

1 MR. BARRETT: (inaudible). Do that outside the presence of the
2 jury? If I could have a moment to speak with my
3 client?
4 COURT: Well what I'm thinking about, what I was
5 anticipating and I'm open to suggestions also as far
6 as this publication goes, um, I got thinking about
7 how we did it yesterday and obviously if you object
8 then I'll think differently. But I don't know, if I
9 give them the admonishment that they are still not
10 to deliberate, I'm thinking if we can send these up
11 to them in the jury room and let them, they can have
12 an hour to take a look at them, that would give you
13 an opportunity to consult with your client. After the
14 State rests and then at the conclusion of the hour
15 then I guess I can check with them if they've been
16 able to at least see.
17 MR. NEGANGARD: I don't have any objection to that.
18 MR. BARRETT: (inaudible).
19 COURT: Sure.
20 MR. BARRETT: If we do that, (inaudible). Are you going to finish
21 everything today?
22 COURT: Well I guess it's going to depend on what, you
23 know what, and I'm not sure procedurally if we do
24 do that, if you talk to your client and if there's not
25 an objection to we send the jury away with the

1 exhibits to take a look at for an hour, um, at that
2 time, do you want to entertain your motion that you
3 may have up to the close. The State can rest. We
4 can publish and let them go up there and we can...

5 MR. NEGANGARD: I'll rest with the statement with the exception of the
6 publishing of the exhibits. I rest.

7 COURT: I think that's fair. Let's let him talk to his client
8 first so we know if we can even do that.

9 MR. BARRETT: Can we approach again?

10 COURT: Sure.

11 MR. BARRETT: We're fine with that as long as you admonish them.

12 COURT: Okay. Sure. We'll do that then.

13 MR. NEGANGARD: Your honor, at this time with the exception of the
14 State wishing that the exhibits be published for the
15 jury, um, as we've discussed, the State rests.

16 COURT: And Mr. Barrett, any objection to that publication?

17 MR. BARRETT: No objection to the publication your honor.

18 COURT: Okay. Here's what we're going to do. I'm going to,
19 as yesterday you had a little bit of time to look at
20 some of the exhibits. You're going to have those
21 same exhibits that were passed to you yesterday that
22 you might not have seen in their entirety plus the
23 exhibits that were entered into evidence on today's
24 date. I'm going to release you back to the jury room
25 to do that. There's no objection from either party to

1 do that, however by doing that, uh, you are still not
2 to deliberate. Okay, you can consider the evidence
3 as you're looking at it because this is not being sent
4 over to you to deliberate right now. The State has
5 just rested. We're going to publish the balance of
6 those, so during the times that you are out of the
7 courtroom you may discuss the case amongst
8 yourselves; however you are not to deliberate or
9 begin making decisions as to a verdict. Do not talk
10 to any of the parties, the attorneys or witnesses.
11 Should anyone attempt to talk to you about the trial,
12 you should refuse and report the attempt to me at
13 your first opportunity. There may be publicity and
14 various media concerning this trial. You should not
15 read or listen to those accounts but should confine
16 your attention to the court proceedings, listen
17 attentively to the evidence as it comes from the
18 witnesses and reach a verdict solely upon what you
19 hear and see in this court. You should keep an open
20 mind. You should not form or express an opinion
21 during the trial and should reach no conclusion
22 about the case until it is submitted to you for your
23 deliberation. So with that, maybe do we want to
24 have the jury go up and you can carry, I don't know
25 if you can carry all these things at once, or however

1 you want to do that. If the Court would please rise?
2 We're on the record on 15D02-0803-FD-84, State
3 of Indiana versus Daniel Brewington. The State
4 appears and the Defendant appears in person and by
5 counsel and the jury is not present at this time.
6 They've adjourned to the jury room and are viewing
7 several exhibits and documents that were presented.
8 It's come to my attention that the Defendant has a
9 motion. Mr. Barrett?
10 MR. BARRETT: Yes your honor, at the conclusion of the State's case
11 and evidence, at this time on behalf of Mr.
12 Brewington I would move for judgment on the
13 evidence pursuant to Indiana Trial Rule 50,
14 specifically with regard to Count I of the indictment
15 Intimidation, an A Misdemeanor, Count II of the
16 indictment for Intimidation of a Judge as a Class
17 D felony, Count III of the indictment, Intimidation
18 as a Class A Misdemeanor with regard to Ms.
19 Humphrey and the first count being with regard to
20 Dr. Connor. Judge we would move for judgment on
21 the evidence. We don't believe that the State's
22 carried its burden specifically with regard to its
23 requirement to prove beyond a reasonable doubt,
24 each element of the crime, specifically that the State
25 has not proven first or all, we don't believe that the

