

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

DON DALE YOWCHUANG,

Defendant-Appellee.

Supreme Court No. 150148

Court of Appeals No. 314706

Wayne Circuit Court
No. 12-010198-01-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

PAUL CHARLES SEEWALD,

Defendant-Appellee.

Supreme Court No. 150146

Court of Appeals No. 314705

Wayne Circuit Court
No. 12-010198-02-FH

150146
reply

**THE PEOPLE'S REPLY BRIEF IN SUPPORT OF
APPLICATION FOR LEAVE TO APPEAL**

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STATEMENT OF QUESTION PRESENTED

Michigan law makes it a felony to conspire "to commit a legal act in an illegal manner." MCL 750.157a. Does a conspiracy fall outside the scope of MCL 750.157a if the conspirators agree not just to commit the legal act but also to use the illegal manner?

The People answer: No.

Defendants answer: Yes.

District court's answer: No.

Trial court's answer: Yes.

Court of Appeals' majority answer: Yes.

INTRODUCTION

The People's application for leave to appeal demonstrated that defendants Paul Seewald and Don Yowchuang conspired "to commit a legal act in an illegal manner" within the plain language of MCL 750.157a(d) and that the Court of Appeals majority erred in affirming the circuit court's order quashing the charge.

In response, Seewald now argues (1) that the People have mischaracterized the charge, (2) that there could not be a conspiracy to commit a "legal" act because the *voter* signatures were invalid as a result of an improper *circulator* signature, and (3) that the construction of the statute urged by the People would make all conspiracies a felony and thus eliminate the misdemeanor conspiracy to commit an offense prohibited by law crime from MCL 750.157a. But the charge addressed conspiring "to submit nominating petitions with valid signatures," and the voter signatures mentioned in the charge were valid. The charge thus properly alleged a legal act (submitting valid voter signatures) in an illegal manner (by submitting false circulator signatures). Further, the People's construction does not eliminate misdemeanor conspiracies; indeed, a misdemeanor conspiracy charge could have been filed in this case.

This Court should grant leave to appeal because the proper interpretation of this criminal conspiracy statute is a legal principle of significant public interest, because this case is brought by the Attorney General, and because the Court of Appeals' decision was clearly erroneous. MCR 7.302(B)(2), (3), & (5).

STATEMENT OF FACTS

Although Seewald provides a counter-statement of facts in his response, he does not deny the central fact in this case: that he and his co-conspirator Yowchuang admitted under oath that one of the goals of their conspiracy was to get Congressman McCotter's name placed on the ballot.

Seewald asserts that the People mistakenly stated on page 5 of their application that Seewald confirmed Yowchuang's testimony that he and Seewald had in 2008 submitted photocopied signatures with the Secretary of State. But while the statement Seewald contests was made regarding the 2008 election, the testimony he cites as contradicting the challenged statement was in response to questions regarding the petitions submitted in the 2012 election. There is no misstatement.

STANDARD OF REVIEW

The People's application for leave to appeal pointed out that a district court's decision regarding whether to bind a defendant over for trial is generally reviewed for an abuse of discretion, but that a de novo standard of review applies here because the appeal involves the interpretation of a statute where the facts are not in dispute. Seewald's answer to the People's application includes a counter-statement of the standard of review asserting it is the circuit court's opinion that is reviewed for an abuse of discretion, citing *People v Miller*, 288 Mich App 207, 209; 795 NW2d 156 (2010). While *Miller* does say the trial court's decision is reviewed for an abuse of discretion, it is mistaken because this Court sits in the same position

as the circuit court in ruling on a motion to quash. *People v Hudson*, 241 Mich App 268, 276; 615 NW2d 784 (2000). Indeed *Miller* itself cited *People v Stone*, 463 Mich 558, 561; 621 NW2d 702 (2001), which correctly indicates that it is the district court's decision that is reviewed for an abuse of discretion, not the circuit court's decision. Thus, contrary to Seewald's suggestion, the circuit court's decision is not entitled to any deference. And this especially makes sense here, because the interpretation of a statute is a question of law.

