

STATE OF MICHIGAN

IN THE 49th CIRCUIT COURT FOR THE COUNTY OF MECOSTA

PEOPLE OF THE STATE OF MICHIGAN,

v

File No. 17-24073-AR

KEITH ERIC WOOD,

Defendant.

EMERGENCY MOTION FOR BOND PENDING APPEAL AND TO STAY EXECUTION
ON CONVICTION/SENTENCE VIA POLYCOM
BEFORE THE HONORABLE ERIC R. JANES, TRIAL COURT JUDGE, ISABELLA
COUNTY

Big Rapids, Michigan - Friday, July 21, 2017

APPEARANCES:

For the People:

Amy C. Clapp (P-67451)
Assistant Prosecuting Attorney
400 Elm Street
Big Rapids, Michigan, 49307

For the Defendant:

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

RECORDED BY:

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

TABLE OF CONTENTS

WITNESSES:

PAGE

NONE CALLED

EXHIBITS:

OFFERED

ADMITTED

NONE OFFERED

1
2
3
4
5
6
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Big Rapids, Michigan

Friday, July 21, 2017 - 3:59 p.m.

THE COURT: Calling the case of People of the State of Michigan versus Keith Eric White. This matter is in the Circuit Court for the County of Mecosta, file number 17-24073-AR. My name is Judge Eric Janes. I am a Trial Court Judge in Isabella County. This matter is being conducted by Polycom with counsel in Mecosta County and the Court being here in Isabella County.

Counsel, please place your appearances on the record.

MS. CLAPP: Thank you. On behalf of the People, Amy C. Clapp.

And, Judge, I would just like to -- it's actually People versus Keith Eric Wood. And I think you had indicated --

THE COURT: What did I say?

MS. CLAPP: I think you had said White.

THE COURT: I apologize. Keith Eric Wood, if I did say it wrong.

MS. CLAPP: Thank you.

THE COURT: And your last name was Clapp?

MS. CLAPP: Correct.

THE COURT: C-L-A-P-P.

MS. CLAPP: That's correct.

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THE COURT: All right.

Counsel.

MR. KALLMAN: Good afternoon, your Honor. David Kallman, appearing on behalf of Mr. Wood, who is not here for this hearing. He's next door in the county jail.

THE COURT: All right.

I have reviewed the Defendant's Emergency Motion for Bond Pending Appeal and Request to Stay Execution of Conviction and Sentence. Is there anything you'd like to say further, Counsel?

MR. KALLMAN: Well, just briefly, Judge. If you've had a chance to read it, then you know where we're coming from on it. Again, it's a misdemeanor and given the -- the lack of real history here of -- for my client and no violent offenses, his family ties, his business, and all these things, and the unique issues in this case, Judge; for example, the First Amendment issues. If you're not totally familiar with the facts here, our client was handing out a brochure regarding jury information and rights on the public sidewalk outside the courthouse to a number of people, including people who had been summoned as jurors, and he didn't know -- he was sure some of the people were summoned as jurors, but others were not. He was just handing out this informational pamphlet. It had nothing to do with the case that had been set for jury

1 trial that day. In fact, the jury trial was never held
2 that day; the jurors were sent home, and a plea deal was
3 worked out. The issues here, your Honor, include,
4 obviously, First Amendment Free Speech issues; that my
5 client has the right to hand out information like that to
6 the general public. Secondly, when is a person a juror;
7 when they're summoned or when they're sworn in. And I
8 think that's a big issue, Judge, because under the jury
9 tampering statute, you have to have been a juror in a
10 specific case; in the trial of a case is the phrase that's
11 used. And so, our argument there, I think that's a very
12 important argument on appeal. And Justice Viviano just
13 recently did a lengthy, 14-page history of when you become
14 a juror. And he became -- he came down saying you're not
15 a juror until you're sworn in. And that, he was writing
16 in a dissent, but the majority in a footnote said all the
17 Justices, seven to zero, agreed with Justice Viviano's
18 dissent on that issue of when you become a juror. Judge
19 Booher heard our motions on this; we made pretrial
20 motions, she denied our motion, ruling that you become a
21 juror when you actually receive a summons in the mail. We
22 appealed that up interlocutory to the Court of Appeals and
23 the Supreme Court and they -- the case was not accepted at
24 that point in time on the interlocutory basis and was just
25 basically sent back for trial. That's why it's been

1 almost two years since this incident happened to today.

