

STATE OF MICHIGAN
IN THE SUPREME COURT

APPEAL FROM THE COURT OF APPEALS
(Murray, C.J., and Murphy and Cameron, J.J.)

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff/Appellee,

-vs-

KEITH ERIC WOOD,

Defendant/Appellant.

APPELLANT’S APPENDIX

SC NO.: 159063

COA NO.: 342424

CIRCUIT CT. NO.: 17-24073-AR

DISTRICT CT. NO.: 15-45978-FY

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Respectfully submitted,

DATED: November 27, 2019.

/s/ David A. Kallman
David A. Kallman (P34200)
Attorney for Mr. Wood

to disregard instructions of the judge; for example, acquittals under the fugitive slave law." (473 F. 2d 1113)

And let us never forget that in the Nuremburg trials of Nazi war criminals, the defendants argued that they were "only following the law." The Tribunal's response was, quite correctly, that they each had a personal responsibility to judge the morality of the law, and should have acted according to conscience!

How can one person make a difference?

BE ALERT! Almost everyday, new attempts are made to limit jury power, mostly via subtle changes in the rules of the courtroom procedure, sometimes by court decisions, legislation, or by the creation of special courts that do not allow jury trials for the accused.

BE AWARE! Thousands of harmless people are in prison simply because their juries weren't fully informed. U.S. now leads the world in percent of population behind bars! New prisons are springing up everywhere, and too many of them are filling up with people whose only "crime" was to displease the government "master", not to victimize anyone (in other words, political prisoners).

BE ACTIVE! Tell others what you know about jury veto power!* Before a jury reaches a verdict, each member should consider:

1. *Is this a good law?*
2. *If so, is the law being justly applied?*
3. *Was the Bill of Rights honored in the arrest?*
4. *Will the punishment fit the crime?*

Is there a local FIJA group?

Probably—most people who receive this leaflet get it from someone on a team of local activists. Local activists may also be working with lawmakers for passage of FIJA legislation; others may be participating in radio talk shows or placing ads and public service announcements, speaking to other local groups, or otherwise getting the word out.

Since 1991, local FIJA groups in 18 states have persuaded their state governors to proclaim September 5 (the day of Penn's acquittal) as "Jury Rights Day", often celebrating it by issuing news releases and leafleting courthouses—thus using our First

FIJA Brochure

Amendment right to explain how juries can protect the rest of our rights, simply by acquitting defendants charged with breaking a bad law.

*Discretion may be the better part of valor: FIJA activists have been so effective at telling jurors the truth about jury veto power that judges and prosecutors nowadays not only try to keep fully informed citizens off of juries, but also have sometimes charged those who do inform them with contempt of court, even with jury tampering. So, if you decide to "be active", we advise you to observe any court order directed at your leafleting or other educational activity, and if you are empaneled to serve on a jury, not to distribute jury-power educational literature to your fellow jurors.



- TO RECEIVE MORE INFORMATION -

Visit www.fija.org, or call **1-800-TEL-JURY**, and tell FIJA where to send your free Jury Power Information Package. It contains a history of jury veto power and tells what to do if you're going to be on a jury (or facing one).

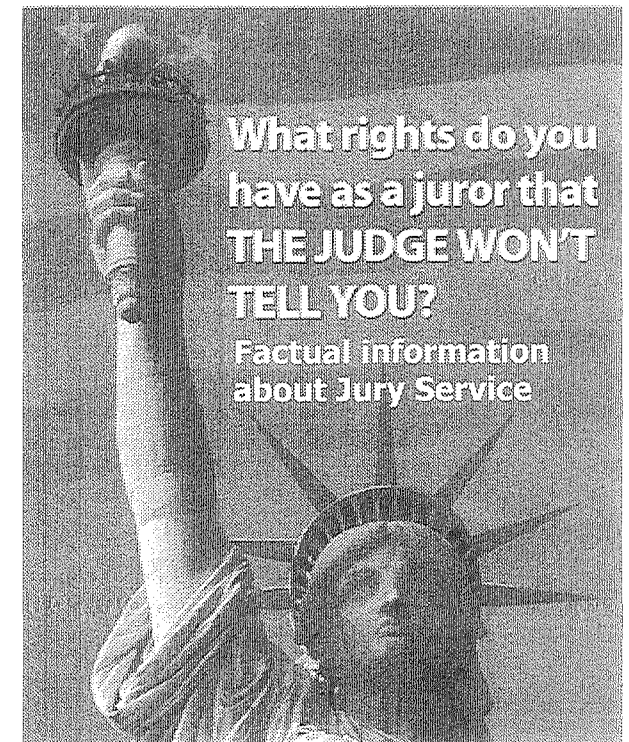
It also includes information on how you can support FIJA and a form for ordering materials.

FIJA maintains a useful web site, www.fija.org. It contains additional information about jury veto power, about FIJA, lists state contacts, a library of documents, and archived files of our newsletters.

**Our web site is www.fija.org.
Restore liberty and justice by jury!**

This leaflet is distributed locally by:

Your Jury Rights: True or False ?



Distributed by
Fully Informed Jury Association
P. O. Box 5570 Helena, MT 59604

www.fija.org
1-800-TEL-JURY



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True or False?

When you sit on a jury, you may vote on the verdict according to your conscience.

“True”, you say—and you’re right. But then . . .

Why do most judges tell you that you may consider “only the facts”—that you must not let your conscience, opinion of the law, or the motives of the defendant affect your decision?

In a trial by jury, the judge’s job is to referee the event and provide neutral legal advice to the jury, properly beginning with a full explanation of a juror’s rights and responsibilities.

But judges only rarely “fully inform” jurors of their rights, especially their right to judge the law itself and vote on the verdict according to conscience. In fact, judges regularly assist the prosecution by dismissing prospective jurors who will admit knowing about this right—beginning with anyone who also admits having qualms with the law.

We can only speculate on why: Disrespect for the idea of government “of, by, and for the people”? Unwillingness to share power? Distrust of the citizenry? Fear that prosecutors may damage their careers, saying they’re “soft on crime”? Ignorance of the rights that jurors necessarily acquire when they take on the responsibility of judging an accused person?

How can people get fair trials if the jurors are told they can’t use conscience?

Many people don’t get fair trials. Jurors often end up apologizing to the person they’ve convicted—or to the community for acquitting a defendant when evidence of guilt seems perfectly clear.

Something is definitely wrong when the jurors feel apologetic about their verdict. They should never have to explain “I wanted to use my conscience, but the judge made us take an oath to apply the law as given to us, like it or not.”

Too often, jurors who try to vote their consciences are talked out of it by other jurors who don’t know their rights, or who believe they “have to” reach a unanimous verdict because the judge said that a hung jury would “unduly burden the taxpayers.”

But if jurors were supposed to judge “only the facts”, their job could be done by a judge. It is precisely

FIJA Brochure

because people have individual, independent feelings, opinions, wisdom, experience and conscience that we depend upon jurors to refuse to mindlessly follow the dictates of a judge or of a bad law.

So, when it’s your turn to serve, be aware:

1. You may, and should, vote your conscience;
2. You cannot be forced to obey a “juror’s oath”;
3. You have the right to “hang” the jury with your vote if you cannot agree with other jurors!



What is FIJA, the Fully Informed Jury Association?

FIJA is a national educational non-profit organization which tells citizens more about their rights, powers, and duties as jurors than they are likely to be told in court.

FIJA believes that “liberty and justice for all” won’t return to America until citizens are again fully informed of — and using — their power as jurors.

Return? Did judges fully inform jurors of their rights in the past?

Yes, it was normal procedure in the early days of our nation, and in colonial times. And if the judge didn’t tell them, the defense attorney often would. America’s founders realized that trials by juries of ordinary citizens, fully informed of their powers as jurors, would confine the government to its proper role as the servant, not the master, of the people.

Our third president, *Thomas Jefferson*, put it like this: “I consider trial by jury as the only anchor yet imagined by man by which a government can be held to the principles of its constitution.”

John Adams, our second president had this to say about the juror: “It is not only his right, but his duty. . . to find the verdict according to his own best understanding, judgment, and conscience, though in direct opposition to the direction of the court.”

These sound like voices of experience. Were they?

Yes. Only decades had passed since freedom of the press was established in the colonies when a jury decided *John Peter Zenger* was “not guilty” of seditious libel. He was charged with this “crime” for printing true, but damaging, news stories about the Royal Governor of New York Colony.

“Truth is no defense,” the court told the jury! But the jury decided to reject bad law and acquitted Zenger. Why? Because defense attorney *Andrew Hamilton* informed the jury of its rights: he told the story of *William Penn’s* trial—of the courageous London jury

which refused to find him guilty of preaching what was then an illegal religion (Quakerism). His jurors stood by their verdict even though they were held without food, water, or toilet facilities for several days.

They were then fined and imprisoned for acquitting Penn—until England’s highest court acknowledged their right to reject both law and fact, and to find a verdict according to conscience. It was exercise of that right in the Penn trial which eventually led to recognition of free speech, religious freedom, and peaceful assembly as individual rights.

American colonists regularly depended on juries to thwart bad law sent over from England. The British then restricted trial by jury and other rights which juries had helped secure. Result? The Declaration of Independence and the American Revolution. Afterwards, to protect the rights they’d fought for from future attack, the founders of the new nation placed trial by jury—meaning tough, fully informed juries—in both the Constitution and the Bill of Rights.

Bad law—special-interest legislation which tramples our rights—is no longer sent here from Britain. But our own legislatures keep us well supplied. Now more than ever, we need juries to protect us!

Why haven’t I heard about “jury veto power” or “juror rights” before?

During the 1800s, powerful special interest groups inspired a series of judicial decisions which tried to limit jury veto power. While no court has yet dared to deny that juries can “nullify” or “veto” a law, or “bring in a general verdict (i.e., judging both law and fact)”, the Supreme Court in 1895 held, hypocritically, that jurors need not be told **their** rights!

That’s why, these days, it’s a rare and courageous attorney who will risk being cited for contempt for informing the jury about its rights without obtaining the judge’s prior approval. It’s also why the idea of jury rights is not taught in (public) schools.

Still, the jury’s power to reject bad law continues to be recognized, as in 1972 when the D.C. Circuit Court of Appeals held that the jury has an . . .

“.. Unreviewable and irreversible power . . . to acquit in disregard of the instruction on the law given by the trial judge. The pages of history shine upon instances of the jury’s exercise of its prerogative

1 would not want my thought processes in front of a jury.
2 If -- if I were sitting in front of a jury and I was
3 sitting here, you know, they -- they -- they hand out this
4 pamphlet, which misstates the law, encourages people to
5 follow -- follow their conscience when the -- the --
6 they're supposed to use their conscience with regard to
7 facts. Not -- this just says ignore the law, ignore the
8 facts, do what your conscience wants and I'm thinking, Oh
9 my goodness, we could have the -- the -- the jury who
10 thinks that jihad is righteous and if the San Bernardino
11 shooters had not been killed, they'd say let's acquit or -
12 -

13 (At 9:59 a.m., loud outburst from those seated
14 in the courtroom gallery)

15 THE COURT: Okay. Please, no comment, please

16 MR. THIEDE: If you want people to decide on
17 their conscience that's what you would have. You could
18 have people that are strongly pro-life say we'll vote our
19 conscience out here in Colorado and say the guy who killed
20 the people in the abortion clinic is not guilty. Not
21 because he didn't violate the law, but because we thought
22 what he did was the righteous thing.

23 We would have a lawless nation if people were to
24 vote their conscience, if we all had a really good
25 conscience. I think, really, the advocates of this sort

1 of stuff want people to vote their conscience not their --
2 they want -- they don't want them to vote their own
3 conscience -- they're personal conscience, the one passing
4 out the flyer because they think they have a good
5 conscience and they want people to vote the way they vote
6 -- they would vote.

7 But, if you say vote your conscience, there's
8 some consciences out there I don't want voting their own
9 way. But, anyway, that's what my testimony would be.
10 But, my testimony isn't relevant. The law is what's
11 relevant. And -- and that's what needs to be argued.

12 And so we're in the situation where we have to
13 follow the law, where we should follow the law in regard
14 to this. The law in regard to this is we're not necessary
15 witnesses. The only way we get to be disqualified or --
16 which happens because we have to testify is if we're a
17 necessary witness. There's no indication that we're
18 necessary witnesses. Their answer itself says it ended
19 outside. That is, he didn't do anything in the
20 courthouse.

21 There's no allegation that either of us was
22 outside the courthouse. And so we are not -- we are not
23 even plausibly necessary witnesses. We are not witnesses
24 at all to the offense and we're not necessary in that to
25 my knowledge there's absolutely nothing that either Mr.

1 discharge that jury and not have a trial. As it was, the
2 jury was not discharged. It was still there at the time
3 that Mr. Yoder took his plea, after Mr. Wood, here, had
4 already finished his activities. So that jury was still
5 here, still subject to the order of the court throughout
6 the entire time of Mr. Wood's activities.

7 It wasn't until after that because the court
8 brought Mr. Yoder over here into this courtroom to take
9 the plea, so in case the plea didn't go through, we still
10 had the jury, but Judge wanted to talk to the jurors
11 because he was going to let them go anyway. He didn't
12 feel like he could impanel a jury after.

13 And, of course, the content of this particular
14 pamphlet was one of the considerations there in that
15 regard simply because it said you can't trust the judges
16 because they're not going to tell you the truth. So it's
17 a little hard to get instructional correction in a
18 situation like that.

19 With regard to the obstruction of justice, we do
20 believe that it is a broader activity that's being
21 involved here, where you do pollute the entire jury panel
22 and certainly, if we were to allow Mr. Wood's conduct
23 here, we could have every trial stopped. We couldn't try
24 a case in this county.

25 Rarely do we have multiple cases going on, at a

1 given time. We have one at a time usually and Mr. Wood
2 came here because of this case. And that's a fact in this
3 case. That's why I wanted to make clear, at the
4 beginning, that we're dealing with our statement of facts
5 not some ethereal idea. But, he was here because of that
6 specific case intending a different outcome in that
7 particular case than the law might dictate. That's what he
8 was here for and that was his intent.

9 And then that fits into all of the cases that we
10 gave the court where repeatedly these types of behaviors,
11 whether they occur outside the courthouse, by sending out
12 mailings to jurors, by putting posters up around town, or
13 by passing out these same sorts of things inside a
14 courthouse, all those things have been found to be
15 improper by courts. All have upheld the convictions.

16 I should back up for just one moment. I'm
17 sorry. Back to the--the issue on *Davis* and whether or not
18 we adequately stated the obstruction of justice. First of
19 all, I think we adequately did especially combined with
20 the discovery that's been provided.

21 Really, the proper motion, *Davis* was at the end
22 run, after a conviction, which is a different question
23 where we are before a pre-lim. We're at the point where
24 if there's any defect in the pleading, you correct it with
25 a bill of particulars--a motion for a bill of particulars,

1 which can be taken care of by having discovery and/or a
2 pre-lim, which we were prepared for last time we were here
3 in court.

4 And that takes care of any questions as to what
5 the issues are that are being raised. So that's the real
6 issue here. This is not a case and position for dismissal
7 if the--if the Court were to find the pleadings
8 insufficient on that grounds. It's a position to change
9 the pleadings. And so, it's procedurally, again, improper
10 here at this point.

11 When we get to the point, though, of the
12 constitutional things, again, the activity of the
13 Defendant was illegal. It doesn't matter, again, whether
14 the jurors, however you characterize the jury's activity
15 and response to it, I still contend the jury's violation
16 of their oath is illegal. Even though we don't have a
17 remedy for it.

18 It's just like in this situation where I say--
19 where--where defense tries the--the proper distinction
20 made by the Court of Appeals and the Michigan Supreme
21 Court, that there is a difference between having a power,
22 as a jury to nullify, and a right to nullify. The power
23 exists simply because we have no remedy if a jury
24 improperly acquits.

25 If a judge makes a mistake of law, and grants a

1 directed verdict after a jury's impaneled, we can't
2 correct that. The guys acquitted; he's gone. Double
3 jeopardy says we can't re-try that. If a juror violates
4 their oath, and acquits somebody, we can't retry them.
5 Double jeopardy says we can't do it.

6 It's one of the reasons we know that this--the
7 pamphlet was set up to instruct and encourage the jury to
8 go in one direction and one direction only. To favor the
9 Defendant. Because jurors can't nullify the law when it
10 comes to--that--in a way that would convict the innocent
11 because the judge, sitting as a judge, would have to say
12 the facts were not proved. The case is not proved. I
13 grant a directed verdict. If the jury happened to come
14 back with a conviction, you do a judgment notwithstanding
15 the verdict. If for some reason that all falls apart, you
16 go to appeal and the appellate court corrects the
17 situation.

18 In all those situations, we have to do it right
19 the first time, according to the law without jurors doing
20 anything outside the law or the facts. Only the defense
21 can benefit from it and not because it's right. But,
22 because the People have no recourse. There's no way to
23 correct the wrong that's been done. And that's the same
24 situation with the--the juror misconduct that might arise
25 out of the activity of the Defendant.

1 One last thing, because there's some things in
2 regard to constitutional analysis and, you know, whether--
3 what level of scrutiny should apply and all that sort of
4 stuff. Conflated in what the defense does are two types
5 of statutes. One type of statute that specifically
6 addresses speech such as obscenity statutes. Those
7 address speech directly. And the question becomes is it
8 under a strict scrutiny test, narrowly tailored to meet a
9 compelling state interest. Does it meet the test?

10 Here, we have a statute of general criminal
11 application. We don't look at any of those questions in
12 regard to this type of statute. In regard to the jury
13 tampering statute or the obstruction statute--of justice
14 statute. They are not designed to limit speech. There's
15 no worry about chilling of free speech. Nothing of that
16 nature. It's simply a crime and the question that the
17 defense can raise is do I have a first amendment defense
18 to this crime. Not whether the statute itself is
19 overbroad, overreaching and [inaudible].

20 So what we've shown is this was a jury according
21 to Michigan statutes. This was a jury. These were
22 jurors. Summoned under court order to appear here.

23 He directly, intentionally communicated with
24 those jurors in a way that was directly intended to
25 influence their deliberations and verdict. More than

1 that, he obstructed justice by doing that with an entire
2 jury panel so the system of justice was unable to move
3 forward on that date.

4 He is being charged with tampering with a jury
5 and obstructing justice. Not passing out pamphlets. The
6 passing out pamphlets was merely the means by which he
7 tampered with jurors and obstructed justice.

8 Counsel is absolutely right that if he was out
9 here passing out political pamphlets for a--a candidate,
10 we would've had nothing to say about it. If he would've
11 had pamphlets generally speaking about the constitution,
12 we would've had nothing to say about it. We would've done
13 nothing with those things because that's first amendment
14 right.

15 And generally speaking, there's a first
16 amendment right even with these--these very pamphlets in a
17 different context and with a different intent. It was the
18 context and the intent where he took those pamphlets and
19 used them as a means to commit the crime that he winds up
20 being charged. Those are very different things; very
21 different.

22 In fact, the things are so different, there's--
23 there's reference to the matter in Denver. That's been
24 going on in--in defense brief. I've had occasion to speak
25 with--with the prosecutor--the appellate attorney from the

STATE OF MICHIGAN
IN THE 77th DISTRICT COURT FOR THE COUNTY OF MECOSTA

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

-vs-

KEITH ERIC WOOD,

Defendant.

ORDER TO DISMISS FELONY

FILE NO.: 15-45978-FY

HON. KIMBERLY L. BOOHER

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77TH DISTRICT COURT
2016 APR 14 PM 3:32
MECOSTA COUNTY

At a session of said Court held in the City of Big Rapids, Mecosta
County, State of Michigan, on this 11 day of April, 2016.

PRESENT: HONORABLE KIMBERLY L. BOOHER, Circuit Judge

Upon the filing and reading of the Defendant's Motion to Dismiss and the Prosecutor's Answer to said motion, the Parties having the opportunity to fully brief the issues and be heard in open court, and the Court being otherwise fully advised in the premises:

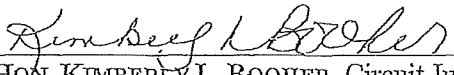
NOW, THEREFORE, IT IS HEREBY ORDERED that Count 1, Felony Obstruction of Justice (MCL 750.505), filed in this matter against the Defendant, Keith Eric Wood, is hereby dismissed for the reasons stated on the record.

District Court Order, April 11, 2016

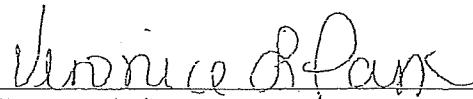
IT IS FURTHER ORDERED that the preliminary examination on Count 1 set for April 21, 2016, is hereby cancelled.

IT IS FURTHER ORDERED that the request to dismiss the remaining misdemeanor Count 2, a charge of Jury Tampering (MCL 750.120a), is denied for the reasons stated on the record and shall be set for further pretrial and jury trial by the District Court Clerk.

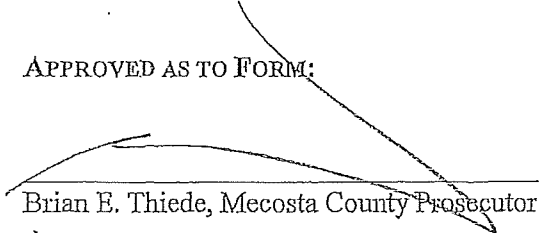
IT IS FURTHER ORDERED that Defendant's motion to dismiss the remaining misdemeanor Count 2 based upon his First Amendment rights is hereby held in abeyance pending further factual development of the issues at subsequent hearings in this matter.

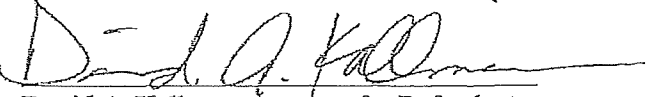

HON. KIMBERLY L. BOOHER, Circuit Judge

Countersigned:


Deputy Clerk

APPROVED AS TO FORM:


Brian E. Thiede, Mecosta County Prosecutor


David A. Kallman, Attorney for Defendant

Prepared By: David A. Kallman
Attorney for Defendant

STATE OF MICHIGAN

IN THE DISTRICT COURT FOR THE COUNTY OF MECOSTA

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v

Hon. Kimberly L. Booher
District Court Judge
File No. 15-45978-FY

KEITH ERIC WOOD,

Defendant.

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ORDER

Pursuant to the Defendant's Motion for Reconsideration, filed on April 21, 2016, with the 77th District Court in the City of Big Rapids, Michigan;

PRESENT: HONORABLE KIMBERLY L. BOOHER
District Court Judge

Defendant Keith Eric Wood was charged with one count of Obstruction of Justice (MCL 750.505) and one count of Jury Tampering (MCL 750.120a(1)). Defendant filed a Motion to Dismiss. At the March 23, 2016, hearing on that motion, the Court dismissed the Obstruction of Justice count but kept in place the Jury Tampering count. Defendant filed a Motion for Reconsideration, requesting that the Court revisit its prior decision and dismiss the Jury Tampering count.

A court may reconsider a judgment or order. *People v Walters (Jayne)*, 266 Mich App 341, 349; 700 NW2d 424 (2005). A motion for reconsideration of a judgment must be served and filed no more than 21 days after entry of the judgment. MCR 2.119(F)(1). Reconsideration of a judgment or order is intended to allow a trial court to immediately correct obvious mistakes it may have made which would otherwise be subject to correction at much greater expense to the


District Court Order, June 15, 2016

parties on appeal. *Bers v Bers*, 161 Mich App 457, 462; 411 NW2d 732 (1987). No response to the motion may be filed and no oral argument is allowed unless the Court directs otherwise. MCR 2.119(F)(2). "The moving party must demonstrate palpable error by which the court and the parties have been misled and show that a different disposition . . . must result from correction of the error." *Id.*

Because the Court did not commit any palpable error in its ruling on March 23, 2016, Defendant's Motion for Reconsideration is DENIED for the reasons found on the record.

IT IS SO ORDERED.

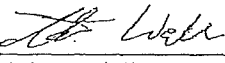
Dated: 6/15/16


Hon./Kimberly L. Booher
District Court Judge

Certificate of Service

The undersigned certifies that on the date below a copy of the within Order was served upon the parties of record in this cause by first class mail or personal service to their respective addresses on record.

Dated: 6/15/16


Adam Walker
Law Clerk

Michigan Non-Standard Jury Instructions, Criminal

Michigan Non-Standard Jury Instr. Criminal § 2:22

Michigan Non-Standard Jury Instructions Criminal | August 2018 Update
Hon. William Murphy & John VandenHomborgh

Criminal
Chapter 2, In General

[View Full TOC](#)

Criminal

Chapter 2, In General

§ 2:1. Civil cases distinguished

§ 2:2. Ignoring civil liability questions

§ 2:3. Reasonable doubt—General nature

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§ 2:22. Consideration of defendant's actions—Attempt to influence juror

Correlation Table

The defendant is charged with willfully attempting to influence the decision of a juror by use of argument or persuasion outside of the proceedings in open court in the trial of the case. The prosecution must prove beyond a reasonable doubt:

(1) *That [name juror involved] was a juror in the case of [name case in which juror sat];*

(2) *That the defendant willfully attempted to influence that juror by the use of argument or persuasion; and*

(3) *That defendant's conduct took place outside of proceedings in open court in the trial of the case.*

A person acts willfully when he or she acts voluntarily and intentionally.

Comment and Authority

1. This instruction was contributed by Timothy Baughman, Special Assistant Prosecuting Attorney, Wayne County Prosecutor's Office, Detroit, Michigan.
2. This offense was created by MCLA § 750.120a, and the instruction is drawn from the act. The act creates a series of offenses involving what is commonly known as jury tampering, that might, prior to the enactment of the statute, have constituted obstruction of justice.
3. This offense, involving only attempts to persuade through argument, is a misdemeanor, punishable by not more than one year in jail, or a fine of not more than \$1000, or both.

1 number 1 that -- and then it has in brackets --

2 [The name of the juror involved] was a juror in
3 the case of -- and then it has in brackets -- [name
4 the case in which the juror sat].

5 Now, I see the Court, in these proposed
6 instructions, has first:

7 That Jennifer Johnson and/or Therese DeVries was
8 a juror or were jurors in the case of *People v Yoder*.

9 And based on the proposed instruction, it used
10 the words -- the -- the case in which the juror sat. And
11 just so the record is clear, we are asking that it would
12 read; first:

13 That Jennifer Johnson and/or Therese DeVries sat
14 as a juror in the case of *People v Yoder*.

15 So that would be our first request, Judge.

16 THE COURT: All right.

17 Let me --

18 MR. KALLMAN: Do you just want me to do these
19 one at a time?

20 THE COURT: Yeah, let's do these one at a time.

21 MR. KALLMAN: That's fine.

22 THE COURT: You know, from all the hearings
23 before, I like to deal with one issue at a time and --

24 MR. KALLMAN: Yep.

25 THE COURT: -- then we'll move from that.

1 MR. KALLMAN: Yep.

2 THE COURT: So then, Mr. Hull, your response in
3 regards to --

4 MR. HULL: I --

5 THE COURT: -- proposed wording that says sat?

6 MR. HULL: Your Honor, I -- my response is
7 twofold; number one, the Court has already ruled on this.
8 In fact, this has been -- defendant has requested in their
9 interlocutory appeals all the way up to the Michigan
10 Supreme Court on the issue as to whether or not a jury is
11 required. The Court has already ruled on it more than a-
12 year ago. There is no requirement that a person sit on a
13 jury. There is nothing in the language of the statute,
14 there is nothing in the language of the case law that
15 would require that to happen. It -- in -- in the Proposed
16 Jury Instruction, that language that -- that Mr. Kallman
17 is looking at is within brackets and it's only meant to
18 identify that there is a specific case in which the juror
19 appeared for. I know he wants to grab onto that word
20 "sat" and say there must be a trial. However, that's not
21 part of the actual jury instruction. That's only
22 something that's used to indicate this is where we put the
23 case name. And there -- there's nothing in the case -- in
24 -- in the statute that would imply that there is a
25 requirement the person sit on a jury.

1 So I would ask the Court to just uphold its
2 prior ruling.

3 THE COURT: All right.

4 Mr. Kallman, anything further in regards --

5 MR. KALLMAN: No, your Honor.

6 THE COURT: -- to that?

7 All right.

8 Then this Court is going -- not going to grant
9 the request that it read "...sat as a juror." The wording
10 that has been put in the preliminary instructions, "...was a
11 juror or were jurors in the case of *People v Yoder*," will
12 stand as they have been written.

13 MR. KALLMAN: Okay.

14 Thank you, Judge.

15 THE COURT: You're welcome.

16 MR. KALLMAN: The next point -- I -- I guess
17 maybe I'll just go through so we're clear on the record
18 here.

19 THE COURT: Sure.

20 MR. KALLMAN: The second element; we have no
21 objection to the second element as stated in the
22 instructions provided by the Court here:

23 That the defendant willfully attempted to
24 influence that juror by the use of argument or
25 persuasion.

1 THE COURT: All right.

2 MR. KALLMAN: We have no objection.

3 Third, the third element:

4 That the defendant's conduct took place outside
5 proceedings in open court in the trial of the case.

6 We have no objection to that.

7 And, again, this is coming from that alternative
8 instruction, I know.

9 Then, I think the next -- in the proposed -- or
10 -- the instructions that the Court just gave us; the next
11 paragraph -- or -- sentence says:

12 A person acts willfully when he or she acts
13 knowingly and purposefully.

14 Your Honor, we have requested that the
15 definition of willfully include language that says:

16 That they acted knowingly and purposefully
17 committed jury tampering.

18 So I would ask the Court to include that in the
19 definition of willfully.

20 THE COURT: All right.

21 Mr. Hull, your response.

22 MR. HULL: Your Honor, briefly in response to
23 that, that seems to open the door for an argument that
24 ignorance of the law is a defense. Even in a specific
25 intent case, ignorance of the law is no defense. The fact

1 that he acted willfully means that he intended -- the
2 actions that he made when he intended to influence the
3 jurors; I believe that is proper the way it's written.

