STATE OF MICHIGAN

IN THE COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff/Appellee,

-vs-

KEITH ERIC WOOD,

Defendant/Appellant.
/

APPELLANT'S BRIEF ON APPEAL AND PROOF OF SERVICE

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

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DEFENDANT/APPELLANT'S BRIEF ON APPEAL

THIS APPEAL INVOLVES A RULING THAT A PROVISION OF THE CONSTITUTION, A STATUTE, RULE OR REGULATION, OR OTHER STATE GOVERNMENTAL ACTION IS INVALID

ORAL ARGUMENT REQUESTED

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ORDER APPEALED

Defendant/Appellant Keith Wood appeals the Mecosta County Circuit Court's February 2, 2018 order denying the appeal of his conviction of Jury Tampering (MCL 750.120a) in the Mecosta County District Court. The Circuit Court's order is attached as Exhibit A. The District Court's Order denying Defendant's Motion to Dismiss and Order denying Defendant's Motion for Reconsideration are attached as Exhibit B. The register of actions is attached as Exhibit C. This Honorable Court granted leave to appeal in its order dated February 22, 2018.

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ALLEGATIONS OF ERROR AND RELIEF SOUGHT

This case presents an issue of first impression involving the interpretation and application of Michigan's Jury Tampering statute to speech in a public forum. MCL 750.120a. The District Court and reviewing Circuit Court misapplied Michigan's Jury Tampering statute inconsistent with controlling precedent. The lower courts:

I. failed to comply with controlling United States Supreme Court and Michigan Supreme Court precedent;

II. violated Mr. Wood's First Amendment freedom of speech rights by upholding the States' unconstitutional conduct;

III. failed to recognize the State's unlawful content-based restriction of Mr. Wood's speech;

IV. incorrectly expanded the definition of the word "juror" in the Jury Tampering statute beyond what it has ever meant in Michigan's history;

V. misapplied the elements of Jury Tampering;

VI. incorrectly held that the Jury Tampering statute's application to Mr. Wood's speech is not void for vagueness;

VII. violated fundamental rules of statutory construction; and

VIII. rendered part of the Michigan Penal Code surplusage and nugatory (MCL 750.120).

Further, the lower courts failed to even address or analyze numerous issues Mr. Wood raised below on appeal. The lower courts:

I. failed to address Michigan Supreme Court precedent directly on point regarding the definition of the word "juror;"

II. failed to provide any analysis of the Jury Bribery statute (MCL 750.120) as it relates to the Jury Tampering statute (MCL 750.120a);

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III. failed to analyze the State's action under any constitutional scrutiny standard;

IV. failed to provide any analysis as to whether a less-restrictive means was utilized before the prosecution of Mr. Wood; and

V. failed to provide any analysis why Mr. Wood was not deprived of a fair trial, including his being barred from arguing the elements of the crime to the jury and the denial of his right to cross examine a witness as to his bias and credibility.

For these reasons, Appellant requests this Honorable Court to grant his Appeal and correctly interpret and apply the Jury Tampering statute, find that his constitutional free speech rights were violated, and reverse the decisions of the lower courts.

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JURISDICTIONAL STATEMENT

The Mecosta County Circuit Court entered its order on February 2, 2018. Defendant/Appellant filed an application for leave to appeal within 21 days of the entry of that order. This Honorable Court granted his application for leave to appeal in its order dated February 22, 2018, and further granted Mr. Wood's motion for stay of his sentence pending appeal. The Court has jurisdiction to consider this appeal pursuant to MCR 7.203(A) and MCR 7.204.

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QUESTIONS PRESENTED

I. WHETHER THE LOWER COURTS ERRONEOUSLY DEFINED AND THEN APPLIED MICHIGAN'S JURY TAMPERING STATUTE?

TRIAL COURT/CIRCUIT COURT'S ANSWER: NO

APPELLANT'S ANSWER: YES

II. WHETHER THE STATE VIOLATED MR. WOOD'S FIRST AMENDMENT RIGHT TO FREEDOM OF SPEECH?

TRIAL COURT/CIRCUIT COURT'S ANSWER: NO

APPELLANT'S ANSWER: YES

III. WHETHER THE STATE VIOLATED MR. WOOD'S DUE PROCESS RIGHTS?

TRIAL COURT/CIRCUIT COURT'S ANSWER: NO

APPELLANT'S ANSWER: YES

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STATEMENT OF FACTS

On the morning of November 24, 2015, Defendant/Appellant Keith Wood (hereinafter "Mr. Wood") stood on a public sidewalk by the street in front the Mecosta County courthouse (Trial Tr., Vol. II(b), June 1, 2017, pgs. 6, 30). Mr. Wood distributed a pamphlet he obtained from the Fully Informed Jury Association (FIJA), a federally recognized 501(c)(3) non-profit educational organization (Trial Tr., Vol. II(b), pg. 34). The pamphlet included information for citizens on a topic and viewpoint concerning the legal authority and power of jurors (Trial Tr., Vol. II(b), pg. 39).

Mr. Wood was aware that *People v Yoder* was calendared for a possible jury trial that day (Trial Tr., Vol. II(b), pg. 33). He had, as an interested citizen, sat in the gallery at an earlier court hearing in the Yoder case on November 4, 2015 after receiving an email about it (Trial Tr., Vol. II(b), pg. 31). He did not, however, know Mr. Yoder and had never met him (Trial Tr., Vol. II(b), pg. 29). Mr. Wood has never had any contact with Mr. Yoder (Trial Tr., Vol. II(b), pgs. 29-30). He had no personal stake in the outcome of *People v Yoder* (Trial Tr., Vol. II(b), pgs. 29-30). Further, Mr. Wood did not know that the *Yoder* case was the only jury trial scheduled on November 24, 2015 (Trial Tr., Vol. II(b), 33).

Mr. Wood never mentioned the *Yoder* case to anyone while he was handing out pamphlets (Trial Tr., Vol. II(b), pg. 40). Further, the pamphlet did not discuss any particular defendant, case, county, or state and did not advocate that any juror vote in any particular way (Trial Tr., Vol. II(b), pg. 40, Exhibit D). Mr. Wood handed out the pamphlets to everyone who passed him on the sidewalk (Trial Tr., Vol. II(b), pg. 36). There was no way for Mr. Wood to tell who was coming to the courthouse for potential jury duty (Trial Tr., Vol. I, pg. 226). Mr. Wood had only obtained the FIJA brochures shortly before the day in question and that was the first day he distributed them publicly (Trial Tr., Vol. II(b), pg. 43).

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Magistrate Thomas Lyons went outside to investigate and confront Mr. Wood while he was sharing the information (Trial Tr., Vol. I, May 31, 2017, pg. 132). Magistrate Lyons told Mr. Wood to not share the information in the pamphlet on a public sidewalk (Trial Tr., Vol. I, pg. 132). Mecosta County District Court Judge Peter Jaklevic also took issue with Mr. Wood sharing information. (Trial Tr., Vol. I, pg. 276). Judge Jaklevic and Prosecutor Thiede decided that Mr. Wood should be brought inside to speak with the judge (Trial Tr., Vol. I, pgs. 218-219). Judge Jaklevic ordered Court Officer Jeffrey Roberts to bring Mr. Wood into the courthouse because he wanted him to stop handing out his pamphlets on the public sidewalk (Trial Tr., Vol. I, pg. 298). Department of Natural Resources (DNR) Detective Janet Erlandson and Court Officer Roberts confronted Mr. Wood outside on the public sidewalk and demanded that he come inside to speak with the judge (Trial Tr., Vol. I, pg. 220). Mr. Wood asked DNR Detective Erlandson if he was being detained (Trial Tr., Vol. I, pg. 221). DNR Detective Erlandson told Mr. Wood that he was not being detained (Trial Tr., Vol. I, pg. 221). However, Court Officer Roberts then told Mr. Wood that if did not come inside, he would be arrested (Trial Tr., Vol. I, pg. 233; Trial Tr., Vol. II(b), pgs. 53-54).

After being coerced by a threat of arrest by Court Officer Roberts, DNR Detective Erlandson physically escorted Mr. Wood into the courthouse (Trial Tr., Vol. II(b), pg. 55). When DNR Detective Erlandson put her hand on Mr. Wood's back as they entered the courthouse, Mr. Wood asked her to not "manhandle" him (Trial Tr., Vol. I, pg. 222). In response, DNR Detective Erlandson testified that she told Mr. Wood, "If I was going to manhandle you, sir, you'd be face down on the ground already" (Trial Tr., Vol. I, pg. 222). At no point did Mr. Wood resist arrest (Trial Tr., Vol. I, pg. 235).

Mr. Wood was taken to a hallway where Judge Jaklevic, Prosecutor Thiede, and Assistant Prosecutor Nathan Hull were waiting (Trial Tr., Vol. I, pg. 240). Despite the coercive demands of

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Court Officer Roberts that Mr. Wood come inside the courthouse to speak with the judge, Judge Jaklevic never spoke directly to Mr. Wood (Trial Tr., Vol. II(b), pg. 58).

Judge Jaklevic then ordered Court Officer Roberts and DNR Detective Erlandson to arrest Mr. Wood for jury tampering (Trial Tr., Vol. I, pg. 206). At the time, no jury had been selected, empaneled, or sworn in to serve as jurors in the case of *People v Yoder* (Trial Tr., Vol. I, pg. 158). No jury was sworn in at any time that day in Mecosta County District Court and all the prospective jurors were sent home (Trial Tr., Vol. I, pg. 125; Trial Tr., Vol. I, pgs. 174-175).

Mr. Wood was arraigned on the felony charge of Obstruction of Justice (MCL 750.505) and the misdemeanor charge of Jury Tampering (MCL 750.120a) (Mot. to Dismiss Tr., March 23, 2016, pg. 39). Despite being a long-time local resident, married with seven children, owning his own small business in the area, and being no flight risk whatsoever, Magistrate Thomas Lyons set an excessive, punitive, and unconstitutional bond of $150,000.00 (10%) (Mot. to Dismiss Tr., pg. 40-41; see Register of Actions). After Mr. Wood's arrest, he posted $15,000.00 for his bond on his credit card (Mot. to Dismiss Tr., pg. 41). Nearly five months after posting the bond, the prosecutor stipulated to refund Mr. Wood the $15,000.00 and his bond was converted to a personal recognizance bond (Mot. to Dismiss Tr., pgs. 50-51).

Mr. Wood filed his Motion to Dismiss on December 21, 2015. Plaintiff/Appellee (hereinafter "Prosecutor") filed his response on January 8, 2016. Mr. Wood filed his reply brief on January 18, 2016. A hearing was held regarding the Motion to Dismiss on March 23, 2016, and the District Court dismissed the felony charge of Obstruction of Justice but did not dismiss the misdemeanor charge of Jury Tampering (Mot. to Dismiss Tr., pg. 39).[1]

[1] The District Court refused to address Mr. Wood's constitutional claims at that time.

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The District Court relied on its interpretation of Black's Law Dictionary (4th Edition) when it refused to dismiss the Jury Tampering charge (Mot. to Dismiss Tr., pg. 39). The District Court ruled that a person becomes a "juror" when a person is merely *summoned to appear* for potential jury duty (Mot. to Dismiss Tr., pgs. 37-39). The District Court cited no statute, case law, or any other Michigan precedent to support its conclusion.

Mr. Wood filed a Motion for Reconsideration on April 21, 2016 responding to the Court's new interpretation citing controlling case law from the Michigan Supreme Court. Approximately eight weeks later, the District Court issued an opinion and order denying Mr. Wood's Motion for Reconsideration. This order summarily concluded that "[b]ecause 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." Mr. Wood appealed the Mecosta County District Court's order denying his Motion to Dismiss and his Motion for Reconsideration to the Mecosta County Circuit Court on June 28, 2016. The prosecutor filed an answer to Mr. Wood's application on July 18, 2016. Mr. Wood filed a reply brief on July 25, 2016. The Circuit Court of Mecosta County issued an order denying Mr. Wood's appeal on July 29, 2016.

Mr. Wood then filed an interlocutory appeal to the Court of Appeals and the Court issued an order declining to review Mr. Wood's request for leave to appeal on December 2, 2016. Mr. Wood filed an Application for Leave to Appeal with the Michigan Supreme Court on January 25, 2017. The Supreme Court declined to review Mr. Wood's Application for Leave to Appeal on April 4, 2017. A two-day jury trial was held on May 31st and June 1st of 2017. Over the objection of Mr. Wood, the District Court instructed the jury that a "juror" for the purpose of the jury tampering statute "includes a person who has been summoned to appear in court to decide the facts in a specific trial." (Pre-Trial TR., pgs. 11-12; Trial Tr., Vol II(b), pg. 145). The jury thereafter found Mr. Wood guilty of jury tampering.

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Mr. Wood was sentenced on July 21, 2017 and ordered to serve forty-five days in jail to be served on weekends. However, the court ordered that Mr. Wood would only have to serve eight weekends in jail if he successfully completed his 120 hours of court-ordered community service (Exhibit A, attached to Motion for Stay). Immediately following the sentencing hearing, Mr. Wood filed his claim of appeal and emergency motion to stay Mr. Wood's sentence with the Mecosta County Circuit Court. Every remaining judge in Mecosta county recused themselves from hearing the appeal. The Supreme Court Administrators Office (SCAO) appointed Isabella County District Court Judge Eric R. Janes to hear Mr. Wood's emergency motion to stay. A hearing on the motion was heard a few hours after Mr. Wood's sentencing and Judge Janes granted the stay pending appeal. Shortly thereafter, SCAO appointed Judge Janes to also hear the appeal on the case.

Both parties filed their respective briefs and oral argument for the appeal was held on February 2, 2018. Moments after the completion of oral argument, Judge Janes read a pre-written opinion on the record and issued his order denying Mr. Wood's appeal (Exhibit A). The Circuit Court's opinion did not address a number of issues Mr. Wood raised on appeal. Judge Janes further lifted his stay of Mr. Wood's sentence and denied Mr. Wood's motion to stay his sentence pending the filing of his Application for Leave to Appeal (Exhibit E).

Mr. Wood's Application for Leave to Appeal the District Court's order (Exhibit B), Mr. Wood's wrongful conviction of Jury Tampering, and the Circuit Court's order denying his appeal (Exhibit A) was granted by this Honorable Court on February 22, 2018.

STANDARD OF REVIEW

Regarding the criminal statute in question, MCL 750.120a, issues of statutory construction are questions of law that are reviewed *de novo*. *People v Dowdy*, 489 Mich 373, 379; 236 NW2d 489 (2011). The cardinal rule of statutory construction is to discern and give effect to the intent of

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the Legislature. *Id*. Courts must construe a statute in a manner that gives full effect to all its provisions. *Id*.

Regarding the First Amendment and due process issues, questions of constitutional law are reviewed de novo. *People v Rapp*, 492 Mich 67, 72; 821 NW2d 452 (2012). It is presumed that a statute is constitutional and the party challenging the validity of the ordinance bears the burden of proving a constitutional violation. *Id*. If the party is challenging a statute as being applied unconstitutionally, the party must show a "present infringement or denial of a specific right or of a particular injury in process of actual execution of government action." *People v Wilder*, 307 Mich App 546, 650; 861 NW2d 645 (2014).

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ARGUMENT

I. THE LOWER COURTS ERRONEOUSLY REDEFINED AND THEN APPLIED MICHIGAN'S JURY TAMPERING STATUTE.

Mr. Wood can find no published or non-published Michigan case in which the State charged a person with jury tampering for handing out educational pamphlets on a public sidewalk. MCL 750.120a 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.

In short, Mr. Wood was charged with tampering with a jury that did not exist. There is no such crime in Michigan. On the day in question, Mr. Wood had no interaction with a single person who was a "juror in any case." Indeed, no jury was selected, empaneled, or sworn on the day in question. Instead, the lower courts created post-hoc a new crime in Michigan. Despite the lower courts' ruling that Mr. Wood distributing literature on a public sidewalk could amount to criminal activity, "[n]othing can be a crime until it has been recognized as such by the law of the land." *People v Thomas*, 438 Mich 448, 456; 475 NW2d 288 (1991).