2 So when is a person a juror. But then, tying in
3 with that, Judge, we were not allowed to argue to the jury
4 -- and I -- we've objected. It's all in the record --
5 that one of the elements is that you have to prove that
6 these people were jurors in a -- in the trial of a case.
7 Judge Booher ruled we could not make that argument to the
8 jury, even though it's a stated element of the offense our
9 client was charged with.

10 So those are the sorts of issues, Judge, that I
11 think are very important here. They're issues of first
12 impression, especially on the free speech issue and using
13 this statute for jury tampering. There are -- we could
14 find no cases in Michigan history dealing with this issue
15 and the statute being applied this way. These are very
16 important issues. We have already filed our appeal. I
17 mean, sentencing was this morning -- and I know you
18 understand that -- we filed appeal today. We will
19 promptly pursue our appeal of appellate rights here. But
20 more than that, Judge, Judge Booher gave our client eight
21 weekends; Friday through Sunday, essentially 24 days over
22 the next couple of months. And if we prevail, which
23 obviously, none of us has a crystal ball, but we would
24 feel confident that we have good arguments and we would
25 prevail on appeal on these issues of when a person becomes

1 a juror or on the First Amendment issues. And if we
2 prevail, our client will have served that time and that
3 would be a real unfair injustice to him. He's married, he
4 has eight children, including a brand new baby in the
5 home, he's self-employed, he is the sole support. We
6 appreciate Judge Booher only -- doing this on weekends,
7 but it is still a stress on the family and inhibits his
8 work. He's an insurance broker, sales, that sort of thing
9 and does work on weekends. So it is going to inhibit at
10 least in some way.

11 So all that said, Judge -- and if you've had a
12 chance to read, you understand the *Giacalone* case; the
13 standards that are there, the four points, I think we meet
14 them -- we would ask the Court to exercise your discretion
15 under MCR 7.108 that allows for this sort of Stay of
16 Execution of Sentence to be granted pending appeal. Our
17 client has appeared for every court hearing and has
18 totally cooperated and done everything the Court has
19 required of him while he has been on bond. If we were to
20 lose on appeal, he would, obviously, immediately report
21 and serve his time.

22 So we think the interest of justice supports our
23 request and we ask your Honor to grant it.

24 Thank you.

25 THE COURT: Thank you.

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Ms. Clapp.

MS. CLAPP: Thank you, your Honor.

As this Court is aware, the Motion for Stay would be under MCR 7.108 (C) (1). And as this Court is aware:

A criminal judgment may be executed immediately even though the time for taking an appeal has not elapsed.

There are -- many, many cases are appealed, few are actually stayed. And there isn't -- the only uniqueness of this case to any other is that the defense has used every single type of tactic to delay this case. The Register of Actions is 11 pages long with all of the different motions that have been filed by the defense, dating back to the incident date of November 24th of 2015. Not only were there all these pretrial motions, but also the interlocutory appeal to the Circuit Court, to the Court of Appeals, to the Supreme Court. I can appreciate the defense indicating to this Court that there are unique issues for appeal; however, the reality is those issues have already been, at least in an interlocutory way, already looked at by the Circuit Court on appeal, the Court of Appeals, and the Supreme Court. The facts that were in the People's brief for each of those answers to those appeals, those applications, were ultimately the

1 same facts that came out in the trial itself. So the Court
2 of Appeals has already had the opportunity, the Supreme
3 Court of Michigan has already had the opportunity to
4 review it, this would at least give us some idea that at
5 least there is no real egregious issues like the defense
6 is indicating here. If there was, they would have granted
7 one of those interlocutory appeals and they didn't.

