specific things the government  
19 is saying that my client did that constituted  
20 intimidation and the various other offenses but  
21 obviously that's a discovery issue and probably for  
22 another hearing.

23 COURT: Okay.

24 MR. BARRETT: And obviously that was kind of the purpose of the  
25 bond hearing as well as those can certainly be



1 used for that purpose as well.

2 COURT: Well maybe I'm presuming wrong, I would  
3 anticipate the State's going to be putting on some  
4 specific evidence at that, for purposes of the bond  
5 hearing.

6 MR. KISOR: Uh, possibly, although there were some other  
7 matters unrelated to the indictments that were  
8 pertinent to the issue of bond, some subsequent  
9 matters.

10 COURT: Okay, I understand but I presume we'll hear...

11 MR. KISOR: Yes, I mean, if particularly the Court would make  
12 that request. There is a, as far as I know, a complete  
13 transcript of the grand jury proceedings.

14 MR. BARRETT: I do have that.

15 MR. KISOR: So I mean that would be what the grand jury  
16 determined.

17 MR. BARRETT: I have not had an opportunity to go over that with  
18 Mr. Brewington, but that's generally the  
19 information that you're relying upon?

20 MR. KISOR: Yes.

21 MR. BARRETT: Okay.

22 MR. KISOR: And I would be glad to talk to you more specifically  
23 more about that.

24 COURT: Anything else that needs to be addressed on the  
25 record at this time, Mr. Barrett?

1 MR. BARRETT: No Judge, we would request that the trial date be  
2 left at this point in time.

3 COURT: Okay, I'll leave that jury trial setting on and we will  
4 discuss matters, I'll allow the parties to make some  
5 phone calls and maybe contact that witness and see  
6 if we can be back here on the 3<sup>rd</sup> or the 5<sup>th</sup> of  
7 August, sometime in one of those afternoons. That  
8 will be all for this hearing for today.

9 MR. BARRETT: Thank you, your honor.

10 MR. KISOR: Thank you, your honor.

# EXHIBIT C

Tue Nov 22 2011 09:27:20

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CHRONOLOGICAL CASE SUMMARY  
CRIMINAL DOCKET, DEARBORN SUPERIOR COURT 2

FOR CAUSE NO: 15D02-1103-FD-00084  
STATE VS BREWINGTON, DANIEL  
JUDGE BRIAN D HILL

ACTION: CLASS D FELONY

DATE FILED: 03/07/2011  
ORIG FILE DT: 03/07/2011

APPLICATION FOR REDUCTION OF BAIL FILED BY DEF; BR

MIN Date: 05/13/2011 Notice: N

RJO: N

MOTION FOR DISCOVERY AND REQUEST FOR RULE 404 AND 405 EVIDENCE FILED BY  
DEF; BR

MIN Date: 05/23/2011 Notice: N

RJO: N

DISCOVERY ANSWER FILED; CK

MIN Date: 05/23/2011 Notice: N

RJO: N

DISCOVERY ANSWER FILED BY DEF; BR

MIN Date: 05/23/2011 Notice: N

RJO: N

MOTION TO WITHDRAW FILED BY J WATSON; BR

MIN Date: 05/25/2011 Notice: N

RJO: N

ORDER OF RECUSAL SIGNED BY SPECIAL JUDGE WESTHAFFER;BR

MIN Date: 06/01/2011 Notice: N

RJO: N

QUALIFICATION BY SPECIAL JUDGE SIGNED;SPECIAL JUDGE BRIAN HILL.MB

MIN Date: 06/01/2011 Notice: N

RJO: N

ORDER SETTING HEARING FOR JUNE 17, 2011 AT 1:30 P.M.;ORDER SIGNED BY  
SPECIAL JUDGE B.HILL.MB

MIN Date: 06/03/2011 Notice: N

RJO: N

ORDER APPOINTING SPECIAL JUDGE BRIAN HILL; BR

MIN Date: 06/17/2011 Notice: N

RJO: N

PRE-TRIAL ORDER SIGNED;