ARGUMENT

I. The People have not mischaracterized the charge.

Seewald asserts the People have attempted to change the charge on appeal by mischaracterizing the filed charge. Not so.

The charge in this case was that defendants conspired "to submit nominating petitions with valid signatures to the Michigan Secretary of State by falsely signing the petitions as the circulator." In the brief the People filed in the Michigan Court of Appeals and in its application for leave to appeal in this Court the People argued that defendants conspired in "filing nominating petitions to get Congressman McCotter on the ballot." There is no mischaracterization. Apparently, Seewald is complaining that the words "with valid signatures" was not repeated when the People were summarizing the goal of the conspiracy in their briefs. This is important to Seewald because he contends the signatures were invalid. But, as explained immediately below, the voter signatures were valid when the conspiracy

was entered into. Thus, when describing the felony conspiracy in their briefs, the People's omission of the words "with valid signatures" is of no consequence.

The People's briefs have focused on the ultimate goal of the conspiracy—and the ultimate act of submitting the nominating petitions—in response to Seewald's claim that the goal of the conspiracy was simply to improperly sign the petitions.

As Judge Jansen correctly stated in her dissent:

[T]he end goal of defendants' conspiracy was to place Congressman McCotter's name on the ballot—itsself a legal act—and not merely to falsely sign the nominating petitions as circulators. Defendants' decision to falsely sign the nominating petitions as circulators in violation of MCL 168.544c was simply a necessary but illegal step taken in furtherance of their ultimate lawful objective. [Dissent, slip op, p 1.]

Seewald invokes case law stating that a court cannot convict a defendant of an offense not specifically charged. But this case law has no application here, given that Seewald and Yowchuang were charged with violating MCL 750.157a(d) and the People are not seeking to convict them of violating any other statute.

A. The fact that the signatures on the petitions became uncountable when defendants signed them does not mean there was no conspiracy to commit a "legal" act.

According to Seewald, he could not have conspired to commit the legal act of "submitting valid signatures" as alleged in the written charge because, as a matter of law, the voter signatures were unlawful and invalid when he falsely signed the petitions as a circulator. This is incorrect.

MCL 168.544c(8) provides, "[a] filing official shall not count electors' signatures that were obtained after the date the circulator signed the certificate or

that are contained in a petition that the circulator did not sign and date.”

Subsection 11(c) forbids someone who is not a circulator from signing as circulator, and under subsection 12 an individual that violates subsection 11 is guilty of a misdemeanor. Thus, when Seewald and Yowchuang signed petitions representing they had circulated the petitions, they committed a misdemeanor and the voter signatures became uncountable.

The fact that otherwise valid voter signatures became uncountable when defendants falsely signed the petitions does not mean it was legally impossible for the defendants to conspire to commit a “legal” act. To be a “valid” signature, the voter must be a “qualified elector” who has lived in the congressional district for at least 30 days. Const 1963, art II, § 1; MCL 168.10(1). Seewald stated under oath that the signatures on the nominating petitions were valid voter signatures. (People’s Ex 22, pp 67–70.) That is, the names and signatures of the people included in each of the nominating petitions were actually qualified voters within Congressman McCotter’s district who were eligible to place his name on the ballot.

The defendants entered into their conspiracy before they signed the petitions. And, their conspiracy was complete when their agreement was reached. *People v Bushard*, 444 Mich 384, 394; 508 NW2d 745 (1993); *People v Cotton*, 191 Mich App 377, 393; 478 NW2d 681 (1991). The fact that the voter signatures became uncountable *after* the conspiracy was complete, on account of Seewald and Yowchuang signing the petitions, does not somehow preclude as a finding that they conspired to commit a “legal” act in an illegal manner.

B. The construction of the statute urged by the People would not make all conspiracies a felony and thus eliminate the misdemeanor conspiracy to commit an offense prohibited by law crime from the statute.