1 State's proven that there's been any threats but even
2 if the State has presented sufficient evidence to
3 allow the jury to determine that there were threats
4 made that additionally that there's not sufficient
5 evidence to show that those threats were made by
6 Mr. Brewington with the intent to place Dr. Connor
7 as to Count I in fear of retaliation. There is
8 evidence of numerous buggings as well as
9 proceedings or letters in the legal proceedings of
10 Mr. Brewington's divorce, um, but there's no
11 evidence specifically that there was an intent on Mr.
12 Brewington's part to retaliate against um, Dr.
13 Connor. Essentially the same argument with regard
14 to Count II, Intimidation of the Judge and Count III,
15 Intimidation of Ms. Humphrey, your honor, in other
16 words that even if the jury would find that there
17 were threatening communications or statement
18 made or placed out there by Mr. Brewington, that's
19 its incumbent upon the State beyond a reasonable
20 doubt to prove that those threats were made by Mr.
21 Brewington with the intent, in other words his intent
22 that those individuals be placed in retaliation for a
23 prior lawful act as described in the State's
24 information. We just don't believe there's evidence
25 to allow a reasonable jury, Judge, to find beyond a

1 reasonable doubt that Mr. Brewington's intent was
2 that as opposed to his intent to express his opinions
3 that are protected pursuant to the first amendment of
4 the United States Constitution and Article I, Section
5 9 of the Indiana Constitution on free speech. So
6 that is my argument and prayer with regard to
7 Counts I through III your honor. With regard to
8 Count IV, um, essentially the same argument Judge,
9 that's the Intent to Commit Obstruction of Justice,
10 we would move for judgment on the evidence
11 pursuant to Indiana Trial Rule 50 with regard to that
12 count of the indictment. Again, um, we don't
13 believe the State's provided evidence beyond a
14 reasonable doubt that Mr. Brewington committed
15 the various things or did the various things um, that
16 had been shown here in court with the intent um, to
17 obstruct justice and in fact and I understand the
18 charge is attempt, but in fact the divorce proceeding
19 was finished and in fact it has gone up on appeal
20 and the appellate process is either finished or nearly
21 finished. So we don't a reasonable jury could find
22 and therefore we believe it's the court's job to take
23 that away from the jury. Um, and then as to Count,
24 did I miss one? I missed one. As to Count, what
25 happened to Count V, as to the Perjury count,

1 Count, which I believe is Count V your honor, we
2 don't believe again pursuant to Trial Rule 50, we
3 would move for a directed verdict on that Count.
4 We don't believe there's sufficient evidence to
5 show that Mr. Brewington knowingly made a false
6 statement to the Grand Jury. There's speculation
7 and suspicion but we don't believe there's evidence
8 for a reasonable person to find beyond a reasonable
9 doubt that he knowingly perjured himself in front of
10 the Grand Jury which is my understanding of what
11 the charge alleges or what the indictment alleges.
12 And finally, your honor, as to Count VI of the
13 indictment, Unlawful disclosure of a Grand Jury
14 Proceedings, Judge the only evidence that I'm aware
15 of is Mr. Brewington's blog that I believe it was
16 State's 10, but it's posted on February 28, 2011 and
17 it's contained there and the statute requires for
18 someone to be guilty of unlawful disclosure of
19 Grand Jury proceedings, specifically a person who
20 has been present at a Grand Jury proceeding and
21 who knowingly or intentionally discloses #1, any
22 evidence or testimony given or produced, #2, what a
23 Grand Juror said, or 3, the vote of the Grand Jury to
24 any person except a person authorized commits
25 Unauthorized disclosure of a Grand Jury

1 Information to be a Misdemeanor. We don't
2 believe there's any evidence to indicate that Mr.
3 Brewington did any of those things enumerated in
4 that statute your honor, by his blog. It would appear
5 to counsel that the purpose of the blog is a kind of
6 tweak at the prosecutor and a comment on the
7 criminal justice system overall or at least as it
8 operated at the time in Dearborn County. So with
9 those things said your honor we would ask the
10 Court to grant our motion for judgment on the
11 evidence as to all six (6) counts of the indictment.
12 Thank you.

