

STATE OF MICHIGAN

IN THE 77<sup>th</sup> DISTRICT COURT FOR THE COUNTY OF MECOSTA

---

PEOPLE OF THE STATE OF MICHIGAN,

v

File No. 15-45978-FY

KEITH ERIC WOOD,

Defendant.

---

SENTENCING

AND MOTION FOR STAY OF SENTENCE PENDING APPEAL  
BEFORE THE HONORABLE KIMBERLY L. BOOHER, ACTING DISTRICT JUDGE

Big Rapids, Michigan - Friday, July 21, 2017

APPEARANCES:

For the People:

Nathan L. Hull (P-72265)  
Assistant Prosecuting Attorney  
400 Elm Street  
Big Rapids, Michigan, 49307  
(231) 592-0141

For the Department:

Probation Officer Jacob Buse  
District Court Probation  
400 Elm Street  
Big Rapids, Michigan, 49307  
(231) 592-0190

For the Defendant:

David A. Kallman (P-34200)  
KALLMAN LEGAL GROUP, PLLC  
5600 West Mount Hope Highway  
Lansing, Michigan, 48917  
(517) 322-3207

RECORDED BY:

Sabrina M. Marlette, CER 8103  
Certified Electronic Reporter  
(231) 592-8303

TABLE OF CONTENTS

WITNESSES:

PAGE

NONE CALLED

EXHIBITS:

OFFERED

ADMITTED

NONE OFFERED

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Big Rapids, Michigan

Friday, July 21, 2017 - 10:00 a.m.

THE COURT: The next matter before the Court is the People of the State of Michigan versus Keith Wood, being file number 1545978FY.

Appearing for the prosecutor's office.

MR. HULL: Thank you, your Honor. Nathan Hull, on behalf of the People.

THE COURT: Thank you.

And for the defendant.

MR. KALLMAN: Good morning, your Honor. Dave Kallman, appearing on behalf of Mr. Wood. He is here, seated to my right.

THE COURT: Thank you.

Today is the time and date set for sentencing in this matter.

Mr. Hull, is there any reason we should not proceed with sentence?

MR. HULL: None, your Honor.

THE COURT: Mr. Kallman, is there any reason we should not proceed with sentence?

MR. KALLMAN: No, your Honor.

THE COURT: Mr. Wood, is there any reason I should not sentence you here today?

THE DEFENDANT: No, ma'am.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE COURT: Mr. Hull, have you reviewed the report and recommendation; do you have any additions or corrections?

MR. HULL: Your Honor, I have had an opportunity to review the report. I have no additions, deletions, or corrections to make.

THE COURT: Thank you.

And, Mr. Kallman, any additions or corrections?

MR. KALLMAN: No, your Honor. Obviously, we disagree with it, but we have nothing to correct or change.

THE COURT: All right.

Allocution, Mr. Hull.

MR. HULL: Thank you, your Honor.

In this case, your Honor, on the -- on the one side, we have a defendant, Mr. -- Mr. Wood, who is 41 years old. He has never been in any trouble with the law before. This is his only criminal conviction; the only entanglement he has had with the law. And since the incident involving the Yoder trial, he hasn't been in any more trouble with the law. On -- on the other side, we do have a conviction for a very serious misdemeanor; Attempting to Influence the Decision of a Juror, which doesn't just -- which goes into the idea that he's attempting to subvert the entire judicial process, which

1 makes the misdemeanor, in and of itself, very serious.  
2 And the legislature has decided to provide a maximum of  
3 one-year jail time for this type of misdemeanor. So those  
4 are obviously the -- the competing ideas that the Court  
5 has to consider in making her recommend -- or -- in making  
6 her judgment in this case.

