

STATE OF INDIANA)	IN THE DEARBORN SUPERIOR COURT II
)	
COUNTY OF DEARBORN)	GENERAL TERM 2017
)	
DANIEL P. BREWINGTON)	CAUSE NO. 15002-1702-PC-003
)	
Petitioner,)	
)	
V.)	
)	
STATE OF INDIANA)	
)	
Respondent.)	

MOTION FOR CHANGE OF JUDGE

COMES NOW the Petitioner Daniel P. Brewington (“Brewington”), pro-se, and in support of this MOTION FOR CHANGE OF JUDGE, pursuant to Indiana Post-Conviction Rule 1(4)(b), [5], as Judge Brian Hill (“Hill”)¹ demonstrated both personal bias and prejudice against Brewington and in support of Brewington states as follows:

“Under Post-Conviction Rule a ‘petitioner may request a change of judge by filing an affidavit that the judge has a personal bias or prejudice against the petitioner.’ The rule ‘requires the judge to examine the affidavit, treat the historical facts recited in the affidavit as true, and determine whether these facts support a rational inference of bias or prejudice.’ State ex rel. *Whitehead v. Madison County Cir. Ct.*, 626 N.E.2d 802, 803 (Ind.1993).” *Lambert v. State*, 743 N.E.2d 719 (2001)

HILL IS DEFENDANT IN APRA LAWSUIT FILED BY BREWINGTON

Brewington named Hill as a defendant in a pending lawsuit seeking public records from the Dearborn Superior Court II. The Office of the Indiana Public

¹ Hill serves as Rush Superior Court Judge, Rush County, Indiana.

Access Counselor issued an opinion stating Hill's reasoning in denying public access to the audio from Brewington's grand jury investigation fell short of the exceptions allowed by Indiana Statute. The Dearborn Superior Court II has yet to release a complete copy of the audio record from the grand jury investigation of Brewington.

HILL'S PREJUDICE AGAINST BREWINGTON IN DENIAL OF APRA REQUEST

In early 2012, Hill granted two separate public requests for the audio record from the grand jury investigation of Brewington and then, without warning, quickly issued an order rendering the requests "moot." In an order dated February 2, 2012,

Hill stated:

"Subsequent to the issuance of those two Orders, the Court has discovered that no audio recordings of the Grand Jury Proceedings for February 28, 2011, March 1, 2011, and March 2, 2011 were admitted into evidence in this cause, therefore, these audio recordings are not a record in these proceedings."

Hill proceeded to state:

"the recipients' request for audio recordings of the Grand Jury Proceedings for February 28, 2011, March 1, 2011 and March 2, 2011...are rendered moot because there are no such audio recordings existing in this case."

Hill offered a different reasoning in denying Brewington's January 29, 2016 request for the same records. In an order dated February 4, 2016, Hill wrote:

"The Court declines to grant the request for audio recordings from the Grand Jury proceeding occurring on February 28, 2011, March 1, 2011, and March 2, 2011. Mr. Brewington has alleged that these audio recordings were admitted into evidence at his criminal trial, however, the Court finds that they were not, and there's been no sufficient reason set forth which would necessitate the release of said audio recordings."

It should first be noted that Hill's claim that Brewington alleged the "audio recordings were admitted into evidence at his criminal trial" is patently false. There is no such documentation to support such a claim. As for Brewington's failure to provide "sufficient reason" which would necessitate the release of the grand jury audio, Indiana statute does not require the public to provide a state agency with a reason for the release of public records. Hill placed the burden of this extra requirement on Brewington and not on prior requests for records. When Brewington challenged Hill's reasoning in Brewington's complaint to the Office of the Indiana Public Access Counselor, Hill 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."

Hill acknowledges that Hill's own prior reasoning for denying access to the grand jury audio were excuses to obstruct access to public records. Hill's finding that the release of the grand jury audio was not appropriate in Brewington's case is problematic because it demonstrates Hill's bias against Brewington. Hill did not apply his "appropriateness test" to prior requests for the records. Though requiring the public to provide a reason as to why a state agency should release public records is not required by Indiana Statute, Hill still did not hold a hearing or allow Brewington to present an argument as to why releasing the audio to Brewington would be "appropriate."