The District Court used the following elements in the jury instructions in this case (Trial Tr., Vol II(b), pgs. 144-145):

1. That Jennifer Johnson and/or Theresa DeVries was a juror/were jurors in the case of *People v Yoder*.
2. That the Defendant willfully attempted to influence that juror by the use of argument or persuasion.
3. That the Defendant's conduct took place outside of proceedings in open court in the trial of the case.

Definitions:

> A person acts "willfully" when he 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.

Mr. Wood objected to the first element (Pre-Trial Tr., May 30, 2017, pgs. 7-9), to the definition of "willfully" (Pre-Trial Tr., pgs. 10-11), and to the definition of "juror" (Pre-Trial Tr., pgs. 11-12).

A. The Lower Courts Committed Reversible Error by Incorrectly Defining the Word "Juror."

Notwithstanding the plain language of the statute, the District Court, relying on a footnote in the 4th Edition of Black's Law Dictionary, erroneously held that a person becomes a "juror" when a person is merely *summoned to appear* for potential jury duty (Mot. to Dismiss Tr., pgs. 37-39). The District Court cited no statute, case law, or any other Michigan precedent to support its conclusion. On appeal, the Circuit Court upheld the lower court's definition by citing to the 10th Edition of Black's Law Dictionary (Exhibit A, pg. 4).

Contrary to the lower courts' rulings, the Michigan Supreme Court recently stated that "a jury is not a jury until it is sworn." *People v Cain*, 498 Mich 108, 139; 869 NW2d 829 (2015). In *Cain*, Justice Viviano's dissent provides a full analysis of the word "juror," including 13 pages discussing the history, definition, and application of the term. Justice Viviano's recitation was

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adopted by the majority when it held that "[t]he dissent is correct that '[f]or as long as the institution we know as 'trial by jury' has existed, juries have been sworn.'" *Id*, at 161 fn. 6. Thus, on this legal point, the Court was unanimous. The only point the justices of the Supreme Court disagreed upon was the form and method through which jurors are sworn. Thus, the Supreme Court unanimously held that for someone to be a juror, that person must be sworn.

Justice Viviano stated in his detailed analysis that "the role of the oath had become so firmly ensconced in the concept of the jury that the body known as "the jury" did not exist until its members swore an oath" and that "[t]he essence of the jury is, and always has been, the swearing of the oath." *Id*. at 133-134. He further explained the origin of the word "juror" through its French and Latin roots and concluded that "the oath was, and has always been, a defining criterion of 'jury.'" *Id*. at 135.

Finally, the majority in *Cain* held that "one of the primary purposes of the oath**—to impart to the members of the jury their duties as jurors**" was fulfilled. *Id*. at 122 (emphasis added). The Supreme Court's holding clearly states that it is the oath which bestows the duties upon the jurors and begins their service. Therefore, no person holds the status of being a juror in a case until she has been sworn and her duties have been bestowed upon her. Again, not a single person ever took an oath to actually become a juror in the *Yoder* case, thus, no jurors existed in that case. It is impossible, therefore, for anyone to have tampered with a juror in the *Yoder* case.

Inexplicably, even after Mr. Wood provided the lower courts with the *Cain* case and other current case law, both lower courts refused to give any reason or analysis as to why *Cain* did not

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apply.[2] The lower courts erred by defining the word "juror" outside the meaning provided in Michigan Supreme Court precedent.

Similarly, in *Jochen v County of Saginaw,* 363 Mich 648; 110 NW2d 780 (1961), the Michigan Supreme Court examined whether the Plaintiff, who had merely been summoned to court, was entitled to workers' compensation as a juror. In order to determine if she was eligible, the Court had to decide whether Plaintiff was a "juror" at the time of her accident. The Supreme Court found that despite being *inside* of the courthouse on the day she was summoned to serve as a potential juror, she was not a juror at the time of her injury. *Id.* at 650. The reason for this was because she had not yet been accepted by the court to serve as a juror. This analysis comports with the recent holding in *Cain,* which indicates that a person is not a juror until accepted and sworn in as a member of a jury for the trial of a specific case.

Consider the following scenario. Mr. Smith is on his way to potentially serve as a juror and is handed a flier on the public sidewalk in front of the courthouse. Once Mr. Smith is inside the courthouse, but before he is sworn in as a juror, he slips and breaks his hip. According to the lower courts' rulings on this issue, Mr. Smith is a juror when he is handed the flier; but the Michigan Supreme Court holds he is not yet a juror at that time or even later when he breaks his hip inside the courthouse. The lower courts cannot have it both ways. This Honorable Court must correct the lower courts' erroneous rulings.

The lower courts further committed reversible error by not giving the word "juror" its plain and ordinary meaning according to Michigan precedent. The Michigan Supreme Court held in *People v Reeves*, 448 Mich 1, 13; 528 NW2d 160 (1995) (emphasis added):

[2] In the District Court's denial of Mr. Wood's motion for reconsideration it never mentioned the *Cain* case and stated that it was denied for the reasons stated on the record at the original motion to dismiss hearing. This was quite a paradoxical ruling because at the time of the motion to dismiss hearing, the Court was not yet aware of the recent *Cain* case. It appears that rather than attempt to respond to the *Cain* case, the District Court decided to completely ignore it.

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> In interpreting penal statutes, this Court "require[s] clarity and explicitness in the defining of the crime and the classification of acts which may constitute it"; however, **we will not usurp the Legislature's role by expanding the scope of the proscribed conduct.**

The Supreme Court further held in *People v Monaco*, 474 Mich 48, 55; 710 NW2d 46 (2006):

> It is a settled rule of statutory construction that, unless otherwise defined in a statute, statutory words or phrases are given their plain and ordinary meanings.

At the time Michigan's jury tampering statute was enacted in 1955, Black's Law Dictionary (4th Edition) defined the word "juror" as "one member of a jury." It then defined a "jury" as (emphasis added):

> A certain number of men, selected according to law, **and sworn** to inquire of certain matters of fact, and declare the truth upon evidence to be laid before them.

Contrary to the lower courts' opinions, at the time the legislature created the jury tampering statute, the plain and ordinary meaning of the word "juror" only included citizens who had been both selected *and sworn*. This is entirely consistent with the holdings in *Cain* and *Jochen*.

The Circuit Court erred by utilizing the 10th Edition (2014) of Black's Law Dictionary to justify its holding (Exhibit A, pg. 4). However, the Jury Tampering statute was originally passed in 1955 by the Legislature, well before Black's Law Dictionary had changed and expanded its definition of the word "juror." The United States Supreme Court held:

> A fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning. Therefore, we look to the ordinary meaning of the term "bribery" at the time Congress enacted the statute in 1961.

Perrin v US, 444 US 37, 42 (1979) (internal citations omitted). Obviously, it is quite difficult to ascribe legislative intent utilizing a dictionary that did not exist at the time the statute was passed. Thus, such a cardinal rule of statutory construction is necessary. See, e.g. *Saint Francis College v Al-Khazraji*, 481 US 604 (1987). The Circuit Court violated this rule by holding that Michigan's Legislature was utilizing a dictionary definition from 2014 when it enacted the statute in 1955.

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The lower courts should have exercised restraint before infringing on the rights of citizens like Mr. Wood. The lower courts' ruling that someone who might become a juror is the same as an actual juror, for purposes of this penal statute, plainly violates this principle. Again, the Michigan Supreme Court stated that "a jury is not a jury until it is sworn." *Cain*, 498 Mich at 139.

Finally, the Michigan Court Rules and Michigan's Criminal Jury Instructions clearly belie the lower courts' redefinition of the word "juror." Michigan Criminal Jury Instruction 1.1 is entitled "Preliminary Instructions to **Prospective Jurors**." The "End Note" for instruction 1.1 (emphasis added) states:

> MCR 6.412(B) states that the court should give the **prospective jurors** appropriate preliminary instructions before beginning the jury selection process.

MCR 6.412(B) (emphasis added) states:

> Instructions and Oath Before Selection. Before beginning the jury selection process, the court should give the **prospective jurors** appropriate preliminary instructions and must have them sworn.

It is worth noting that during all of *Voir Dire* and all the way up until the actual jury was chosen and sworn, the entire panel was referred to as "Prospective Jurors" (Trial Tr., Vol I., pgs. 1-94). This complies with MCR 8.108(B)(1) (emphasis added) which states:

> The court reporter or recorder shall attend the court sessions under the direction of the court and take a verbatim record of the following:
> (a) the voir dire of **prospective jurors**; . . .

Further, the District Court recognized that the people called for Mr. Wood's trial were only prospective jurors when she stated (Trial Tr., Vol I., pg. 24) (emphasis added): "We will now pick eight names out of the **prospective jurors** that are here."

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The court rule, jury instruction, the Trial Judge's statement, and the actual transcript in this case clearly indicate that people who have merely been summoned to court are only "prospective jurors." It is not until a person is selected, empaneled, and sworn that the status of "juror" is bestowed. There is no crime in Michigan for "prospective juror tampering." Thus, Mr. Wood committed no crime. Moreover, the jury instructions, court rules, Black's Law Dictionary (4th Edition), and the holdings in *Cain* and *Jochen* are all consistent that a person is not a juror until she is selected and sworn.

Logic and common sense also demonstrate that a juror is not a juror until he is sworn. One only needs to look at numerous other examples in society. A police cadet becomes a police officer when he is sworn. A law student becomes a lawyer when she is sworn. A gubernatorial candidate becomes the governor when he is sworn. It is the taking of the oath which confers the authority and title of the position. It logically follows that a person summoned for potential jury duty only becomes a juror when she is sworn.

The lower courts completely failed to properly justify such a redefinition of this dispositive statutory term, especially in light of the controlling precedent in *Cain* and *Jochen*. Because it is uncontroverted that no one was ever sworn in as a juror on the day in question, the proper definition of the word "juror" necessitates the reversal of Mr. Wood's conviction as a matter of law.

B. MCL 750.120 Provides Further Support That Mr. Wood's Definition of "Juror" is Correct.

The juror bribery statute, immediately preceding the jury tampering statute, demonstrates Mr. Wood's definition of "juror" is correct. The lower courts committed reversible error by failing to acknowledge, respond, or even attempt to refute this argument in their rulings. MCL 750.120 states:

> Juror, etc., accepting bribe—**Any person summoned as a juror** or chosen or appointed . . . who shall corruptly receive any gift or gratuity whatever, from a party

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> to any suit, cause, or proceeding, **for the trial or decision of which such juror shall have been summoned** . . . shall be guilty of a felony.

This statute was passed in 1931. In contrast, MCL 750.120a, which was passed in 1955, is much more narrow:

> 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 legislature is presumed to know what it is doing when it passes laws. "It is a well-established principle of statutory construction that the Legislature is presumed to act with knowledge of statutory interpretations[.]" *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 505-506; 475 NW2d 704 (1991) The legislature added section 120a, immediately following section 120, and specifically used the language, "juror in any case." If the legislature truly intended for jury tampering to include every person who has been summoned, it would have used the same language from the immediately preceding statute. If the legislature intended MCL 750.120 and MCL 750.120a to mean the same thing, why did it use different language? The answer is obvious; it is because the legislature did not intend to include persons who had merely been summoned as potential jurors in MCL 750.120a.

Binding precedent from the Supreme Court of the United States justifies Mr. Wood's position:

> [W]here Congress includes particular language in one section of a statute but omits it in another . . . , it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.

Russello v United States, 464 US 16, 23 (1983) (internal citations omitted). The Supreme Court further held:

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> A familiar principle of statutory construction, relevant both in *Lindh* and here, is that a negative inference may be drawn from the exclusion of language from one statutory provision that is included in other provisions of the same statute.

Hamdan v Rumsfeld, 548 US 557, 578 (2006).

In this case, the Michigan Legislature specifically included the qualifying phrase "any person summoned as" in MCL 750.120 but excluded such language from MCL 750.120a. As the Supreme Court has held, it is presumed that the legislature acted intentionally and purposefully in excluding such language from the jury tampering statute and that a negative inference should be drawn from such an exclusion. In other words, the Circuit Court erred by holding that two adjacent sections of the code mean the exact same thing when the legislature used explicit and different language. This is clear and obvious error. As much as the lower courts may prefer that the jury tampering statute include persons merely summoned, it is the role of the legislature to make such a change, not the judiciary.

The lower courts' rulings rest entirely on their opinion that the word "juror," standing alone, includes anyone who has been summoned to appear for a potential jury pool. If it were correct then the beginning of the phrase in MCL 750.120 stating "[a]ny person summoned as a juror" would be completely redundant because, according to the lower courts, the legislature had no need to include "any person summoned as" and should have just said "juror." But the legislature did not simply say "juror." It explicitly qualified that term by adding the language "any person summoned as." Clearly, MCL 750.120 proves that the lower courts' definition of the word "juror" is erroneous.

The lower courts' rulings violate a cardinal rule of statutory construction.

> It is axiomatic that "every word [in the statute] should be given meaning, and we should avoid a construction that would render any part of the statute surplusage or nugatory."

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Duffy v Michigan Dept. of Natural Resources, 490 Mich 198, 215; 805 NW2d 399 (2011) (internal citations omitted).

The lower courts' rulings rendered part of MCL 750.120 redundant, surplusage, nugatory, and completely unnecessary. The lower courts should have applied the familiar principles of statutory construction:

> As our Supreme Court has instructed: [T]he purpose of statutory construction is to discern and give effect to the intent of the Legislature. In determining the intent of the Legislature, this Court must first look to the language of the statute. The Court must, first and foremost, interpret the language of a statute in a manner that is consistent with the intent of the Legislature. **As far as possible, effect should be given to every phrase, clause, and word in the statute**. The statutory language must be read and understood in its grammatical context, unless it is clear that something different was intended. Moreover, when considering the correct interpretation, the statute must be read as a whole. Individual words and phrases, while important, should be read in the context of the entire legislative scheme. While defining particular words in statutes, we must consider both the plain meaning of the critical word or phrase and its placement and purpose in the statutory scheme. **A statute must be read in conjunction with other relevant statutes to ensure that the legislative intent is correctly ascertained.**

Adanalic v Harco Nat'l Ins Co, 309 Mich App 173, 179-180; 870 NW2d 731 (2015) (internal citations omitted) (emphasis added). The Michigan Supreme Court has even more specifically held that two consecutive statutes regarding the same subject matter should be read together.

> "It is elementary that statutes in *pari materia* are to be taken together in ascertaining the intention of the legislature, and **that courts will regard all statutes upon the same general subject matter as part of one system**." In this case, both MCL 691.1401 and MCL 691.1402 are in the GTLA, MCL 691.1401 immediately precedes MCL 691.1402, and MCL 691.1401 expressly [defines several terms] "[a]s used in this act...." See also *Remus v Grand Rapids*, 274 Mich. 577, 581, 265 N.W. 755 (1936) ("**In the construction of a particular statute, or in the interpretation of any of its provisions, all acts relating to the same subject, or having the same general purpose, should be read in connection with it, as together constituting one law**.")

Duffy, 490 Mich at 206-207 (2011) (emphasis added) (internal citations omitted).

There is no dispute that the lower courts erred by failing to read MCL 750.120 and MCL 750.120a together. It is obvious that the legislature intended the juror bribery statute (MCL

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750.120) to encompass every person summoned as a juror, but it did *not* intend the general jury tampering statute (MCL 750.120a) to be so broad as to include every person summoned. If the legislature intended these two statutes to mean the same thing, it would have written them using the same language. These two statutes, when read together, prove that jury tampering does not apply to everyone who has been summoned. If the lower courts believed the word "juror" should include every person summoned, the remedy to this issue is to ask the legislature to amend the statute, not to allow a wrongful prosecution of Mr. Wood or to act as a super-legislature.

