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Dearborn Superior Court 2
Dearborn County, Indiana

DANIEL BREWINGTON	)	IN THE SUPERIOR COURT II
	)	
PETITIONER,	)	DEARBORN COUNTY, INDIANA
v.	)	
STATE OF INDIANA	)	GENERAL TERM 2019
	)SS:	
RESPONDANT.	)	
	)	CAUSE NO. 15D02-1702-PC-0003
	)	
	)	
	)	

REPLY TO STATE'S RESPONSE TO MOTION FOR SUMMARY DISPOSITION

Plaintiff, Daniel Brewington ("Brewington"), submits this REPLY TO STATE'S RESPONSE TO MOTION FOR SUMMARY DISPOSITION and in support, Brewington states as follows:

CRIMINAL CONSPIRACY INVOLVING THE DEARBORN SUPERIOR COURT II

This Court cannot dismiss the fact that even the State acknowledges that the Dearborn Superior Court II conspired to alter grand jury records to sabotage Brewington's 6th amendment right to a fair trial. On page nine of the State's Response to Petitioner's Motion for Summary Judgment, filed 06/08/2017, Dearborn County Deputy Prosecutor Andrew Krumwied wrote the following:

> Finally, the State wishes to address the claim raised in Brewington's Motion for Summary Judgment in Paragraph 2(A) that "[Prosecutor] Negangard switched playbooks on Brewington". This claim is, to put it bluntly, nonsensical. Even if one is to assume that Brewington's baseless assertion that the grand jury transcripts were altered or otherwise incomplete, the evidence contained therein is more than enough for even a layperson to discern a "true threat".

There may not be a more constitutionally defective argument than the above arguments by the State. Neither this Court nor the State have addressed the fact that the grand jury record omits all content prior to witness testimony, nor has anyone addressed

how the audio of the grand jury proceedings released to Brewington contains less information than the transcription of the same investigation. To be clear, the court is responsible for maintaining records of legal proceedings. Any blame for incomplete or inaccurate recordings and transcripts falls squarely on the court. As such, Deputy Krumwied effectively argues:

> *Even if one is to assume that the trial court altered grand jury transcripts, the trial court left enough information for Brewington to discern the nature of the allegations Brewington was to defend at trial*

Neither the special judge in this matter, Honorable Judge W. Gregory Coy nor the Office of the Dearborn County Prosecutor can un-ring this bell. This case has been pending for over two years, yet no Indiana judge or state attorney has attempted to explain why the grand jury record inexplicably omits, at least, all record of the grand jury investigation occurring prior to witness testimony. The grand jury record is not accidentally incomplete. The State instructed Brewington to rely on the complete transcription of the grand jury record, not just witness testimony, to understand what actions Brewington was required to defend. Brewington was unable to do so because the Dearborn Superior Court II omitted former Prosecutor F. Aaron Negangard's introduction/explanation to the grand jury as to why Brewington was a target of the investigation. Brewington attaches his Reply to State's Response to Request for Order to Release Grand Jury Audio, filed 04/17/2019 as "Exhibit A." Brewington's pleading demonstrates that the Dearborn Superior Court II began altering grand jury records to harm Brewington as early as prior to the convening of the grand jury. Any claim that there is no audio of Prosecutor Negangard's introduction to the grand jury investigation of Daniel Brewington required a conscious agreement between the Dearborn Superior Court II and Prosecutor Negangard to intentionally *NOT* record any

account of the investigation prior to witness testimony. (F. Aaron Negangard is the current Chief Deputy to Indiana Attorney General Curtis T. Hill.)

RELEVANCY OF ALTERED GRAND JURY AUDIO TO MOTION FOR SUMMARY DISPOSITION

It is unconscionable that Brewington must delve into providing an in-depth breakdown of why it is a violation of state and federal constitutions for a trial court to sabotage grand jury records to help the prosecution obtain convictions. Indiana Courts and state attorneys should stop using adjectives in their attempts to dismiss Brewington's claims and begin using facts. Calling Brewington's claims baseless or nonsensical does not erase the fact that this Court and the State are both aware that the Dearborn Superior Court II altered the grand jury record in Brewington's case.[1] A manifest injustice occurred the moment the Dearborn Superior Court II relinquished its role as an independent institution and began working with the State to prosecute Brewington. *State v. Lewis*, 543 N.E.2d 1116, (1989) states:

> A court has the power to revisit prior decisions of its own or of a coordinate court in any circumstance, although as a rule courts should be loathe to do so in the absence of extraordinary circumstances such as where the initial decision was 'clearly erroneous and would work a manifest injustice.' *Arizona v. California*, 460 U.S. 605, 618 n. 8, 103 S.Ct. 1382, 1391 n. 8, 75 L.Ed.2d 318, 333 n. 8 (1983) (citation omitted).

It is axiomatic that Brewington's right to a constitutional criminal trial was eviscerated the moment the trial court decided to alter grand jury records to obstruct

[1] The Office of the Dearborn County Prosecutor, the Office of Indiana Attorney General Curtis T. Hill and the Indiana Court System continue to play dumb to the fact that the Dearborn Superior Court II altered grand jury records in the grand jury investigation of Daniel Brewington. The grand jury records begin at witness testimony. Unless Dearborn Superior Court II Judge Sally McLaughlin has evidence of a record-stealing bandit that broke into the offices of the Dearborn Superior Court II and selectively erased grand jury records, Judge McLaughlin and others should face disciplinary action/prosecution for conspiring to obstruct justice in Brewington's criminal proceedings.

Brewington's access to evidence and indictment information. Krumwied's "even if" argument best demonstrates the manifest injustice involved. To be clear, the State has never argued, nor will it ever argue that the grand jury record beginning at witness testimony is complete, because the State knows grand jury proceedings do not begin at witness testimony. Krumwied's offering of the State's "even if" argument that the grand jury transcripts were altered or otherwise incomplete is an admission by the State that the court altered grand jury transcripts and audio. The State's fight against the release of the official grand jury audio can only be viewed as an attempt to shield illegal conduct by the Dearborn Superior Court II. The most disturbing part of the State's argument is the suggestion that "even if" the grand jury records were altered or incomplete, *"the evidence contained therein is more than enough for even a layperson to discern a 'true threat.'"* The State doesn't get the privilege of determining how much indictment information the Dearborn Superior Court II may privately withhold from Brewington.[2] Just as disturbing as the information the Dearborn Superior Court II stripped from the grand jury record is the information the Dearborn Superior Court II *left* in the grand jury record. The fact that the State argues the trial court *left enough* indictment information in the grand jury record establishes that the Dearborn Superior Court II employed a level of discretion while selectively transcribing the grand jury audio. The State's claim that the Dearborn Superior Court II left enough evidence in the grand jury record for *"even a layperson to discern a 'true threat'"* acknowledges that the Superior Court II crafted the record of the grand jury proceeding with the intent of preserving the appearance of legitimacy. As such, it must be

[2] While allowing her court staff to omit indictment information and evidence from the grand jury transcript, Dearborn Superior Court II Judge Sally (Blankenship) McLaughlin set Brewington's bond at $500,000 surety and $100,000 cash.

assumed that preserving the appearance of constitutional legitimacy was the trial court's primary goal throughout Brewington's entire criminal proceeding.

JUDICIAL MISCONDUCT BURIES BREWINGTON'S PRETRIAL INEFFECTIVE ASSISTANCE CLAIMS

The appointment of Brewington's public defender was simply another prop that the trial court provided to assist the State's prosecution. Brewington's public defender, Rush County Public Defender Bryan Barrett, was appointed by Special Judge Brian Hill (Judge of the Rush County Superior Court) to provide the illusion that Brewington received legitimate representation. And just as in the case of the altered grand jury audio, the State attempts to distract the Court's attention from the damning content in Brewington's Motion for Summary Disposition. In section 15 of the State's Response, Deputy Krumwied states:

> Brewington provides no legal basis for such a claim, directing the court merely to a colloquy between himself and the court at the September 19, 2011 Final Pretrial hearing in his underlying criminal matter.

The State continues its pattern of refusing to address the most obvious examples of the constitutional deficiencies described in Brewington's Motion for Summary Disposition, which the State had no problem exploiting during trial. The State's reference to the "mere colloquy" appearing in Brewington's Motion for Summary Disposition actually occurred in the opening moments of Brewington's criminal trial (10/03/2011) and not the 09/19/2011 pretrial hearing. (To clear up any "confusion" by the State on the matter, Brewington attaches the transcription of the 09/19/2011 colloquy between Brewington and Judge Hill as "Exhibit B".) [3] Page two of Brewington's Motion for Summary Disposition

[3] The State confuses the "colloquies" between Hill and Brewington that took place during the 09/19/2011 pretrial hearing and the opening moments of Brewington's 10/03/2011 criminal trial. It was during the 09/19/2011 hearing that Brewington requested Judge Hill to continue the 10/03/2011 criminal

contains the opening dialogue between Brewington and Special Judge Brian Hill in Brewington's criminal trial. [Transcript of 10/03/2011 dialogue attached as "Exhibit C"]

> **Judge Hill:** We are here in case number 15D02-1103-FD-84, the State of Indiana vs. Daniel Brewington. Let the record reflect that the State appears by Prosecuting Attorney, Aaron Negangard and the Defendant appears in person and by counsel, Bryan Barrett and this matter is scheduled for jury trial this morning and about twenty (20) or thirty (30) minutes ago I received a file marked Motion to Dismiss, Motion to Disqualify F. Aaron Negangard and appoint Special Prosecutor and Motion to Dismiss for Ineffective Assistance of Counsel. Those are pro se motions filed by the Defendant. 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?
>
> **Brewington:** Mr. Barrett hasn't met with me since July, I believe the 17th of this year. 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. 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. I also do not have my medication. I take Ritalin for attention deficit disorder. It's been an issue of the defense. It's been brought up multiple times in the grand jury transcripts and without that I don't even have the ability to concentrate as hard. I have difficulties reading and that sort and Mr. Barrett waived my right to bring that up at trial as he made no objection to the motion in limine which I did not realize that a motion in limine had uh, was requesting the court to prohibit any discussion about medication that was given to me while I was incarcerated in DCLEC. So I have absolutely no idea what's going on in my case. I tried, everything that has been provided here. except for the grand jury transcripts which I didn't even receive until Friday, October 23rd I believe or September 23rd.

trial because Brewington still had not received a copy of the grand jury transcript and Barrett had yet to provide Brewington any legal assistance in preparing for trial. Two weeks later Judge Hill stated he believed Brewington's continued pleas for indictment information, evidence, and legal assistance were indications that Brewington was ready to represent himself in Brewington's 10/03/2011 criminal trial.

> **JUDGE HILL:** 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...
>
> **BREWINGTON:** 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.
>
> **JUDGE HILL:** Okay that was the answer to my question. Uh, Mr. Barrett, are you ready to proceed with this case today?
>
> **BRYAN BARRETT:** Yes your honor.
>
> **JUDGE HILL:** And is the State ready to proceed?
>
> **PROSECUTOR NEGANGARD:** Yes your honor.
>
> **JUDGE HILL:** Alright, then as I stated in opening the hearing, I'm going to find the pro se motions filed on this morning's date are denied. Um, and I think we're ready to bring in jury then.

On the surface of the record alone, Brewington clearly established he received no assistance in preparing for trial. Brewington stated in open court that he did not have any idea of the direction of his defense because Bryan Barrett refuse to provide Brewington with any legal assistance. Brewington explained he had yet to receive the grand jury evidence. Judge Hill acknowledged just prior to trial he received Brewington's three pro se motions detailing Brewington's concerns. In following the storyline predicated by the court-altered grand jury record, Judge Hill stuck to the "script" to promote the appearance of a legitimate criminal proceeding. Brewington's motions made no mention of seeking self-representation. Brewington's motions addressed the same kind of issues Brewington

described in open court. Brewington explained the filing of the motions was a last-ditch effort because Barrett refused to communicate with Brewington. The only way Judge Hill would address Brewington's claims of receiving no assistance of counsel was if Brewington represented himself. "*Mr. Brewington, you have legal counsel and I'm not inclined to contemplate pro se motions."* Brewington met the burden of triggering any competent judge's inquiry into the allegations. Judge Hill should be afforded a presumption of competency, but not honesty. This Court cannot argue that Judge Hill's actions were a product of incompetence rather than malicious conduct. When a defendant states he does not understand the nature of the criminal trial that is about to begin, both law and basic common sense direct a judge to ask the defendant, "What do you not understand?" Judge Hill asked, "you're uh, indicating to me that you're wanting to represent yourself?" If someone stated they did not know how to drive, it would be illogical for someone to ask, *"You're indicating to me that you're wanting to drive in the Indianapolis 500 today?"* Judge Hill's response is just as illogical, but it was the only way Hill thought he could address Brewington's constitutional claims without having to actually address those claims.

Judge Hill came onto the record with an agenda. It would be constitutionally impermissible for Judge Hill to allow a criminal defendant to represent themselves when the defendant claimed to lack evidence and knowledge of the nature of the alleged crimes. Brewington filed a Motion to Dismiss for Ineffective Assistance of Counsel. Judge Hill knew Brewington's motion was by no means an indication that Brewington sought self-representation because it would effectively void Brewington's argument to have the case dismissed. If the State's failure to protect Brewington's constitutional right to legal counsel was grounds for dismissal of the criminal case, Judged Hill's senseless self-representation

inquiry would require the most ridiculous of scenarios. Rather than accept the dismissal of the case for ineffective assistance of counsel, Brewington would have had to waive the right to having the case dismissed so Brewington could voluntarily remain incarcerated and risk participating in an unnecessary criminal trial as a pro se defendant without any understanding of what actions Brewington was required to defend. Brewington's pro se motions and courtroom statements unequivocally prove Judge Hill knew Brewington lacked the evidence and understanding of the indictments that even a seasoned attorney would require to prepare a defense.

When ruling out utter incompetence, Judge Hill's actions were malicious.