HILL DENIED BREWINGTON'S RIGHT TO FAIR TRIAL

"The law presumes that a judge is unbiased and unprejudiced. In re

Edwards, 694 N.E.2d 701, 711 (Ind.1998); *Smith v. State*, 535 N.E.2d 1155, 1157 (Ind.1989). Our Judicial Code provides that when a judge's impartiality might be reasonably questioned because of personal bias against a defendant or counsel, a judge is to recuse himself. Ind. Judicial Conduct Canon 3(E)(1)(a); accord *Edwards*, 694 N.E.2d at 710. The test for determining whether a judge should recuse himself or herself under Judicial Canon 3(E)(1) is whether 'an objective person, knowledgeable of all the circumstances, would have a reasonable basis for doubting the judge's impartiality.' *Edwards*, 694 N.E.2d at 711." *Timberlake v. State*, 753 N.E.2d 591 (2001)

Hill refused to address Brewington's numerous complaints regarding not having any assistance of counsel, not having specific charging information, and Brewington's right to evidence. Hill's personal or professional motives behind his actions are unclear but Hill's actions in depriving Brewington of basic constitutional rights clearly demonstrate Hill's bias against Brewington. Hill made a conscience decision to force Brewington to trial without charging information, evidence, and assistance of counsel. As such, Hill made a conscience decision to assist the State's prosecution of Brewington.

DENIAL OF COUNSEL

Throughout Brewington's criminal proceedings, Hill refused to address Brewington's complaints about not having any access to counsel with Brewington's public defender, Bryan Barrett ("Barrett")². There is no evidence in the record to dispute this claim.

DENIAL OF CHARGING INFORMATION

² Barrett is Chief Public Defender for Rush County, Indiana. Hill's courtroom and office as well as Barrett's office are in the Rush County Courthouse. Hill was aware of Barrett's refusal to provide Brewington with any legal assistance prior to trial but did nothing to protect Brewington's right to counsel.

As early as Brewington's March 11, 2011 arraignment hearing, Brewington expressed concern about a lack of information from the State informing Brewington which of Brewington's actions were responsible for the indictments. During the July 18, 2011, pretrial hearing, Barrett admitted both Brewington and Barrett were unaware of what conduct the State alleged to be unlawful. Tr. 20-20. During the final pretrial hearing on September 19, 2011, Brewington reiterated, "I have absolutely no explanation of the alleged crimes leading to the charges against me including dates, specific incidents, etc." Tr. 72. At the beginning of Brewington's October 3, 2011, jury trial, Brewington stated, "I don't have any idea of the direction of my case other than what was just explained to me just in the past few minutes before things got settled here." Tr. 3-4. At no point, did Hill ask Brewington what parts of the indictments Brewington did not understand. At no point, did Hill address the matter with Barrett. At no point on record was Brewington provided an explanation of charges.

DENIAL OF EVIDENCE

During the opening minutes of Brewington's trial, Brewington stated:

"I still don't have some of the evidence. I don't have copies of the Grand Jury evidence. There's documents from Detective Kreinhop's investigation that are not included. There's transcripts that uh, that he said would be included in his investigation that were not included in discovery and I've never been able to obtain that information and Mr. Barrett has not communicated with me about that stuff and I just don't know the direction of my defense and he hasn't been able to meet with me, tell me anything, explain to me anything."

Hill took no measures to investigate any of Brewington's concerns.

Brewington never received access to the evidence.

HILL FORCED BREWINGTON TO REPRESENT HIMSELF ON MATTERS

During the final pretrial hearing on September 19, 2011, Hill forced Brewington to explain Brewington's objections to the State's motion for an anonymous jury when Barrett refused to object. Hill never confronted Barrett about Barrett's refusal to object and preserve an appealable issue. Not only did Hill deny Brewington the assistance of counsel on the matter, Hill also jeopardized Brewington's 5th amendment right against self-incrimination.

