

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON**

**IN THE MATTER OF:  
PETITION TO IMPANEL A CITIZENS GRAND JURY**

**File NO. \_\_\_\_\_ PZ**

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**DANIEL A. BURRESS P 11445  
8163 Grand River, Suite 100  
Brighton, MI 48114  
810 229 9494**

**PETITION TO IMPANEL A CITIZENS GRAND JURY**

NOW COMES Daniel A. Burress filing the within Petition to Impanel a Grand Jury and Appoint a Special Prosecutor, and respectfully represents unto the court as follows:

1. Petitioner is a resident of Livingston County, Michigan and is a retired Circuit Court Judge of the 44th Circuit Court of Livingston County, Michigan.
2. Hon. Theresa M. Brennan, elected to the 53<sup>rd</sup> District Court, and sitting by assignment in the Livingston County Circuit Court, was assigned and presided over a murder trial entitled People v Walter Jerome Kowalski, No. 08-17643 FC.
3. Michigan State Police Detective Sean Furlong was the detective in charge of, and a material witness in said case.
4. That prior to impaneling the jury in said case Mr. Thomas Kizer, Jr., a former prosecuting attorney for Livingston County, sent a letter (Exhibit A) to the current prosecuting attorney,

Mr. William Vaillencourt advising of a social relationship between Judge Brennan and Detective Furlong.<sup>1</sup>

5. In spite of widespread rumors in the legal community that Judge Brennan had more than a “social relationship” with Detective Furlong, she declared from the bench at her recusal hearing that “it’s a friendship, nothing more than a friendship (Exhibit B)”<sup>2</sup> and denied the motion to recuse herself.<sup>3</sup> Her decision to remain on the case was affirmed by the Michigan Supreme Court.<sup>4</sup>
6. Judge Brennan thereafter presided over the jury trial, which commenced January 7, 2013; a guilty verdict was rendered January 28, 2013, and defendant, who is in his 70’s was sentenced to life without parole March 5, 2013. Judge Brennan was the sole arbiter of the credibility of Detective Sean Furlong and others concerning facts which critically impacted the guilt or innocence of the Defendant.
7. On December 2, 2016 Judge Brennan’s husband, represented by Mr. Kizer, filed an action for divorce<sup>5</sup> in the Livingston County Circuit Court
8. Deposition testimony, taken in Livingston County, Michigan, during the course of the divorce proceedings put a new face on the extent of the social relationship between the judge and Mr. Furlong. It revealed that Judge Brennan, Sean Furlong, and Shawn Ryan, an assistant prosecuting attorney (APA) in Mr. Vaillencourt’s office shared a social relationship that extended back as far as 2008 or 2009. By way of example, divorce trial depositions reveal:
  - a. Both Judge Brennan and Detective Furlong admitted to having an intimate sexual relationship, but claim it first occurred after the Kowalski trial was

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<sup>1</sup> This letter is shown to have been copied to Regional SACO Administrator James P. Hughes, Chief Justice Robert P. Young, Jr., Michigan Supreme Court, First Lieutenant Joel Allen, Michigan State Police, Brighton Post, and Hon. David Reader, Chief Judge, 44<sup>th</sup> Circuit Court.

<sup>2</sup> Exhibit B, Transcript January 4, 2013 Motion to Recuse, Page 7, Lines 5,6.

<sup>3</sup> Exhibit B, Transcript Page 13, Lines 2-18. Judge Reader “She did not believe that she had a duty to disclose those friendships. But I’ve got to say those friendships are really, really not hidden to the community. I think it’s well known by the legal community here in this, in this area.” The problem is that Defense counsel is not from the Livingston County area and was unaware of the relationship. Quoting Judge Brennan starting on line 10, Judge Reader continued: “I don’t think that means that I can’t be friends with people. What I believe is that I have to look into my heart and soul and decide whether that affects me in any way, and if it does, then I can’t handle the case. And this is your life, Mr. Kowalski. I understand that. And if I thought for one second that my friendship would affect how I treated you, how I rule, I would recuse myself in a heartbeat. My friendship will not and has not for a split second impacted the decisions that I’ve made.”