> *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...*

Judge Hill made the above statement just seconds after Brewington stated:

> *"So I have absolutely no idea what's going on in my case."*

Brewington has included the above dialogue in several of Brewington's pleadings but this Court refuses to acknowledge it. Just as in the case of the grand jury transcript, Judge Brian Hill stuck to the "script" to construct a "façade" of legitimacy in the court record. Refusing to agree to self-representation does not waive Brewington's right to evidence and an understanding of the criminal indictments. Brewington cannot be forced into self-representation before making a claim of receiving no assistance of counsel. Brewington met every burden possible in alerting the trial court about a lack of representation and understanding of the indictment information. Judge Brian Hill just ignored it, while the State took full advantage of Brewington's lack of representation.

STATE IGNORES BREWINGTON'S CRONIC CLAIM

The State's request for a 60-day extension to reply to Brewington's Motion for Summary Disposition was egregious at best because it appears Deputy Krumwied failed to take the time to even read Brewington's motion. In the State's reply, Krumwied wrote:

> 20. Here, Brewington has presented no evidence beyond a single colloquy with the Court that would support his position that he was denied effective assistance of counsel, and considering he himself admits that he was represented at trial and various hearings by counsel, his claim that he received "no assistance of counsel" is demonstrably false to the point that it creates a material issue of fact.

If Krumwied would have read page three of Brewington's Motion for Summary Disposition, he would have seen that moments after Brewington told Judge Hill *"I have absolutely no idea what's going on in my case,"* Judge Hill turned to Bryan Barrett and asked, *"Mr.Barrett, are you ready to proceed with this case today?"* Bryan Barrett immediately responded, *"Yes your honor."*

The State refused to acknowledge Brewington's reference to *United States v. Cronic*, while also failing to offer any argument why *Cronic* should not apply in Brewington's case. In *United States v. Cronic*, 104 S.Ct. 2039, 466 U.S. 648, 80 L.Ed.2d 657, (1984), the US Supreme Court wrote:

> The special value of the right to the assistance of counsel explains why "[i]t has long been recognized that the right to counsel is the right to the effective assistance of counsel." *McMann v. Richardson*, 397 U.S. 759, 771, n. 14 (1970). The text of the Sixth Amendment itself suggests as much. The Amendment requires not merely the provision of counsel to the accused, but "Assistance," which is to be "for his defence." Thus, the core purpose of the counsel guarantee was to assure "Assistance" at trial, when the accused was confronted with both the intricacies of the law and the advocacy of the public prosecutor. *United States v. Ash*, 413 U.S. 300, 309 (1973). If no actual "Assistance" "for" the accused's "defence" is provided, then the constitutional guarantee has been violated. To hold otherwise could convert the appointment of counsel into a sham and nothing more than a formal compliance with the Constitution's requirement that an accused be given the assistance of counsel. The Constitution's guarantee of assistance of counsel cannot be satisfied by mere formal appointment.

There may never be a clearer example of a defendant receiving "no assistance of counsel" than what is demonstrated during the opening moments of Brewington's trial. Brewington's claim is accurate under the *Cronic* analysis. Brewington stood next to Barrett in the opening moments of Brewington's criminal trial and stated, *"I have absolutely no idea what's going on in my case"* and Hill, Barrett, and Negangard all ignored Brewington's concerns and allowed Brewington to proceed to trial; leaving Brewington completely in the dark.

BARRETT DID NOT KNOW WHAT ACTIONS REQUIRED DEFENDING

If this Court has any doubt of whether Barrett's representation of Brewington was a "sham" appointment as discussed in *Cronic*, Judge Coy need only to review pages 498-499 of the transcript from Brewington's criminal trial. [Attached as "Exhibit D".] During closing arguments, Barrett stated the following:

> Count V is perjury alleging that Mr. Brewington who voluntarily testified before the Grand Jury perjured himself, lied, under oath and as near as I can tell is the address issue with the Humphrey's.

While delivering closing arguments to the trial jury, Brewington's public defender, Bryan Barrett expressed uncertainty as to what actions he was even required to defend. Just as it is not constitutionally permissible for the trial court to "kinda" alter grand jury records, it is not constitutionally permissible for defense counsel to be unsure of the nature of the State's indictments against his client; especially near the end of trial. As such, this Court must vacate Brewington's convictions on this point alone. [4]

CULTURE OF CORRUPTION

[4] This is a case of first impression as no case law in the United States addresses the constitutional permissibility of a defense attorney not having to understand the nature of 100% of the criminal accusations that the attorney was appointed to defend.

Probably the best indicator of the widespread corruption throughout Brewington's criminal proceedings and post-conviction action is the overwhelming hubris displayed by the legal professionals involved. When Brewington told Judge Hill that Brewington had "absolutely no idea what's going on in [his] case," Judge Hill tried to force Brewington into self-representation. When Brewington declined, Judge Hill began trial without questioning Barrett why Brewington had no understanding of the direction of his defense, nor did Judge Hill make any attempt to determine what Brewington failed to understand. Then there was Barrett's nonchalance in acknowledging during closing arguments that Barrett was unsure about which of Brewington's actions Barrett was required to defend. None of the conduct surpasses the moxie demonstrated by Deputy Krumwied in rationalizing how Brewington's constitutional rights were not negatively impacted by the tampering of grand jury records by the Dearborn Superior Court II. The State argued Brewington suffered no harm because Judge McLaughlin's court left enough information for Brewington to discern what actions Brewington was required to defend.

The above acts could not occur without the comfort of a statewide culture of misconduct that protects such transgressions. The indifference of a young deputy prosecutor arguing that a trial court did not cheat a defendant *that bad,* can only exist in an environment where there is no fear of repercussions. It becomes evident that Krumwied's boss, Dearborn County Prosecutor Lynn Deddens, not only condones the illegal tampering of grand jury records, but Prosecutor Deddens instructs her staff to help protect the "Dearborn County way" of administering justice. It's not that these professionals are

oblivious to the misconduct; they just don't care because the conduct is consistent with the "Indiana way" of doing things, as referenced in *Tyson v. State,* 622 N.E.2d 457, (1993)[5]

STATE'S REMAINING CLAIMS

If the above does not serve as grounds for vacating Brewington's convictions, Brewington quickly addresses the remaining claims in the State's Response.

> **29. Brewington did not raise any issue before the trial court, Court of Appeals, or Indiana supreme court as to failure to record a portion of the proceedings, even though he had a copy of the transcript and audio which he now claims was altered because it contains only testimony from witnesses and the state's final presentation to the grand jury.**

This Court should consider sanctioning Krumwied for continuing to lie to this Court, especially as the State was granted an additional sixty (60) days to respond to Brewington's Motion for Summary Disposition. Exhibit F of Brewington's original Request for Order Compelling Production of Grand Jury Record, filed 05/30/2017, includes a screenshot of the details of the grand jury audio files in Windows File Explorer. The screenshot shows the grand jury audio files that the Dearborn Superior Court II provided Brewington were both created ("Date created") and last modified ("Date modified") on 04/27/2016; nearly two years after the Indiana Supreme Court's May 1, 2014 decision in *Brewington v. State*, 7 N.E.3d 946, (2014). Krumwied knew it was impossible for Brewington to raise the fact the grand jury audio contains less information than the transcript during trial or during appeal because the Dearborn Superior Court II refused to release the audio until after 04/27/2016.

[5] Tyson v. State, 622 N.E.2d 457, (1993) dealt with the recusal of Chief Justice Randall T. Shepard following a social function where Shepard's wife told Alan M. Dershowitz, attorney for Mike Tyson, "that [Dershowitz] needed to be better attuned to the Indiana way of approaching things as [Tyson's] appeal progressed"

As for the State's position on the content of the record, other than suggesting the Dearborn Superior Court II did not remove *too much* indictment information from the grand jury record, Krumwied still refuses to address the fact that the grand jury audio contains less information than the transcription of the same record, or address why the Dearborn Superior Court II omitted the introduction from the grand jury transcript. The State's Praecipe, filed 03/07/2011 directed "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." There is nothing ambiguous about the directive. If there is no introduction to the grand jury proceedings, then the record is incomplete. Krumwied's argument is particularly disturbing as Krumwied knows the State, Judge Hill, and Brewington's public defender Bryan Barrett withheld the grand jury transcript from Brewington until less than two weeks before trial. Brewington and/or his family attempted to obtain the grand jury audio as early as January 2012. Krumwied knows the Dearborn Superior Court II continues to obstruct Brewington's access to the complete record because the audio released to Brewington contains less information than the transcript. Krumwied also glosses over the fact that Brewington continues to explain Brewington received no assistance from counsel prior to trial. As such, prior to trial Brewington had no one to ask, "Do grand jury records begin at witness testimony?"

The record of the 09/19/2011 final hearing, referenced by Deputy Krumwied, not only proves Barrett had no interest in preserving Brewington's appealable rights, the transcript shows Barrett effectively argued *against* Brewington's interest in preserving the ability to contest the State's request for an anonymous jury. When Judge Hill asked Barrett

for a response on the State's motion for the confidentiality of the names of the trial jury, the following transpired:

> **BARRETT**: I don't object as long as we uh, or if something should come up during the process. I'm sorry? (Mr. Brewington conversing with Mr. Barrett) I do not object. My client does object apparently your honor, so I don't know if you want to ...
>
> **JUDGE HILL**: And what's the nature of your objection Mr. Brewington?

Barrett's statement verifies Brewington's claims of having no assistance of counsel. Barrett's response proves Barrett failed to even discuss the State's request for an anonymous jury with Brewington. There could be no plausible strategy to not objecting to such an uncommon motion. Even when Brewington told Barrett Brewington wanted to object to the State's request, Barrett *STILL* went against Brewington's wishes and offered a personal caveat to Brewington's objection *"I don't object."*

At that moment, Brewington's constitutional right to legal counsel collapsed. Barrett established he felt the State's interests superseded Brewington's right to preserve appealable issues. It also demonstrated Judge Hill was only interested in protecting Barrett's non-existent representation; not protecting Brewington's right to counsel. Not only did Judge Hill fail to question why Barrett was adamant about advocating the State's interests over Brewington's, Judge Hill forced Brewington to represent himself on matters when Barrett's interests opposed Brewington's. Judge Hill's refusal to investigate the matter is equally problematic because it is impossible to determine whether Barrett's actions were simply attempts to sabotage Brewington's defense.

Once again Brewington reminds this Court that Deputy Prosecutor Krumwied argued even if the Dearborn Superior Court II altered the grand jury record, there was enough evidence left behind to determine a true threat. Brewington also reminds this Court

that the State took the time to file a response contesting Brewington's request for a certified copy of the grand jury audio, leaving Judge McLaughlin's court with a compelling dilemma; should Judge McLaughlin release a copy of the grand jury audio that matches the audio already provided to Brewington, or a copy of audio matching the certified transcription; because the two records do not match. If the Dearborn Superior Court II was willing to alter grand jury transcripts and audio, it must be assumed Judge McLaughlin's court would alter trial records as well. Even the substitution of "(inaudible)" for a few constitutionally questionable statements during a meeting at the bench could deprive Brewington the ability to address the conduct on appeal.

7. By moving for disposition based solely on only two grounds, Brewington has waived any argument as to the remaining eighteen (18) claims presented in his Petition

The State offers no statutory or legal authority to support such a claim. For the sake of judicial efficiency, Brewington only raised the two grounds dealing with the court-altered grand jury records and Brewington's non-existent legal assistance because the material facts supporting the two issues cannot be contested. In the case of the grand jury records beginning at witness testimony, Brewington hopes that Judge Coy sees the irony in the State's own argument. The Office of the Dearborn County Prosecutor is fighting Brewington's ability to determine why the Dearborn Superior Court II did not comply with the Prosecutor's request to prepare and certify a full and complete transcript of the grand jury proceedings. At some point someone from the Dearborn Superior Court II decided to prepare less than the complete transcription of the grand jury investigation. At that moment the issue of the altered grand jury record almost becomes irrelevant because the court relinquished any impartiality in Brewington's case when it arbitrarily decided to

withhold records from Brewington. The 6th amendment protects Brewington's right to a trial in a court where the court staff does not alter grand jury records to help the prosecution. There is also no issue of material fact in Brewington's claim he received no legal assistance in preparing for trial. Brewington is not arguing that Barrett's representation was subpar; it was non-existent. Both issues require the immediate reversal of Brewington's convictions, regardless of the other eighteen (18) grounds in Brewington's Verified Petition for Post-Conviction Relief. In the name of judicial efficiency, Brewington limited the scope of his Motion for Summary Disposition to expedite matters; however, raising the two grounds does not diminish the validity of the remaining eighteen (18) grounds in Brewington's petition.

22. Here, Brewington has presented no evidence, and not pled a case either in his Petition or in this Motion to establish either deficient representation nor prejudice.

This Court has a copy of the record from Brewington's criminal trial. Brewington highlighted the opening where everyone refused to address the content in Brewington's motions and on record claims that Barrett refused to provide Brewington *ANY* assistance in preparing for trial. Brewington keeps stating it, and the State keeps ignoring it. Having no ability to build a defense in a criminal trial seems like a self-evident prejudice when a public defender refuses to meet with the defendant prior to trial. Since Barrett never determined the exact actions responsible for Brewington's crime, it was not until the Supreme Court's ruling in *Brewington*, that Brewington discovered what actions were responsible for Brewington's convictions. This made it impossible for Brewington to effectively participate in any stage of his criminal proceeding or appellate process.

16. Brewington provides no legal basis for such a claim, directing the court merely to a colloquy between himself and the court at the

September 19, 2011 Final Pretrial hearing in his underlying criminal matter.

Just as the Dearborn Superior Court II should not be trusted to keep accurate court records, Deputy Krumwied should not be trusted with the truth. As mentioned at the beginning of this Reply, in the State's Response, Krumwied argued the following regarding Brewington's claim of receiving no assistance of counsel:

Brewington's Motion for Summary Disposition directed the Court to the colloquy occurring in the opening moments of Brewington's trial on 10/03/2011; not the final pretrial hearing. Pages two and three of the transcripts includes dialogue between Judge Hill and Brewington. As the State continues its efforts to confuse the facts of this case, Brewington includes the same dialogue in this Reply. Brewington emphasizes that his Motion for Summary Disposition clarified the origin of the conversation between Judge Hill and Brewington:

> The transcript from the October 3, 2011 criminal trial demonstrates how Judge Brian Hill's opening statements were nothing more than a charade to shelter the misconduct of Brewington's public defender, Bryan Barrett:

The State did not confuse issues. The State has simply resorted to deflecting attention away from the opening dialogue in Brewington's trial because the State cannot argue with the facts. As explained throughout this pleading, the trial record demonstrates that the State made no objections when Judge Hill forced Brewington to trial despite Brewington telling Judge Hill, "I have absolutely no idea what's going on in my case." Surprisingly enough, the opening of Brewington's 10/03/2011 trial was the second time in two weeks where Brewington told Hill that Barrett refused to provide Brewington with any assistance in preparing for trial. It was also the second time Judge Hill refused to question Barrett about Brewington's claims.