4 THE COURT: All right.

5 Mr. Kallman, anything further?

6 MR. KALLMAN: Nothing further, Judge.

7 THE COURT: All right.

8 Then this Court is going to leave the language
9 as it is written -- revised. It was -- earlier, I had
10 drafted as willfully when he or she acts voluntarily and
11 intentionally. I think after the conversation that we had
12 in chambers, the more appropriate wording is "...willfully
13 when he or she acts knowingly and purposefully." And that
14 will be the way that it is written.

15 MR. KALLMAN: Thank you, your Honor.

16 THE COURT: Thank you.

17 MR. KALLMAN: I appreciate that. And I
18 appreciate the Court's consideration on these issues.

19 THE COURT: Sure.

20 MR. KALLMAN: The next one -- or -- the next
21 sentence, Judge, is a definition provided by the
22 prosecutor's office.

23 The word -- quote -- the word "juror" includes a
24 person who has been summoned to appear in court to
25 decide the facts in a specific trial.

1 Your Honor, I'm not going to reiterate, I mean,
2 all of our objections. I just want to preserve for
3 appeal, appellate purposes -- since the higher courts did
4 not technically rule on those issues and just basically
5 said it's not ripe to be determined at this time -- I want
6 to preserve those issues that we've raised in court before
7 in our oral argument and in our briefs, and all that. And
8 just -- that's all I need to say is that we just want to
9 preserve our objections.

10 THE COURT: Sure.

11 Anything that you would like to say, Mr. Hull?

12 MR. HULL: No comment, your Honor.

13 I believe it's proper the way it's written.

14 THE COURT: All right.

15 And I -- based on my prior rulings and -- I am
16 going to leave the sentence the way that it is:

17 The word "juror" includes a person who has been
18 summoned to appear in court to decide the facts in a
19 specific trial.

20 MR. KALLMAN: Great.

21 Thank you, your Honor.

22 THE COURT: You're welcome.

23 MR. KALLMAN: And then lastly, the last
24 definition says:

25 An "argument or persuasion" can be oral or

1 Q Tell me what was going on in the district court at that
2 time?

3 A On the 24th of November of 2015, we had a jury trial that
4 was scheduled in the case of, I believe, it was *People*
5 *versus Yoder*. That morning there were motions scheduled.
6 We usually start jury trials at 9:15, jurors usually show
7 up at 8:45. That morning we had a motion that had to be
8 heard so we all showed up at 8:00 o'clock in the morning
9 to -- so the judge could hear that motion before the trial
10 started and the jurors got here.

11 Q Were there any other jury trials scheduled for that date
12 to your knowledge?

13 A I don't believe so.

14 Q Were there -- and to you knowledge, any trial scheduled in
15 the circuit court, other than the *Yoder* trial?

16 A No. I don't --

17 Q Any -- any --

18 A -- think so.

19 Q -- trials in the family or the probate court?

20 A No other trials that I can remember.

21 Q And you had mentioned; what time are jurors instructed to
22 appear?

23 A They're instructed to appear on their summons by 8:45.

24 Q So you said that in that particular case, on that day,
25 there were some motions to be heard before the jurors

1 A I went outside and I looked around and I saw a young
2 gentleman, I believe Mr. Wood, was out on the sidewalk
3 that's parallel to the road. I believe that's Elm Street
4 out there. I saw him with the same flyers in his hand and
5 I went up to him, within ten, 15 feet or so, and I said,
6 You shouldn't be handing those out to the jurors. And, at
7 that point, he said to me, what's your name, what's your
8 title? I told him my name, I told him my title. Also, at
9 that time, after we had that exchange, I said the Judge
10 would like to see you inside.

11 Q Okay. So let's -- let's step back for a second. You said
12 you saw a person standing out there. Would you be able to
13 recognize that person if you saw him today?

14 A Oh, it's Mr. Wood.

15 MR. HULL: Okay.

16 Your Honor, may the record reflect the witness
17 identified the defendant, Mr. Wood?

18 THE COURT: It shall so reflect.

19 BY MR. HULL:

20 Q Was there anyone else handing out pamphlets that you saw?

21 A No. Actually, at this point in time, I didn't see hardly
22 anyone else out there except Mr. Wood.

23 Q Okay. So what happened then?

24 A Okay. Then I said, "The Judge would like to see you
25 inside." At that point in time, he told me if the Judge

1 I specifically don't intend to bring that up in front of
2 the jury because it is irrelevant to whether or not he
3 committed the crime. So all it will do is create a whole
4 different issue that's not relevant to this case. And I
5 would ask that the Court exclude that evidence.

6 THE COURT: Thank you.

7 Mr. Kallman, your response.

8 MR. KALLMAN: Yes. Thank you, your Honor.

9 Again, the reasons we want to delve into the
10 post -- or -- the requirement to post a \$150,000 bond; a
11 ten percent bond, as well as other facts surrounding that
12 is because it goes to this witness's credibility and
13 possible bias. And, also, it's showing -- he has already
14 testified he was a witness in this matter and he's being
15 brought as a fact witness against our client as to facts
16 involved in their attempt to prove that he's guilty of
17 this crime. And, yet, then after that, he sat as an
18 impartial arbiter, sitting as a magistrate, setting our
19 client's bond. I think that's wholly inappropriate and
20 those are facts in evidence that the jury should be aware
21 of.

22 So just briefly, your Honor, in response to the
23 objection, MCR 6.11 -- or 611(C) -- sorry -- says that
24 we're allowed to cross-examine as to credibility and bias
25 for witnesses. And a couple cases, your Honor, *Hayes*

1 *versus Coleman, 338 Michigan 371, 1953 case says this:*

2 It is always permissible upon the cross-
3 examination of an adverse witness to draw from him
4 any fact or circumstance that may tend to show his
5 relations with, feelings toward, bias or prejudice
6 for or against either part, or that may disclose a
7 motive to injure the party or to befriend or favor
8 the other.

9 That's always permissible, Judge, under People
10 -- or *Hayes versus Coleman*.

11 And then *People versus Layher* -- it's spelled a
12 little differently, it's L-A-Y-H-E-R -- 464 Mich 756, 2001
13 Supreme Court case says very clearly that:

14 The interest or bias of a witness has never been
15 regarded as irrelevant.

16 And that's a very important thing that we're
17 allowed to delve into. That's our purpose in doing it. I
18 understand the Court has discretion to make a ruling, but
19 that's the reason why we're asking for it.

20 Thank you.

21 THE COURT: Tell me this, Mr. Kallman -- and I
22 understand the argument; bias, prejudice, throwing out
23 those words -- but, specifically, indicate to me what
24 testimony that Mr. Lyons testified to that would indicate
25 in any way his bias towards this defendant; based on what

1 he has already testified to?

2 MR. KALLMAN: I'm not sure I understand the
3 question, your Honor. I don't have to have something to
4 show from his -- necessarily from his testimony so far
5 he's been bias or whatever. I think that -- I mean,
6 there's going to be other evidence coming in that refutes
7 what he's saying. In fact, one of the cases we looked at
8 says when we have a situation where one witness is saying
9 one thing and another witness is saying the other, your
10 right to delve into anything that would show bias, or
11 prejudice, or credibility is of the highest order. So I
12 don't -- it doesn't have to be predicated on something
13 he's already said. I mean, these are acts he did right at
14 the same day, the same time, everything that was going on.
15 And so --

16 THE COURT: Not the --

17 MR. KALLMAN: -- it would show bias on his part;
18 that he chose to sit as the magistrate over Mr. Wood when
19 he was a witness in this case. He knew better. I think I
20 have the right to delve into that and show the jury that
21 hey, there's some potential bias here and credibility
22 issues in his testimony so beware. I mean, I have the
23 right to do that.

24 THE COURT: Mr. Hull, your response.

25 MR. HULL: Your Honor, he throws out the word

1 bias and prejudice. He used them. And he cites case laws
2 that say okay, look, where this is going to show bias and
3 prejudice and you have to be able to show it. There is
4 nothing about a magistrate setting a bond that shows bias
5 or prejudice. If there was something about a magistrate
6 setting a bond that showed bias or prejudice, they would
7 have to have a magistrate testify in every single criminal
8 case that they ever set a bond at, no matter how high or
9 low that bond was. In this particular case, it does not
10 show any kind of bias or prejudice or motive or anything
11 like that. All it was is he set a bond. He set a bond on
12 several factors, based on several situations, which might
13 be brought up in something else, but not at this trial,
14 not for this jury. It has nothing to do with this crime.

15 MR. KALLMAN: Your Honor, magistrates are not
16 normally witnesses to a crime. They're -- they're brought
17 in, they know nothing about the case, they're reading the
18 charges, they set a bond. That's not what happened here.

19 THE COURT: All right.

20 This Court understands that. But for this jury,
21 I'm concerned about the confusion to the jury in regards
22 to bringing up that particular issue that the magistrate
23 was a witness, he shouldn't have sat as a -- later,
24 sitting as a magistrate; that he shouldn't have done that.
25 I think that that is confusion -- could be confusion to

1 this jury. And, although I think there are a number of
2 questions that you could ask that -- I'm not going to
3 limit you to cross-examining him regarding bias or
4 prejudice. I think that's always open. But to
5 specifically ask him regarding the bond that he set later,
6 I don't -- I don't believe that that is appropriate under
7 the circumstances and I'm not going to allow that to
8 happen.

9 MR. KALLMAN: All right.

10 Thank you, Judge.

11 THE COURT: Thank you.

12 So let's call Mr. Lyons back to the stand,
13 please.

14 Oh, I'm sorry. We need to have the jury.

15 (At 1:39 p.m., off record conversation regarding
16 cameraman and microphones with the Court)

17 Please rise --

18 THE RECORDER: Please --

19 THE COURT: -- for the jury.

20 (At 1:40 p.m., jury enters courtroom)

21 You may be seated.

22 Mr. Lyons, please come to the -- back up to the
23 witness stand. You are still under oath.

24 THE WITNESS: Okay.

25 (At 1:40 p.m., witness returns to the witness

1 A Uh-huh.

2 Q Did he make any comments about Mr. Wood?

3 A He first told us a little bit about what the trial had
4 been and told us it had been settled and that we wouldn't
5 be needed. And then someone in the room raised their hand
6 and asked him to explain why they had been collected. The
7 bailiff had been questioned about why he was taking them
8 when he came in and he said --

9 Q Taking the brochures you mean?

10 A Right. And --

11 Q Okay.

12 A -- the Judge said -- he said the Judge will explain when
13 he comes into the room. So someone followed up and asked
14 the Judge to explain. And he said, I saw the pamphlets.
15 There was some information in it that was -- didn't seem
16 right; was concerning to me, that gentleman is now lodged
17 in our jail.

18 Q Okay. And you were there, summoned to be a potential
19 juror, to sit on that Yoder case, potentially, right?

20 A Right.

21 Q Was a jury ever selected that day for the Yoder trial?

22 A No.

23 MR. KALLMAN: Thank you.

24 Nothing --

25 MR. HULL: Your Honor --

1 those flyers --

2 A Yes.

3 Q -- from you? Okay. Do you remember who that was?

4 A I don't know his name. It was, as I recall, a sheriff. He
5 came in the room after the Judge started to come in the
6 room and evidently was having a conversation and went back
7 out the door. And then about 15, 20 minutes later, the
8 sheriff came into the room and he said, "How many of you
9 received brochures?" And a fairly good number raised
10 their hands. And he said, "I need you turn those over."

11 Q Okay. And so you did?

12 A Yes, we did.

13 Q Okay. Thank you. I don't think I have -- well, I'm sorry.
14 Were -- you were there with the jury pool; was there ever
15 a jury selected that day in the Yoder case?

16 A No.

17 Q Okay. So no --

18 A No, there --

19 Q -- jury trial was ever held, correct?

20 A No, because when the Judge came back in, he made the
21 comment, he says, "I've got good news and bad news. The
22 good news is for those of you that wanted to get out of
23 here and not be on a jury," he says the defendant had
24 accepted a plea bargain, I believe they call it. And he
25 said, "Those of you that wanted to be on the jury, there's

1 not going to be a trial, so you're excused."

2 Q Okay. And you don't know what the ultimate outcome was of
3 the Yoder case or what happened to Mr. Yoder do you; do
4 you have any knowledge --

5 A To who?

6 Q -- of that?

7 A Happened to who?

8 Q To Mr. Yoder, who was the defendant in that case that day?

9 A No, I -- none of us I don't think were familiar with
10 anything that was going on in that -- in that regard.

11 MR. KALLMAN: Fair enough.

12 Thank you.

13 THE COURT: Redirect, Mr. Hull.

14 REDIRECT EXAMINATION

15 BY MR. HULL:

16 Q Thank you. You were interviewed by -- by a deputy; is that
17 -- is that correct?

18 A I'm sorry?

19 Q I'm sorry. You were interviewed a couple weeks ago by a
20 deputy?

21 A Yes.

22 Q And -- and when you spoke with the deputy; were things
23 fresher in your memory than they are now or about the same
24 as far as memory goes?

25 A Pretty much the same. The -- the -- the sheriff, I believe

1 A He told me that juror -- jurors were not being informed by
2 the judges of all of their rights.

3 Q Okay. And at that date and time, November 24th of 2015,
4 were you aware of any policy in your clerk's office or
5 that the county had to regulate people handing out
6 pamphlets out on the public sidewalk?

7 A I'm not aware of any, sir.

8 Q Okay. So you don't know of any policy that either allowed
9 it or denied it or --

10 A I'm not --

11 Q -- any --

12 A -- sir.

13 Q -- regulations at all?

14 A No, sir.

15 Q And you'd never seen a policy like that?

16 A I have not; no, sir.

17 MR. KALLMAN: Okay.

18 Thank you.

19 I have nothing else, Judge.

20 THE COURT: Redirect, Mr. Hull.

21 REDIRECT EXAMINATION

22 BY MR. HULL:

23 Q Very briefly. Had anything like this ever happened
24 before; as far as you're aware?

25 A No, not in the 16 years I've worked for the county.

1 Q All right. I'll move on. Thank you, Judge. So the Judge
2 ordered you to bring Mr. Wood into the courthouse?

3 A Yes, sir.

4 Q Okay. And that was so he could talk to Mr. Wood?

5 A Yeah, that -- he just told me to go get him and bring him
6 in here; he wanted to talk to him.

7 Q And he wanted to talk to him?

8 A Yes.

9 Q Okay. So, when Mr. Wood was -- came into the courthouse;
10 wasn't there another officer escorting him from the DEQ;
11 do you recall that other officer?

12 A I do not.

13 Q Okay. And he was taken down the hallway I think you said?

14 A Like I said, when I came down the hallway, I met the
15 Judge; he was standing in the hallway, and I was telling
16 him he won't come inside. And when I turned around, he
17 was -- he was walking up towards us.

18 Q Okay. And who else -- you say "us;" it was you, the
19 Judge, who else?

20 A Me and the Judge and Prosecutor Brian Thiede was there,
21 too.

22 Q Okay. That interaction all happened in the hallway
23 outside this courtroom, right?

24 A Yes, sir.

25 Q Did the Judge order you to do anything regarding Mr. Wood

1 when you were in the hallway?

2 A He was asked if he was the one passing out the pamphlets.

3 He said, Yes. And I was told to arrest him for Jury

4 Tampering so.

5 Q Okay. And who asked Mr. Wood whether or not he was the

6 one handing out the pamphlets?

7 A I don't remember if it was the Judge or if it was the

8 Prosecutor, but it was one of those -- one of those two

9 guys.

10 Q Okay. So the Judge, Judge Jaklevic, did not bring Mr.

11 Wood into the district courtroom, or --

12 A No.

13 Q -- do anything formal along those lines --

14 A No.

15 Q -- that -- is that correct?

16 A Yes.

17 Q Okay. And you testified that there was a trial going on

18 in the *Yoder* case. But, in fact, no trial was ever held;

19 isn't that true?

20 A No trial was held, no.

21 Q Okay. No jury was picked, correct?

22 A No, sir.

23 Q Is that correct?

24 A That is correct.

25 Q I know I'm asking it in a bad way, so I'm sorry about

1 that. All right. How many times did you go outside of
2 the courthouse here to talk with Mr. Wood?

3 A Just the one time.

4 Q Just the one time. Did he ever ask you if he was being
5 detained or arrested; do you recall him asking you that?

6 A I don't recall. I just remember him saying he knows -- he
7 knew what his rights were. I remember him saying
8 something along that line, but I don't remember him asking
9 anything else.

10 Q So the fact that you had no arrest powers outside of the
11 courthouse and you were trying to get him inside the
12 courthouse at Judge's direction; was that just a rouse to
13 get him in here so he could be arrested?

14 A I think I was pretty straight with him; if he didn't come
15 in, I'd just have a City unit come over here.

16 Q To get him arrested, right?

17 A To --

18 Q Was that your intention?

19 A To bring him in as per the Judge's orders.

20 Q Okay. So that he could be arrested?

21 A I --

22 MR. HULL: Your Honor, asked and answered --

23 THE WITNESS: -- don't recall saying that.

24 MR. HULL: -- and relevance.

25 MR. KALLMAN: All right. Well, he says he

1 doesn't recall. I'll move on, Judge.

2 THE COURT: All right.

3 Thank you.

4 BY MR. KALLMAN:

5 Q Do you specifically have a recollection; once everybody is
6 the hallway here, of Mr. Wood interacting and talking to
7 Judge Jaklevic if you -- if you recall?

8 A I -- if there was any, it was very short. There -- there
9 wasn't a lot. I mean there was a couple things said, but
10 nothing that --

11 Q So you don't recall?

12 A -- made me remember what was said, no. So --

13 Q Like I said, you don't recall any specific words --

14 A No.

15 Q -- or what was said?

16 A No.

17 Q Okay. Now, Deputy Roberts, you -- let me ask you about
18 this; are you aware of any -- well, how long have you
19 worked here in the courthouse?

20 A I've been here in the courthouse for about three-and-a-
21 half years.

22 Q Okay. Are you aware of any policy that the court has or
23 the county has on this property regarding the handing out
24 of brochures or pamphlets outside the courthouse?

25 A No.

1 Q You've never seen any policy like that?

2 A No.

3 Q Okay. Is that correct?

4 A Yes.

5 Q Okay. Did the Judge indicate to you his -- any -- any
6 concern with the content of what was in the brochure that

7 --

8 A Not directly --

9 Q -- Mr. Wood was handing out?

10 A -- to me, no.

11 Q Not to you?

12 A No.

13 Q Okay. Did you ever read the brochure?

14 A I skimmed through it when I was -- after I collected them
15 up, but I didn't -- I didn't really read into it too much,
16 no.

17 Q Okay. And Judge Jaklevic ordered you to confiscate the
18 brochures from all the jurors in the --

19 A Yes.

20 Q -- jury room that had them, right?

21 A Yes.

22 Q Okay. Did he tell you why he wanted you to do that?

23 A No, not that I recall.

24 Q Were you present in the jury room when the Judge was
25 explaining at the trial was not going to happen; when that

1 turned around and looked at him and I said, well,
2 obviously, I'm a person, because I wasn't quite
3 understanding what he said. And then I walked into the
4 building.

5 Q Okay. Now at that point had he had -- had he actually
6 handed you a pamphlet?

7 A No.

8 Q So you didn't know what was on the pamphlet?

9 A I did not.

10 Q Okay. So what happened next?

11 A Then when I came in and kind of waiting; there was a lot
12 of people here that day for the trial, there was a
13 regulatory staff that was here and -- for the trial -- as
14 called as a witness, and she made the comment to me, she
15 said, I have -- I received a pamphlet from the guy out on
16 the sidewalk. Well, at that point then, Ms. Wood -- I'm
17 sorry -- Ms. Marshall, who worked with the Prosecutor,
18 took the pamphlet from her -- and I was standing right
19 next to the civilian witness -- and she then took it and
20 there was a conversation, and I was just standing off to
21 the side, and then there was a decision made that the
22 pamphlets would be taken from anybody that was sitted --
23 seated in the jury room. And that was done by a Mecosta
24 County Deputy. And then the actual Prosecutor and the
25 Judge were out in the hallway and the decision was made

1 that the Judge would like to speak to Mr. Wood and wanted
2 to see if he was still outside.

3 Q Okay. So I'd like to take you back before -- before we go
4 any further; first of all, at this point in time, was the
5 jury trial still scheduled to go forward in the *Yoder*
6 case?

7 A Yes.

8 Q Were jurors still sitting in the room waiting to hear the
9 case; as far as you were aware?

10 A Yes.

11 Q Okay. All right. And then, so you said that at that
12 point, a decision was made to take the pamphlets away from
13 the jurors that were sitting in that room; is that
14 correct?

15 A Yes.

16 Q Okay. And then what happened after the Judge said
17 something about getting Mr. -- or -- getting the person
18 who was handing out the pamphlets?

19 A Then Deputy Roberts was called. And so I went outside
20 with him, because I did not want him to go outside alone
21 and plus, I knew from earlier contact with Mr. Wood where
22 he -- or -- what he looked like, so I went outside and
23 Deputy Wood (sic) didn't know who he was looking for, so
24 he spoke to some people that were standing out, just
25 outside, on the steps. And I said, no, no, Mr. Wood is

1 still down at the end of the sidewalk --

2 Q Okay.

3 A -- at the end of the steps. So then the deputy and I
4 went down --

5 Q Okay.

6 A -- to the end of the sidewalk.

7 Q And what did you say to Mr. Wood when you went out down
8 there?

9 A I told him that -- well, first of all, there was a
10 conversation between the deputy and Mr. Wood. And then I
11 told him that the Judge would like to speak to him.

12 Q And when you say down there; where were they; how far from
13 the courthouse?

14 A Well, the deputy was talking to him from the steps and I
15 was --

16 Q Okay.

17 A -- down by Mr. Wood.

18 Q So the deputy was on the steps talking to him and then you
19 -- you went down there to talk -- okay.

20 A I went down there to --

21 Q I just want to make sure --

22 A -- to personally talk --

23 Q -- of that.

24 A -- to Mr. Wood, yes.

25 Q Okay. So then you went down next to Mr. Wood and you

1 spoke with him?

2 A Yes.

3 Q What happened next?

4 A Well, then I told him that the Judge would like to see him
5 -- or -- wanted to speak to him. And Mr. Wood said, "Am I
6 being detained?" And I said, "No." I said, "The Judge
7 would like to speak to you." Because, at that point, I
8 didn't know --

9 Q And just --

10 A -- what was going on.

11 Q -- just for the record, this is just a conversation
12 between you and Mr. Wood; at this point, it was just the
13 two of you talking?

14 A Yes.

15 Q Okay. So go --

16 A It was -- right.

17 Q -- ahead after that.

18 A And we were just down at the end of the sidewalk and that
19 was it. It was just him and I. And it was --

20 Q And so Deputy Roberts wasn't involved directly in that
21 conversation?

22 A No.

23 Q Okay. So what happened next?

24 A And like I said, it was just this kind of conversation.

25 And he said, "Am I being detained?" And I said, "No." I

1 said, "The Judge has asked to speak to you, so I'm asking
2 if you'll come inside with me." And he said, "Okay." So
3 we started up the stairs and we got to the first set of
4 glass doors. And there was a large, large number of people
5 in the lobby area. So, when we got through the first set
6 of doors, the deputy opened the second glass set of doors
7 and, at that point, I put my hand on his back.

8 Q When you say "his back," whose back?

9 A On Mr. Wood's back.

10 Q Okay.

11 A And I put my hand on his back. And he said very loudly,
12 "Don't manhandle me." And I said, "If I was going to
13 manhandle you, sir, I'd -- you'd be face down on the
14 ground already." And he said, "Oh, okay." And I said to
15 him also, "I'm not doing anything more than I would for my
16 89-and-a-half-year-old mother; I'm leading you through the
17 crowd, the lobby is crowded." So the people moved and at
18 that point, once we got through the crowd, I just took my
19 hand off and said, "The judge is" -- and I'm looking --
20 and I said, "Down there by the window." So the deputy led
21 the way and I followed Mr. Wood and -- and we went up to
22 where the Judge was.

23 Q Okay. Now you said there was a large number of people.
24 And the case of *People v Yoder*; that was -- was that an
25 Amish citizen?

1 A Yes.

2 Q Were there a large number of Amish people in the
3 courthouse that day?

4 A Yes, sir.

5 Q And can you say about how many?

6 A I'm estimating a minimum of 60 to 80 citizens.

7 Q Did you notice whether or not any of the Amish citizens
8 had pamphlets in their hands?

9 A I don't know, sir.

10 Q You just don't know the answer to that?

11 A I don't --

12 Q Okay.

13 A -- know the answer to that.

14 Q After the conversation that you had with the defendant;
15 would you be able to recognize him if you saw him today?

16 A Yes, sir.

17 Q And is he in this courtroom?

18 A Yes, sir.

19 Q Okay. Your Honor -- could you point him out for the
20 record?

21 A He's at the defendant's table, wearing a navy blue jacket,
22 and a blue dress shirt, and blue jeans, and tannish-brown
23 socks, and --

24 Q And that's the --

25 A -- black shoes.

1 Q -- gentleman you saw outside?

2 A Yes, sir.

3 MR. HULL: Okay.

4 Your Honor, may the record reflect the witness
5 identified the defendant?

6 THE COURT: It shall so reflect.

7 MR. HULL: Thank you.

8 I have no further questions.

9 Thank you.

10 THE WITNESS: Yes, sir.

11 THE COURT: Mr. Kallman.

12 CROSS-EXAMINATION

13 BY MR. KALLMAN:

14 Q Thank you, your Honor. Detective, you're a DNR officer
15 then?

16 A Yes, sir.

17 Q So you're -- you're not a deputy of Mecosta County?

18 A No, sir.

19 Q So you don't have any arrest powers here in Mecosta
20 County; is that --

21 A I --

22 Q -- right?

23 A Yes, sir, I absolutely do. I have statewide arrest
24 powers.

25 Q Okay. And arrest powers for what?

1 A Any law in the State of Michigan.

2 Q Okay.

3 A I am state sworn.

4 Q All right. And that's -- so anywhere in the State of
5 Michigan that a law is being violated; you have arrest
6 powers?

7 A I absolutely do, sir.

8 Q Okay. Let's go through your testimony again here.

9 A Okay.

10 Q You did a report for this matter; is that right?

11 A I did.

12 Q Okay. Did you review that before today's testimony?

13 A I did.

14 Q Okay. And you said in your report, you observed a male
15 wearing a blue jacket and jeans, with hair cut -- brown
16 hair, cut short, handing out pamphlets to everyone heading
17 into the district court, right?

18 A Yes.

19 Q Okay. So people who are not summoned as potential jurors
20 got brochures also, didn't they?

21 A Probably, yes.

22 Q Okay.

23 A I didn't know who was a juror, sir, and who was not a
24 juror so.

25 Q You've taken the question out of my mouth. There is

1 really no way to tell was there?

2 A No, sir, there -- there was not.

3 Q They weren't wearing big buttons or signs saying "I'm a
4 potential juror" or anything --

5 A No --

6 Q -- right?

7 A -- sir. No, sir, there was --

8 Q Okay.

9 A -- not.

10 Q So he's just handing them out as people are walking by;
11 some people would take a brochure, others wouldn't, right?

12 A That is correct.

13 Q Okay. And you say in your report that as you approached
14 Mr. Wood, "He observed my duty weapon, badge, handcuffs,
15 an additional magazine of duty and ammunition concealed
16 under my blazer," right?

17 A Blazer.

18 Q Okay. So if it's concealed under your blazer; how would
19 he see that?

20 A Because it was windy that day and as the wind blows, I was
21 having a hard time keeping my blazer closed. So it was --

22 Q Okay. So he would recognize --

23 A I can --

24 Q I'm sorry. I didn't mean to cut you off.

25 A I did not have a heavy winter coat on.

1 Q Gotcha.

2 A So I just had this jack -- or -- not this exact suit, but

3 --

4 Q Sure.

5 A -- I had a blazer on.

6 Q Okay. Sure. So anybody that would have observed you that
7 day would realize you had something to do with law
8 enforcement, right?

9 A Yes, sir.

10 Q Okay. I mean, you have a gun, handcuffs, that sort of
11 thing, right?

12 A Yes, I would hope so, sir.

13 Q Okay. And what he said to you was this pamphlet -- he
14 didn't expect that you would want one, right?

15 A That is correct.

16 Q And that it was simply a pamphlet that explained jury
17 rights, correct?

18 A Correct.

19 Q And I just want to make clear; he was -- was he around the
20 sidewalk where there is kind of like a "T" on the sidewalk
21 out by Elm Street; is -- that's where he was, right?

22 A Yes, sir. He was right on the sidewalk, right in front,
23 where the steps lead up. Like there's --

24 Q Where the sidewalk starts leading up to the courthouse?

25 A That is correct. Right --

1 Q Okay.

2 A -- right there.

3 Q So right at that "T" out by Elm Street; in front of the
4 courthouse here?

5 A Right. You've got the road, and you've got the grass, then
6 you've got the public sidewalk, and then you've got --

7 Q Right.

8 A -- the main set of steps leading up, and he was right
9 there.

10 Q At the public sidewalk?

11 A Yes, sir.

12 Q Okay. Thank you. Now was there somebody else with you
13 that day from the DEQ?

14 A Not with me that -- well, can you clarify that?

15 Q Yeah, maybe -- you mentioned in your report a Brandi
16 Stefanski; is that --

17 A Right. She -- she is a regulatory staff. She was not
18 with me. She was there to listen on the case. She was an
19 observer, but she was not with me.

20 Q Okay. I see. I understand.

21 A Okay.

22 Q But, you knew who she was and she was there?

23 A I did.

24 Q Okay. And she got handed a pamphlet by Mr. Wood, right?

25 A She did.

1 Q Okay. And she was clearly not a juror or summoned that
2 day to come for a trial, right?

3 A That is correct.

4 Q Okay. Now you talked earlier; you said there was some
5 discussion about going outside to bring Mr. Wood inside to
6 see the Judge. Do you recall who made the decision to go
7 out and bring Mr. Wood in?

8 A I know in my report I said that it was the Prosecutor, but
9 it was the Judge. And when I realized what I put in my
10 report, I called and I said, "I screwed up."

