

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.)	

MOTION FOR SUMMARY JUDGMENT ON PETITIONER’S VERIFIED
PETITION FOR POST-CONVICTION RELIEF

Petitioner, Daniel Brewington (“Brewington”), pursuant to Indiana Rules of Trial Procedure 56, files this Motion for Summary Judgment and attached Memorandum in Support and states the following:

- 1) Brewington’s Motion for Summary Judgment makes a prima facie showing that record of the grand jury proceedings was altered upon direction of Dearborn County Prosecutor F. Aaron Negangard¹ to deprive Brewington of a fair trial; thus, entitling Brewington to judgment as a matter of law.
- 2) Any potential defense, appeal, objection, waiver, etc., by Brewington was premised on Negangard’s impermissible criminal defamation argument and not the

¹ Negangard now serves as Chief Deputy to Indiana Attorney General Curtis Hill.

“true threat” argument Negangard instructed court reporters to omit from the record of the grand jury transcripts.²

A) Negangard switched “playbooks” on Brewington, prohibiting Brewington’s ability to mount a defense against Negangard’s “real” case, while forcing Brewington to focus on the “plainly impermissible” criminal defamation prosecution.

3) All Affirmative Defenses made by the Prosecution Fail

4) Negangard broke the law by, under color of law, making Brewington the target of a grand jury investigation in retaliation for constitutionally protected activity; or Negangard broke the law by arguing a constitutionally permissible ground for Brewington’s indictments then instructed the court reporter for the Dearborn Superior Court II to omit the permissible ground from the record of the grand jury in order to deny Brewington the opportunity to prepare a defense.

5) A simple prima facie review of the “invited error” finding in *Brewington v. State*, 7 N.E.3d 946 (2014), requires the reversal of Brewington’s intimidation convictions.

6) Brewington’s convictions arising from the unconstitutional indictments are “blatant violations of basic and elementary principles, and the harm or the potential

² Brewington’s Verified Petition for Post-Conviction Relief explains Brewington’s defense counsel failed to prepare any defense for Brewington’s trial because defense counsel refused to ever discuss the case with Brewington prior to trial. Brewington raised the matter on several occasions but Special Judge Brian Hill refused to investigate any of Brewington’s claims.

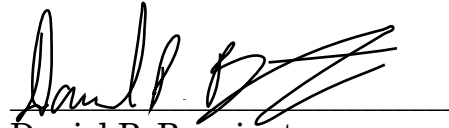
for harm cannot be denied” and are reviewable by this Court. *Smith v. State*, 459 N.E.2d 355 (1984).

7) The other grounds raised in Brewington’s VERIFIED PETITION FOR POST-CONVICTION RELIEF are no less egregious but the topic of the abuse of grand jury records and the grand jury process is self-evident upon prima facia review. Brewington raises the issues in his MOTION FOR SUMMARY JUDGMENT to avoid wasting the time and resources of the Special Judge in the case and to finally allow Brewington to resume a normal life following former Dearborn County Prosecutor F. Aaron Negangard’s malicious prosecution.

8) The controversy created by the altered grand jury record places unbelievable hardships on Brewington. These hardships are in addition to the emotional and financial tolls already endured by Brewington because of the unconstitutional trial and Brewington’s 2.5-year incarceration.

WHEREFORE, for the reasons set forth in this MOTION FOR SUMMARY JUDGMENT IN FAVOR OF PETITIONER and attached MEMORANDUM IN SUPPORT, 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 official and unedited copy of the grand jury audio from the grand jury investigation of Daniel Brewington so Brewington can make a greater showing of fraud, 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

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 31, 2017.

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

Sally A. McLaughlin, Judge
Judge, Dearborn Superior Court II
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Lawrenceburg, IN 47025
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Dearborn Superior Court II
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Daniel P. Brewington
Plaintiff, pro se

STATE OF INDIANA)	IN THE DEARBORN SUPERIOR COURT II
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DANIEL P. BREWINGTON)	CAUSE NO. 15D02-1702-PC-0003
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MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON
PETITIONER’S VERIFIED PETITION FOR POST-CONVICTION RELIEF

Plaintiff, Daniel Brewington (“Brewington”), pursuant to Indiana Rules of Trial Procedure 56, files this memorandum in Support of Plaintiff’s Motion for Summary Judgment and in support states the following:

1) In Reed v. Reid, 980 N.E.2d 277 (2012) The Indiana Supreme Court explained the moving party in a motion for summary judgment “bears the initial burden of making a prima facie showing that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law.’ Gill v. Evansville Sheet Metal Works, Inc., 970 N.E.2d 633, 637 (Ind.2012).”