<sup>4</sup> People v Kowalski, 492 Mich 106, 821 NW2d 14 (2012)

<sup>5</sup> Livingston County No. 16-7127 DO



over.<sup>6</sup> Sean Ryan claims body language from Judge Brennan in 2012 said much more.<sup>7</sup>

- b. Although disputed, it appears that the first kiss between Detective Furlong and Judge Brennan may have occurred in 2008, some 5 years before the Kowalski trial, in her 53<sup>rd</sup> District Court chambers around the time of her 50<sup>th</sup> birthday. Shawn Ryan, then a good friend of the judge and a Livingston County APA, testified that the judge admitted the same to her.<sup>8</sup> Ms. Ryan also testified that at or near the time Sean Furlong also admitted to her that he and the judge kissed.<sup>9</sup>
- c. Theresa Brennan and Sean Furlong's relationship went back many years before the Kowalski trial and included, trips to the Tiger's games<sup>10</sup>, hockey games,<sup>11</sup> football games,<sup>12</sup> parties at the judge's home, many trips to her cottage in Holland, Michigan, starting shortly after she was appointed to the bench,<sup>13</sup> and socializing at bars and restaurants.
- d. Prior to the Kowalski trial the Livingston County legal community was awash with rumors<sup>14</sup> that Judge Brennan and Detective Furlong were caught together in a compromising circumstance in a public place in an automobile.

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<sup>6</sup> Exhibit C, Deposition of Judge Brennan, Page 244, Line 9-17. She claimed the intimate sexual relationship commenced in late October or November, 2013. Sean Furlong testified it was early spring 2014, Exhibit D, Page 36, Line 12-13.

<sup>7</sup> Exhibit E, Deposition of Shawn Ryan, Page 14, lines 4-15

<sup>8</sup> Exhibit E, Deposition of Shawn Ryan, Page 7, line 5-25

<sup>9</sup> Exhibit E, Deposition of Shawn Ryan, Page 8, page 1-9.

<sup>10</sup> Exhibit D, Page 39, Lines 1-7

<sup>11</sup> Exhibit D, Page 39, Line 8

<sup>12</sup> Exhibit D, Page 39 Lines 10-11

<sup>13</sup> Exhibit D, Page 50, Lines 1-10.

<sup>14</sup> Exhibit E, Page 13-14, Line 9-25, 1-3.

Q "And did Shari indicate to you anything else about being caught with Furlong other than just being caught in the vehicle?"

A. "Just in general."

Q. "Had you heard the rumor that this had happened?"

A. "Oh, everyone did."

Q. "Theresa didn't think it did when she testified. She never heard it before. All she heard was about you, but would you explain – was it common knowledge in the law enforcement and legal community in this county that that rumor was going around?"

A. "Absolutely. It was going around the weekend after it happened."

Q. And that was in 2012?"

A. That's my understanding. I don't have any personal recollection of it, of when it was. I could not sit here under oath and say I remember hearing about this. What I can tell you is it was when Tom Ash, my ex-boyfriend, and I were still living together was in 2012.

- e. Judge Brennan denied knowing about these rumors.<sup>15</sup> Her denial of having heard rumors of this incident is contradicted by the testimony of retired Michigan State Police Trooper Jennifer Louise Eve who said she talked to Judge Brennan about it in about 2012 while she was still a trooper at the Brighton Post, before she and Judge Brennan became friends.<sup>16</sup> Also, Sean Ryan testified that she had lunch with a close friend/lawyer of Judge Brennan and was told that Judge Brennan admitted to her “that it was in fact her and Furlong that had been caught in the car”.<sup>17</sup>
- f. Both Sean Furlong and Judge Brennan were questioned about telephone and text contact with each other both before, during, and after the Kowalski trial. Mr. Furlong denied having any contact with Judge Brennan during the trial.

Excerpts from Exhibit D (Furlong deposition), Page 56, Lines 2-19:

Q. Okay. You would of, I’m assuming, had no contact with the presiding judge, Theresa Brennan, during that trial, would you?

A. I did not.

Q. Okay. Did the two of you ever exchange any texts or phone calls during that time?

A. No.

Q. You would be certain that you didn’t do that?

A. I am.

Q. Okay. Thank you.

Judge Brennan not being under oath, then interjected herself into the Furlong deposition:

Judge Brennan: We did once.

Mr. Kizer: I don’t need to hear from you.

Judge Brennan: He’s forgetting.

Mr. Kizer: I’m very concerned, she can’t coach the witness. I want the record to reflect that she turned and tried to coach the witness.

Judge Brennan; I didn’t coach him. He’s forgetting.

<sup>15</sup> Exhibit C. Page 227, Lines 4-12.

Q. And who did you get caught with in a car having an intimate relationship in 2012 around the week before Halloween?

A. No one.

Q. So, have you ever heard that before?

A. At the deposition that you –

Q. Never heard it before that?

A. I’ve heard it about Shawn Ryan, but I’ve never heard it about me.

Q. Never ever?

A. Never ever.

<sup>16</sup> Exhibit H, Page 18, Lines 1-25 Page 19, Lines 1-4. (L 24. “Q. She acknowledged that she knew about it? A. The rumor? Q. Yeah. A. Yes.)

<sup>17</sup> Exhibit E, Page 9, Lines 1-25.