11 Q Yeah, it's okay.

12 A I put that it was -- because it was a shirt and a tie. So
13 after I had submitted it, I called and I talked to the
14 assistant prosecutor and I said, you know, "Do you want me
15 to resubmit that it was the Judge and not the Prosecutor?"
16 And he said, "No, just wait." And I said there was a lot
17 going on; I just knew that it was a shirt and a tie --

18 Q Okay.

19 A -- and it ended up being the Judge that had requested it.

20 Q All right. So in your report where you say it was
21 Prosecutor Brian Thiede who said to go out, it actually
22 was Judge Jaklevic?

23 A It was the Judge; yes, sir.

24 Q Okay. And then you went out with Deputy Roberts, right?

25 A That is correct.

1 Q Okay. Do you recognize him here today?

2 A Right there, sir.

3 Q Sitting next to Mr. Hull?

4 A I believe that's him, sir.

5 Q Okay.

6 A I was just with him just the one time so --

7 Q All right.

8 A -- I believe that's him.

9 Q That's fair. Thank you. And you say in your report that
10 at first Deputy Roberts thought the Amish were handing out
11 the flyers?

12 A Well, he wasn't sure.

13 Q Okay.

14 A I don't think he was sure because he had been inside. He
15 -- and he was basically brought out at the Judge's
16 request. And I don't think he -- well, in my opinion only
17 -- I don't think he knew what had been transpiring where
18 --

19 Q Okay.

20 A -- I had because I had come in from the outside. So
21 that's why I went outside. For one, with all my years of
22 police work, you never send one person out alone and two,
23 to be able to assist him to find if Mr. Wood was still
24 handing out the pamphlets since I had contact with Mr.
25 Wood.

1 Q Okay. Mr. Wood did not have any weapons or anything on
2 his person that day, did he?

3 A No, he didn't.

4 Q Okay. So you did indicate that Deputy Roberts -- "Deputy
5 Roberts yelled at a group of Amish to come forward if they
6 were handing out pamphlets," right?

7 A Right.

8 Q Okay. And that's where you corrected him and pointed out
9 Mr. Wood?

10 A Right.

11 Q Okay.

12 A I said, "No, no, there -- there's Mr. Wood."

13 Q Okay.

14 A Because, again, he wasn't sure -- you know -- who was --

15 Q Understood.

16 A -- who was doing it. And I said, "No, Mr. Wood is down
17 there." And then I walked down to where Mr. Wood was.

18 Q Understood. Okay. And I think you indicated Mr. Wood was
19 still in the same place at that "T" in the intersection on
20 the public sidewalk, out by the street, right?

21 A Yes, sir.

22 Q Okay. And you said you had told him earlier to move away.

23 A Yes, sir.

24 Q On what authority were you telling him he had to leave?

25 A Well, for one, he was blocking the sidewalk.

1 Q Mr. Wood was blocking the whole sidewalk so people could
2 not get in; that's your opinion?

3 A Well, I had to step around him on the grass.

4 Q Huh.

5 A So -- which, I had dress shoes on and it was awful wet.
6 And I was thinking well, maybe some people would not
7 especially like to get their shoes all wet -- I didn't
8 particularly care, but - and not knowing what the
9 pamphlets were, maybe people would not like being
10 approached. So I just told him to move on.

11 Q Okay. And, again, you informed Mr. Wood the Judge wanted
12 to speak with him, right?

13 A I did.

14 Q And then he said, Am I -- he'd asked -- Am I being
15 detained, right?

16 A He did.

17 Q I think you testified to that.

18 A Yes --

19 Q Okay.

20 A -- he did.

21 Q And then you say in your report, "Deputy Roberts told him,
22 Mr. Wood, if he did not come in the City Police would come
23 up and arrest him." Is that your recollection?

24 A Yes, sir.

25 Q Okay. So he was threatened with arrest?

1 A Not by me, sir.

2 Q I didn't say by you. He was threatened by arrest by
3 Deputy Roberts, right?

4 A I --

5 Q That's what you say.

6 A That's what I said in the report, sir.

7 Q Okay.

8 A That's what -- that's what was said; sir, yes.

9 Q Okay. So that's what happened, right?

10 A Yes, sir.

11 Q Okay. So, Mr. Wood, after asking, "Am I being detained,"
12 was threatened with arrest by Deputy Roberts, right?

13 A Yes, sir.

14 Q And it was either come inside, talk to Judge, or get
15 arrested; that was the choice given to Mr. Wood, right?

16 A Not by me, sir.

17 Q I didn't ask from you. That was the choice given to Mr.
18 Wood by Deputy Roberts, right?

19 A By Deputy Roberts; yes, sir.

20 Q Okay. And you personally observed this?

21 A I heard it; yes, sir.

22 Q Okay. Well, you were there, right?

23 A Yes, sir.

24 Q Okay. You personally saw it happen and you --

25 A Yes, sir.

1 Q -- heard it, right?

2 A Yes, sir.

3 Q Okay. So then you say, "Well, I asked Mr. Wood to come up
4 the sidewalk with me." Why did you leave that out of your
5 earlier testimony, because you just said well, I was
6 talking to him and told him to come in; he just came in.

7 A No, I didn't.

8 Q Well --

9 A I did --

10 Q -- you didn't --

11 A -- not.

12 Q -- mention anything about this.

13 A About what?

14 Q About getting arrested. Why not?

15 A I wasn't asked the question.

16 Q Okay. So as you're walking up the steps or walking up the
17 sidewalk, and you get to the steps, and you're coming into
18 the building; did you ask Mr. Wood if he had any weapons
19 on him?

20 A I did.

21 Q Well, what did you ask him if he had?

22 A If he had any bazookas or machetes.

23 Q So you asked Mr. Wood if he had any bazookas or machetes?

24 A That's -- I did many years on road patrol before I retired
25 out of the sheriff's department and that was a calming way

1 and usually you would get a snicker out of somebody when
2 they go, "No, I don't have anything like that," and they
3 would snicker. Obviously, you would see something like
4 that on Mr. Wood. And he says, "Oh, no." I mean --

5 Q Okay.

6 A -- and he -- I knew right away he didn't, but it was
7 trying to calm down a situation. That was it.

8 Q Okay. Well, calm down a situation. He was walking in.

9 A He was.

10 Q He wasn't resisting. He --

11 A He was --

12 Q -- wasn't --

13 A -- not.

14 Q -- yelling?

15 A He was not.

16 Q Okay. So -- well, all right.

17 A It just -- it was a little tense, you could tell.

18 Q Okay. So, when you say Mr. Wood came up the stairs
19 voluntarily; it wasn't really voluntary was it, it was
20 either come up or get arrested?

21 A In my eyes, at the time when I was talking to him and
22 asked him to come up, it was him and I. I told him what
23 the Judge had asked us to do. He came up based on, in my
24 opinion, based on what I had asked him to do. And I asked
25 him to come up because the Judge had wanted to talk to

1 him.

2 Q So it didn't factor in at all that Deputy Roberts
3 threatened to have him arrested by --

4 MR. HULL: Your Honor --

5 MR. KALLMAN: -- the City Police?

6 MR. HULL: -- you know we've gone over this.

7 THE WITNESS: No, because --

8 MR. KALLMAN: Is --

9 THE WITNESS: -- Deputy Roberts was --

10 MR. HULL: Well, I'm going to object --

11 THE COURT: Hold on.

12 THE WITNESS: I'm -- I'm sorry.

13 MR. KALLMAN: It's cross-examination, Judge. I
14 think it's --

15 MR. HULL: First of all, it's asked and
16 answered. Second of all, I don't see the relevance again.

17 THE COURT: Your response, Mr. Kallman.

18 MR. KALLMAN: It's certainly relevant. It's the
19 right for the actual facts of the incident involved where
20 they're alleging my client committed a crime. They tried
21 to portray to this Court and this jury that he just came
22 in voluntarily, when he was threatened with arrest. I
23 think that's something I can delve into --

24 MR. HULL: I --

25 MR. KALLMAN: -- and get in. I'm going through

1 her report. She brought it up more than once. I'm simply
2 going through her report and asking her about it. That's
3 all I'm doing. I'm ready to move on to --

4 MR. HULL: Your Honor --

5 MR. KALLMAN: -- other things.

6 MR. HULL: -- I don't -- I do not agree with the
7 way he is portraying the witness's testimony. Corrections
8 Officer Roberts testified already and he said he -- he
9 said he was going to call the City Police. So it's not
10 like anything was being hidden from the jury. He already
11 testified to that twice -- three times; once on direct,
12 twice on cross-examination. So it's not like there is
13 anything being hidden here. I don't like his portraying
14 that somehow that the information is being left out on
15 purpose. It's already been testified to.

16 MR. KALLMAN: Well --

17 MR. HULL: It's already asked and answered with
18 this witness.

19 MR. KALLMAN: I think Deputy Roberts' testimony
20 was pretty clear when I asked him specifically about what
21 -- his testimony is clear -- he never talked or mentioned
22 at all that he threatened to have my client arrested. He
23 never brought that up, but the jury will recall what --
24 what he --

25 MR. HULL: Your Honor --

1 MR. KALLMAN: -- testified to.

2 THE COURT: Right.

3 Do you have --

4 MR. KALLMAN: I'm ready to move on anyway,
5 Judge.

6 THE COURT: All right. Then, thank you.

7 BY MR. KALLMAN:

8 Q Thank you. So, Detective, you said you then placed your
9 hand on Mr. Wood's back to steer him through the crowd?

10 A Yes, sir.

11 Q Does that mean you were inside the building at that point?

12 A At that point, yes, sir.

13 Q Okay.

14 A Well, we were in between the two vestibules.

15 Q The door --

16 A You know, the --

17 Q -- the glass doors?

18 A Yes, sir.

19 Q Okay.

20 A I guess that's what you'd call it; the vestibule.

21 Q And then you -- you say that Mr. Wood made this statement
22 about don't manhandle me, right?

23 A Yes.

24 Q Okay. And then you say, "I told him, if I was going to
25 manhandle him that he would've already been face down on

1 the ground."

2 A Yes.

3 Q Okay.

4 A And he went, "Oh, okay." That was his response.

5 Q So --

6 A And then we --

7 Q -- do you --

8 A -- walked in.

9 Q -- think Mr. Wood would take that as a threat; that you
10 were threatening to lay him out on the ground?

11 A No.

12 Q Was he resisting you at that point?

13 A No. I don't know what he was saying -- why he -- he said
14 that.

15 Q Okay. So then you say, you took him down on the hallway.
16 Is that what happened; you came in?

17 A This hallway; yes, sir.

18 Q Okay. And where -- how far down the hallway did you go;
19 do you recall?

20 A Not --

21 Q Past this courtroom, right?

22 A Yes, not -- yes, past this door, but I don't think as far
23 as the drinking fountain.

24 Q Okay.

25 A So right --

1 Q And who was --

2 A -- right --

3 Q -- out -- I'm sorry. I thought you were done. I'm sorry.

4 A No, no, sir. Right about where the Judge's door is. So
5 maybe right directly across from this juror right here, I
6 believe.

7 Q Okay.

8 A If I'm looking through the door.

9 Q All right. And then who was waiting in the hallway to
10 meet with you and Mr. Wood and Deputy Roberts?

11 A There was the Judge and Mr. Thiede.

12 Q Mr. Thiede, the Prosecutor?

13 A The Prosecutor.

14 Q Okay.

15 A A whole bunch of other people that were here for their
16 court appearances for the afternoon, there were still 60
17 to 80 other people here for the other trial that was
18 supposed to go on. I don't know how many people were
19 still here, but there was a lot of people.

20 Q And you mention in your report Assistant Prosecutor Hull
21 was also there, right?

22 A Yes, sir. And -- yes, sir.

23 Q So Mr. Hull was sitting --

24 A He was there.

25 Q -- right here?

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JUDGE PETER JAKLEVIC

(At 3:55 p.m., called by the People, sworn by
the Court, testified as follows)

DIRECT EXAMINATION

BY MR. HULL:

Q Thank you, your Honor. Could you please state your full
name and spell your last for the record?

A Peter Jaklevic. My last name is spelled
J-A-K-L-E-V -- as in Victor -- I-C.

Q And what do you do for a living?

A I'm the District Court Judge for Mecosta and Osceola
County. It's the 77th District Court. My courtroom is
actually right across the hall.

Q How long have you been in the District Court for Mecosta
and Osceola County?

A Since January 1st of 2015. So just over two years.

Q And that's an elected position; is that correct?

A It is.

Q Before you were the district court Judge, you were a
prosecutor; is that correct?

A Correct.

Q And how long were you a prosecutor?

A Let's see here, I became the Chief Prosecutor in 1998,
before that I was the Chief Assistant Prosecutor for two
years, and before that an Assistant Prosecutor. So I've

1 been in the Prosecutor's Office for Mecosta County, all
2 total, just over 20 years before I became a Judge.

3 Q And before that; what did you do?

4 A I was a law clerk for Judge Root; the gentleman up on the
5 wall there, I was his law clerk back in 1993.

6 Q Now were you the Judge that was presiding over the *People*
7 *versus Andy Yoder* case?

8 A I -- I was, yes.

9 Q From your memory; what did that case involve?

10 A Well, I didn't know a whole lot about the facts, but my
11 understanding was that there were three misdemeanor
12 charges against Mr. Yoder. The case, essentially,
13 involved allegations that Mr. Yoder had taken a wetland on
14 his property and was trying to convert it to farmland.
15 And there were three misdemeanor allegations against him.
16 Essentially, he was supposed to have obtained a permit
17 before he did these things and he was charged as a result
18 of that. That was my understanding of it. Again, I
19 didn't know a whole lot about the case, but --

20 Q Okay. Now I'd like to take you back to November 4th, 2015.

21 A Okay.

22 Q Was there anything going in relation to the *Yoder* case
23 then --

24 A On --

25 Q -- on that date?

1 A -- November 4th -- and, again, this is -- I just have in
2 front of me here; this is the -- the court file so there
3 might be a point in time where I need to reference this
4 and I'll ask you -- but November 4th was, I guess I would
5 refer to it as a pretrial motion day. There was a Motion
6 to Adjourn filed and heard on that day. It wasn't a day
7 that -- it was a trial day, okay. So on November 4th, the
8 defense in the case; Mr. Yoder's attorney, Mr. Andy
9 Yoder's attorney, wanted to adjourn the trial date. The
10 trial date was scheduled for November 24th. So on November
11 4th, Mr. Yoder's attorney filed a Motion to Adjourn. A
12 motion just means a request, okay. It's a fancy legal
13 word for a request. He wanted to adjourn the trial. So
14 there's a Motion to Adjourn heard that day, and there
15 might have been a couple other issues discussed as well
16 pertaining to evidence and things of that nature, but
17 primarily on November 4th, it was a Motion to Adjourn the
18 Trial. The defense wanted to adjourn the trial.

19 Q Was there anything else scheduled for that date and time
20 -- well, first of all, what time was that -- was that
21 hearing taking place in the district court?

22 A On November 4th?

23 Q Yes.

24 A I'd have to consult the file. I don't recall what time of
25 day --

1 Q Would --

2 A -- it was.

3 Q Would that refresh your memory?

4 A It would.

5 Q Go ahead.

6 A And these are -- I'm just looking at -- these are
7 transcripts of the proceedings that happened. That's what
8 that court reporter is doing; she's taking all this down,
9 and she prepares similar things. So that's what I'm
10 looking at. These are just transcripts. This says it
11 started at 11:04 a.m. on November 4th. So, Wednesday,
12 November 4th, 2015, at 11:04 a.m. And they went until
13 about 11:28, according to the file. So we were on the
14 record, in court, from 11:04 a.m. to 11:28 a.m. on
15 November 4th.

16 Q Was there anything else scheduled to go on the record at
17 that time in district court, at 11:00 a.m., from your
18 memory or was that the only scheduled for that time?

19 A Well, it was a final pretrial conference that day as well
20 and there was discussions of -- let's see -- I have the
21 final pretrial conference and a final pretrial. That's
22 what we -- we addressed.

23 Q And -- and I apologize. Let me ask it this way; was there
24 any other case going on at that time besides the *Yoder*
25 case; was there anything scheduled for 11:00 o'clock on

1 that day besides the *Yoder* pretrial and motion hearing?

2 A I'm sorry. Maybe -- maybe you could refresh my
3 recollection. I'm not sure what --

4 Q Okay.

5 A -- you're getting at. I don't know.

6 Q Okay. So you -- what -- what -- okay. Was -- were -- you
7 were discussing the *Yoder* trial at 11:00 o'clock in
8 district court, correct, at 11:04?

9 A Correct.

10 Q Okay. And you weren't discussing anything else; it was
11 the *Yoder* pretrial that you were having at that time,
12 correct?

13 A Yeah, this was --

14 Q Okay.

15 A Right. It was set for a final pretrial conference on that
16 date and a Motion to Adjourn Trial. And that's what we
17 went on the record for; to address those issues.

18 Q Okay. Thank you. And now --

19 A I could -- I mean, if there's something else I'm missing.
20 I don't -- this was a long ago. I could consult the file,
21 but I --

22 Q I just wanted --

23 A -- that's what --

24 Q -- to make sure --

25 A -- I remember.

1 Q -- there wasn't any other case being heard at that time.

2 A Oh, no. No, that was the only case. I'm sorry.

3 Q Thank you. Now at that pretrial motion hearing was -- was
4 the date and time of the trial discussed at that time?

5 A It was.

6 Q Okay. And was that something that you discussed on the
7 record?

8 A I was. And I remember it very specifically because,
9 obviously, whenever we're dealing with a motion to adjourn
10 a trial, we -- we want to know, well, how long is the
11 trial away, right. So on November 4th, we discussed, on
12 the record, the fact that it was 20 days away; it was
13 November 24th. So that was discussed on the record very
14 clearly because whenever a defense attorney wants more
15 time, as a Judge, I have to look at, well, how much time
16 do have until the trial; when did you start this case, how
17 much time do we have to get ready. And so we -- the --
18 the date of the trial was very important to me. I needed
19 to know how much time he had. So we discussed that on the
20 record at least a couple of times.

21 Q Were there any other trials scheduled in district court to
22 occur on 11/24, November 24th?

23 A Not in district court and I don't believe anywhere else in
24 this courthouse.

25 Q Okay. So none in circuit court either?

1 A No.

2 Q How does the process work when you have jurors appear for
3 trial; how are they -- first, how are they notified?

4 A Well, like the folks here were notified; you'd get a
5 summons in the mail, and it would tell you the date to
6 appear, and the time. And these would be sent out by my
7 staff well in advance of trial.

8 Q Generally, what time are jurors ordered to appear for
9 trial?

10 A I believe, 8:30 to 8:45 they show up. So -- and the --
11 the trial was actually scheduled for 9:15 a.m., according
12 to the notice in the file so -- and that's when all of our
13 trials start is at 9:15 a.m. At least that's when they're
14 scheduled to start. As you know, just because somebody
15 says it's going to start at 9:15, doesn't meant it always
16 does. But it was set for 9:15 so.

17 Q So it was scheduled for -- to begin at 9:15 in the
18 morning?

19 A Yes.

20 Q And what time were the jurors ordered to appear around; do
21 you know?

22 A I believe it was 8:45.

23 Q Okay. Now was there anything going on in the -- in regard
24 to *Yoder* before the 9:15 trial; where there any hearings
25 going on?

1 A Yes.

2 Q What was -- what was going on before that?

3 A Well, there was -- there had been some last minute
4 motions; requests for relief. There was some evidentiary
5 issues that had come up regarding what evidence was or was
6 not going to come in at the *Yoder* trial, okay. And I had
7 decided -- I -- I received motions from Mr. Yoder's
8 attorney and I think I received a response from the State
9 -- and I decided because I was getting these so close in
10 time to trial that I would just hear these on the morning
11 of trial. But, again, I -- I like to start on time as
12 best I can. So I actually ordered the attorneys to appear
13 at 8:00 o'clock. I told them to be there at 8:00 o'clock
14 on the 24th so we could resolve -- we could hear the motion
15 -- these other sets of motions that were being discussed,
16 so that way, again, we wouldn't delay that start time of
17 9:15. So we had some -- some motions heard on the morning
18 of the trial and I -- those were scheduled for 8:00
19 o'clock.

20 Q Was there anything resolve at that point in regard to the
21 trial; any resolutions in regard to trial?

22 A At the motion hearing?

23 Q Yeah, at the motion hearing.

24 A Well, there was some -- the trial wasn't resolved -- there
25 was some issues regarding what evidence was going to come

1 in and what wasn't. But the trial was -- was still -- was
2 still going. I know at the close of -- at the close of
3 that motion, Mr. Hull renewed his plea offer to Mr.
4 Gilbert -- or -- Mr. Gilbert was Mr. Yoder's attorney. So
5 -- I'll just back up -- so we hear the motions, okay.
6 They're resolved. We're still on the record, okay. And
7 this is right -- we're starting at 8:00 o'clock in the
8 morning -- and I made my rulings; I decided what evidence
9 was going to come in and what wasn't, and then Mr. Hull
10 renewed a plea offer to Mr. Gilbert, and we went into
11 recess at right around 8:30 so that he could discuss it
12 with his client.

13 Q Okay. Now right around 8:30, when you went into recess,
14 what happened after that; where did you go?

15 A Well, my -- my actual office -- if you -- that courtroom
16 right across the hall there; my actual office is -- is --
17 I can go right into the courtroom; I don't even need to go
18 into the hallway, so I went into my office. I walked out
19 of my courtroom -- like Judge Booher; her office goes --
20 that -- that's where the circuit court judge goes -- I
21 have a door that goes right into my chambers. So that's
22 where I went. And I was waiting to see if there was going
23 to be any resolution or if we were going to have a trial.
24 But, at that point in time, the trial was -- was still
25 going so.

1 Q Did anything happen when you were sitting in your office;
2 related to that case that we're standing here for?

3 A Yeah, no -- I don't know how much longer it was after I
4 sat down, but I was at my desk and Theresa (sic) Bechler,
5 who was then working in our clerk's office -- and I -- I --
6 -- you know what, I call her Theresa (sic) Bechler. I don't
7 know if her last name has changed.

8 Q No.

9 A I heard a no. Okay. Well, we'll go -- I'll go with that.
10 Anyway, Theresa (sic) Bechler walked in my -- into my
11 office and handed me a yellow pamphlet and said -- I don't
12 know if you want me to get into what she said, but --

13 Q What did she say at the point she handed you the pamphlet?

14 A She said, "Judge, I just thought you'd like to know that
15 someone's outside handing these pamphlets to your jurors."

16 Q Did you get a chance to look at the pamphlet immediately
17 or --

18 A I did. She handed it to me and I -- I kind of said, "Oh,
19 great." And then I think I looked at the pamphlet right
20 away and I began reading it.

21 Q What was going through your head when you first began
22 reading it?

23 A Well, honestly, I -- I thought I -- to be -- to be quite
24 candid, I honestly thought I missed -- I missed a memo
25 somewhere where we decided to give out pamphlets. It's

1 not uncommon for some counties around the State of
2 Michigan to play videos for their jurors instead of -- you
3 know -- this Judge initiated you to the juror process; she
4 probably read some initial instructions. Some -- in some
5 counties they'll do videos; they'll do little educational
6 things. So I'm thinking, I don't remember ever -- ever
7 handing out pamphlets to jurors. This must be something
8 new. I was like, this -- this -- this just didn't sound
9 right. But, I maybe -- I thought maybe I just missed the
10 memo. Maybe this was something that the State of Michigan
11 was now doing. I was like, what -- what's going on,
12 because it just didn't seem right to me. And I thought
13 maybe --

14 Q So even --

15 A -- I --

16 Q -- your first thought was that this might have been
17 something official?

18 A Well, yeah. I didn't know what to think --

19 Q Okay.

20 A -- to be honest with you. I didn't -- it was -- it was
21 unusual and I didn't expect that to happen. So I'll say
22 that.

23 Q All right. And at what point did you realize that this
24 was not something that was official?

25 A When I read the cover.

1 MR. HULL: I'm showing you -- your Honor, may I
2 approach?

3 THE COURT: You may.

4 BY MR. HULL:

5 Q I'm showing you what's been admitted as People's Exhibit
6 Number 1. Do you recognize that?

7 A I do.

8 Q Is that the pamphlet that you saw on that date that
9 Therese Bechler provided you?

10 A It -- it's -- I believe it's -- if it's -- it might not be
11 the pamphlet, but it's one just like it.

12 Q One just like it?

13 A Yep.

14 Q Okay. And what --

15 A Yes. I'm sorry.

16 Q Sorry. Go ahead.

17 A No, I said yep. Sorry. I meant yes. I'm sorry.

18 Q What went through your head when you suddenly realized
19 this was not an SCAO -- or -- when you realized this was
20 not an official pamphlet?

21 A Well, I -- I -- I read the pamphlet fairly quickly. And I
22 thought to myself, you know, "Oh, great. This is not
23 supposed to be happening." You know, as a judge, my job
24 is to make sure the playing field is level for both sides.
25 And anytime you're -- you're bringing in potentially

1 extrajudicial influences, I thought this was going to
2 trash my jury trial. Basically, this would have -- I -- I
3 thought to myself, this would probably have caused the end
4 of my jury trial.

5 Q And -- and what do you mean by cause the end of your jury
6 trial or trash your jury trial; what about that pamphlet
7 made you think that that would have done that?

8 A Well, I mean, it -- a number of things, you know. First
9 of all, anytime -- backing up a second, okay. The Sixth
10 Amendment to the Constitution -- okay -- it says that an
11 accused has a right to a fair trial by an impartial jury,
12 okay. That's the United State Constitution that says
13 that. That's what -- we've all heard that before. That
14 right to a fair trial by an impartial jury, also applies
15 to the People. So the People have a right to a fair trial
16 by an impartial jury. Impartial means free of outside
17 influence, meaning you're supposed to decide the case on
18 the facts here in the courtroom, the facts that come from
19 this witness stand, and the law that's told to you by the
20 judge. So -- you know -- from my standpoint; as soon as I
21 saw this, in my opinion, there was potentially a violation
22 of constitutional dimensions. I was --

23 MR. KALLMAN: Your Honor --

24 THE WITNESS: -- also quite concerned --

25 MR. KALLMAN: -- I'm going to have to object --

1 THE COURT: Hold on.

2 MR. KALLMAN: -- to this line for the reasons we
3 discussed off the record.

4 THE COURT: All right.

5 And I guess maybe -- well, Mr. Hull, your
6 response.

7 MR. HULL: Your Honor, I'm asking the witness to
8 explain what his concerns were in regard to this pamphlet.
9 There's been a lot of discussion and a lot of testimony
10 that was brought on the record as to how the Judge reacted
11 when he found the pamphlet. That opens the door to this
12 kind of testimony as to why it is that he was so concerned
13 in regard to the pamphlet being distributed to his jury.

14 THE COURT: All right.

15 Judge, I'm going to caution you. We -- we have
16 had some objections and some concerns that you being
17 allowed to make any ultimate -- stating any ultimate
18 opinion in regards to whether or not any laws were
19 violated. So I'm going to allow you to testify in regards
20 to what your concerns were, but any ultimate opinions
21 regarding any laws being violated, I would ask that you
22 not be allowed to do that, all right.

23 THE WITNESS: That's fine. I do understand.

24 And I -- I would just say -- you know -- that,
25 obviously, these are just my opinions, these were just my

1 concerns, and I certainly am not -- your decision is your
2 decision. You're the one -- you're the ones that have to
3 decide this case. So I'm just -- obviously, I will just
4 state my concerns as best I can. And I'll try to do my
5 best to honor your order of course, your Honor.

6 THE COURT: Thank you.

7 MR. HULL: Thank you.

8 THE COURT: Mr. -- hold on -- Mr. Kallman, does
9 that satisfy your concerns?

10 MR. KALLMAN: It does, your Honor.

11 Thank you.

12 THE COURT: All right.

13 Thank you.

14 THE WITNESS: All right.

15 BY MR. HULL:

16 Q So we'll get back to your concerns in regard to the
17 pamphlet. Let's --

18 A All right.

19 Q -- go -- so you had this pamphlet, it's been handed to
20 you, you suddenly realize -- you know -- as you said,
21 there might be an issue with the jury; what do you do
22 next?

23 A Well, I -- I didn't know -- I wanted to find out to what
24 extent -- you know -- she just said -- when Ms. Bechler
25 came in and told me what she told me; that "Hey, Judge, I

1 just want you to know, somebody's handing these pamphlets
2 to your jurors," I wanted to see to what extent; how many
3 jurors had it. I mean, if it's only one or two jurors, I
4 -- then I could have just probably sent them home and we
5 could've -- if we were going to have a trial, we would
6 have been able to do it. So I walked outside of my office
7 and I walked down and I -- I sneaked a peek into my
8 courtroom to see how many people had the yellow pamphlets
9 in their hands; how many of the jury pool that was in the
10 courtroom was holding these in their hands. So I walked
11 out my door, by the water fountain there -- and my door is
12 not the bathroom, it's the next one over -- and I walked
13 down the hallway, and I looked into my courtroom, and --
14 to see -- you know -- how many people actually had the
15 pamphlets, and I looked in and I saw a number -- I don't
16 -- I didn't count, but I would say at that point in time,
17 most of the jurors had arrived. I think we were still
18 waiting on a few others, but most of the jury pool, I
19 should say, had arrived, but not all. And what I remember
20 -- if I just had to do an estimate -- I'd say maybe half
21 of them had yellow pamphlets. I didn't count, but I saw
22 -- you know -- I remember specifically when I looked in
23 the courtroom the first two people I looked at had -- were
24 reading these yellow pamphlets; right as I look -- I peek
25 in the courtroom, there were two women seated there, right

1 on that -- the very -- right -- the door -- the seats
2 closest to the courtroom door, were reading these
3 pamphlets, and I looked around and I saw some others. I
4 didn't do a count. So this is just an estimate on my
5 part. But that's -- that's what I did. And, again, I was
6 trying to see to what extent people had these pamphlets.

7 Q And in regard to the trial that you were presiding over;
8 what -- what concerns did you have in regard to so many
9 jurors having -- have -- having those pamphlets and
10 reading them?