13 COURT: As to Defendant's motion for judgment on the
14 evidence, I'm going to find that as far as I can tell
15 there was sufficient evidence to at least send this to
16 the jury so I'm going to deny Defendant's motion
17 for judgment on the evidence on Counts I, II, III, IV,
18 V and VI.

19 MR. BARRETT: Thank you, your honor.

20 COURT: Is there anything else before we break? As I stated I
21 anticipate to let the jury review those documents
22 until at least say 3:00 or so and then maybe we'll
23 check in with them. Is there anything else that
24 needs to be heard before that?

25 MR. NEGANGARD: No your honor.

1 COURT: From the Defendant, Mr. Barrett?

2 MR. BARRETT: With regard to the final instructions Judge, when

3 does the Court anticipate going over those?

4 COURT: I guess once you make your determination...

5 MR. BARRETT: ...okay...

6 COURT: ...of what we're going to hear, if anything.

7 MR. BARRETT: Okay, alright.

8 COURT: So I'll give your, I guess between now and 3:00, if

9 you've had sufficient time to discuss with your

10 client.

11 MR. BARRETT: Yes sir.

12 COURT: What's going to happen next, um, if you want to let

13 me know, we can get the State and we can come

14 back in and we can discuss final instructions. Yell I

15 would be glad to get that taken care of before any

16 closings.

17 MR. BARRETT: Okay. Thank you your honor.

18 COURT: Alright. That's all for now. We're back on the

19 record on 15D02-1103-FD-84, the State of Indiana

20 versus Daniel Brewington. The parties appear in

21 person and by counsel. The jury does not appear at

22 this time. They are still in the jury room reviewing

23 the exhibits. I've had a brief conference with

24 counsel in chambers. The State had rested at the

25 time when we recessed last, um, Mr. Barrett, do you

1 wish to proceed?

2 MR. BARRETT: Excuse me. Judge, um, my client and I have had an
3 opportunity to discuss whether or not he is going to
4 testify. He has indicated to me that he is not going
5 to testify. At this point, um, I would like to ask the
6 Court to place Mr. Brewington under oath so that I
7 can question him about that.

8 COURT: Mr. Brewington, would you please raise your right
9 hand? Do you swear or affirm under the penalties
10 for perjury that the testimony you are about to give
11 is the truth, the whole truth and nothing but the
12 truth?

13 MR. BREWINGTON: Yes I do.

14 COURT: You may proceed Mr. Barrett.

15 MR. BARRETT: Would you state your name please?

16 MR. BREWINGTON: Daniel Paul Brewington.

17 MR. BARRETT: And Mr. Brewington you are the Defendant in this
18 case. Is that correct?

19 MR. BREWINGTON: Yes, that's correct.

20 MR. BARRETT: And I was appointed by the Court to represent you I
21 believe in either late June or early July of this year.
22 Is that correct?

23 MR. BREWINGTON: Correct.

24 MR. BARRETT: Um, to put it charitably, you and I have had a bit of
25 a rocky relationship at times.

1 MR. BREWINGTON: Correct.

2 MR. BARRETT: Uh, that seems to be better now.

3 MR. BREWINGTON: Yes.

4 MR. BARRETT: Um, you and I discussed yesterday, I suppose for
5 half hour or so and then again today for roughly that
6 same amount of time, maybe a little less, your right
7 to testify in this case.

8 MR. BREWINGTON: Yes.

9 MR. BARRETT: And you and I had the opportunity to discuss, at
10 least from my perspective, the positives as far as
11 why you should testify as well as the potential
12 negative consequences of your testimony.

13 MR. BREWINGTON: Correct.

14 MR. BARRETT: And I expressed my opinions to you about those
15 things.

16 MR. BREWINGTON: Yes.

17 MR. BARRETT: Um, you shared your opinions with me.

18 MR. BREWINGTON: Yes.

19 MR. BARRETT: Do you feel like you've had adequate time to speak
20 with me about that and understand your rights to
21 testify?