Q. You're a bright guy. You recall your answer?

A. I don't recall having any conversation.

Judge Brennan was deposed for a second time a few weeks after Furlong's deposition and the subject of contact between the judge and Furlong during the Kowalski trial was again asked.

Exhibit C (Theresa Brennan Deposition), Page 202, Line 23 – Page 203, Line 21:

Q. And would you—did you have a phone call with him once or a text with him?

A. A phone call.

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Q. A phone call. What were the circumstances?

A. I called him. We were at the airport, all of us, and we were all drinking and our plane wasn't – it was way delayed, and so I was sitting at the bar and just called to say hi. I don't remember anything else and I can't remember a conversation.

Q. How long were you on the phone?

A. I don't remember.

Q. Would it have been an hour, would it have been –

A. I seriously doubt that. We were hoping our plane was going to go. And, no, it wouldn't have been an hour.

Q. Did you reveal that to the attorneys in this case, the prosecutor and the defense attorneys?

A. No.

Q. Were there any other calls during that trial that you had with him?

A. I did not, nope.

Q. None?

A. No.

Q. You're certain of that?

A. Yes

g. Phone records<sup>18</sup> show that the Judge and Furlong had substantial phone contact for at least one year prior to the Kowalski trial (upwards of 200 or more calls).

Contrary to the denials by each of them, it appears that there were three (3) calls during the trial itself from Theresa Brennan's phone to Sean Furlongs of over 30 minutes which were not revealed to trial counsel.<sup>19</sup> After the verdict and before sentencing there appear to be 26 more calls of about 265 minutes. The record indicates a 29-minute call the day before Mr. Kowalski was sentenced.

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<sup>18</sup> Summaries were prepared by/for Mr. Root for his attorney in the divorce trial.

<sup>19</sup> January 17, 2013, 9 minutes (8:53 p.m.), January 17, 2014, 17 minutes (10:14 p.m.), January 19, 2013, 9 minutes, (3:07 p.m.).

- h. Both the Judge and Furlong claim they had no sexual relationship after 2015. Yet Detective Furlong and Judge Brennan were in Florida together in 2016. She denied having sex with him during that time.<sup>20</sup> She did admit to kissing him romantically but denied that it led to anything else.<sup>21</sup> Jennifer Louise Eve, a retired Michigan State Police Trooper, and now a Livingston County Court Officer<sup>22</sup> contradicted this testimony. She testified at her deposition that Judge Brennan told her that she (Judge Brennan) and Furlong had sex on that trip.<sup>23</sup>
9. If Mr. Vaillencourt was unaware of the rumors about the relationship between Detective Furlong and Judge Brennan, he was likely one of only a few in the legal community who was. Shawn Ryan, an APA in Mr. Vaillencourt's office was a part of the social circle that included the judge. Brighton Post Trooper Eve was aware back in 2012 of the rumor about the judge and Furlong in a car together and testified she discussed it with the judge in 2012.
10. Judge Brennan hired Jessica Yakel<sup>24</sup> as her law clerk January 2, 2014.<sup>25</sup> Ms. Yakel soon began performing the services of a personal assistant to the Judge, on county time, some of which included:

Paying her bills, some by check and some on line.

Taking the judges vehicle to a local dealer to have it serviced and waiting to have it completed.<sup>26</sup>

Securing a water sample from Judge Brennan's home and taking it for testing in Brighton.<sup>27</sup>

Fixing the judges television set at her home.

On more than one occasion Ms. Yakel provided "out of gas" road service for the judge. In one such service call three court employees were needed to deal with the situation. One employee rode along with Ms. Yakel to the location of the thirsty car, and then stood watch

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<sup>20</sup> Exhibit C, page 188, Lines 3-51

Q. You had no sex with Sean Furlong in your trip to the Keys in 2006, am I correct?

A. No, we didn't have sex.

<sup>21</sup> Exhibit C, Page 188, Lines 18-21.

<sup>22</sup> Currently on medical leave. Exhibit H Line Page 7, Lines 8-14.

<sup>23</sup> Exhibit H, Page 16, Line 9-25, Page 17, Lines 1-20.

<sup>24</sup> Exhibit J Deposition Transcript, Page 7, Line 23 – Page 8, Line 1.

<sup>25</sup> Exhibit J a licensed Michigan attorney.

<sup>26</sup> Exhibit J, Page 15, Line 15-

<sup>27</sup> Exhibit J, Page 16, Lines 1-29



over it while Ms. Yakel carried the judge on to her now overdue medical appointment.<sup>28</sup> The third employee, the court bailiff, was dispatched to secure fuel for the car.

