

STATE OF INDIANA
COUNTY OF DEARBORN

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IN THE DEARBORN CIRCUIT COURT
GENERAL TERM, 2012

STATE OF INDIANA

VS

ADOLFO LOPEZ

Cause No. 15C01-1209-FC-089

and

MARIA LOPEZ

Cause No. 15C01-1209-FC-168

ORDER DENYING MOTION FOR REMOVAL

This matter comes before the Court on Motion of Defendants, Adolfo Lopez and Maria Lopez, by counsel, Douglas Garner, for removal of the presiding Judge in this cause of action. And the Court having reviewed Defendants' Motion and being duly and sufficiently advised in the premises now finds as follows:

1. That in the matter of State of Indiana v. Adolfo Lopez, Cause No. 15C01-1209-FC-089 this Court was called upon to consider the issue of bail at a hearing held on November 15, 2011. The Court heard evidence from numerous witnesses on behalf of the defense and the State.
2. After hearing evidence the Court issued an eight (8) page Order outlining considerations for bond and a determination that Defendant's Motion for Bond Reduction should be denied. Evidence presented and considered on the issue of bond

at this bond hearing included testimony that:

- A. Defendant Lopez advised employees in the course of a labor investigation to “lie to the Department of Labor investigators”;
 - B. Defendant collected large sums of cash and was afraid he would be caught in possession of these sums;
 - C. Defendant Lopez frequently visited Mexico and maintained ties to Mexico;
 - D. That investigators in this cause of action recovered in excess of Three Million Dollars (\$3,000,000.00) in cash, including, sums contained in separate safety deposit boxes in the amounts of:
 - (1) Seven Hundred and Fifty Thousand Dollars (\$750,000.00);
 - (2) Seven Hundred and Fifty Thousand Dollars (\$750,000.00);
 - (3) Four Hundred and Fifty Thousand Dollars (\$450,000.00);
 - (4) Three Hundred and Sixty Thousand Dollars (\$360,000.00);
 - (5) Four Hundred and Eighty-nine Thousand Dollars (\$489,000.00); and
 - (6) Six Hundred and Twenty-nine Thousand Dollars (\$629,000.00);
 - E. That Defendants’ Indiana restaurants had unreported sales of over Four Million Dollars (\$4,000,000.00) and sales tax due of over Three Hundred Thousand Dollars (\$300,000.00).
3. Based upon these and other factors cited by the Court, the Court found that these circumstances indicated a substantial likelihood of non-appearance by Defendant Adolfo Lopez at future hearings and that he constituted a substantial flight risk. The Court denied Defendant’s Motion to Reduce Bond. (See attached Order Denying

Motion to Reduce Bond)

4. Defendant, Adolfo Lopez, filed a Motion to Appeal the Bond set by the Court in this cause of action. The Indiana Court of Appeals will, therefore, review the record and make a determination as to whether or not the bond set by the Court in this matter is appropriate.
5. Defendant's attorney subsequently filed a Motion to Remove the Current Judge from hearing this cause of action involving Mr. & Mrs. Lopez. This Motion appears to allege, in part, a conspiracy between the Court and the State of Indiana arising from the Prosecutor's former prosecution of Defendant, Daniel Brewington, in Cause No. 15D02-1103-FD-084.
6. The Court notes that there is no connection between the cause of action in State of Indiana v Lopez and the matter of State of Indiana v Brewington and Brewington v Brewington. The trial in the matter of State v. Brewington was concluded over one (1) year ago.
7. That on or about the 17th day of December, 2008, Judge James D. Humphrey was appointed as Special Judge in the matter of a dissolution of marriage in Brewington v Brewington in the Ripley Circuit Court, Cause No. 69C01-0701-DR-007. That on or about 5/27, 6/2 and 6/3/2009, a final hearing was held. A Decree of Dissolution was entered on the 18th day of August, 2009. This Court's decision, in the Dissolution of Marriage, was affirmed by the entire Indiana Court of Appeals (69A05-0909-CV-542) (Panel Per Curiam) on July 20, 2010. (Copy of Decree of Dissolution and Decision of Indiana Court of Appeals attached.)