Again, it is worth noting that no lower court has yet to acknowledge, address, or respond to any of Mr. Wood's arguments regarding his analysis of MCL 750.120 and MCL 750.120a. Instead of addressing these serious concerns, the lower courts ignored them. However, what is clear is that the legislature did not intend the word "juror" to include every person merely summoned. Again, if that was the legislature's true intent, it would have used the same language in both statutes. It did not. Therefore, Mr. Wood's conviction must be reversed and the case dismissed.

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C. The Lower Courts Misapplied the Elements of Jury Tampering.

The State has the responsibility of proving, beyond a reasonable doubt, each of the elements of the crime before a defendant may be found guilty. No crime exists unless all of its elements are proven. Based upon *People v Crawford*, 458 Mich 376, 389; 582 NW2d 785 (1998), the prosecution bears the burden of proving all of the elements of the crime, including that Mr. Wood attempted to influence "jurors in the case of *People v Yoder*." No "jurors in the case of *People v Yoder*" ever existed. Indeed, because the *Yoder* trial never occurred, there were no "jurors in the case of *People v Yoder*" at the time Mr. Wood exercised his Constitutionally protected right to disseminate the political pamphlets at issue on the public sidewalk to those individuals who chose to take and read them. Nor did anyone who received a pamphlet from Mr. Wood ever sit as

part of a jury in any case at any point in the future.[3] Again, it is impossible to influence "jurors in the case of *People v Yoder*" when no "jurors in the case of *People v Yoder*" ever existed.

Even if this Court were to accept the lower courts' definition of the word "juror" to mean any person summoned, Mr. Wood's conviction still must be dismissed. The element did not merely state that Mr. Wood had to improperly influence a juror, it stated that Mr. Wood had to improperly influence "jurors in the case of *People v Yoder*." Thus, it is not enough that Jennifer Johnson and Theresa DeVries were jurors (according to the lower courts), they also must have been jurors "**in the case of *People v Yoder***."

Since it is undisputed that no jurors were ever selected, empaneled, or sworn in the case of *People v Yoder*, it is impossible for Jennifer Johnson or Theresa DeVries to have been jurors in the *Yoder* case. It is also undisputed that none of the summons the individuals received in the mail stated that they were being summoned for the *People v Yoder* case (Trial Tr., Vol. II(b), pg. 17).

The proposed jury instructions, rejected by the lower court, provided by the Prosecutor from Michigan's Non-Standard Jury Instructions-Criminal (written by Michigan Court of Appeals Judge William B. Murphy) also supports Mr. Wood's position. The original proposed jury instruction template stated for the first element:

> *That [name juror involved] was a juror in the case of [name case in which juror sat].*

See Exhibit F. Even the proposed jury instruction acknowledged that the juror must have "sat" in the case. Thus, the juror must have been more than merely summoned. This is consistent with both Mr. Wood's definition of the word "juror" and his claim that the juror must actually be sitting in the *Yoder* case. Further, the jury instruction template is completely incompatible with the lower

[3] First, the Circuit Court acknowledged in fn. 2 on pg. 4 of its opinion that the people summoned that day were only "potential jurors." Second, to be clear, the *Yoder* trial was never held at any point in time in the future.

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courts' interpretation of the statute. If there had been two trials scheduled that day, but neither of them occurred, it would be impossible to determine in which of the two cases, if any, Jennifer Johnson sat. This reveals the lower courts' unjustified belief that merely receiving a summons in the mail determines in what case a potential juror will sit, which is a necessary element of the crime.

Mr. Wood requested that the jury instruction for the first element state:

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

(Pre-Trial Tr., pg. 7). The trial court gave no reasoning, analysis, or discussion and summarily denied Mr. Wood's request (Pre-Trial Tr., pg. 9). Similarly, the Circuit Court gave no reasoning, analysis, or discussion as to why the District Court was correct on this point. This was also reversible error.

The Michigan Legislature designed the jury tampering statute to prevent people from influencing an actual juror on an actual jury sitting on an actual case. Had the legislature intended to include within the ambit of the crime people who might possibly serve on a jury that might possibly exist at some future time, it would not have used language so clearly stating otherwise.

If this Court nevertheless believes ambiguity in the statute exists, the rule of lenity requires this Court to interpret any ambiguity in a criminal statute in favor of the defendant. See *United States v Bass*, 404 US 336 (1971); *McBoyle v United States*, 283 US 25 (1931); *United States v Gradwell*, 243 US 476 (1917). Again, if the Michigan Legislature intended this statute to sweepingly apply to potential, non-existent jurors in a potential, non-existent jury, the Legislature would have made that clear in the statute. Its failure to do so prohibits a broad application of the language used under the rule of lenity.

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No one disputes that actual jurors sworn to decide an actual case should be free from outside, improper influence. That is not what this case is about. Mr. Wood believes the language of the statute is plain and obvious; a juror does not exist until she is sworn. However, after a person is sworn and becomes a juror, she is absolutely protected by the jury tampering statute from any person who would attempt to improperly influence her. This is consistent with the Michigan Supreme Court holdings in *Jochen* and *Cain*. It is the role of the legislature, not the courts, to amend the law to cover a person merely summoned to possibly serve as a potential juror.

Further, the lower courts prohibited Mr. Wood from making any argument to the jury that the *Yoder* trial never occurred and therefore there were no "jurors in the case of *People v Yoder*" (Trial Tr., Vol. II(a), pg. 10). In other words, Mr. Wood was prohibited from arguing an element of the offense to the jury. Inexplicably, the trial court held that Mr. Wood arguing the actual language of the elements would be the same as adding an extra element that was not required for a conviction (Trial Tr., Vol. II(a), pg. 10). Not only did the trial court use improper elements for the crime, it ruled that Mr. Wood could not argue the actual words of the trial court's own erroneous elements to the jury (Trial Tr., Vol II(a), pg. 10).

To add insult to injury, the trial court permitted the Prosecutor to argue to the jury that it was irrelevant that the *Yoder* trial did not occur, but prevented Mr. Wood from addressing that very same issue in closing arguments (Trial Tr., Vol. II(b), pgs. 99-100). During the Prosecutor's closing argument, Mr. Wood attempted to address this issue at the bench, however, the trial court did not put anything on the record and indicated at the bench that it was proper for the Prosecutor to argue it was irrelevant that no trial occurred while preventing the defense from responding (Trial Tr., Vol. II(b), pgs. 99-100). In addition, while these issues were raised to the Circuit Court on appeal, the Court provided no discussion or analysis on this issue and summarily stated that the trial court did not err.

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The trial court not only rewrote the requirements of the jury tampering statute, it deprived Mr. Wood of his right to a fair trial by refusing to allow him to argue the elements of the crime. The lower courts redefined the word "juror" beyond what it has ever meant in Michigan's history and ignored the requirement that there be actual jurors in an actual case. In short, the lower courts rewrote the statute in a way that would ensure Mr. Wood's conviction.

For all of these reasons, Mr. Wood's conviction must be reversed, and the case must be dismissed.

II. THE STATE VIOLATED MR. WOOD'S FIRST AMENDMENT RIGHT TO FREEDOM OF SPEECH.

A. The First Amendment Protects Mr. Wood's Right to Distribute Brochures on a Public Sidewalk.

Judges, prosecutors, and law enforcement officials must discharge their duties within the confines of our Constitution. Citizens hold many differing political views, and they often hold them passionately. They may express those views even in ways that offend government officials. The price for our freedom is that we might be subjected to views that offend us. Democracy is a messy business, and we, as a people, have freely chosen it over the relative tidiness of tyranny.

The First Amendment to the United States Constitution protects citizens against government action substantially interfering with freedom of speech or assembly. US Const, Am 1. The United States Supreme Court currently holds that this limit on the exercise of government power applies to action by state entities. *Cantwell v Connecticut*, 310 US 296 (1940). Moreover, our state Constitution provides similar protection in Article I, Section 6:

> Every person may freely speak, write, express and publish his views on all subjects, being responsible for the abuse of such right; and no law shall be enacted to restrain or abridge the liberty of speech or of the press.

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The United States Supreme Court has clearly affirmed the principle that when a criminal prosecution is based on an unconstitutional application of a statute, it is proper for the lower court to dispose of the criminal case through a motion to dismiss:

> So if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.

Marbury v Madison, 5 US 137, 178 (1803).

The United States Supreme Court calls these kinds of hand-distributed political pamphlets "historical weapons in the defense of liberty." *Schneider v State of New Jersey*, 308 US 147, 162 (1939). By prosecuting Mr. Wood, the State engaged in nothing less than suppression of protected free speech. Few legal principles are more clear than the one stating that "handing out leaflets in the advocacy of a politically controversial viewpoint… is the essence of First Amendment expression"; "[n]o form of speech is entitled to greater constitutional protection." *McCullen v Coakley*, 134 SCt 2518, 2536 (2014) (quoting *McIntyre v Ohio Elections Comm'n*, 514 US 334, 347 (1995)). The Court went on to state that "[w]hen the government makes it more difficult to engage in these modes of communication, it imposes an especially significant First Amendment burden." *Id*. Thus, Mr. Wood's activities are protected by the First Amendment.

Where the government regulates expressive activity by means of a criminal sanction, the government appropriately bears the burden of proving that its actions pass constitutional muster. *Perry Ed Assn v Perry Local Ed Assn*, 460 US 37, 45-46 (1983). The government's burden to produce evidence is not satisfied by mere speculation or conjecture. Instead, it must offer evidence establishing that the problem it identifies is real and that the speech restriction will alleviate that problem to a material degree *without* unconstitutionally restricting protected First Amendment activity. *Edenfield v Fane*, 507 US 761, 770-771 (1993); see also *United States v Playboy Entm't*

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Group, 529 US 803 (2000). "First Amendment standards … 'must give the benefit of any doubt to protecting rather than stifling speech.'" *Citizens United v Federal Election Comm'n*, 130 SCt 876, 891 (2010) (quoting *Federal Election Comm'n v Wisconsin Right To Life, Inc*, 551 US 449, 469 (2007) (opinion of Roberts, C.J.)).

Mr. Wood's political speech is at the core of the First Amendment's protection because it deals with matters of public concern. "Speech deals with matters of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community, or when it is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public." *Snyder v Phelps*, 131 SCt 1207, 1216 (2011) (internal quotations omitted). Speech on matters of public concern is at the heart of the First Amendment's protection. *Id*. at 1215. "The First Amendment reflects 'a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.'" *Id*. (quoting *New York Times Co v Sullivan*, 376 US 254, 270 (1964)). "The arguably 'inappropriate or controversial character of a statement is irrelevant to the question whether it deals with a matter of public concern.'" *Id*. (quoting *Rankin v McPherson*, 483 US 378, 387 (1987)).

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); *Bridges v State of California*, 314 US 252 (1941) (holding that the First Amendment protects out-of-court publications pertaining to a pending case just as much as it protects other speech on issues of public concern). Further, neither Mr. Wood's general awareness of *People v Yoder*, nor his previous presence in the courtroom at a pre-trial hearing, negate his First Amendment rights.

Not only is the content of Mr. Wood's speech deserving of special protection, but restrictions on the method through which he delivered his message also historically require the

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highest scrutiny possible in order to protect our First Amendment rights. Indeed, the United States Supreme Court has stated, "[l]eafletting and commenting on matters of public concern are classic forms of speech that lie at the heart of the First Amendment," *Schenck v Pro-Choice Network*, 519 US 357, 377 (1997), and that "one-on-one communication" is "the most effective, fundamental, and perhaps economical avenue of political discourse." *Meyer v Grant*, 486 US 414, 424 (1988). When the government imposes restrictions on "these modes of communication, it imposes an especially significant First Amendment burden." *McCullen*, 134 SCt at 2536.

Mr. Wood's speech is to be afforded the highest protection under the First Amendment both because of its content and because of its mode of delivery. Expressive activity need not make noise to be "speech" for purposes of First Amendment protection. The Court has long considered the distribution of literature to be an expressive activity entitled to the core protection of the First Amendment. See, e.g., *Schneider*, 308 US at 162; *McCullen*, 134 SCt at 2536; *Jamison v Texas*, 318 US 413, 416 (1943) (one rightfully on a public street carries with him there his First Amendment right to the "communication of ideas by handbills"); *Int'l Soc'y for Krishna Consciousness, Inc v Lee*, 505 US 672, 690 (1992) (O'Connor, J., concurring).

Mr. Wood was arrested for engaging in political speech in the most protected kind of public forum, a public sidewalk. The United States Supreme Court held:

> "public way[s]" and "sidewalk[s]." …. **occupy a "special position in terms of First Amendment protection" because of their historic role as sites for discussion and debate.** *United States v Grace*, 461 U.S. 171, 180, 103 S.Ct. 1702, 75 L.Ed.2d 736 (1983). **These places--which we have labeled "traditional public fora" --" 'have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions**.'" *Pleasant Grove City v Summum*, 555 U.S. 460, 469, 129 S.Ct. 1125, 172 L.Ed.2d 853 (2009) (quoting *Perry Ed. Assn. v Perry Local Educators' Assn.*, 460 U.S. 37, 45, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983)).

McCullen, 134 SCt at 2528-2529 (2014) (emphasis added).

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Mr. Wood's speech was entitled to the highest First Amendment protection. The State did not afford Mr. Wood the constitutional protection to which his speech was entitled. Instead, the State arrested and prosecuted him solely based on the Prosecutor and Judge Jaklevic's disagreement with his topic and viewpoint.

B. The State's Action was Content-Based.

"If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." *Texas v Johnson*, 491 US 397, 414 (1989). State officials in this case unconstitutionally abused the power of the State to arrest and charge Mr. Wood with crimes in order to harass, intimidate, and silence him because they disagree with the content of his message.

The State's arrest and prosecution of Mr. Wood was a content-based restriction on speech motivated solely by animus for his message. Indeed, Judge Jaklevic testified at length about all of the "concerns" he had regarding the content of the information contained in Mr. Wood's nefarious piece of paper. Judge Jaklevic strongly disagreed with the content in Mr. Wood's brochure. For example:

- He was concerned that it stated that jurors should vote according to their conscience (Trial Tr., Vol. I, pg. 293).
- He read the pamphlet and thought "this is not supposed to be happening" (Trial Tr., Vol. I, pg. 276).
- He was concerned that it stated that judges only rarely fully inform jurors of their rights and that jurors have the right to judge the law itself (Trial Tr., Vol. I, pg. 293).
- He was concerned that the content in the brochure conflicted with Michigan's jury instructions and oath (Trial Tr., Vol. I, pg. 294).
- He was concerned because it encouraged jurors to consider whether the law was being justly applied (Trial Tr., Vol. I, pg. 295).

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- He was concerned because it encouraged jurors to consider whether the Bill of Rights were honored in the arrest (Trial Tr., Vol. I, pg. 295).

Further, Judge Jaklevic ultimately conceded that he was concerned with the content in the brochure (Trial Tr., Vol. I, pg. 309) (emphasis added):

> ***Q*. Isn't that the content of the pamphlet?**
> ***A*. That was one of my concerns.**

Contrary to Judge Jaklevic's concerns, the United States Supreme Court holds:

> [W]e are here confronted with a statute which, by its own words and as applied, **purports to punish mere advocacy and to forbid, on pain of criminal punishment, assembly with others merely to advocate the described type of action. Such a statute falls within the condemnation of the First and Fourteenth Amendments.**

Brandenburg v Ohio, 395 US 444, 449 (1969) (internal citations omitted) (emphasis added).

Thus, even though the State disagrees with Mr. Wood's criticism and interpretation of the law regarding the authority of juries, it has no power to silence his speech. "One of the prerogatives of American citizenship is the right to criticize public men and measures—and that means not only informed and responsible criticism but the freedom to speak foolishly and without moderations." *Baumgartner v United States*, 322 US 665, 673-674 (1944).