Ms. Yakel was of course surprised when she returned to the scene to learn that another driver experiencing a medical emergency rear ended the judge's car. She also learned that the frightened sentinel called 911 to report that another vehicle had struck her and was pushing her toward the intersection. The City of Brighton Police Department responded promptly and was able to turn off the aggressive rear vehicle before anyone was hurt. EMS of course responded to attend to the medical emergency. (Exhibit L and M, Scene Photo's)

While still sitting on the bench with Ms. Yakel using the computer next to her, Judge Brennan enlisted her services to assist in securing a compatible airline flight ticket and seating for Sean Furlong while the Judge was coordinating the purchase of her own ticket and seat for the same flight at a different computer. She was apparently going to her niece's wedding and Mr. Root was paying for the judge's ticket, and the judge was using her own credit card to pay for Sean Furlong's ticket. Ms. Yakel believed that the judge was using the county computer at the time.<sup>29</sup>

Exhibit J, Page 16, Lines 1-3:

"Some of these she asked, others she told me. Towards the end of my employment there she had a tendency to just tell me."

Exhibit J, Lines 9-21:

A. "Yes. I also stained her deck, too.

Q. At her house.

A. Yes.

Q. How did that happen?

A. She needed someone to stain it. She had someone initially, but they were taking too long. I said I've stained decks before. She asked if I would do it. I said sure. I figured it would be during the weekend because the weekend was better than during the week, and she said go do it now during the work hours. And so I went and stained the deck.

Q. She directed you to go do it then?

A. Yes"

11 That on information and belief complaints have been filed and are pending against Judge Brennan with the Judicial Tenure Commission for upwards of about fifteen (15) months.

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<sup>28</sup> Exhibit J, Pages 20, Line 20 – page 21, Line 3

<sup>29</sup> Exhibit J, Page 13, through Page 15, Line 14.

Although said complaints are not public, in this rare instance the Judicial Tenure Commission has publicly acknowledged that it is conducting an investigation relating to Judge Brennan.<sup>30</sup>

- 12 Although the Michigan State Police have been made aware of most of the facts contained in this petition many months ago, and executed search warrants and seized county owned computers from Judge Brennan's courtroom and apparently other property from the home of the judge<sup>31</sup>(Exhibit K, Detroit Free Press Article may 4, 2017), it appears that they may not yet have completed their investigation since they recently continued their questioning of lawyers and others locally.
- 13 To this date no public action has been taken by the Judicial Tenure Commission other than the acknowledgment referred to above, or by the Livingston County Prosecutor, or Attorney General of Michigan.
- 14 The allegations brought out in the divorce proceedings, and those alleged in the search warrant affidavit,<sup>32</sup> reveal the possibility of violations of criminal laws of the State of Michigan involving perjury; misconduct in office; obstruction of justice; wrongful use of county/court property and employees for personal use, use of court property and personnel in arranging flights, use of court personnel to do personal work at the Judge's home on county time, and perhaps others.
- 15 That in order to assist the grand jury in obtaining all relevant facts surrounding the allegations herein, either the Attorney General should become involved, or a special prosecutor is necessary for such investigation, including any investigative personnel required to promptly and effectively present to the grand jury the evidence necessary to determine whether or not a criminal complaint should be filed against any individual(s).
- 16 That in the interest of justice and to protect the integrity and respect for our legal system, a grand jury must be authorized in order to complete a proper investigation.
- 17 That it appears to the community that the investigations of the Michigan Judicial Tenure Commission and the Michigan State Police are proceeding at glacial speed, while at the same time the statute of limitations on some matters may soon leave them in the dust.

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<sup>30</sup> Exhibit I, Livingston County Daily article December 19, 2017.

<sup>31</sup> Exhibit K, Detroit Free Press Article May 4, 2017.

<sup>32</sup> Although Petitioner has not seen the search warrant affidavit, MCL 780.652 provides that a search warrant may be issued to search for and seize property that is one of the items enumerated in the statute. In addition, the magistrate must be convinced that probable cause exists. "Probable cause sufficient to support issuing a search warrant exists when all the facts and circumstances would lead a reasonable person to believe that the evidence of a crime or the contraband sought is in the place requested to be searched." *People v Brannon*, 104 Mich App 121, 132 (1992).



18 That this Petition is made on information and belief and transcripts of the divorce proceedings between Judge Brennan and her former husband.

Wherefore, Petitioner prays that pursuant to MCL 767.3, and such other statutes, laws, and rules as may be appropriate, this court will do the following:

- A. Initiate grand jury proceedings for the purpose of investigation of the above allegations and any related acts.
- B. Appoint a special prosecutor and investigator as necessary in order to properly, fairly, and completely investigate the allegations herein, and such others as may arise.
- C. Upon conclusion of the proceedings that the grand jury shall initiate such criminal complaints as are warranted by the facts, if any there may be.

Dated: June 4 2018

Daniel A. Burrell  
Daniel A. Burrell