CHRONOLOGICAL CASE SUMMARY  
CRIMINAL DOCKET, DEARBORN SUPERIOR COURT 2

FOR CAUSE NO: 15D02-1103-FD-00084  
STATE VS BREWINGTON, DANIEL  
JUDGE BRIAN D HILL

ACTION: CLASS D FELONY

DATE FILED: 03/07/2011  
ORIG FILE DT: 03/07/2011

BOND REDUCTION HEARING; 7/18/11; 1:30 PM;  
FINAL PRE-TRIAL 7/18/11 @ 1:30 PM; PLEA DEADLINE 7/18/11;  
JURY TRIAL 8/16/11 @ 8:30 AM;  
BR

MIN Date: 06/17/2011 Notice: N

RJO: N

ORDER TO PRODUCE EVIDENCE SIGNED;  
ORDER ON WITHDRAW SIGNED; BR

MIN Date: 06/20/2011 Notice: N

RJO: N

ORDER ON DEFENDANT'S REQUEST FOR APPOINTMENT OF PUBLIC DEFENDER SIGNED BY  
SPECIAL JUDGE B.HILL.MB

MIN Date: 06/28/2011 Notice: N

RJO: N

MOTION TO CONTINUE BOND REDUCTION HEARING FILED BY STATE; BR

MIN Date: 06/29/2011 Notice: N

RJO: N

SUPPLEMENTAL DISCOVERY ANSWER FILED BY State.kb

MIN Date: 07/18/2011 Notice: N

RJO: N

APPEARANCE FORM FILED BY BRYAN BARRETT;;  
;BR

MIN Date: 07/18/2011 Notice: N

RJO: N

FINAL PRE-TRIAL HEARING; DEF W/ATTY B BARRETT; STATE BY J KISOR; COURT TO  
RESCHEDULE BOND REDUCTION HEARING TO AUGUST 3, 2011 AT 1:30 PM; SPECIAL  
JUDGE HILL; COURT TO PREPARE ORDER; BR

MIN Date: 07/21/2011 Notice: N

RJO: N

ORDER TO CONTINUE FILED; BOND REDUCTION HEARING RE-SET FOR AUGUST 3, 2011  
AT 1:30 PM; CK

MIN Date: 08/04/2011 Notice: N

RJO: N

CHRONOLOGICAL CASE SUMMARY  
CRIMINAL DOCKET, DEARBORN SUPERIOR COURT 2

FOR CAUSE NO: 15D02-1103-FD-00084  
STATE VS BREWINGTON, DANIEL  
JUDGE BRIAN D HILL

ACTION: CLASS D FELONY

DATE FILED: 03/07/2011  
ORIG FILE DT: 03/07/2011

VOIR DIRE ORDER SIGNED BY SPECIAL JUDGE HILL; BR

MIN Date: 08/04/2011 Notice: N

RJO: N

MOTION TO VACATE HEARING FILED BY DEFENDANT; BR

MIN Date: 08/04/2011 Notice: N

RJO: N

ORDER VACATING HEARING SIGNED; BR

MIN Date: 08/09/2011 Notice: N

RJO: N

MOTION FOR CONFIDENTIALITY OF JUROR'S NAMES AND IDENTIFIES FILED BY STATE;  
BR

MIN Date: 08/10/2011 Notice: N

RJO: N

MOTION TO RELEASE GRAND JURY EXHIBITS FILED BY STATE; BR

MIN Date: 08/11/2011 Notice: N

RJO: N

ORDER VACATING JURY TRIAL SIGNED; BR

MIN Date: 08/17/2011 Notice: N

RJO: N

HEARING ON BOND REDUCTION; DEF W/ATTY B BARRETT; STATE BY A NEGANGARD;  
SPECIAL JUDGE HILL; WITNESSES SWORN; EVIDENCE HEARD; EXHIBITS 1 THROUGH 8  
ADMITTED; COURT TAKES UNDER ADVISEMENT; BR