7 I see that the Probation Department has  
8 recommended, I believe, 45 days, with credit for one day  
9 served; a total of 44 days, as well as 120 hours of  
10 community service. One of the things I would ask this  
11 Court to consider, outside of those two contrasting  
12 considerations, is the fact that defendant's testimony  
13 during the trial seems to indicate that he's a person that  
14 might not necessarily be amenable to rehabilitative  
15 services. What I mean by that is the defendant took the  
16 stand, he swore an oath in front of this Judge and in  
17 front of the jury, and he admitted that yes, he is -- he  
18 was a person who knew about the *Yoder* trial; yes, he was  
19 very upset about what was going on with the *Yoder* trial;  
20 yes, he appeared for the final pretrial in that case; yes,  
21 he called the local media because -- or -- the local  
22 newspaper because he was very upset by what was going on;  
23 yes, he was so upset by what was going on, he immediately  
24 went home and started ordering these flyers entitled,  
25 "Your Jury Rights: True or False?" from the FIJA website;

1       yes, he had a specific interest in this trial in that he  
2       did not think that what the government was doing was  
3       correct and, yes, he appeared for the date and time of the  
4       trial, at this courthouse, before the trial was to begin,  
5       and began handing out those pamphlets that are directed  
6       towards jurors. He then veered off into the ditch when he  
7       said to this Court; under oath, no, I had absolutely no  
8       intention whatsoever of influencing the decision of a  
9       jury. And if the absurdity of that statement isn't  
10      obvious on its face, he then doubled down on that by  
11      trying to say that your -- Your Honor, the reason why I  
12      chose -- or -- he tried to tell the jury the reason that  
13      he chose the date and time for that particular trial was  
14      because he didn't think there would be a trial. This kind  
15      of statement, your Honor, shows that the defendant not  
16      only realized that what he was doing was wrong, but then  
17      tried to -- he -- he compounded the fallacy by making this  
18      absurd argument that he chose the date and time for a jury  
19      trial, because he didn't think there would be a trial, and  
20      he chose to hand out these pamphlets saying, Your Jury  
21      Rights; True or False, to a bunch of people headed into  
22      the courtroom -- or -- walking into a courtroom for a  
23      trial because he did not think that jurors would be  
24      influenced by it.

25                   Your Honor, obviously, the jury did not buy

1 that. It took them about 20 minutes to come back with a  
2 guilty verdict. And I think that that demonstrates that  
3 this was not a person who made a one-time mistake. And  
4 then -- he -- he hasn't demonstrated that he's -- he's  
5 kind of shown that he realizes now the significance of  
6 what he's done. In fact, the testimony shows the  
7 contrary. It's for that reason, your Honor, I believe  
8 that the recommendation as provided by the Probation  
9 Department would be appropriate in this case.

10 THE COURT: Thank you.

11 Mr. Kallman.

12 MR. KALLMAN: Thank you, your Honor.

13 Well, obviously, we disagree. I think the Court  
14 obviously knows and has to look at a lot of different  
15 factors; protection of the community, prior record, all  
16 those sorts of things. I'm not going to repeat all that.  
17 I know the Court is fully familiar with all of those  
18 things. But, I think the lack of history here and it is a  
19 misdemeanor. I have had numerous clients for all sorts of  
20 misdemeanor crimes over the years I've been in practice.  
21 Many for violent type crimes; assaults, drunk driving, all  
22 sorts of things. With a record like my client has, and on  
23 a first offense, absolutely a probation -- and I think  
24 that the -- and, frankly, in some cases even no probation;  
25 just fines and costs, and whatever the Court imposes for a



1 first-time offender. I don't think that the Court should  
2 be -- essentially, the Prosecutor is arguing retaliate  
3 against Mr. Wood because he disagreed with the jury  
4 process or general jury rights and things like that. He  
5 exercised his, what he believes are his, free speech  
6 rights; did it out on the -- the sidewalk before this  
7 court. And that, because of that, that deserves 45 days  
8 in jail, let alone one day in jail? I totally disagree  
9 with that. And I don't think in the interest of  
10 proportionality, and the way other folks are sentenced,  
11 and all sorts of things, that there is any rhyme or reason  
12 to that.