8 The other issue here is that the defendant's
9 been convicted by a jury. We're not talking about
10 somebody who is not guilty. We're talking about somebody
11 who has been found guilty by a jury. And it only took the
12 jury 20 minutes to come back with their guilty verdict.

13 Judge Booher, as the acting District Court
14 Judge, did not abuse any discretion whatsoever that she
15 had by denying the Defendant's Motion for Stay and having
16 him immediately remanded to begin his jail sentence. And
17 let's just look at that sentence for a second; the
18 defendant was actually sentenced to 45 days in jail. He is
19 to serve eight weekends, the balance of which is
20 suspended. So the Judge did take into consideration all
21 of those issues that the defense wants this Court now to
22 consider on the Motion to Stay. If anything, it sounds
23 like defense's argument that they just are very unhappy
24 with, not only, how the trial went and how it didn't go in
25 their favor, but also they're unhappy with the sentence

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itself.

So based on all those reasons, we don't believe that the trial court has abused its discretion whatsoever in exercising their right to deny the defense motion. And for those reasons, we're asking that this Court also deny Defense's Motion for Stay.

MR. KALLMAN: Just briefly.

THE COURT: Brief --

MR. KALLMAN: Yes.

THE COURT: -- response.

MR. KALLMAN: Yes, brief, Judge.

First off, that few cases are stayed is not the standard. The standard is, in this particular case, under the *Giacalone* case and the standards that are set forth, do we meet that -- those points that are in that case. And to argue that we've been delaying this or whatever because we exercised appellate rights on the issue of when a person becomes a juror is ridiculous to say that was tactics to delay. Frankly, to get through all those levels of appeal in about a-year-and-a-half and for us to bring motions; I mean, is it wrong for a defense attorney to bring motions? Nothing was done to delay this case or trial or anything. And to argue that all these issues were looked at by a court, the higher court, the first time around is frankly, just false. That's not true. The

1 only issue on the interlocutory appeal was when does a
2 person become a juror. And that's the only issue we asked
3 the court to take on an interlocutory basis. The Court
4 had not ruled; Judge Booher had not ruled, on our First
5 Amendment Motion to Dismiss the Case. She didn't rule on
6 that until just prior to the trial. The Court had not
7 ruled that we were barred from arguing to the jury an
8 actual element of the charge against him. These are all
9 issues that came up during the trial, your Honor. They
10 have not been looked at by a higher court. And to say,
11 well, a jury convicted him, that's enough. You know,
12 Judge, if I can't argue to the jury the elements of the
13 case then an actual trial of the matter did not occur.
14 And if I can't argue to the jury my client has a First
15 Amendment right to pass out literature that didn't even
16 talk about the underlying case or the defendant involved;
17 if we can't raise these issues to the jury, I'm not
18 surprised at what the jury did in this case.

19 So we appreciate Judge Booher reducing this
20 recommendation. But, again, as I said this morning -- I
21 know you've read the transcript -- I have had hundreds,
22 and hundreds, if not thousands of clients and first-time
23 offenders, essentially on a misdemeanor; getting jailtime
24 on something like this is not the norm by a longshot,
25 especially someone with my client's background, and

1 family, and business, and history, and all of those
2 things.

3 So, Judge, for all the reasons that we've listed
4 there, I -- I understand this is totally in your
5 discretion under (C)(1) -- and Ms. Clapp stopped at the
6 point where it says -- she read the first sentence -- but
7 the next sentence says this is in your discretion to grant
8 this. And we meet the *Giacalone* Standards. I did not
9 hear anything from the Prosecutor that we don't meet the
10 *Giacalone* Standards. She's not arguing that.

11 So, your Honor, we ask that our motion be
12 granted.

13 Thank you.

14 THE COURT: Thank you.

15 You have the right to the final and last brief
16 response if any, Ms. Clapp.

17 MS. CLAPP: Only that -- the only thing that I
18 would stress, your Honor, is that there has been no abuse
19 of discretion by the trial court in this matter, whether
20 it comes to the sentencing of this defendant or the Motion
21 to Dismiss.