A) The following is FACT:

i) The Office of the Dearborn County Prosecutor misled Brewington about the nature of the indictments and withheld indictment and charging

information and evidence depriving Brewington any opportunity to subject the State's case to any adversarial testing.

ii) On March 7, 2011, Dearborn County Prosecutor F. Aaron Negangard filed the State's Praeipe requesting the Court Reporter of the Dearborn Superior Court II to prepare a complete transcript from the grand jury proceedings occurring on February 28, 2011, March 1, 2011, and March 2, 2011. See Praeipe attached hereto as "Exhibit A".

iii) Chief Court Reporter Barbara Ruwe certified the grand jury transcripts as being "complete." See "Exhibit B".

iv) During the pretrial hearing on July 18, 2011, Deputy Prosecutor Joseph Kisor explained the State's case against Brewington was based on the "complete" transcription of the grand jury proceedings in question. See transcript from July 18, 2011 hearing, attached as "Exhibit C".

v) Page one from the transcription of the grand jury proceedings begins at witness testimony. See "Exhibit D". (for the Court's convenience, a copy of the 340-page transcript can be viewed at

http://www.dadsfamilycourtexperience.com/Grand_Jury_Transcript.pdf)

vi) There were no orders or petitions directing Ruwe to transcribe select portions of the official record of the grand jury proceedings.

vii) "Indiana Code § 35-34-1-7 provides that '[a]n indictment shall be dismissed upon motion when the grand jury proceeding which resulted in the

indictment was conducted in violation of IC 35-34-2.” *Wurster v. State*, 715 N.E.2d 341 (1999).

viii) Brewington’s case differs from *Wurster* in the fact that the State instructed Brewington to build a defense from the transcription of the grand jury proceedings and then omitted portions of the proceedings without telling Brewington.

B) The grand jury transcripts are void of the following

i) Any record of the grand jury investigation prior to witness testimony.
ii) Negangard making any mention of a “true threat” ground or instruction for Brewington’s indictment.

iii) Negangard providing a reading of the subsections in the intimidation statute or any instruction of what sections of the intimidation statute applied to Brewington’s case.

iv) Any specific instruction from Negangard of what actions were alleged to be in violation of Indiana law.

v) Any explanation of what statement the State alleged to constitute perjury.

C) Dearborn County Prosecutor F. Aaron Negangard deprived Brewington of indictment information and evidence by doing at least one of the following:

i) Instructing the court reporter to only record select portions of the grand jury proceedings; or,

ii) Instructing court reporter Barbara Ruwe to deviate from the State's Praeceptum, filed by Negangard on March 7, 2011, and only transcribe select portions of the grand jury audio.

2) Any potential defense, appeal, objection, waiver, etc., by Brewington was premised on Negangard's impermissible criminal defamation argument and not the "true threat" argument that Negangard instructed court reporters to omit from the record of the grand jury transcripts.¹

A) Negangard switched "playbooks" on Brewington, prohibiting Brewington's ability to mount a defense against Negangard's "real" case, while forcing Brewington to focus on the "plainly impermissible" criminal defamation prosecution.

3) All Affirmative Defenses of the Prosecution Fail

A) Res Judicata

"If an issue was known and available but not raised on direct appeal, it is waived. *Rouster*, 705 N.E.2d at 1003. If it was raised on appeal, but decided adversely, it is res judicata. *Id.* (citing *Lowery v. State*, 640 N.E.2d 1031, 1037 (Ind.1994))." *Stevens v. State*, 770 N.E.2d 739 (2002)

i) All prior appealable issues in Brewington's case are refreshed for the purposes of this Post-Conviction action because all prior arguments by Brewington did not take into account the indictment information Negangard withheld from Brewington.