HILL PLAYED AN ADVERSARIAL ROLE AGAINST BREWINGTON

During Brewington's final pretrial hearing on September 19, 2011, Brewington asked Hill to continue the trial scheduled for October 3, 2011 because Barrett refused to discuss the criminal case with Brewington, Brewington had yet to receive any specific charging information, and Brewington had not been provided with much of the State's evidence. Hill's response was as followed:

"I thought when we were here last you were complaining the trial hadn't happened yet." Tr. 76

The record of Brewington's criminal proceedings are void of Brewington complaining about the trial not occurring.

HILL LIED TO BREWINGTON ABOUT ENTERTAINING MOTION FOR SPECIAL PROSECUTOR

Brewington raised the issue of appointing a special prosecutor during a pre-trial hearing on June 17, 2011 following the recusal/withdrawal of three officials in Brewington's case. In an order dated March 17, 2011, Judge Sally (Blankenship) McLaughlin disqualified herself from Brewington's case stating:

“To avoid the appearance of bias or prejudice, no judicial officer in Dearborn County is able to hear this matter.” -REQUEST FOR APPOINTMENT OF SPECIAL JUDGE BY THE INDIANA SUPREME COURT, filed March 17, 2011.³

Falling in between McLaughlin and the appointment of Hill was the appointment of Special Judge John A. Westhafer. In a letter to Chief Justice Randall T. Shepard, dated May 2, 2011, Westhafer stated he had known Humphrey “for 25 years and consider[ed] him to be a good friend.” On May 25, 2011, Westhafer recused himself from Brewington’s case citing a possible conflict. During a pre-trial hearing on June 17, 2011, Hill granted a motion to withdraw filed by Brewington’s first public defender, John Watson. Despite representing Brewington for over two months, Watson filed a MOTION TO WITHDRAW, dated May 23, 2011, stating:

“That Counsel has multiple cases in Judge Humphrey’s court and accepts conflict public defender cased for Judge Humphrey, who is a victim in this case.

Counsel feels that this situation at minimum creates an appearance of impropriety.”

It was during the June 17, 2011 hearing that Brewington addressed the appearance of impropriety regarding the Office of the Dearborn County Prosecutor. Dearborn County Prosecutor F. Aaron Negangard obtained indictments against Brewington after Negangard made Brewington the target of a grand jury investigation claiming Brewington made “over the top” and “unsubstantiated

³ McLaughlin’s recusal came just six days McLaughlin set Brewington’s bond at \$500,000 surety and \$100,000 cash. Despite the absence of any criminal history by Brewington, McLaughlin set the outrageous bond claiming Brewington had a “history of not following Court orders and a general disdain for the authority of the Court and the legal system.”

statements” about Judge Humphrey [GJ Tr. 338], while Negangard actively served as the Dearborn County Prosecutor and prosecuted cases before Dearborn Circuit Judge James D. Humphrey. During the pretrial hearing, Brewington stated:

[M]y concern at this point is that there's going to be more conflicts in this case... [Judge Blankenship] recused herself because she stated that no Dearborn County judicial officer could hear it. Judge Westhafer recused himself because he...had a personal relationship with Judge Humphrey and then Mr. Watson is suggesting his withdrawal because of similar uh, uh, conflicts and I just had to bring into question the Dearborn County prosecutor's office, uh, having the same conflict...Negangard has a political relationship, uh, has a professional, professional relationship as he hears cases in this courtroom or he tries cases in this courtroom in front of Judge Humphrey.”

Hill provided Brewington with the following response:

“Well I'm not going to hear a request on that. If that's the case, we have to get an out of county Judge for every criminal filing in the filing[sic].”
“So if you have something like that you want to put that in writing and back that up with some case law, then I would be willing to hear that at a later date.”