8. That subsequently Grand Jury indictments were entered against Daniel Brewington alleging Intimidation of persons involved in the Brewington dissolution case. Alleged victims involved the custody evaluator, Judge James D. Humphrey, and the Judge's wife. Charges of Attempt to Commit Obstruction of Justice, Perjury, and Unlawful Disclosure of Grand Jury Proceedings were also filed. These criminal charges proceeded to trial on the 3rd day of October, 2011, a guilty verdict was returned on October 6th, 2011, for Intimidation under Count I; Intimidation of a Judge under Count II; Intimidation under Count III; Attempt to Commit Obstruction of Justice, a Class D Felony, under Count IV; and Perjury, a Class D Felony, under Count V. The defendant received the following sentence on October 24, 2011, as stated in the Court's Sentencing Order:

Count I ----- The Defendant is sentenced to six (6) months, executed, in the Dearborn Co. Jail (Defendant shall receive credit for 231 days of pre-sentence confinement plus 231 days of good time credit for a total of 462 days)

Count II ----- The Defendant is sentenced to two (2) years, executed, in the Indiana Dept. Of Correction (consecutive to Counts I, IV, and V).

Count III ----- The Defendant is sentenced to six (6) months, executed, in the Dearborn co. Jail (concurrent to Count II).

Count IV ----- The Defendant is sentenced to two (2) years, executed in the Indiana Dept. Of correction (concurrent to Count I, Defendant shall also receive credit for 231 Days of pre-sentence confinement plus 231 days of good time credit).

Count V ----- The Defendant is sentenced to one (1) year, executed, in the Indiana Dept. Of correction (consecutive to Counts I, II, III, and IV).

Lead Counsel on this case was Prosecuting Attorney, F. Aaron Negangard. This

matter is currently on appeal with the Indiana Court of Appeals in Cause No. 15A01-1110-CR-550. On appeal the State of Indiana is represented by the Indiana Attorney General's Office. (Copies of Grand Jury Indictments and Sentencing Order attached.)

9. The Prosecuting Attorney does not act as Attorney for alleged victims in a cause of action but rather represents the State of Indiana.
10. The Judge, and his spouse, did in fact attend oral arguments before the Indiana Court of Appeals in the matter of State v. Brewington on November 21st, 2012. This Judge felt it critically important to show that neither he, nor others involved in the legal system, will be intimidated from carrying out their duties in the administration of justice and enforcement of our Laws.
11. This Court has reviewed Defendants' allegations of conspiracy between the Court and the State and finds that these allegations are unreasonable, unwarranted and without justification. In fact, the Court notes that the Prosecution and Attorney Garner, on behalf of Maria Lopez, presented an Agreed Entry to the Court to reduce her bond, which the Court approved. (See attached copy)
12. This Court further notes that copies of defense Counsel's Motion for Removal and attached Affidavit were immediately provided by the Court to Counsel for the Indiana Commission on Judicial Qualifications.
13. The Court has reviewed the current circumstances in light of applicable Canons of Judicial Ethics and advisory opinions. This Court finds that there is no bias or prejudice for or against either party which arises in this case as a result of the State's prosecution in the Brewington case or for any other reason.

14. This Court, therefore, finds that Defendants' Motion filed herein for Removal of Circuit Court Judge is completely without merit and not worthy of hearing or further consideration. The Court finds that this matter is confirmed for trial on February 4, 2013, 3rd choice. The Court further confirms that James D. Humphrey will be the presiding Judge at the trial in this matter.

WHEREFORE, THE COURT FINDS that Defendants' Motion is hereby denied.

SO ORDERED THIS 20 **DAY OF DECEMBER, 2012.**


James D. Humphrey, Judge
Dearborn Circuit Court

Distribution:

Prosecutor

Douglas Garner, Esq.

