

1 APPEARANCES

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4 ON BEHALF OF THE STATE:

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6 BRIAN JOHNSON

7 DEPUTY PROSECUTING ATTORNEY

8 AND

9 JOSEPH KISOR

10 CHIEF DEPUTY PROSECUTING ATTORNEY

11 215 WEST HIGH STREET

12 LAWRENCEBURG, IN 47025

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15 ON BEHALF OF THE DEFENDANT:

16 JOHN WATSON

17 P. O. BOX 430

18 SUNMAN, IN 47041

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1 **DANIEL BREWINGTON – HEARING – JUNE 17, 2011**

2 JUDGE: Let the record reflect the State appears by Deputy
3 Prosecuting Attorneys, Joe Kisor and Brian
4 Johnson. Let the record reflect the Defendant
5 appears in person and by counsel, John Watson, and
6 this matter was set today for a hearing on Defense
7 counsel's Motion to Withdraw citing an appearance
8 of impropriety in this case and Mr. Watson, do you
9 wish to make any statements just in support of that
10 motion at this time?

11 MR. WATSON: Yes your honor, I want to just make a record of
12 where we stand on it and what my concern is and
13 also mention to your honor that there are some other
14 pending motions I know the Court's aware of.
15 Essentially Judge, my concern is this: I believe I
16 could zealously represent this client, um, and but I
17 have a concern because of the nature of the case
18 after reading all the discovery and also talking to
19 Mr. Brewington prior to this. I do appear on a
20 regular basis in front of Judge Humphrey. I don't
21 have a pending major felony now that I'm aware of
22 but during the pendency of this case I've had a
23 pending major felony in this courtroom and I do
24 have a pending major probation violation and
25 divorces and I regularly do appear in here. It seems

1 to me that to properly defend the client it would be
2 necessary to take Judge Humphrey's deposition and
3 that of his wife as well who is listed as a witness in
4 this cause. I think that given the fact that I do
5 appear both as a paid and as a public funds counsel
6 in this courtroom on a regular basis, it creates the
7 appearance at least of an impropriety that could sort
8 of cast (indiscernible) in these proceedings. Mr.
9 Brewington has been in the past and so with me but
10 Mr. Brewington in the past has been concerned
11 about those kinds of issues and inter-relationship
12 among county officials in this county, particularly
13 related to the Judge's office and other county
14 officials. So it's a concern and I believe it does at
15 least on the face of it have an appearance of
16 impropriety that could get in the way of the proper
17 prosecution and defense of the case. I wanted to put
18 it in front of the Court at this time. Actually I filed
19 it back in May and your honor just took jurisdiction
20 recently.

21 COURT: Does the State have any position on the motion to
22 withdraw?

23 MR. KISOR: We do not.

24 MR. WATSON: Your honor and I think Mr. Brewington has asked if
25 he could be heard on this matter and I talked to him

1 about and I don't know whether he agrees or
2 disagrees. I think, he told me prior to the hearing
3 that he's got various concerns about conflicts so I
4 don't know how your honor wants to handle it.
5 COURT: Sir, do you wish to make some statements?
6 MR. BREWINGTON: Yes your honor.
7 COURT: Would you please raise your right hand? Do you
8 swear or affirm under the penalties for perjury that
9 the testimony you are about to give is the truth, the
10 whole truth, and nothing but the truth?
11 MR. BREWINGTON: Yes.
12 COURT: Okay, please state your full true name.
13 MR. BREWINGTON: Daniel Paul Brewington.
14 COURT: Alright, now you may make your statements at this
15 time.
16 MR. BREWINGTON: Uh, my concern at this point is that there's going to
17 be more conflicts in this case. I've been
18 incarcerated in the Dearborn County Law
19 Enforcement Center now for three (3) months and I
20 haven't had a pre-trial even, uh, the, Judge
21 Blankenship recused herself because she stated that
22 no, may I see my notes?
23 COURT: If you wish.
24 MR. BREWINGTON: Uh, she recused herself because she stated that no
25 Dearborn County judicial officer could hear it.

1 Judge Westhaver recused himself because he could
2 not, or because he had a personal relationship with
3 Judge Humphrey and then Mr. Watson is suggesting
4 his withdrawal because of similar uh, uh, conflicts
5 and I just had to bring into question the Dearborn
6 County prosecutor's office, uh, having the same
7 conflict. The uh, uh, Dearborn County Prosecutor,
8 F. Aaron Negangard has a political relationship, uh,
9 has a professional, professional relationship as he
10 hears cases in this courtroom or he tries cases in this
11 courtroom in front of Judge Humphrey, of being,
12 uh, having administrative control over the whole
13 prosecutor's office that would trickle down to the
14 whole prosecutor's office.

15 COURT: Well I'm not going to hear a request on that. If
16 that's the case, we have to get an out of county
17 Judge for every criminal filing in the filing.

18 MR. BREWINGTON: Yes, yes.

19 COURT: Because we're dealing with the prosecutor's office
20 on a daily basis.

21 MR. BREWINGTON: Well yell.

22 COURT: So if you have something like that you want to put
23 that in writing and back that up with some case law,
24 then I would be willing to hear that at a later date.
25 I'm not going to hear that today.