13 To argue that my client -- well, he didn't want  
14 to influence the jurors, but he didn't think there was  
15 going to be a trial; that those are inconsistent. I don't  
16 see how that's inconsistent whatsoever. He said very  
17 clearly, when Mr. Wood testified, he said, I wanted to get  
18 information out. I knew a lot of people were called that  
19 day to be a juror -- you know -- for this -- for the jury.  
20 I wanted to get information into people's hands; that he  
21 was handing it out to people who were not jurors. He was  
22 handing out the information. That was his purpose. There  
23 was nothing in that flyer that said anything about the  
24 Yoder case. I know the Court is aware of all this  
25 background. But to say that's inconsistent; I don't think

1 that's inconsistent at all. The fact that he thought, I  
2 really don't think there's probably going to be a trial  
3 that day, but I know a lot of people are going to be  
4 there, I'm handing this out. I think that's totally  
5 consistent and, if anything, goes to whether or not he  
6 should get jail time or not because he honestly believed  
7 there would not be a trial. He was trying to educate the  
8 public; he knew a lot of people would be there, including  
9 prospective jurors, and he was handing out the  
10 information. So I don't think that that warrants such,  
11 frankly, a stiff penalty for a first-time offender.

12           Beyond that, your Honor, I think you need to  
13 consider a number of other factors here; my client has  
14 maintained his employment through his adult life, he's  
15 self-employed in the insurance field and is a broker, he  
16 is an entrepreneur; has done a lot of very positive things  
17 in the communities where he has lived, and through his  
18 church, and other things. He has never had any problems,  
19 as Mr. Hull said, since this whole thing started now  
20 almost two years ago. There have not been any repeat  
21 offenses or anything going on. My client is married and  
22 now has eight children. They just recently had a baby who  
23 is, I think, four or five months old, and he is the sole  
24 support for his family. The sole support that provides  
25 health insurance and care, as well as putting food on the

1 table. He's it. And if this Court were to put my client  
2 in jail for something like this, for 45 days, you're  
3 essentially sentencing him to losing his business, losing  
4 his source of income, and ability to care for his family  
5 over handing out a flyer. Now, I understand the  
6 Prosecutor is upset; he brought this case, the jury has  
7 ruled. I'm not saying any -- I understand all of that.  
8 But, I think you need to look at the totality of the  
9 circumstances here, Judge. And is that really what we  
10 want is essentially the potentiality of putting his family  
11 on the welfare rolls of this state, and lose their health  
12 insurance, and lose his ability to care for his children  
13 and his family? I would say that is so far out of  
14 proportion to what's occurred here that it's not even a  
15 close call. He's been free on bond since this incident  
16 occurred. He has complied with all terms of the bond  
17 conditions that the Court has put in place. He's no risk  
18 to flee or take off or do anything like that. So I think  
19 the Court needs to look at all those sorts of things.  
20 He's not a violent person, this is not a violent offense,  
21 he does not pose a danger to anybody and I don't think the  
22 Prosecutor would argue that.

23 So given all those things, Judge, I would argue  
24 that jailtime in this case is not warranted. If the Court  
25 wants to send a message or do something, it could set a

1           probation term and put jail at the end of probation and  
2           have my client -- see how he performs on probation, and if  
3           he doesn't comply, then a sentence could be carried out.  
4           But it gives an opportunity for my client to continue to  
5           show the Court he's not a danger to anybody and he's not  
6           doing anything more beyond what's occurred in this case.

