STATE OF MICHIGAN

IN THE COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff/Appellee,

-vs-

KEITH ERIC WOOD,

Defendant/Appellant.

***AMICUS CURIAE* BRIEF OF THE FULLY INFORMED JURY ASSOCIATION**

COA NO.: 342424
CIRCUIT CT. NO.: 17-24073-AR
DISTRICT CT. NO.: 15-45978-FY

AMICUS CURIAE BRIEF OF THE FULLY INFORMED JURY ASSOCIATION

ORAL ARGUMENT REQUESTED

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STATEMENT OF IDENTITY OF *AMICUS CURIAE*, ITS INTEREST IN THE CASE AND THE SOURCE OF ITS AUTHORITY TO FILE

The Fully Informed Jury Association (FIJA) is a corporation, duly registered and headquartered in the state of Montana. FIJA is a nonprofit, nonpartisan, educational outreach organization, pursuant to IRC §501(c)(3). Its mission is to preserve the full function of the jury as the final arbiter in our courts of law by informing everyone of their rights and responsibilities—including the right of conscientious acquittal—in delivering just verdicts when serving as jurors. FIJA conducts its educational efforts through a variety of programs and materials, research and publication on jury-related issues, outreach via an array of media, both traditional and modern and other appropriate means. The group also maintains a website,

www.FIJA.org, which provides information and materials in furtherance of its mission and purpose at no charge to the public.

FIJA does not advocate for specific jury verdicts in any case in progress. Rather, FIJA educates the general public, which includes potential jurors, regarding the historic and constitutional role of the jury as a protector of criminal defendants (and hence the community) from unjust laws, malicious prosecutions and government abuses. As part of its educational mission, FIJA sometimes files *amicus curiae* briefs when matters regarding the jury are at issue to clarify and illuminate jurors' full constitutional authority and the crucial role of the jury in protecting human rights and restraining government.

FIJA submits that the arrest, prosecution and conviction of Keith Wood in this matter constitute a terrible miscarriage of justice and a stain on the legal history of the State of Michigan.

This brief is wholly the product of the Fully Informed Jury Association ("FIJA") and its counsel. Neither the parties nor their counsel authored or contributed anything toward the production, preparation or filing of this brief.

SUMMARY OF THIS CASE AND THE ARGUMENTS IN THIS BRIEF

Counsel for FIJA submits that the able counsel for Mr. Wood has adequately summarized the facts, procedural posture, jurisdictional requirments, questions presented, and background of this case. The Appellant's brief has laid out a number of arguments which FIJA supports. However, FIJA focuses on just one topic in this *amicus curiae* brief: whether the conduct of Mr. Wood and the ideas expressed in FIJA's informational brochure, *"Your Jury Rights: True or False?,"* constitute the crime of jury tampering. (Trial Tr., Vol. II(b), pg. 39).

The *"Your Jury Rights"* brochure asks "True or False: When you sit on a jury, you may vote on the verdict according to your conscience." The brochure references statements by Thomas Jefferson and John Adams, and describes historic events such as the trial of John Peter Zenger. "How can one person make a difference?" the brochure continues, with recommendations such as the following:

> 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.

FIJA submits that the brochure is entirely accurate, and that no ideas expressed in the brochure constitute unlawful tampering which might induce any juror to act unlawfully in any specific case.

ARGUMENT

"Jury tampering" is an anciently recognized crime.[1] It is the crime of acting to influence a jury's verdict in a specific case by threats, violence, bribery or other criminal pressure.[2] Jury tampering is undoubtedly a problem as old as trial by jury itself. Indeed, ancient Greeks held jury trials before juries of hundreds of people in order to combat the problem of jury tampering.[3] The jury that convicted Socrates was composed of 500 jurors.[4]

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[1] John H. Langbein, *Bifurcation and the Bench: The Influence of the Jury on English Conceptions of the Judiciary*, 82 in *Judges and Judging in the History of the Common Law* (2012) (mentioning that jury tampering was recognized as a crime in late medieval times).
[2] See Erica Summer (2001) "Post-Trial Jury Payoffs: A Jury Tampering Loophole," 15 *Journal of Civil Rights and Economic Development* 353, 354 (2001) ("For most the term jury tampering conjures images of bribes or threats directed at a jury member. Traditional jury tampering methods such as these are illegal and have been for centuries").
[3] Jean Kinney Williams *Empire of Ancient Greece* 75 (2009).
[4] See James A. Colaiaco, *Socrates Against Athens: Philosophy on Trial* 17 (2013).

In Michigan, the misdemeanor jury tampering statute (MCL 750.120a(1)) states 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. . ." The evidence asserted in the Court below to convict Keith Wood of jury tampering is insufficient under the plain text and meaning of this statute. Accordingly, Keith Wood was improperly convicted and is entitled to a judgment of reversal with an order for the trial court to dismiss this action. No instruction or set of instructions could cure the error in a new trial.

EVEN IF WOOD HAD KNOWINGLY HANDED HIS PAMPHLETS OR ORALLY COMMUNICATED THE IDEAS CONTAINED IN THE PAMPHLETS DIRECTLY TO A KNOWN JUROR, HE WOULD NOT COMMIT THE CRIME OF JURY TAMPERING

The able counsel for the Appellant has sufficiently described how the individual(s) who took the brochures offered by the Appellant were not "jurors" in any proper, legal, or dictionary sense. But even if Mr. Wood had handed his flyers to actual jurors currently hearing an actual case, his act of handing out such flyers could not have constituted "willfully attempt[ing] to influence the decision of a juror in any case by argument or persuasion . . ." The brochures contain no argument or persuasion dedicated to any actual case.