Arbitrarily arresting and charging Mr. Wood on unfounded criminal charges to punish him for expressing a contrary opinion shamelessly violates the First Amendment; and the lower courts' complete disregard for the First Amendment is equally repugnant. The government officials' unlawful animus was further shown by punishing his speech with an excessive, punitive, and unconstitutionally high bond of $150,000.00 two days before Thanksgiving, despite Mr. Wood being a married man with seven children who owned a business in the community and was absolutely no flight risk whatsoever.

The United States Court of Appeals for the Sixth Circuit recently issued an *en banc* decision upholding speech in a public forum in the case of *Bible Believers v Wayne County*, 805

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F3d 228 (6th Cir 2015). In that case, the Court reviewed allegedly offensive speech on another Michigan public sidewalk. The Court cogently held that "[I]f it is the speaker's opinion that gives offense, that consequence is a reason for according it constitutional protection." *Id*. at 243. The Court held that **"[w]hen confronted by offensive, thoughtless, or baseless speech that we believe to be untrue**, **the 'answer is [always] more speech**.'**"** *Id*. (emphasis added).

> Finally, in reference to speech being unlawful, the Court held that:
>
> Because **"[t]he mere tendency of speech to encourage unlawful acts is not a sufficient reason for banning it**," speech that fails to specifically advocate for listeners to take "any action" cannot constitute incitement.

Id. at 245 (internal citations omitted) (emphasis added).

The Trial court cited *nothing* in support of its opinion that Mr. Wood's conduct was not protected by the First Amendment (Trial Tr., Vol. II(a), pgs. 39-41). In addition, the Circuit Court failed to apply the proper First Amendment content-based analysis (Exhibit A, pg. 3). The Circuit Court's entire content-based analysis irrelevantly revolved around the interaction between Mr. Wood and the potential jurors walking on the sidewalk that day. However, such an analysis is highly inapt because a proper content-based analysis must examine the State's conduct and action taken against Mr. Wood, not solely what he said to people on the public sidewalk that day. When determining whether the State's action is unconstitutional, it seems rather obvious that it is the State's action that must be analyzed. See, e.g. *Texas v Johnson, supra; Reed v Town of Gilbert, Ariz*, 135 S Ct 2218 (2015). However, the lower courts failed to conduct such an analysis. Further, the lower courts committed reversible error by completely ignoring the plethora of evidence of the State's content-based actions which deprived Mr. Wood of his First Amendment rights.

In this case, it cannot be argued that the FIJA pamphlet encouraged people to commit an unlawful act. Mr. Wood was sharing information that a juror is entitled to vote their conscience; the same instruction every juror receives in every criminal case (MI CJI 3.11(5)). Truly, instructing

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a person to follow his conscience could just as much encourage a juror to convict a guilty man who is trying to evade justice as it could encourage a juror to acquit a defendant from an unlawful prosecution.

Even if this Court accepts the proposition that it is an improper act for jurors to violate their juror oath, no law, by statute or at common-law, makes it a crime for a person to follow his or her conscience—even if it means disregarding the juror's oath. In fact, case law clearly affirms that jurors have the power to do so. See *People v St Cyr,* 129 Mich App 471; 341 NW2d 533 (1983).

The State's censure of Mr. Wood's speech occurred on a public sidewalk, a quintessential public forum. See *Hague v CIO,* 307 US 496, 515 (1939). The regulation of his expression must, therefore, comply with the following constitutional requirements for a traditional public forum:

> 1) the regulation must not be content based - unless it can survive strict scrutiny; and
>
> 2) the regulation must be a valid time, place and manner regulation (i.e., among other things, the government's action must leave open an adequate alternative place for the speech).

Heffron v International Soc'y of Krishna Consciousness Inc, 452 US 640, 648 (1981); *Perry Ed Assn v Perry Local Ed Assn,* 460 US 37 (1983).

First, the government's regulation of Mr. Wood's expression was content-based. The District Court, Judge Jaklevic, Magistrate Lyons, Prosecutor Thiede, and Assistant Prosecutor Hull, all objected to the pamphlet being shared by Mr. Wood because of its message and the information it contained. The pamphlet said nothing about any specific case pending before the court that day, nor did it direct any juror to vote a specific way. See Prosecutor's Trial Exhibit 1. To qualify as content-neutral regulation of speech, the government regulation must be both:

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1) subject-matter-neutral, (i.e., government must not regulate speech based on the topic of the speech), and

2) viewpoint-neutral, (i.e., government must not regulate speech based on the ideology of the message).

Perry Ed Assn, 460 US at 45.

Here, the State's action was neither. It was the subject-matter and viewpoint Mr. Wood expressed that led to the State action suppressing his speech. Prosecutor Thiede demonstrated in his oral argument on December 10, 2015 that it was the content of the brochure that offended him (Pre-lim Tr., December 10, 2015, pg. 13). He was upset by the idea of a potential juror being told to vote his or her conscience (Pre-lim Tr., pgs. 13-14). In fact, he said that there were some consciences out in the public that he would not want voting on a jury (Pre-lim Tr., pg. 14). Prosecutor Thiede even went so far as to say that if people are exposed to the content of the brochure, it would create a lawless nation where terrorists and clinic bombers could potentially go free (Pre-lim Tr., pg. 13).

If Mr. Wood had been advancing a view that jurors must only decide cases by following the instructions as given to them by the court, there can be little doubt that the State would not have arrested and prosecuted him. Prosecutor Thiede admitted to the State's content-based censorship in Court (Mot. to Dismiss Tr., pg. 27):

> Counsel is absolutely right that if he was out here passing out political pamphlets for a—a candidate, we would've had nothing to say about it. If he would've had pamphlets generally speaking about the constitution, we would've had nothing to say about it. We would've done nothing with those things because that's [his] first amendment right.

Further, the Prosecutor also admitted to his content-based justification on the record:

> And, of course, **the content of this particular pamphlet was one of the considerations** there in that regard simply because it said you can't trust the judges because they're not going to tell you the truth.

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Mot. to Dismiss Tr., pg. 22 (emphasis added).

The Circuit Court erred by stating that *Outdoor Sys, Inc v City of Clawson*, 262 Mich App 716; 686 NW2d 815 (2004) supports its inaccurate analysis of the State's content-based actions (Exhibit A, pg. 2). The Circuit Court stated:

> Therefore, if the government does not regulate speech based on content, the law is content neutral and will survive constitutional inquiry.

Id. at 722. In other words, the Circuit Court held that any content-neutral law will be constitutional. According to this standard, a city could ban all speech on public sidewalks as long as the ban was "content-neutral." Moreover, the State could ban all speech in public, so long as the ban was "content-neutral" according to this standard. Content neutrality does not function as a silver bullet to the First Amendment. Further, no such holding, statement, quotation, or sentiment exists in the *Outdoor* case. The *Outdoor* case actually states the exact opposite. The Court in *Outdoor* held that the State action was content-neutral, yet it still violated the First Amendment and was struck down. *Id*. at 724. In addition, the *Outdoor* Court explicitly held:

> Nonetheless, even a content neutral restriction on speech must be narrowly tailored to achieve a significant governmental interest, meaning that it "directly advances" the governmental interest and "reaches no further than necessary to accomplish the given objective.

Id. at 723 (internal citations omitted).

The *Outdoor* Court further held that "[g]overnment regulation of expressive activity is content neutral **so long as it is 'justified <u>without reference</u> to the content of the regulated speech**." *Id*. at 722 (emphasis added). This entire case began because Judge Jaklevic saw the brochure Mr. Wood was handing out that day including the speech it contained and worked with his deputy and Prosecutor Theide to make sure Mr. Wood was arrested and charged. Indeed, the primary piece of evidence at the trial submitted by the State was Mr. Wood's brochure, and large portions of the trial were dedicated to its contents.

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Instead of justifying Mr. Wood's prosecution without reference to the content of his speech, the State rested its entire case upon such a justification. The Circuit Court clearly erred by misapplying the *Outdoor* case to support an untenable position. In fact, the *Outdoor* case does the opposite, it supports Mr. Wood's position that the State acted unlawfully.

Despite all of the evidence of content-based censorship, the lower courts failed to provide any proper analysis as to whether the State action was content-based (Trial Tr., Vol. II(a), pgs. 39-41). The lower courts' lack of proper First Amendment analysis is very troubling. Instead, the trial court focused on completely irrelevant facts such as where Mr. Wood was located on the public sidewalk or whether he was blocking the sidewalk to determine whether there was a First Amendment violation (Trial Tr., Vol. II(a), pg. 40). The Circuit Court only analyzed Mr. Wood's interaction with other people on the public sidewalk that day, instead of correctly analyzing the State action in this case. The lower courts committed reversible error by not providing any proper First Amendment content-based analysis.

The Circuit Court acknowledged that content-based State action is presumptively unconstitutional (Exhibit A, pg. 2; citing *RAV v St Paul*, 505 US 377; 395 (1992)). The Circuit Court then cited *Reed, supra*, which held:

> 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, 135 S Ct at 2226-2227 (emphasis added). Despite the Circuit Court using this direct quote from *Reed*, it incongruently held that because of the function and purpose behind Mr. Wood handing out his brochures (allegedly influencing a potential juror), his speech does not deserve First Amendment protection (Exhibit A, pg. 2). However, a citizen does not forfeit his First Amendment rights merely because the State has alleged a nefarious purpose behind his speech.

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The State still must engage in the proper constitutional analysis to determine if the speech is protected. Both lower courts utterly failed to do so.

One of the most glaring errors by the lower courts is that they neither analyzed, nor applied, any constitutional standard (Strict Scrutiny, Intermediate Scrutiny, or even Rational Basis) to the State's conduct. Despite the overabundance of evidence, including the State's own acknowledgment on the record and in open court of the importance of the content of Mr. Wood's speech, the Circuit Court conclusively held that "[t]he pamphlets' content is simply not the issue" and moved on (Exhibit A, pg. 3). Citing constitutional standards for review, and never discussing such standards ever again, does not serve as a proper constitutional analysis. This lack of analysis, in and of itself, is grounds for reversal.

Finally, as outlined above, the silencing of pure speech, either verbal or written, deserves strict scrutiny. Indeed, the distribution of political pamphlets is a textbook example of such speech.[4] However, the lower courts committed reversible error by reclassifying Mr. Wood's speech as mere conduct, concluding that it was not protected, and failing to provide any further analysis. Even if this Court were to agree that Mr. Wood's speech was mere conduct (which Mr. Wood does not concede), it would still require a strict scrutiny analysis because it was conduct that communicates.

Texas v Johnson, *supra*, mandates the reversal of the Circuit Court. In *Johnson*, the Defendant was prosecuted for burning a flag in public. The majority held that the burning of the flag was conduct that communicates and thus required a strict scrutiny analysis. The Court held

[4] Again, few legal principles are more clear than the one stating that "handing out leaflets in the advocacy of a politically controversial viewpoint… is the essence of First Amendment expression"; "[n]o form of speech is entitled to greater constitutional protection." *McCullen v Coakley*, 134 SCt 2518, 2536 (2014) (quoting *McIntyre v Ohio Elections Comm'n*, 514 US 334, 347 (1995)).

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that the State's action of prosecuting Mr. Johnson did not survive a strict scrutiny analysis and his conviction was reversed. However, Justice Stevens, in his dissent, stated:

> **The content of respondent's message has no relevance whatsoever to the case.** The concept of "desecration" does not turn on the substance of the message the actor intends to convey, but rather on whether those who view the act will take serious offense. . . . **The case has nothing to do with "disagreeable ideas[.]" It involves disagreeable conduct that, in my opinion, diminishes the value of an important national asset.**

Johnson, 491 US at 438 (internal citations omitted) (emphasis added). The Circuit Court's analysis is identical to Justice Stevens' dissent.

In this case, the Circuit Court stated:

> 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.**

Exhibit A, pg. 3 (internal citations omitted) (emphasis added). Both Justice Stevens in his dissent and the Circuit Court here only focused on the alleged intent of the Defendant and the effect on the people who heard the speech. They both believed that such an intent negated the Defendants' First Amendment rights and thus the content of the speech was irrelevant. The United States Supreme Court rejected such a restrictive standard, and this Court must do so as well. The Circuit Court failed to recognize that conduct that communicates is still deserving of First Amendment protections.

The *Johnson* majority held:

> In deciding whether particular conduct possesses sufficient communicative elements to bring the First Amendment into play, we have asked whether [a]n intent to convey a particularized message was present, and [whether] the likelihood was great that the message would be understood by those who viewed it.

Johnson, 491 US at 404. The Court acknowledged that, of course spoken and written words were protected, but also held that other forms of speech were protected, such as, wearing black armbands

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to protest the military, conducting a "sit-in" to protest an issue, and picketing. Despite the Circuit Court's attempt to recharacterize Mr. Wood's speech as conduct, it is undisputed (and even the Circuit Court recognized) that Mr. Wood was conveying a message regarding jury rights and he was educating anyone he encountered that day. It is clear that Mr. Wood did have a particularized message (information and history about jury rights), and it was also clear that the people who received his brochure would have understood that message. Therefore, Mr. Wood was engaged in conduct that communicates.

The *Johnson* Court further held:

> **[The government] may not, however, proscribe particular conduct because it has expressive elements.** [W]hat might be termed the more generalized guarantee of freedom of expression makes the communicative nature of conduct an inadequate basis for singling out that conduct for proscription. **A law directed at the communicative nature of conduct must, like a law directed at speech itself, be justified by the substantial showing of need that the First Amendment requires.**

Id. at 406 (emphasis added). In this case, the Circuit Court wrongfully made a distinction between speech and conduct, and thus held that Mr. Wood's speech was not deserving of protection. However, such a distinction between speech and conduct that communicates is not found in our laws and history. The *Johnson* Court held:

> The State's argument cannot depend here on the distinction between written or spoken words and nonverbal conduct. That distinction, we have shown, is of no moment where the nonverbal conduct is expressive, as it is here, and where the regulation of that conduct is related to expression, as it is here.

Id. at 416. Clearly, the Circuit Court committed reversible error by reclassifying Mr. Wood's speech as non-communicative and unprotected conduct. Such a holding must be overturned. The State cannot punish Mr. Wood for handing out his brochures any further than it could for Mr. Wood standing on that public sidewalk and reading his brochure aloud. Mr. Wood's speech

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necessitates a proper strict scrutiny analysis, an analysis that has yet to be done by any lower court in this case.

It is clear that the government actors in this case arrested and charged Mr. Wood because of the content of his pamphlet. It was Mr. Wood's peaceful expression of his political message that the government targeted for censorship via his arrest, imprisonment, and criminal prosecution. The State, therefore, regulated Mr. Wood's speech in a content-based way and must, therefore, survive a strict scrutiny analysis. It cannot do so.

C. First Amendment Strict Scrutiny Analysis

Content-based regulation of expression by government authorities invokes strict scrutiny, the highest standard of review in constitutional analysis. *Turner Broadcasting System v FCC,* 512 US 622, 641 (1994). Under strict scrutiny the government must prove:

1) that it had a compelling governmental interest in regulating the speaker's speech, and

2) that it used the least restrictive means possible to serve that compelling interest.

See, e.g., *McCullen,* 134 SCt at 2530. Further, the U.S. Supreme Court held:

> Content-based prohibitions, enforced by severe criminal penalties, have the constant potential to be a repressive force in the lives and thoughts of a free people. To guard against that threat the Constitution demands that content-based restrictions on speech be presumed invalid, and that the Government bear the burden of showing their constitutionality.

Ashcroft v ACLU, 542 US 656, 660 (2004) (internal citations omitted).