CONSPIRACY IN THE SEPTEMBER 19, 2011 HEARING

Brewington feels compelled to address the 09/19/2011 pretrial hearing that the State mistakenly reported to serve as the basis of Brewington's *Cronic* claim. The record of the final hearing occurring just two weeks before Brewington's jury trial, shows both Negangard and Hill attacking Brewington after Brewington requested Judge Hill to continue the 10/03/2011 jury trial. [See 09/19/2011 transcript attached hereto as "Exhibit B."] On the surface it appears Judge Hill and Negangard are chastising Brewington for stalling the jury trial, when a simple review of the CCS in Brewington's criminal proceedings case reveals something far more sinister.

Brewington had been incarcerated in the DCLEC since Brewington's 03/11/2011 arraignment hearing, where Judge McLaughlin set Brewington's bond at $500,000 surety and $100,000 cash. During the opening of the 09/19/2011 hearing, Judge Hill acknowledged that neither Barrett nor Brewington received a copy of the grand jury transcript, which the State instructed Brewington to rely on to determine the nature of the general indictments. As such, Dearborn County held Brewington for at least 191 days without telling Brewington what actions were responsible for his incarceration. During the same hearing Brewington explained to Judge Hill that Barrett refused to provide any legal assistance to Brewington in preparing for trial. Even more damning is the fact the record shows that Barrett refused to argue or address Brewington's concerns about going to trial in two weeks, despite neither Barrett nor Brewington having any understanding of what actions Brewington was required to defend.

The transcript also shows Barrett trying to waive Brewington's ability to contest the State's request for an anonymous jury. When asked for a response on the State's motion for

the confidentiality of the names of the trial jury, Barrett stated, "I do not object. *My client does object apparently your honor."* As neither Barrett nor Brewington had yet to receive a copy of the grand jury transcript, Judge Hill granted the State's motion for an anonymous jury prior to Brewington having any idea what actions required defending.

To ensure there is no confusion by this Court or any subsequent court of review, Brewington includes his statements to Judge Hill appearing in the transcription of the 09/19/2011 hearing:

> "Uh, I've prepared just a statement. I've been incarcerated in DCLEC, the Dearborn County Law Enforcement Center for over six (6) months and I have yet to receive the following from either of my public defenders. I have absolutely no explanation of the alleged crimes leading to the charges against me including dates, specific incidents, etc. I've haven't had any meeting to discuss trial preparation. I've only met with Mr. Barrett and John Watson for a combined total of less than two (2) hours. I haven't been provided with any evidence from a public defender. The only evidence that I've gathered has been given to me by my family. Uh, there has been no approach, no effort to approach me about potential evidence and witnesses to aid in my defense. Mr. Barrett has refused to contact my mother to obtain such information even after my mother volunteered to hand deliver beneficial evidence. Mr. Barrett has also failed to provide me with any of the prosecution's evidence submitted during the Court. I understand today that you just ruled on the Grand Jury evidence but I don't have any of the exhibits that have been, any of the other exhibits that have been submitted during Court. Uh, to my knowledge, Mr. Barrett has not attempted to obtain any information concerning Keith Jones. That's the man who made the allegation that I somehow uh, approached him to cause harm to one of the uh, allegedly cause harm to one of the witnesses in this case. Uh, there's quite a bit of information about him that was obtained in Columbus, Ohio in the capital. You know most of this information involves first amendment rights. I have no idea if there has been a first amendment expert that was subpoenaed. There hasn't been any, to my knowledge, there's been no subpoena from mental health expert to refute any of the findings of Dr. Connor which has been, the prosecution used the phrase that I have a psychological disturbance that doesn't lend itself well to proper parenting a number of times but haven't been, you know, to my knowledge, there's no way to even refute, there's going to be no way to refute that because there is not expert. Also my defense has failed to subpoena Dr. Connor's case file from the August 29, 2009, or 2007 child custody evaluation which is where Dr. Connor's findings are derived from. Uh, to my knowledge, there's been absolutely no depositions

from the State's witnesses or any of the alleged victims. Uh, my public defender has failed to file any motions to help preserve appealable issues including but not limited to Motion to Dismiss due to constitutional defective indictment, motion for a special prosecutor, motions. to suppress evidence as the prosecution obtained my records from a psychologist without my knowledge and without a hearing per Indiana law and these are just some of the problems that jeopardize my right to a fair trial on October 3, 2011. I still haven't, I don't, I haven't received any indication of any strategy from my defense. I just want to address these issues with the Court in the hopes of at least preserving some of my civil rights and I can submit this to the Court is, uh, these are just issues that I want on the record. I have absolutely no idea of the direction my defense is going ...

Judge Hill interrupted Brewington and asked, “Okay, what relief are you asking for?” Brewington continued:

Uh, the biggest thing is to continue the hearing because there's absolutely no way uh, some of the charges, some of the alleged charges date back for over four (4) years and uh, I have no idea of any specifics, anything like that. I haven't been able to speak to my public defender about these issues or when these uh, when these things happened, any kind of information from me, explanations, there's uh, the prosecution submitted one thousand three hundred sixty-eight (1,368) pages of discovery answers and I have yet to go through that, any of that or speak about any of that with my public defender and also uh, the public defender, to my knowledge, didn't make any attempt to get that from the prosecution until uh, roughly August 2nd. Mr. Watson, my former public defender, told the Court that he would make every effort to get them to Mr. Barrett but Mr. Watson failed to do that and uh, and not I'm just, you know, I've been diligent in organizing, organizing, uh, and documenting things and I mean as you can see, I bring all of this information to Court, yet uh, I haven't, I've been prohibited from playing any role in my defense and so that's, that's the key issue is that, in two (2) weeks, especially with me just being allowed to review the Grand Jury transcripts, there's no way to properly prepare for the case or if the case, if my defense has been properly prepared, I have no way of knowing it because uh, there's been very little to no communication between Mr. Barrett and myself. So that's my main concern is just uh, to my knowledge, I have absolutely no defense or I do not know what the defense is.

Viewing matters objectively, prior to reviewing at least the grand jury transcript, it was impossible for anyone to establish a timeframe required for the preparation of Brewington’s defense. Prior to receiving the (altered) grand jury transcript, Brewington was forced to rely on the general indictments to determine what actions Brewington was

required to defend. Count I of Brewington's indictments was Class A Misdemeanor Intimidation. The general indictment states:

> The Grand Jurors of Dearborn County, State of Indiana, good and lawful men and women, legally impaneled, charged and sworn to inquire into felonies and misdemeanors in the name of and by the authority of the State of Indiana, on their oaths or affirmations, do present that on or about or between August 1, 2007 and February 27, 2011, Daniel Brewington did communicate a threat to another person, to wit: Dr. Edward Connor, with the intent that Dr. Edward Connor be placed in fear of retaliation for a prior lawful act, to-wit: issuing a custodial evaluation regarding Daniel Brewington's children.

The timeframe for the above general indictment alone spanned One-Thousand-Three-Hundred-Six (1,306) days. Prior to the release and the review of the grand jury transcript and evidence, it was impossible to estimate how long it would take to prepare a defense. Judge Hill also knew it was impossible to prepare a defense in less than two weeks because it could take several days for Barrett to review the several hundreds of pages of grand jury transcripts and evidence necessary to determine what actions Barrett was appointed to defend. Brewington's convictions should be reversed on this point alone. Even if Judge Hill reviewed all the evidence of the case, which he could only have received through ex parte means via the State, Hill's rigid timeframe on Brewington's defense was predicated upon what Hill believed Brewington's defense should entail. Judge Hill allowed the State to withhold indictment information from Brewington until two weeks before the trial. Hill then determined two weeks was more than ample time to prepare a defense against specific allegations not yet known by Brewington and Barrett. Barrett's non-objection demonstrates Barrett's role as Brewington's public defender was at best disenfranchised and at worst a player in the conspiracy against Brewington. Barrett refused to object to procedural issues on Brewington's behalf while leaving Brewington to

argue why two weeks was an insufficient timeframe to establish a defense strategy; especially when Barrett understood it was already too late to engage in basic discovery. Even the logistics of Brewington's incarceration made it impossible for Barrett to prepare a defense in two weeks. Barrett served as the Chief Public Defender for Rush County, Indiana and worked out of an office in the Rush County Courthouse; over an hour drive from the DCLEC. Adding to the problem of Bryan Barrett's availability was Barrett's workload as Rush County's only full-time public defender. The minutes from the 09/19/12 Indiana Public Defender Commission Meeting show Barrett's caseload had "been out of compliance for four quarters."[6] The minutes also show Judge Hill appeared before the Commission with Barrett. Despite Barrett's overburdened caseload, Hill still only allowed two weeks for the preparation of Brewington's defense. Just like the transcript of the grand jury, the 09/19/2011 pretrial hearing the trial court set the narrative for Brewington's criminal proceedings to give the appearance of legitimacy; but cracks in the logic of the narrative expose the appearance of a conspiracy between Negangard and Judge Hill.

EX PARTE CONSPIRACY

Brewington directs Judge Coy's attention to the frightening dialogue of Judge Hill and Negangard regarding Brewington's request to continue the jury trial scheduled for 10/03/2011. Barrett's sham appointment as Brewington's public defender is best demonstrated by the fact that Brewington was somehow forced to argue issues on his own. As mentioned above, when Judge Hill asked Barrett for a position on the State's request for an anonymous jury, Barrett responded, "I do not object. *My client does object apparently your honor."* Rather than asking Barrett why he took a position opposite of his client, Judge

[6] https://www.in.gov/publicdefender/files/pdc-minutes-2012.pdf

Hill stripped Brewington of his right to legal counsel and 5th amendment right against self-incrimination by forcing Brewington to explain the objection. This is another example of Hill's effort to develop a record that was prejudicial to Brewington. Judge Hill and Prosecutor Negangard took matters to an entirely different level by developing a storyline to explain Brewington's long incarceration without an understanding of the indictments, and/or in the case that Brewington asked to continue the trial. It serves as another example of the measures the State and the trial court took to dictate the content of the record throughout Brewington's criminal proceedings. Barrett's silence in not correcting Hill and Negangard suggests that Barrett also took sides with the State. Judge Hill gave the following reactions to Brewington's request to continue the trial

> "I thought when we were here last you were complaining the trial hadn't happened yet. Am I inaccurate in my…" "I mean, I thought you had an issue last time because your trial date kept getting continued for these reasons and you were ready to get it started"

The record of this case proves Judge Hill's above claim is a boldfaced lie. First, Judge Hill only continued Brewington's trial once. After vacating the 08/16/2011 trial, Judge Hill set a new date and the trial commenced on 10/03/2011. Therefore, Brewington could not have been disappointed that his trial date "kept getting continued" because it was only continued once. As for Hill's assertion regarding Brewington complaining about continuing the 08/16/2011 trial date, the record of the CCS proves it is absolutely impossible for there to be a record indicating that Brewington "was complaining the trial hadn't happened yet." This fact should scream from the pages of this pleading. This isn't a matter of a judge making an inappropriate comment about a defendant; this was a premeditated attack by Judge Hill to rationalize rushing Brewington through Negangard's malicious prosecution. Judge Hill pushed the false narrative to shift blame towards Brewington for the fact that

Judge Hill and Negangard allowed Brewington to sit in a jail cell for over six months without an understanding of what actions Brewington was required to defend. Judge Hill created this alternative reality to give the record an appearance of legitimacy. Making matters much worse is the fact that Negangard not only continued with the same counterfeit story, Negangard even admitted his purpose in attacking Brewington's character was to get Hill and Negangard's false narrative "noted for the record":

> Your honor, um, the issue before was that the jury trial was being continued because Mr. Barrett hadn't had time to prepare a defense because he had only been on the case a month and he was dealing with some very important family issues. It is my understanding that the Defendant objected to any continuance at that time, um, and in the interest of fairness and ensuring that Mr. Brewington got a defense, um, a fair defense, the Court continued this based on an emergency, found there was an emergency and then continued the jury trial to this setting. Defense wasn't concerned; I just don't know that Mr. Brewington is being honest with the Court. He wasn't concerned in August of this month that his attorney had not had time to prepare a defense. 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. Um, if the Defendant wants a continuance, um, you know, I'm not going to take a position one way or the other with regard to that. I'm anxious and looking forward to trying this case on October 3rd. We're ready on October 3rd. However, you know, whatever the Court deems appropriate to address these issues raised by the Defendant, but I also want to put on the record that Mr. Brewington's integrity is at issue here and I don't see that you know, just based on the inconsistencies of what he had been complaining to the Court before to and then now he's complaining, it seems to me that the motivation is more about um, complaining and seeing any way to keep this case from a resolution than really getting a resolution, almost like he's trying to sabotage his own case. He's comfortable in August going forward with the trial even though his defense attorney hasn't had an opportunity to review one document or anything else based on a family emergency and then now today um, he wants more time for his defense attorney to talk and meet with him. Um, so you know, I do want to get that noted for the record but as far as if the Defendant wants a continuance so he can meet with his counsel further and the Court feels that's appropriate, I don't have any objection to that.

Judge Hill denied Brewington's request to continue the jury trial stating:

> Okay. Based on what's happened so far since I've been involved in this case, I'm going to deny your motion for continuance. We've got two (2) weeks until trial. Based on my understanding of things, there isn't anything that the State's going to offer that's not going to be available to you by the end of this afternoon. So you've got two (2) weeks to confer with counsel and we'll get started with the jury trial on October 3rd at 9:00 a.m.