The Court of Appeals majority held that the defendants could not violate MCL 750.157a(d) because they had the illegal immediate goal to defraud the Secretary of State and therefore “they conspired to commit an illegal act in an illegal manner.” *People v Seewald; People v Yowchuang*, unpublished opinion per curiam of the Court of Appeals, issued August 5, 2014 (Docket No. 314705-6), slip op, p 4. But as explained in the People’s application, that erroneous reasoning would mean that a defendant could get away with agreeing to commit a legal act in an illegal manner simply by *also* agreeing to the necessary step of using an illegal manner. Under the majority’s approach, agreeing to use the illegal manner taints the ultimate act, rendering it illegal too. This construction of the statute fails to apply the plain statutory text and essentially eliminates the crime of conspiracy to commit a legal act in an illegal manner. Worse, it makes it a defense to the charge to argue that one of the conspirators’ goals was to break the law.

Seewald has no direct answer to any of these points. Instead, he asserts that the People’s construction of the statute would make all conspiracies a felony and thus would eliminate the misdemeanor conspiracy to commit an offense prohibited by law crime from MCL 750.157a. Not so. For example, the People’s application noted that the evidence at the preliminary examination established that defendants conspired both to commit an illegal act (a misdemeanor) and to commit a legal act in

an illegal manner (a felony). Thus, the People's construction of the statute allowed that a misdemeanor conspiracy charge could have been filed.

Moreover, the People's construction of the statute will not lead to the unfettered ability of prosecutors to charge felony conspiracy in every case where two people conspire to commit a misdemeanor. Here, the criminal act that Seewald and Yowchuang committed was not a goal in and of itself; it only had value as an intermediate step on the path to the ultimate lawful goal, which was getting the Congressman's name on the ballot. But in the hypothetical Seewald advances about two people agreeing to steal a dollar to buy a can of soda, the stealing of money is a goal with value, even if it could also be characterized as a step towards a further goal. In cases in which the crime that is the subject of the conspiracy is a goal in and of itself, the prosecutor could not then charge felony conspiracy merely by speculating that that goal was going to lead to some further legal goal. Here, there was no such speculation—the goal of placing the Congressman's name on the ballot was plainly the only reason the defendants signed petitions they had not circulated.

At an absolute minimum, the competing interpretations of MCL 750.157a, and the dearth of case law construing the statute supports the conclusion that this case is grant-worthy. Indeed, Seewald himself acknowledges that "there is little

case law in Michigan concerning MCL 750.157a(d).” (Seewald Opp, p 10.)¹ The proper interpretation of the state’s criminal conspiracy statute is a legal principle of significant public interest and an issue of first impression in this Court.

Prosecutors and lower courts would greatly benefit from this Court issuing an opinion setting forth the reach of this statute.

CONCLUSION AND RELIEF REQUESTED

Here, the defendants’ own inculpatory admissions established probable cause to believe that they conspired to commit a legal act in an illegal manner. The goal of their conspiracy was to commit the legal act of filing a nominating petition to procure Congressman McCotter’s placement on the ballot. Despite Seewald’s claims to the contrary, evidence presented at the preliminary examination established that the defendants conspired to commit this legal act in an illegal manner—by signing the nominating petitions as circulators when they had not been the people to collect the signatures. The Court of Appeals majority clearly erred in interpreting the plain statutory text as not reaching the defendants’ felony conspiracy. This Court should grant leave to appeal, reverse the Court of Appeals’ erroneous decision, reinstate the charge of conspiracy to commit a legal act in an illegal manner, and remand the case for trial.

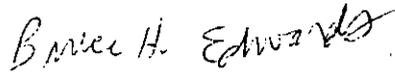
¹ The People would note that the Michigan Court of Appeals just issued a divided published opinion addressing a charge of conspiring “to commit a legal act in an illegal manner” under MCL 750.157a(d) in *People v Lois Butler-Jackson*, __ Mich App __; __ NW2d __ (November 6, 2014, Docket No. 315591) The fact that the Court of Appeals has now issued two opinions addressing MCL 750.157a(d) where each opinion had a dissent demonstrates that prosecutors and lower courts need guidance from this Court regarding the proper construction of this statute.

Respectfully submitted,

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