22 MR. BREWINGTON: Yes.

23 MR. BARRETT: And you have chosen not to testify. Is that correct?

24 MR. BREWINGTON: That is correct.

25 MR. BARRETT: And you're making that decision voluntarily and

1 knowingly?

2 MR. BREWINGTON: Yes.

3 MR. BARRETT: I've explained to you once you've told the Judge

4 that under oath that you're not going to be able to

5 change your mind.

6 MR. BREWINGTON: Correct.

7 MR. BARRETT: Um, I've explained to you that projected, what we

8 believe will be the way this process will continue

9 from now and in fact we're going to go into

10 tomorrow. Is that correct?

11 MR. BREWINGTON: Correct.

12 MR. BARRETT: Do you understand that you can't come to Court

13 tomorrow and decide that you want to testify?

14 MR. BREWINGTON: Yes.

15 MR. BARRETT: Um, I haven't forced you or coerced you in any way

16 to have you not want to testify. Is that correct?

17 MR. BREWINGTON: No.

18 MR. BARRETT: It's your own free decision?

19 MR. BREWINGTON: Yes.

20 MR. BARRETT: Um, anything else that you wish to say to Judge Hill

21 with regard to your right to testify and your decision

22 not to do so?

23 MR. BREWINGTON: No.

24 MR. BARRETT: I don't have any other questions of Mr. Brewington

25 your honor.

1 COURT: Thank you. Does defense intend to present any
2 other evidence?

3 MR. BARRETT: No your honor. I assume you want me to rest in
4 front of the jury.

5 COURT: Yell that would be fine. Let's go off the record. I
6 need to speak to counsel at the bench. Maybe we
7 were not on record just a moment ago. I had
8 indicated to counsel that the jury has been in their
9 chambers with the exhibits to view. They were so
10 voluminous to give them an opportunity to have
11 those published and take a look at those, um, and
12 they were also admonished not to deliberate. There
13 has been some questions that the Bailiff has now
14 brought down and I've got counsel here at the
15 bench. The one question, is there any part of the
16 Grand Jury proceedings that is public knowledge or
17 open to public knowledge? It's one of the questions
18 and I guess let me preface this by saying quite
19 frankly none of the jurors asked any questions of the
20 witnesses so unless I hear otherwise I'm going to
21 presume we're probably not going to be answering
22 any of these questions and just advise them of such.

23 The one question is: is there any part of the Grand
24 Jury proceedings that is public knowledge or open
25 to public knowledge. Another question, who are the

1 people sitting behind the jury. Um, is the
2 alternative, is the alternative allowed to ask the
3 witness, the alternate allowed to ask the witness
4 questions. It's too late for that as far as I can tell.
5 MR. NEGANGARD: I don't think they are.
6 MR. BARRETT: I don't know the answer to that.
7 MR. NEGANGARD: Because I've had that come up in the Grand Jury
8 proceeding.
9 COURT: I don't know.
10 MR. NEGANGARD: Is it in the instruction? It doesn't matter now. It's
11 too late.
12 COURT: It's too late. Is it better for the jury to ask questions
13 than to remain quiet?
14 MR. BARRETT: (inaudible).
15 COURT: I do too but...
16 MR. NEGANGARD: I never was a big fan of that.
17 COURT: I don't think we're to answer any of these questions
18 quite frankly.
19 MR. NEGANGARD: I agree.
20 COURT: Okay. It's not any earth shattering things I don't
21 think any way. Are we ready to bring the jury back?
22 MR. NEGANGARD: Are they done?
23 COURT: Well, she's just coming down by herself so I guess
24 we'll ask her. You may be seated. We're on on
25 15D02-1103-FD-84, the State of Indiana versus

1 Daniel Brewington. The parties appear in person
2 and by counsel and the jury is also present at this
3 time. Um, during the time that you've had to
4 review some of the exhibits, it was made known to
5 me by the Bailiff that there were a couple of
6 questions that you may have had. Those were
7 reduced to writing. Those were delivered to me.
8 I've discussed those questions with both counsel
9 and we've come to the conclusion that we are not
10 able to give you an answer to those questions that
11 were posed and not all, but some of the questions
12 had to do with questions regarding the jury
13 questions to witnesses. Um, the witnesses have left
14 the stand. That opportunity has passed so I guess
15 that maybe just not timely but they were addressed
16 with counsel and I cannot answer those questions at
17 this time. The State has rested. Mr. Barrett you
18 may proceed.