Attachments:

Order Denying Motion to Reduce Bond - Adolfo Lopez/copy

Judgment and Final Order on Decree of Dissolution of Marriage - Brewington/copy

Court of Appeals Decision filed July 20, 2010 - Brewington/copy

Copies of Grand Jury Indictments and Sentencing Order attached

Agreed Entry to Reduce Bond - Maria Lopez

STATE OF INDIANA)

COUNTY OF DEARBORN)

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IN THE DEARBORN CIRCUIT COURT

GENERAL TERM, 2012

FILED

STATE OF INDIANA

NOV 21 2012

VS

CLERK OF DEARBORN CIRCUIT COURT CAUSE NO. 15C01-1209-FC-089

ADOLFO LOPEZ

**ORDER DENYING MOTION TO
REDUCE BOND**

This matter comes before the Court on the 15th day of November, 2011, on Defendant's Motion to Reduce Bond; and the State of Indiana appeared by F. Aaron Negangard, Prosecuting Attorney for the Seventh Judicial Circuit of Indiana, and M. Joseph Kisor, Chief Deputy Prosecuting Attorney for the Seventh Judicial Circuit of Indiana; And the Defendant, Adolfo Lopez, appeared in person and with Counsel, Douglas A. Garner;

The Court hears evidence and receives Memorandums from Counsel for the State and for the defense, and the Court being duly and sufficiently advised in the premises, now finds as follows:

BOND STATUTE

1. The Court considers the issue of bond in the context of Indiana Code Section 35-33-8-4(b) which provides as follows:

"Bail may not be set higher than that amount reasonably required to assure the defendant's appearance in Court or to assure the physical safety of another person or the community if the Court finds by clear and convincing evidence that the defendant poses a risk to the physical safety of another person or the community. In setting and accepting an amount of bail, the judicial officer shall take into account all facts relevant to the risk of non-appearance, including:

- (1) the length and character of the defendant's residence in the community;
- (2) the defendant's employment status and history and his ability to give bail;



- (3) the defendant's family ties and relationships;
- (4) the defendant's character, reputation, habits and mental condition;
- (5) the defendant's criminal or juvenile record, insofar as it demonstrates instability and a disdain for the Court's authority to bring him to trial;
- (6) the defendant's previous record in not responding to Court appearance when required or with respect to flight to avoid criminal prosecution;
- (7) the nature and gravity of the offense and the potential penalty faced, insofar as these factors are relevant to the risk of non-appearance;
- (8) the source of funds or property to be used to post bail or to pay a premium, insofar as it affects the risk of non-appearance;
- (9) that the defendant is a foreign national who is unlawfully present in the United States under federal immigration law; and
- (10) any other factors, including any evidence of instability and a disdain for authority, which might indicate that the defendant might not recognize and adhere to the authority of the Court to bring him to trial."

2. The Court also considers Appellate authorities interpreting and applying Indiana law.

GENERAL CONSIDERATIONS

3. The Court considers that Defendant, Adolfo Lopez, has been an American citizen for approximately fifteen (15) years and that he has lived in Lawrenceburg with his wife and children for approximately seven (7) to eight (8) years. The Court also notes that the State presented evidence through State's witness, Lazono, that the Defendant had previously bragged to him about having a "faked birth certificate" to change his birth date to qualify for previous amnesty in approximately 1985. The Court does not find that this evidence alone is sufficient to show that Defendant obtained citizenship improperly. The Court also finds that Defendant has been married approximately fifteen (15) years and that his children attend local schools.

4. That the Defendant is the owner of eleven (11) restaurants in the Indiana, Kentucky and Ohio area, and that two (2) restaurants are maintained in Kentucky, four (4) in Ohio and five (5)

in the State of Indiana.