Judge Brian Hill and the current Chief Deputy Attorney General, F. Aaron Negangard, rewrote the history of Brewington's criminal proceedings during the 09/19/2011 hearing so Judge Hill could rationalize forcing Brewington into an unconstitutional trial. Judge Hill said he denied Brewington's request to continue the 10/03/2011 criminal trial "based on what's happened so far" immediately after Judge Hill and Negangard handcrafted the "history" of Brewington's case. Before the State or this Court resort to using adjectives like "nonsensical" or "baseless" to dispute Brewington's claims, a review of the record unequivocally proves Negangard and Hill made up the entire story because there is ***NO*** record of Brewington making any objection to continuing the original trial date.

First, why would Brewington object to continuing the trial if Barrett *"hadn't had an opportunity to review one document or anything else based on a family emergency"* as suggested by Negangard? Just the act of presenting the issue to Brewington would be ineffective assistance of counsel. Barrett could not give Brewington the option of whether to proceed to trial despite Barrett not having reviewing one document. Second, it was impossible for Brewington to object because there was no hearing on the matter. Judge Hill issued an order vacating the 08/16/2011 trial on Hill's own motion. A simple review of the CCS of Brewington's criminal case proves it was not logistically possible for Brewington to object. The only hearing prior to the originally scheduled trial date took place on 07/18/2011, where Barrett made his first appearance as Brewington's public defender. As Brewington had no way of knowing at the time of the 07/18/2011 hearing that Barrett

would have a future family emergency, Brewington was unable to object to such. The next hearing did not occur until 08/17/2011, the day after the originally scheduled trial. The record of the case is void of any pro se motions from Brewington objecting to continuing the 08/16/2011 trial date. Even worse is the fact the CCS shows Brewington's 08/03/2011 bond reduction hearing as being rescheduled for 08/17/2011. Brewington includes page 13 from the transcription of the 08/17/2011 bond reduction hearing [Attached as "Exhibit E"] to give Judge Coy a true perspective of the brutality of Hill and Negangard's actions. When asked what Brewington planned to do if released on bond, Brewington responded:

> Uh, yes, I would be looking for work as well as working on preparing for this case. There's a tremendous amount of information that I don't have access to especially since the majority of this, or basically all of this deals with uh, internet writings, IP address, things of that sort. There's a tremendous amount of information on my laptop computer that I just can't obviously access from here and a lot of knowledge that many people don't or are aware of in terms of having to subpoena IP addresses and things of that nature that uh, I would be working on as well.

Not only does the CCS demonstrate it was impossible for Brewington to object to Judge Hill's sua sponte order vacating the 08/16/2011 jury trial, but common sense demonstrates the absurdity of the claim as well. From the most fundamental standpoint, why would Brewington want to participate in a criminal trial while incarcerated, when the rescheduled bond reduction hearing offered the prospect of Brewington sleeping in his own bed? From both a legal and humanitarian standpoint, there are no words to describe the evil nature of Hill and Negangard's actions. Both Judge Hill and Negangard were present during the 08/17/2011 bond reduction hearing when Brewington explained the various resources necessary for Brewington's own defense but somehow both men showed up to the 09/19/2011 final hearing with the same impossible bulls*#t story about Brewington wanting to rush to trial on 08/16/2011 prior to obtaining all the evidence Brewington

spoke of during the bond reduction hearing on 08/17/2011. This fails to take into account the obvious fatal flaw of the men's story; Judge Hill did not approve the release of the grand jury transcript until the September 19, 2011 hearing. By Hill and Negangard's own account, if not for Bryan Barrett's family emergency, Judge Hill, Negangard, and Barrett would have forced Brewington to trial without the grand jury record.

Two weeks later Brewington appeared at trial and explained to Judge Hill that Brewington still had no idea about the nature of the criminal trial because Barrett still refused to meet with Brewington. Judge Hill's response was, "Are you're uh, indicating to me that you're wanting to represent yourself?" That's the moment that the lights went out in Dearborn County, Indiana.[7]

A HEARING ON THE MATTER IS UNNECESSARY

As mentioned earlier in this Reply, *State v. Lewis*, 543 N.E.2d 1116, (1989) reads:

> A court has the power to revisit prior decisions of its own or of a coordinate court in any circumstance, although as a rule courts should be loathe to do so in the absence of extraordinary circumstances such as where the initial decision was 'clearly erroneous and would work a manifest injustice.' *Arizona v. California*, 460 U.S. 605, 618 n. 8, 103 S.Ct. 1382, 1391 n. 8, 75 L.Ed.2d 318, 333 n. 8 (1983) (citation omitted).

Brewington met his burden of raising the fatal constitutional flaws in Brewington's criminal trial prior to discussing the conspiracy between Prosecutor Negangard and Judge Hill to alter the factual record of Brewington's criminal trial. The grand jury transcript inexplicably begins at witness testimony and the names and file structure of the grand jury audio have been modified, and the audio contains less information than the transcript.

[7] Reference to the 1972 song "The Night the Lights Went Out in Georgia" written by Bobby Russell. The song includes a lyric that is frightening appropriate to Brewington's criminal case: "Don't trust your soul to no backwoods Southern lawyer, 'cause the judge in the town's got blood stains on his hands."

During both the 09/19/2011 final pretrial hearing and the opening of Brewington's criminal trial, Brewington informed the trial court that Brewington's public defender refused to provide any legal assistance to Brewington; thus, Brewington had no understanding what actions Brewington was required to defend during trial. Judge Hill refused to address Brewington's concerns and at no point did Judge Hill ask Barrett about Brewington's claims. Negangard made no inquiry into Brewington's claims of receiving no assistance of counsel and offered no objection to prosecuting a defendant that Negangard knew lacked legal representation and an understanding of the indictments.

Judge Coy should dismiss any of the State's claims or defenses because it was the State that conspired with current Chief Deputy Attorney General F. Aaron Negangard to maliciously prosecute Brewington. The evidence contained in this motion unequivocally proves that the trial court and the State engaged in a conspiracy against Brewington's civil rights in retaliation for Brewington's speech that criticized Dearborn County Court officials. The evidence also proves Brewington's public defender, at the least, knew about the conspiracy, if not an active participant. Barrett's refusal to protect Brewington from the actions of Judge Brian Hill and Prosecutor Negangard suggest the latter.

This Court should notify state and federal authorities about the conduct described above. No argument by the Office of the Dearborn County Prosecutor can explain away the fact that the record conclusively demonstrates that Judge Brian Hill and former prosecutor F. Aaron Negangard simultaneously launched attacks against Brewington for allegedly objecting to continuing the 08/16/2011 trial; however, a simple review of the record of Brewington's criminal proceedings proves it was impossible for Brewington to even have the opportunity to make such an objection. As such, Prosecutor Negangard and Judge Hill

made up a convenient story about Brewington objecting to continuing the 08/16/2011 trial, launched false attacks on Brewington's credibility, and then Judge Hill used the entire dialogue to rationalize denying Brewington's request to continue the 10/03/2011 jury trial. Despite Negangard and Judge Hill using Barrett's family emergency as the basis for the false narrative to justify denying Brewington's request to continue the trial, Barrett made no attempt to protect Brewington.

At this point, the worst should be assumed at every stage of Brewington's criminal investigation, grand jury investigation, and criminal trial. If the trial court and the prosecution were willing to fabricate an easily disproven story for the sole purpose of crafting the record of the criminal proceedings, this Court cannot assume that the Office of the Dearborn County Prosecutor and the Dearborn Superior Court II did not engage in other misconduct such as implanting "favorable" jurors for both the trial and grand jury. As it has been well established that the trial court engaged in deceitful conduct against Brewington, it is axiomatic that Brewington could only object if he was aware of the deception.

If this Court believes a hearing is necessary, it should compel the appearance of Judge Brian Hill and Indiana Chief Deputy Attorney General F. Aaron Negangard so that they can provide an explanation as to how they came to their ex parte conclusions that Brewington objected to continuing the 08/16/2011. This Court should also order the release of a certified copy of the grand jury audio, as well as ordering the release of the names of the trial jurors and grand jurors to protect any shred of integrity left in this case.

Brewington notes the content of the grand jury audio is almost irrelevant when considering whether there are grounds for the reversal of Brewington's convictions. The

release of a certified copy of the grand jury audio will prove the Dearborn Superior Court II altered and withheld grand jury records from Brewington's criminal trial; or the release will prove the Dearborn Superior Court II took intentional measures to omit Negangard's introduction to the jurors from the recording of the grand jury investigation. This Court is already aware that the grand jury audio released to this point contains less information than the transcription of the same record.[8] If this Court should elect to hold a hearing to listen to the official grand jury audio, within seconds, everyone in the courtroom will have an understanding of the extent of the record tampering by the Dearborn Superior Court II. There is no scenario where the release of the official audio will not reveal a criminal conspiracy involving the Dearborn Superior Court II and the Dearborn County Prosecutor. Either the two entities conspired to not record the entire proceedings, or they conspired to withhold portions of the record. If additional recordings exist, Dearborn Superior Court II Judge Sally McLaughlin and Judge Brian Hill may face disciplinary action in Brewington's APRA lawsuit for lying to the court about there being no more grand jury records to release in Brewington's case. If there are not "four to five" other grand jury investigations intertwining with the audio of Brewington's proceedings, as alleged in Judge Hill's order dated 04/20/2016, then Judge Hill lied about the intertwining grand jury investigations to justify the cutting and pasting of grand jury audio by McLaughlin's staff to match the previously altered transcription. If the "four to five" intertwining investigations do exist and the introduction to Brewington's grand jury investigation is still missing, then it would prove Judge McLaughlin's staff intentionally stopped the audio recording at the beginning

[8] Brewington included a copy of the grand jury audio in Brewington's original Request for Order Compelling Production of Grand Jury Record, filed 05/31/2017. To date, this Court has refused to acknowledge Brewington's request.

of the grand jury investigation of Daniel Brewington and did not hit "record" until the beginning of witness testimony. Again, there is no scenario clearing the Dearborn Superior Court II from wrongdoing in altering/withholding grand jury records from Brewington's criminal trial. Brewington notes that there is an interesting wild card involving the grand jury audio. The first day of the grand jury investigation was held on 02/28/2011 in the courtroom of the Dearborn County Juvenile Court, which falls under the jurisdiction of the Dearborn Circuit Court. If it should be determined that the court staff of the Dearborn Circuit Court was responsible for altering/withholding grand jury records to sabotage Brewington's criminal trial, this Court should immediately vacate Brewington's convictions. This Court should also notify federal authorities because the judge responsible for sabotaging the grand jury record would be Circuit Judge James D. Humphrey, an alleged victim in the criminal prosecution of Brewington's public speech.

CONCLUSION

As it has been well established that the Dearborn Superior Court II played an active role in altering grand jury records and sabotaging Brewington's criminal trial, Brewington's convictions must also be vacated on procedural grounds, relating to the Indiana Rules of Post-Conviction Remedies. P-C.R. 1(4)(b) states:

> No change of venue from the county shall be granted.

It would be beyond prejudicial to Brewington to hold an evidentiary hearing using the same court staff that even the State concedes was responsible for altering the original grand jury records. Since Indiana Rules of Post-Conviction Remedies do not allow for a change of venue, Brewington's convictions must be reversed.

This Court made the following claim in its sua sponte summary dismissal of Brewington's entire Verified Petition for Post-Conviction Relief:

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

Brewington appealed this Court's 10/25/2017 summary dismissal of Brewington's entire Verified Petition for Post-Conviction Relief and the court in *Brewington v. State*, 107 N.E.3d 1113, (2018) ruled in Brewington's favor and remanded the case back. It would not be inconceivable that Judge Coy's objectivity was swayed by the conventional wisdom that trial courts and prosecutors do not alter grand jury records in conspiracies to maliciously prosecute people. As the evidence and the arguments herein prove Brewington received no assistance of counsel in a malicious prosecution involving an obvious conspiracy between the trial court and the State, Judge W. Gregory Coy can vacate Brewington's convictions because the criminal conspiracy created a manifest injustice. If This Court has any doubt regarding Brewington's conspiracy allegations, Brewington invites Judge W. Gregory Coy to simply compel the State to produce a record of a hearing or pleading where Brewington objected to continuing the 08/16/2011 jury trial. The reversal of Brewington's convictions are inevitable because no such record exists.

Brewington reminds this Court that there is no waiver that precludes Brewington from relief when there's evidence beyond any reasonable doubt that Judge Brian Hill and Prosecutor F. Aaron Negangard conspired to sabotage Brewington's criminal defense while providing Brewington no real assistance of legal counsel. If Special Judge W. Gregory Coy would again rationalize ignoring the facts and arguments contained within this motion and deny Brewington's right to relief from a criminal conspiracy involving the Office of the Dearborn County Prosecutor, the Dearborn Superior Court II, and Chief Deputy Indiana

Attorney General F. Aaron Negangard, Brewington will include a copy of Judge Coy's order and a copy of this pleading in a petition to the appropriate federal court of review. As always, if this Court should take issue with any of Brewington's above facts or claims, Brewington cordially invites Judge W. Gregory Coy to hold Brewington accountable for such.

WHEREFORE, for the reasons set forth above, Brewington requests this Court grant Brewington's Motion for Summary Disposition and vacate all Brewington's conviction and for all other proper relief.

Respectfully Submitted,

Daniel Brewington
Plaintiff, Pro se

CERTIFICATE OF SERVICE

I certify that on April 22, 2019, I electronically filed the foregoing document using the Indiana E-Filing System (IEFS).

I also certify that on April 22, 2019 the foregoing document was served upon the following person via IEFS:

Dearborn County Prosecutor
Lynn Deddens (24146-15)
efile@dearbornohioprosecutor.com

Daniel Brewington
Plaintiff, Pro se

CC: Marion County Prosecutor
Terry Curry (3481-49)

Filed: 4/17/2019 8:16 PM
Dearborn Superior Court 2
Dearborn County, Indiana

Exhibit A

DANIEL BREWINGTON	)	IN THE SUPERIOR COURT II
	)	
PETITIONER,	)	DEARBORN COUNTY, INDIANA
v.	)	
STATE OF INDIANA	)	GENERAL TERM 2019
	)SS:	
RESPONDANT.	)	
	)	CAUSE NO. 15D02-1702-PC-0003
	)	
	)	
	)	

REPLY TO STATE'S RESPONSE TO REQUEST FOR ORDER TO RELEASE GRAND JURY AUDIO

Plaintiff, Daniel Brewington ("Brewington"), submits this REPLY TO STATE'S RESPONSE TO REQUEST FOR ORDER TO RELEASE OFFICIAL GRAND JURY AUDIO and in support, Brewington states as follows:

THE COVERUP OF A COURT CONSPIRACY

In response to the State's opposition to the release of the complete grand jury record, Brewington directs the reader of this petition to a previous filing by the State. On page nine of the State's Response to Petitioner's Motion for Summary Judgment, filed 06/08/2017, Deputy Prosecutor Andrew Krumwied wrote the following:

> Finally, the State wishes to address the claim raised in Brewington's Motion for Summary Judgment in Paragraph 2(A) that "Negangard switched playbooks on Brewington". This claim is, to put it bluntly, nonsensical. Even if one is to assume that Brewington's baseless assertion that the grand jury transcripts were altered or otherwise incomplete, the evidence contained therein is more than enough for even a layperson to discern a "true threat".