7                         Finally, Judge -- and I think we all know this  
8           and I mean no disrespect to the Court; I hope the Court  
9           understands, I think I've tried to be respectful through  
10          all of these proceedings. I think I have been. And --  
11          because I feel that way -- but, obviously, we're going to  
12          appeal. And there are constitutional issues here. And  
13          there are lots of things that the higher courts are going  
14          to have to decide that have been raised and properly  
15          preserved in the record of this case. And we all know  
16          that that's going up. So to impose a sentence like this  
17          given the certainty of appeal here. And I think, frankly,  
18          a lot of these issues will be a first impression with the  
19          Court; using the jury tampering statute in this way  
20          against a person exercising their speech rights. I could  
21          find no case law on it. I think this is going to be a  
22          case of first impression. So, you know, to impose this  
23          and then potentially have it carried out, and then if we  
24          subsequently win on appeal, I think you can see the  
25          unfairness of that. And even if -- and, obviously, we

1 would pursue that appeal all the way through, my client  
2 would continue to obey all Court directives, and if -- if  
3 at the end he loses his appeal, he could serve whatever  
4 time at that point and that's not harming the State at  
5 all.

6 And so, I don't know -- I'll -- I'll reserve my  
7 further motion depending on how -- you know -- what the  
8 Court intends to do. But, I just think given the lack of  
9 record, my client's family situation, he's self-employed  
10 with his business, and all the things I've said, jail is  
11 not appropriate here, Judge.

12 Thank you.

13 THE COURT: Thank you.

14 Mr. Wood, is there anything that you would like  
15 me to know before I impose sentence?

16 THE DEFENDANT: No, your Honor.

17 Thank you.

18 THE COURT: All right.

19 I'd ask that you and Mr. Kallman stand at the  
20 podium, please.

21 MR. KALLMAN: Okay.

22 THE COURT: This Court would note that I have  
23 been involved with this case since the beginning of this  
24 case --

25 (At 10:11 a.m., baby fussing in the gallery)

1 I'm going to have to ask that that child be --  
2 either has to be quite or has to be removed, please. We --  
3 obviously, Mr. Kallman has indicated there will be a -- an  
4 appeal and we cannot make a transcript with a baby crying.

5 THE DEFENDANT: Sorry.

6 THE COURT: As I indicated, this Court has been  
7 involved from the beginning of this case, presiding over  
8 not only a preliminary examination, various motions in  
9 this case, and then, ultimately, a trial in this case. A  
10 trial that was, as we all know, based on the concept that  
11 everyone has a right to a trial by your peers. Your peers  
12 have decided, Mr. Wood, that you are guilty of what you've  
13 been charged with; the Attempting to Influence Jurors.  
14 After being provided with all of the information that you  
15 were handing out, all of the facts and circumstances of  
16 this case, they have determined -- and in a very short  
17 period of time -- that you were guilty of the charge that  
18 you were -- the charge that was brought against you.

19 This Court has thought long and hard in regards  
20 to an appropriate sentence in this case. And I have taken  
21 into account all of the testimony from the trial, all of  
22 the arguments that have been made in the various motions  
23 that were brought before me, and all of the arguments that  
24 were made on the record today, and I have reviewed the  
25 sentence recommendation in this case. In considering

1 everything that has been provided to me and everything  
2 that I have heard, I think that I'm going to -- I'm going  
3 to deviate from the recommendation. However, based on  
4 what I believe is appropriate -- in my experience in  
5 dealing with appropriate sentences -- under the  
6 circumstances, this is a one-year misdemeanor. I don't  
7 believe that the -- serving 45 days in jail; a straight 45  
8 days in jail, is what is appropriate under the  
9 circumstances. But, I don't feel that no jail is  
10 appropriate either. So what your sentence is going to be  
11 is going to be as follows; I am going to place you on  
12 probation for a period of six months.

