

[CAPTION]

MOTION TO COMPEL GRANT OF IMMUNITY (JUROR MISCONDUCT)

The Defendant, by counsel, respectfully requests this Court to compel the State to grant immunity from prosecution to Juror [insert name] with respect to any statements he has made during voir dire or otherwise regarding the allegations in the Motion to Correct Error. In support of the Motion, the Defendant states the following:

1. In the Motion to Correct Error, the Defendant contends that the juror committed misconduct by making materially false statements during voir dire.
2. In the affidavit attached to the Motion to Correct Error, counsel for the Defendant stated under oath that the juror has confirmed that he had spoken to a witness about this case before being called to serve as a juror.
3. In a deposition, the juror denies making any statements to the undersigned counsel as recited in the Affidavit.
4. Counsel believes that the juror is afraid to tell the truth and admit his misconduct because he believes he could be prosecuted for perjury relating to his misconduct. The Defendant contends that the State has intimidated the juror by implicitly threatening him with prosecution for perjury if he admitted his misconduct. Collins v. State, 822 N.E.2d 214 (Ind.Ct.App. 2005) (it is a violation of the Sixth Amendment for a prosecutor to threaten to arrest or file charges against a witness if the witness testifies).
5. The State's conduct amounts to interference with the Defendant's case and a distortion of the fact-finding process such that the Court is justified in compelling the State to grant the juror immunity so that he may freely testify about his alleged misconduct. While the Defendant does not have due process right to compel immunization of defense witnesses, the State cannot be allowed to use its power to interfere with the defense's presentation of its case or to prevent defense witnesses from testifying. See Bubb v. State, 434 N.E.2d

120, 124 (Ind.Ct.App. 1982) (citing Webb v. Texas, 409 U.S. 95, 93 S.Ct. 351, 34 L.Ed.2d 330 (1972) and Washington v. Texas, 388 U.S. 14, 87 S.Ct. 1920, 18 L.Ed.2d 1019 (1967)); Moore v. State, 655 N.E.2d 1251 (Ind.Ct.App. 1995).

6. It is in the interest of justice and the search for the truth to immunize the juror as the only other way for the Defendant to produce the sought-after evidence is to require instant counsel to make himself a material witness and force the Defendant's counsel of choice to withdraw. The only other possible source of evidence is the witnesses who cannot recollect the conversation but confirm her relationship with the juror.
7. The State's fear that such a grant of immunity will encourage future jurors to lie in voir dire is groundless. If the State is concerned about such future conduct, any order granting the juror immunity can be sealed and a hearing on the matters held in camera.

WHEREFORE, the Defendant, by counsel, respectfully requests this Court to compel the State to grant immunity from prosecution to Juror [insert name] with respect to any statements he made during voir dire or otherwise with respect to the allegations made in the Motion to Correct Errors, and for all other relief just and proper in the premises.

(Signature)