The above best sums up the culture of the Dearborn County Court System. Only in Dearborn County, Indiana would it acceptable for a prosecutor to argue that even if the trial court altered grand jury records, the court would alter the grand jury transcript in a

manner not to infringe *too much* on the rights of the defendant. Deputy Krumwied knows the record of Brewington's grand jury investigation has been altered because the record omits all portions of the proceedings occurring prior to witness testimony. This is how far into the pit of constitutional indecency Brewington's case has fallen. The Office of the Dearborn County Prosecutor speculated that the constitutional harm associated with the Superior Court II altering grand jury records would not be *that* prejudicial to Brewington's criminal trial. The absurdity of the State's arguments do not end there because the State is also fighting the release of records that have already been ordered to be released.

EXISTING ORDER STATING BREWINGTON IS ENTITLED TO AUDIO

The issue of whether Brewington is entitled to the complete audio record of the grand jury proceedings pertaining to his criminal trial was firmly settled by the previous special judge in this case. In an order dated 04/20/2016 [Attached hereto as Exhibit A], Judge Brian Hill, Special Judge for the Dearborn Superior Court II, ordered the following:

> Based on an Advisory Opinion issued by the Public Access Counselor, Luke H. Britt, on April 14, 2016, the Court issues the following Order regarding the audio recordings of Grand Jury proceedings conducted in this Court on February 28, 2011, March 1, 2011 and March 2, 2011, hereby amending a previous Order regarding these recordings issued on February 4, 2016.
>
> The Court now ORDERS as follows:
>
> 1. The Court Reporter is hereby ORDERED to prepare a compact disc of audio recordings of the Grand Jury proceedings regarding this matter conducted on February 28, 2011, March 1, 2011, and March 2, 2011.

The Dearborn Superior Court II forced Brewington to take matters to the Indiana Public Access Counselor ("PAC") after the court refused to order the release of the grand jury audio. Brewington sought the audio to verify the accuracy of the transcription. Adding significance to the grand jury record is the fact Brewington was instructed to rely on the

complete record for an understanding of the general indictments. On March 7, 2011, former Dearborn County Prosecutor F. Aaron Negangard filed the State's Praecipe directing the court reporter of the Superior Court II to prepare a complete transcription of the grand jury record. During a pretrial hearing dated 07/18/2011, the State instructed Brewington to rely on the complete transcription of the grand jury investigation for Brewington's defense. Unbeknownst to Brewington at the time was that the Dearborn Superior Court II omitted, at least, all content of the grand jury proceedings occurring prior to witness testimony. Despite the grand jury transcripts being admitted as evidence, thus becoming public record, the Dearborn Superior Court II gave a plethora of excuses in denying Brewington access to the audio record. The court forced Brewington to obtain the records via the Access to Public Records Act (APRA), where the PAC deemed Judge Hill's varying excuses for denying the release of the grand jury audio to be invalid. When Hill directed the court reporter to prepare a copy of all the audio from Brewington's grand jury proceedings, the "administrative wing" of the Dearborn Superior Court II, under Judge Sally McLaughlin, refused to fully comply with Hill's order. Judge McLaughlin charged Brewington $300.00 and then provided Brewington with a copy of grand jury audio that contained *less* information than the transcription of the same audio record. This forced Brewington into seeking alternative legal measures to obtain the records to which Brewington was already legally entitled. Now the Dearborn Superior Court II and the State are fighting to conceal the grand jury record containing Negangard's opening statements/arguments in the grand jury investigation of Daniel Brewington.

CRIMINAL ACTS COMMITTED BY THE DEARBORN SUPERIOR COURT II

> *"Good morning ladies and gentlemen. Thank you for your service on this grand jury. You have been gathered here today because Dan Brewington is the type of*

man who abuses innocent puppies and kittens, and for that you must return indictments!"[1]

Did former Dearborn County Prosecutor F. Aaron Negangard make the above statements during the opening of the investigation of Daniel Brewington? We do not know because the Dearborn Superior Court II refuses to release any grand jury audio occurring prior to witness testimony. Negangard could have made several unconstitutional arguments in seeking indictments against Brewington. Normally grand jury records are not disclosed but the State instructed Brewington to rely on the complete transcription to prepare a defense despite knowing Judge McLaughlin and her staff omitted portions of the proceedings from the record. The purpose of maintaining records of legal proceedings is to protect the people involved as well as the integrity of the proceedings. Though the above example involving puppies and kittens may appear absurd, it fails to come close to the level of absurdity displayed by the refusal of the Dearborn Superior Court II to comply with its own order to release an accurate copy of grand jury audio. A trial court instilling itself as an adversary against a criminal defendant by altering/withholding grand jury records would normally mandate the reversal of any relating convictions. Since this Court and the State places the burden on Brewington to prove why Judge Sally McLaughlin's decision to arbitrarily omit grand jury records is prejudicial to Brewington, Brewington must continue with this analysis of the inane.

The State and the Dearborn Superior Court II are trying to have their cake and eat it too. To reel in perspective for the reader of this petition, the State and the administrative wing of the Dearborn Superior Court II claimed Brewington enjoyed a fair criminal trial

[1] Disclaimer: At no point in his life has Brewington ever brought harm to kittens or puppies.

while refusing to address why the grand jury record inexplicably omits all record of the proceedings prior to witness testimony. In any legitimate court of law, the production of incomplete/altered grand jury records would bring the proceedings to a screeching halt because it would deliver a fatal blow to the appearance of impartiality of the court. Judge McLaughlin and her staff look like a bat wielding 8-year-old child standing in the backyard telling his parents through a broken window that he didn't know how his baseball landed in the dining room. Of course, it was McLaughlin and her staff who altered the grand jury records. They were the only people capable of doing so; and they did so to help Negangard convict Brewington. Any argument that another entity altered the transcription of the grand jury investigation is far more problematic. As the grand jury audio released to Brewington is in a different format than the original and contains less information than the transcription, it would appear that Judge McLaughlin instructed her staff to alter the grand jury audio to match the already modified transcription.

Due to the absence of case law that provides any guidance for situations where trial courts alter grand jury records to assist the prosecution obtain convictions, Brewington points to the judicial code of conduct for perspective. Section 5 under Rule 1.2 of the Indiana Code of Judicial Conduct states in part:

> The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.

Grand jury proceedings do not begin at witness testimony. No judge serving in any capacity for the Dearborn Superior Court II has offered any explanation for the incomplete record. Applying the "reasonable mind" test to the above creates the perception of a full-blown criminal conspiracy. The silence of the State and this Court in their refusal to

address the incomplete grand jury record speaks volumes about the severity of the misconduct. Now the State is crying "foul" because Brewington was forced to take alternative legal measures to compel McLaughlin to comply with her own court's order to release all the grand jury audio pertaining to Brewington's case. The problem the State has with the two concurrent legal proceedings dealing with similar issues is it places the State and the Dearborn Superior Court II in the position of having to tell the "same" truth.

STATE TAKES ISSUE WITH BREWINGTON'S PUBLIC RECORD LAWSUIT

Deputy Krumwied argues the issue of the grand jury audio is better addressed in Brewington's public record lawsuit:

> 4. Brewington's Request also fails to mention that he is currently involved in a separate civil proceeding (15D01-1702-PL-013) centered exclusively around the grand jury audio he now seeks, a proceeding in which he currently has a pending motion requesting the same records which awaits a ruling.
>
> 5. Brewington's Request in this court, in this proceeding, is an attempt to forum shop for a favorable ruling in the event he is unsuccessful in his attempts in his pending civil suit in Dearborn Superior Court I before Special Judge D.J. Mote.
>
> 6. This matter is more properly before the Court in that matter, and as such this Court in this Post-Conviction matter need not address the release of grand jury audio as it is not contemplated by the Indiana Post-Conviction Rules.

As stated above, the Dearborn Superior Court II already issued an order stating Brewington is entitled to the complete audio record from the grand jury investigation of Daniel Brewington. Deputy Krumwied was less than honest in his portrayal of the nature of Brewington's lawsuit seeking public records. Brewington is not waiting for an order in his APRA action to determine whether he is entitled to the record because the issue has already been settled. Deputy Krumwied fails to provide any legal or statutory authority to

support the State's claim that Brewington's post-conviction action somehow precludes Brewington from exercising his right as a member of the general public in pursuing the records through an APRA action or visa-versa. Brewington cannot be punished in this Court for taking additional legal action to compel the Dearborn Superior Court II to comply with its own orders. If the State feels overburdened by Brewington's simultaneous proceedings, the State could always expedite matters by providing insight as to why it proceeded to trial knowing the Dearborn Superior Court II altered grand jury records.

This Court should take note of the timeframe of Brewington's pending APRA action (15D01-1702-PL-013) mentioned by Krumwied. Brewington filed the APRA action on 02/21/2017 after the Dearborn Superior Court II provided Brewington with a copy of grand jury audio containing less information than the original transcription. Brewington filed this action on 02/22/2017. In totaling the days encompassing both actions, 1,565 days have passed where neither the Dearborn Superior Court II, the Office of the Dearborn County Prosecutor, nor the Office of Indiana Attorney General Curtis Hill have made any attempt to address why the grand jury record begins at witness testimony. There is no mystery as to why the grand jury record is incomplete; the Dearborn Superior Court II intentionally omitted all content occurring prior to witness testimony.

BREWINGTON IS HELD TO A HIGHER LEGAL STANDARD THAN THE STATE AND COURTS

> (It) "is well settled that a litigant who proceeds pro se is held to the same established rules of procedure that trained counsel is bound to follow."
> *Rickels v. Herr*, 638 N.E.2d 1280, (5 Dist. 1994).

Brewington would like to point out the hypocrisy of any arguments by the State that suggest Brewington is barred from seeking relief from the court altered grand jury records

because of any procedural error on Brewington's part. Any technical legal arguments by the State against the reversal of Brewington's convictions or the release of a certified copy of the grand jury audio should be placed in context with the trial court altering grand jury records:

> *Brewington failed to cite the correct case law so this Court should deny Brewington's request to see the extent of the trial court's alterations to the grand jury record*
>
> *Brewington failed to object at trial to the trial court altering grand jury records to help the prosecution so he cannot raise the issue now.*
>
> *Brewington failed to follow the local rules of the Dearborn County Courts pertaining to the proper procedure relating to when a trial court alters grand jury records to help the prosecution secure convictions. As such, Brewington waives the right not to be a target of a criminal conspiracy between the Dearborn Superior Court II and the Office of the Dearborn County Prosecutor.*

The above hypotheticals demonstrate the steep burden Brewington must overcome just to climb out from under the misconduct of the trial court and prosecution. Judge Sally McLaughlin and Chief Deputy Attorney General F. Aaron Negangard began stacking the deck against Brewington as early as prior to the grand jury investigation. Brewington has trouble understanding why he is saddled with the burden of adhering to strict legal procedures to address how Judge Sally McLaughlin and her staff committed a criminal act in altering grand jury records in a conspiracy to deprive Brewington of a constitutional trial. If Brewington falsified or altered official records to obstruct justice in his criminal trial, Brewington would be held in contempt and/or charged with a crime. Brewington requests this Court to hold the State and court staff to the same legal standard. When the court staff under Dearborn Superior Court Judge Sally McLaughlin altered grand jury transcripts and audio, attorneys from the Office of the Indiana Attorney General and Dearborn County Prosecutor rushed in to coverup the crime.

Grand juries do not begin at witness testimony. Rather than provide a plausible explanation for the incomplete record, State attorneys like Deputy Krumwied craft technical legal arguments as to why Brewington should be precluded from relief from a criminal conspiracy within the Dearborn County Court System. In section 3 of the State's Response to Request for Order to Release Official Grand Jury Audio, Deputy Krumwied accuses Brewington of providing no legal or statutory authority for the release of any Grand Jury Audio. Ironically Krumwied fails to hold himself to the same legal standard as he requires of Brewington. In section 6 Deputy Krumwied argues the issue is more appropriately addressed in Brewington's public record case yet provides no legal or statutory authority to support the State's reasoning. Krumwied goes one step further in an attempt to take advantage of Brewington's pro se status by suggesting this Court should not address the release of grand jury audio. Krumwied argued the issue "is not contemplated by the Indiana Post-Conviction Rules." Technically Krumwied is lying. Rule 1(5) of the Indiana Post-Conviction Rules states

> "All rules and statutes applicable in civil proceedings including pre-trial and discovery procedures are available to the parties"

If the release of grand jury records can be addressed as an evidentiary matter or in any other capacity during an Indiana civil proceeding then, per P-C.R. 1(5), the issue of the grand jury audio is properly before this Court. If Brewington was aware of P-C.R. 1(5) then Deputy Krumwied was also aware the issue of the grand jury audio is properly before this Court. Krumwied knows Honorable Judge Coy is aware as well. As such, Krumwied lied about the grand jury record not being proper in these proceedings in the hopes Judge Coy would run with the notion and deny Brewington's request.

STATE'S OPPOSITION TO RELEASE OF GRAND JURY AUDIO IS ADMISSION OF GUILT

Deputy Andrew Krumwied and the State understand the release of a certified copy of the grand jury audio will likely break the dam of a criminal conspiracy. There is no plausible explanation for the State to contest the release of the grand jury record. There is an existing order out of the Dearborn Superior Court II authorizing the release to Brewington. As Deputy Krumwied and the State allege Brewington's allegations of criminal conspiracies to be baseless and nonsensical, the State should be begging for the release of the grand jury audio to disprove Brewington's conspiracy claims. It would be only rational that this Court would want the same. Why would Honorable Judge W. Gregory Coy want to continue fielding voluminous filings by Brewington ladled with allegations of criminal conduct by court officials when Judge Coy could simply order the release of a certified copy of the grand jury audio to prove Brewington wrong? Because the State and this Court understand Brewington is right.