11 A Well -- you know -- again, my concerns; my concerns -- you
12 know -- had to do with extrajudicial information;
13 information being brought outside the courtroom, and
14 presented to these jurors. And you folks, the folks that
15 are sitting here, when you took your juror oath, you -- in
16 fact, it's on the first page of the instructions that the
17 judge read to you -- were that you're supposed to decide
18 -- this is supposed to be a true verdict; a verdict based
19 on the facts as decided inside the courtroom, and the law
20 that's instructed to you. That's the oath. That's one of
21 the very first things you're told by the judge. Those jury
22 instructions about deciding it on the facts in the
23 courtroom and the law as the judge gives it to you, and
24 only that, are repeated throughout the jury instructions.
25 You're going to hear them throughout this trial. But --

1 so my concern was that, obviously, this appeared to me;
2 appeared to me, to be an effort to bring in information to
3 the jury's attention that wasn't through the witness stand
4 and it wasn't -- it wasn't -- it was certainly beyond the
5 judge's instructions so --

6 Q Outside of the courtroom; outside the district courtroom,
7 in the hallway area, do you remember there were people
8 standing about in that area?

9 A I do.

10 Q Do you remember how many; obviously, you can't give an
11 exact number, but was the area crowded, was there only a
12 few people around?

13 A I don't know how many people were there, but I remember
14 walking -- because if you walk out -- if you walk down the
15 hallway here, and you look out the door, you can kind of
16 see out there into the -- the stairway and all that and
17 there's a lot of windows that cover, so you can kind of
18 see what's going on outside. And I remember trying to see
19 if I could see anybody handing out pamphlets and I
20 couldn't because there were so many people out there. And
21 I didn't count. I don't know how many there were. I just
22 know that there were a lot. I remembered also that the
23 majority of them appeared to be Amish or, if they weren't,
24 they were dressed like Amish people. And so I knew there
25 was enough people where I couldn't see outside. So there

1 were quite a few people.

2 Q And looking at the group of people that were Amish; did
3 you see any of them holding any of these flyers?

4 A Of the Amish; no, I didn't see anybody holding flyers. No
5 Amish people were holding flyers at all.

6 Q Okay. So you -- and I -- you kind of touched on this a
7 little bit, but putting this pamphlet aside; putting that
8 pamphlet itself aside, what concerns, if any, do you have
9 with people approaching jurors in regard to your ability
10 to handle a case and to preside over a case; people
11 approaching jurors in or around the courthouse right
12 before a trial is begun or while a trial is going on and
13 talking to them?

14 A Okay.

15 Q Just taking out this pamphlet completely; what concerns do
16 you have?

17 A Well -- you know -- again, I go back to number 1; it --
18 having -- having that information; having information
19 being brought in, could implicate the violation of the
20 Constitution in two different respects --

21 MR. KALLMAN: Well, your Honor --

22 THE WITNESS: Again, I don't know -- I'm trying
23 to -- I can try to say it a different way; the concerns I
24 had.

25 THE COURT: Mr. Kallman, why don't you make your

1 -- make a total objection on the record, please.

2 MR. KALLMAN: Well, again, your Honor, I think
3 this witness is not here to take the place of the jury or
4 supplant the jury's role. And so when he starts
5 pontificating on, I think it's this constitutional
6 violation or it's this one, or whatever, that's not his
7 role as a witness. He's here to say what he observed;
8 what he saw. I didn't see pamphlets with the Amish, I did
9 this, I did that. He's not here to tell this jury what
10 they should -- how they should decide this case because
11 that's what this is a thinly failed attempt to do.

12 THE COURT: I --

13 MR. HULL: Your Honor, he's not --

14 THE COURT: Mr. Hull.

15 MR. HULL: This is directly in response to
16 testimony that was brought up in cross-examination in --
17 in -- in regard to the defendant being arrested and
18 bringing out the stuff that wasn't relevant in the first
19 place, but it was brought out. So now we have to bring
20 up, in response to that, why it is that the judge decided
21 to do what he did next, what was going through his mind,
22 what his concerns are. And on top of that, besides the
23 fact that this is responding to evidence that was brought
24 up during cross-examination, it's also relevant in this
25 case to show exactly the kinds of issues that we have in

1 regard to jurors being influenced. It goes directly to
2 the heart of this case. And he's not attempting to tell
3 the jury -- in fact, I believe he specifically said that
4 that's not his purview. He's not talking about whether or
5 not he believes in this particular case or this particular
6 defendant violated a particular statute. He's not making
7 any testimony to that. He has not been asked that
8 question. The question is generally, how does something
9 like this; outside influence of the jury, affect his
10 ability to preside over a case.

11 MR. KALLMAN: Well, and your Honor, my client's
12 not on trial for that. My client is on trial for whether
13 or not he influenced Jennifer Johnson and Theresa DeVries.
14 Not whether Judge Jaklevic, with all respect, sir -- you
15 know -- felt he was somehow -- you know -- compromised, or
16 I didn't like what was going on, or things like that.
17 That is not the issue here. And so by simply asking
18 factual questions about who did what; who ordered my
19 client be arrested, it goes to the crime that they're
20 claiming my client committed. This goes way beyond
21 anything I asked and it's totally inappropriate and it's
22 an attempt, as I said, to try to supplant Judge Jaklevic's
23 opinion on to the jury. And that's just totally improper.
24 My client is not on trial for that. I understand the
25 judge not liking -- my dad was a judge. I get it. Okay.

1 I understand him not liking this brochure. But the fact --

2 THE WITNESS: I didn't --

3 MR. KALLMAN: -- that --

4 THE WITNESS: -- testify. I didn't --

5 MR. KALLMAN: But --

6 THE WITNESS: -- testify to that.

7 THE COURT: Hold on.

8 MR. KALLMAN: -- the fact that he was -- he's
9 concerned. Okay. I'm sorry. The fact that he's --

10 MR. HULL: Your Honor --

11 MR. KALLMAN: -- concerned with this flyer and
12 it was going to trash my jury trial, as he said or things
13 like that, is not what my client is on trial for. So I
14 object.

15 MR. HULL: Your Honor, he is giving --
16 completing the testimony that's already done. I said --
17 my next question was -- taking the flyer out of it. We
18 weren't even discussing the flyer at this point. He's
19 using this as an opportunity to create another argument
20 for himself. We said, I -- the question was, taking the
21 flyer out of it. We're not even talking about it at this
22 point.

23 MR. KALLMAN: That's exactly what they're
24 talking about. It's violations of the Constitution and
25 all -- I mean, he's exactly going into that, Judge. They

1 can try to couch it and play around it and try to do it,
2 but that's --

3 MR. HULL: Your Honor --

4 MR. KALLMAN: -- exactly what --

5 MR. HULL: -- we're arguing --

6 MR. KALLMAN: -- they're doing.

7 MR. HULL: -- the law here. We're not couching
8 and playing around with anything.

9 THE COURT: All right.

10 Again, Judge Jaklevic, I am going to caution you
11 in regards to your testimony, any opinion whether or not
12 any laws were violated that day, only your concerns
13 regarding what could have occurred if jurors got outside
14 information, outside of what was presented by witnesses or
15 law that was presented by a judge, but not any opinions
16 regarding whether or not any laws were violated that day.

17 THE WITNESS: Okay. It's a fine line --

18 THE COURT: To the best of --

19 THE WITNESS: -- but I will do my best.

20 All right.

21 So, I guess to answer your question --

22 THE COURT: Do you want him to restate the
23 question?

24 THE WITNESS: No, I -- I got it. I'm trying to
25 answer it without getting in trouble. You know, it -- in

1 the -- the concerns that I have would be -- well, let me
2 put it to you this way; the right to cross-examine the
3 witness; that's part of the Sixth Amendment, the right to
4 a fair trial by an impartial jury; that's part of our
5 Constitution; the right to cross-examine witnesses is part
6 of our Constitution, each side has that right. And so the
7 concern that I would have is that when information or
8 something else is being brought in, you've denied the --
9 outside of the trial, wherever it's occurring, is that you
10 potentially could be depriving that other side from cross-
11 examining the witness, which is a constitutional right,
12 and, again, you're essentially asking the jury to violate
13 their oath for a true verdict; the oath that you took at
14 the beginning of the trial. Whether that happened, I
15 don't know; that's not my call, that's your call. But
16 those are the concerns that I have is that the
17 Constitution and the potential to ask the jury to violate
18 the oath that they took.

19 BY MR. HULL:

20 Q Can I just ask you what are the standard criminal jury
21 instructions?

22 MR. KALLMAN: Well, your Honor, why is this
23 witness talking about jury instructions? You instruct the
24 jury, not this witness. I --

25 MR. HULL: I absolutely am not --

1 MR. KALLMAN: -- I would say that is not --

2 MR. HULL: I will not be asking him to instruct
3 the jury on anything. I'm asking him what the standard
4 jury instructions are, your Honor. The other way to do
5 this; I can ask the Court to take judicial notice the
6 standard jury instructions are something that are used in
7 every single court and every single criminal case, across
8 the state of Michigan. If you'd like to take judicial
9 notice of that, your Honor, I'm fine with it. One way or
10 another, I'd like to be -- have it brought up in evidence
11 that the standard jury instructions are standard across
12 the State of Michigan. So I either have to bring it up
13 through a witness or have this Court take judicial notice
14 over it.

15 MR. KALLMAN: Your Honor, the -- there's so many
16 problems with that I don't even know where to begin. I
17 mean, first, it calls for a narrative from this witness to
18 just pontificate on the jury instructions. Second, your
19 Honor gives the jury, just as you already have,
20 instructions. They understand that you're giving to them
21 and they -- you've already gone through all of this and
22 you'll be doing it again. This is absolutely totally
23 irrelevant to the charge against my client and it's simply
24 trying, again, to supplant this witness to try to get in
25 the head of this jury -- in the heads of this jury -- with

1 totally inappropriate testimony.

2 MR. HULL: One of the elements of the charge,
3 your Honor, is whether or not the defendant attempted to
4 persuade the opinions of the juror using argument and
5 persuasion. One of the arguments of persuasion that he
6 used through this pamphlet is having people try to ignore,
7 deny, or otherwise forget the criminal jury instructions;
8 the standard criminal jury instructions. In fact, your
9 Honor, as an offer of proof, this pamphlet talks about how
10 some judges will not tell people their entire facts. Well,
11 the fact is, your Honor, every single judge does because
12 it's the jury instructions. And I'm fine with that being
13 part of -- if you want to make a rule and order of -- of
14 -- of law, that's fine. If it's part of the law in the
15 case that the standard jury instructions are something
16 that is read through every single criminal case in the
17 State of Michigan and it's standard for every single
18 judge, every single case, I can either bring it up through
19 a witness or I can bring it up through you, Judge. But,
20 either way, that is important in order to show this jury
21 exactly what this pamphlet attempts to do.

22 MR. KALLMAN: Well, in fact, your Honor, that's
23 just not true. I mean, we've been spending time going
24 through what was the proper jury instruction for the
25 elements to give to this jury and we went back and forth

1 before finally getting agreement and your Court ruling on
2 a few aspects of that. To say that all the jury
3 instructions are just standard is not true and it's
4 totally irrelevant to the charges and elements here. If
5 he wants to argue that pamphlet, fine. I'm going to argue
6 it, too. But this -- he -- it's not what he's asking this
7 witness.

8 MR. HULL: Your Honor, you know there is a huge
9 difference between arguing over the elements of a crime
10 that doesn't have a standard jury instruction and arguing
11 the actual jury instructions that are read in every single
12 case. You know this, Judge. I'm not talking --

13 MR. KALLMAN: Not all of them are read in every
14 single case. We all know that. There are many that are
15 not read for various reasons. So, again, it's irrelevant,
16 Judge. I just don't see how this helps the jury come to
17 any fact conclusions in this case.

18 THE COURT: All right.

19 I'm going to overrule your objection. I'm going
20 to give Mr. Hull a little bit of leeway in regards to this
21 particular area. But, Mr. Hull, don't go --

22 MR. HULL: Thank you, your Honor.

23 THE COURT: -- real far.

24 MR. HULL: I just have a few questions.

25 THE COURT: Thank you.

1 BY MR. HULL:

2 Q What are the standard criminal jury instructions, your
3 Honor?

4 A The -- the standard criminal jury instructions -- you've
5 probably already heard some yourself -- but the State of
6 Michigan mandates that -- and the court rules mandate that
7 we read standard jury instructions to all jurors in all
8 criminal trials all across the State of Michigan. They
9 are very similar. Counsel is correct; Counsel -- Mr.
10 Kallman -- I'm sorry. Mr. Kallman is correct that there
11 are differences, slight differences, between jury
12 instructions, but the standard jury instructions are just
13 that. Most of them are the same and they are read to
14 every single jury in every single criminal trial all
15 across the State of Michigan. And they're supposed to be
16 that way so that all trials are conducted similarly. So
17 that's --

18 Q Okay.

19 A That's my --

20 Q Thank you.

21 A -- answer.

22 Q Thank you. That's all I needed to know.

23 A All right.

24 Q Now do you -- did I give you a copy of the -- of the
25 pamphlet; do you have Exhibit --

1 A You did.

2 Q -- Number 1?

3 A Yes.

4 Q I'd like you to open up to the first flap. On -- it looks
5 like -- the second paragraph -- no -- the third paragraph
6 down; judges only rarely fully inform jurors of their
7 rights, especially their right to judge the law itself and
8 vote on the verdict according to conscience. In regard to
9 the standard criminal jury instructions only; are there
10 any issues with that statement in the pamphlet and -- and
11 the instruction that you provide to jurors as a judge in
12 every trial?

13 A Yes.

14 MR. KALLMAN: Same objection here, Judge. Now
15 he's asking for legal opinions. This is the purview of
16 the jury. He's not here to determine whether or not my
17 client improperly influenced jurors in this case. And he
18 -- I don't see how it's relevant for him to talk on and on
19 about different aspects legally; do you think this is
20 sufficient, and all of that. That's asking for legal
21 conclusions.

22 MR. HULL: I narrowed it --

23 MR. KALMAN: And so I object.

24 MR. HULL: I narrowed it specifically to the
25 standard jury instructions. I took out any other legal --

1 and that's why I was asking him specifically in regard to
2 the standard jury instructions. And I made that very
3 clear in my question.

4 THE COURT: Restate your question, please.

5 BY MR. HULL:

6 Q Based on that -- that second reading; that paragraph, are
7 there any concerns in regard to contradictions that that
8 paragraph has with the standard jury instructions?

9 A The language -- it's -- it -- the paragraph clearly says
10 that jurors have a right to judge the law. That's what
11 the pamphlet says; that jurors have a right to judge the
12 law. That is not -- not according to the jury instructions
13 in the State of Michigan. So that -- that is contrary to
14 the jury instructions and it's contrary to the oath that
15 all jurors take.

16 Q Are there other -- and we're not going to get into each
17 one -- are there other areas in that pamphlet that -- that
18 contradict the standard jury instructions?

19 A Quite a few.

20 Q Can you point out another area in the pamphlet that would
21 contradict the standard jury instructions?

22 A Well, let me take a look at it here. That's the main one
23 is the right to judge the law. Obviously, the judge --
24 according to the jury instructions -- tells you what the
25 law is. On the back of it, it talks about "Before a jury

1 reaches a verdict, each member should consider; is this a
2 good law?" All right. You're not allowed to judge the
3 law according to the jury instructions. "If so, is the
4 law being justly applied?" I'm not sure what that means.
5 I -- I don't really have -- I don't see any issue with
6 that. "Was the Bill of Rights honored in the arrest?"
7 The -- the -- that's not contrary to the jury
8 instructions, but --

9 Q Yeah, I'm --

10 A -- that's problematic --

11 Q -- only looking for ones that are contrary --

12 A All right.

13 Q -- to the jury instructions. How about the, "Will the
14 punishment fit the crime?"

15 A "Will the punishment fit the crime?" The jury
16 instructions will clearly tell you that you're not allowed
17 to consider punishment when you decide your verdict.
18 You'll hear that if you -- if you haven't already.

19 Q And do you see, generally, throughout this pamphlet those
20 types of arguments as far as disregarding the jury
21 instructions?

22 A I -- I do. And, I mean, it's a common theme. And the
23 gist of it is this right to judge the law and things of
24 that nature.

25 Q And what is the common theme when you say -- what's the

1 term for it?

2 A Well, it's jury nullification is what they're referring
3 to.

4 Q Okay. No further question -- well, actually -- I
5 apologize. I didn't get any further. You went outside and
6 you saw the jurors were holding the pamphlets; what
7 happened after that?

8 A So -- okay. Oh, I -- you -- I'm outside the courtroom
9 now, I see the people with --

10 Q Yep, you're --

11 A -- the pamphlets?

12 Q -- outside the courtroom.

13 A Okay.

14 Q You see the -- the -- some of the jurors or many of the
15 jurors are holding the --

16 A All right.

17 Q -- pamphlets. What do you do next?

18 A So at that point in time, when I saw that there were a lot
19 of people with -- a lot of the potential jurors with the
20 pamphlets, it was around that time where I -- I was
21 walking back from my office and I saw the Magistrate,
22 Thomas Lyons, who's already testified, and he indicated to
23 me that he --

24 Q All right.

25 A I'm going to keep going, but --

1 Q Go ahead.

2 A All right.

3 MR. HULL: Is there --

4 MR. KALLMAN: I was just whispering to my --

5 THE WITNESS: All right. No, I --

6 MR. KALLMAN: I'm not objecting.

7 THE WITNESS: I'm just -- you know -- I don't
8 want to go steamrolling through here.

9 BY MR. HULL:

10 Q Go ahead.

11 A So, Mr. Lyons indicated to me that he had gone outside and
12 spoken with the gentleman who was handing out the
13 pamphlets and told him he should stop. And Mr. Lyons told
14 me that the gentleman was not going to stop in so many
15 words -- I don't remember all the -- I'm paraphrasing a
16 little bit -- I don't remember exactly what Mr. Lyons
17 said. But he said, hey -- he went out and told the guy
18 knock it off and the gentleman would not do so. So it was
19 shortly after that where I had instructed the deputy to go
20 bring the gentleman in because as far as -- well, the
21 concerns I -- I had some concerns about what was going on.
22 Okay. It appeared to me that something was wrong and so I
23 wanted that something wrong to stop. And I felt that the
24 deputy; this deputy here, Jeff -- geez, I know your last
25 name a million times, I just can't -- Roberts, Deputy

1 Roberts, I told him to go out and bring the gentleman in.
2 I went into my office -- I may have been in my office --
3 but I was in my office and then, a couple minutes later, I
4 was told that the deputy had the gentleman and -- and that
5 they were outside of my office. So I opened up the door
6 and there was Mr. Wood standing there, there was the
7 deputy, I think Mr. Lyons was standing there, and I think
8 your boss, Mr. Thiede, was also there.

9 Q Okay. And so you had -- you had not seen Deputy Roberts
10 bring the defendant in; you had gone to your office, you
11 didn't see any of that, and you just came back out after
12 --

13 A No, I -- I didn't see him bring him in, but I very clearly
14 told the deputy that I wanted him brought in because I
15 wanted the behavior to stop.

16 MR. HULL: No further questions.

17 Thank you.

18 THE COURT: Mr. Kallman.

19 CROSS-EXAMINATION

20 BY MR. KALLMAN:

21 Q Yes. Thank you, your Honor. Your Honor -- your Honor.

22 A I'm not your Honor here. So you can call me whatever you
23 want.

24 Q Judge.

25 A I --

1 Q Once a judge, always a judge. That's what I was told
2 during -- in all my life. Sir, I just want to make clear
3 on the record; I was not an attorney in any way in the
4 Yoder case was I?
5 A Not that I know of.
6 Q Okay.
7 A No, sir.
8 Q I mean, I was not representing Mr. Yoder, I never appeared
9 in that case --
10 A I --
11 Q -- I had nothing to do with it, right?
12 A If -- if you were, that's news to me.
13 Q Right. I mean, I -- I wasn't here in front of you. I had
14 nothing to do with that case as far as you know --
15 A Not --
16 Q -- that's right?
17 A Not that I know of.
18 Q Okay. Were -- did you, at any point in time, when you
19 told Deputy Roberts to go out and bring Mr. Wood in -- I
20 -- I assume you mean inside the courthouse?
21 A Yes.
22 Q Was it because you wanted to talk to him?
23 A It was because I wanted the behavior to stop, because
24 again -- well, I don't want to violate your ruling, but I
25 was very concerned about what was going on --

1 Q Okay.

2 A -- I still had --

3 Q I understand.

4 A -- jurors walking into the courthouse and --

5 Q Okay.

6 A -- I needed the behavior to stop so.

7 Q Because there has been other testimony that you told
8 various people to go out and bring Mr. Wood in so that he
9 could talk to you -- that you wanted to talk to him; is
10 that not your recollection or --

11 A I may have said that. I don't recall.

12 Q Okay. When Mr. Wood was in the hallway and you came out,
13 and you've described who was there, who ordered his
14 arrest?

15 A Mr. Thiede did.

16 Q Okay. It was not you?

17 A Well, let me -- I -- I think I need to expand on that a
18 little bit --

19 Q Sure.

20 A -- so you can understand. Is --

21 Q Yeah.

22 A -- that --

23 Q Absolutely.

24 A -- all right?

25 Q Yep. Absolutely.

1 A Okay. So I opened up the door and Mr. Thiede was standing
2 there to my left, Mr. Wood was directly in front of me,
3 the deputy was right off next to Mr. Wood. I looked over
4 at Mr. Thiede and I said, "Is he being arrested today?"
5 Mr. Thiede said, yes. So at that point in time, I'm
6 looking around the hallway and I'm not seeing a City
7 Police Officer here or any deputy except for my bailiff,
8 who had -- he was checking in jurors still. That was his
9 job. So I'm looking around for all right who's -- who's
10 going to take Mr. Wood to jail? And I didn't see any
11 other police officers, I had jurors checking in, so I
12 looked down the hallway and -- and Magistrate Lyons goes
13 down there and he said -- I remember him signaling me like
14 I'll continue to check the jurors in -- because I'm
15 looking around; who's going to take him to jail, there's
16 nobody else around. I'm not going to take him to jail,
17 Mr. Thiede is not going to take him to jail. So I told
18 the deputy to take him to jail. I said that.

19 Q Okay.

20 A But it was based on the fact that Mr. Thiede was going to
21 arrest him and we didn't have a police officer around.

22 Q Okay.

23 A So I very clearly --

24 Q Thank you.

25 A -- told this deputy to take him to jail.

1 Q Okay. Thank you. At that time that Mr. Wood was being
2 arrested and in the hallway here; did he have an attorney
3 with him?
4 A Not that --
5 MR. HULL: Your Honor --
6 THE WITNESS: -- I know of.
7 MR. HULL: -- I'm going to object to this.
8 THE COURT: I'm going to sustain the objection.
9 BY MR. KALLMAN:
10 Q Did you have any discussion with Mr. Wood in any way at
11 that time?
12 A I don't believe I did.
13 Q Okay. Do you have any personal knowledge or information
14 that Jennifer Johnson or Theresa DeVries were improperly
15 influenced by this pamphlet; do you have any personal
16 knowledge of that, sir?
17 A I -- I would -- if I were to -- I didn't see them being
18 handed the pamphlet. It's my personal --
19 Q That's my point --
20 A -- knowledge --
21 Q -- you have no personal knowledge that those two --
22 A My -- I'm going to --
23 Q -- prospective jurors, do you?
24 A Well, I'm going to condition that. I didn't see them and
25 I don't know what was in their mental state, but as far as

1 the personal knowledge I did have, is what was in this
2 pamphlet. And --

3 Q That's not my --

4 A -- if they were --

5 Q -- question, sir. I --

6 A Okay.

7 Q You know, we're all lawyers here. We're good at dodging
8 questions. I'm asking you --

9 A I'm not dodging anything.

10 MR. HULL: Your Honor, objection.

11 MR. KALLMAN: I'm asking you --

12 THE COURT: Hold on.

13 MR. KALLMAN: -- what personal knowledge you
14 have --

15 MR. HULL: Your Honor, there's an objection on
16 the table.

17 MR. KALLMAN: -- that --

18 THE COURT: Yeah, hold on. There's --

19 MR. HULL: He's being argumentative. The
20 witness is attempting to answer the question.

21 MR. KALLMAN: No, he wasn't. He's trying to get
22 around it, Judge. And it's a very simple question. He
23 either has personal knowledge that those two jurors --
24 which is what the allegation is against my client -- that
25 those jurors were improperly influenced or not. And I

1 think the answer is obvious. He doesn't want to answer
2 it. So he wants to try to get around it and infer from
3 other information or pamphlets, and things like that. I'm
4 asking what he knows personally about those two --

5 MR. HULL: Your Honor, he --

6 MR. KALLMAN: -- prospective jurors.

7 MR. HULL: -- was trying to answer. He has
8 personal knowledge about the pamphlet, he has personal
9 knowledge about what's in the pamphlet. He was answering
10 the question and --

11 MR. KALLMAN: And that's -- no, that was not the
12 --

13 MR. HULL: -- he --

14 MR. KALLMAN: -- question.

15 MR. HULL: And he doesn't like the answer that
16 he was being given.

17 MR. KALLMAN: That was not my question, Judge.
18 My question was specifically about those two individuals.

19 THE COURT: Restate your question.

20 MR. KALLMAN: Thank you.

21 THE COURT: No. Just restate your question.

22 MR. KALLMAN: Okay.

23 THE COURT: I want to hear it.

24 MR. KALLMAN: My question is -- I was going to
25 -- I'm asking this witness; do you have any information or

1 personal -- do you have any personal knowledge that
2 Jennifer Johnson or Theresa DeVries were improperly
3 influenced by this pamphlet? I think that's a very simple
4 -- practically a yes or no question. Either he does or he
5 doesn't. I think the answer is -- well, I'm not going to
6 speculate. But, I think that's a pretty easy question to
7 answer.

8 THE COURT: Okay. So it is not whether or not
9 they were --

10 MR. KALLMAN: Does he have personal knowledge
11 that those two; the two victims that have been cited in
12 the -- in this jury instruction that are -- that this
13 panel -- that this jury panel has received -- does he have
14 any information about those two prospective jurors?
15 That's any --

16 THE COURT: Why is --

17 MR. KALLMAN: -- personal knowledge as to whether
18 they were improperly influenced here.

19 THE COURT: Why is his personal knowledge
20 relevant to whether or not they were improperly
21 influenced?

22 MR. KALLMAN: Because that's what my client is
23 charged with. And he's been doing a bunch of -- you know
24 -- going on and on here about all his concerns. That's
25 fine. I understand why he has concerns with -- with the

1 pamphlet. I get it. But concerns with the pamphlet does
2 not translate into Jennifer Johnson and Theresa DeVries
3 being improperly influenced. That's the charge here. And
4 if he doesn't have any specific knowledge of how they were
5 personally impacted by this -- that's what I'm asking. I
6 think that's a very fair and simple question and it gives
7 some context to all of this testimony here.

8 THE COURT: Mr. Hull, your response.

9 MR. HULL: I don't think it's a very simple
10 question because I'm trying to figure out what he means by
11 personal knowledge. That -- that -- I mean, the Judge was
12 trying to answer him; I have personal knowledge, but. I
13 mean, he was trying to answer the question. He obviously
14 has a meaning in his head of personal knowledge. I -- and
15 the witness can try to answer the question as best as he
16 can, but that's the only thing he can do is; do you have
17 any personal knowledge? Well, okay.

18 MR. KALLMAN: Look, Judge, it's like this; if
19 I'm asked a question, do I have personal knowledge of the
20 Tiger's winning the game last night -- I don't even know
21 if they did, but okay -- do I have personal knowledge
22 about some fact. I can answer yes or no. If I don't have
23 personal knowledge; all I know is these general things,
24 the things he's been testifying to, that's fine. But, I
25 think this is a very simple question. Does this witness

1 have any personal knowledge about the two alleged victims
2 in this case? And I -- you know -- that's all I'm trying
3 to elicit. I mean, I can come at it from another way; did
4 he talk to those two prospective jurors; did he have any
5 interaction with those --

6 THE COURT: Well, I think --

7 MR. KALLMAN: -- prospective jurors? I mean, I
8 can --

9 THE COURT: I think that's a more appropriate
10 way, because I think the way that you've asked that
11 question kind of couches the issue and it sets up --

12 MR. KALLMAN: I'll come at --

13 THE COURT: So --

14 THE WITNESS: I -- I can answer your question.
15 I know what you're getting at. If you'd like.

16 MR. KALLMAN: Well, I'll rephrase the question,
17 Judge.

18 THE COURT: Rephrase --

19 THE WITNESS: All right.

20 THE COURT: -- the question.

21 THE WITNESS: That's fine.

22 BY MR. KALLMAN:

23 Q Did you -- sir, did you ever talk with Jennifer Johnson?

24 A No.

25 Q Did you ever talk with Theresa DeVries?

1 A No, I did not.

2 Q Did you ever have any personal interaction with either of
3 those summoned jurors?

4 A I don't believe so. It -- well --

5 Q I know --

6 A -- you're not going to accuse me of coaching anymore, but
7 --

8 Q No.

9 A -- they -- after -- when I sent the jurors home, I was in
10 the courtroom with them and I excused them all. But, I
11 didn't --

12 Q All the jurors at once were --

13 A Yeah, but I didn't --

14 Q -- excused?

15 A -- sit down and talk with any individual.

16 Q That -- that's what I'm asking.

17 A All right.

18 Q You didn't sit down with Jennifer Johnson; just you and
19 her, one-on-one, and have her tell you --

20 A No.

21 Q -- what she thought?

22 A I --

23 Q Or with Theresa DeVries, right?

24 A Correct.

25 Q Okay. And, Judge, I think it's fair to say that based on

1 your testimony; what you're concerned about with this
2 flyer is the content of the flyer, aren't you?

3 A Nope.

4 Q Well, you just said it says that the right to judge the
5 law itself -- you quoted it -- and you said, well, I think
6 that violates jury instructions.

7 A Well, that was --

8 Q Do you think that --

9 A -- one of my --

10 Q Isn't that the content of the pamphlet?

11 A That was one of my concerns.

12 Q Okay.

13 A The other concern was that there shouldn't be any contact,
14 period and there shouldn't be any outside information
15 being brought into the trial, period, there shouldn't be
16 any outside law being brought -- or supposed law -- being
17 brought into the trial, truth or not. I mean, my concern
18 -- if this pamphlet were totally true, which it isn't, it
19 would still be problematic. So the content, to me, had
20 nothing to do with it whatsoever in terms of -- I mean,
21 that was just one other problem. It would have been
22 objectionable and concerning to me as a judge regardless
23 of the content.