Mr. Wood concedes that the State has a compelling interest to prevent jury tampering. What Mr. Wood does not concede is that the State has a compelling interest to criminalize Mr. Wood's distribution of a juror rights pamphlet on a public sidewalk. Mr. Wood does not concede that the State can unconstitutionally redefine the jury tampering statute (after-the-fact) to prohibit highly protected expressive conduct. What he also does not concede is that such a compelling interest relieves the State of its duty to use the least restrictive means. Finally, he does not concede

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that a compelling interest to prevent jury tampering bestows upon the State *carte blanche* to use any means necessary.

Moreover, the Circuit Court inaccurately stated that Mr. Wood conceded in his appellate brief that the Jury Tampering statute "does not regulate content of speech in any way" (Exhibit A, pg. 3, fn. 1). Mr. Wood stated in his first appellate brief that the state has a compelling interest to prevent jury tampering, which is only one aspect of one prong of the strict scrutiny analysis. Mr. Wood did not, at any point in time, concede that the jury tampering statute does not regulate the content of speech in any way.

The issue here is not the constitutionality of the jury tampering statute *as it was originally written*; the issue is whether the application of the statute to Mr. Wood's speech was constitutional. Indeed, the Court of Appeals has held:

> While the facial-challenge standard is extremely rigorous, an as-applied challenge is less stringent and requires a court to analyze the constitutionality of the statute against a backdrop of the facts developed in the particular case.

People v Hallak, 310 Mich App 555, 567; 873 NW2d 811 (2015) (overruled on unrelated grounds regarding a sentencing issue).

Therefore, the proper question is whether the State had a compelling interest to override Mr. Wood's First Amendment rights and prevent him from handing out brochures on a public sidewalk. It clearly does not.

To be clear, Mr. Wood is not facially challenging the constitutionality of the jury tampering statute as it was originally written. MCL 750.120a. Mr. Wood is challenging the statute as it was applied in this case. He is challenging the lower courts' redefinition of words and omission of elements, in order to secure Mr. Wood's conviction. Appellant can find no case law applying the statute in such an inappropriate way. In doing so, the State violated Mr. Wood's rights and unconstitutionally silenced his free speech in violation of *People v Wilder, supra*.

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Out of all of the issues required in a First Amendment analysis, the only one the District Court addressed was whether the State had a compelling interest to prevent jury tampering. The Circuit Court failed to address either prong of the strict scrutiny analysis, or for that matter, any constitutional test. Instead, as stated above, the Circuit Court mistakenly held that content-neutrality permits all State restrictions on speech. The lower courts analyzed irrelevant facts, provided no proper analysis, and consequently reached the wrong conclusion. Further, the lower courts erred by providing no case law, statute, rule, or any other authority to support their conclusory position that the State had a compelling interest to silence Mr. Wood. At least the District Court acknowledged that Mr. Wood's rights deserved a strict scrutiny analysis by mentioning that the State had a compelling interest (Trial Tr., Vol. II(a), pg. 40). The Circuit Court failed to use any constitutional standard in its analysis.

Even if the government had a compelling interest in ensuring *potential jurors* are not informed of the powers they rightfully and lawfully possess (which we do not concede), the government failed to use the least restrictive means available to accomplish this interest. The First Amendment requires that the government use the least restrictive means possible to further a compelling state interest if it wishes to limit or infringe on a fundamental right, such as freedom of speech. US Const, Am 1; *People v DeJonge*, 442 Mich 266; 501 NW2d 127 (1993).

Here the State not only failed to use the least restrictive means, it used the most restrictive. Indeed, the State exercised the nuclear option by using the most extreme, excessive, and punitive route possible by arresting Mr. Wood, charging him with a felony, and setting an unconstitutionally high bond. By arresting and prosecuting Mr. Wood, the State engaged in overt censorship. Both the Federal and State Constitutions require that this Honorable Court reject such oppression.

There were many less restrictive options available to Mecosta County if it was truly concerned about pamphlets being distributed to the public near the courthouse. The government

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could have, for example, employed a valid time, place, and manner regulation that controlled, not the content of Mr. Wood's speech, but the manner in which Mr. Wood safely manifested it. The county could impose a policy where people may only hand out information at certain times. The county could restrict the distribution of materials on mornings when a potential jury has been summoned. The county could set up a designated protesting/pamphleteering area. The court could utilize curative jury instructions if it were concerned about a specific jury. Indeed, Michigan's jury instructions could be utilized by a court to instruct jurors to not consider any outside information.[5] Again, neither lower court conducted a least restrictive means analysis. Here, no less restrictive means were ever implemented by the State in this case.

Indeed, both Therese Bechler, a clerk for Mecosta County, and Court Officer Roberts indicated that there was no policy regarding people distributing pamphlets (Trial Tr., Vol. I, pg. 185; Trial Tr., Vol. I, pgs. 208-209). The State's failure to utilize any type of less restrictive means prior to prosecuting Mr. Wood violates his First Amendment rights.

Most troublesome of all, the lower courts failed to analyze, or even mention, whether any less restrictive means were available or used in this case (Trial Tr., Vol. II(a), pgs. 39-41, Exhibit A). This is reversible error.

D. This Court Must Construe the Jury Tampering Statute Narrowly.

The Circuit Court held that all that matters is whether the Defendant attempted, or that his purpose was, to influence a juror (Exhibit A, pg. 3). The South Dakota Attorney General made the exact same argument in *State v Springer-Ertl*, 2000 SD 56, 610 NW2d 768 (SD 2000).[6] However, the South Dakota Supreme Court *affirmed* that the Defendant must receive a new trial because of

[5] See M Crim JI 2.16.
[6] The Prosecutor first raised and previously relied numerous times on the *Springer-Ertl* case of to support his position.

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the serious First Amendment implications and *rejected* the South Dakota Attorney General's arguments. *Springer-Ertl*, and its analysis of current United States Supreme Court precedent, supports Mr. Wood's position that his speech is protected by the First Amendment. The *Springer-Ertl* Court held:

> **Americans have long maintained the right to challenge and criticize government in its handling of affairs, including the arrests and trials of those charged as criminals.** Indeed, the freedom to speak in opposition to acts of law enforcement is "one of the principal characteristics by which we distinguish a free nation from a police state."

Id. at 774 (emphasis added) (internal citations omitted).

> **First Amendment protections become meaningless if one can be punished for merely speaking on a pending case to a public that may contain future jurors.** In this case, where the only communication charged as criminal was **made in a public setting**, it is vital to fix a precise standard for when the State may lawfully punish data dissemination about a pending trial. If an **overbroad** interpretation of a statute infringes on the right of free speech, it tends to discourage the exercise of that right. "**Ambiguous meanings cause citizens to' "steer far wider of the unlawful zone" ... than if the boundaries of the forbidden areas were clearly marked.**'"

Id. at 775 (internal citations omitted) (emphasis added).

It is apparent that the Circuit Court believes that Michigan's Jury Tampering statute should be read expansively. However, the South Dakota Supreme Court, citing the United States Supreme Court, held:

> In First Amendment cases, appellate courts must "make an independent examination of the whole record" to ensure that "the judgment does not constitute a forbidden intrusion on the field of free expression." **It is incumbent on us, therefore, to give our jury tampering statute a *narrowing* construction sufficient to keep it from encroaching on First Amendment liberties.**

Id. (emphasis added) (internal citations omitted).

> Although our criminal justice system retains the power to protect the integrity of its processes, in "borderline instances where it is difficult to say upon which side the alleged offense falls, ... **the specific freedom of public comment should weigh heavily against a possible tendency to influence pending cases**." When it is alleged that an attempt to influence jurors was made by addressing the public, **the**

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> **balance must be inclined in favor of free speech by *narrowly* construing our statute.**

Id. at 777 (emphasis added) (internal citations omitted).

By contrast, the Circuit Court held that Michigan's jury tampering statute should be construed so broadly as to encompass any speech that might tend to influence any person summoned as a potential juror.

> That a future juror might somehow hear or read of someone's public statement cannot feasibly constitute the precisely tailored restriction necessary to justify punishing speech otherwise protected by the First Amendment. If that conduct can be punished, then why not other types of public comment about a pending case? A letter to the editor, a newspaper op-ed piece, a television or radio commentary, a political speech, even an aside to one's neighbor, all may be latent criminal acts if prospective jurors might learn of them. **If this is how the statute is meant to operate, then what a fearful instrument it is to repress criticism and stifle debate.**

Id. at 776 (emphasis added).

It is also significant that after the South Dakota Supreme Court ordered that the Defendant receive a new trial, the charges against her were dismissed even though the South Dakota jury tampering statute is substantially broader than Michigan's statute:

> Attempt to influence jurors, arbitrators, or referees--Felony. Any person who attempts to influence a juror, **or any person summoned or drawn as a juror**, or chosen an arbitrator or appointed a referee, in respect to any verdict or decision **in any cause or matter pending, or about to be brought before such person . . .**

SDCL 22-11-16 (now known as SDCL 22-12A-12) (emphasis added).

South Dakota's statute thus specifically covers jurors as well as any person summoned or drawn as a juror. Michigan has no such language in its statute. The lower courts in this case have unconstitutionally rewritten Michigan's jury tampering statute according to what they believed it should prohibit, rather than interpreting it according to the plain language of the statute and current legal precedent. If the lower courts truly believed the jury tampering statute should include

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summoned, potential jurors, then it is the role of the legislature to amend the statute, not the judiciary.

Mr. Wood requests that this Court reverse his conviction as violating his First Amendment rights and dismiss this matter with prejudice.

E. Unconstitutional Overbreadth

Although the lower courts should be reversed because of the content-based censorship of Mr. Wood's speech alone, it also violated the Constitution by its overbroad redefinition of the jury tampering statute. "Before ruling that a law is unconstitutionally overbroad, [the] Court must determine whether the law 'reaches a substantial amount of constitutionally protected conduct.'" *Rapp*, 492 Mich at 73. When 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.

According to the lower courts, the jury tampering statute no longer only covers jurors actually sworn and sitting in a case. MCL 750.120a. The lower courts' definition is so expansive that it includes thousands of people who merely receive a summons in the mail. Of course, the vast majority of people summoned will never even be called to court. This creates a problem like the one addressed by *Rapp*:

> [I]t would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large.

Id. at 74-75 (citing *City of Houston v Hill*, 482 US 451, 465-466 (1987)).

The lower courts, through their redefinition of the jury tampering statute, have now made a substantial amount of constitutionally protected speech a criminal offense. For example, if Mr. Wood 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

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jury tampering because they were still summoned for that month. As our Supreme Court has held, this is not permissible:

> Before ruling that a law is unconstitutionally overbroad, this Court must determine whether the law "reaches a substantial amount of constitutionally protected conduct." The United States Supreme Court has held that criminal statutes must be scrutinized with particular care, and those that prohibit a substantial amount of constitutionally protected conduct may be facially overbroad even if they have a legitimate application.

Rapp, 492 Mich at 73.

According to the lower courts, a person could be criminally liable for merely speaking with, giving information to, or communicating in any way with a potential juror. All a prosecutor would have to allege is that an improper influence could have occurred. Such an interpretation creates a virtually limitless minefield for a prosecutor to detonate a citizen's First Amendment rights.

The lower courts' redefinition of the jury tampering statute, as applied in this case, is overbroad, interferes with a substantial amount of constitutionally protected speech, and runs afoul of controlling precedent. The lower courts should be reversed and this case dismissed with prejudice.

III. THE STATE VIOLATED MR. WOOD'S DUE PROCESS RIGHTS.

A. The Lower Courts' Redefinition of the Jury Tampering Statute is Void for Vagueness.

The Due Process clauses of the United States Constitution and the Michigan Constitution require that the law provide predictability for all citizens. US Const, Am 14; Const 1963, art 1, § 17. An unambiguously drafted criminal statute affords prior notice to the citizenry of conduct proscribed. A fundamental principle of due process, embodied in the right to prior notice, is that a criminal statute is void for vagueness where its prohibitions are not clearly defined. Although citizens may choose to roam between legal and illegal actions, governments of free nations insist

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that laws give an ordinary citizen notice of what is prohibited, so that the citizen may act accordingly. If a person has to guess at what a criminal statute means, or if the crime is not clearly defined, then this Court must dismiss the charges. See, e.g., *Grayned v City of Rockford*, 408 US 104 (1972).

The lower courts unconstitutionally rewrote Michigan's jury tampering statute to such a degree that it is now void for vagueness.

> A law is unconstitutionally vague if a reasonable person cannot tell what speech is prohibited and what is permitted. Unduly vague laws violate due process whether or not speech is regulated. For example, in *Kolender v. Lawson*, the Court declared unconstitutional California's loitering law and declared that "the void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement. * * *
> In part, the vagueness doctrine is about fairness; it is unjust to punish a person without providing clear notice as to what conduct was prohibited. Vague laws also risk selective prosecution; under vague statutes and ordinances the government can choose who to prosecute based on their views or politics.

Erwin Chemerinsky, *Constitutional Law – Principles and Policies*, 3rd Ed, pgs. 941-942 (citing *Kolender v Lawson*, 461 US 352 (1983).[7]

The Michigan Supreme Court has held:

> [T]here are at least three ways a penal statute may be found unconstitutionally vague:
> (1) failure to provide fair notice of what conduct is prohibited,
> (2) encouragement of arbitrary and discriminatory enforcement, or
> (3) being overbroad and impinging on First Amendment freedoms.

People v Lino, 447 Mich 567, 575-576; 527 NW2d 434 (1994). The United States Supreme Court has further explained the vagueness doctrine:

[7] Erwin Chemerinsky is one of the most prominent constitutional scholars of our time. He has been cited numerous times by the United States Supreme Court for his constitutional analysis, amicus briefs, and treatises. See, e.g. *American National Red Cross v. S.G.*, 505 U.S. 247 (1992); *Shady Grove Orthopedic Associates, P.A. v. Allstate Insurance Co.*, 559 U.S. 393 (2010); *Duncan v. Walker*, 533 U.S. 167 (2001); *Wisconsin Dept. of Corrections v. Schacht*, 524 U.S. 381 (1998).

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> As generally stated, the void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement. Although the doctrine focuses both on actual notice to citizens and arbitrary enforcement, we have recognized recently that the more important aspect of vagueness doctrine "is not actual notice, but the other principal element of the doctrine--the requirement that a legislature establish minimal guidelines to govern law enforcement." **Where the legislature fails to provide such minimal guidelines, a criminal statute may permit "a standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal predilections.**"

Kolender, 461 US at 357-358 (1983) (emphasis added) (internal citations omitted). The Supreme Court further held that "[w]hen speech is involved, rigorous adherence to those requirements is necessary to ensure that ambiguity does not chill protected speech." *FCC v Fox*, 132 S Ct. 2307, 2317 (2012). In this case, the lower courts' redefinition and application of the jury tampering statute rendered it unconstitutionally vague pursuant to all three vagueness doctrines.

First, there was no proper notice to the citizens of the State of Michigan 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. When, as here, ambiguous statutory language prevents notice of what constitutes a criminal offense, government authorities can arbitrarily define the criminal offense after the commission of the act. That is exactly what happened to Mr. Wood.

To be clear, Mr. Wood is not alleging that the jury tampering statute is unconstitutionally vague as written by the legislature. However, the lower courts' interpretation and application of the statute, to mean something it has never meant in Michigan's history, has rendered it unconstitutionally vague.

The Supreme Court has held that "[w]hen making a vagueness determination, a court must also take into consideration any judicial constructions of the statute." *Lino*, 447 Mich at 575. It is only because the lower courts judicially rewrote the statute that it is now unconstitutionally vague. No statute, case, or any other Michigan authority exists which would had given notice to the

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citizenry that the word "juror" included anyone who had simply received a summons in the mail. No ordinary person could have had proper notice of what conduct was illegal, therefore, the lower courts' rulings must be overturned.