Of course, the term "willfully" under Michigan criminal law means done with "an evil intent," "a bad purpose," or a "guilty knowledge," and implies a knowledge and a purpose to do wrong. *People v. Lerma*, 66 Mich. App. 566, 570; 239 N.W.2d 424 (1976). Yet the record below is utterly devoid of any evidence that Appellant Keith Wood distributed the pamphlet with an evil intent or knowing that he was breaking the law to do so. "Nothing can be a crime until it has been recognized as such by the law of the land." *People v. Thomas*, 438 Mich 448, 456 (1991) (citations omitted).

Mr. Wood was sharing information on the history, authority and power of juries, a topic of political, social and public concern. See, e.g., *Wood v. Georgia*, 370 US 375 (1962) (holding that a letter distributed to grand jury members was speech on public issues). Nothing contained in *"Your Jury Rights: True or False?"* has been challenged as untrue.

It is not the law in Michigan or in any other American jurisdiction that juries must find a defendant guilty when the Government meets its burden of proof, though they may do so. See *United States v. Martin Linen Supply Co*., 430 U.S. 564, 572-73 (1977) (trial judges are prohibited from "directing the jury to come forward with [a guilty] verdict, regardless of how overwhelming the evidence may point in that direction"); *Gregg v. Georgia*, 428 U.S. 153, 199 n.50 (1976) (saying any legal system that would rob jurors of their discretion to acquit against the evidence would be "totally alien to our notions of criminal justice").

As *"Your Jury Rights: True or False?"* points out, when juries vote their conscience in trial deliberation they are exercising the highest ideals behind the institution of trial by jury. See *Brotherhood of Carpenters v. United States*, 330 U.S. 395, 408 (1947) ("a judge may not direct a verdict of guilty, no matter how conclusive the evidence"); *United States v. Mentz*, 840 F.2d 315, 319 (6th Cir. 1988) ("Regardless of how overwhelming the evidence may be, the Constitution delegates to the jury, not to the trial judge, the important task of deciding guilt or innocence"); *Konda v. United States*, 166 F.91, 93 (7th Cir. 1908) (an accused has a right to a chance of a jury acquittal even where "the evidence against him is clear and uncontradicted, as he unquestionably would have if it were doubtful and conflicting"); *Buchanan v. United States*, 244 F.2d 916 (6th Cir. 1957) (a trial judge cannot instruct a jury to convict even if the facts of guilt are undisputed); *Billeci v. United States*, 184 F.2d 394, 399 (D.C. Cir. 1950) (must-convict instruction "is not the

law. The law is that if the jury believes beyond a reasonable doubt that the defendant has committed the alleged offense it *should* find a verdict of guilty"). (emphasis added)

Never have the U.S. Supreme Court or the Michigan Supreme Court issued a decree that jurors must abandon their senses of justice, their assessment of the justness of laws or their consciences if the government proves its case beyond a reasonable doubt. See *Jackson v. Virginia*, 443 U.S. 307, 317 n.10 (1979) (referring to the jury's "unassailable" power to issue an "unreasonable verdict of 'not guilty'"); *McCleskey v. Kemp*, 481 U.S. 279, 311 (1987) (criminal juries have an inherent discretionary power to "decline to convict," and such "discretionary exercises of leniency are final and unreviewable"); *Batson v. Kentucky*, 476 U.S. 79, 86-87 n.8 (1986) (the jury's role "as a check on official power" is in fact "its intended function"); *United States v. Spock*, 416 F.2d 165 (1st Cir. 1969) (discussing jurors' well-established "power to follow or not to follow the instructions of the court"); *United States v. Wilson*, 629 F.2d 439, 443 (6th Cir. 1980) ("a jury is entitled to acquit the defendant because it has no sympathy for the government's position. It has a general veto power"). See also *State v. Koch*, 85 P. 272, 274 (Mont. 1906) ("the jury has power to disregard the law as declared and acquit the defendant, however convincing the evidence may be, and . . . the court or judge has no power to punish them for such conduct"); *United States v. Taylor*, 11 F. 470, 472 (C.C.D.Kan. 1882) ("It has accordingly long been well settled that, while the court is the judge of the law and may instruct the jury upon the law, . . . it is still within the power of the jury to render a general verdict, and thereby to decide on the law as well as the facts").

Indeed, Michigan Criminal Jury Instructions instruct jurors to do exactly what *"Your Jury Rights: True or False?"* discusses: "In the end, your vote must be your own, and you must vote honestly and in good conscience." *M Crim JI* 3.11 *Deliberations and Verdict*. Nothing done

by the Appellant in distributing the brochure could have influenced a juror to do anything other than what is lawful.

Michigan law has always enshrined the principle that no juror can ever be punished for his verdict. See *People v. St Cyr*, 129 Mich App 471 (1983). This principle has been recognized for three centuries. See *Bushell's Case* in 1670 (Howell's State Trials, Vol. 6, Page 999 (6 How. 999)).

Thus, nothing in Appellant Keith Wood's conduct in distributing the *"Your Jury Rights: True or False?"* brochure could constitute the crime of jury tampering even if Wood had actually handed the flyer to an actual juror in an actual case.

CONCLUSION

Mr. Wood was NOT discussing any particular case, and was NOT seeking to influence a juror to vote a particular way by unlawful means. Accordingly, the judgment of conviction in this case must be reversed, and the case dismissed with prejudice.

Respectfully submitted,

DATED: April 2, 2018

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