19 MR. BARRETT: Thank you, your honor. At this time, the Defense
20 rests your honor.

21 COURT: Under the circumstances and the time of day, I'm
22 going to recess for the day and I've indicated to
23 counsel, we've got a few things that we need to deal
24 with first thing in the morning so I plan on
25 reconvening at 8:30 however to the jurors um, you

1 can take an extra hour tomorrow. I expect to have
2 you back here at 9:30 in the morning. Are there any
3 questions as to that? Is there anything else before
4 we break today from the State? Mr. Negangard?

5 MR. NEGANGARD: No your honor.

6 COURT: Anything from the Defense, Mr. Barrett?

7 MR. BARRETT: No your honor.

8 COURT: During the times and this again I'm addressing the
9 jury, during the times that you are out of the
10 courtroom you may discuss the case amongst
11 yourselves, however you are not to deliberate or to
12 begin making decisions as to a verdict. Do not talk
13 to any of the parties, the attorneys or witnesses.
14 Should anyone attempt to talk to you about the trial,
15 you should refuse and report the attempt to me at
16 your first opportunity. There may be publicity and
17 various media concerning this trial. You should not
18 read or listen to those accounts but should confine
19 your attention to the court proceedings, listen
20 attentively to the evidence as it comes from the
21 witnesses and reach a verdict solely upon what you
22 see and hear in this court. You should keep an open
23 mind. You should not form or express an opinion
24 during the trial and should reach no conclusion
25 about the case until it is submitted to you for

1 deliberation. We are now recessed until tomorrow.

2 Counsel, be here at 8:30, jury at 9:30. All rise.

3 **DANIEL BREWINGTON – JURY TRIAL – OCTOBER 6, 2011**

4 COURT: We are on the record of 15D02-1103-FD-84, the
5 State of Indiana versus Daniel Brewington. Let the
6 record reflect that the State continues to appear by
7 Prosecuting Attorney, Aaron Negangard and Deputy
8 Prosecutor, Joseph Kisor. The Defendant appears in
9 person and by counsel, Bryan Barrett. The jury is
10 not present at this time and we're having a brief
11 hearing. Back several weeks ago I had submitted
12 proposed instructions. Um, the parties have had
13 now for some time, proposed finals and on this
14 mornings date, there has been a tender or proposed
15 final instructions, additional instructions made by
16 the Defendant. We've had a brief conference in
17 chambers with counsel regarding those instructions
18 and there's an agreement on most of those and I'll
19 go through those at this time. There was
20 Defendant's proposed final instruction Number 1 in
21 regards to the first amendment to the United States
22 Constitution and the State has no objection to that
23 instruction. Is that correct Mr. Negangard?

24 MR. NEGANGARD: That's correct your honor.

25 COURT: There was Defendant's proposed final instruction

1 Number 2, referencing the free speech clause in
2 Indiana Constitution Article I, Section 9. There was
3 also no objection to that additional instruction from
4 the State. Is that correct Mr. Negangard?

5 MR. NEGANGARD: That's correct your honor.

6 COURT: Instruction number 3 was in regards to direct and
7 circumstantial evidence. The Defendant's proposed
8 cites that it's Indiana pattern jury instruction 12.01.
9 After referencing those pattern jury instructions, it
10 looks like the Defendant may have used the old
11 version and we've since discussed that neither party
12 has any objection to using 12.01 as long as we use
13 the newest version of that instruction. Is that correct
14 Mr. Negangard?

15 MR. NEGANGARD: That's correct your honor.

16 COURT: And Mr. Barrett?

17 MR. BARRETT: It is your honor.

18 COURT: We'll get back to proposed Number 4 and Number
19 5, uh, Defendant's proposed final instruction
20 Number 6, uh, regards to Indiana Pattern Jury
21 instruction 13, 15, the Court, I believe, had already
22 included this in its proposed number 11. I think the
23 Court used the most recent language. This might
24 have been some older language in the proposed, so
25 number 6 is taken care of. That's already included.