13 I do need to ask because there is not an  
14 oversight fee in this; what is your normal probation fee?

15 MR. BUSE: Your Honor, for six months it would  
16 be \$120.

17 THE COURT: A hundred and twenty dollars. All  
18 right.

19 Thank you.

20 You will be placed on six months' probation. I  
21 am going to impose the 45 days as recommended, but it will  
22 be served as follows; I am going to require you to serve  
23 eight full weekends in jail. Those weekends; except for  
24 today -- I am going to require that you go immediately to  
25 jail today to start your first weekend. You will be

1 released on Sunday at 6:00 o'clock p.m. -- every weekend  
2 after that, for the next seven weekends, will be Friday at  
3 6:00 p.m. to Sunday at 6:00 p.m. Any additional time will  
4 be suspended. That time will be suspended for 120 hours  
5 of community service. I will be assessing the following  
6 costs; a fine of \$150, costs of \$150, state cost in the  
7 amount of \$50, crime victims' assessment in the amount of  
8 \$75, the oversight fee of \$120, making the total  
9 assessments in this case \$545. I am also assessing a \$75  
10 community service fee for the community service that will  
11 be in -- imposed.

12 Mr. Hull, do you have any questions regarding  
13 that recommendation?

14 MR. HULL: None, your Honor.

15 Thank you.

16 THE COURT: Mr. Kallman.

17 MR. KALLMAN: Your Honor, I would assume that  
18 the \$620 -- if my math is right -- that you've just set  
19 for fines and costs, can be paid over probation?

20 THE COURT: That can be, yes. He initially had  
21 a bond amount, but that was all returned; is that --

22 MR. KALLMAN: Right.

23 THE COURT: -- correct?

24 MR. KALLMAN: Yes.

25 THE COURT: So he's on personal recognizance?



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. KALLMAN: Yes.

THE COURT: So we don't have any bond to apply. So, yes, that can be paid over his -- I will allow him to pay that over his probation period due to the fact -- normally, it's required upfront -- however, because he is going straight to jail today, I will allow that to be paid over the probation --

MR. KALLMAN: Okay. Thank --

THE COURT: -- period.

MR. KALLMAN: -- you, your Honor.

THE COURT: From the Probation Department; any questions regarding the recommendation so you can do the appropriate paperwork?

MR. BUSE: No, your Honor. I'll prepare the judgment and orders.

THE COURT: All right.

This is a final sentence of the Court and you do have appeal rights. I would presume that you know that, Mr. Kallman.

MR. KALLMAN: Of course.

Can I have one moment to chat with my client then, I may have a motion?

THE COURT: That --

MR. KALLMAN: If we could just have a moment?

THE COURT: Yes, that would be fine.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. KALLMAN: Okay.

Thank you.

(At 10:17 a.m., off record discussion between Mr. Kallman and his client)

(At 10:18 a.m., court reconvenes)

MR. KALLMAN: Your Honor, given the Court's sentence -- and I understand that and I have no question on that -- I would make a Motion to Stay the Sentence pending our appeal. And under *People versus Giacalone, 16 Mich App 352*, it sets out the standards for the granting of a Stay of a Sentence Pending an Appeal. And I'm not going to repeat all -- I under -- the Court understands our basis for the appeal -- but the *Giacalone* Standards say -- there are four of them -- the first is the likelihood that Mr. Wood would appear when required to appear; he has always appeared for everything. Two, the potential harm to the community from him being out and not serving any jail time; again, I don't think there's any evidence that there's any harm to anybody in the community from him being out. He's been out now almost two years. Third, the substantiality of the grounds for appeal; I -- you're fully aware of all of the issues, and the First Amendment and constitutional issues, and things here. I think they are substantial. We can all respectfully agree to disagree. But they are substantial. And then finally,

1 fourth, what's the risk to the administration of justice  
2 if the Stay is not granted; again, I would argue there is  
3 no risk to the administration of justice because we would  
4 vigorously pursue the appeals, and once they're completed  
5 -- depending on the outcome -- if it goes against Mr.  
6 Wood, he'll report and still do the time that the Court's  
7 imposed without any problem. However, if he wins, then,  
8 of course, that changes that outcome. So I would argue  
9 that weighs toward my client's side of the equation here.  
10 Those are the four factors, Judge. So I think we meet all  
11 of those. We would ask the Court to consider a Stay of  
12 his Sentence pending the appeal.

