

**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 - 21 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.

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.

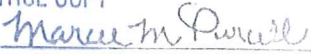
IT IS FURTHER ORDERED that the court's order to stay the execution of appellant's conviction and sentence is set aside.

This order resolves the last pending claim and closes the case.

Date: February 2, 2018



Hon. Eric R. Janes (P42026)
Isabella County Trial Court

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