Following the June 17, 2011 hearing, Hill appointed Barrett to represent Brewington. Barrett refused to meet with Brewington to discuss Brewington’s criminal case before trial. Hill ignored Brewington’s numerous pleas to appoint counsel willing to provide any legal assistance to Brewington prior to trial. After Barrett refused meet with Brewington, share evidence with Brewington or challenge the unconstitutional indictments, Brewington filed three pro se motions at the beginning of trial on October 3, 2011, which included Brewington’s MOTION TO DISQUALIFY F. AARON NEGANGARD AND APPOINTMENT OF SPECIAL PROSECUTOR. Though instructing Brewington to file a motion regarding a special

prosecutor, Hill refused to consider any of Brewington's motions. Hill's response to Brewington's motions was as followed:

"Mr. Brewington, you have legal counsel and I'm not inclined to contemplate pro se motions. I guess, what's your uh, what are you going for here? You've got counsel to represent you to give you legal advice and make these filings. Are you're uh, indicating to me that you're wanting to represent yourself or do you want to clarify that for me please?" Tr. 3

Brewington responded,

"No your honor. Uh, I just, Mr. Barrett hasn't met with me since July, I believe the 17th of this year... I still don't have some of the evidence. I don't have copies of the Grand Jury evidence. There's documents from Detective Kreinhop's investigation that are not included...I just don't know the direction of my defense and he hasn't been able to meet with me, tell me anything, explain to me anything. I also do not have my medication. I take Ritalin for attention deficit disorder...I have absolutely no idea what's going on in my case." Tr. 4

Hill interpreted Brewington pleas for evidence, charging information, ADHD medication, and legal counsel as a request by Brewington to represent himself in the matter. Hill gave the following response to Brewington's pleas for help:

Okay, I've listened for about three (3) or four (4) minutes I think uh by filing this, tells me you don't want counsel. You're filing motions by yourself. So you're ready to go... Tr. 5

Brewington responded:

"No, no, no, I want [competent] counsel. I want to know what's going on. I can't and even if I were to make a decision to do it on my own, I don't have, I haven't been given the medication that I need that is prescribed by a doctor to do this sort of stuff, I mean to read, to process, to question and everything like that. I just, I would have raised the issue earlier except Mr. Barrett at the September 19th hearing, said that he would be in to discuss the case with me and he never appeared. He said the same thing at the hearing before that. He said that he would be in to see me and he never appeared. He said over the phone that he would be in to see me when he had the chance and he never appeared. So I haven't had the opportunity to have effective counsel. It's not that I want to do

it on my own. It was a last resort effort.” Tr. 5

Hill gave only the following reply to Brewington’s numerous pleas:

“Okay that was the answer to my question. Uh, Mr. Barrett, are you ready to proceed with this case today?”

Bryan Barrett replied “Yes your honor” and Barrett, Prosecutor Negangard, and Judge Hill, proceeded with a criminal trial, while ignoring the fact Barrett never had any intention to subject the prosecution’s case against Brewington to any adversarial testing.

HILL ENHANCED SENTENCING DUE TO BREWINGTON’S REQUESTS FOR CONSTITUTIONAL RIGHTS

“[W]hat makes it even more crazy to me in this whole thing is almost every, every time that you get the opportunity to do, uh, make a statement or, or just the volumes of evidence that was presented at the, uh, the trial, I guess I’ve never seen anyone better at manipulating or turning the facts around to make yourself out to be the victim. And, I guess that just makes the, the certain things of the case even more egregious.” -Judge Hill, Brewington Sentencing Hearing, September 24, 2011 Tr. 81

Brewington did not testify in his own trial thus leaving out any opportunity for Brewington to respond to the prosecution’s case against Brewington.

Brewington’s only statements prior to trial were pleas to Hill for charging information, evidence, and assistance of counsel, which Hill refused to address. Hill accused Brewington of “manipulating facts” and cited “volumes of evidence that was presented at the, uh, the trial” despite the fact Hill refused to protect Brewington’s ability to review all the State’s “volumes of evidence.”

CONCLUSION

In arguing his motives for withdrawing as Brewington's first public defender, John Watson stated:

"It seems to me that to properly defend [Brewington] it would be necessary to take Judge Humphrey's deposition and that of his wife as well who is listed as a witness in this cause."