This Court and the State understand there is no graceful exit strategy for Dearborn Superior Court II Judge Sally McLaughlin and her staff. Even if they tried to manipulate the official record of the grand jury investigation of Daniel Brewington, there still is no way to escape criminal liability. Brewington directs the Court's attention to Exhibit B attached to this Reply. Exhibit B is a copy of the Defendants' Reply in Support of Cross-Motion for Summary Judgment in Brewington's pending APRA lawsuit (15D01-1702-PL-00013). Defense counsel Deputy Attorney General Joshua Lowry argued the following on behalf of the Dearborn Superior Court II:

> The simple truth is audio cannot be produced that does not exist. Brewington has received the transcripts and the audio related to his grand jury proceedings. While Brewington makes many arguments as to why he believes there must be more audio recordings of the grand jury proceeding into his criminal investigation, these arguments do not change the fact that more there are no additional audio recordings. What is contained in the

recording is contained in the recording, no matter how many times Brewington claims there should be more.

Someone is lying. Why would the Office of the Dearborn County Prosecutor take the time to contest the release of the audio from Brewington's grand jury investigation if "there are no additional recordings"? If there is no record of Brewington's grand jury proceeding occurring prior to witness testimony, it would prove that Judge McLaughlin's court engaged in a criminal conspiracy against Brewington prior to the onset of the grand jury investigation. Judge McLaughlin's court previously claimed that Brewington's grand jury investigation was simultaneously recorded with "four to five" other investigations on a single audio track. A claim that there is no audio of the proceedings prior to witness testimony requires the Dearborn Superior Court II to have intentionally omitted Negangard's introduction to the grand jury from the recording of the investigation.[2] Regardless of whether Dearborn Superior Court II lied about there being no more records or whether the court intentionally omitted the audio, both contentions require the reversal of Brewington's conviction under the 6th amendment.

This Court and the State know that it is impossible for the Dearborn Superior Court II to have *NOT* engaged in some form of criminal conduct. The release of the official grand

[2] Judge Hill Court's 04/20/2016 order to release grand jury audio claimed "four to five" intertwining grand jury investigations made it necessary to reformat and piece together the audio from Brewington's proceedings to protect the secrecy of the other proceedings. Brewington believes this to be an excuse to by the Dearborn Superior Court II rationalize altering grand jury audio to match a previously altered transcript. With that said, the only way the audio from intertwining grand jury investigations could interfere with the production of an exact copy of the audio files from Brewington's proceeding is if the alleged intertwining investigations were recorded on a single non-stop recording. This contention is just as problematic for the State and Dearborn Superior Court II. If the introduction to Brewington's grand jury proceeding does not exist on the original record, the absence of the audio required an intentional effort by the staff of the Dearborn Superior Court II to NOT record Negangard's introduction to the grand jury investigation of Brewington. Such a finding would prove that Dearborn Superior Court II Judge Sally McLaughlin and former Dearborn County Prosecutor F. Aaron Negangard embarked in a criminal conspiracy to indict and convict Dan Brewington prior to the start of the grand jury investigation.

jury audio will show the grand jury investigation of Daniel Brewington did not begin at witness testimony, proving that the Dearborn Superior Court II and the Office of the Dearborn County Prosecutor conspired to sabotage Brewington's criminal trial and then undertook a years-long conspiracy to coverup the criminal conspiracy. The moment the trial court decided to help the prosecution's case was the moment Brewington's constitutional right to a fair trial was eviscerated. All efforts to obstruct Brewington's access to the original grand jury record should be viewed as criminal acts to conceal the conspiracy. Brewington brought the APRA action to compel the production of the entire record because Judge McLaughlin refused to produce the audio record from the grand jury investigation occurring prior to witness testimony.

CONCLUSION

In the absence of ill intent, there is no reason to alter grand jury records. The longer this Court stalls in addressing the obvious criminal conduct by Judge Sally McLaughlin, current Chief Deputy Attorney General F. Aaron Negangard, and others, only serves to implicate Judge W. Gregory Coy in the matter. The release of a certified copy of the grand jury audio in Brewington's case will prove Judge McLaughlin's court lied about releasing the complete record or it will prove McLaughlin's court conspired to intentionally omit Negangard's introduction to the grand jurors from the audio record. Brewington reminds this Court of the arrogance exuded by the Office of the Dearborn County Prosecutor and its reckless disregard for the constitution:

> "Even if one is to assume that Brewington's baseless assertion that the grand jury transcripts were altered or otherwise incomplete, the evidence contained therein is more than enough for even a layperson to discern a 'true threat.'"

Deputy Prosecutor Andrew Krumwied's above argument portrays grand jury record tampering as being standard procedure in Dearborn County, Indiana.

In *Brewington v. State*, 107 N.E.3d 1113, (2018) the Indiana Court of Appeals remanded this case back for an evidentiary hearing because Special Judge W. Gregory Coy failed to "specifically address each of Brewington's allegations" as required by P-C.R. 1(6). Judge Coy provided only the following reasoning for the sua sponte summary dismissal of Brewington's entire Verified Petition for Post-Conviction relief:

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

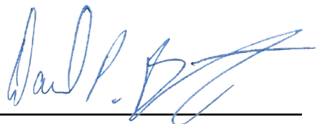
Brewington assumes that if Judge Coy had a valid excuse for summarily dismissing Brewington's Verified Petition for Post-Conviction Relief, he would have provided it.

Judge W. Gregory Coy nor the State can walk back Deputy Krumwied's argument that "even if" Judge McLaughlin's court altered grand jury records; the unauthorized alterations would not prejudice Brewington. Judge Coy and the State cannot deny that the grand jury record beginning at witness testimony is incomplete. If this Court wishes to hold an evidentiary hearing on Brewington's PCR claims, it must allow Brewington to obtain an official certified copy of the grand jury audio. This will provide Brewington the opportunity to prove whether Judge McLaughlin's court withheld grand jury testimony/evidence to help Negangard prosecute Brewington; or, whether McLaughlin's court agreed to intentionally omit Negangard's opening instructions/arguments to the grand jurors from the recording of the grand jury investigation. Both scenarios involve a conspiracy by the trial court to sabotage Brewington's criminal defense, thus violating Brewington's 6th amendment guarantee to a fair trial and requiring the reversal of Brewington's convictions. Brewington notes that he will attach a copy of this pleading to subsequent appellate or

federal pleadings if Judge Coy would ignore the above criminal conduct and refuse to compel the court reporter to prepare and certified an exact copy of the grand jury audio to which Brewington is already entitled.

WHEREFORE, for the reasons set forth above, if Judge Coy deems it necessary for Brewington to prove how his rights were negatively impacted by the Dearborn Superior Court II withholding evidence and indictment information to assist the State's prosecution, Brewington requests this Court to issue an order directing the court reporter to prepare and certify a complete and exact copy of the original audio pertaining to the grand jury investigation of Daniel Brewington, and for all other appropriate relief.

Respectfully Submitted,



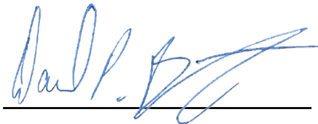
Daniel Brewington
Plaintiff, Pro se

CERTIFICATE OF SERVICE

I certify that on April 17, 2019, I electronically filed the foregoing document using the Indiana E-Filing System (IEFS).

I also certify that on April 17, 2019 the foregoing document was served upon the following person via IEFS:

Dearborn County Prosecutor
Lynn Deddens (24146-15)
efile@dearbornohioprosecutor.com



Daniel Brewington
Plaintiff, Pro se

Exhibit A

STATE OF INDIANA | DEARBORN SUPERIOR COURT II

COUNTY OF DEARBORN | CAUSE NO. 15D02-1103-FD-084

STATE OF INDIANA,
Plaintiff

vs

DANIEL BREWINGTON,
Defendant

FILED
APR 20 2016
CLERK OF DEARBORN CIRCUIT COURT

ORDER ON REQUEST FOR RELEASING AUDIO COPIES (AS TO GRAND JURY PROCEEDINGS OF FEBRUARY 28, 2011, MARCH 1, 2011, AND MARCH 2, 2011)

Based on an Advisory Opinion issued by the Public Access Counselor, Luke H. Britt, on April 14, 2016, the Court issues the following Order regarding the audio recordings of Grand Jury proceedings conducted in this Court on February 28, 2011, March 1, 2011 and March 2, 2011, hereby amending a previous Order regarding these recordings issued on February 4, 2016.

The Court now **ORDERS** as follows:

1. The Court Reporter is hereby **ORDERED** to prepare a compact disc of audio recordings of the Grand Jury proceedings regarding this matter conducted on February 28, 2011, March 1, 2011, and March 2, 2011.

2. It is the Court's understanding that the Grand Jury impaneled for this matter also heard evidence in four to five other Grand Jury proceedings during this time, often going back and forth between all of the cases. The audio recordings being released shall contain only the matter regarding Daniel Brewington and no other Grand Jury proceedings.

3. Daniel Brewington shall be responsible for reasonable copying fees pursuant to I.C. 5-14-3-8. Additional costs may be required due to the

nature of the Grand Jury proceedings, because of efforts made to maintain the confidentiality of the other proceedings that were conducted simultaneous with the matter regarding Daniel Brewington.

4. The release of these audio recordings are hereby specifically limited to the personal review by Daniel Brewington. The recipient, Daniel Brewington, is barred from broadcasting or in any other way publishing these records in any manner. Violation of this Order may result in contempt proceedings.

ALL OF WHICH IS ORDERED this 20th day of April, 2016.

BRIAN D. HILL, Special Judge
Dearborn Superior Court II

Distribution:
Honorable Brian D. Hill
Prosecuting Attorney
Daniel Brewington

Exhibit B

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

DANIEL BREWINGTON,

Plaintiff,

v.

DEARBORN SUPERIOR COURT II, JUDGE SALLY MCLAUGHLIN, JUDGE BRIAN HILL, COURT REPORTER BARBARA RUWE

Defendants.

FILED
MAY 30 2017
CLERK OF DEARBORN CIRCUIT COURT

REPLY IN SUPPORT OF CROSS-MOTION FOR SUMMARY JUDGMENT

Defendants, Dearborn Superior Court II, Judge Sally McLaughlin, and Judge Brian Hill, by counsel, respectfully submit this reply in support of their Cross-Motion for Summary Judgment. Defendants continue to rely upon their response in opposition to Plaintiff's Motion for Summary Judgment and Cross-Motion for Summary Judgment. Defendants re-emphasize that under no circumstances should Brewington be entitled to the audio recordings of other grand jury proceedings involving criminal investigations into other people.

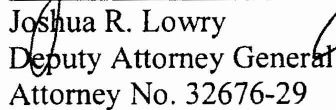
In his response, Brewington attempts to use this lawsuit to litigate numerous claims against numerous officials. However, this lawsuit only pertains to his APRA request. The simple truth is audio cannot be produced that does not exist. Brewington has received the transcripts and the audio related to his grand jury proceedings. While Brewington makes many arguments as to why he believes there must be more audio recordings of the grand jury proceeding into his criminal investigation, these arguments do not change the fact that more there are no additional audio

recordings. What is contained in the recording is contained in the recording, no matter how many times Brewington claims there should be more.

WHEREFORE, Defendants respectfully request that the Court grant summary judgment in their favor and that the Court deny Plaintiff's request for summary judgment, and all other relief deemed just and proper by the Court.

Respectfully submitted,

CURTIS T. HILL, JR.
Attorney General of Indiana
Attorney No. 32676-29

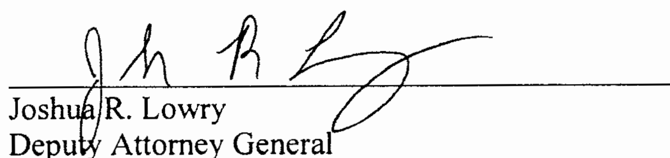
By: 

Joshua R. Lowry
Deputy Attorney General
Attorney No. 32676-29

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 May 30, 2017:

Daniel P. Brewington
8894 Glassford Ct. N
Dublin, OH 43017



Joshua R. Lowry
Deputy Attorney General

OFFICE OF ATTORNEY GENERAL
Indiana Government Center South, 5th Floor
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Indianapolis, IN 46204-2770
Telephone: (317) 233-6215
Facsimile: (317) 232-7979
E-mail: Joshua.Lowry@atg.in.gov

Exhibit B

1 about fifteen (15) days prior to trial and then we can
2 work that out in any instructions at that pre-trial.
3 Any other issues today, Mr. Barrett?
4 MR. BARRETT: You said trial rule, you mean criminal rule 4(a)?
5 COURT: Yell I'm sorry, criminal rule 4(a).
6 MR. BARRETT: Okay, I just wanted to be sure.
7 COURT: I think its subsection (a), it's under criminal rule 4.
8 MR. BARRETT: I think you're right.
9 COURT: But I think it's (a).
10 MR. BARRETT: I just wanted to be sure what you're referring to.
11 COURT: Anything else?
12 MR. BARRETT: And the Court's indication is that it will rule before
13 the end of the week on the motion to reduce bond?
14 COURT: I'm going to go right back to the office this
15 afternoon and try to get through the evidence and
16 hopefully have a ruling out tomorrow or Friday.
17 MR. BARRETT: Thank you, your honor.
18 COURT: Okay?
19 MR. NEGANGARD: Thank you, your honor.
20 COURT: That's all for today.
21 **DANIEL BREWINGTON – FINAL PRE-TRIAL HEARING -**
22 **SEPTEMBER 19, 2011**
23 COURT: We're here in Case # 15D02-1103-FD-84, the State
24 of Indiana versus Daniel Brewington. Let the
25 record reflect the State appears by Prosecuting

1 Attorney, Aaron Negangard. The Defendant
2 appears in person and by counsel, Bryan Barrett.
3 This matter is set today for a final pre-trial
4 conference with a jury trial set to commence on
5 October 3, 2011 at 9:00 a.m. A couple of the issues
6 that we had, um, for consideration today, um, first
7 of all back in August, I think it was even maybe
8 prior to our last bond reduction hearing, the State
9 had made a motion to release Grand Jury Exhibits
10 which was granted and those were actually admitted
11 into evidence at the bond reduction hearing that was
12 held on August 17th, I believe that was the date it
13 was. Being that those have been admitted as public
14 record, there was a question by Defense counsel, we
15 just had a brief conference in chambers before
16 coming out on the record to make sure that those
17 were allowed to be released to the Defendant and
18 yes, that is the case and I don't, uh, there were some
19 conversations between Mr. Negangard and Mr.
20 Barrett about getting that transcript and that might
21 happen I think immediately after this hearing today
22 and as I recall, I think I may still, I'm pretty sure the
23 transcript, I didn't bring that back. That's still at my
24 office, so for whatever reason if Mr. Barrett needs
25 that, it can happen in Rush County too, I suppose.