24 Q So then you don't care that the content of the pamphlet
25 says jurors have the right to judge the law itself?

1 A Well, that --

2 Q Because if it's not the content, then you don't care.

3 A That -- I -- I said the content was important, but I said
4 that any -- it was the communication that was -- any form
5 of communication is problematic.

6 MR. KALLMAN: One moment, your Honor.

7 I have nothing else.

8 Thank you, your Honor.

9 THE WITNESS: Thank you.

10 THE COURT: Mr. Hull, redirect.

11 MR. HULL: No redirect, your Honor.

12 THE COURT: Questions from the jury?

13 THE JURORS: (No verbal response).

14 THE COURT: No.

15 May this witness be excused?

16 MR. HULL: Witness may be excused, your Honor.

17 THE COURT: You may be excused.

18 THE WITNESS: Thank you.

19 (At 4:47 p.m., witness excused)

20 MR. HULL: Your Honor, I do have other witnesses
21 if you wanted to go forward.

22 THE COURT: Okay. How many witnesses do you
23 have and how much time do you think it will take?

24 MR. HULL: I have three witnesses here. They
25 should be very quick by comparison to the last one. They

1 don't know if they're actually in there. But, I will
2 allow the -- I -- I will allow the argument, Mr. Kallman -
3 -

4 MR. KALLMAN: Thank you, Your honor.

5 THE COURT: -- because it is factual. Not all
6 counties -- some counties might have ten trials going on
7 in one day depending on the size of the county. This
8 county does one trial per court per day.

9 Then, in regards to the third element, the
10 Defendant's conduct placed outside of proceedings in open
11 court in the trial of the case. I do agree with the
12 Prosecutor's argument that in that case if you are argue,
13 Mr. Kallman, that a trial was necessary for the crime to
14 be committed, then you are adding an additional element to
15 the charge and that was not agreed to or to be able to --
16 you're adding an additional element to the charge that a
17 trial -- trial is necessary and that is not one of the
18 elements.

19 And I -- I know that there's been testimony that
20 a trial never took place, but I'm not going to allow you
21 to argue that because the trial did not take place, that
22 he cannot be found guilty of the charge because that would
23 be adding on an element that a trial actually took place
24 in this case and that was not part of the discussions in
25 the -- when we were deciding jury instructions.

1 manner restrictions. They did none of them and they didn't
2 even have a policy in place to even address the situation.

3 And so -- I mean, right there it fails, the
4 Prosecutor's position. They did not use the least
5 restrictive means. Even if you accept there's some
6 compelling interest in general, I'm not going to argue
7 there's a compelling interest to have orderly justice and
8 trials and everything else. I don't think the testimony
9 here indicates that Mr. Wood disrupted anything. The
10 reactions of some of the people involved, from the
11 prosecutor's office, the judge, and everybody else, I
12 think they felt it was a lot more disruptive than it
13 really was.

14 But, all that aside, there was still no trial.
15 They did not have a policy. They did not use time, place,
16 manner restrictions. They did not prove a compelling
17 interest in regards to a specific flyer handed out and
18 they clearly did not use least restrictive means. For all
19 those reasons, Judge, this case should be dismissed.

20 THE COURT: Thank you.

21 As I indicated, I did re-review the filings from
22 quite a while ago; maybe close to a year ago this morning
23 because I knew that this was going to -- this motion was
24 going to be heard this morning.

25 I will indicate that based on the testimony that

1 has been presented and the arguments that have been made
2 today, Mr. Kallman, I'm going to deny your motion. I will
3 indicate that I think based on the testimony that's been
4 presented -- and don't think that I -- I am not a strong
5 proponent of first amendment rights. However, I did hear
6 witnesses testify that they had to walk around him, that
7 he was blocking sidewalk, that he was asking them if they
8 were jurors.

9 In the case -- as a matter of fact I
10 specifically asked one of the last witnesses if he was at
11 the top of the stairs and he -- I don't want to speculate,
12 but obviously he could've been when one juror saw him he
13 could've been moving around in the front. Obviously, if
14 one juror said he was at the top of the stairs and the
15 other one said he was down by the sidewalk. He could've
16 been at different locations during different time periods.
17 The fact of the matter is, is that he -- it appears to me
18 that he was targeting jurors that were coming in that day
19 based on some of the testimony that's been presided -- or
20 presented here today.

21 I think there is a compelling interest in making
22 sure for both the Prosecutor and the defense that there is
23 a fair and impartial jury being chosen and that it is also
24 very clear to me that he was very interested in that case
25 and knew that that case was set for trial that day.

1 Now the argument that there -- that there was no
2 trial at the time that this took place he would've never
3 known whether a trial was going to take place at this time
4 so I don't think that weighs on my decision at all that
5 there was no trial.

6 At the time that he was doing in this out in
7 front of the courthouse, it would've been his
8 understanding that there was going to be a trial that day,
9 that this case was set for trial on that particular day
10 and he knew it because he was inside the courtroom on the
11 date of the pretrial. So your motion is denied.

12 MR. KALLMAN: Thank you, Your Honor.

13 THE COURT: Thank you.

14 MR. KALLMAN: Your Honor, my second motion would
15 be the typical directed verdict. I know you've heard all
16 of the evidence at this point. Even in the light most
17 favorable to the prosecutor, with all of the elements that
18 have been put forth, I think the first element especially
19 that Jennifer Johnson and Theresa DeVries were jurors in
20 the case of *People v Yoder*, has not been met.

21 You can't extrapolate what other people knew
22 onto my client. It's what my client knew and you have no
23 evidence in front of you that he knew that was the only
24 trial. He knew there was a trial for *Yoder* that day.
25 There's no evidence that he knew that was the only trial.

1 MR. KALLMAN: Thank you, your Honor.

2 May it please the Court, ladies and gentlemen of
3 the jury, we would call Darren Nichols.

4 THE COURT: Mr. Nichols, come up here to the
5 witness box. Before you have a seat, raise your right
6 hand. Do you swear or affirm to tell the truth, the whole
7 truth, and nothing but the truth?

8 MR. NICHOLS: I do.

9 THE COURT: All right.

10 Go ahead and have a seat.

11 MR. KALLMAN: May I proceed, your Honor?

12 THE COURT: You may.

13 DARREN NICHOLS

14 (At 9:57 a.m., called by the Defense, sworn by
15 the Court, testified as follows)

16 DIRECT EXAMINATION

17 BY MR. KALLMAN:

18 Q Thank you. Sir, could you please state your full name and
19 spell your last name for the record?

20 A Darren Scott Nichols, N-I-C-H-O-L-S.

21 Q And, Mr. Nichols, what do you do?

22 A I work for the IBW as a journeyman substation technician.

23 Q All right. And do you live here in Mecosta County?

24 A Yes, I do. I live in Morley.

25 Q And did you happen to be here at the courthouse back on

1 November 24th of 2015?

2 A I did.

3 Q And why were you here?

4 A I was summoned for jury duty.

5 Q Okay. And you got a general summons in the mail?

6 A Yes.

7 Q Okay. Did anything unusual -- or -- what did you observe
8 when you got to the courthouse and you were still outside?

9 A I observed a man handing out brochures, flyers.

10 Q Okay. And let's -- so you saw a man handing out flyers or
11 brochures. Was he out on the public sidewalk?

12 A Yes.

13 Q Where was he located; on the north side near the
14 courthouse, or somewhere else?

15 A Yes, it would be directly out the main doors --

16 Q Okay.

17 A -- on the sidewalk.

18 Q And when you look at the sidewalk there, there's some
19 steps out the main doors and then a sidewalk that takes
20 you directly to Elm Street, right?

21 A Uh-huh.

22 Q Is that a yes? I'm sorry. You have to say yes or --

23 A Yes.

24 Q -- no so they can pick it up.

25 A Yes.

1 A Yes.

2 Q Okay. Did it say -- do you recall that summons saying to
3 you, you're being summoned as a juror in the case of
4 *People versus Yoder*?

5 A No.

6 Q It did not say that?

7 A Not to my recollections, because some of us were
8 discussing what case we were here for.

9 Q Because you didn't know, did you?

10 A We didn't know.

11 Q Okay. When you arrived here in the courthouse on that
12 date, November 24th, of '15 -- and if you don't recall the
13 exact date; do you just recall coming for the jury pool?

14 A Yes.

15 Q Okay.

16 A Yes.

17 Q Did you run into anybody out in front of the courthouse
18 handing out literature?

19 A Yes.

20 Q And tell us what happened; how did you meet this person,
21 how did it come about?

22 A I parked out in front of the courthouse, exited my
23 vehicle, and was approached on the sidewalk.

24 Q Okay. Now, you say you parked your vehicle; was that on
25 Elm Street?

1 MR. KALLMAN: Thank you, your Honor.

2 We would call Keith Wood.

3 THE COURT: Mr. Wood, come up here to the
4 witness stand. Before you sit down, raise your right
5 hand. Do you swear or affirm to tell the truth, the whole
6 truth, and nothing but the truth?

7 THE DEFENDANT: I affirm.

8 THE COURT: Have a seat, Mr. Wood.

9 Mr. Kallman, go ahead.

10 KEITH WOOD

11 (At 10:19 a.m., called by the Defense, sworn by
12 the Court, testified as follows)

13 DIRECT EXAMINATION

14 BY MR. KALLMAN:

15 Q Thank you, your Honor. Mr. Wood, could you please state
16 your full name and spell your last name for the record?

17 A Yes, my name is Keith Eric Wood, spelled W-O-O-D.

18 Q And, Mr. Wood, back in November of 2015; did you live in
19 Mecosta County?

20 A I did.

21 Q So you were a resident here?

22 A Yes, sir.

23 Q Do you live -- do you have a house, do you have a family,
24 what?

25 A We rented a home in Mecosta, Michigan. My wife and, at

1 the time, we had seven children.

2 Q Okay.

3 A We now have eight.

4 Q Okay. And what's your occupation?

5 A I'm self-employed. I'm a licensed insurance broker and I
6 help Medicare beneficiaries find the best Medicare
7 insurance solutions for their needs and their budget.

8 Q Okay. And did you have a -- your own business here in
9 town then?

10 A I -- I did. I worked from home and I traveled. But, I --
11 yeah -- I covered the entire State of Michigan.

12 Q All right. Well, we all know why you're here so let's get
13 to it.

14 A Okay.

15 Q How did you become interested in the whole issue of juror
16 rights, and what they're told, and that sort of thing?

17 A Well, I was surprised to learn that the trial by jury
18 system had changed dramatically over the last 100 to 150
19 years. And that's when I became interested in juror
20 rights issues.

21 Q So you just started researching it?

22 A I did.

23 Q It was just something of interest to you?

24 A With the internet you can find a lot of information; some
25 good, some correct, some bad.

1 Q Okay. How did you hear about the *People versus Yoder*
2 case?

3 A Well, somebody in the area sent an email out. It was an
4 email blast and I received it. I don't remember exactly
5 who. I do have several email addresses with my business
6 and two personal email accounts. So I did receive an
7 email. And it generally talked about the *Yoder* case and
8 it invited people to come to the *Yoder* case; the pretrial
9 hearing, at -- on November 4th, if they were interested.

10 Q Okay. Do you recall approximately when you would have
11 received this email?

12 A I don't know for sure, but if -- I would say a couple
13 weeks before November 4th. So possibly mid-October.

14 Q Okay. So you get this email, it piqued your interest, and
15 you decided to go to this pretrial?

16 A I -- I did decide to go.

17 Q Okay. And we've all seen the video. That is you sitting
18 there in the pretrial isn't it?

19 A That was me, yes.

20 Q Okay. Andrew Yoder is the name of the gentleman who was
21 involved in that case, *People v Yoder*, we keep referring
22 to. Do you know Andrew Yoder?

23 A I do not know Andrew Yoder. We have never met before.

24 Q You've never met him at any time?

25 A Never met him at any time.

1 Q Have you had contact with him since November 24th --

2 A I have had no --

3 Q -- of 2015?

4 A I have had no contact with Andrew Yoder since -- did you
5 say November 4th?

6 Q The 24th of 2015?

7 A No. I have had no contact with him.

8 Q Okay. And when you were here on the 24th and the case was
9 being -- we've heard testimony that was resolved and --
10 did you talk to Andrew Yoder that day?

11 A I did not talk to Andrew Yoder that day.

12 Q Okay. Did you know his attorney?

13 A I -- I knew his name because he was at the pretrial.

14 Q Okay. But do you have any -- was he a friend of yours --

15 A No.

16 Q -- I mean, did you know him?

17 A He was not a friend of mine, no.

18 Q Okay. Well, did you coordinate with Mr. Yoder and/or his
19 attorney to pass out pamphlets on November 24th?

20 A Absolutely not. I did it on my own accord.

21 Q Did you call him up and tell him; hey, guys, I'm going to
22 show up on November 24th and hand out these brochures
23 because I want to help you out. I mean, did you call him
24 and tell him?

25 A I did not.

1 Q Now, you did go to that pretrial on November 4th, right?

2 A I did.

3 Q And you've talked about the email and that it was open to
4 the public; the email told you that?

5 A It did. I was -- it was open to the public.

6 Q Okay. When you were there -- and I think it was shown on
7 the video -- did you talk to a State Trooper that was
8 there at the same time?

9 A I did. I noticed when I -- when I walked in that there
10 was a -- a Trooper's car that was running and I just
11 wanted to let him know that it was running.

12 Q Okay. So kind of like hey, the lights are on or -- or you
13 were just letting him know that his car was on?

14 A Absolutely.

15 Q Okay. Do you remember exactly what you said to him or --

16 A I -- I don't remember exactly.

17 Q Okay. Do you remember telling -- do you remember saying
18 to the Trooper, "You're wasting tax dollars;" did you say
19 that?

20 A I -- I don't remember saying that.

21 Q Okay. Were other people talking to the Trooper at the
22 same time?

23 A After I asked the question -- or -- if he knew that his
24 car was running, then there was some banter.

25 Q And so other people made comments too, besides you, right?

1 A That is correct, yes.

2 Q Okay. Now that same day on November 4th; prior to the
3 pretrial, did you call Emily Grove, who is the reporter
4 that testified earlier?

5 A I -- I did. I thought that -- that the case was
6 newsworthy and that she should attend.

7 Q Okay. And so you called her the same day, but before the
8 pretrial, right?

9 A Right.

10 Q Okay.

11 A I think it was in the morning, I believe.

12 Q Okay. Did you talk with her for 15 minutes?

13 A Absolutely not.

14 Q Okay. How long did you talk with her?

15 A Well, based on her testimony regarding her email; the
16 email that she sent somebody, it was a few minutes. So a
17 few is three, with a maximum four minutes.

18 Q Okay. And that's your recollection of how long --

19 A That is --

20 Q -- you talked?

21 A -- my recollection. It was --

22 Q Okay.

23 A -- very, very brief.

24 Q Did you talk to her about jury rights?

25 A Absolutely not.

1 Q Did you talk to her about hey, I've got a pamphlet I'm
2 going to be handing out?

3 A I did not.

4 Q Did you talk to her about the existence of a jury pamphlet
5 at all?

6 A I did not.

7 Q So the sole thing you talked about was just, "Hey, have
8 you heard about this *Yoder* case?" And you thought it might
9 be interesting to them?

10 A That's correct.

11 Q Okay. Did you know that on November 24th of 2015, that the
12 *Yoder* case was the only case set for trial that day?

13 A I had no idea to know that that was the only case.

14 Q Okay.

15 A I didn't look at a schedule or anything.

16 Q All right. Obviously, you knew the *Yoder* case was set for
17 that day, right?

18 A I -- I knew it was scheduled for that day. I didn't know
19 that it was going to go to trial.

20 Q Okay. And you didn't know that was the only case set for
21 trial that day, did you?

22 MR. HULL: Your Honor, I'm going to object to
23 the leading questions.

24 MR. KALLMAN: Well, he's already -- yeah, I'll
25 rephrase it.

1 THE COURT: Thank you.

2 BY MR. KALLMAN:

3 Q Did you know whether or not that was the only trial
4 scheduled?

5 A I -- I had no idea if there was going to be other trials
6 held.

7 Q Okay. When did you decide to go to the courthouse on
8 November 24th to hand out these pamphlets; the pamphlet
9 that has been admitted, it's in evidence?

10 A Well, I -- I don't know exactly the day when I decided to
11 -- to hand out the informational brochures, but it was
12 after the pretrial hearing. I did decide to go on the
13 public sidewalk and hand out the educational information
14 to anybody that would take one.

15 Q Okay. Where did you first see this pamphlet?

16 A I saw it online somewhere and I think it was a Facebook
17 post, so I clicked through the link and it took me to a
18 website. It's the Fully Informed Jury Association, it's
19 fija.org.

20 Q And that's where you saw the pamphlet?

21 A That's correct.

22 Q Okay. So you had no idea about the existence of a
23 pamphlet on November 4th of 2015?

24 A I did not.

25 Q Why did you decide to hand out the pamphlets on November

1 24th of 2015?

2 A Well, with all of the research that I was doing and my
3 wife -- if my wife was here, she can testify that I'm
4 pretty thorough in my research -- so I learned a really
5 interesting fact that 95 percent of all criminal cases in
6 the United States, they are pled out before they get to
7 trial. And so there was a -- there was a very high
8 likelihood that the *Yoder* case was not going to go to
9 trial, but then I also believed that there were going to
10 be a lot of people around the courthouse and it was going
11 to give me a really good opportunity to educate as many
12 people to hand out the pamphlets and get this information
13 into their hands.

14 Q So you assumed there was not going to be a trial?

15 A Well, I'm not the brightest crayon in the box, but a 95
16 percent chance that it wasn't going to go to trial, I -- I
17 was pretty certain that it wasn't going to happen.

18 Q So your purpose was to simply get this information out?

19 A Absolutely.

20 Q Okay. And, in fact, your assumption was correct, right,
21 because no trial was held?

22 A No trial ever happened.

23 Q Okay. Now, you said that you knew that there would be a
24 lot of people there. In fact, there were a lot of people
25 there that day, weren't there?

1 A There -- there were a lot of people there, that's correct.

2 Q Okay. Did you know, as people were coming in, who was a
3 juror, who was not a juror, who was a court employee, who
4 was there to pay their taxes; I mean, did you have any
5 idea of knowing as these people walked in?

6 A I -- I didn't have any idea to know who was summoned as a
7 potential juror, who was not. When you asked about the
8 court employees; I did see some people with some lanyards
9 and ID badges hanging from their neck. So I didn't know
10 if they were court employees or who they were. I couldn't
11 really read it when they passed by. But, I had no idea.
12 I -- I didn't have any way to know; just like Detective
13 Erlandson testified previously, I didn't know who was a
14 juror summoned or who was not.

15 Q So who were you handing your pamphlet out to?

16 A To anybody that would receive one.

17 Q Okay. And where were you standing?

18 A I -- I was standing on the sidewalk that runs parallel to
19 Elm Street, which is east -- east and west.

20 Q Out here at the north entrance; the front?

21 A At the north entrance of Elm Street. And I didn't want to
22 block the sidewalk. So it makes a cross. So the sidewalk
23 actually goes into the street; you have some grass area on
24 either sides, and so I -- I wanted to make sure I wasn't
25 blocking the sidewalk, so I positioned myself towards the

1 grass, on the sidewalk, just -- I guess, if you're walking
2 down the stairs, it's just to the right of the cross.

3 Q Okay.

4 A But north, towards --

5 Q So --

6 A -- the street.

7 Q -- if you were walking from the courthouse, out the front
8 doors, down the steps, and then the sidewalk goes all the
9 way to Elm Street, right?

10 A Yes.

11 Q Were you on that part of the sidewalk at all?

12 A No.

13 Q So the part of the sidewalk that went east and west; just
14 a few feet from Elm Street, you were just off to the side?

15 A That's correct.

16 Q Near the intersection of those --

17 A That is --

18 Q -- sidewalks?

19 A Yes, that's correct.

20 Q Okay. Now there's been some testimony from Mrs. Lenahan
21 that you helped her out and you were up on the top landing
22 of the steps; was that accurate?

23 A That is not accurate.

24 Q Okay. Tell the jury what happened with -- with Ms.
25 Lenahan?

1 A When I saw her coming with her walker, I -- I recalled our
2 interaction and based on my recollection, she was coming
3 from -- let's see -- this is north -- she was coming from
4 the east, heading west, on the sidewalk, towards that --
5 that sidewalk that -- that crosses --

6 Q The cross, uh-huh.

7 A -- the Elm Street sidewalk. And so she passed right by
8 me. And I -- I mean -- I -- I'm observant, so I noticed
9 that she had a walker, and so once she got up to the
10 steps, I went ahead and walked up towards the steps. And
11 I said, "Let me -- let me -- let me grab that walker for
12 you and I -- I can carry it up there," and I did.

13 Q So you helped her up the steps?

14 A I helped her up the steps.

15 Q Okay. And then, at that point, did you -- did you ask
16 her, "Are you on the jury?"

17 A Absolutely not. I never asked anybody if they were on the
18 jury.

19 Q Okay. Did you tell her about a handicapped entrance?

20 A I -- I didn't. I didn't know that there was one.

21 Q Okay. So you basically helped her up and to the doors.
22 Did you go inside the courthouse at that point?

23 A No, I did not.

24 Q Okay. Was there anyone else around you and Mrs. Lenahan
25 when you were up on that landing; when you were helping

1 her?

2 A I -- I don't recall. But at that point, I don't believe
3 so.

4 Q Okay. And you did do -- you did offer her one of the
5 brochures, right?

6 A I -- I did.

7 Q And what did you say to her?

8 A "Here's jury rights information you should know about,"
9 and handed her a pamphlet.

10 Q Okay. So was that kind of your mantra; what were you
11 saying to people as they were coming by?

12 A Yeah, I -- I would simply hand it out, not in front of
13 them, but just say, "Here's some jury rights information,"
14 and offer it to them.

15 Q Okay. And what if somebody said no or no thanks or kept
16 walking?

17 A Oh, I would retract my arm and just smile and say, "Have a
18 nice day."

19 Q Okay. Were you being loud or demonstrative in any way?

20 A Never.

21 Q Were you badgering people coming in?

22 A I was not.

23 Q Harassing anybody, chasing after them; you have to read
24 this pamphlet?

25 A No. It's not my nature.

1 Q Okay. Did you ever ask any person that you -- that you
2 handed out -- well, any person you came in contact with
3 that morning; did you ever ask any of them, anything about
4 *People versus Yoder*?

5 A I -- I never mentioned versus People -- *People versus*
6 *Yoder*, no.

7 Q Did you ever say to them, "I think Mr. Yoder is getting a
8 raw deal?"

9 A I -- I never mentioned the *Yoder* case at all.

10 Q Didn't encourage anybody to vote on his behalf or anything
11 else?

12 A I did not.

13 Q Okay. And the brochure you were handing out; did it say
14 anything about the *Yoder* case?

15 A It didn't say anything about the *Yoder* case.

16 Q Did it even talk about the State of Michigan or Mecosta
17 County?

18 A It did -- it did not.

19 Q Did it talk about Judge Jaklevic?

20 A It didn't talk about Judge Jaklevic.

21 Q Did it talk about anything about this particular court
22 system here in Mecosta County?

23 A It didn't mention anything about this court system.

24 Q Okay.

25 A Here in Mecosta.

1 Q And you agree that what's been admitted as the
2 Prosecutor's Exhibit Number 1 is a copy of one of the
3 brochures you were handing out, right?

4 A Can I take a look at it?

5 Q Sure.

6 A May I?

7 MR. KALLMAN: May I approach, your Honor?

8 THE COURT: You may.

9 THE WITNESS: I -- I just -- it looked like it.
10 I just want to make sure.

11 MR. KALLMAN: I know you haven't seen it
12 directly so.

13 May I approach the witness, your Honor?

14 THE COURT: You may.

15 BY MR. KALLMAN:

16 Q Take a second to look that over.

17 A That was the one.

18 Q Okay. And they were colored yellow like that, right?

19 A Yes, they were.

20 Q Okay. Now, you say you were not trying to block anybody
21 from progressing along on the sidewalk that day?

22 A No, I was -- I was very conscientious to not block
23 anybody.

24 Q Okay. Let me ask you, Mr. Wood; how tall are you?

25 A Well, I usually say to people I'm 5'7, standing on a

1 stool, but that's not accurate. I -- my wife says I'm 5'6
2 and a-half, I say I'm 5'7.

3 Q Okay.

4 A I'm not very tall.

5 Q How much do you weigh, sir?

6 A I -- I weigh approximately 155 pounds.

7 Q Did you ever hold yourself out as some kind of court
8 official?

9 A I -- I never did, no.

10 Q Tell people, "Hey, I'm here to help with jurors; I'll help
11 you get in," or anything like that?

12 A Absolutely not.

13 Q Were your -- were you wearing any kind of a badge or any
14 kind of a thing that could be misinterpreted that you were
15 somehow an official?

16 A No, I -- I unless --

17 Q What were you --

18 A -- somebody --

19 Q -- wearing?

20 A Well, I had blue jeans on and I had a button-up shirt, and
21 over that was a winter jacket; a black winter jacket.

22 Q Okay. So it was kind of cold out that day?

23 A It was cold out there that day, yes.

24 Q Okay. Did you have a megaphone out there; yelling, "Get
25 your juror rights information?"

1 A I did not. No.

2 Q How many pamphlets did you have with you that day to hand
3 out?

4 A I would say between 75 and a hundred I had in my hand.

5 Q Okay. And what was goal those pamphlets?

6 A To educate as many people in the public as possible about
7 juror rights.

8 Q Hopefully, give them all out?

9 A I was hoping, yes.

10 Q Okay. What if you ran out with the 75 or a hundred that
11 you had?

12 A I -- I did have some reserves in the car.

13 Q Okay. Was this the first time you had ever handed out
14 brochures like this on this issue?

15 A Well, I -- I had given them to people like clerks if the
16 issue would arise, my pest control guy; I work from home,
17 and he would come at least once a-month and we --

18 Q Okay.

19 A -- we discussed that.

20 Q Let me ask this, when did you first have a pamphlet in
21 your hand that you could give to somebody?

22 A (No verbal response).

23 Q I think you said it was after the pre -- when -- when did
24 you first --

25 A Yeah, it's -- it was definitely after November 4th.

1 Q Okay. But what I'm asking, sir, is not, "Did you give it
2 to some individual person" or something. When was the
3 first time you went out in public, on a public sidewalk,
4 to hand these out to just anybody who would take one?

5 A Well, this was the first time, because I had just learned
6 about jury rights and I -- I just began my investigation
7 regarding this issue.

8 Q Okay. And then after you got arrested and this whole case
9 started; have you gone out anywhere else to --

10 A No.

11 Q -- hand out brochures?

12 A I -- I have not.

13 Q Okay. There was some testimony that there was a period of
14 time where -- that morning, of the 24th -- that a bus full
15 of Amish folks got off and went inside the courtroom.
16 Were you there at the sidewalk yet when that happened?

17 A I -- I never saw an Amish bus pull up and a whole bunch of
18 Amish -- Amish-folk come out. So I'm saying no, I was not
19 there.

20 Q Okay. So --

21 A I didn't see one.

22 Q -- were the Amish-folk already in the courthouse for the
23 most part?

24 A Yes. You -- you can see through the windows. I did see
25 some Amish folks through the windows. So, yes, they were

1 already there --

2 Q Okay.

3 A -- when I arrived.

4 Q Did there come a point in time where some of the Amish
5 folks came out on that landing area at the top of the
6 steps?

7 A They did. So at one point, a little after I got there, I
8 did see a group of Amish men come out on that landing and
9 -- and they were set up on the top of the steps at that
10 landing.

11 Q Okay. Well, when you saw all of them on the landing; did
12 you run up to the landing and say, "Hey, guys, take a look
13 at this brochure I've got. You should know your juror
14 rights?"

15 A No, I did not.

16 Q Did you approach them at all?

17 A I didn't.

18 Q Did you ever hand a brochure to any Amish folks that were
19 there that day?

20 A I did hand a brochure to one Amish man, an Amish couple;
21 they must have been late, but they came down the sidewalk.
22 In fact, they were on the sidewalk that is parallel with
23 Elm Street. And they were coming from the west, heading
24 east, and I offered the gentleman one of those pamphlets
25 and he took it and I saw him put it in the inside pocket

1 of his jacket.

2 Q Okay. So that was the only interaction you had with any
3 Amish folks that were there that day?

4 A That is correct.

5 Q Did you coordinate anything with some Amish church or
6 group beforehand, before the 24th, to show up that day to
7 hand out these brochures?

8 A I did not.

9 Q Okay. Now did there come a point in time where someone
10 came out of the courthouse to talk to you about what you
11 were doing?

12 A Yes. A man came halfway down the steps from the north
13 entrance area. And --

14 Q And where were you located?

15 A I was still at the same place that I had always been.

16 Q Okay.

17 A I didn't --

18 Q Out by Elm Street?

19 A Right. And --

20 Q Okay. But on the sidewalk?

21 A On the sidewalk.

22 Q Okay.

23 A Not blocking anybody.

24 Q All right. And what happened?

25 A Well, he came halfway down the stairs. He said something.

1 I -- I heard noise. I could not make out exactly what he
2 said. And --

3 Q So what did you do?

4 A Well, and so I wanted to know -- I like to know who I'm
5 talking to -- so I just asked him well, "Who are you?"
6 And his reply was, "I'm a magistrate" or "I'm the
7 magistrate." And right after that I asked him well, "What
8 is -- what is your name?" I like to know -- you know --
9 officials' names. And either when I was asking the
10 question what is your name or just after I finished the
11 question, he turned around and he walked inside the
12 courthouse.

13 Q Okay. Did you hear him ask or make any command to you to
14 stop handing out pamphlets?

15 A I -- I did not hear that, no.

16 Q Okay. So other than that brief exchange about being a
17 magistrate and what you said; you could not really make
18 out what he was saying?

19 A I -- I didn't hear what he said.

20 Q Okay.

21 A And he didn't -- he didn't stay very long for -- for me to
22 really know what he wanted me to do or not want me to do.