Barrett never attempted to take any depositions. Barrett never collected any evidence or subpoenaed any witnesses for trial. Barrett refused to challenge Negangard's outrageous claim that the Indiana Rules of Professional Conduct criminalized Brewington's normally protected speech. Tr. 515. Barrett did absolutely nothing to prepare a defense for Brewington's trial and Hill not only looked the other way, Hill told Brewington Hill had "never seen anyone better at manipulating or turning the facts around to make yourself out to be the victim." This is simply Hill's attempt at manipulating the record. Hill's manipulation continued in obstructing the release of grand jury audio. Rather than address Hill's varying excuses in denying APRA requests for grand jury audio, excuses the PAC found to fall short of any statutory exceptions under Indiana law, Hill created a set of "alternative facts" to cast doubt on Brewington's character, while questioning Brewington intentions in requesting the grand jury audio. Hill ignored the fact that Barbara Ruwe, Court Reporter for the Dearborn Superior Court II, varied from the State's Praeceptum directing the court reporter to "prepare and certify a full and complete transcript of the grand jury proceedings in this cause of action" and prepared an "abridged" version of the grand jury transcripts for no apparent reason. Rather than acknowledge Ruwe obstructed Brewington's right to charging

information and evidence in a criminal trial, Hill issued an order giving Ruwe the latitude to arbitrarily alter the names and format of audio files from the grand jury proceedings at Ruwe's discretion. Brewington understands that Hill currently possesses the jurisdiction to rule on this motion. Though some of the above allegations Brewington may appear extreme, Brewington's assertions are grounded in fact and Brewington bears the burden of raising these matters now in the case that Hill would make to further attempts to obstruct Brewington's fundamental rights, thus forcing the matter to a federal court.

WHEREFORE, for the above reasons and others mentioned in Brewington's VERIFIED PETITION FOR POST-CONVICTION RELIEF, Brewington requests that Special Judge Brian Hill recuse himself from matters pertaining to Cause No. 15D02-1103-FD-084 and Brewington's VERIFIED PETITION FOR POST-CONVICTION RELIEF, Cause No. 15002-1702-PC-003, and to award Brewington any other appropriate relief.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Daniel P. Brewington", written over a horizontal line.


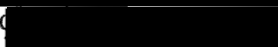
Daniel P. Brewington
Plaintiff, pro se

State of Ohio)
) SS
County of Delaware)

I, Daniel Brewington, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing motion; that I know the contents thereof; that it includes grounds for the recusal of Judge Brian Hill in this motion; and that the matters and allegations therein set forth are true.


Signature of Affiant


Subscribed and sworn to before me this 1st day of March, 2017.


Notary Public 

My Commission Expires:

1 - 20 - 20
(month) (day) (year)





NOTARY PUBLIC
FOR THE
STATE OF OHIO
My Commission Expires
January 20, 2020

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, first-class postage prepaid, on March 1, 2017.

Brian D. Hill, Judge
Judge, Rush Superior Court
101 East Second Street, 3rd Floor
Rushville, IN 46173
(765) 932-3520

Office of the Dearborn County Prosecutor
Dearborn Superior Court II
215 W High St
Lawrenceburg, IN 47025


Daniel P. Brewington
Plaintiff, pro se

March 1, 2017

Clerk of the Dearborn Superior Court II
215 W High St
2nd Floor
Lawrenceburg, IN 47025
812.537.8874

Enclosed is one original and three copies of the MOTION FOR CHANGE OF JUDGE. Please file stamp the extra copy and return the file stamped copy in the return envelope provided. As stated in earlier correspondence with the Superior Court II, I request that Court Reporter Barbara Ruwe play no role in dealing with my case in any manner as she is named as a defendant in a separate lawsuit seeking public records. The subject matter of the lawsuit and the enclosed MOTION FOR CHANGE OF JUDGE revolves around Ms. Ruwe altering grand jury transcripts in the absence of any order directing her to do so. If you have any questions, feel free to contact me or you can visit www.danbrewington.blogspot.com for additional information and an electronic copy of this letter.

Very truly yours,



Daniel P. Brewington

contactdanbrewington@gmail.com

Enclosed:

Original and three copies of MOTION FOR CHANGE OF JUDGE
Return Envelope

Cc: Dearborn County Prosecutor
Judge Hill