1 Um, so that release is allowed. Um, there was also
2 the State made a motion for confidentiality of
3 juror's names and identities and that was filed on
4 August 9, 2011. Is there any response to that
5 motion for the record Mr. Barrett?
6 MR. BARRETT: I don't object as long as we uh, or if something
7 should come up during the process. I'm sorry?
8 (Mr. Brewington conversing with Mr. Barrett) I do
9 not object. My client does object apparently your
10 honor, so I don't know if you want to...
11 COURT: And what's the nature of your objection Mr.
12 Brewington?
13 MR. BREWINGTON: Just a lack of evidence that I pose any danger to
14 anybody. There hasn't been any kind of evidence
15 admitted that I pose a risk to, physical risk to any
16 juror or any witness, anything like that, or at least
17 any credible evidence.
18 COURT: Okay, Jury Rule #10, subtitle, juror safety and
19 privacy, um, I'm going to emphasize privacy, uh,
20 personal information relating to a juror or a
21 perspective juror not disclosed in open Court is
22 confidential other than for the use of the parties and
23 counsel. The Court shall maintain that
24 confidentiality to an extent consistent with the
25 Constitutional statutory rights of the parties. Now

1 while that rule in itself makes would, makes the
2 juror identities confidential unless disclosed in open
3 Court, it ordinarily would be made available to you.
4 I'm going to disagree with you based on the
5 evidence that was presented at the bond reduction
6 hearing that some of your, and call them alleged or
7 whatever, I think that the State has made a prima
8 facia case at least that there's been a history of
9 disclosing private information. I don't know if
10 there would be information to say that you were a
11 physical risk to their safety but I think the privacy
12 issue is definitely a concern based on the evidence
13 that has been previously submitted and for that
14 reason that motion for confidentiality of juror's
15 names and identities is going to be granted. Um,
16 and the jury questionnaires that we have, the
17 summons' will go out today after this hearing and
18 um, both counsel received copies of the juror
19 questionnaires that have been returned. There are
20 several that have not been returned yet but as soon
21 as the Court gets those, the ones that are provided to
22 Counsel will have redacted names and signatures
23 and as far as I can tell, that's the only information
24 redacted from those juror questionnaires and as the
25 new questionnaires come back when the summons

1 are returned, those names will be redacted and they
2 will be provided to both counsel as soon as possible
3 once they get uh, once they are returned to the
4 Court. As to logistics, the day of the trial, um, and
5 this is the case with all jury trials in my Court any
6 way, they are going to be referred to as, the jurors
7 will be referred to as numbers. Everyone, all the
8 jurors will have and prospective jurors and all will
9 have placards around their neck that they'll have
10 their number. So I'm going to order that the parties
11 refer to those jurors by their number. There will be
12 asking of names or addresses or phone numbers
13 during voir dire or frankly anytime during the trial.
14 If there comes up an issue in either party, whether
15 the State or the Defendant can show a good cause
16 why an individual's identity needs to be revealed to
17 the parties, we'll deal with that on a case by case
18 basis and if that is, if sufficient evidence is shown
19 that that would be necessary, then we'll deal with
20 that. I don't know if we'll get all the other jurors
21 out or have a in chambers conference to question
22 that juror or whatever but the Defendant or the State
23 for that matter would have right if there's good
24 cause to show why a particular jurors name needs to
25 be revealed. We can take precautions and do that.

1 Um, the Defendant had previously filed a Motion in
2 Limine; file marked back on September 6th. Does
3 the State have any objection to that Motion in
4 Limine?
5 MR. NEGANGARD: No your honor.
6 COURT: Okay. The State filed their Motion in Limine, file
7 marked September 19th of this year. Is there any
8 response to that, Mr. Barrett?
9 MR. BARRETT: There's no objection to it at this point your honor.
10 COURT: The final, well actually not the final issue; I have
11 sent out some proposed preliminary and final
12 instructions. Obviously it's a little premature on the
13 final instructions but as far as the preliminary were
14 there any known issues with that and again I'm not
15 going to prohibit from adding any if they want to, if
16 what we find out anything in voir dire if you want to
17 add a preliminary instruction but any issue that we
18 know of with the proposed preliminaries at this
19 point from the State's perspective, Mr. Negangard?
20 MR. NEGANGARD: No your honor.
21 COURT: Mr. Barrett?
22 MR. BARRETT: No your honor.
23 COURT: Okay and I think we do have an electronic copy of
24 those here so if we do need to make some changes,
25 we ought to be able to do that in short order. Um,

1 the Court anticipates summoning eighty (80) jurors
2 based on the number and what I've been told about
3 the Courtroom and our capacities, I'm intending to
4 call forty (40) jurors to be here first thing in the
5 morning and then we'll begin voir dire and then in
6 the summons we'll have the subsequent forty (40),
7 probably appear somewhere around 12:30, 1:00
8 p.m. and we'll have a second batch if we need to get
9 into the second forty (40) to get our jury. Is there
10 any issue or objection to that process Mr.
11 Negangard?
12 MR. NEGANGARD: No your honor.
13 COURT: Mr. Barrett?
14 MR. BARRETT: No your honor.
15 COURT: Alright um, any other issues which need to be
16 addressed today from the State's prospective Mr.
17 Negangard?
18 MR. NEGANGARD: No your honor.
19 COURT: Mr. Barrett?
20 MR. BARRETT: My client wishes to address the Court your honor.
21 COURT: Go ahead Mr. Brewington.
22 MR. BREWINGTON: Uh, I've prepared just a statement. I've been
23 incarcerated in DCLEC, the Dearborn County Law
24 Enforcement Center for over six (6) months and I
25 have yet to receive the following from either of my

1 public defenders. I have absolutely no explanation
2 of the alleged crimes leading to the charges against
3 me including dates, specific incidents, etc. I've
4 haven't had any meeting to discuss trial preparation.
5 I've only met with Mr. Barrett and John Watson for
6 a combined total of less than two (2) hours. I
7 haven't been provided with any evidence from a
8 public defender. The only evidence that I've
9 gathered has been given to me by my family. Uh,
10 there has been no approach, no effort to approach
11 me about potential evidence and witnesses to aid in
12 my defense. Mr. Barrett has refused to contact my
13 mother to obtain such information even after my
14 mother volunteered to hand deliver beneficial
15 evidence. Mr. Barrett has also failed to provide me
16 with any of the prosecution's evidence submitted
17 during the Court. I understand today that you just
18 ruled on the Grand Jury evidence but I don't have
19 any of the exhibits that have been, any of the other
20 exhibits that have been submitted during Court. Uh,
21 to my knowledge, Mr. Barrett has not attempted to
22 obtain any information concerning Keith Jones.
23 That's the man who made the allegation that I
24 somehow uh, approached him to cause harm to one
25 of the uh, allegedly cause harm to one of the

1 witnesses in this case. Uh, there's quite a bit of
2 information about him that was obtained in
3 Columbus, Ohio in the capital. You know most of
4 this information involves first amendment rights. I
5 have no idea if there has been a first amendment
6 expert that was subpoenaed. There hasn't been any,
7 to my knowledge, there's been no subpoena from
8 mental health expert to refute any of the findings of
9 Dr. Connor which has been, the prosecution used
10 the phrase that I have a psychological disturbance
11 that doesn't lend itself well to proper parenting a
12 number of times but haven't been, you know, to my
13 knowledge, there's no way to even refute, there's
14 going to be no way to refute that because there is
15 not expert. Also my defense has failed to subpoena
16 Dr. Connor's case file from the August 29, 2009, or
17 2007 child custody evaluation which is where Dr.
18 Connor's findings are derived from. Uh, to my
19 knowledge, there's been absolutely no depositions
20 from the State's witnesses or any of the alleged
21 victims. Uh, my public defender has failed to file
22 any motions to help preserve appealable issues
23 including but not limited to Motion to Dismiss due
24 to constitutional defective indictment, motion for a
25 special prosecutor, motions to suppress evidence as

1 the prosecution obtained my records from a
2 psychologist without my knowledge and without a
3 hearing per Indiana law and these are just some of
4 the problems that jeopardize my right to a fair trial
5 on October 3, 2011. I still haven't, I don't, I haven't
6 received any indication of any strategy from my
7 defense. I just want to address these issues with the
8 Court in the hopes of at least preserving some of my
9 civil rights and I can submit this to the Court is, uh,
10 these are just issues that I want on the record. I
11 have absolutely no idea of the direction my defense
12 is going...
13 COURT: Okay, what relief are you asking for?
14 MR. BREWINGTON: Uh, the biggest thing is to continue the hearing
15 because there's absolutely no way uh, some of the
16 charges, some of the alleged charges date back for
17 over four (4) years and uh, I have no idea of any
18 specifics, anything like that. I haven't been able to
19 speak to my public defender about these issues or
20 when these uh, when these things happened, any
21 kind of information from me, explanations, there's
22 uh, the prosecution submitted one thousand three
23 hundred sixty-eight (1,368) pages of discovery
24 answers and I have yet to go through that, any of
25 that or speak about any of that with my public

1 defender and also uh, the public defender, to my
2 knowledge, didn't make any attempt to get that
3 from the prosecution until uh, roughly August 2nd.
4 Mr. Watson, my former public defender, told the
5 Court that he would make every effort to get them
6 to Mr. Barrett but Mr. Watson failed to do that and
7 uh, and not I'm just, you know, I've been diligent in
8 organizing, organizing, uh, and documenting things
9 and I mean as you can see, I bring all of this
10 information to Court, yet uh, I haven't, I've been
11 prohibited from playing any role in my defense and
12 so that's, that's the key issue is that, in two (2)
13 weeks, especially with me just being allowed to
14 review the Grand Jury transcripts, there's no way to
15 properly prepare for the case or if the case, if my
16 defense has been properly prepared, I have no way
17 of knowing it because uh, there's been very little to
18 no communication between Mr. Barrett and myself.
19 So that's my main concern is just uh, to my
20 knowledge, I have absolutely no defense or I do not
21 know what the defense is.
22 COURT: So after that, your relief you're requesting a
23 continuance of the jury trial?
24 MR. BREWINGTON: Continue the jury trial until a date where I can, until
25 I have a date where to meet with you know, Mr.

1 Barrett or if Mr. Barrett's not interested in meeting
2 with me and preparing a defense and asking me if
3 there's any witnesses or any evidence that I may
4 have with another public defender. Essentially it
5 almost has to be an indefinite thing because I have
6 no idea what the Grand Jury transcripts consist of
7 and the evidence and without knowing that, I
8 wouldn't have any idea of what kind of evidence or
9 documentation needs to be provided or witnesses
10 that need to be called and so forth.
11 COURT: I thought when we were here last you were
12 complaining the trial hadn't happened yet. Am I
13 inaccurate in my...
14 MR. BREWINGTON: Excuse, I didn't...
15 COURT: I mean, I thought you had an issue last time because
16 your trial date kept getting continued for these
17 reasons and you were ready to get it started.
18 MR. BREWINGTON: Well that was under the assumption that there was
19 something, that there was a, there was a defense
20 being prepared and there, uh, uh, Mr. Barrett, when
21 Mr. Barrett, uh, was attending to a family issue, his
22 assistant, Justin Curry, left him in charge of
23 preparing my defense which I'm not sure that Justin
24 Curry is an attorney.
25 COURT: Justin Curry is not here. He's not representing your

1 or whoever his assistant, so.

2 MR. BREWINGTON: Yell, well okay, yes, Justin Curry...

3 COURT: Just because he may have fielded some phone calls

4 when Mr. Barrett was out of the office, doesn't

5 mean that he was preparing your defense I don't

6 think but...

7 MR. BREWINGTON: ...oh, okay, well he was just, he was giving legal

8 advice uh, I have evidence of that in here in an e-

9 mail, uh, but he informed uh, me and my family that

10 the trial would be ready to happen on August 16th

11 and uh since then, I haven't seen any evidence, there

12 just has been absolutely no discussion about uh, my

13 defense.