23 Q All right. And was that your -- strike that. Now, you
24 know Detective Erlandson, right?

25 A Well, I --

1 Q I mean, you know who she is?

2 A I know who she is. I don't know --

3 Q And --

4 A -- her.

5 Q -- you saw her testify here in court yesterday, right?

6 A Yes --

7 Q Okay.

8 A -- I saw her.

9 Q How many times did Detective Erlandson come out and talk
10 to you?

11 A Well, I talked to her twice. One -- once when she was
12 coming inside the courtroom -- or -- the courthouse
13 rather. So for -- she was on the public sidewalk and she
14 was coming into the courthouse. And then the second time
15 was when she came down to the -- the same sidewalk that I
16 was standing at --

17 Q Okay.

18 A -- twice.

19 Q Well, let's talk about those --

20 A Okay.

21 Q -- separately. The first time she was coming in just like
22 other people were walking in that day, right?

23 A Yes, that's correct.

24 Q Okay. And -- and just so I'm clear; you were handing
25 these brochures out to anybody who would take them, right?

1 A That is correct.

2 Q We've heard testimony from people who were not jurors, who
3 did get the brochure, right?

4 A Yes. Absolutely.

5 Q So you were not -- you didn't know who was a juror or who
6 wasn't a juror did you?

7 A I had no idea.

8 Q Now the first time you saw Detective Erlandson, tell us
9 what happened; she's walking in, where was she coming
10 from, where were you? Tell the jury what -- what
11 happened.

12 A Well, she was coming towards the sidewalk where I was at
13 and as -- you know -- she was going to turn and head up
14 the sidewalk to go up the stairs, before she even got on
15 that sidewalk, I said something to the effect, "You don't
16 want one of these do you?" and I smiled at her.

17 Q Okay. Why did you say that?

18 A Well, I -- you know -- I did see her duty weapon, I saw
19 her badge, so I knew she was some sort of law enforcement
20 officer. But -- you know -- the fact is -- well, I --

21 Q Okay.

22 A I offered --

23 Q So you --

24 A I offered her one.

25 Q You offered her one?

1 A Yeah.

2 Q Kind of tongue-in-cheek?

3 A Right.

4 Q All right. And what did she do?

5 A Oh, she said she didn't want one. She said that
6 everything that -- yeah -- I don't remember exactly what
7 she said. But, she didn't take one.

8 Q She declined one --

9 A Right.

10 Q -- right?

11 A Right.

12 Q Okay. Did she tell you to move on; that you couldn't hand
13 out those brochures at this first meeting?

14 A She never told me to move on.

15 Q Okay. Did she complain to you -- again, we're at the
16 first time you encountered her -- did she tell you, "Hey,
17 you're blocking the sidewalk?"

18 A She never told me I was blocking the sidewalk, because I
19 wasn't.

20 Q Okay. All right. The second time that Detective
21 Erlandson came out -- and I think we've all heard the
22 testimony -- she came walking up the sidewalk, towards
23 you, and Deputy Roberts came out and was still on the
24 landing or somewhere up near the courthouse, right?

25 A That's correct, yes. So she came down the stairs, down

1 that sidewalk that makes the cross.

2 Q Uh-huh.

3 A Yes.

4 Q And what did she say to you?

5 A She told me I needed to come inside the courthouse because
6 the judge wanted to talk to me or needed to talk to me.

7 Q Okay. And did you ask her a question?

8 A I did. I asked her if I was being detained.

9 Q Okay. Why --

10 A And she said --

11 Q Why would --

12 A -- no.

13 Q -- you ask that?

14 A Well, if I'm not being detained then I'm free to go. And
15 if I'm free to go, then I'm free to stay.

16 Q Okay. So when you asked, "Am I being detained;" what did
17 -- how did she respond?

18 A She said, "No, you're not being detained."

19 Q Okay. So what happened then; did you --

20 A Well, I --

21 Q -- go inside at that point, right after she said that?

22 A No, I did not because she said I was not being detained.

23 And I know that much; if I'm not being detained, then I'm

24 -- I'm not doing anything wrong, and I don't have to -- I

25 don't have to comply with a request.

1 Q Okay. Were you nervous about going inside the courthouse?

2 A I -- I was very nervous about going inside the courthouse.

3 Q Okay. Why?

4 A Well, just -- you know --

5 Q You didn't want to meet the judge?

6 A Well, I didn't want to meet the judge and I didn't feel
7 like I was doing anything wrong. So I just didn't have
8 any reason to -- to talk to him.

9 Q Okay. Well, then right at that point, Deputy Roberts; did
10 he say anything to you?

11 A So -- so once Detective Erlandson answered me and then I
12 said, "Well, I really don't want to go anywhere if I'm not
13 being detained, then -- you know -- I just want to
14 continue to -- to hand these pamphlets out. I'm free to
15 do this." And then Detective (sic) Roberts from -- from
16 the landing; he yelled down to me -- and -- and it wasn't
17 -- he had to yell to -- to -- so I could hear him -- and
18 he said --

19 Q Okay. He wasn't angry --

20 A No.

21 Q -- or anything?

22 A No, I don't believe so.

23 Q Yeah.

24 A I -- from my recollection, I didn't take it that way. He
25 was trying to communicate with me.

1 Q Okay.

2 A And so he said, "You need to come in the courthouse, the
3 judge wants to talk to you." And then --

4 Q So what did you say?

5 A Well, I asked him, "Am I being detained?" because I knew
6 if I wasn't being detained, then I didn't have to do that.

7 Q Okay. And how did Deputy Roberts respond?

8 A He either said, "No," or "Not yet."

9 Q Okay.

10 A And -- well --

11 Q Then what was the --

12 A Well --

13 Q -- then what did he state to you?

14 A Well, I said if I'm not being detained -- and if I'm being
15 accused of -- of yelling, this would be the only time that
16 I really raised my voice so that he could hear me, but it
17 wasn't out of anger. It was just so he could hear me. And
18 I just said, "If I'm not being detained, then I don't want
19 to go in and talk to the judge. I'm free to stay right
20 here."

21 Q Okay. And then what did Deputy Roberts say to you?

22 A Well, then Deputy Roberts said, "If you don't come in and
23 talk to the judge, I'm going to call the City Police" --
24 and he said Big Rapids -- "and they're going to come and
25 arrest you."

1 Q So how did you take that?

2 A I took that as a threat.

3 Q Did you feel free to leave at that point?

4 A Absolutely not.

5 Q Okay. So he threatened you with arrest or come in and
6 talk to the judge; those were --

7 MR. HULL: Your Honor --

8 MR. KALLMAN: -- your two choices?

9 MR. HULL: -- we've allowed a lot of this
10 testimony. I -- I'm going to object to relevance just
11 because we've already gone through it and it's not
12 relevant to the charge.

13 MR. KALLMAN: Well, it most certainly is. I
14 mean --

15 THE COURT: Your --

16 MR. KALLMAN: -- this --

17 THE COURT: -- response.

18 MR. KALLMAN: -- is going right to what happened
19 and the circumstances surrounding him handing out the
20 brochures. And there's been testimony from other
21 witnesses about this. I think my client is entitled to
22 say this is what he recollects of what happened.

23 THE COURT: Okay.

24 How -- how many further questions along this
25 line do you have?

1 MR. KALLMAN: Actually, that was my last one
2 before moving on.

3 THE COURT: Then let's move on.

4 BY MR. KALLMAN:

5 Q Okay. Thank you, Judge. So once the threat was made;
6 what did Detective Erlandson do?

7 A Well, at this point, she -- she didn't touch me at that
8 point, but she had her arm stretched out just behind the
9 small of my back. She was trying to corral me and try to
10 guide me up that sidewalk and up the steps.

11 Q Okay.

12 A So she was -- she was trying to get me in the courthouse.

13 Q Okay. Did you resist her?

14 A I never resisted her.

15 Q Did you walk up the sidewalk and toward the courthouse?

16 A Under duress I did, yes.

17 Q Okay. So she moved you along and you cooperated?

18 A I did.

19 Q Okay. And did you make any statements at that point; as
20 they're walking you up toward the courthouse?

21 A So at one point, when she had her arm out corralling me,
22 it did touch the small of my back. And I remembered that
23 she said I wasn't being detained. And I just know that
24 you're not -- you know -- government officials are not
25 supposed to touch you, law enforcement are not supposed to

1 touch you, if you're not detained or legally arrested. So
2 I asked her again, simply, "Am I being detained?" and she
3 responded, "No." I said, "Please, please don't touch me
4 then."

5 Q Okay. But, she kept moving you along?

6 A She kept moving me along, yes.

7 Q Okay. Did you feel free to leave at that point; as you're
8 walking up the sidewalk and the steps and into the
9 courthouse?

10 MR. HULL: Your Honor --

11 THE WITNESS: Absolutely not.

12 THE COURT: Once again --

13 MR. KALLMAN: Well, this is another spot, Judge.
14 And as he's moving along.

15 THE COURT: I --

16 MR. KALLMAN: Yeah.

17 THE COURT: I understand. However, I -- I'm
18 going to sustain his objection. We're not here regarding
19 the arrest. So --

20 MR. KALLMAN: Okay.

21 THE COURT: -- move along.

22 BY MR. KALLMAN:

23 Q Okay. I'll keep moving. Thank you, Judge. Did you
24 voluntarily go inside?

25 A I did not voluntarily go inside. I -- I went in under

1 duress.

2 Q And as they moved you along -- and -- did you cause a
3 commotion of any kind?

4 A I never caused a commotion, no.

5 Q And so you went inside the courthouse?

6 A I -- I did go inside the courthouse.

7 Q Where did you go?

8 A I was led to -- well, more pushed but -- beyond the door
9 of the circuit courtroom, right here, somewhere in the
10 hallway right here --

11 Q Okay.

12 A -- towards the right side of the hallway.

13 Q Okay.

14 A I say the right side if you're facing that way.

15 Q And what were you feeling at that point?

16 A I was really scared.

17 Q Okay. And what happened when you got in the hallway here;
18 you stopped at some point, why did you stop?

19 A Well, I was told to stop right here.

20 Q Okay. Who told you?

21 A At this --

22 Q Do you recall?

23 A Well, at this point, I'm really scared and things kind of
24 get -- get fuzzy. I don't know if it was Detective
25 Erlandson or if it was Deputy Roberts.

1 Q Okay. Were there other people there besides Detective
2 Erlandson and Deputy Roberts?

3 A There were other people there. I didn't recognize them.
4 I didn't know who they were.

5 Q Did Judge Jaklevic come out into the hallway?

6 A He did. After a short while, a door opened, and he stood
7 in the doorway and he looked at me, he looked down the
8 hallway; that way, and then he looked back towards me and
9 Deputy Roberts, and he said to Deputy Roberts, "Place him
10 under arrest for Jury Tampering."

11 Q Did the judge ever speak to you?

12 A Nope.

13 Q Prior to him ordering your arrest?

14 A No, he never talked to me.

15 Q Okay. He never asked you any questions?

16 A He never asked me one question.

17 Q Did you still have pamphlets in your hand when you walked
18 in the courthouse?

19 A I did.

20 Q Well, what happened to those?

21 A Somebody confiscated them.

22 Q Okay. And then after Deputy Roberts was ordered to arrest
23 you; what happened?

24 A Then I was led down the hall to the -- to the jail. I
25 guess the courthouse and the jail are interconnected.

1 There's some connection there. And so they led me --
2 hailed me off to jail.

3 Q Okay. Were you handcuffed?

4 A I was. I'm sorry. They did. They placed handcuffs on
5 me.

6 Q Okay. Now through this whole process; Magistrate Lyons
7 came out, you had two encounters with Detective Erlandson,
8 the Deputy, the other officials here in the hallway, at
9 any time, did any of those officials or -- or law
10 enforcement officers ever ask you why are you handing out
11 pamphlets?

12 A No, they never asked me why I was handing out pamphlets.

13 Q Never inquired?

14 A No.

15 Q Were you asked any questions while you were in the hallway
16 here?

17 A I --

18 Q If you recall?

19 A I -- I really don't recall. At that time, I was really
20 scared.

21 Q Okay.

22 A So I was kind of -- yeah.

23 Q So nobody asked why you were out there doing that and then
24 they just arrested you?

25 A Yep, they arrested me.

1 Q Okay. And, again, is the Yoder case discussed in that
2 pamphlet at all?

3 A No.

4 Q Did you know Jennifer Johnson on November 24th of 2015?

5 A I did not.

6 Q Would you have known who she was when she took a pamphlet
7 that morning?

8 A I would have had no idea who she was.

9 Q Did you know Theresa DeVries on November 24th of 2015; that
10 morning?

11 A I had no way of knowing.

12 Q And so you didn't know who she was --

13 A No, I didn't.

14 Q -- when she took a pamphlet?

15 A I didn't know who she was.

16 Q Okay. And, again, did you tell either of those people --
17 well, strike that -- obviously, you didn't know who they
18 were. Did you even know that they got a brochure from you
19 until we were here in court?

20 A No, I didn't know until -- until yesterday.

21 Q Okay. Did you have any way of knowing that Ms. Johnson or
22 Ms. DeVries were summoned for general jury duty that day?

23 A I had no way of knowing, no.

24 Q Okay. Did you ever ask the names of anybody as they were
25 coming up and you're offering your brochure?

1 A No, I didn't have opportunity, but I wasn't asking either.

2 Q Now, Mr. Wood, you've testified that you never asked
3 anybody if they were a juror; you said that very clearly,
4 and you said what you did ask -- or -- what you did state
5 to them. But, look, you must have known; it was possible
6 a summoned juror might get a brochure, right? I mean, you
7 must have known that was a possibility.

8 A Well -- you know -- a lot of things are possible of
9 course. Absolutely.

10 Q Okay. But did you know who was summoned?

11 A No, I had no way of knowing, just like Detective Erlandson
12 testified yesterday, there is no way to know who was
13 summoned and who was not.

14 Q Did you know whether or not jurors might have been
15 reporting at another door from where you were?

16 A I had -- I have no idea.

17 Q Did you know anything about the jury process; what time
18 they showed up, when, where they went, any of that; did
19 you know anything about any of that?

20 A I didn't know about that, no.

21 Q Did you know what time jurors were supposed to report that
22 morning?

23 A I had no idea.

24 Q Okay. Well, let me just ask you directly; Mr. Wood, did
25 you willfully attempt to influence any jurors in the Yoder

1 trial?

2 A Absolutely not.

3 MR. KALLMAN: Thank you.

4 I don't have any other questions.

5 THE COURT: Mr. Hull.

6 CROSS-EXAMINATION

7 BY MR. HULL:

8 Q Thank you, your Honor. I'd like to kind of take you back;
9 so you received an email blast in regard to the *Yoder*
10 trial from some member of the community?

11 A That's correct.

12 Q And you saw -- you read that email?

13 A I did.

14 Q And you thought that the *Yoder* case was something that was
15 worth your attention?

16 A Sure, it piqued my interest. It was -- yeah.

17 Q Something that you -- you didn't like what the government
18 was doing in that case?

19 A Well, I couldn't say that. I didn't have enough
20 information.

21 Q Oh, so you just didn't -- so it vaguely piqued your
22 interest, but you didn't have enough information to say
23 whether or not you did or didn't like what was going on in
24 the *Yoder* case?

25 A Well, it talked about a wetlands violation on private

1 property, it was an Amish man, and something to do with
2 DEQ. So I was interested that -- it just interested me
3 that the government would have jurisdiction on somebody's
4 private property. So, yes, it did pique my interest.

5 Q So that is something that piqued your interest. Did you
6 have the pamphlets; the jury nullification pamphlets, at
7 that point, when you got that email; did you have copies
8 of those?

9 A No, I did not.

10 Q You hadn't -- you hadn't printed any copies or ordered any
11 copies of that at that point?

12 A Well, I know I didn't order any copies at that point. I
13 can't say for sure if I didn't print maybe one or two of
14 them in my research. I don't know for sure.

15 Q So then, the morning of the pretrial; November 4th, 2015 --

16 A Yes.

17 Q -- before the pretrial, you called up Emily Grove from the
18 Pioneer?

19 A I -- I did, yes.

20 Q And you thought that -- you talked to her about the Yoder
21 case, specifically?

22 A I did.

23 Q And that was a case that you thought the community would
24 be interested in?

25 A I did.

1 Q And --

2 A But --

3 Q -- you wanted her to come and report on that case?

4 A I thought it would be newsworthy and of interest.

5 Q And, at that point, you hadn't printed up all of the jury
6 pamphlet information?

7 A No, I did not.

8 Q Okay. So then, November 4th, later on in the morning, you
9 go to the Yoder pretrial?

10 A I did, yes.

11 Q You appeared for that?

12 A I was there.

13 Q You sat down and listened to the entire motion hearing?

14 A I did.

15 Q And you were there from beginning to end?

16 A Yes.

17 Q And on that date and time, at 11:00 o'clock, all the way
18 up to the end, you hadn't printed up any jury question --
19 or -- any jury pamphlets?

20 A No.

21 Q You didn't hand out any pamphlets on that date of the
22 pretrial?

23 A I -- I didn't because I didn't have them printed out.

24 Q You didn't hand out any pamphlets on the day after the
25 pretrial?

1 A I didn't.

2 Q And you knew from going to that pretrial that the *Yoder*
3 trial was scheduled for November 24th?

4 A I did, yes.

5 Q You did not hand out those pamphlets in a public form any
6 day before November 24th?

7 A I -- I didn't.

8 Q You didn't go to Wal-Mart to hand them out?

9 A I -- I don't shop at Wal-Mart.

10 Q You didn't go to Meijer or any other public location?

11 A I do shop at Meijer. But, no.

12 Q You didn't go to any public parking lots to hand them out
13 before November 24th?

14 A I -- I didn't, no.

15 Q Okay. So you chose the day of the *Yoder* trial to come and
16 hand out those pamphlets?

17 A I did. I thought there was going to be a lot of people
18 here, yeah.

19 Q And you got there about, what, 8:30 in the morning, 8:15;
20 about what time?

21 A I really don't recall exactly when I got there.

22 Q You got there before the *Yoder* trial was to begin?

23 A Well, yes.

24 Q Okay.

25 A I saw some Amish --

1 Q And --

2 A -- men on the landing coming out, so I'm --

3 Q So, yeah.

4 A -- I assume that it had not commenced, correct.

5 Q And you knew when you got there that that was the date and
6 time that the *Yoder* trial was scheduled?

7 A It was scheduled, right.

8 Q And you knew that there would be jurors showing up on that
9 date and time?

10 A I assumed potential jurors would be there, yes.

11 Q And you positioned yourself on the sidewalk between the
12 parking lot and the doors entering the courthouse?

13 A Could you be a little more specific?

14 Q You were standing on the sidewalk --

15 A I mean, specific meaning --

16 Q The part -- you know there is that -- that giant parking
17 lot across the street from the courthouse?

18 A Where I'm parked --

19 Q Yeah.

20 A -- correct, yes.

21 Q You were standing in the sidewalk between that parking lot
22 and the doors entering the courthouse?

23 A Off to the side. But, yes.

24 Q Yes.

25 A Yes.

1 MR. HULL: Now these pamphlets; you didn't just
2 print all of these off of your printer, right? I mean,
3 these were pretty standard looking pamphlets.

4 Your Honor, may I approach?

5 THE COURT: You may.

6 BY MR. HULL:

7 Q You didn't just print these off your printer, right? You
8 had 75 to 100 of them.

9 A In my hand, right.

10 Q And more in your car?

11 A Yes.

12 Q So you had to order them from somebody, right?

13 A Yeah, fija.org.

14 Q And you went to fija.org?

15 A Uh-huh.

16 Q And -- is that a yes? I'm sorry.

17 A Yeah, I'm sorry. Yes, it is.

18 Q And then you ordered how -- a bunch of these pamphlets?

19 A I don't remember the exact number, but it was -- yes, it
20 was quite a few.

21 Q And I assume it wasn't overnight delivery; I assume it
22 took a while to get those pamphlets?

23 A I don't recall.

24 Q And the only day and the only time and the only place that
25 you went to, to publicly hand these out, was this

1 courthouse on November 24th, 2015, before the Yoder trial
2 was to begin?

3 A That would be pretty accurate, yeah.

4 Q And when you were asked by your own attorney -- you know
5 -- is it possible that you -- that -- that maybe jurors
6 would have gotten this, your response was anything's
7 possible. So to -- in your knowledge, it was only
8 possible; based on your testimony, it was only possible
9 that jurors might have --

10 A Oh, it --

11 Q -- gotten that?

12 A Oh, it was very possible that anybody could have received
13 them.

14 Q You had an interaction with Magistrate Lyons?

15 A I did, yes.

16 Q And he asked you -- or -- he said something to you and
17 your response was that you didn't hear what he said?

18 A I did not hear what he said.

19 Q So your response, when you didn't hear what that gentleman
20 said to you was, "What's your name?"

21 A Well, right. I wanted to know -- no, I didn't say that. I
22 -- I asked who he was because I wanted to know who he was.

23 Q These jury pamphlets that you provided --

24 A Yes, sir.

25 Q -- they basically tell people that they can ignore their

1 juror oath -- they don't -- I'm sorry. Not basically.
2 They tell people they can ignore their juror oath, right?

3 A Okay. Okay.

4 Q Is that -- is that fair to say? I assume you've --

5 A Would you --

6 Q I should ask --

7 A -- like me to read it?

8 Q -- you this --

9 A Yeah.

10 Q You've read this pamphlet?

11 A Of course I have.

12 Q Okay. So --

13 A I haven't -- I haven't recently. It's -- it's gotten me
14 in a huge mess. So I haven't recently. I've stayed away
15 from it.

16 Q Is it fair to say that this pamphlet says, "As a juror,
17 you cannot be forced to obey your juror's oath?"

18 A Did you just read that from there?

19 Q Yes.

20 A Okay. So, yes, I would -- I would agree that it's in
21 there.

22 Q Would you agree this pamphlet says that, "Judges regularly
23 assist the prosecution in dismissing prospective jurors
24 who admit to knowing about their rights?"

25 A Absolutely.

1 Q It also says that, "Thousands of harmless people are in
2 prison simply because their juries weren't fully
3 informed?"

4 A That's correct. I mean, we have four percent of the
5 world's population in --

6 Q That's what the --

7 A -- 20 --

8 Q -- pamphlet says?

9 A I'm sorry. Yes.

10 Q And the pamphlet also says, "New prisons are springing up
11 everywhere, and too many of them are filling up with
12 people whose only 'crime' was to displease their
13 government 'master.'" Is that what the pamphlet says?

14 A You just read that?

15 Q Yeah.

16 A Yeah, it -- that's what it says, absolutely.

17 Q You -- when you came to the courthouse on November 24th,
18 2015, you were already -- you had how many pamphlets in
19 your hand?

20 A I would say that I had approximately 75 to a hundred in my
21 hands.

22 Q And I just want to make sure I understand your testimony;
23 at no point before or after, did you publicly hand out
24 those pamphlets --

25 A Before --

1 Q -- besides the day of that trial?

2 A Before or after what?

3 Q Before or after that trial did you publicly hand those
4 pamphlets out?

5 A I -- I did not publicly, no. I did not.

6 Q And when you handed those pamphlets out; you said that
7 they contained jury information you should know about
8 regarding your jury rights?

9 A Are you asking what I said or --

10 Q I'm asking that -- I under -- I believe that was your
11 testimony. I'm just confirming. Is that your testimony;
12 that you told people, when you handed it, this contained
13 information you should know about your jury rights?

14 A I said I would -- I said, "Here's juror rights
15 information," and I extended my arm.

16 Q And to every person that you handed it to you said, "Here
17 is juror rights information?"

18 A That -- that's what I said.

19 Q In fact, the front of the pamphlet says, "Your Jury
20 Rights?"

21 A Yeah. Yeah. I'm sorry. Yes.

22 Q When you were handing out those pamphlets; did you hear
23 anything about the trial being called off or anything like
24 that?

25 A (No verbal response).

1 Q The *Yoder* trial.

2 A When? I'm sorry.

3 Q When you were handing out the pamphlets?

4 A So when I was on the public sidewalk?

5 Q Yes.

6 A No, I -- I didn't hear that the trial had been called off.

7 No.

8 Q So as far as you knew -- and, in fact -- the trial was
9 still going on when you were handing out those pamphlets
10 -- or -- the trial was still scheduled to continue?

11 A Yeah, to my belief it was still scheduled. But, when you
12 said --

13 Q And it had --

14 A -- going on --

15 Q -- at -- at --

16 A -- there was --

17 Q At that point in time --

18 A Yep.

19 Q -- as far as your knowledge --

20 A Yep.

21 Q -- the jury trial was still scheduled to continue?

22 A Yes, sir. That's correct.

23 Q So you knew jurors would be there?

24 A (No verbal response).

25 Q You knew jurors would be showing up that day?

1 A Sure. Absolutely.

2 MR. HULL: No further questions.

3 Thank you.

4 THE COURT: Thank you.

5 Redirect.

6 REDIRECT EXAMINATION

7 BY MR. KALLMAN:

8 Q Just briefly, your Honor. Again, just -- I want to be
9 clear; Mr. Wood, did you know on November 24th -- you
10 showed up that morning, you're handing out the brochures
11 -- did you know that the Yoder trial was the only trial
12 scheduled that day?

13 A I -- I had no way of knowing, no.

14 Q Okay. So, as far as you knew, there could've been three
15 other, five other trials scheduled; you had no way of
16 knowing?

17 A I had no way of knowing if other trials were going on.

18 Q And then right at the end, Mr. Hull asked you, "Well, did
19 you have any information that the trial had been
20 cancelled?" Let me ask it this way; did you know the jury
21 trial actually went on or actually occurred at any time?

22 A I didn't know.

23 Q Okay. You found out later, though, right --

24 A I --

25 Q -- that it --

1 A I did find out later.

2 Q Okay. One moment, your Honor. And, again, even though it
3 was scheduled; it was your understanding that most of
4 these cases never go to trial anyway, right?

5 A Ninety-five percent. It's a fact. Ninety-five percent of
6 cases are pled out before they ever go to trial.

7 MR. KALLMAN: Thank you.

8 Nothing further.

9 THE COURT: Thank you.

10 Questions from the jury?

11 Hold on. There's a bunch of them. There you
12 go; bring them all at one time.

13 (At 11:07 a.m., bench conference held)

14 (At 11:09 a.m., bench conference concluded)

15 All right. We have received three questions
16 from the jury. And I have met with the Prosecutor and --
17 and defense counsel. And we have agreed that each one of
18 these can be asked.

19 So, Mr. Wood, I have a few questions for you.
20 Do you have any ties to the Amish community?

21 THE WITNESS: When you say ties; do -- I -- I've
22 never gone to their meetings. I -- I don't -- when you
23 say ties. I -- I bought produce from them before, but I
24 only lived about 10 or 15 minutes away from them. But to
25 have Amish -- ties to the Amish; I -- I don't -- I didn't

1 go into their church meetings or --

2 THE COURT: All right.

3 Second question; why did you choose to stand on
4 this sidewalk, instead of any other location in town?

5 THE WITNESS: Well, as I mentioned before, I
6 knew that there was a possible trial that was going to
7 happen, but more likely than not, it was going to be pled
8 out beforehand. I knew a lot of people were going to be
9 here and I wanted to get my informational brochures into
10 as many hands as possible.

11 THE COURT: Next question, have you -- have you,
12 yourself, ever sat as a juror or been called as a
13 potential juror?

14 THE WITNESS: Never.

15 THE COURT: If not then, what made you feel that
16 potential jurors needed to be educated since you would not
17 have known what jurors would be told in court?

18 THE WITNESS: Well, I -- I did read some -- some
19 jury instructions as I was doing my research and they
20 seemed to conflict. And so it wasn't just potential
21 jurors needing to know about this. I felt like everybody
22 needs to know about this. This isn't something that's
23 taught in school -- we homeschool our children -- I love
24 to educate myself and my children. And so I felt like
25 this was something very important for everybody to know.

1 THE COURT: Based on those questions; does that
2 bring up any additional questions from you, Mr. --

3 MR. HULL: Yes, your Honor. I just have a
4 couple.

5 THE COURT: Well, actually, it's your witness.
6 So let's start there.

7 FURTHER DIRECT EXAMINATION

8 BY MR. KALLMAN:

9 Q Okay. Thank you, your Honor. Mr. Wood, I asked you
10 regarding what you knew about the schedule the day of the
11 24th and what time jurors were called and all that sort of
12 thing, right. Do you remember those questions?

13 A I do. I do remember those questions.

14 Q Did you know anything about the process that was being
15 done that day? I think I asked you in general about
16 process. Did you know anything about that day; what
17 process was going to be used for jurors?

18 A I had -- I had no idea.

19 Q Okay. Have you, at any point in time in the past, received
20 a juror questionnaire?

21 A I did receive a juror questionnaire, yes.

22 Q Okay. But, you were never called?

23 A I was never summoned, no.

24 MR. KALLMAN: Okay.

25 THE COURT: May I see the two of you at the

1 passing it out to public is not illegal. And that is
2 where we get into the circumstantial evidence that we
3 talked about during the voir dire process. What made this
4 illegal was specifically how the defendant did it. He did
5 not go to a Wal-Mart -- he said he wanted to get maximum
6 -- he wanted to get as many people as possible to find out
7 about what he believed juror rights were -- he didn't go
8 to a Wal-Mart or a Meijer, he didn't go to a parking lot,
9 he didn't go to a sporting event, he didn't go around town
10 asking people if they -- businesses -- if they'd put them
11 on their shelves for people to take out. He chose the date
12 of the *Yoder* trial; the time that jurors would be
13 appearing for the *Yoder* trial, and at one of the only two
14 entrances that jurors have to walk through in order to
15 come in and do their duty for the *Yoder* trial. That was
16 his specific intent.

17 The fact that the trial did not end up going is
18 irrelevant. You'll notice that in the elements we've
19 read, there is nothing that says that the trial has to go
20 on after his attempt. They have to be summoned for a
21 trial. The trial was going on; was going to be
22 continuing, at the time that they approached. The time
23 the defendant handed them the pamphlet. And if you think
24 about it, if the trial was an extra element to the crime;
25 if it was required that there be a trial after the crime

1 was committed, then anytime a court decides, "Listen, we
2 can't have a trial because the jury has been tampered
3 with," and calls off the trial, suddenly there is no jury
4 tampering because a judge had to call off the trial.