5. That the Defendant has entered no objections to the admission of State's Exhibit "2." The Court notes that State's Exhibits "3" and "4" were admitted without objection, and also constitute a portion of State's Exhibit "2." The Court notes that the Defendant has entered objections to testimony provided by the State regarding the manner in which the restaurants' business was conducted. The Defendant argues that this evidence goes to facts supporting allegations more appropriately presented at trial. The Court has overruled these objections and also admits State's Exhibit "2." The Court finds this evidence is relevant for consideration. In addition, the Defendant has opened the door to such evidence based upon the content of the Defendant's Memorandum in Support of Reasonable Bond filed November 15, 2012, which alleges Defendant's character and the manner in which his restaurant business is conducted as a basis to reduce the bond. The Court further finds that Defendant inquired of defense witnesses during the bond hearing regarding their knowledge of any improper business activities at Defendant's restaurants. The Court finds that State's evidence, on this issue, is therefore admissible and subject to consideration by the Court. The Court finds such evidence is appropriate for consideration under Indiana Code 35-33-8-4(b)(10) regarding factors "including any evidence of instability and disdain for authority which might indicate that the Defendant might not recognize and adhere to the authority of the Court to bring him to trial." The Court also considers evidence regarding business practice in the context of Defendant's "character, reputation, habits and mental condition" I.C. 35-33-8-4b(4).

DEFENSE WITNESSES

6. The Court has heard and considers testimony of witnesses called by the defense, including Daniel Breyer, Attorney; Marcos Montino, Defendant's insurance agent; William Ebben, friend and computer consultant; and Defendant Adolfo Lopez. The Court summarizes these witnesses' testimony as follows:

- A, Attorney Breyer indicated familiarity with the managers and staff at the Milford, Ohio , Acapulco Restaurant. Mr. Breyer indicated some knowledge of Mr. Lopez, however, indicated greater knowledge of individuals involved with the Milford Restaurant.
- B. Mr. Montino indicated that he has known Mr. Lopez for approximately five (5) years and handles all of his personal and business insurance needs. Mr. Montino further indicated personal knowledge of Mr. Lopez and his family. Mr. Montino indicated some knowledge of a prior drug dealing offense at an Acapulco Restaurant and Mr. Montino further indicated he was asked about his knowledge of bookkeeping and responded that he was not aware of the manner of bookkeeping at the restaurants.
- C. Witness William Ebben indicated that Mr. Lopez maintained a modest lifestyle. Mr. Ebben stated that he does computer work for the business at home and at the office. Mr. Ebben was further asked by defense counsel if he was aware of any illegal activity at the restaurants or aware of how bookkeeping and tax accounting was conducted for the businesses. Mr. Ebben indicated that he was not aware of any such improper activity.
- D. Gary Puckett indicated that he personally knew Mr. Lopez and his wife and he and his wife worked with Mr. Lopez and his wife to help in mutually learning Spanish and English. Mr. Puckett indicated that upon questioned by defense counsel, that he was not aware of any organized criminal activity through the business. Mr. Puckett further indicated that he was "disappointed" when he heard about the current allegations and that he had not gotten that indication from his contact with Mr. Lopez.

not gotten that indication from his contact with Mr. Lopez.

- E. Adolph Lopez briefly testified regarding his marital status, status as an American citizen and that he had lived in Lawrenceburg approximately seven (7) to eight (8) years.

EXHIBIT 2

7. In considering State's Exhibit "2," the Court finds for purposes of these bond proceedings that total unreported cash sales from the restaurants is indicated to be Four Million Three Hundred Ninety-six Thousand One Hundred Ninety-nine Dollars and Four (\$4,396,199.04) Cents, and that additional sales tax due would be Three Hundred Five Thousand Six Hundred Sixty Dollars and Fifty-one (\$305,660.51) Cents. It is the Court's understanding that these amounts represent calculations based on the years 2008 through 2012.

STATE'S WITNESSES

8. The Court further considers evidence received from State's bond hearing witness, Rodriguez, a former manager at the Aurora restaurant, that a specific scheme and form was devised to report sales of the day and sales that would be reported with the support of the Defendant. (See State's Exhibit "1-A").