22 I have nothing further than that.

23 THE COURT: Well, it's kind of a difficult
24 situation; obviously, being a -- brought in at the last
25 minute on an emergency hearing that I've had ten minutes

1 to review the record from this morning at sentencing, the
2 defendant's motion, and didn't even get a response filed
3 from the Prosecutor. This was a jury trial; the defendant
4 was convicted by a jury. Often times -- not that often, I
5 should say, in a misdemeanor case are there emergency
6 Motions to Stay that I am aware of. I mean, in my tenure,
7 I haven't seen a lot of them. And it is common for jury
8 verdicts to call for incarceration. Although, counsel for
9 the defense may have handled hundreds and thousands, as he
10 indicated, of these kind of cases, I doubt he has had very
11 many jury tampering cases in his career. Probably one of
12 the first. It is a serious offense that's been charged.
13 The defendant was found guilty by a jury of his peers.
14 But the defense does make some good arguments about the
15 issues that are going to be taken up on appeal. It is
16 within -- as the parties both recognize -- it's within the
17 Court's purview to determine whether I'm going to grant it
18 or not. I have discretion in this matter. I'm not
19 unmindful of the fact that the sentencing judge was
20 somewhat sympathetic to the defendant in the sentence and
21 gave weekends, instead of a straight jail sentence
22 upfront; gave him time to serve it, I'm sure, so he
23 wouldn't lose his job, it wouldn't interfere with raising
24 his family, and the income, and so forth. But, he does
25 bring up some interesting issues on the appeal that

1 apparently were not brought up on an interlocutory basis.
2 I think the biggest argument still is going to be when is
3 a juror -- when is a person a juror. The Prosecutor has
4 indicated that that's been brought up on the interlocutory
5 appeal and not -- not granted at the Circuit Court, Court
6 of Appeals, or the Supreme Court level. But there are
7 some other weighty issues as well; free speech, the
8 ability to argue an element of a crime and so forth.

9 So, when I was originally reading this, I was
10 not going to grant the appeal, but at this time I am going
11 to grant the stay; I'll grant the Emergency Motion Pending
12 Appeal. I'll set a bond, but the bond is not going to be
13 a personal recognizance bond, it will be cash or surety
14 bond and I'm going to make it \$20,000, cash, surety, or
15 ten percent. I'm also going to order that the defendant
16 not leave the State of Michigan -- I don't know where he
17 resides. You indicated he resides in Michigan, but I
18 don't know if he resides in the jurisdiction of the court
19 that he was convicted in.

20 MR. KALLMAN: No, he has moved, recently, down
21 to Oakland County. That address was supplied to the court
22 a while ago. I don't have the exact address --

23 THE COURT: Supplied to --

24 MR. KALLMAN: -- in front of me.

25 THE COURT: -- the Court; I didn't see it.

1 MR. KALLMAN: Yeah, I meant the court here,
2 Judge. I meant the court here.

3 THE COURT: Yeah.

4 I'm going to order that he tender his passport
5 to the court, that he not leave the State of Michigan
6 without authority of the court.

7 Ms. Clapp, do you have any requests for terms of
8 bond?

9 MS. CLAPP: Well, I guess the only thing that
10 we're concerned about, your Honor, is there's been quite a
11 bit of media coverage in this case, specifically from the
12 defendant and his attorney going to the media and making
13 statements. Since this case is going to be pending on
14 appeal, we have some -- I'm not asking the Court
15 necessarily to do a Gag Order on this case, but certainly
16 there's some concerns in regards to that.

17 MR. KALLMAN: Well --

18 THE COURT: Well, I'm asking if you have any
19 recommendations or requests for terms of the conditional
20 bond?

21 MS. CLAPP: Nothing further than what I have
22 just indicated, your Honor.

23 THE COURT: Well, you didn't ask for anything.
24 You just mentioned you're not asking for a Gag Order, but
25 I -- I -- so you're not asking for anything in particular,

1 correct?