5 MR. KALLMAN: Your Honor, can we approach?

6 THE COURT: You may.

7 (At 1:53 p.m., bench conference held)

8 (At 1:54 p.m., bench conference concluded)

9 MR. HULL: As I was saying, ladies and
10 gentlemen, at the time that Mr. Yoder (sic) approached --
11 approached the jurors in this case, Ms. Johnson and Ms.
12 DeVries, at the time that he handed them the pamphlet,
13 they were appearing for a trial. He knew, not any
14 specific person, but he knew exactly what he was doing.
15 He knowingly and purposefully came to the location of the
16 Yoder trial in order to influence the jurors by means of
17 this pamphlet.

18 The pamphlet goes into a lot of different areas.
19 It talks about, basically, what we know is to be jury
20 nullification. One of the things about the pamphlet is
21 that the pamphlet directly contradicts many of the things
22 you have already been told by this Court and by every
23 Court in the State of Michigan. Looking up at the screen
24 here, one of the things that the pamphlet says is that you
25 have to ask, "Did the punishment fit the crime?" And the

1 You should not decide this case based on which
2 side presented more witnesses. Instead, you should
3 think about what -- think about each witness and each
4 piece of evidence and whether you believe them. Then
5 you must decide whether the testimony and evidence
6 you believe proves beyond a reasonable doubt that the
7 defendant is guilty.

8 You have heard testimony from witnesses who are
9 police officers. That testimony is to be judged by
10 the same standards you use to evaluate the testimony
11 of any other witness.

12 The defendant is charged with the crime of
13 Attempting to Influence a Juror. To prove this
14 charge, the prosecutor must prove each of the
15 following elements beyond a reasonable doubt:

16 First, that Jennifer Johnson and/or Theresa
17 DeVries was a juror/were jurors in the case of *People*
18 *v. Yoder*.

19 Second, that the defendant willfully attempted
20 to influence that juror by the use of argument or
21 persuasion.

22 Third, that the defendant's conduct took place
23 outside of proceedings in open court in the trial of
24 the case.

25 A person acts willfully when he or she acts

1 knowingly and purposefully.

2 The word "juror" includes a person who has been
3 summoned to appear in court to decide the facts in a
4 specific trial.

5 An "argument or persuasion" can be oral or
6 written.

7 Now, we have, as I indicated to you earlier;
8 yesterday actually, eight of you have sat and listened to
9 all of the testimony today. We will now choose two names
10 out of the eight of you who are seated. Two of you will
11 be dismissed from deliberations. What I'm going to ask
12 you to do is as soon as your name is called, you will be
13 free to leave the -- free to leave the courtroom. You
14 need to take your -- take your notes with you -- or --
15 give your notes to the bailiff. On the sheet that you
16 have, please list your name and telephone number. Do not
17 speak to anyone; you are still not free to speak to
18 anybody about this case, just in case that there could be
19 an issue with deliberations. I actually released jurors
20 one time and then we had a juror issue and I had an issue
21 with having to call back jurors. So you are still --
22 you're still not able to read the newspaper. We will call
23 you when deliberations are over if you would like to leave
24 the building. However, you are not free to talk to anyone
25 or discuss with anyone, any aspects of the case, in case

STATE OF MICHIGAN
IN THE MECOSTA COUNTY CIRCUIT COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee

17-24073

Circuit Case No.: 17-2473-AR
District Case No.: 15-45978-FY

v

KEITH ERIC WOOD,

Defendant-Appellant.

Hon. Eric R. Janes

FILED
49TH CIRCUIT COURT
COUNTY OF MECOSTA
2018 FEB - 2 A 11:48
COUNTY CLERK

OPINION AND ORDER
ON DEFENDANT-APPELLANT'S APPEAL

I. FACTS

Defendant-Appellant (appellant) appeals his June 1, 2017 conviction for violating MCL 750.120a(1) (willful attempts to influence a juror's decision). He claims that plaintiff-appellee (appellee) violated his First Amendment right to free speech, that MCL 750.120a(1) is unconstitutionally vague, and that he did not receive a fair trial.

On November 24, 2015, appellant stood outside the Mecosta County courthouse and distributed pamphlets to people who were entering the courthouse. An unrelated jury trial was scheduled for that day. Appellee charged appellant with obstructing justice, MCL 750.505, and jury tampering, MCL 750.120a(1). Following a motion to dismiss, the trial court dismissed the obstructing-justice charge. Appellant filed a motion for reconsideration, which the trial court denied. He filed an interlocutory appeal and the Michigan Court of Appeals declined to review his appeal. Appellant filed an application for leave to appeal to the Michigan Supreme Court and that Court declined to review his appeal.

On June 1, 2017, a jury convicted appellant of tampering with a jury. The court sentenced appellant on July 21, 2017. That same day, appellant filed a motion to stay his sentence pending any appeal. The trial court denied his motion. Appellant then filed an emergency motion for bond pending appeal and to stay execution on conviction and sentence. The State Court Administrator's Office assigned that motion to this court because all other Mecosta County judges recused themselves. This court granted his motion to stay, set bond, and agreed to hear this appeal.

Both parties filed briefs with this court on appeal. This court also permitted the Fully Informed Jury Association and the American Civil Liberties Union Fund of Michigan to file amicus curiae briefs. This court reviewed all materials and exhibits on this appeal.

II. ANALYSIS

Appellant first argues that appellee violated his First Amendment right to free speech. More specifically, appellant argues that appellee unconstitutionally arrested and charged appellant under MCL 750.120a(1) when he distributed the jury pamphlets.

The court reviews constitutional questions de novo on appeal. *People v Yanna*, 297 Mich App 137, 142; 824 NW2d 241 (2012). The court presumes statutes to be constitutional unless their unconstitutionality is clearly apparent and it will construe the statute as constitutional whenever possible. *Id.* at 146; *People v Deroche*, 299 Mich App 301, 305; 829 NW2d 891 (2013). Further, the court has a duty to make “[e]very reasonable presumption . . . in favor of constitutionality.” *People v Swint*, 225 Mich App 353, 364; 572 NW2d 666 (1997), quoting *Mahaffey v Attorney General*, 222 Mich App 325, 334-335; 564 NW2d 104 (1997). The party that opposes the statute bears the burden of overcoming the presumption and proving the statute unconstitutional. *City of Owosso v Pouillon*, 254 Mich App 210, 213; 657 NW2d 538 (2002).

Both the United States Constitution and the Michigan Constitution guarantee a person’s right to free speech. US Const, Am I; Const 1963, art 1, § 5; *Thomas M Cooley Law Sch v Doe I*, 300 Mich App 245, 255–56; 833 NW2d 331 (2013). Under such protection, the government is prohibited from enacting any laws that abridge or restrain free speech. *Id.* Further, the government “has no power to restrict expression because of its message, its ideas, its subject matter, or its content.” *Police Dept of Chicago v Mosley*, 408 US 92, 95; 92 S Ct 2286; 33 L Ed 2d 212 (1972). A law that targets speech based on its communicative content is presumptively unconstitutional. *R.A.V. v St Paul*, 505 US 377, 395; 112 S Ct 2538; 120 L Ed 2d 305 (1992). The government can only justify a content-based restriction if it satisfies strict scrutiny: the law must be narrowly tailored to serve a compelling state interest. *Reed v Town of Gilbert, Ariz*, 135 S Ct 2218, 2226–2227; 192 L Ed 2d 236 (2015).

Appellant claims that he was prosecuted and convicted based on his pamphlet’s content. The government regulates based on content if a law pertains to the particular topic or idea discussed or expressed. *Reed, supra* at 2227. The court must review the government’s purpose with regard to the enacted law, e.g. whether the government simply disagrees with the prohibited speech. *Outdoor Sys, Inc v City of Clawson*, 262 Mich App 716, 722; 686 NW2d 815 (2004). In *Reed*, the Court explained:

Some facial distinctions based on a message are obvious, defining regulated speech by particular subject matter, and others are more subtle, defining regulated speech by its function or purpose. Both are distinctions drawn based on the message a speaker conveys, and, therefore, are subject to strict scrutiny. [*Reed, supra.*]

Therefore, if the government does not regulate speech based on content, the law is content neutral and will survive constitutional inquiry. *Outdoor, supra*, citing *Ward v Rock Against Racism*, 491 US 781, 791-792; 109 S Ct 2746; 105 L Ed 2d 661 (1989).

In this case, the jury convicted appellant of violating MCL 750.120a(1), which states:

A person who willfully attempts to influence the decision of a juror in any case by argument or persuasion, other than as part of the proceedings in open court in the trial of the case, is guilty of a misdemeanor punishable by imprisonment for

not more than 1 year or a fine of not more than \$1,000.00, or both.

On its face, this court finds that MCL 750.120a(1) does not regulate content of speech in any way¹. Instead, appellant argues that when the government applied the statute to his conduct, i.e. when it arrested and prosecuted him for distributing the pamphlets to jurors, it unconstitutionally restricted that conduct based on the pamphlets' content.

On November 24, 2015, appellant approached people outside the Mecosta County courthouse to distribute pamphlets. (6/1/2017 Jury Trial Vol. IIb, "JT IIb," 34). Appellant claimed it was a "really good opportunity to educate as many people" as he could about "juror rights." *Id.* at 35, 43. Two witnesses testified that appellant specifically asked them if they were jurors before he gave them the pamphlets. (5/31/2017 Jury Trial Vol. I, "JT I," 154, 163, 167). Further, he gave the witnesses the pamphlets before he told them about the pamphlets' contents. *Id.* Therefore, there seems to be little doubt that appellant willfully attempted to influence people he believed to be, and confirmed, were jurors by handing them his pamphlets. The pamphlets' content is simply not the issue, only that he intended to give the pamphlets to at least two people whom he believed were jurors. The statute relates solely to when a person attempts to "influence" a juror's decision, not to "influence" them as to any topic whatsoever, let alone whether "juror rights" are prohibited or permitted. Appellant admitted that he chose to "educate" people that the record suggests not only were potential jurors, but also people whom he believed were jurors. It seems disingenuous for appellant to now argue that to "educate" someone is somehow not to "influence" someone.

This court acknowledges that appellant categorically denied that he asked anyone about whether they were jurors. JT IIb, *supra* at 38, 49. However, the jury had the opportunity to hear all of the evidence, evaluate appellant's credibility, as well as the other witnesses' credibility, and thereafter, convicted appellant. See *People v Kelly*, 317 Mich App 637, 646; 895 NW2d 230 (2016) (A jury may generally decide whether a defendant's innocence claim is more credible than the prosecutor's evidence against that defendant. Essentially, the jury decides the facts based on testimony, weighing evidence, and witness credibility.) Therefore, this court finds that MCL 750.120a(1) does not regulate speech based on content and that even as applied to appellant's conduct in this case, appellee did not violate appellant's free-speech rights by arresting and prosecuting him under the statute.

Further, this court does not find merit in appellant's argument that MCL 750.120a(1) is unconstitutionally vague because the Legislature failed to define "juror." There are three grounds for challenging a statute for vagueness: (1) the statute is overbroad and impinges on First Amendment freedoms; (2) the statute fails to provide fair notice of the proscribed conduct; and (3) the statute is so indefinite that it confers unfettered discretion on the trier of fact to determine whether the law has been violated. *People v Rogers*, 249 Mich App 77, 94-95; 641 NW2d 595 (2001). This court reviewed appellant's First Amendment arguments above and denied his appeal on those grounds. Therefore, this court will review whether MCL 750.120a provides fair notice and that it is not too indefinite. See *People v Lawhorn*, 320 Mich App 194, 2; ___ NW2d ___ (2017).

When a court reviews a statute to determine whether it provides fair notice and is not too indefinite, it must review the particular facts of the case at issue. *People v Nichols*, 262 Mich App 408, 410; 686 NW2d 502 (2004). Therefore, a defendant may not assert that a statute is overbroad and reaches innocent conduct if the defendant's conduct clearly falls within the language of the statute. See *People v Lynch*, 410 Mich 343, 352; 301 NW2d 796 (1981). In other words, "[a]

¹ Appellant concedes this issue. Appellant's Brief on Appeal, pp. 15-16.

defendant has standing to raise a vagueness challenge only if the statute is vague as applied to [the defendant's] conduct." *People v Al-Saiegh*, 244 Mich App 391, 397 n 5; 625 NW2d 419 (2001). Further, even if "a statute may be susceptible to impermissible interpretations, reversal is not required where the statute can be narrowly construed so as to render it sufficiently definite to avoid vagueness and where the defendant's conduct falls within that prescribed by the properly construed statute." *Id.* "To give fair notice, a statute must give a person of ordinary intelligence a reasonable opportunity to know what is prohibited or required." *People v Noble*, 238 Mich App 647, 652; 608 NW2d 123 (1999) (citation omitted). "A statute cannot use terms that require persons of ordinary intelligence to speculate regarding its meaning and differ about its application." *People v Sands*, 261 Mich App 158, 161; 680 NW2d 500 (2004). Finally, "[f]or a statute to be sufficiently definite, its meaning must be fairly ascertainable by reference to judicial interpretations, the common law, dictionaries, treatises, or the commonly accepted meanings of words." *Id.*

In this case, appellant argues that MCL 750.120a(1) is unconstitutionally vague because it does not define a "juror." More specifically, he claims that because he never approached a person who was sworn to decide the case, he did not "attempt to influence the decision of a juror." Each person who received a pamphlet from appellant received the pamphlet outside the courthouse and before taking any oath². Further, because the statute does not define "juror" and the Michigan Criminal Jury Instructions do not define "juror," the trial court looked to Black's Law Dictionary. (3/23/2016 Motion to Dismiss, 38).

Black's Law Dictionary defines "juror" as follows: "[a] member of a jury; a person serving on a jury panel." Black's Law Dictionary (10th ed 2014). It defines "jury panel" as "[s]ee venire." *Id.* "Venire" is defined as "[a] panel of persons selected for jury duty and from among whom the jurors are to be chosen . . ." *Id.*

The Black's Law Dictionary provides a clear definition for "juror:" a "juror" is "a person selected for jury duty and from among whom the jurors are to be chosen." *Id.* No definition requires an oath to qualify a person as a "juror." As this court reviews the statute and the definition, appellant's conduct clearly indicates that he attempted to "influence" "a person selected for jury duty and from among whom the jurors are to be chosen." He asked two people whether they were jurors and attempted to "educate" them. (JT I, 154,163,167; JT IIb, 34.) Therefore, he not only believed they were jurors, but he specifically targeted jurors to "educate." His conduct "clearly falls within the language of the statute." *Lynch, supra*. Appellant appears to be a "person of ordinary intelligence" and this court finds that the statute provides him with fair notice of what it prohibits: it prohibits appellant from influencing jurors as he willfully attempted to do on November 24, 2015. See *Noble, supra*; *Sands, supra*.

Likewise, this court finds that MCL 750.120a(1) does not "confer unfettered discretion on the trier of fact to determine whether the law has been violated." *Rogers, supra*. This court held above that MCL 750.120a(1) appropriately addresses the proscribed conduct. It also held that Black's Law Dictionary defines "juror" in a clear manner. The trial court defined "juror" and provided that definition to the jury as follows through its instructions: "[t]he word 'juror' includes a person who has been summoned to appear in court to decide the facts in a specific trial." JT IIb, 145. Because the trial court's definition remains clear and a court presumes the jury follows the court's jury instructions, this court finds that the trial court did not give the jury unfettered discretion to decide the case. See generally *People v Abraham*, 256 Mich App 265, 279; 662 NW2d 836 (2003) (The court presumes jurors follow its instructions). In fact, the jury performed its exact duty with the precise and appropriate discretion. Therefore, this court finds that the trial

² The trial for which the potential jurors were called was not held on that day.

Circuit Court Opinion, February 2, 2018

court did not err on this issue.

Finally, appellant claims that he did not receive a fair trial. However, there is absolutely no evidence to support this argument. The record is clear that appellant received a fair trial and he was represented by counsel. This court finds these arguments to be without merit and that the trial court did not err on these issues.


THEREFORE IT IS ORDERED that appellant's appeal is denied.

IT IS FURTHER ORDERED that his conviction under MCL 750.120a(1) is affirmed.

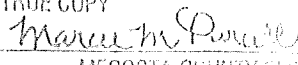
IT IS FURTHER ORDERED that the court's order to stay the execution of appellant's conviction and sentence is set aside.

This order resolves the last pending claim and closes the case.

Date: February 2, 2018



Hon. Eric R. James (P42026)
Isabella County Trial Court

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STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEITH ERIC WOOD,

Defendant-Appellant.

FOR PUBLICATION

December 11, 2018

9:10 a.m.

No. 342424

Mecosta Circuit Court

LC No. 17-024073-AR

Before: MURRAY, C.J., and MURPHY and CAMERON, JJ.

MURRAY, C.J.

Defendant was convicted of jury tampering, MCL 750.120a(1), a misdemeanor, for attempting to influence jurors when he stood in front of a courthouse and distributed pamphlets to those he knew to be potential jurors in a case set for trial that day. The circuit court affirmed his conviction, rejecting defendant's statutory and First Amendment arguments. We granted leave to appeal,¹ and now affirm.

I. FACTS AND PROCEDURAL HISTORY

This matter arose out of defendant's interest in a criminal case involving Andrew Yoder, a member of the Amish community who had been charged with "a DEQ violation" for "illegally draining wetlands." After hearing of the case, defendant decided to attend the pretrial hearing on November 4, 2015, because despite not actually knowing Yoder, the case "piqued [his] interest." At the pretrial hearing, the court scheduled Yoder's trial for November 24, 2015.

Defendant returned to the courthouse on the day set for trial, and stood outside the front entrance to pass out pamphlets entitled "Your Jury Rights: True or False?" that he obtained from the Fully Informed Jury Association (FIJA) website. The pamphlet begins by explaining that jurors may vote according to their conscience. It further advises readers to be aware "when it's your turn to serve" that "[y]ou may, and should, vote your conscience," "[y]ou cannot be forced

¹ *People v Wood*, unpublished order of the Court of Appeals, entered February 22, 2018 (Docket No. 342424).

to obey a juror's oath," and "[y]ou have the right to 'hang' the jury with your vote if you cannot agree with other jurors!"

Although defendant handed or attempted to hand the pamphlet to a number of people that day, his charge for jury tampering resulted from his distribution of the pamphlet to Jennifer Johnson and Theresa DeVries, two people summoned to the court for jury selection. Johnson testified that she arrived at the courthouse unsure of where to go, and approached defendant thinking he was out front to "direct traffic." Although she could not remember who broached the subject, it was established between them that she was there for jury duty. Defendant proceeded to hand her a pamphlet "and sort of pointed at the door." DeVries, on the other hand, testified that as she approached the courthouse, defendant specifically asked if she was there for jury selection. When she confirmed that she was, he handed her a pamphlet and said, " 'Do you know what your rights are for being a jury [sic] on jury duty?' "

Defendant was ultimately arrested and charged with obstruction of justice, MCL 750.505, and jury tampering. Yoder's case, however, never went to trial because the parties reached a plea agreement.

Before trial in his own case, defendant moved the district court to dismiss both charges. The district court granted the motion with respect to obstruction of justice, but declined to dismiss the jury tampering charge. In so doing, the Court rejected defendant's argument that the charge should be dismissed because the term "juror," as used in MCL 750.120a(1), does not encompass individuals like Thompson and DeVries who were summoned for jury duty, but who were never actually selected or sworn, and took defendant's First Amendment argument under advisement. The circuit court affirmed the district court's decision, and defendant was denied leave to appeal by this Court, *People v Wood*, unpublished order of the Court of Appeals, entered December 2, 2016 (Docket No. 334410), as well as the Michigan Supreme Court, *People v Wood*, 500 Mich 963 (2017).

Defendant's two-day jury trial was held in district court. When asked why he decided to distribute the pamphlets, defendant testified that he

learned a really interesting fact that 95 percent of all criminal cases in the United States, they are pled out before they go to trial. And so there was a—there was a very high likelihood that the *Yoder* case was not going to go to trial, but then I also believed that there were going to be a lot of people around the courthouse and it was going to give me a really good opportunity to educate as many people to hand out the pamphlets and get this information to their hands.

He further stated that he did not know "who was summoned as a potential juror" and that he just handed the pamphlet "[t]o anybody that would receive one."

After the prosecution rested, defendant renewed his motion to dismiss on First Amendment grounds, but the district court rejected the argument, reasoning that defendant "was targeting jurors that were coming in that day," and that there was "a compelling interest in making sure for both the Prosecutor and the defense that there is a fair and impartial jury being chosen and that it is also very clear to me that [defendant] was very interested in that case and

Court of Appeals Opinion, December 11, 2018

knew that the case was set for trial that day.” Further, the court found it to be irrelevant that a trial never occurred in Yoder’s case.

At the close of trial, the district court provided the following instructions to the jury regarding the elements of jury tampering:

First, that Jennifer Johnson and/or Theresa DeVries was a juror/were jurors in the case of *People v Yoder*.

Second, that the defendant willfully attempted to influence that juror by the use of argument or persuasion.

Third, that the defendant’s conduct took place outside of proceedings in open court in the trial of the case.

A person acts willfully when she or she acts knowingly and purposefully.

The word “juror” includes a person who has been summoned to appear in court to decide the facts in a specific trial.

An “argument or persuasion” can be oral or written.

Defendant was ultimately convicted and then sentenced on July 21, 2017.

On appeal to the circuit court, defendant argued that: (1) “the State” violated his First Amendment rights when he was “arrested and charged because of the content his pamphlet contained,” and such conduct would fail a strict scrutiny analysis, (2) he was denied his right to due process because MCL 750.120a(1) is unconstitutionally vague, (3) the district court erred in defining the term “juror” to include persons summoned for jury duty, and (4) even if the district court’s interpretation was correct, he should not have been convicted under MCL 750.120a(1) because Yoder’s case never proceeded to trial.

The circuit court issued its opinion and order on February 2, 2018, affirming defendant’s conviction. In so doing, the court first rejected defendant’s First Amendment argument, reasoning that the content of the pamphlet was not at issue because “[t]he statute relates solely to when a person attempts to ‘influence’ a juror’s decision, not to ‘influence’ them as to any topic whatsoever,” and defendant willfully attempted to influence people he believed to be jurors. Secondly, the court concluded that because *Black’s Law Dictionary* (10th ed) defines “juror” to include those selected for jury duty, the juror tampering statute applied. And lastly, the court ruled that no evidence existed to support defendant’s argument that he was denied a fair trial.

II. DID DEFENDANT TAMPER WITH A “JUROR?”

Defendant first argues that both trial courts erroneously defined “juror,” as used in MCL 750.120a(1), to include those summoned for jury duty. Specifically, he asserts that he could not have tampered with “a juror in any case” under MCL 750.120a(1), because the term “juror” only encompasses those selected and sworn for jury duty, and no jurors were ever selected in Yoder’s case.

Statutory interpretation is a question of law reviewed de novo. *PNC Nat'l Bank Ass'n v Dep't of Treasury*, 285 Mich App 504, 505; 778 NW2d 282 (2009). When interpreting statutory provisions, the overriding goal is to discern and give effect to the Legislature's intent. *People v Flick*, 487 Mich 1, 10; 790 NW2d 295 (2010). The words in the statute are, of course, the best evidence of what was intended by the Legislature in passing the statute. *People v Smith*, 496 Mich 133, 138; 852 NW2d 127 (2014) ("The words of a statute are the most reliable indicator of the Legislature's intent and should be interpreted according to their ordinary meaning and the context within which they are used in the statute."). "If the statute is unambiguous on its face, the Legislature will be presumed to have intended the meaning expressed, and judicial construction is neither required nor permissible." *People v Likine*, 492 Mich 367, 387; 823 NW2d 50 (2012).

MCL 750.120a(1) provides:

A person who willfully attempts to influence the decision of a juror in any case by argument or persuasion, other than as part of the proceedings in open court in the trial of the case, is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

The term "juror" is not defined in the statute itself or in the Michigan Penal Code (MPC), MCL 750.1 *et seq.* As a result, we may consult a lay dictionary to determine the plain and ordinary meaning of "juror" if it lacks "a unique legal meaning," *People v Thompson*, 477 Mich 146, 151-152; 730 NW2d 708 (2007), or a legal dictionary if the word is a legal term of art, *People v Jones*, 467 Mich 301, 304; 651 NW2d 906 (2002). See also MCL 8.3a. However, because the definitions of the term "juror" "are the same in both a lay dictionary and legal dictionary, it is unnecessary to determine whether the phrase is a term of art, and it does not matter to which type of dictionary this Court resorts." *Hecht v Nat'l Heritage Academies, Inc.*, 499 Mich 586, 621-622 n 62; 886 NW2d 135 (2016).

Defendant maintains that the rules of statutory construction require a court to consult dictionaries in publication at the time a statute was enacted – 1955² in this case – to determine the meaning of an undefined term. The Michigan Supreme Court has recognized the importance of defining a statutory term according to its original meaning. *Cain v Waste Mgt, Inc (After Remand)*, 472 Mich 236, 247; 697 NW2d 130 (2005) (reasoning that because the statute at issue did not define the term "loss," the Court was required to "ascertain the original meaning the word 'loss' had when the statute was enacted in 1912"). See also *Perrin v United States*, 444 US 37, 42; 100 S Ct 311; 62 L Ed 2d 199 (1979) ("A fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning."). The definition of "juror" found in both lay and legal dictionaries in publication at the time the statute was enacted supports the trial courts' determination that the term, as used in MCL 750.120a(1), includes those summoned for jury duty, even if never selected nor sworn to serve on a jury.

² See 1955 PA 88.

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In deciding defendant's pretrial motion to dismiss, the district court relied in part on *Black's Law Dictionary* (Revised 4th ed), published in 1968, which defines "juror" as "[o]ne member of a jury," and includes a usage note which states, "The term is not inflexible, and besides a person who has been accepted and sworn to try a cause 'juror' may also mean a person selected for jury service." The same usage note appears in *Black's Law Dictionary* (4th ed), published in 1951 and cited by defendant in support of his argument. Moreover, the usage note is consistent with the definition of "juror" in a lay dictionary from 1955. *Webster's New International Dictionary* (1955), provides that a juror is

[o]ne of a number of men sworn to deliver a verdict as a body; specif., *Law*, a member of a jury, or one designated and summoned to serve on a jury.

"*Juror*" is uniformly used by the jurists most familiar with the subject as including persons designated or ordered to be summoned as *jurors*. For stronger reasons, it would include them after they are summoned and have appeared in court.

Similar definitions for "juror" also appear in more current legal and lay dictionaries. *Merriam-Webster's Collegiate Dictionary* (11th ed) defines "juror" as both "a member of a jury" and "a person summoned to serve on a jury." And in *Random House Webster's College Dictionary* (2001), "juror" is defined as "a member of a jury," "a member of the panel from which a jury is selected," or "a person who has taken an oath or sworn allegiance." Similarly, *Black's Law Dictionary* (10th ed) states that a "juror" is "[a] member of a jury; a person serving on a jury panel." The definition of "jury panel" directs the reader to "VENIRE," which is defined as "[a] panel of persons selected for jury duty and from among whom the jurors are to be chosen." *Id.* Consequently, based on dictionary definitions from 1955 and today, a "juror" under MCL 750.120a(1) includes a person summoned for jury duty.

Defendant's assertions that MCL 750.120, M Crim JI 1.1, and MCR 6.412(B) support his argument regarding the definition of "juror" also fail. MCL 750.120,³ which punishes jurors who accept bribes, provides as follows:

Any person summoned as a juror or chosen or appointed as an appraiser, receiver, trustee, administrator, executor, commissioner, auditor, arbitrator or referee who shall corruptly take anything to give his verdict, award, or report, or who shall corruptly receive any gift or gratuity whatever, from a party to any suit, cause, or proceeding, for the trial or decision of which such juror shall have been summoned, or for the hearing or determination of which such appraiser, receiver, trustee, administrator, executor, commissioner, auditor, arbitrator, or referee shall have been chosen or appointed, shall be guilty of a felony.

Defendant highlights the language "[a]ny person summoned as a juror" to assert that "[i]f the legislature truly intended for jury tampering to include every person who has been summoned, it

³ MCL 750.120 was enacted in 1931. 1931 PA 328.

would have used the same language from the immediately preceding statute.” But “the specific rules of statutory construction are merely aids to interpretation.” *People v Armstrong*, 212 Mich App 121, 128; 536 NW2d 789 (1995). Looking at MCL 750.120 in its entirety, and considering the context in which the phrase is used, it is obvious to us that the Legislature simply used the phrase “[a]ny person summoned” to describe the act of being called for jury duty, just as it used a descriptive phrase for the rest of the positions listed in the statute, i.e., “[a]ny person . . . chosen or appointed as.” No comparable language was necessary or appropriate in MCL 750.120a(1), as it applies only to jurors. Further, statutory language should be read in harmony with the entire legislative scheme, *Charter Twp of York v Miller*, 322 Mich App 648, 662; 915 NW2d 373 (2018), and under the doctrine of *in pari materia*, “statutes that relate to the same subject or that share a common purpose should, if possible, be read together to create a harmonious body of law,” *People v Mazur*, 497 Mich 302, 313; 872 NW2d 201 (2015). Both MCL 750.120 and MCL 750.120a aim to preserve the integrity and impartiality of juries. It would be inconsistent with this shared purpose to read one as applicable to anyone summoned for jury duty, and the other as applicable only to those chosen from the pool of summoned jurors and sworn to serve on a jury.

We likewise reject defendant’s position that MCR 6.412(B) and M Crim JI 1.1 support his argument because they each use the term “prospective jurors” with regard to preliminary instructions given before the jury selection process. Neither the court rules nor jury instructions are created by the Legislature, so their use of the term “prospective jurors” has no bearing on what the Legislature meant when it used the term “juror” in a statute.⁴

Additionally, neither *People v Cain*, 498 Mich 108; 869 NW2d 829 (2015), nor *Jochen v Co of Saginaw*, 363 Mich 648; 110 NW2d 780 (1961), support defendant’s argument. Neither case interpreted the term “juror,” as used in MCL 750.120a(1), and we fail to understand how opinions involving the proper juror’s oath, see *Cain*, 498 Mich at 112, or whether a person injured while reporting for jury duty should be considered a county employee under the workmen’s compensation act, see *Jochen*, 363 Mich at 648, are at all applicable to the separate statutory question before us.