13 I do have a proposed order. I can share it with  
14 Mr. Hull. And there's a spot on here, your Honor, to  
15 either grant or deny it.

16 THE COURT: Thank you.

17 MR. KALLMAN: If I may approach?

18 THE COURT: You may.

19 Mr. -- did you have anything further?

20 MR. KALLMAN: Nope.

21 THE COURT: Okay.

22 Mr. Hull --

23 MR. KALLMAN: Thank you.

24 THE COURT: -- your response to the Motion to  
25 Stay.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. HULL: Thank you, your Honor.

I -- I don't see any reason to treat this case any differently than you would any other criminal conviction. It -- it is a misdemeanor; it's a one-year. He has been tried and he's been convicted based on this. Any criminal conviction will -- could potentially result in a constitutional challenge by a defendant, whether it be a First Amendment, Fourth Amendment, Sixth Amendment, most criminal convictions can have a challenge by a defendant. I don't see how this is any different from any other conviction. So I would ask the Court to deny the motion.

THE COURT: Mr. Kallman, it is your motion, anything further?

MR. KALLMAN: No, your Honor. Again, I think this case is unique. As I said before, I could find no prior precedent on this sort of -- applying this statute in this manner as it's been done in this case. And I think with -- given the First Amendment issues -- you know -- this is a very unique case.

So, thank you, your Honor.

THE COURT: Thank you.

MR. HULL: Your Honor, very briefly. I apologize. If the Court is considering, I would ask for an opportunity to brief the issue because I have not been

1 provided any kind of notice that this would be coming,  
2 except Mr. Kallman did inform us right before the hearing  
3 today.

4 THE COURT: This Court has heard the arguments.  
5 This Court actually did anticipate that that request would  
6 be made if a -- obviously -- if a jail sentence was  
7 imposed. Therefore, I don't feel that there is any reason  
8 to treat Mr. Kallman -- or I'm sorry -- Mr. Wood any  
9 different, Mr. Kallman, than any other criminal defendant  
10 that I sentence. Therefore, the -- your motion will be  
11 denied. I will provide this to the court clerk and she  
12 can provide you copies then.

13 MR. KALLMAN: Your Honor, if I could inquire  
14 then, will the Judgment of Sentence be entered  
15 immediately, because I brought the appellate paperwork  
16 along and I have paperwork that I would like to file  
17 upstairs to have this issue heard by Judge Hill-Kennedy.  
18 So how soon would I be able to -- I mean, will this be  
19 going right to the clerk's office so I can proceed ahead?

20 THE COURT: I -- I will, however, the Judgment  
21 of Sentence will have to be prepared. So I don't know how  
22 long that that will take.

23 MR. BUSE: An hour at most.

24 MR. KALLMAN: Okay.

25 THE COURT: Yeah.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. KALLMAN: Okay. Okay. Great.

THE COURT: I'm here all day so.

MR. KALLMAN: All right.

Thank you.

THE COURT: All right.

Thank you.

Take Mr. Wood into custody, please.

We'll be off the record.

(At 10:22 a.m., proceedings concluded)

1 STATE OF MICHIGAN )

2 )

3 COUNTY OF MECOSTA )

4

5

6

7

8

9

10 I certify that this transcript, consisting of 23  
11 pages, is a complete, true, and correct transcript, to the best  
12 of my ability, of the proceedings and testimony taken in  
13 this case on Friday, July 21, 2017.

14

15

16

17

18

19 July 21, 2017

20

\_\_\_\_\_  
Sabrina M. Marlette, CER 8103

21

49<sup>th</sup> Circuit Court

22

400 Elm Street

23

Big Rapids, Michigan 49307

24

(231) 592-8303

25