¹ Brewington's Verified Petition for Post-Conviction Relief explains Brewington's defense counsel failed to prepare any defense for Brewington's trial because defense counsel refused to ever discuss the case with Brewington prior to trial. Brewington raised the matter on several occasions but Special Judge Brian Hill refused to investigate any of Brewington's claims.

ii) Res judicata does not bar Brewington's constitutional claim regarding the incomplete grand jury transcript. The error was neither harmless nor unintentional. The damage inflicted to Brewington is best demonstrated in the opinion in *Brewington*, where Justice Loretta Rush wrote:

“Instead, like *Bachellar*, any confusion arises only because of how the case was argued and how the jury was instructed. 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' That makes it quite possible that the impermissible criminal-defamation theory formed at least part of the basis for the jury's guilty verdicts, and the general verdict cannot indicate otherwise.” *Brewington v. State*, 7 N.E.3d at 962

iii) It was impossible for Brewington to mount a defense against the permissible “true threat” ground because the grand jury transcripts make no mention of a “true threat” ground in either the plain reading of the statute or the brief instructions from Negangard near the end of the grand jury proceedings.

iv) Placing the burden on Brewington to object to the prosecution introducing a new ground for Brewington's convictions near the end of trial overlooks the fact that Brewington was left unable to defend the “true threat” ground that the prosecution waited until the end of trial to introduce.

v) As such, a res judicata defense only prevails under the contention that the Dearborn County Prosecutor believes Brewington waived the issue because Brewington failed to object to Negangard withholding evidence and indictment

information, while the State waited until the closing moments of trial to introduce a new ground for Brewington's conviction.

B) Laches Defense:

“For laches to apply, the State must prove by a preponderance of the evidence that the petitioner unreasonably delayed in seeking relief and that the State is prejudiced by the delay. For post-conviction laches purposes, prejudice exists when the unreasonable delay operates to materially diminish a reasonable likelihood of successful re-prosecution.” *Tuck v. State*, 79A02-1511-PC-2032

i) Laches obviously fails as a defense because the re-prosecution of Brewington's case would rest on the prosecution effectively having to say, “Okay, the prosecution agrees that it will provide Defendant with all of the charging information *this time*.” Any retrial of Brewington would also constitute double jeopardy because the State could not rely on the same evidence for the failed criminal defamation indictment to retry Brewington under a new true threat premise.

C) Estoppel

i) The two-step analysis explained in *Reid v. State* demonstrates that the Estoppel defense asserted by the Dearborn County Prosecutor is not only invalid, but requires this Post-Conviction Court to vacate Brewington's convictions:

“Further, in order to apply the doctrine of collateral estoppel, the court must engage in a two-step analysis. We must first determine what the first judgment decided, and then examine how that determination bears on the second case. *Segovia*, 666 N.E.2d at 107. Determining what the first judgment decided involves an examination of the record of the prior proceedings including the pleadings, evidence, charge and any other relevant matters. *Id.* The court must then decide whether a reasonable

jury could have based its verdict upon any factor other than the factor of which the defendant seeks to foreclose consideration. *Id.* If the jury could have based its decision on another factor, then collateral estoppel does not bar relitigation. *Id.*” *Reid v. State*, 719 N.E.2d at 457

ii) Page 338 of the abridged version of the grand jury transcripts prepared by Ruwe contains Negangard’s only instruction to the grand jury as to the nature of the investigation and why Brewington’s actions were unlawful. Negangard failed to make any argument that Brewington’s conduct amounted to “true threats” nor did Negangard give any “true threat” instruction. Negangard only provided the following instruction:

Okay we're on record. I want to present to the Grand Jury Exhibit 231 which is a summary of blog postings that he made of his blog in Dan's Adventures in Taking on the Emily Court and what it is, is we highlighted where he said um, what we felt was over the top, um, unsubstantiated statements against either Dr. Conner or Judge Humphrey. This is not every, and as you can read, it' s not every negative thing he said about Dr. Conner, but it's a step that we felt, myself and my staff, crossed the lines between freedom of speech and intimidation and harassment. Um, Grand Jury Exhibit 232 is a much smaller site that, Dan Helps Kids, that has a few things in there, um, you know, he says something in there like Judge Humphrey punished me for standing up to a man that hurts children and families for monetary gain, referring to Dr. Conner and uh, and that he called Judge Humphrey unethical, illegal, unjust, vindictive and that he abused my children. Um, again that's a summary in Grand Jury Exhibit 232 so that's for your review. At this time then we have no further evidence to present in the matter of Dan Brewington”

iii) Negangard proceeded to give a general reading of the intimidation indictments without any mention of subsections (c)(1) - (8), which define threats under the intimidation statute.