MIN Date: 08/23/2011 Notice: N

RJO: N

ORDER TO RELEASE GRAND JURY EXHIBITS FILED; CK

MIN Date: 08/23/2011 Notice: N

RJO: N

ORDER DENYING BOND REDUCTION FILED; CK

MIN Date: 08/26/2011 Notice: N

RJO: N

ORDER SETTING TRIAL SIGNED; BR

CHRONOLOGICAL CASE SUMMARY  
CRIMINAL DOCKET, DEARBORN SUPERIOR COURT 2

FOR CAUSE NO: 15D02-1103-FD-00084  
STATE VS BREWINGTON, DANIEL  
JUDGE BRIAN D HILL

ACTION: CLASS D FELONY

DATE FILED: 03/07/2011  
ORIG FILE DT: 03/07/2011

MIN Date: 09/06/2011 Notice: N

RJO: N

MOTION IN LIMINE FILED BY DEF; BR

MIN Date: 09/19/2011 Notice: N

RJO: N

MOTION IN LIMINE FILED BY STATE; BR

MIN Date: 09/19/2011 Notice: N

RJO: N

FINAL PRE-TRIAL HEARING HELD; BR

MIN Date: 09/26/2011 Notice: N

RJO: N

SUPPLEMENTAL DISCOVERY ANSWER FILED BY STATE;

MIN Date: 09/30/2011 Notice: N

RJO: N

SUPPLEMENTAL DISCOVERY ANSWER FILED BY STATE.CM

MIN Date: 09/30/2011 Notice: N

RJO: N

SUPPLEMENTAL DISCOVERY ANSWER FILED BY STATE.CM

MIN Date: 10/03/2011 Notice: N

RJO: N

MOTION TO DISMISS FOR INEFFECTIVE ASSISTANCE OF COUNSEL FILED BY DEF PRO SE; BR

MIN Date: 10/03/2011 Notice: N

RJO: N

MOTION TO DISQUALIFY F. AARON NEGANGARD AND APPOINTMENT OF A SPECIAL PROSECUTOR FILED BY DEF PRO SE; BR

MIN Date: 10/03/2011 Notice: N

RJO: N

MOTION TO DISMISS FILED BY DEF PRO SE; BR

MIN Date: 10/03/2011 Notice: N

RJO: N

CHRONOLOGICAL CASE SUMMARY  
CRIMINAL DOCKET, DEARBORN SUPERIOR COURT 2

FOR CAUSE NO: 15D02-1103-FD-00084  
STATE VS BREWINGTON, DANIEL  
JUDGE BRIAN D HILL

ACTION: CLASS D FELONY

DATE FILED: 03/07/2011  
ORIG FILE DT: 03/07/2011

HEARING HELD ON DEFENDANT'S PRO SE MOTIONS; DEF IN PERSON AND W/COUNSEL;  
STATE BY A NEGANGARD/J KISOR; COURT DENIES ALL MOTIONS FILED BY DEF PRO  
SE; BR