2 MS. CLAPP: Well, in that case, I would ask for
3 an order of that nature until this case is decided on
4 appeal, if it is even decided on, if it's even appealed.
5 Once it goes through that process, then -- and the
6 defendant is no longer on bond to the court -- then
7 certainly he has the right to make any statements
8 whatsoever. But, as right now, he's under the
9 jurisdiction of the district court, the 77th District
10 Court.

11 MR. KALLMAN: Well, your Honor, this case is
12 almost two years old. And my client is obviously not
13 going to -- I -- we'll make sure he makes those
14 statements. I have no problem with that. But to say that
15 we can't address media when they're calling with questions
16 about the case, and just tell them what we're doing, is
17 ridiculous. I mean, we should be able to tell -- this is
18 a public record. Our briefs, their briefs, everything
19 that gets turned over to the court is all fair game for
20 the media. That -- this is just ridiculous to ask for a
21 Gag Order on this.

22 MS. CLAPP: Except that's not what's happened in
23 this case. Mr. Kallman, as well as all of his associates,
24 have invited media to all of this. That's --

25 MR. KALLMAN: That is not true, your Honor.

1 THE COURT: All right. I don't need to hear any
2 more.

3 MS. CLAPP: Excuse me.

4 MR. KALLMAN: All right.

5 MS. CLAPP: I didn't interrupt you. Thank you.

6 MR. KALLMAN: Well, lie about me and I'm going
7 to object.

8 THE COURT: I'm going to put -- Counsel --

9 MR. KALLMAN: Yes.

10 THE COURT: I don't need you to argue.

11 MR. KALLMAN: All right.

12 THE COURT: I'm also going to --

13 MR. KALLMAN: Sorry.

14 THE COURT: -- defendant's not to consume any
15 alcohol or go to establishments that serve alcohol, he's
16 not to use, possess any illegal drugs, mind-altering
17 substances, or paraphernalia or associate with anyone that
18 does. He will be subject to random drug and alcohol tests
19 and at the discretion of the Court and Probation there.
20 He's not to leave the State of Michigan. He's not to
21 violate any laws of the State of Michigan or any other
22 governmental entity or unit. One second. If the appeal
23 is not perfected or timely filed, his bond will be
24 revoked. So he has to file the appeal properly and
25 timely. I can't think of anything else at this time.

1 So that will be the -- I'm not going to put a
2 Gag Order on it. I'm not doing that.

3 Mr. Kallman, will you prepare an order?

4 MR. KALLMAN: Yes, your -- well, there should be
5 an order with what was sent to you. I had a proposed --

6 THE COURT: It didn't have all the terms.

7 MR. KALLMAN: -- it didn't have all the terms,
8 but the court usually issues the bond terms when the bond
9 is issued. But, I have a proposed order to grant the
10 motion.

11 THE COURT: I see it's here now.

12 I will grant that and then I'm asking that the
13 Mecosta Court prepare the bond paperwork and then have it
14 sent down to me for signature.

15 MR. KALLMAN: That's fine.

16 THE COURT: All right.

17 MR. KALLMAN: And, your Honor, can that be faxed
18 over here or emailed, your order, so that we can get Mr.
19 Wood out?

20 THE COURT: All right. As soon as I -- yeah,
21 make sure we get the fax number and it will be faxed back
22 to you today.

23 MR. KALLMAN: Okay.

24 THE COURT: I wish both of you the best of luck.

25 MR. KALLMAN: All right. Thank you, Judge.

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MS. CLAPP: Thank you, your Honor.

THE COURT: Thank you.

(At 4:20 p.m., proceedings concluded)

1 STATE OF MICHIGAN)

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3 COUNTY OF MECOSTA)

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

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19 July 25, 2017

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Sabrina M. Marlette, CER 8103

21

49th Circuit Court

22

400 Elm Street

23

Big Rapids, Michigan 49307

24

(231) 592-8303

25