iv) In *Brewington v. State*, 7 N.E.3d 946 (2014), authored by Loretta H. Rush, the Indiana Supreme Court stated:

“Nothing on the face of the indictments, then, creates confusion between protected or unprotected acts as the basis for conviction. Instead, like Bachellar, any confusion arises only because of how the case was argued and how the jury was instructed. 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.”

v) Brewington was unable to waive or challenge a “true threat” ground because Negangard never presented a “true threat” ground for Brewington’s indictments during the grand jury proceedings.

vi) For the Dearborn County Prosecutor to argue that Brewington waived the ability to raise the “true threat” ground through Post-Conviction Relief, the Prosecutor would have to produce a record of the grand jury proceeding that was previously omitted from the original transcripts or concede that Brewington’s intimidation convictions rested on a prosecutorial ground not presented to the grand jury.

D) Time Limitations of TR 60

i) Any alleged time limitations of TR 60 do not apply in the current case.

ii) The Office of the Dearborn County Prosecutor and the Dearborn Superior Court II at some point came to an agreement to withhold portions of the grand jury proceedings from Brewington; thus, withholding charging information and evidence.

iii) If the Dearborn County Prosecutor maintains the grand jury transcripts are an accurate representation of the audio from the grand jury proceedings, then the Dearborn Superior Court II and former Dearborn County

Prosecutor F. Aaron Negangard failed to record the entire grand jury investigation as required by law and Brewington's convictions should be vacated.

E) Failure to Lodge a Direct Appeal; Waiver

i) Further arguments by the Dearborn County Prosecutor that Brewington is barred from seeking Post-Conviction Relief due to failure to lodge a direct appeal or any other waiver must be disregarded because Brewington cannot appeal or object to prosecutorial arguments unlawfully withheld from Brewington.

ii) Negangard and the court reporter from the Dearborn Superior Court II omitted the "true threat" ground for Brewington's indictment from either the audio of the grand jury proceedings or the transcription of the audio. To argue otherwise requires acknowledging that the current Chief Deputy Attorney General for the State of Indiana convened a grand jury, under color of law, and prosecuted Brewington for constitutionally protected activity.

4) One way or the other, Negangard Broke the Law

A) If Negangard failed to present a constitutional ground for Brewington's indictments:

i) Negangard made Brewington a target of a grand jury investigation in retaliation for Brewington's protected speech.

B) If Negangard presented a constitutionally permissible "true threat" ground for Brewington's indictments:

i) Negangard instructed the court reporter to not record the grand jury proceedings where Negangard introduced the “true threat” ground, or

ii) Negangard instructed court reporter Barbara Ruwe not to include the “true threat” ground from the transcription of the audio.

iii) Both scenarios are examples of conspiracies to deprive Brewington of liberties protected by the Constitution of the United States.

5) A prima facie review of the “invited error” finding in *Brewington* alone, requires the reversal of Brewington’s intimidation convictions. Chief Justice Loretta H. Rush made the following arguments for invited error waiver in the opinion of the Indiana Supreme Court:

“[Brewington] is correct that the instructions were erroneous and created a general-verdict error--but he affirmatively invited those errors as part of a perfectly reasonable trial strategy. When an error is invited for such legitimate reasons, it is neither fundamental error nor ineffective assistance of counsel.” *Brewington v. State*, 7 N.E.3d at 972

“In effect, that approach sought to exploit the prosecutor's improper reliance on ‘criminal defamation’ to the defense’s advantage--focusing the jury on the clearly protected aspects of Defendant’s speech” *Brewington v. State*, 7 N.E.3d at 975

“Emphasizing Defendant’s protected speech about the family court system while downplaying the threatening aspects of his communications and conduct was objectively reasonable, precisely because so much of Defendant’s speech was protected, at least when viewed in a vacuum. But that approach depended on the same constitutional imprecision Defendant now complains of. Were it not for that apparent strategy, Defendant’s arguments would be well taken.” *Brewington v. State*, 7 N.E.3d at 976-77