MIN Date: 10/03/2011 Notice: N RJO: N

JURY TRIAL - DAY 1

MIN Date: 10/03/2011 Notice: N RJO: N

COURT'S PRELIMINARY INSTRUCTIONS; BR

MIN Date: 10/03/2011 Notice: N RJO: N

ORDER DENYING DEFENDANT'S PRO SE MOTIONS; BR

MIN Date: 10/03/2011 Notice: N RJO: N

JURY ENTRY - OCTOBER 3, 2011; BR

MIN Date: 10/03/2011 Notice: N RJO: N

RECORD OF CHALLENGES SIGNED; BR

MIN Date: 10/04/2011 Notice: N RJO: N

JURY ENTRY - OCTOBER 4, 2011; BR

MIN Date: 10/04/2011 Notice: N RJO: N

ORDER GRANTING MOTIONS IN LIMINE; BR

MIN Date: 10/05/2011 Notice: N RJO: N

JURY ENTRY - OCTOBER 5, 2011; BR

MIN Date: 10/06/2011 Notice: N RJO: N

# EXHIBIT F

**TRIAL COURT AUDIO**

Name	Date created	Date modified	Type	Size	Length
Criminal_9-19-11 1-37_01cc76d141e79440	9/19/2011 2:42 PM	9/19/2011 2:42 PM	WAV File	3,527 KB	00:05:00
Criminal_9-19-11 1-42_01cc76d1f50268c0	9/19/2011 2:47 PM	9/19/2011 2:47 PM	WAV File	3,527 KB	00:05:00
Criminal_9-19-11 1-47_01cc76d2a821f830	9/19/2011 2:52 PM	9/19/2011 2:52 PM	WAV File	3,527 KB	00:05:00
Criminal_9-19-11 1-52_01cc76d35b43f8a0	9/19/2011 2:57 PM	9/19/2011 2:57 PM	WAV File	3,527 KB	00:05:00
Criminal_9-19-11 1-57_01cc76d40e57c840	9/19/2011 3:00 PM	9/19/2011 3:00 PM	WAV File	2,502 KB	00:03:33
Criminal_9-19-11 9-12_01cc76ac39645170	9/19/2011 10:17 AM	9/19/2011 10:17 AM	WAV File	3,527 KB	00:05:00
Criminal_9-19-11 9-17_01cc76acac836bb0	9/19/2011 10:22 AM	9/19/2011 10:22 AM	WAV File	3,525 KB	00:05:00
Criminal_9-19-11 9-22_01cc76ad9f7eaa40	9/19/2011 10:27 AM	9/19/2011 10:27 AM	WAV File	3,527 KB	00:05:00
Criminal_9-19-11 9-27_01cc76ae528f6ca0	9/19/2011 10:32 AM	9/19/2011 10:32 AM	WAV File	3,528 KB	00:05:00
Criminal_9-19-11 9-32_01cc76af05ae86e0	9/19/2011 10:37 AM	9/19/2011 10:37 AM	WAV File	3,527 KB	00:05:00
Criminal_9-19-11 9-37_01cc76afb8c8bf20	9/19/2011 10:42 AM	9/19/2011 10:42 AM	WAV File	3,528 KB	00:05:00

**GRAND JURY AUDIO**

Name	Date created	Date modified	Type	Size	Length
Superior 2_20110301-0923_01cbd7f25f3bc080	4/27/2016 3:46 PM	4/27/2016 3:46 PM	WMA File	55 KB	00:00:05
Superior 2_20110301-0933_01cbd7f3b3e47630	4/27/2016 3:47 PM	4/27/2016 3:47 PM	WMA File	28,206 KB	00:59:30
Superior 2_20110301-1125_01cbd80367e8c280	4/27/2016 3:50 PM	4/27/2016 3:50 PM	WMA File	7,991 KB	00:16:50
Superior 2_20110301-1144_01cbd805ffe7ab80	4/27/2016 3:52 PM	4/27/2016 3:52 PM	WMA File	9,531 KB	00:20:05
Superior 2_20110301-1342_01cbd81684dac100	4/27/2016 3:54 PM	4/27/2016 3:54 PM	WMA File	20,925 KB	00:44:08
Superior 2_20110301-1606_01cbd82ab1003d00	4/27/2016 3:55 PM	4/27/2016 3:55 PM	WMA File	5,042 KB	00:10:36
Superior 2_20110301-1622_01cbd82cedc39690	4/27/2016 3:55 PM	4/27/2016 3:55 PM	WMA File	753 KB	00:01:34

- 1) FILE NAMING STRUCTURE INCLUDES DATE AND NATURE OF PROCEEDINGS.
- 2) FILE NAMING STRUCTURE INCLUDES BREWINGTON'S NAME AND DATE OF 3/1/2011 PROCEEDINGS. ALSO INCLUDES A SUBFOLDER SIMPLY NAMED "DAN."
- 3) DATE AND TIME CREATED CORRESPONDS W/FILE NAME. 9-37 = 9:37AM (LESS DAYLIGHT SAVINGS) DATE CREATED EQUALS THE LENGTH OF AUDIO FILE + TIME WHEN AUDIO FILE WAS NAMED.
- 4) DATE CREATED/MODIFIED IS OVER FIVE YEARS AFTER GRAND JURY INVESTIGATION TOOK PLACE. AUDIO LENGTHS DO NOT CORRESPOND WITH FILE NAMES.
- 5) AUDIO FILE SIZES AND LENGTHS ARE UNIFORM AND DO NOT EXCEED 5 MINUTES.
- 6) AUDIO FILE SIZES AND LENGTHS VARY.
- 7) DEFENDANTS CHANGED FILE FORMAT OF GRAND JURY AUDIO.
- 8) FILE CONTAINS NO AUDIBLE DIALOGUE.



# EXHIBIT G

## EXAMPLES OF ALTERED GRAND JURY AUDIO

Supporting evidence for the following examples are found within the alleged transcription of the grand jury investigation of Daniel Brewington (EXHIBIT A), and the audio of the grand jury investigation of Daniel Brewington (EXHIBIT B).