1 MR. BREWINGTON: Alright. Okay, uh, then another concern is that uh, I
2 have a, there's federal issues at hand here with
3 freedom of speech, things like that. I don't contest
4 that I wasn't the author of the publications on
5 websites, so forth, but at this point, uh, the
6 Dearborn County Law Enforcement Center has
7 refused, refused me access to my Ohio attorney who
8 is currently working on a civil federal suit.

9 COURT: That's what I want to get to. That's what I want to
10 hear from you today is your representation.

11 MR. BREWINGTON: Yell.

12 COURT: I'm presuming you're wishing that you be
13 represented by counsel in this case.

14 MR. BREWINGTON: Yes, yes.

15 COURT: Alright now are you going to be hiring your own
16 counsel or do you want to continue to have the
17 services of a public defender?

18 MR. BREWINGTON: At this point I haven't been able to find any lawyer
19 or public defender who wants to get involved with
20 the case because a lot of the information has to do
21 with the Supreme Court, uh, one person named as a
22 Defendant, or I'm sorry as a victim is a member of
23 the Ethics and Professional Committee under the
24 Supreme Court so we're going to have issues where
25 uh, depositions will have to be taken, maybe a

1 subpoena uh, meeting minutes, other information
2 that I've listed, uh, there's critical statements about
3 the Indiana Supreme Court, IP addresses that
4 appeared on my websites during my appeal and so
5 we subpoenaed that information, it's going to be
6 direct...

7 COURT: So sir again, you...

8 MR. BREWINGTON: Yell, I'm sorry.

9 COURT: Do you wish to have services of a public defender's
10 office then because there's and I just had a brief
11 conference with the attorneys before and you
12 mentioned this attorney from Ohio, uh, it's not a
13 matter of you know, picking and choosing and
14 we're going to have who, is going to sit at counsel.
15 You're either going to hire your own attorney or
16 you're going to get appointed a public defender.
17 I'm going to be granting Mr. Watson's Motion to
18 Withdraw today.

19 MR. BREWINGTON: Yell.

20 COURT: If you're telling me you want to continue to have the
21 services of a public defender, I will immediately get
22 a public defender appointed to represent you. But
23 I'm not going to do that with this other question out
24 there, if you've got private counsel that's going to
25 be entering an appearance, we can get that resolved

1 today. So...

2 MR. BREWINGTON: Well...

3 COURT: ...I guess my question is, what's it going to be?

4 MR. BREWINGTON: Well I'm sorry. Well the private was uh, and Mr.
5 Watson was aware of this also, was offering his
6 services pro bono to go pro hac vice to assist in any
7 way possible. It's not a matter of getting him over
8 here to represent me. That wasn't the issue. Uh,
9 one of the things that uh, I'm not granted attorney,
10 client access and I was respectfully, I respectfully
11 move this court to permit that, for that to be, me to
12 have the ability to speak with Mr. Robert G. Kelly
13 at the DCLEC to have a regular attorney visit so he
14 can assist.

15 COURT: Is Robert Kelly this attorney from Ohio?

16 MR. BREWINGTON: Yell, yell, from Norwood, Ohio, yes sir.

17 COURT: Okay, well I'm not going to treat him any
18 differently than I would anybody else...

19 MR. BREWINGTON: ...no, no, I'm not asking that.

20 COURT: ...than the public that has a right to speak to you.

21 MR. BREWINGTON: Mr. Kelly's never had a problem visiting clients
22 from you know, out of State in Dearborn County
23 until this particular case and it seems that they, they
24 changed the rules of the attorney client visitation
25 when my case came about, uh, so.

1 COURT: Well he's not your attorney in this case.

2 MR. BREWINGTON: Uh, no, but.

3 COURT: If he wants to, if you want to hire your own counsel
4 and he enters an appearance and you can get local
5 counsel to follow along with that, that's a different
6 story but as long as you've got the office of the
7 public defender to represent you, he does not
8 represent you and I quite frankly, I'm not going to
9 tell the jail who you cannot see. I mean that's their
10 policy.

11 MR. BREWINGTON: Okay, alright, uh, and uh, then there was another
12 issue on the medication. I take Ritalin for attention
13 deficit disorder and uh, the jail has prevented me
14 from taking it. That's one of the reasons why I
15 stutter a little bit more. I've been taking it for nine
16 (9) years. I have a note from my doctor explaining
17 that, uh, they are currently in possession of the
18 prescription in the DCLEC right now and they are
19 not giving me proper doses and stuff like that and
20 it's making me, it's making it hard to digest
21 information, read information, uh, what have you.
22 I'm not asking anything above and beyond. It's not
23 a matter of getting it into the DCLEC because they
24 said that I could take it on a limited basis, not as
25 prescribed by my doctor but I would just ask that

1 they do, that they do administer my medication as
2 prescribed because like I said, this is an incredible
3 amount of information to go through and have to
4 concentrate on and get it to, and forward it back and
5 forth to attorneys and what forth, so uh, if it's
6 possible if the Court could compel the jail to
7 administer that medication. I could hand you the, I
8 could submit the letter from my doctor if that
9 would, if it would please the Court.