A) This Post-Conviction Court should take note that the trial record is absolutely void of Brewington’s public defender’s thoughts on a trial strategy. With

that said, Brewington's convictions require reversal because regardless of Rush's baseless opinions on trial strategy, Brewington could not invite the errors associated with the unconstitutional grand jury indictments.

i) Negangard provided the grand jury with only one ground for Brewington's intimidation indictments: "criminal defamation".

ii) The grand jury transcripts are void of a "true threat" instruction mentioned in the opinion written by Justice Rush.

iii) Thus, Rush's perception of Barrett's trial strategy becomes impossible as well as Brewington's ability to invite the fundamental errors, because the grand jury transcripts demonstrate that Negangard only provided one ground for Brewington's intimidation indictments; criminal defamation.

B) Rush's findings require the reversal of Brewington's indictments under *United States v. Cronin*, 104 S.Ct. 2039, 466 U.S. 648, 80 L.Ed.2d 657 (1984).

i) Even assuming Rush could read the mind of Brewington's public defender, Bryan Barrett ("Barret") and determine Barrett's strategy, Brewington's convictions require reversal under *United States v. Cronin*, 104 S.Ct. 2039, 466 U.S. 648, 80 L.Ed.2d 657 (1984).

ii) Since the grand jury transcripts are void of any mention of a "true threat" ground for Brewington's indictments, Barrett's trial strategy, as perceived by Rush, would require Barrett to have prepared a defense strategy against a prosecutorial argument that was not raised until the end of trial.

iii) Rush's contention requires Barrett to have devised a trial strategy against an allegation not made by the State, which is not only incompetent, but delusional.

iv) If Barrett's strategy was not formed out of delusions, Barrett's "strategy" in not challenging the unconstitutional indictments and forcing Brewington to undergo an unnecessary trial can only be viewed as a strategy to sabotage Brewington's case.

6) *Smith v. State*, 459 N.E.2d 355 (1984).

"[W]hen the record reveals blatant violations of basic and elementary principles, and the harm or the potential for harm cannot be denied, we will review an issue which was not properly raised and preserved. *Webb v. State*, (1982) Ind., 437 N.E.2d 1330, 1332; *Nelson v. State*, (1980) Ind., 409 N.E.2d 637, 638. This case is one in which the error rises to what is known as fundamental error, one which, if not rectified, would deny the defendant fundamental due process. *Nelson v. State*, 409 N.E.2d at 638." *Smith v. State*, 459 N.E.2d 355 (1984).

A) It cannot be overstated enough that Negangard either convened a grand jury seeking indictments against Brewington's protected speech, or Negangard obtained indictments under a "true threat" ground while omitting the "true threat" ground from the record of the grand jury proceedings. Negangard forced Brewington to trial without providing Brewington the ability to prepare a defense against the constitutionally permissible "true threat" ground.

B) The official record of the grand jury proceedings CANNOT begin with the foreman swearing in a witness, yet Negangard had the proceedings recorded or transcribed in this manner to prohibit Brewington from understanding the prosecution's case against him.

C) It goes without saying that the above actions are some of the most egregious examples of fundamental error and due process violations possible. If Negangard never argued a “true threat” ground for Brewington’s indictments for intimidation, then Negangard sent Brewington to prison for a non-crime and neither Barrett nor Judge Brian Hill did anything to protect Brewington’s rights.

D) If the Office of the Dearborn County Prosecutor wishes to contest Brewington’s MOTION FOR SUMMARY JUDGMENT IN FAVOR OF PETITIONER, Brewington requests this Court compel the Court Reporter of the Dearborn Superior Court II to release the entire unaltered audio from the grand jury investigation of Daniel Brewington so Brewington can determine whether the Court Reporter failed to record the grand jury proceedings in its entirety or if Barbara Ruwe omitted portions of the grand jury proceedings from the transcription of the audio.

7) The other grounds raised in Brewington’s VERIFIED PETITION FOR POST-CONVICTION RELIEF are no less egregious but the topic of the abuse of grand jury records and the grand jury process is self-evident upon prima facia review. Brewington raises the issues in his MOTION FOR SUMMARY JUDGMENT to avoid wasting the time and resources of the Special Judge in this case and to finally allow Brewington to resume a normal life following former Dearborn County Prosecutor F. Aaron Negangard’s malicious prosecution.