Second, arbitrary and discriminatory enforcement has been the hallmark of this case. The State officials arrested and charged Mr. Wood because of their personal animus towards the content of his pamphlet (see above). Again, Prosecutor Thiede acknowledged that he would look to the content of a brochure to determine, in his opinion, if the exact same conduct (handing out information on a public sidewalk) rises to the level of criminal activity (Mot. to Dismiss Tr., pg. 27). This is the epitome of arbitrary and discriminatory enforcement and illustrates the lower courts' unconstitutional rulings. Further, the lower courts' erroneous application of the statute enabled government authorities to arbitrarily decide (after the fact) that Mr. Wood's expression fell within Michigan's jury tampering statute.

Third, the lower courts' erroneous interpretation and application of the jury tampering statute impinged on Mr. Wood's First Amendment freedoms (see above for full the First Amendment overbreadth analysis).

Rather than properly address these issues, the Circuit Court improperly relied on *People v Lynch*, 410 Mich 343; 301 NW2d 796 (1981) to support its conclusion. However, *Lynch* specifically states that its analysis is based upon the fact that there were no First Amendment issues in that vagueness case. *Id*. at 352. Thus, *Lynch* is wholly inapplicable for a First Amendment analysis for vagueness. In short, the Circuit Court incorrectly relied upon a non-First Amendment vagueness case to decide a First Amendment vagueness case.

Consider an average citizen analyzing Michigan's two statutes regarding influencing juries, MCL 750.120 and MCL 750.120a. Again, while MCL 750.120 clearly states that it includes "[a]ny person summoned as a juror," MCL 750.120a expressly applies only to a "juror in any

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case." A person of ordinary intelligence would look at those two statues and naturally conclude that one covers a person who has been summoned, while the other does not. However, according to the lower courts, a person of ordinary intelligence should be able to look at both statutes, see that only one uses the word "summoned," yet conclude that *both* statutes include people summoned for jury duty. This is nonsensical. No person of ordinary intelligence could possibly look at these statutes and conclude that the one expressly omitting the word "summoned" must include people summoned. Likewise, no person of ordinary intelligence would look at the phrase "juror in any case" and conclude that it meant merely receiving a summons in the mail. Therefore, because of the lower courts' rewriting of the statute, the statute failed to provide proper notice of what conduct was prohibited and the lower courts must be reversed.

Clearly, the lower courts violated Mr. Wood's due process rights by rewriting Michigan's jury tampering statute to be unconstitutionally vague pursuant to all three vagueness doctrines. This cannot stand. The lower courts' rewriting of the statute and Mr. Wood's conviction must be reversed.

B. Mr. Wood Did Not Receive a Fair Trial.

The constitution guarantees the right to a fair trial, in particular when a citizen's liberty is at stake. The United States Supreme Court has held that "[f]ew interests under the Constitution are more fundamental than the right to a fair trial by impartial jurors[.]" *Gentile v State Bar of Nevada*, 501 US 1030, 1031 (1991). The trial court failed to provide a fair trial for Mr. Wood. The first issue which deprived Mr. Wood of a fair trial was the trial court's ruling that only the Prosecutor was permitted to argue the elements of the crime, i.e. whether or not a trial occurred and whether or not there were actual jurors in the *Yoder* case (Trial Tr., Vol. II(a), pg. 10; Trial Tr., Vol II(b), pgs. 99-100) (for full analysis on this issue, please see above, pgs. 18-19).

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The second issue which deprived Mr. Wood of a fair trial was that he was not permitted to properly cross-examine a witness. "[T]he Sixth Amendment's right of an accused to confront the witnesses against him is likewise a fundamental right and is made obligatory on the States by the Fourteenth Amendment." *Pointer v Texas*, 380 US 400, 403 (1965). The trial court improperly prohibited Mr. Wood from cross-examining Magistrate Lyons regarding three issues of bias and credibility (Trial Tr., Vol. I, pgs. 140-144).

The first example of bias was how Magistrate Lyons was a witness to the crime, confronted Mr. Wood outside the courthouse, yet he also improperly presided over Mr. Wood's arraignment on that same day. Yet, the trial court improperly prohibited Mr. Wood from delving into these issues. The second example of bias was how Magistrate Lyons set an unconstitutionally high bond of $150,000.00 (10%) for Mr. Wood two days before Thanksgiving, for a married man with seven children who owned a business in the community and was absolutely no flight risk whatsoever. The third example of bias was that Magistrate Lyons refused to appoint Mr. Wood an attorney at the arraignment.

The trial court prohibited all of these issues from being raised at trial. The right of cross-examination is "one of the safeguards essential to a fair trial," yet the trial court refused to permit Mr. Wood to cross-examine Magistrate Lyons on these issues. *Id*. at 404. Our Supreme Court has held:

> It is always permissible upon the cross-examination of an adverse witness to draw from him **any fact or circumstance that may tend to show his relations with, feelings toward, bias or prejudice for or against, either party, or that may disclose a motive to injure the one party or to befriend or favor the other.** The party producing a witness may not shield him from such proper cross-examination for the reason that the facts thus elicited may not be competent upon the merits of the cause.

Hayes v Coleman, 338 Mich 371, 381; 61 NW2d 634 (1953) (emphasis added). Further, contrary to the Prosecutor's objection at trial, the "interest or bias of a witness has never been regarded as

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irrelevant." *People v Layher*, 464 Mich 756, 764; 631 NW2d 281 (2001). The trial court was presented with the above cases during the trial but completely ignored them (Trial Tr., Vol. I, pgs. 143-144). Similarly, the Circuit Court ignored these issues as well. In effect, the trial court constructively prevented Mr. Wood from cross-examining Magistrate Lyons because he could not go into the issues which would demonstrate his bias or lack of credibility. In addition, rather than discuss or analyze any of these issues, the Circuit Court merely stated that Mr. Wood did receive a fair trial and was represented by counsel. The lower courts' rulings violated Mr. Wood's constitutional rights and prevented him from receiving a fair trial. Therefore, Mr. Wood's conviction must be overturned.

CONCLUSION

Our jury system is predicated upon responsible citizens voting their conscience on a jury. There is no better system in the world. Mr. Wood believes that freedom of speech leads to more justice and more freedom, not less, and that citizens are competent to shape their own opinions without the "protection" of government officials.

For all the reasons stated above, the lower courts violated Mr. Wood's rights and his conviction must be overturned. The lower courts ignored United States Supreme Court and Michigan Supreme Court precedent and failed to address numerous significant arguments raised by Mr. Wood. He respectfully requests that this Honorable Court grant his Appeal, reverse the lower courts, vacate Mr. Wood's conviction, dismiss the case with prejudice, and grant such other and further relief as is just and appropriate.

Respectfully submitted,

DATED: February 23, 2018.

/s/ David A. Kallman
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Attorney for Mr. Wood

KALLMAN LEGAL GROUP, PLLC

PROOF OF SERVICE

I, David A. Kallman, hereby affirm that on the date stated below I delivered a copy of Defendant's Brief on Appeal and attached exhibits, upon the Mecosta County Prosecutor, by e-mail to bthiede@co.mecosta.mi.us and via First Class Mail, postage prepaid thereon to the address stated above. I hereby declare that this statement is true to the best of my information, knowledge, and belief.

DATED: February 23, 2018.

/s/ David A. Kallman
David A. Kallman (P34200)

KALLMAN LEGAL GROUP, PLLC

EXHIBIT A

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

Hon. Eric R. Janes

KEITH ERIC WOOD,

Defendant-Appellant.

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 1*, 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 way[1]. 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 oath[2]. 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. James (P42026)
Isabella County Trial Court

A TRUE COPY
MECOSTA COUNTY CLERK
2-2-18 JK

EXHIBIT B

STATE OF MICHIGAN

IN THE 77th DISTRICT COURT FOR THE COUNTY OF MECOSTA

PEOPLE OF THE STATE OF MICHIGAN,	ORDER TO DISMISS FELONY
Plaintiff,	FILE NO.: 15-45978-FY
-vs-	HON. KIMBERLY L. BOOHER
KEITH ERIC WOOD,	
Defendant. /	

Brian E. Thiede (P32796)
Mecosta County Prosecutor
Attorney for Plaintiff
400 Elm Street, Room 206
Big Rapids, MI 49307
231-592-0141

David A. Kallman (P34200)
Stephen P. Kallman (P75622)
KALLMAN LEGAL GROUP, PLLC
Attorneys for Defendant
5600 W. Mount Hope Hwy.
Lansing, MI 48917
(517) 322-3207/Fax: (517) 322-3208

77TH DISTRICT COURT
2016 APR -4 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.

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.

/

Brian Thiede (P32796)	**David A. Kallman (P34200)**
Mecosta County Prosecutor	**Attorney for Defendant**
400 Elm St.	**5600 W. Mount Hope Hwy.**
Big Rapids, MI 49307	**Lansing, MI 48917**
(231) 592 - 0141	**(517) 322-3207**

/

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

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

EXHIBIT C

16-023507-AR JUDGE HILL-KENNEDY FILE 07/01/16
MECOSTA COUNTY

P 001 WOOD,KEITH,ERIC
ATY:KALLMAN,DAVID A
P-34200 517-322-3207

VS D 001 PEOPLE OF THE STATE OF MI,,
ATY:THIEDE,BRIAN E.
P-32796 231-592-0141

Actions, Judgments, Case Notes

Num	Date	Judge	Chg/Pty	Event Description/Comments	
1	07/01/16	HILL-KENNE		APPEAL TO CIRCUIT COURT	CLK AKJ
				RECEIPT# 00168944 AMT $175.00	
				APPLICATION FOR LEAVE TO	CLK
				APPEAL	CLK
				BRIEF IN SUPPORT OF	CLK
				APPLICATION FOR LEAVE TO	CLK
				APPEAL AND PROOF OF SERVICE	CLK
2	07/05/16			REPORTER/RECORDER CERTIFICATE	CLK KLH
				OF ORDERING TRANSCRIPT ON	CLK
				APPEAL COA	CLK
				E.GRUBAUGH CER#8538	CLK
3	07/13/16			ORIGINAL FILE REC'D FROM	CLK AKJ
				DISTRICT COURT	CLK
				(DC CASE #-15-45978-FY)	CLK
4				CERTIFICATE OF RECORDS	CLK AKJ
				TRANSMITTED FOR APPEAL AND	CLK
				NOTICE TO PARTIES OF RECORD	CLK
				FILED IN CIRCUIT CT	CLK
				CERTIFICATE OF MAILING	CLK
5	07/18/16			BRIEF IN ANSWER TO DEFENDANT'S	CLK LMK
				APPLICATION FOR LEAVE TO	CLK
				APPEAL FILED	CLK
6				RE: BRIEF IN ANSWER TO	CLK LMK
				DEF APPLICATION FOR LEAVE TO	CLK
				APPEAL	CLK
7	07/27/16			REPLY BRIEF IN SUPPORT OF	CLK LMK
				APPLICATION FOR LEAVE TO	CLK
				APPEAL FILED	CLK
				JUDGES COPY FILED	CLK
8	07/29/16			ORDER ENTERED-APPLICATION FOR	CLK LMK
				LEAVE TO APPEAL IS DENIED	CLK

..... END OF SUMMARY .....

STATE OF MICHIGAN 77TH JUDICIAL DISTRICT ORI540015J	REGISTER OF ACTIONS	CASE NO: 15-45978FY D01 FY X-REFERENCE #: MCSD674315 STATUS: PEND

JUDGE OF RECORD: BOOHER,KIMBERLY L., P-52670
JUDGE: JAKLEVIC,PETER M., P-49075

STATE OF MICHIGAN v

CTN: 541500162701
TCN: P615129117J
SID: 4590045X

WOOD/KEITH/ERIC
8304 90TH AVE
MECOSTA MI 49332

ENTRY DATE: 11/24/15
OFFENSE DATE: 11/24/15

VEHICLE TYPE: VPN:

DOB: 04/27/1976 SEX: M RACE: DLN: MI W300465234323 CDL: N
VEH YR: VEH MAKE: VIN: PAPER PLATE:

DEFENSE ATTORNEY ADDRESS	BAR NO.
KALLMAN,DAVID A., 5600 W MOUNT HOPE HWY LANSING MI 48917	P-34200 Telephone No. (517) 322-3207

OFFICER:	DEPT: MECOSTA COUNTY SHERIFF
PROSECUTOR: THIEDE,BRIAN E., VICTIM/DESC:	P-32796

COUNT 1 C/M/F: F 750505-A PACC#750.505-A
OBSTRUCTION OF JUSTICE
ARRAIGNMENT DATE: 11/24/15 PLEA: PLEA DATE:
FINDINGS: DISMISSED DISPOSITION DATE: 04/11/16
SENTENCING DATE:

FINE	COST ST.	COST	CON	MISC.	REST	TOT FINE	TOT DUE
0.00	0.00	0.00	0.00	10.00	0.00	10.00	0.00

JAIL SENTENCE: PROBATION:
VEH IMMOB START DATE: NUMBER OF DAYS: VEH FORFEITURE:

BOND HISTORY:

RCPT DT	NO.	ACTION	TYPE	CHECK	AMOUNT	STAT	CLRK
11/25/15	D191486	11/25/15	10% DEPOSIT		15,000.00	CLSD	VLP
		4/11/16	BND REFUNDED	16969	15,000.00		VLP

COUNT 2 C/M/F: M 750.120A1 PACC#750.120A1
JURORS-ATTEMPTING TO INFLUENCE
ARRAIGNMENT DATE: 11/24/15 PLEA: PLEA DATE:
FINDINGS: DISPOSITION DATE:
SENTENCING DATE:

FINE	COST ST.	COST	CON	MISC.	REST	TOT FINE	TOT DUE
0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

JAIL SENTENCE: PROBATION:
VEH IMMOB START DATE: NUMBER OF DAYS: VEH FORFEITURE:

DATE	ACTIONS, JUDGMENTS, CASE NOTES		INITIALS
11/24/15			
	FILING DATE	112415	VLP
1	ORIGINAL CHARGE	OBST JUSTICE	VLP
	AUTHORIZATION OF COMPLAINT DATE		VLP
	PROS THIEDE,BRIAN E.,	P-32796	VLP
	COMPLAINT ISSUANCE DATE		VLP