14 COURT: Okay. Does the State have a position, Mr.

15 Negangard?

16 MR. NEGANGARD: Your honor, um, the issue before was that the jury

17 trial was being continued because Mr. Barrett hadn't

18 had time to prepare a defense because he had only

19 been on the case a month and he was dealing with

20 some very important family issues. It is my

21 understanding that the Defendant objected to any

22 continuance at that time, um, and in the interest of

23 fairness and ensuring that Mr. Brewington got a

24 defense, um, a fair defense, the Court continued this

25 based on an emergency, found there was an

1 emergency and then continued the jury trial to this
2 setting. Defense wasn't concerned; I just don't
3 know that Mr. Brewington is being honest with the
4 Court. He wasn't concerned in August of this
5 month that his attorney had not had time to prepare
6 a defense. Now in October, now in September
7 where we are two (2) weeks from the jury trial, now
8 he's um mad that his attorney hasn't talked to him
9 enough as far as I can tell. Um, if the Defendant
10 wants a continuance, um, you know, I'm not going
11 to take a position one way or the other with regard
12 to that. I'm anxious and looking forward to trying
13 this case on October 3rd. We're ready on October
14 3rd. However, you know, whatever the Court deems
15 appropriate to address these issues raised by the
16 Defendant, but I also want to put on the record that
17 Mr. Brewington's integrity is at issue here and I
18 don't see that you know, just based on the
19 inconsistencies of what he had been complaining to
20 the Court before to and then now he's complaining,
21 it seems to me that the motivation is more about
22 um, complaining and seeing any way to keep this
23 case from a resolution than really getting a
24 resolution, almost like he's trying to sabotage his
25 own case. He's comfortable in August going

1		forward with the trial even though his defense
2		attorney hasn't had an opportunity to review one
3		document or anything else based on a family
4		emergency and then now today um, he wants more
5		time for his defense attorney to talk and meet with
6		him. Um, so you know, I do want to get that noted
7		for the record but as far as if the Defendant wants a
8		continuance so he can meet with his counsel further
9		and the Court feels that's appropriate, I don't have
10		any objection to that.
11	MR. BREWINGTON:	If I may your honor?
12	COURT:	Go ahead.
13	MR. BREWINGTON:	In terms of Mr. Negangard's attempt to character
14		assassination on my integrity, the DCL...
15	COURT:	Nothing he says is evidence.
16	MR. BREWINGTON:	DCLEC records, phone records, which they've been
17		checking periodically and the visitation records,
18		both document that I have had little to no contact
19		with Mr. Barrett so in terms of uh, uh, and like the
20		allegation that I'm not being...
21	COURT:	The point is though you were wanting trial a month
22		ago.
23	MR. BREWINGTON:	Well also, there was another...
24	COURT:	....you didn't bring this up then. You were actually
25		pushing...

1 MR. BREWINGTON: ...well there was uh, well there was another...

2 COURT: ...you were affirmatively pushing for trial.

3 MR. BREWINGTON: ...issue of preserving my right to uh, uh, being tried
4 within six (6) months and that was weighed, you
5 know, over something that I weighed against uh,
6 you know proper defense which Mr. Curry ensured
7 me that was going to be available. Since then uh,
8 since then, my right has been inadvertently waived
9 and also I became more conscious that...

10 COURT: ...it wasn't waived; it was postponed. The rule
11 required me to reset it as soon as reasonably
12 possible.

13 MR. BREWINGTON: Yell, yell...

14 COURT: ...and I've done that.

15 MR. BREWINGTON: ...yes, yes, I understand that but my concerns are
16 that I've had absolutely no uh, participation in the
17 defense that includes not knowing what the Grand
18 Jury transcripts say and evidence consists of but
19 we're talking about two thousand (2,000)
20 documents that I haven't had an opportunity to go
21 over it with, with my lawyer and that uh, that raises
22 a big issue with me and that's one of the major,
23 major issues. Also I have no idea if there's been
24 any subpoenas, uh, witnesses, uh, witnesses to
25 testify, what have you and I still do not know an

1 exact, any specifics as to the crimes that I allegedly
2 committed that constitute the charges that have been
3 filed against me.
4 COURT: Okay. Based on what's happened so far since I've
5 been involved in this case, I'm going to deny your
6 motion for continuance. We've got two (2) weeks
7 until trial. Based on my understanding of things,
8 there isn't anything that the State's going to offer
9 that's not going to be available to you by the end of
10 this afternoon. So you've got two (2) weeks to
11 confer with counsel and we'll get started with the
12 jury trial on October 3rd at 9:00 a.m. Anything else
13 Mr. Negangard?
14 MR. NEGANGARD: No your honor.
15 COURT: Mr. Barrett?
16 MR. BARRETT: No your honor.
17 COURT: Alright, that's all for today.
18 MR. NEGANGARD: Thank you, your honor.
19 MR. BARRETT: Thank you, your honor.
20 MR. BREWINGTON: I'm sorry, your honor. Could I submit this?
21 MR. BARRETT: He would like to submit as part of the record your
22 honor.
23 MR. BREWINGTON: I want to make that part of the record – the uh, uh,
24 letter.
25 MR. BARRETT: I believe it was what he just read to you. Is it what

1 you just read?

2 MR. BREWINGTON: Yes, yes, I was wanting to make that part of the

3 record.

4 COURT: Does the State have a position on that?

5 MR. NEGANGARD: No objection.

6 COURT: We'll show Defendant's, we'll go with A, we'll

7 show that offered and admitted.

Exhibit C

IN THE

INDIANA COURT OF APPEALS

APPELLATE NO. 15A01-1110-CR-00550

DANIEL BREWINGTON	)	APPEAL FROM THE DEARBORN
	)	
APPELLANT/PARTY BELOW	)	SUPERIOR COURT II
	)	
VS.	)	TRIAL COURT CASE NO.
	)	15D02-1103-FD-0084
	)	
STATE OF INDIANA,	)	BEFORE THE HONORABLE
APPELLEE/PARTY BELOW	)	BRIAN HILL, SPECIAL JUDGE

TRANSCRIPT OF JURY TRIAL

VOLUME I OF III

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3

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8 AND

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16

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21

22

23

24

25

1 **DANIEL BREWINGTON – JURY TRIAL – OCTOBER 3, 2011**

2 COURT: (Outside the presence of the jury) We are here in
3 case number 15D02-1103-FD-84, the State of
4 Indiana vs. Daniel Brewington. Let the record
5 reflect that the State appears by Prosecuting
6 Attorney, Aaron Negangard and the Defendant
7 appears in person and by counsel, Bryan Barrett and
8 this matter is scheduled for jury trial this morning
9 and about twenty (20) or thirty (30) minutes ago I
10 received a file marked Motion to Dismiss, Motion
11 to Disqualify F. Aaron Negangard and appoint
12 Special Prosecutor and Motion to Dismiss for
13 Ineffective Assistive of Counsel. Those are pro se
14 motions filed by the Defendant. Mr. Brewington,
15 you have legal counsel and I'm not inclined to
16 contemplate pro se motions. I guess, what's your
17 uh, what are you going for here? You've got
18 counsel to represent you to give you legal advice
19 and make these filings. Are you're uh, indicating to
20 me that you're wanting to represent yourself or do
21 you want to clarify that for me please?

22 MR. BREWINGTON: No your honor. Uh, I just, Mr. Barrett hasn't met
23 with me since July, I believe the 17th of this year. I
24 don't have any idea of the direction of my case other
25 than what was just explained to me just in the past

1 few minutes before things got settled here. I still
2 don't have some of the evidence. I don't have
3 copies of the Grand Jury evidence. There's
4 documents from Detective Kreinhop's investigation
5 that are not included. There's transcripts that uh,
6 that he said would be included in his investigation
7 that were not included in discovery and I've never
8 been able to obtain that information and Mr. Barrett
9 has not communicated with me about that stuff and
10 I just don't know the direction of my defense and he
11 hasn't been able to meet with me, tell me anything,
12 explain to me anything. I also do not have my
13 medication. I take Ritalin for attention deficit
14 disorder. It's been an issue of the defense. It's been
15 brought up multiple times in the grand jury
16 transcripts and without that I don't even have the
17 ability to concentrate as hard. I have difficulties
18 reading and that sort and Mr. Barrett waived my
19 right to bring that up at trial as he made no objection
20 to the motion in limine which I did not realize that a
21 motion in limine had uh, was requesting the court to
22 prohibit any discussion about medication that was
23 given to me while I was incarcerated in DCLEC. So
24 I have absolutely no idea what's going on in my
25 case. I tried, everything that has been provided here

1 except for the grand jury transcripts which I didn't
2 even receive until Friday, October 23rd I believe or
3 September 23rd.
4 COURT: Okay, I've listened for about three (3) or four (4)
5 minutes I think uh by filing this, tells me you don't
6 want counsel. You're filing motions by yourself.
7 So you're ready to go…
8 MR. BREWINGTON: No, no, no, I want confident counsel. I want to
9 know what's going on. I can't and even if I were to
10 make a decision to do it on my own, I don't have, I
11 haven't been given the medication that I need that is
12 prescribed by a doctor to do this sort of stuff, I mean
13 to read, to process, to question and everything like
14 that. I just, I would have raised the issue earlier
15 except Mr. Barrett at the September 19th hearing,
16 said that he would be in to discuss the case with me
17 and he never appeared. He said the same thing at
18 the hearing before that. He said that he would be in
19 to see me and he never appeared. He said over the
20 phone that he would be in to see me when he had
21 the chance and he never appeared. So I haven't had
22 the opportunity to have effective counsel. It's not
23 that I want to do it on my own. It was a last resort
24 effort.
25 COURT: Okay that was the answer to my question. Uh, Mr.

1 Barrett, are you ready to proceed with this case
2 today?
3 MR. BARRETT: Yes your honor.
4 COURT: And is the State ready to proceed?
5 MR. NEGANGARD: Yes your honor.
6 COURT: Alright, then as I stated in opening the hearing, I'm
7 going to find the pro se motions filed on this
8 morning's date are denied. Um, and I think we're
9 ready to bring in jury then. (Voir dire not
10 transcribed)
11 COURT: (outside the presence of the jury). We're on case
12 #15D02-1103-FD-84, the State of Indiana versus
13 Daniel Brewington. The State appears by
14 Prosecuting Attorney, Mr. Negangard and the
15 Defendant appears in person and by counsel and the
16 jury is not present and I believe the next step would
17 be the instructions for the jury. Do the parties have
18 any uh, there was some proposed preliminary
19 instructions supplied to the parties by the Court.
20 Are there any objections or additions to any of those
21 instructions Mr. Negangard?
22 MR. NEGANGARD: Your honor, uh, on regards to Count I and I had
23 mentioned this, we had prepared and filed relatively
24 early on in this case an amended Count I which
25 added the language, after with intent that Dr.

1 On the other hand there are very few things in this
2 world that we know with absolute certainty. The
3 State does not have to overcome every doubt. The
4 State must prove each element of the crimes by
5 evidence that firmly convinces you and leaves no
6 reasonable doubt. The proof must be so convincing
7 that you can rely and act upon it in this matter of the
8 highest importance. And that's what I was trying to,
9 not very heartfully earlier, this instruction, I've been
10 doing this a long time as you might guess on both
11 sides and this instruction used to be different and it
12 talked about a matter of the highest importance to
13 you and the Supreme Court changed that rule later
14 and I didn't like that. I liked the old instruction
15 better but this is what we have to work with. If you
16 find there is a reasonable doubt that the Defendant
17 is guilty of the crimes, you must give the Defendant
18 the benefit of the doubt and find the Defendant not
19 guilty of the crime under consideration. That's the
20 law ladies and gentlemen. You don't have to like it
21 but it is the law. This case comes down to Mr.
22 Brewington's intent and whether that intent was to
23 retaliate with regards to Counts I through IV; it's
24 that simple I would submit to you - not whether you
25 like him. <u>Count V is perjury alleging that Mr.</u>

1 Brewington who voluntarily testified before the
2 Grand Jury perjured himself, lied, under oath and as
3 near as I can tell what they're referring to is the
4 address issue with the Humphrey's. And I had the
5 Sheriff yesterday, yell yesterday, read a portion of
6 that um transcript from that Grand Jury and I
7 believe the portion I had him read was Mr.
8 Negangard's question and it said James Humphrey
9 who happens to be the name of your Judge and
10 you're under oath and you're actually expecting the
11 Grand Jurors to believe that you didn't know that
12 that was his wife. And the exchanges about
13 whether the Defendant knew Ms. Humphrey was
14 Judge Humphrey's wife and Dan's response is, oh,
15 it very well could be a possibility. I'm not from
16 Dearborn County. I don't know but the and then he
17 was cut off. But apparently their contention is that
18 he lied about how whether he knew that Mrs.
19 Humphrey, Heidi Humphrey, was Judge
20 Humphrey's wife as near as I can tell. That's the
21 contention. Now Mr. Brewington, the evidence was
22 from the Sheriff, I believe again, to his knowledge
23 anyway and during the course of his investigation,
24 did not live in Dearborn County and his only
25 connection to Dearborn County was that in fact his

1		contact. Do you understand that?
2	MR. BREWINGTON:	Yes.
3	MR. BARRETT:	Of any person, um, that the Court would designate
4		and that would include phone contacts, internet and
5		any kind of modern communication, if you will?
6	MR. BREWINGTON:	Yes.
7	MR. BARRETT:	And you would abide by those rules?
8	MR. BREWINGTON:	Yes.
9	MR. BARRETT:	Should you be released on bond, Mr. Brewington,
10		what are your plans besides going to the address that
11		you gave us in Ohio? Would you be looking for
12		work or what would you be doing sir?
13	MR. BREWINGTON:	Uh, yes, I would be looking for work as well as
14		working on preparing for this case. There's a
15		tremendous amount of information that I don't have
16		access to especially since the majority of this, or
17		basically all of this deals with uh, internet writings,
18		IP address, things of that sort. There's a tremendous
19		amount of information on my laptop computer that I
20		just can't obviously access from here and a lot of
21		knowledge that many people don't or are aware of in
22		terms of having to subpoena IP addresses and things
23		of that nature that uh, I would be working on as well.
24		So your plan, is it fair to say Mr. Brewington, your
25	MR. BARRETT:	

1		plan, should you be released from custody on this
2		matter, would be um, to seek employment and also
3		work on or prepare for the jury trial that you
4		anticipate having in this matter. Is that correct?
5	MR. BREWINGTON:	Correct, yes, and the main thing I'm concerned
6		about is just clearing my name of this and you
7		know, preparing for Court and preparing for my
8		appearance in Court.
9	MR. BARRETT:	And you can assure Judge Hill that you would
10		appear for any other hearings that he would set in
11		this matter?
12	MR. BREWINGTON:	Yes, and I have documented that on many of my
13		internet writings that I would be sure to appear at
14		any court hearing involving any of these matters.
15	MR. BARRETT:	So you are today asking that the Court reduce your
16		bond in this matter. Is that correct?
17	MR. BREWINGTON:	Yes I am.
18	MR. BARRETT:	And as I understood your testimony, you're asking
19		that the bond be reduced to somewhere around ten
20		thousand dollars ($10,000.00), either ten percent
21		(10%) cash allowed or surety. Is that correct?
22	MR. BREWINGTON:	Uh, most preferably not surety. Uh, just, well
23		Indiana doesn't do the ten percent (10%) down, uh,
24		mainly just a thousand dollars ($1,000.00) cash.
25	MR. BARRETT:	That's what you can post?