8) The controversy created by the altered grand jury record places unbelievable hardships on Brewington. These hardships are in addition to the emotional and

financial tolls already endured by Brewington because of the unconstitutional trial and Brewington's 2.5-year incarceration.

A) Brewington has been saddled with the burden of researching statutes, case law, civil procedures, and drafting legal petitions because Brewington cannot afford legal representation in the matter.

B) Even if Brewington could afford legal representation, the facts surrounding the incomplete grand jury record requires an attorney to lodge accusations of unethical/illegal conduct between the Dearborn Superior Court II and former Dearborn County Prosecutor, F. Aaron Negangard, who is now Chief Deputy to Indiana Attorney General Curtis Hill.

C) A recent email from Brewington's former appellate attorney, "civil rights attorney" Michael Sutherlin, of Michael K. Sutherlin & Associates, demonstrates the difficulties in finding an attorney willing to directly address prosecutorial misconduct on this level and the tremendous unchecked power wielded by Indiana prosecutors. Email attached hereto as "Exhibit E".

i) Following the filing of Brewington's Verified Petition for Post-Conviction Relief, on February 24, 2017, at 10:41 AM, Brewington emailed Sutherlin the following:

"Mr. Sutherlin,

The following link includes a copy of the petition for post-conviction relief I filed this week. I wanted you to be aware as it includes a claim of ineffective assistance of appellate counsel

<http://danbrewington.blogspot.com/2017/02/brewington-takes-new-legal-action-in.html?m=1>

Dan Brewington”

ii) Sutherlin’s response was as followed:

“DAN, I hope you have a life outside of the running fight with Negangard. Please send me your PCR, I didn't want to review your website to find it.

Michael Sutherlin”

iii) As Brewington made no mention of Negangard in Brewington’s email, Sutherlin’s reference to “running fight with Negangard” had to be in reference to Brewington’s blog post containing the link to Brewington’s Verified Petition for Post-Conviction Relief. Brewington’s blog, dated February 24, 2017, stated the following:

Brewington takes new Legal Action in light of Altered Grand Jury
Records

The State of Indiana prosecuted me for criminal defamation of court officials. I was given a \$600,000 bond, denied charging information, denied evidence, and denied the ability to consult legal counsel prior to trial. The Indiana Supreme Court upheld my convictions based on a hidden threat argument never made by the prosecution. Several years later, I discovered that Barbara Ruwe, Chief Court Reporter for the Dearborn County (IN) Superior Court II, altered grand jury transcripts to assist Dearborn County Prosecutor F. Aaron Negangard in his unconstitutional prosecution against me. (Negangard is now the Chief Deputy Attorney General under Indiana Attorney General Curtis Hill.) When the Indiana Office of the Public Access Counselor deemed the grand jury audio in my case to be a releasable public record, the Dearborn Superior Court II modified the grand jury audio to ALMOST match the transcripts but came up a little short. In modifying the audio, the “official” copy of the audio does not contain the same amount of information as the transcription of the same audio. Page one of the grand jury transcripts is void of any instruction from the prosecutor and begins with witness testimony. This gave Negangard the freedom to request indictments for any alleged conduct regardless of truth, because Negangard knew such instruction would be omitted from the official record. As such, I have refiled my public records lawsuit seeking grand

jury audio and I have filed a motion for Post-Conviction Relief to have my convictions thrown out.

D) During Brewington's appeal, Sutherlin echoed the same sentiments expressed to Brewington's by Brewington's appointed public defender, Bryan Barrett. Both Sutherlin and Barrett explained to Brewington, "An Indiana prosecutor can indict a ham sandwich."

E) The acceptance of prosecutorial misconduct in Indiana is at an alarming level when even a civil rights attorney like Michael Sutherlin characterizes Brewington as being irrational for choosing to continue Brewington's "running fight with Negangard." An explanation of the "fight" Sutherlin refers to is as follows:


i) Negangard's fight with Brewington consists of making Brewington's protected speech the target of a grand jury investigation, conspiring with court employees to alter grand jury records to withhold indictment information and evidence, with the intent to assist Negangard in securing convictions against Brewington's protected speech.

ii) Brewington's "fight" with Negangard consists of repairing the damage inflicted by Negangard through Post-Conviction Relief, because Brewington refuses to accept the notion that Brewington is just another ham sandwich.