NAME: WOOD/KEITH/ERIC CASE NO: 15-45978FY PAGE 2

DATE	ACTIONS, JUDGMENTS, CASE NOTES				INITIALS
	SCHEDULED FOR ARRAIGNMENT	112415	LYONS,THOMAS G,	# 2773	VLP
2	MISCELLANEOUS ACTION	JURY-INFLUEN			VLP
	ADDED CHARGE	JURY-INFLUEN			VLP
	ARRAIGNMENT HELD	ALL COUNTS			TGL
	SCHEDULED FOR PROBABLE CAUSE CONFERENCE				
		120115 900A	JAKLEVIC,PETER M.,	P-49075	TGL
	SCHEDULED FOR EXAMINATION	120815 130P	JAKLEVIC,PETER M.,	P-49075	TGL
	10% DEPOSIT				TGL
	BOND SET		$ 150000.00	112415	TGL
1	BAIL BOND GENERATED	OBST JUSTICE			TGL
11/25/15					
1	MISCELLANEOUS ACTION	OBST JUSTICE			CRT
	ATT PRO PER,NOT ELIGIBL			# 999	CRT
	REFUSED CAA				CRT
	PREV. 4304 90TH AVE				CRT
	ADDR: MECOSTA MI 49332				CRT
	NOTICE TO APPEAR GENERATED				
		OBST JUSTICE			CRT
	TCN ADDED				VLP
	MONETARY TRANSACTION	OBST JUSTICE			VLP
	10% DEPOSIT		$ 15000.00		VLP
	BOND POSTED		$ 15000.00	D191486	VLP
1	ATM CARD TENDERED				VLP
11/30/15					
	MISCELLANEOUS ACTION	ALL COUNTS			VLP
	DEF CAME IN AND PETITIONED FOR COURT				VLP
	APPOINTED ATTORNEY/MAGISTRATE REVIEWED/				VLP
	DENIED DUE TO INCOME				VLP
12/01/15					
1	MISCELLANEOUS ACTION	OBST JUSTICE			CRT
	ATT KALLMAN,DAVID A.,			P-34200	CRT
	APPEARANCE BY AN ATTORNEY FILED				CRT
	PROBABLE CAUSE CONFERENCE HELD				
		ALL COUNTS			VLP
	DEF TO GO ON TO PE/ATTY TO PROBABLY FILE				VLP
	MOTION TO HAVE STATE COURT APPOINT A DIFF				VLP
	JUDGE OTHER THAN ONE FROM OUR COUNTY/POSS				VLP
	TO BE HEARD RATHER THAN PRELIM ON 12/8				VLP
.2/02/15					
1	MISCELLANEOUS ACTION	OBST JUSTICE			VLP
	REC'D REQUEST FOR MEDIA COVERAGE IN				VLP
	COURTROOM/				VLP
	MISCELLANEOUS ACTION	OBST JUSTICE			VLP
	MAGISTRATE SIGNED/MAILED COPY TO ATTY/				VLP
	FAXED COPY TO PA/7&4				VLP
	MISCELLANEOUS ACTION	OBST JUSTICE			VLP
	JDG HILL-KENNEDY,SCOTT			P-41542	VLP
	JUDGE JAKLEVIC SIGNED ORDER OF DISQUAL/				VLP
	REASSIGNMENT/GAVE TO CHIEF JUDGE TO REVIEW				VLP
	MISCELLANEOUS ACTION	OBST JUSTICE			VLP
	CHIEF JUDGE HILL-KENNEDY SIGNED/INTERNAL				VLP
	REASSIGNMENT REQUESTED/CASE REASSIGNED TO				VLP
	JUDGE HILL-KENNEDY/ORDER ENTERED				VLP

NAME: WOOD/KEITH/ERIC CASE NO: 15-45978FY PAGE 3

DATE		ACTIONS, JUDGMENTS, CASE NOTES				INITIALS
12/03/15						
	MISCELLANEOUS ACTION	ALL COUNTS				VLP
	REC'D OPINION AND ORDER FROM JUDGE HILL-					VLP
	KENNEDY/HE IS NOT AVAILABLE ON 12/8-					VLP
	CASE IS BEING REASSIGNED TO JUDGE BOOHER					VLP
	CERTIFICATE OF SERVICE BY CIRC COURT					VLP
	MISCELLANEOUS ACTION	ALL COUNTS				VLP
	JDG BOOHER,KIMBERLY L.,				P-52670	VLP
	REMOVE SCHEDULED DATE FROM CALENDAR					
		120815	130P	JAKLEVIC,PETER M.,	P-49075	VLP
	SCHEDULED FOR EXAMINATION	121015	900A	BOOHER,KIMBERLY L.,	P-52670	VLP
	NOTICE TO APPEAR GENERATED					
		ALL COUNTS				VLP
12/07/15						
	MISCELLANEOUS ACTION	ALL COUNTS				VLP
	PA FILED MOTION TO QUASH SUBPOENAS SERVED					VLP
	ON PA/ASST PA W/ JUDGE'S COPY					VLP
	PA FILED MOTION TO QUASH SUBPOENAS SERVED					VLP
	ON JUDGE AND MAGISTRATE/W/ JUDGE'S COPY					VLP
2	MISCELLANEOUS ACTION	JURY-INFLUEN				VLP
	REC'D REQUEST FOR MEDIA IN COURTROOM FROM					VLP
	BR PIONEER					VLP
12/09/15						
	MISCELLANEOUS ACTION	ALL COUNTS				VLP
	REC'D FAXED COPY OF ATTYS RESPONSE TO PA'S					VLP
	MOTION TO QUASH					VLP
2	MISCELLANEOUS ACTION	JURY-INFLUEN				VLP
	REC'D REQUEST FOR MEDIA IN COURTROOM FROM					VLP
	WOOD TV					VLP
	MISCELLANEOUS ACTION	JURY-INFLUEN				VLP
	MEDIA REQUESTS SIGNED AND FAXED TO SHERIFF'					VLP
	DEPT/PA OFFICE/WOOD TV/ATTY OFFICE					VLP
	MISCELLANEOUS ACTION	ALL COUNTS				VLP
	REC'D REQUEST FOR MEDIA IN COURTROOM/					VLP
	FAXED COPY TO ATTY/PA/JAIL/9&10					VLP
12/10/15						
1	HEARING ON MOTION HELD	OBST JUSTICE				VLP
	MOTION TO QUASH SUB'S HELD-JUDGE BOOHER TO					VLP
	ISSUE WRITTEN OPINION/DEF ATTY STATES HE					VLP
	WILL BE FILING MOTION TO DISMISS, MOTION					VLP
	REGARDING BOND, MOTION FOR DISCOVERY OF					VLP
	THE JUROR INFORMATION FROM DEF DAY OF					VLP
	ARREST/PA TO FILE RESPONSE/UPON RECEIPT OF					VLP
	BOTH, MOTIONS TO BE SCHEDULED/NOT TO					VLP
	RESCHEDULE PRELIM UNTIL AFTER MOTIONS					VLP
	ALL DECIDED					VLP
	MISCELLANEOUS ACTION	OBST JUSTICE				VLP
	SCHEDULED FOR REVIEW	010816		PARK,VERONICA,	# 2222	VLP
	MISCELLANEOUS ACTION	ALL COUNTS				VLP
	REC'D MEDIA REQUEST FROM INDIVIDUAL					VLP
	PRIOR TO MOTION/JUDGE DENIED/GAVE COPIES					VLP
	TO MR. ENGELS/PA/ATTY					VLP
12/15/15						

NAME: WOOD/KEITH/ERIC CASE NO: 15-45978FY PAGE 4

DATE	ACTIONS, JUDGMENTS, CASE NOTES					INITIALS
	MISCELLANEOUS ACTION	ALL COUNTS				VLP
	REC'D MOTION TO REDUCE BOND AND MOTION FOR					VLP
	DISCOVERY/BRIEF IN SUPPORT OF MOT TO REDUCE					VLP
	BOND W/ JUDGE'S COPY/ORIGINAL TO FOLLOW IN					VLP
	MAIL					VLP
12/21/15						
	MISCELLANEOUS ACTION	ALL COUNTS				VLP
	ATTY EMAILED MOTION TO DISMISS W/ BRIEF					VLP
	IN SUPPORT					VLP
12/28/15						
1	MISCELLANEOUS ACTION	OBST JUSTICE				VLP
	REC'D ORIGINAL MOTION W/ JUDGE'S COPY					VLP
01/08/16						
1	MISCELLANEOUS ACTION	OBST JUSTICE				VLP
	SCHEDULED FOR REVIEW	012216	PARK,VERONICA,	#	2222	VLP
	RE: WAITING ON OPINION					VLP
	MISCELLANEOUS ACTION	ALL COUNTS				VLP
	PA FILED ANSWER TO MOTION TO DISMISS W/					VLP
	BRIEF IN SUPPORT					VLP
01/11/16						
	MISCELLANEOUS ACTION	ALL COUNTS				CRT
	REC'D CALL FROM ATTY OFFICE/WILL BE FILING					CRT
	RESPONSE TO PA RESPONSE TO ATTY MOTION TO					CRT
	DX BY 1/19/16					CRT
01/25/16						
	MISCELLANEOUS ACTION	ALL COUNTS				VLP
	SCHEDULED FOR REVIEW	020516	PARK,VERONICA,	#	2222	VLP
02/02/16						
	MISCELLANEOUS ACTION	ALL COUNTS				VLP
	REC'D OPINION & ORDER FROM JUDGE BOOHER/					VLP
	ORDER DENIED IN PART (PA AND ASST PA DO NOT					VLP
	HAVE TO TESTIFY) AND ORDER GRANTED IN PART					VLP
	(JUDGE AND MAGISTRATE DO HAVE TO TESTIFY)					VLP
	MISCELLANEOUS ACTION	ALL COUNTS				VLP
	WAITING FOR JUDGE TO REVIEW OTHER MOTIONS					VLP
	TO SEE WHETHER TO SCHED/IF ORAL ARGUMENTS					VLP
	ARE NEEDED ON OTHER MOTIONS					VLP
02/05/16						
	MISCELLANEOUS ACTION	ALL COUNTS				VLP
	SCHEDULED FOR REVIEW	021916	PARK,VERONICA,	#	2222	VLP
02/19/16						
	MISCELLANEOUS ACTION	ALL COUNTS				VLP
	SCHEDULED FOR REVIEW	022616	PARK,VERONICA,	#	2222	VLP
02/26/16						
1	MISCELLANEOUS ACTION	OBST JUSTICE				VLP
	SCHEDULED FOR MOTION HEARING					
		032316 900A	JAKLEVIC,PETER M.,		P-49075	VLP
	SCHEDULED FOR EXAMINATION	042116 900A	JAKLEVIC,PETER M.,		P-49075	VLP
	ALL MOTIONS TO BE HEARD ON 3/23					VLP
	ALL PROCEEDINGS TO BE HEARD IN THE CIRCUIT					VLP
	COURT BEFORE JUDGE BOOHER					VLP
1	NOTICE TO APPEAR GENERATED					
		OBST JUSTICE				VLP

NAME: WOOD/KEITH/ERIC CASE NO: 15-45978FY PAGE 5

DATE	ACTIONS, JUDGMENTS, CASE NOTES			INITIALS
03/01/16				
	MISCELLANEOUS ACTION ALL COUNTS			VLP
	REC'D REQUEST FOR MEDIA COVERAGE FROM			VLP
	WOOD TV/SENT COPY TO ATTY AND PA OFFICE			VLP
03/16/16				
	MISCELLANEOUS ACTION ALL COUNTS			VLP
	REC'D MEDIA REQUEST FROM THE PIONEER/			VLP
	MAILED TO ATTY AND PA			VLP
	MISCELLANEOUS ACTION ALL COUNTS			VLP
	REC'D CALL FROM DEF ASKING IF HE COULD			VLP
	LEAVE THE STATE/TOLD HIM TO CONTACT HIS			VLP
	ATTY/SAID ATTY TOLD HIM TO CONTACT COURT/			VLP
	ADVISED THAT A STIP/ORDER WOULD NEED TO			VLP
	MISCELLANEOUS ACTION ALL COUNTS			VLP
	BE FILED FOR JUDGE TO REVIEW			VLP
03/23/16				
1	MISCELLANEOUS ACTION OBST JUSTICE			VLP
	MOTION TO DISMISS MISD CHARGE-NOT GRANTED			VLP
	MOTION TO DISMISS FY-GRANTED			VLP
	MOTION TO REDUCE BOND TO PR-GRANTED			VLP
	DEF ATTY TO PREPARE AND FILE ORDERS			VLP
	MISCELLANEOUS ACTION OBST JUSTICE			VLP
	CASE TO BE SCHEDULED FOR PT AND JT			VLP
	MISCELLANEOUS ACTION OBST JUSTICE			VLP
	SCHEDULED FOR REVIEW 032516	PARK,VERONICA,	# 2222	VLP
04/01/16				
	MISCELLANEOUS ACTION ALL COUNTS			VLP
	SCHEDULED FOR FINAL PRE-TRIAL			
	071316 900A	LYONS,THOMAS G,	# 2773	VLP
	SCHEDULED FOR JURY-TRIAL 072816 900A	JAKLEVIC,PETER M.,	P-49075	VLP
	MISCELLANEOUS ACTION ALL COUNTS			VLP
	SCHEDULED FOR JURY-TRIAL 072916 900A	JAKLEVIC,PETER M.,	P-49075	VLP
	MISCELLANEOUS ACTION ALL COUNTS			VLP
	JUDGE OF RECORD/MAGISTRATE CHANGED			VLP
	FROM: 49075 JAKLEVIC,PETER M.,			VLP
	TO: 52670 BOOHER,KIMBERLY L.,			VLP
	REMOVE SCHEDULED DATE FROM CALENDAR			
	042116 900A	JAKLEVIC,PETER M.,	P-49075	VLP
	NOTICE TO APPEAR GENERATED			
	ALL COUNTS			VLP
	MISCELLANEOUS ACTION ALL COUNTS			VLP
	CALLED BOTH PA OFFICE AND ATTY OFFICE			VLP
	AND CLEARED JURY TRIAL DATES			VLP
1	MISCELLANEOUS ACTION OBST JUSTICE			VLP
	REC'D STIP/ORDER ALLOWING DEF TO LEAVE			VLP
	STATE/GAVE TO JUDGE TO REVIEW			VLP
04/04/16				
1	MISCELLANEOUS ACTION OBST JUSTICE			VLP
	JUDGE SIGNED/ORDER ENTERED			VLP
	MISCELLANEOUS ACTION ALL COUNTS			VLP
	REC'D ORDER DISMISSING FELONY COUNT 1			VLP
	AND ORDER NUNC PRO TUNC AMENDING BOND/			VLP
	GAVE TO JUDGE TO REVIEW			VLP

NAME: WOOD/KEITH/ERIC CASE NO: 15-45978FY PAGE 6

DATE	ACTIONS, JUDGMENTS, CASE NOTES				INITIALS
04/07/16					
	MISCELLANEOUS ACTION ALL COUNTS				VLP
	REC'D TRANSCRIPT OF DEF MOTION TO DISMISS/				VLP
	MOTION FOR DISCOVERY AND MOTION TO REDUCE				VLP
	BOND				VLP
04/11/16					
	MISCELLANEOUS ACTION ALL COUNTS				VLP
	JUDGE SIGNED/ORDER TO DISMISS FELONY AND				VLP
	ORDER TO RETURN BOND ENTERED				VLP
	MISCELLANEOUS ACTION ALL COUNTS				VLP
	PERSONAL				VLP
	BOND SET				VLP
1	MISCELLANEOUS ACTION OBST JUSTICE				VLP
	JDG JAKLEVIC,PETER M.,			P-49075	VLP
	DISMISSED				VLP
04/14/16					
1	MONETARY TRANSACTION OBST JUSTICE				VLP
	CERTIFIED COPY OF CASE RECORD	$	10.00		VLP
	PAYMENT	$	10.00	D192555	VLP
1	CASH TENDERED				VLP
04/21/16					
	MISCELLANEOUS ACTION ALL COUNTS				VLP
	REC'D FAXED COPY OF MOTION TO RECONSIDER/				VLP
	GAVE TO JUDGE BOOHER TO REVIEW/ATTY TO				VLP
	FILE ORIGINAL IN MAIL				VLP
04/25/16					
	MISCELLANEOUS ACTION ALL COUNTS				VLP
	REC'D ORIGINAL COPY OF MOTION IN MAIL				VLP
04/27/16					
	MISCELLANEOUS ACTION ALL COUNTS				VLP
	CHECKED W/ JUDGE/STILL REVIEWING MOTION				VLP
06/15/16					
	MISCELLANEOUS ACTION ALL COUNTS				VLP
	JUDGE BOOHER FILED OPINION AND ORDER				VLP
	DENYING MOTION TO RECONSIDER/LAW CLERK				VLP
	SENT COPY TO PA AND TO ATTY				VLP
06/17/16					
	MISCELLANEOUS ACTION ALL COUNTS				VLP
	REC'D CALL FROM ATTY OFFICE/FAXED COPY OF				VLP
	ORDER DENYING MOTION AND ROA				VLP

***** END OF REGISTER OF ACTIONS ***** 06/17/16 10:26

17-024073-AR JUDGE JANES FILE 07/21/17
MECOSTA COUNTY

P 001 PEOPLE OF THE STATE OF MI,, VS D 001 WOOD,KEITH,ERIC
ATY:HULL,NATHAN LAV ATY:KALLMAN,DAVID A
P-72265 231-592-0141 P-34200 517-322-3207