Defendant also argues that the district court misapplied the elements of jury tampering,⁵ citing the Michigan Criminal Nonstandard Jury Instructions which recommend the following

⁴ MCL 600.1334 and MCL 600.1344, which govern juror excusal from attendance in court and juror compensation, support our conclusion that the term “juror,” as used in MCL 750.120a(1), includes those summoned for jury duty, but never selected to actually serve on a jury. Both use the term broadly. For instance, MCL 600.1334(1) states, in part, “The chief judge may postpone the service of a juror to a later term of court if the juror has not been called for voir dire examination in any action.” And MCL 600.1344 provides that jurors must be compensated for each day of actual attendance at sessions of the court. Although “juror” is undefined, the statutes clearly apply to those persons summoned for jury duty, but not necessarily selected and sworn.

⁵ “This Court reviews jury instructions as a whole to determine whether there is error requiring reversal.” *People v Bartlett*, 231 Mich App 139, 143; 585 NW2d 341 (1998).

instruction for the first element of the crime: “That [name juror involved] was a juror in the case of [name case in which juror sat].” In so doing, he asserts that “[e]ven the proposed jury instruction acknowledged that the juror must have ‘sat’ in the case.” But this is simply a different way of arguing that the term “juror” does not include those summoned for jury duty, which we have rejected. As stated above, jury instructions are not created by the Legislature and, thus, have no bearing on the interpretation of statutory terms.

Further, the district court did not err by refusing to allow defendant to argue that there were no jurors in Yoder’s case because no trial ever occurred. MCL 750.120a(1) only requires that someone attempt to influence “a juror in any case.” A trial is not required,⁶ and there is no indication that the Legislature sought to exclude from prosecution under MCL 750.120a(1) a person who attempts to influence a juror’s decision in a case that is ultimately disposed of before trial.

III. DID DEFENDANT’S CONVICTION VIOLATE THE FIRST AMENDMENT?

A. AS-APPLIED CHALLENGE

Having concluded that Johnson and DeVries were “jurors” for purposes of the jury tampering statute, we now must address defendant’s alternative argument that MCL 750.120a(1), as applied to his circumstances, violated his First Amendment right to free speech.

We review constitutional questions de novo. *People v Pennington*, 240 Mich App 188, 191; 610 NW2d 608 (2000). “A constitutional challenge to the validity of a statute can be brought in one of two ways: by either a facial challenge or an as-applied challenge.” *In re Forfeiture of 2000 GMC Denali & Contents*, 316 Mich App 562, 569; 892 NW2d 388 (2016). “When faced with a claim that application of a statute renders it unconstitutional, the Court must analyze the statute ‘as applied’ to the particular case.” *Crego v Coleman*, 463 Mich 248, 269; 615 NW2d 218 (2000). In other words, “[a]n as-applied challenge contends that the law is unconstitutional as applied to the litigant’s particular speech activity, even though the law may be capable of valid application to others.” *Foti v City of Menlo Park*, 146 F3d 629, 635 (CA 9, 1998). See also *Bonner v Brighton*, 495 Mich 209, 223 n 27; 848 NW2d 380 (2014) (“An as-applied challenge, to be distinguished from a facial challenge, alleges ‘a present infringement or denial of a specific right or of a particular injury in process of actual execution’ of government action.”) (citation omitted).

The First Amendment to the United States Constitution provides, in pertinent part, that “Congress shall make no law . . . abridging the freedom of speech,” US Const, Am I, and is applicable to the states through the Fourteenth Amendment, *McDonald v Grand Traverse Co Election Comm*, 255 Mich App 674, 681; 662 NW2d 804 (2003). “Leafletting and commenting

⁶ Our dissenting colleague opines that MCL 750.120a(1) is only implicated “after the trial process has begun.” But the language referencing a trial is in the exception to the rule, allowing arguments and persuasion of jurors once trial has commenced. That language adds nothing to when a person becomes a juror under this statute.

on matters of public concern are classic forms of speech that lie at the heart of the First Amendment, and speech in public areas is at its most protected on public sidewalks, a prototypical example of a traditional public forum.” *Schenck v Pro-Choice Network of Western New York*, 519 US 357, 377; 117 S Ct 855; 137 L Ed 2d 1 (1997).

Defendant’s as-applied challenge is based upon his assertion that his conduct involved pure speech, the restriction of which should be subject to strict scrutiny, and the state has no compelling interest in preventing a person from distributing educational pamphlets to potential jurors in a public space. In addressing this as-applied challenge our focus is exclusively on the specific facts at issue—namely, the jury’s finding that defendant distributed pamphlets at the courthouse to influence the decision of people he knew to be potential jurors appearing for a case he took an interest in.⁷ In fact, as discussed below, the conduct defendant engaged in is precisely the type of speech states have a compelling interest in regulating through validly-enacted statutes.

“[I]t is well understood that the right of free speech is not absolute at all times and under all circumstances.” *Chaplinsky v New Hampshire*, 315 US 568, 571; 62 S Ct 766; 86 L Ed 1031 (1942). Although speech is given great protections by the First Amendment, the states nonetheless have the right to punish certain limited speech so long as there is a compelling reason to do so, and it is accomplished in the narrowest fashion. See *Speet v Schuette*, 726 F3d 867, 880 (CA 6, 2013). And, when it comes to the prevention of jury tampering, it has long been held that states may punish or regulate speech *intended to interfere* with court proceedings or with the right of an accused to have his case decided by an impartial jury. See *Turney v State*, 936 P2d 533, 541 (Alas, 1997) (holding that a narrowly drawn jury tampering statute did not implicate protected speech under the First Amendment); *Dawkins v State*, 208 So 2d 119, 122 (Fla App, 1968) (“Efforts to influence a grand jury in its deliberations respecting specific matters under investigation by it are not shielded by the constitutional right of free speech.”); *Pennekamp v Florida*, 328 US 331, 366; 66 S Ct 1029; 90 L Ed 1295 (1946) (FRANKFURTER, J., concurring) (“In securing freedom of speech, the Constitution hardly meant to create the right to influence judges or juries.”). See also *Cox v Louisiana*, 379 US 559, 562-564; 85 S Ct 476; 13 L Ed 2d 487 (1965) (upholding a statute that prohibited picketing near a courthouse on the basis that “[a] State may adopt safeguards necessary and appropriate to assure that the administration of justice at all stages is free from outside control and influence,” and that a statute like that at issue does not infringe the right of free speech because “[t]he conduct which is the subject of [the] statute . . . is subject to regulation even though intertwined with expression and association”). Thus, because defendant concedes that MCL 750.120a(1) is facially valid, and a jury found that he

⁷ Evidence at trial supported the jury’s findings. Defendant testified that he took an interest in Yoder’s case, and he attended the pretrial hearing where the trial date was announced. He then returned to the courthouse on the day set for trial, and distributed the FIJA pamphlets to several people, including Johnson and DeVries, who both testified that defendant knew they were at the courthouse because they had been summoned for jury duty.

willfully attempted to influence a juror's decision in Yoder's case, his as-applied constitutional challenge necessarily fails.⁸

The foregoing is a more direct way of stating that when applying strict scrutiny to the government's actions as defendant urges us to do (and argues the trial courts erred by failing to do), his First Amendment challenge fails because the state has a compelling interest in protecting the sanctity of the jury.⁹ "The First Amendment requires heightened scrutiny whenever the government creates a regulation of speech because of disagreement with the message it conveys." *Sorrell v IMS Health Inc.*, 564 US 552, 566; 131 S Ct 2653; 180 L Ed 2d 544 (2011) (quotation marks and citation omitted). "Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed." *Reed v Town of Gilbert, Arizona*, ___ US ___, ___; 135 S Ct 2218, 2227; 192 L Ed 2d 236 (2015). "Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Id.* at 2226.

Applying strict scrutiny, we hold that application of the statute to defendant's conduct was a narrowly tailored means of furthering the state's compelling interest in preserving the impartiality and integrity of jurors. Defendant concedes that the government has a compelling interest in preventing jury tampering, but states he "does not concede . . . that the State has a

⁸ The Ninth Circuit rejected a First Amendment challenge to a similar jury tampering statute in *Turney v Pugh*, 400 F3d 1197 (CA 9, 2005). There, the petitioner (who was the petitioner in *Turney v State*, 936 P2d 533 (Alas, 1997)) challenged the Alaska statute as overbroad, and as part of its decision, the court reasoned:

[T]he First Amendment, while generally quite protective of speech concerning judicial proceedings, does not shield the narrow but significant category of communications to jurors made outside of the auspices of the official proceeding and aimed at improperly influencing the outcome of a particular case. What Alaska's jury tampering statute covers in the main, then, is speech that is not protected by the First Amendment." [*Id.* at 1203.]

Defendant's attempt to distinguish *Turney* on the basis that the Alaska statute expressly defined "juror" to include those summoned for jury duty is misguided, as the term "juror," as used in MCL 750.120a(1), also includes those summoned for jury duty.

⁹ Defendant does not argue that MCL 750.120a(1) is on its face a content-based regulation. Rather, he maintains that the government regulated his "speech in a content-based way" given that "[i]t is clear that the government actors in this case arrested and charged [him] because of the content of his pamphlet." We apply strict scrutiny here because although the statute is not a purely content-based restriction, to convict under the statute it must be proven that defendant intended to influence a juror, and that can only be done by reviewing the words communicated to the juror. For example, if defendant was passing out to jurors a newspaper circular with commercial advertisements, he would never have been prosecuted or convicted of jury tampering.

compelling interest to criminalize [his] distribution of a juror rights pamphlet on a public sidewalk.” Yet this argument is based on the premise, rejected outright by the jury, that defendant only intended to educate the general public with his pamphlet. The jury, in fact, determined the opposite, as it found that defendant distributed the pamphlets in an attempt to willfully influence the decision of jurors in a particular case. We cannot overemphasize the importance of the jury’s finding that defendant intended to influence two jurors summoned for Yoder’s case. It is that specific level of intent that takes defendant’s case out of the general pamphletting activities protected by the First Amendment.

Further, we reject defendant’s argument that the government does not have a compelling interest in preventing tampering with “*potential jurors*.” First, as we have already concluded, Johnson and DeVries were “jurors,” not “potential jurors.” Second, there is no basis in the law that would allow us to recognize the government’s interest in protecting the impartiality of jurors only after they have been selected and sworn, as juries are chosen from the pool of people summoned for jury duty. Jurors summoned for duty that are tampered with do not lose that taint if they end up on the jury. See *State v Tucker*, 170 So 3d 394, 406 (La App, 2015) (“Because any threat or attempt to influence a person summoned for jury duty (i.e., a ‘prospective juror’) in a pending trial impairs the administration of justice in exactly the same way that justice is impaired by a threat or influence of an impaneled ‘juror,’ we conclude that the term ‘juror’ in the statute includes a ‘prospective juror’ within its reach.”).

Defendant’s additional argument that “[e]ven if the government had a compelling interest in ensuring *potential jurors* are not informed of the powers they rightfully and lawfully possess . . . , the government failed to use the least restrictive means available to accomplish that interest,” fares no better. A content-based restriction on speech “must be the least restrictive means of achieving a compelling state interest.” *McCullen v Coakley*, ___ US ___, ___; 134 S Ct 2518, 2530; 189 L Ed 2d 502 (2014). Defendant asserts specifically that the government exercised the most extreme option available in response to his conduct by arresting and prosecuting him, and that the government could have instead employed valid time, place, and manner restrictions to regulate his distribution of pamphlets.

We reject this argument for two reasons. First, the argument is based entirely on the rejected premise that defendant’s distribution of the pamphlet was an attempt to educate the public rather than a willful attempt to influence the decision of jurors in Yoder’s case. Second, although at the time defendant was arrested and charged it appears that certain government actors did not know of defendant’s interest in Yoder’s case and disapproved of the pamphlet’s contents, the jury ultimately found defendant guilty of MCL 750.120a(1), which requires a specific intent to influence jurors. And the evidence presented at trial supported these findings. The law defendant was convicted under does not address the random distribution of pamphlets to the general public outside a courthouse. Instead, the Legislature was concerned with an individual’s purposeful attempt to tamper with jurors, which is a compelling state interest. The statute also touches upon only a narrowly defined class of people and speech, i.e., those who purposefully communicate with specific jurors summoned to serve on a case with the intent to influence the decision of a juror. Defendant cannot rely on less restrictive means relating to an entirely

hypothetical governmental interest not present in this case, and the government clearly has no obligation, through statute, regulation, or rule, to designate places and times during which an individual may engage in criminal behavior, speech-related or not.¹⁰

B. OVERBROAD CHALLENGE

Defendant also argues that MCL 750.120a(1) is unconstitutionally overbroad because “[w]hen the lower courts redefined the word ‘juror’ to mean more than a person actually selected, empaneled, and sworn in a case, it vastly expanded the range and scope of the jury tampering statute to reach a substantial amount of constitutionally protected speech.” Although defendant characterizes his argument as an as-applied challenge, it is more appropriately considered a facial challenge to the statute itself, as we have held that the lower courts accurately interpreted the term “juror” in MCL 750.120a(1).

“An overbroad statute prohibits protected conduct, primarily conduct protected by the First Amendment.” *People v Lueth*, 253 Mich App 670, 676; 660 NW2d 322 (2002). “Under the doctrine of First Amendment overbreadth, a litigant may mount a facial attack on a statute that restricts protected speech even if the litigant’s own speech is unprotected.” *Turney v Pugh*, 400 F3d 1197, 1200 (CA 9, 2005), citing *Broadrick v Oklahoma*, 413 US 601, 612; 93 S Ct 2908; 37 L Ed 2d 830 (1973). “In a facial challenge to the overbreadth and vagueness of a law, a court’s first task is to determine whether the enactment reaches a substantial amount of constitutionally protected conduct.” *Village of Hoffman Estates v Flipside, Hoffman Estates, Inc*, 455 US 489, 494; 102 S Ct 1186; 71 L Ed 2d 362 (1982). “Criminal statutes must be scrutinized with particular care; those that make unlawful a substantial amount of constitutionally protected conduct may be held facially invalid even if they also have legitimate application.” *City of Houston, Texas v Hill*, 482 US 451, 459; 107 S Ct 2502; 96 L Ed 2d 398 (1987) (citation omitted).

Defendant asserts that the statute is unconstitutionally overbroad because “a person could be criminally liable for merely speaking with, giving information to, or communicating in any way with a potential juror.” For example, he contends, if he “had started handing out pamphlets to the summoned potential jurors *after* the Court released them on the day in question, under the lower courts’ redefinition, he could still be charged with jury tampering because they were still summoned for that month.” However, defendant’s assertions ignore the requirement in MCL 750.120a(1) that to be convicted of jury tampering, a person must possess the willful intent to influence the decision of a juror in a particular case. That requirement serves as a constitutional safeguard. As the Ninth Circuit reasoned in *Turney*, 400 F3d at 1204, “innocent” conversations with jurors will rarely violate a jury tampering statute because such communications will usually

¹⁰ Defendant appears to misunderstand the concept of time, place, and manner restrictions. Time, place, and manner restrictions may be used to regulate speech *otherwise protected under the First Amendment*, if such restrictions are content-neutral and narrowly tailored to serve a significant governmental interest. *Clark v Community for Creative Non-Violence*, 468 US 288, 293-294; 104 S Ct 3065; 82 L Ed 2d 221 (1984).

lack “the requisite intent.” If a person is not attempting to influence a juror’s decision in a case, that person can freely communicate with the juror without violating MCL 750.120a(1).

In its amicus brief, the American Civil Liberties Union contends that “[t]he state’s interpretation of the jury tampering statute criminalizes a great variety of First Amendment protected expression,” and provides the following hypotheticals:

Consider whether a citizen committed to decriminalizing possession of controlled substances, passing out material regarding the issue outside a courthouse, would be charged with jury tampering if a prospective juror received the material. Would a group advocating for tort reform be prevented from posting outside the court on days when products liability cases were being tried? Can the court prevent a women’s rights organization from holding a rally when sex discrimination cases are on the docket?

Similarly, in its amicus brief, the Cato Institute posed hypotheticals involving op-ed writers, radio personalities, protesters with signs urging conviction, and a wife reminding her husband who has been selected for jury duty that he should not assume government witnesses are more credible than other witnesses.

Despite these concerns, the simple fact is that the conduct prosecuted in this case has no relationship to the eye-grabbing hypotheticals posed, which ignore the intent element of MCL 750.120a(1). For instance, an op-ed writer or radio personality expressing an opinion about a particular case or types of cases would likely not possess the intent necessary to be convicted of jury tampering under MCL 750.120a(1). There is a significant distinction between an individual targeting jurors for a particular case and providing them with information calculated to influence how they conduct their duties as jurors, and an op-ed writer or protester who opines about the general propriety of a prosecution or civil matter, with no intention to influence a particular juror. Moreover, [t]he overbreadth doctrine is not . . . ‘casually employed,’ even in a case involving a First Amendment challenge.” *In re Chmura*, 461 Mich 517, 531; 608 NW2d 31 (2000). “[T]here must be a realistic danger that the statute itself will significantly compromise recognized First Amendment protections of parties not before the Court for it to be facially challenged on overbreadth grounds.” *Members of the City Council of Los Angeles v Taxpayers for Vincent*, 466 US 789, 801; 104 S Ct 2118; 80 L Ed 2d 772 (1984). There is nothing to show that the statute would be applied to anyone or any set of facts that go beyond the intent required by the statute.

With regard to the political demonstration examples, the United States Supreme Court’s decision in *Cox*, provides guidance. In that case, the defendant led a group of people outside a courthouse in protest against the arrest of students the day before, and was himself arrested and convicted of intending to influence a juror or to obstruct or impede the administration of justice. *Cox*, 379 US at 560, 564-565. The Court explained that “[t]he conduct which is the subject of this statute—picketing and parading—is subject to regulation even though intertwined with expression and association,” *id.* at 563, and ultimately concluded that the statute at issue was facially valid because “the fact that free speech is intermingled with such conduct does not bring with it constitutional protection,” *id.* at 564. Thus, to the extent that MCL 750.120a(1) may preclude certain limited courthouse demonstrations, the United States Supreme Court has

countenanced that result given the government’s strong interest in the impartial administration of justice. Defendant’s First Amendment argument fails.

IV. DUE PROCESS

A. VAGUENESS

Defendant next argues that MCL 750.120a, as interpreted and applied by the trial courts, is void for vagueness because it: (1) fails to provide proper notice to citizens “that the distribution of a pamphlet of general information on a public sidewalk to a person who was merely summoned for potential jury duty is a criminal act,” (2) is susceptible to arbitrary and discriminatory enforcement, and (3) as erroneously interpreted and applied, impinged on his First Amendment rights.

We review de novo “challenges to the constitutionality of a statute under the void-for-vagueness doctrine.” *People v Lawhorn*, 320 Mich App 194, 197 n 1; 907 NW2d 832 (2017). “The ‘void for vagueness’ doctrine is derived from the constitutional guarantee that the state may not deprive a person of life, liberty, or property, without due process of law.” *State Treasurer on Behalf of Dep’t of Corrections v Wilson (On Remand)*, 150 Mich App 78, 80; 388 NW2d 312 (1986). “A penal statute may be unconstitutionally vague if it (1) fails to provide fair notice of the conduct proscribed, (2) permits arbitrary and discriminatory enforcement, or (3) is overbroad and impinges on First Amendment freedoms.” *People v Sands*, 261 Mich App 158, 161; 680 NW2d 500 (2004). “A vagueness challenge must be considered in light of the facts at issue.” *Id.* “When presented with a vagueness challenge, we examine the entire text of the statute and give the words of the statute their ordinary meanings.” *People v Morey*, 230 Mich App 152, 163; 583 NW2d 907 (1998), *aff’d* 461 Mich 325 (1999).

“To afford proper notice of the conduct proscribed, a statute must give a person of ordinary intelligence a reasonable opportunity to know what is prohibited.” *People v Roberts*, 292 Mich App 492, 497; 808 NW2d 290 (2011). “A statute cannot use terms that require persons of ordinary intelligence to speculate regarding its meaning and differ about its application.” *Sands*, 261 Mich App at 161. “For a statute to be sufficiently definite, its meaning must be fairly ascertainable by reference to judicial interpretations, the common law, dictionaries, treatises, or the commonly accepted meanings of words.” *Id.*

Defendant first asserts that if the trial courts’ interpretation of MCL 750.120a(1) is correct, then the law is unconstitutionally vague because “[n]o statute, case, or any other Michigan authority exists which would have given notice to the citizenry that the word ‘juror’ included anyone who had simply received a summons in the mail.” However, a person of ordinary intelligence does not have to speculate as to the word’s meaning. Rather, the definition of “juror” is readily ascertainable to anyone with access to a dictionary. *Sands*, 261 Mich App at 161. Further, defendant’s assertion that a person of ordinary intelligence comparing MCL 750.120 and MCL 750.120a(1) would look at the statutes and naturally conclude that one covers a person summoned for jury duty while the other does not, lacks merit for the reasons already stated.

Defendant also suggests that MCL 750.120a(1) is susceptible to arbitrary and discriminatory enforcement, asserting that his own arrest and prosecution were based on the government's "animus towards the content of his pamphlet." Even if the decision to arrest and charge defendant was primarily based on the content of the pamphlet, the pamphlet provided evidence of his intent to influence a juror and was relevant to his prosecution. Additionally, although a statute may be misapplied by officials, our primary focus is on whether the statute *permits* arbitrary and discriminatory enforcement, not whether an isolated official happens to arbitrarily enforce it. See *Allison v Southfield*, 172 Mich App 592, 596; 432 NW2d 369 (1988) ("Even if one of the evils sought to be prevented by the vagueness doctrine is the vesting of unstructured discretion and the resultant arbitrary and [discriminatory] enforcement of the law, the doctrine is not triggered unless the wording of the promulgation is itself vague.") (citation omitted). Defendant has not shown that MCL 750.120a(1) is unconstitutionally vague. *People Vandenberg*, 307 Mich App 57, 62; 859 NW2d 229 (2014).

B. FAIR TRIAL

Lastly, defendant argues that he was denied his right to a fair trial because the district court precluded him from arguing the elements of MCL 750.120a(1), and because he was not permitted to cross-examine Magistrate Lyons regarding purported bias against him.

We review de novo whether a defendant received a fair trial. *People v Stevens*, 498 Mich 162, 168; 869 NW2d 233 (2015). With regard to the elements of jury tampering, defendant asserts he should have been allowed to argue that the absence of an actual trial in Yoder's case precluded his conviction under MCL 750.120a(1). However, the statute contains no requirement that a trial take place, and the argument is duplicative of his underlying position, rejected in this opinion, that only those selected and sworn for jury service may be considered jurors under the statute.

With regard to Magistrate Lyons's purported bias, "[a] primary interest secured by the Confrontation Clause[US Const, Am VI,] is the right of cross-examination." *People v Gaines*, 306 Mich App 289, 315; 856 NW2d 222 (2014). "Neither the Sixth Amendment's Confrontation Clause nor due process confers on a defendant an unlimited right to cross-examine on any subject." *People v Canter*, 197 Mich App 550, 554; 496 NW2d 336 (1992). "Rather, the Confrontation Clause protects the defendant's right for a *reasonable* opportunity to test the truthfulness of a witness' testimony." *People v Ho*, 231 Mich App 178, 190; 585 NW2d 357 (1998). However, "[a] limitation on cross-examination that prevents a defendant from placing before the jury facts from which bias, prejudice, or lack of credibility of a prosecution witness might be inferred constitutes denial of the constitutional right of confrontation." *People v Kelly*, 231 Mich App 627, 644; 588 NW2d 480 (1998).

Defendant contends specifically that he wished to examine Magistrate Lyons regarding conduct at the arraignment, where Magistrate Lyons allegedly "set an unconstitutionally high bond of \$150,000.00 (10%)" and "refused to appoint [him] an attorney," and that the district court erred by denying him the opportunity to do so. Defendant identifies caselaw suggesting that a defendant has a constitutional right to examine a witness's bias, *Kelly*, 231 Mich App at 644; *Hayes v Coleman*, 338 Mich 371, 380-381; 61 NW2d 634 (1953), and the matters identified

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by defendant arguably show that Magistrate Lyons was biased against him. However, even if the district court erred by precluding cross-examination, the error would be harmless.

[V]iolations of the right to adequate cross-examination are subject to a harmless-error analysis. Whether such an error is harmless in a particular case depends on a host of factors, including the importance of the witness' testimony, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness, the extent of cross-examination otherwise permitted, and the overall strength of the prosecution's case. [*Kelly*, 231 Mich App at 644-645.]

Magistrate Lyons's testimony merely provided context for the events of the day. He testified about when he learned of the pamphlets, his interaction with defendant, and his subsequent conversation with Judge Jaklevic. Further, he testified that Yoder's case was the only case scheduled for trial on the day in question. This testimony was cumulative to that of other witnesses, namely Judge Jaklevic, and had little bearing on whether defendant actually violated MCL 750.120a(1). Moreover, we see nothing to suggest that the jury would have reached a different result had it concluded that Magistrate Lyons was biased against defendant and not credible. As a result, we cannot hold that defendant was denied a fair trial on this basis.

Affirmed.

/s/ Christopher M. Murray

/s/ Thomas C. Cameron

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEITH ERIC WOOD,

Defendant-Appellant.

FOR PUBLICATION

December 11, 2018

No. 342424

Mecosta Circuit Court

LC No. 17-024073-AR

Advance Sheets Version

Before: MURRAY, C.J., and MURPHY and CAMERON, JJ.

MURPHY, J. (*dissenting*).

I conclude that the jury-tampering statute, MCL 750.120a, is simply not implicated under the circumstances presented in this case. Therefore, I would reverse defendant’s misdemeanor conviction. Accordingly, I respectfully dissent.

We review de novo issues of statutory construction. *People v Pinkney*, 501 Mich 259, 267; 912 NW2d 535 (2018). When interpreting a statute, this Court first focuses on the plain language of the statute, with the goal of giving effect to the intent of the Legislature. *Id.* at 268. We must read individual words and phrases in the context of the entire legislative scheme, examining the statute as a whole. *Id.* When the language of the statute is unambiguous, the statute must be enforced as written, and no further judicial construction is required or permitted. *Id.* If at all possible, every word in a statute should be given meaning and no word should be rendered nugatory or treated as surplusage. *Id.* at 288.

MCL 750.120a(1) provides that “[a] person who willfully attempts to influence the decision of a juror in any case by argument or persuasion, other than as part of the proceedings in open court in the trial of the case, is guilty of a misdemeanor” With respect to *mens rea*, under the plain language of the statute, a person’s conduct in attempting to influence a juror’s decision by way of argument or persuasion must be willful. Next, given that the statute punishes “attempts” to influence a juror, a person need not successfully influence a juror’s decision in order to be held criminally responsible. Additionally, Subsection (1) of MCL 750.120a is limited to proscribing conduct and communications entailing “argument or persuasion.”

In defining the meaning of the term “juror” so as to accurately decipher the Legislature’s intent, I believe it is vital to take into consideration the surrounding language and the context in which the term is used in MCL 750.120a(1). Under MCL 750.120a(1), argument or persuasion cannot be employed in a willful attempt to influence “the decision of a juror in any case.” In my view, the statutory phrase, “the decision of a juror in any case,” tells us all that we need to know

in resolving this appeal, making it unnecessary and improper to resort to dictionary definitions of the term “juror” or to engage in a constitutional analysis. I conclude that a person is not “a juror in a[] case,” let alone a juror who has the capacity to make a “decision,” at the point in time that he or she has merely been summoned for jury duty and arrives at the courthouse. Rather, at the very earliest, one who has been selected as a venireperson, as distinguished from the larger group of individuals summoned for jury duty, might perhaps be characterized as a juror in a case, given that a venireperson would be subjected to voir dire for purposes of a particular case. See *People v Bryant*, 491 Mich 575, 583 n 4; 822 NW2d 124 (2012) (differentiating a venire, which consists of a panel of potential jurors called into a courtroom, from a group of people summoned to appear for jury duty). In sum, I cannot conclude that MCL 750.120a is implicated until the trial process in a case is underway, starting with selection of the venire, if even at that point.

This position is buttressed by the language in MCL 750.120a(1), which provides an exception for argument or persuasion that is “part of the proceedings in open court *in the trial of the case . . .*” (Emphasis added.) This language presupposes that a trial was indeed commenced. Moreover, MCL 750.120a(3) provides that Subsection (1) does not “prohibit any *deliberating juror* from attempting to influence other members of the same jury by any proper means.” (Emphasis added.) This language contemplates not only a trial, but a concluded trial, followed by jury deliberations.

Giving meaning to the words in MCL 750.120a(1), such that none of the words are treated as surplusage, and reading the words and phrases in the context of the whole statute, the Legislature plainly envisioned MCL 750.120a(1) being implicated only after the trial process has commenced. Jennifer Johnson and Theresa DeVries were simply not *jurors in the case* against Andrew Yoder when approached by defendant and given the juror-nullification literature.

In further support and contrary to the majority’s view, I believe that the Legislature’s reference to a person “summoned as a juror” in MCL 750.120, absent comparable language in MCL 750.120a(1), reveals that the MCL 750.120a(1) reference to “a juror” was solely meant to encompass seated jurors and perhaps venirepersons. MCL 750.120 was enacted in 1931 pursuant to 1931 PA 328, and MCL 750.120a was added in 1955 pursuant to 1955 PA 88. Clearly, had the Legislature intended for MCL 750.120a(1) to cover a person summoned as a juror, it would and could have used the previously employed and more expansive language, yet the Legislature chose not to do so. “Generally, when statutory language is included in one statutory section but omitted from another, we presume that the drafters acted intentionally to include or exclude the language.” *People v Robar*, 321 Mich App 106, 121; 910 NW2d 328 (2017). I find the majority’s arguments rejecting application of this statutory principle strained and unavailing. I do wish to emphasize, however, that although I conclude that defendant did not commit a criminal misdemeanor under MCL 750.120a(1), I am not prepared to state, nor is it necessary to state, that a trial court, under its inherent and constitutional powers, cannot prohibit or control the possible tainting of summoned jurors.

I would reverse defendant’s conviction. Accordingly, I respectfully dissent.

/s/ William B. Murphy