WHEREFORE, for the reasons set forth in this MEMORANDUM and in Brewington's MOTION FOR SUMMARY JUDGMENT IN FAVOR OF PLAINTIFF, 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 official and unedited copy of the grand jury audio from the grand jury investigation of Daniel Brewington, and award Brewington any other appropriate relief.

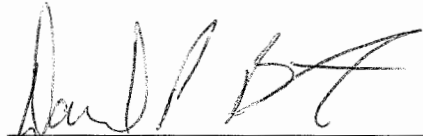
Respectfully submitted,

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 petition; that I know the contents thereof; and that the matters and allegations therein set forth are true.



Signature of Affiant

Subscribed and sworn to before me this 31st day of March, 2017.



Notary Public

My Commission Expires:

3 31 17
(month) (day) (year)

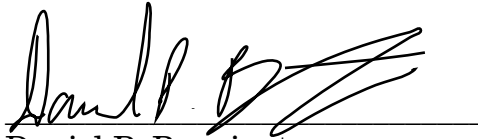



NOTARY PUBLIC
FOR THE
STATE OF OHIO
My Commission Expires


CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing has been duly served upon the parties listed below, by United States mail, first-class postage prepaid, on March 31, 2017.

Office of the Dearborn County Prosecutor
215 W. High St.
Lawrenceburg, Indiana 47025

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

Daniel P. Brewington
Plaintiff, pro se

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

STATE OF INDIANA

COUNTY OF DEARBORN

Grand Jury
Daniel Brewington

IN THE DEARBORN SUPERIOR II COURT

REPORTER'S CERTIFICATE

I, Barbara Ruwe, Reporter of the Dearborn Superior Court II, Dearborn County, State of Indiana, do hereby certify that I am the court reporter of said Court, duly appointed and sworn to report the evidence of causes tried therein.

That upon the hearings of the grand jury in this cause, I transcribed all of the statements of the witnesses given during the hearings.

I further certify that the foregoing transcript, as prepared, is full, true, correct and complete.

IN WITNESS THEREOF, I have hereunto set my hand and affixed my Seal this 15 day of June, 2011.

Barbara Ruwe

Barbara Ruwe
Dearborn Superior Court II
Dearborn County, Indiana

EXHIBIT C

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

20

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22

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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 16th, 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 1st, I have the whole
10 afternoon and August 3rd and August 5th, 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 1st, the 3rd, and the 5th? 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 1st. 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 3rd or the 5th 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 3rd or the 5th 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 D

TRANSCRIPT OF GRAND JURY PROCEEDINGS

DANIEL BREWINGTON

FEBRUARY 28, 2011,

MARCH 1, 2011,

MARCH 2, 2011

PAGES 1 - 250

Barbara Ruwe
Official Court Reporter
Dearborn Superior Court II

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ON BEHALF OF THE STATE:

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EXHIBIT E

From: Michael Sutherlin
To: Dan.Brewington
Subject: Re: Appearance being withdrawn
Date: Friday, February 24, 2017 10:48:58 AM

DAN, I hope you have a life outside of the running fight with Negangard. Please send me your PCR, I didn't want to review your website to find it.

Michael Sutherlin

On Fri, Feb 24, 2017 at 10:41 AM, Dan Brewington <contactdanbrewington@gmail.com> wrote:

Mr. Sutherlin,

The following link includes a copy of the petition for post-conviction relief I filed this week. I wanted you to be aware as it includes a claim of ineffective assistance of appellate counsel

<http://danbrewington.blogspot.com/2017/02/brewington-takes-new-legal-action-in.html?m=1>

Dan Brewington

"Facts are stubborn things; and whatever may be our wishes, our inclinations, or the dictates of our passion, they cannot alter the state of facts and evidence." - John Adams

On May 26, 2014, at 1:56 PM, Michael Sutherlin <msutherlin@gmail.com> wrote:

Dear Dan and Sue,

I will be withdrawing my appearance in the criminal appeal still before the Indiana Supreme Court as well as my appearance in the family court matter. I understood from our last phone conversation that I was fired. I had hoped for a better result from the Supreme Court and I do understand your unfavorable opinion of the Indiana court system. Good luck in all that you undertake. I will keep your file materials, and will return them to you if you desire. But they are too bulky to mail. Michael

--

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