10 COURT: Quite frankly, I'm not interested in dealing with
11 medication at this hearing.

12 MR. BREWINGTON: Alright, that's fine.

13 COURT: Okay, I'm interested in getting you counsel so you
14 can address all these issues.

15 MR. BREWINGTON: Yell.

16 COURT: Alright, that's the purpose of today's hearing. Is
17 there anything else on the issue of an attorney to
18 represent you?

19 MR. BREWINGTON: No.

20 COURT: Okay. Uh, therefore, I'm going to grant, Mr.
21 Watson, your Motion to Withdraw in this matter,
22 uh, the only thing I would ask from you is maybe
23 cooperate with new counsel and I'm going to do
24 that as soon as possible and is it alright to have
25 them get in touch with you?

1 MR. WATSON: Absolutely, your honor, I have the entire discovery
2 organized into the exhibits.

3 COURT: Okay.

4 MR. WATSON: And it's ready to be handed over so that he can hit
5 the ground running. I've got every exhibit.

6 COURT: So I will continue to appoint the office of the public
7 defender and I've got some folks in mind that are
8 going to be outside of this county so we can
9 hopefully avoid any potential conflicts in the future
10 so we can go forward with this case. Um, also,
11 that's why I've held off on the Motion to Reduce
12 Bond, uh, and I'm setting that for a hearing at this
13 time. We had some hearing dates, this will give you
14 time to speak with your counsel to prepare, uh.

15 MR. WATSON: Your honor, if I may just state one thing.

16 COURT: Yes sir.

17 MR. WATSON: Mr. Brewington pointed out to me yesterday and I
18 had not seen it, but I did have a typographical error
19 on the bond motion. What I had done was, is I had
20 captioned it properly and listed his defenses but I
21 had left an offense, I mean obviously as we all
22 know, these bond reduction motions typically are
23 staples and I had left an offense, a C felony offense,
24 he's not charged with. Mr. Brewington is
25 concerned about that and has indicated a desire to

1 withdraw that motion. I would like to, offer to say
2 for the record that that was a typographical error
3 that I made and I would be concerned that if he
4 would withdraw the motion you might lose the
5 court date that the Judge is getting ready to give you
6 and your new counsel I'm sure, could amend that
7 and take that out.

8 COURT: Is that the battery with a deadly weapon mentioned
9 in paragraph 1?

10 MR. WATSON: It should not have been your honor.

11 COURT: Okay.

12 MR. KISOR: The State would not object to that being amended at
13 this time and being stricken from the motion, your
14 honor.

15 COURT: I'll strike battery with a deadly weapon as a Class C
16 felony from paragraph 1 immediately.

17 MR. WATSON: In the first paragraph I had another name up there. I
18 mean when we transpose it over on our bond
19 motion, somebody didn't take his name out.

20 COURT: I'll write (indiscernible), okay. Obviously no
21 objection from the State in amending the name.

22 MR. KISOR: No objection. Thank you, no objection.

23 MR. WATSON: I appreciate it your honor and I apologize for the
24 error.

25 COURT: Um, as far as the date, I'm going to combine the

1 hearing on that application for bond reduction, uh,
2 that's going to be heard on July 18th at 1:30 in the
3 afternoon. Following the decision on that bond
4 reduction which I anticipate making on that
5 afternoon after hearing evidence and argument, I
6 anticipate holding a final pre-trial conference at that
7 time, so we can determine where we are as to the
8 jury setting which right now is going to be August
9 16th, commencing at 8:30. So we've got a bond
10 reduction/final pre-trial conference July 18, 2011, at
11 1:30 and a jury trial setting of August 16, 2011, at
12 8:30. Uh, Mr. Brewington, as soon as I get counsel
13 to represent you, I'll notify them of those hearing
14 dates immediately and they will be in contact with
15 you to preparing for those things and just for your
16 information I treat those final pre-trial conferences
17 as a deadline, either to continue the jury trial or to
18 file a plea agreement or we're going to trial. Those
19 are typically the three (3) options. Anything after
20 that date would either be an open plea or a trial on
21 the 16th unless it was asked to be continued by
22 either party and then I would hear argument on that.
23 Is there anything else from the State in this case
24 today, Mr. Kisor?

25 MR. KISOR: No your honor, not at this time.

1 COURT: Anything and I understand you're not counsel Mr.
2 Watson at this time. Mr. Brewington, is there
3 anything else you wish to say today?
4 MR. BREWINGTON: No your honor.
5 COURT: Okay, uh, we'll be back on July 18th and hopefully
6 within a couple of days, I'll have new counsel
7 appointed to you and urge him to get down here as
8 soon as possible. Okay?
9 MR. BREWINGTON: Thank you.
10 COURT: Alright, that's all for today.
11 MR. KISOR: Thank you, your honor.
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