### **I. GRAND JURY AUDIO FAILS TO MATCH WHAT COURT REPORTER RUWE ALLEGED TO BE A CERTIFIED TRANSCRIPTION OF THE SAME AUDIO**

- Page 16 of the grand jury transcripts state the following:

19 MR. NEGANGARD: We'll get to that later.

20 MR. KREINHOP: Okay.

21 MR. NEGANGARD: We're back on record to so that we're addressing

22 the handgun issue.

The above exchange allegedly occurred on February 28, 2011 and appears at 0:21:36 of the audio file named [JUVENILEWS]20110228-1055\_01 cbd736060e5700 within "EXHIBIT B." The audio offers a different depiction of events. Instead of transcribed account of Negangard stating "We'll get to that later," the grand jury audio provides a different account:

*"We'll get, we can ge...."* [audio file abruptly ends.]

Negangard failed to complete his statement. There was no "Okay" from Kreinhop. The name of the first audio file includes the numbers "20110228-1055" which translates to February, 28 2011 at 10:55 a.m. This is when the audio began. The duration of the audio file, which has obviously been cut short, is 0:21:38 (h/mm/ss). Adding the duration of the audio to the time at which the audio file began indicates the earliest the altered audio could end is 11:16:38 a.m. The name of the next audio file suggests Negangard came back on record at 11:22 a.m. As such, five minutes of the proceedings are missing.

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- Page 67 of the grand jury transcripts states the following:

9 MR. NEGANGARD: Thank you. 116 is the Court of Appeals decision  
10 regarding the decision of Judge Humphrey. I want  
11 to break for lunch at this point. I would call Dr.  
12 Edward Conner to the stand. Please swear the  
13 witness in.

In the above example occurring on February 28, 2011, the audio file [JUVENILEWS]20110228-1259\_01 cbd7475c37c600, which is only eleven seconds long and falls between files [JUVENILEWS]\_20110228-1147 01 cbd73d41605400 and [JUVENILEWS]20110228-1431 01 cbd7542147f620. The conflict lies in the middle file. The eleven-second file contains Negangard's statement:

*"116 is the Court of Appeals decision regarding the decision of Judge Humphrey. I want to break for lunch..."*

The audio does not include *"at this point,"* which is included in the transcript.

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- Page 340, line 24 of the grand jury transcripts states the following:

24 MR. NEGANGARD: That's with regard to Dan Brewington.

The above is the final statement appearing in the transcription of Brewington's grand jury proceedings, which occurred on March 2, 2011. The audio, however, does not contain the same information. The audio in file Superior 2\_20110302-1054\_01cbd8c834bc3700 portrays Negangard stating:

*"That's with regard t-"*

The audio cuts of Negangard's statement mid-word. The above half-sentence is the last audio appearing in the record of Brewington's grand jury investigation.

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## **II. GRAND JURY AUDIO SKIPS TIME**

- Page 336 of the grand jury transcript contains the following statements from Negangard:

23 MR. NEGANGARD: I don't have any further questions at this time.

24 Okay one of the Grand Jurors has a question for

25 Sheriff Kreinhop.

The above consists of two separate audio files, "Superior 2\_20110301-1606\_01cbd82ab1003d00" with a duration of 0:10:36 and "Superior 2\_20110301-1622\_01cbd82cedc39690" which only lasted 0:01:34. The first file consists of Kreinhop's final testimony ending with Negangard stating "I don't have any further questions." Roughly 16 seconds of ambient noise continues after Negangard's statement. A couple seconds into the second audio file, Negangard states "Okay one of the Grand Jurors has a question for Sheriff Kreinhop." Taking into consideration of the duration of the files indicated by their respective names, five minutes of the grand jury proceedings were removed.

## **III. AUDIO FILES LACKING DIALOGUE**

- One audio file contains no dialogue.

The audio file titled Superior 2\_20110301-0923\_01cbd7f25f3bc080 appears at the beginning of the grand jury audio that allegedly occurred on March 1, 2011. The 5-second audio lacks any dialogue yet is somehow part of the record of the grand jury investigation of Brewington.