9. The Court considers the additional testimony of State's bond hearing witnesses, Rodriguez, Losano and Moreno, all employees of Defendant's Acapulco Restaurants regarding the manner in which the business was conducted:

- A. That employees were not paid a salary by Defendant, but merely received tips, that they were required to work six (6) days a week, ten (10) hours per day;
- B. That Defendant made arrangements for faked social security numbers;
- C. That employees were called together and threatened by Defendant after a

Department of Labor investigation was initiated;

- D. That following the Department of Labor investigation a sham work schedule/time sheet was placed at business locations at direction of Defendant;
- E. That Defendant advised employees in the course of the labor investigation that they were to "lie to the Department of Labor investigators."
- F. That Defendant stated that at the end of the month he collected large sums of cash and was afraid he would be caught in possession of these sums;
- G. That Defendant had arranged for "coyotes" (persons bringing illegal aliens to the United States) for several individuals working for the restaurants.
- H. That the Defendant frequently visited Mexico and maintained ties to Mexico.
- I. That two (2) of these former employees indicated that they were illegal residents of the United States.

OFFICER SUTTON

10. The Court also considers testimony of Timothy Sutton presented by deposition. It shows that in the course of investigating this cause of action that search warrants were executed at certain local banking institutions for safety deposit boxes owned by Adolfo Lopez. Funds from these separate safety deposit boxes were as recovered in the following amounts of cash:

- A. Seven Hundred Fifty Thousand (\$750,000.00) Dollars;
- B.. Seven Hundred Fifty Thousand (\$750,000.00) Dollars;
- C. Four Hundred Fifty Thousand (\$450,000.00) Dollars;
- D. Three Hundred Sixty Thousand (\$360,000.00) Dollars;
- E. Four Hundred Eighty-nine Thousand (\$489,000.00) Dollars;
- F. Six Hundred Twenty-nine Thousand (\$629,000.00) Dollars.

That the total amount of cash seized in the investigation was in excess of Three Million (\$3,000,000.00) Dollars.

REBUTTAL

The Court notes that the defense called no rebuttal witnesses as to State's evidence presented at the bond hearing.

SEVERITY OF CHARGES

11. The Court also considers the fact that Defendant is charged with ten (10) felony Counts including Count I, Corrupt Business Influence, Class C Felony; Count II, Conspiracy to Commit Corrupt Business Influence, Class C Felony; Forgery (Alleging Falsified Tax Forms), Class C Felony under Counts III, IV, V and VI, and Perjury in Count VII through X, Class D Felonies, (alleging false information in tax forms reported to the Indiana Department of Revenue). The Court considers the fact that a Class C Felony is punishable by a jail sentence of from two (2) to eight (8) years, advisory sentence of four (4) years, and possible fine of up to Ten Thousand (\$10,000.00) Dollars. The Court also considers as to the Class D Felonies that they are punishable by a jail sentence of from six (6) months to three (3) years, advisory sentence of one and one-half (1 ½) years and a possible fine of up to Ten Thousand Dollars (\$10,000.00). The Court also considers the nature of these allegations and the evidence received in this proceeding as it relates to "evidence of instability and disdain for authority."

CONCLUSION

12.. Considerable thought, attention and review has been provided to the issue of bond in this matter. The Court considers the factors cited above. The Court also recognizes and considers all of the evidence presented at the Bond Hearing. The Court notes that the strict Rules of Evidence do not apply to these proceedings as a bond hearing. The Court has, however, excluded or not considered evidence which did not bear sufficient indicia of the liability for consideration in the bond hearing.

13. The Court finds that this case presents an unusual set of circumstances indicating a

substantial likelihood of non-appearance for future proceedings. The Court finds that these circumstances show that the Defendant is a substantial flight risk. Some of the evidence the Court considers most significant is the amounts of cash recovered, the testimony of former employees outlined herein and the nature and severity of charges. The Court, therefore, finds that the bond set in this matter is reasonable and appropriate under the circumstances of this case and that Defendant's Motion for Reduction of Bond should be and hereby is DENIED.

14. The Court recognizes that a substantial bond has been set in this matter. The Court, however, believes that under the facts of this case such a bond is necessary to insure Defendant's future appearance.

15. Any findings stated herein are made for the sole purpose of the consideration of bond.

SO ORDERED THIS 21 DAY OF November, 2012.



JAMES D. HUMPHREY, Judge
Seventh Judicial Circuit

Copies to: Prosecutor
 Probation
 Sheriff
 Garner