1 MR. BARRETT: I'll withdraw number 6 your honor.

2 COURT: Okay. Thank you. And instruction number 7, in

3 regard to the Defendant's choice not to testify, uh

4 instructing the jury on that. That's Indiana pattern

5 13.21 and I will grant that addition and actually

6 swap that for what I had originally proposed as

7 number 13 which talked about the Defendant if he

8 did testify so I'll take my original proposed 13 out

9 and add 7 and I believe that number 8 was

10 withdrawn at the request of the Defendant. As to

11 Defendant's proposed final number 4, uh, the State

12 objected to that proposal. And what's the basis for

13 your objection Mr. Negangard on Defendant's

14 proposed final 4?

15 MR. NEGANGARD: With regard to 4 your honor, um, we believe 4 is

16 accurately or more appropriately addressed in the

17 pattern instruction that's given in what would be the

18 amended proposed final 3, um, which is the current

19 pattern instruction that deals with that issue item 4,

20 is not a case that says it should be an instruction,

21 authorities just stating that that is the law and that is

22 appropriately addressed in the previous instruction

23 and we feel would be inappropriate under those

24 circumstances.

25 COURT: And Mr. Barrett, your response to that on number

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MR. BARRETT:

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Thank you your honor. Judge I believe it is an accurate inappropriate statement of the law in the State of Indiana and while partially covered um, in the prior instruction, I would still request that it be given and there's a site there, Robie versus State indicating that in fact it is a correct statement of law in Indiana.

COURT:

Um, based on, I think the parties point out, I don't think there's a dispute as to whether it is the correct statement of the law, I do find that it is sufficiently covered in the Court's other instructions which will be tendered so I'm going to sustain the State's objection to number 4. That takes us to number 5, the proposed final in regards to the statement of the law stemming from Winnington versus State. The State objected to that number 5. What's the basis of that objection Mr. Negangard?

MR. NEGANGARD:

Your honor again, Winnington versus State is a case dealing with the first amendment process. We don't believe that 5 is really an accurate statement of that case. Um, there's a lot more to that process than indicated in an instruction and as such we don't think it will be helpful to the jury but more confusion. We have no objection to the Defense

1 making arguments along the lines of what's stated
2 in Winnington but we believe this instruction would
3 be inappropriate under those circumstances.

4 COURT: Mr. Barrett?

5 MR. BARRETT: Judge, with regard to Defendant's proposed 5, I
6 believe it is correct statement of the law in the State
7 of Indiana and it is obviously cited from the
8 Winnington case before the Indiana Supreme Court
9 in 1996 and it was I guess I would argue the current
10 status and the most recent (indiscernible)
11 interpretation that our Court or Supreme Court has
12 given. Um, I believe it would be helpful for the
13 jury. So we would ask that it be given your honor.

14 COURT: The Court finds that under limited circumstances I
15 would agree it to be a correct statement of the law,
16 however I think the State has pointed out there are
17 some differences between the Winnington case and
18 the evidence that's been presented in this case and
19 that I think this instruction may simplify that two
20 step process a little too much under the
21 circumstances, so I'm going to sustain the objection
22 to number 5, obviously the, the constitutional
23 amendments and articles are included in the
24 instructions and I think that along with the other
25 instructions and argument of counsel, final

1 argument are sufficient to inform the jury so I'm
2 going to sustain that objection to number 5. Were
3 there any other, uh, oh, also in my proposed
4 instructions we talked about um, the same
5 modifications that I've made to preliminary and
6 we'll get those changed. I had unintentionally
7 shown unlawful disclosure of a Grand Jury
8 proceeding as a Class D Felony. That's in fact
9 charged as a B Misdemeanor. So we'll make that
10 correction on the proposed final along with the
11 Count I, the begin date would be August 1, 2007.
12 That's the same for Count IV, the begin date would
13 be August 1, 2007. I will be removing my proposed
14 number 13 and supplementing that with the
15 Defendant's proposal. With those corrections and
16 the Defendant's additions which were granted, are
17 there any other additions or corrections before we
18 prepare these finals from the State Mr. Negangard?

19 MR. NEGANGARD: No your honor.

20 COURT: And Mr. Barrett?

21 MR. BARRETT: No your honor.

22 COURT: I'm going to take a brief break and get working on
23 changing and adding these instructions and then
24 we'll come back and call the jury and we'll be ready
25 for final argument.