B 001 WOOD,KEITH,

Bond History

Num	Amount	Type	Posted Date	Status
1	$20,000.00	Cash/Surety	7/25/17	Posted

Actions, Judgments, Case Notes

Num	Date	Judge	Chg/Pty	Event Description/Comments	
1	07/21/17	HILL-KENNE		APPEAL TO CIRCUIT COURT	CLK SLK
				RECEIPT# 00180930 AMT $150.00	
2				CLAIM OF APPEAL FILED	CLK SLK
3				EMERGENCY MOTION FILED FOR	CLK SLK
				BOND PENDING APPEAL AND TO	CLK
				STAY EXECUTION ON CONVICTION/	CLK
				SENTENCE	CLK
4				MOTION HEARING	CRT LMK
				S MARLETTE, #8103	CRT
				ATTNY KALLMAM APP FOR DEF.	CRT
				MS. CLAPP APP FOR PA OFFICE.	CRT
				JUDGE JANES PRESIDE OVER CASE	CRT
				FROM ISABELLA CO. MOTION HELD	CRT
				VIA POLYCOM. EMERGENY MOTION	CRT
				FOR BOND PENDING APPEAL AND	CRT
				TO STAY EXECUTION ON	CRT
				CONVICTION/SENTENCE. ATTNY	CRT
				KALLMAN STATES APPEAL CASE	CRT
				WAS FILED TODAY AFTER DEF	CRT
				SENT IN DISTRICT CT. IS DEF	CRT
				APPEAL IS SUCCESSFUL SENT IS	CRT
				UNFAIR. MS. CLAPP STATES	CRT
				DEF HAS USED EVERY TACTIC TO	CRT
				DELAY CASE. STATES DEF WAS	CRT
				FOUND GUILTY BY JURY, NOT	CRT
				BY COURT. ATTNY KALLMAN	CRT
				RESPONDS. CT GRANTS MOTION.	CRT
				SETS BOND AT $20,000 SURETY/	CRT
				10%/$2,000 CASH. CT STATES	CRT
				IF APPEAL IS NOT FILED	CRT
				TIMELY BOND TO BE REVOKED.	CRT
				CT SIGNS ORDER.	CRT
5				ORDER ENTERED GRANTING DEF	CLK LMK
				MOTION TO STAY EXECUTION ON	CLK
				CONVICTION/SENTENCE	CLK
6	07/25/17			REPORTER/RECORDER CERTIFICATE	CLK KLH
				OF ORDERING TRANSCRIPT ON	CLK
				APPEAL FILED.	CLK
				E.GRUBAUGH CER#8538	CLK
9				REPORTER/RECORDER CERTIFICATE	CLK KLH

			OF ORDERING TRANSCRIPT ON	CLK
			APPEAL FILED.	CLK
			S.MARLETTE CER#8103	CLK
10		B 001	BOND POSTED (01)	CLK LMK
			RECEIPT# 00181075 AMT $2,000.00	
			BOND ON APPEAL FILED	CLK
11	07/26/17		TRANSCRIPT RECEIVED-EMERGENCY	CLK KLH
			MOTION FOR BOND PENDING APPEAL	CLK
			AND TO STAY EXECUTION ON	CLK
			CONVICTION/SENTENCE VIA	CLK
			POLYCOM-HELD-JULY 21, 2017-BY	CLK
			JUDGE-ERIC R JANES, TRIAL	CLK
			COURT JUDGE FOR ISABELLA	CLK
			COUNTY.	CLK
13	08/03/17		NOTICE OF FILING OF TRANSCRIPT	CLK KLH
			AND AFFIDAVIT OF MAILING FILED	CLK
			E.GRUBAUGH CER#8538	CLK
14	08/07/17		ORDER ENTERED OF	CLK LMK
			DISQUALIFICATION/REASSIGNMENT	CLK
			-DISQUALIFIED FOR PERSONAL	CLK
			KNOWLEDGE OF DISPUTED	CLK
			EVIDENTIARY FACTS CONCERNING	CLK
			THE PROCEEDING	CLK
			REQUEST FOR REFERRAL TO SCAO	CLK
15	08/10/17		NOTICE OF FILING OF TRANSCRIPT	CLK KLH
			AND AFFIDAVIT OF MAILING FILED	CLK
			S.MARLETTE CER#8103	CLK
17			CERTIFICATE OF RECORDS	CLK LMK
			TRANSMITTED FOR APPEAL AND	CLK
			NOTICE TO PARTIES FILED	CLK
			NOTICE TO PARTIES OF RECORD	CLK
			FILED IN CIRCUIT COURT	CLK
18			FILE RECEIVED FROM DISTRICT	CLK LMK
			CT	CLK
20	09/07/17		APPELLANT'S BRIEF ON APPEAL	CLK LMK
			FILED	CLK
21			PROOF OF SERVICE FILED	CLK LMK
			RE:APPELLANT'S BRIEF ON APPEAL	CLK
22	09/26/17	P 001	APPEARANCE	CLK LMK
			ATTORNEY: P-72265 HULL	CLK
23		P 001	FROM: THIEDE,BRIAN E.,	CLK LMK
			TO: HULL,NATHAN LAVAIL,	CLK
24			PEOPLE'S ANSWER TO DEFENDANT'S	CLK LMK
			BRIEF ON APPEAL FILED	CLK
			JUDGES COPY FILED	CLK
25			PROOF OF SERVICE FILED	CLK LMK
			RE:APPEARANCE, PEOPLE'S ANSWER	CLK
			TO DEFENDANT'S BRIEF ON APPEAL	CLK
			AND CERTIFICATE OF MAILING	CLK
26	10/10/17		MOTION FILED	CLK LMK
			RECEIPT# 00183746 AMT $20.00	
			MOTION BY THE AMERICAN CIVIL	CLK
			LIBERTIES UNION OF MICHIGAN	CLK
			FOR LEAVE TO FILE AMICUS	CLK
			CURIAE BRIEF FILED	CLK
27			AMICUS CURIAE BRIEF OF THE	CLK LMK
			AMERICAN CIVIL LIBERTIES	CLK

			UNION OF MICHIGAN FILED	CLK	
28			PROOF OF SERVICE FILED	CLK	LMK
			RE:MOTION BY THE AMERICAN	CLK	
			CIVIL LIBERTIES UNION OF MI	CLK	
			FOR LEAVE TO FILE AMICUS	CLK	
			CURIAE BRIEF AND AMICUS	CLK	
			CURIAE BRIEF	CLK	
29	10/13/17		MOTION FOR LEAVE TO FILE AN	CLK	LMK
			AMICUS BRIEF ON THE FULLY	CLK	
			INFORMED JURY ASSOCIATION	CLK	
			FILED	CLK	
30	10/16/17		MOTION FILED	CLK	LMK
			RECEIPT# 00183846 AMT $20.00		
			APPELLATN'T MOTION TO EXTEND	CLK	
			PAGE LIMIT AND PROOF OF	CLK	
			SERVICE FILED	CLK	
			**MOTION WAS RECEIVED ON	CLK	
			10/10/17 BUT NOT PROCESSED	CLK	
			UNTIL 10/16/17. MOTION FEE	CLK	
			WAS NOT RECEIVED UNTIL THEN**	CLK	
31			APPELLANT'S REPLY BRIEF ON	CLK	LMK
			APPEAL FILED	CLK	
32	11/13/17		ORDER ENTERED ON THE AMERICAN	CLK	LMK
			CIVIL LIBERTIES UNION OF	CLK	
			MICHIGAN'S MOTION FOR LEAVE	CLK	
			TO FILE AN AMICUS BRIEF	CLK	
33			ORDER ENTERED ON DEFENDANT'S -	CLK	LMK
			APPELLANT'S MOTION TO EXTEND	CLK	
			PAGE LIMIT	CLK	
34			ORDER ENTERED ON THE FULLY	CLK	LMK
			INFORMED JURY ASSOCIATION'S	CLK	
			MOTION FOR LEAVE TO FILE AN	CLK	
			AMICUS BRIEF	CLK	
35	12/12/17		NOTICE SENT FOR: 02/02/18 10:00 AM MISCELLANOUS HEARING	CLK	TLP
			/ORAL ARGUMENTS - TO BE HELD	CLK	
			IN THE PROBATE COURTROOM	CLK	
36			PROOF OF SERVICE FILED	CLK	KLH
			RE:MISCELLANEOUS HEARING	CLK	
			2/2/2018	CLK	
39	01/30/18	JANES	REQUEST AND NOTICE FOR FILM	CLK	LMK
			AND ELECTRONIC MEDIA COVERAGE	CLK	
			OF COURT PROCEEDINGS FILED	CLK	
37	01/31/18	HILL-KENNE	STATE OF COURT ADMINISTRATIVE	CLK	LMK
			OFFICE - ASSIGNMENT	CLK	
			REASON FOR ASSIGNMENT:	CLK	
			DISQUALIFICATION	CLK	
			CASE REASSIGNED TO JUDGE	CLK	
			ERIC JANES	CLK	
38		JANES	CASE REASSIGNMENT	CLK	AKJ
			FROM: HILL-KENNEDY,SCOTT P.,	CLK	
			TO: JANES,ERIC R.,	CLK	
40	02/02/18		MISCELLANOUS HEARING HELD	CRT	LMK
			S MARLETTE, #8103	CRT	
			ATTNY KALLMAN APP FOR DEF.	CRT	
			MR. THIEDE AND MR. DONAHUE	CRT	
			APP FOR PA OFFICE. ORAL	CRT	

	ARGUMENTS. ATTNY KALLMAN	CRT	
	STATES WHY DEF CONVICTION	CRT	
	SHOULD BE OVER TURNED. STATES	CRT	
	A JUROR IS NOT A JUROR UNTIL	CRT	
	SWORN. STATES IMPROPER	CRT	
	DEFINITIONS WERE CITED. STATES	CRT	
	THE PA DID NOT MEET THE BURDON	CRT	
	WITH RESTRICTION MEANS. STATES	CRT	
	THE DEF FREEDOM OF SPEECH WAS	CRT	
	VIOLATED. STATES THERE WERE NO	CRT	
	RESTRICTIONS UPHELD AT THE	CRT	
	COURTHOUSE AT THE TIME. NO	CRT	
	LEAST RESTRICTIVE MEANS WERE	CRT	
	GIVEN THE DAY OF TRIAL. STATES	CRT	
	DEF FREE SPEECH RIGHTS WERE	CRT	
	VIOLATED. MR. THIEDE RESPONDS.	CRT	
	STATES THE DEF RIGHTS ARE NOT	CRT	
	PROTECTED UNDER FREE SPEECH,	CRT	
	EXPLAINS. STATES THE DEF HAD	CRT	
	AN INTEREST IN THE UNDERLYING	CRT	
	CASE. THE DEF SPECIFICALLY	CRT	
	ASKED POTENTIAL JURORS IF THEY	CRT	
	WERE JUROR, WHEN HANDING OUT	CRT	
	THE PAMPHLETS. STATES THE DEF	CRT	
	HAD ALL THE INTENT TO VIOLATE	CRT	
	THE JURY STATUTE WHICH MEANS	CRT	
	THE FIRST AMENDMENT DOES NOT	CRT	
	APPLY. STATES THE DEF WAS	CRT	
	FOUND GUILTY BEYOND A	CRT	
41	MISCELLANOUS HEARING HELD	CRT	LMK
	S MARLETTE, #8103	CRT	
	REASONABLE DOUBT AT A JURY	CRT	
	TRIAL. ATTNY KALLMAN RESPONDS.	CRT	
	STATES THERE IS NO UNDERLYING	CRT	
	CRIME HERE, THERE IS ONLY	CRT	
	ONE ELEMENTS, AN ATTEMPT IS	CRT	
	NOT ENOUGH HERE. ATTEMPT	CRT	
	CRIMES ARE NOT EXCEPTIONS TO	CRT	
	THE FIRST AMENDMENT. STATES	CRT	
	THE COURT RULE TRUMPS THE	CRT	
	STATUTE. CT BREAKS. CT	CRT	
	RESUMES. CT GIVES RULING	CRT	
	FROM BENCH. CT GIVES	CRT	
	STATEMENT. CT FINDS THAT THE	CRT	
	TRIAL COURT DID NOT ERROR	CRT	
	ON THE ISSUES BROUGHT. CT	CRT	
	DENIES MOTION. CONVICTION	CRT	
	AFFIRMED. ATTNY KALLMAN IS	CRT	
	REQUESTING STAY PENDING	CRT	
	APPEAL. CT DENIES STAY. BOND	CRT	
	IS REVOKED.	CRT	
42	OPINION AND ORDER ENTERED ON	CLK	LMK
	DEFENDANT - APPELLANT'S	CLK	
	APPEAL	CLK	
43	REQUEST AND NOTICE FOR FILM	CLK	LMK
	AND ELECRONIC MEDIA COVERAGE	CLK	
	OF COURT PROCEEDING FILED	CLK	

..... END OF SUMMARY .....

EXHIBIT D

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 my 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 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.

FIJA

- 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:

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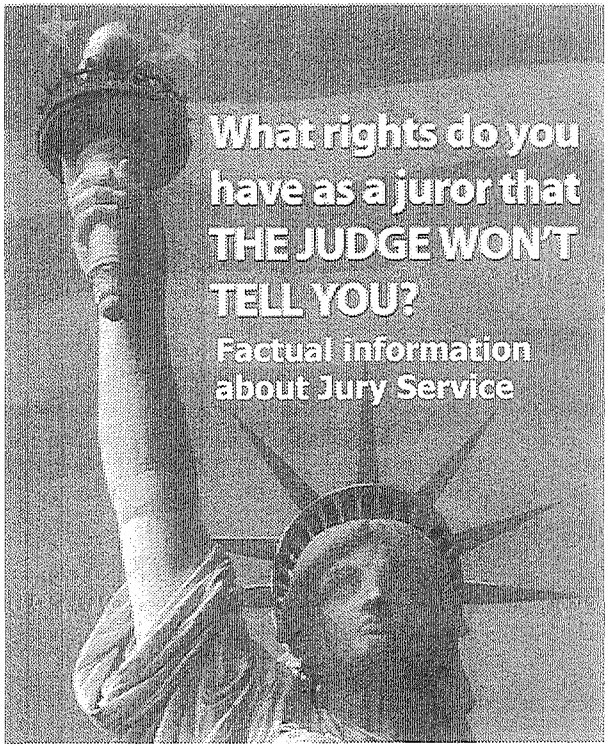
Publication # (TOF): last update March 2013

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

FIJA

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 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 thedirection 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

EXHIBIT E

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MECOSTA

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff/Appellee,

-vs-

KEITH ERIC WOOD,

Defendant/Appellant.

ORDER DENYING STAY

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

HONORABLE ERIC R. JANES

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At a session of said Court held in the City of Big Rapids, Mecosta County, Michigan, on this 6th day of February, 2018.

PRESENT: HON. ERIC R. JANES, CIRCUIT JUDGE

Upon the Court having issued its Opinion and Order on February 2, 2018, the Defendant having made an oral motion for stay of his sentence pending appeal, the parties having had the opportunity to be heard in open court, and the Court being otherwise fully advised in the premises;

NOW, THEREFORE, IT IS HEREBY ORDERED that the Defendant/Appellant's motion for stay of sentence pending appeal to the Court of Appeals is denied.

2-6-18

HON. ERIC R. JANES, Circuit Judge

Countersigned:

Deputy Clerk

APPROVED AS TO FORM:
B Brian E. Thiede (by permission)
Brian E. Thiede, Mecosta County Prosecutor

David A. Kallman, Attorney for Defendant

Prepared By: David A. Kallman, Attorney for Defendant/Appellant

EXHIBIT F

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

Michigan Non-Standard Jury Instructions Criminal | August 2016 Update
Hon. William Murphy & John VandenHombergh

Criminal
Chapter 2. In General

§ 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.