

**STATE OF MICHIGAN
IN THE SUPREME COURT**

Appeal from the Michigan Court of Appeals
Kathleen Jansen, P.J., and Henry W. Saad and Pat M. Donofrio, JJ.

PEOPLE OF THE STATE OF MICHIGAN	Supreme Court Case No. 150146
Petitioner-Appellant,	Court of Appeals Case No. 321599
v.	
PAUL CHARLES SEEWALD,	Wayne Circuit Case No. 12-010198-02-FH
Respondent-Appellee.	

**BRIEF OF THE PROSECUTING ATTORNEYS
ASSOCIATION OF MICHIGAN AS *AMICUS CURIAE*
IN SUPPORT OF THE PEOPLE OF THE STATE OF MICHIGAN**

****ORAL ARGUMENT REQUESTED****

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SUMMARY OF ARGUMENT

Pursuant to the Court's Order granting the People's Application for Leave to Appeal, this Court has graciously invited the Prosecuting Attorneys Association of Michigan (the "PAAM") to file the instant Brief as *Amicus Curiae* in support of the People's position and request for relief. Accordingly, in filing this Brief, the PAAM fully supports and adopts the People's arguments set forth in Appellant's Brief on Appeal and the subsequent Reply to Appellee's Brief on Appeal. However, to save the Court's and parties' valuable time and to avoid redundancy, the People's arguments on appeal will not be readdressed in this Brief. Instead, the PAAM writes separately to address the critical errors in the reasoning and conclusions of the Michigan Court of Appeals in cases involving the crime of conspiracy to commit a legal act in an illegal manner.

As in the instant case, the Court of Appeals has consistently refused to reinstate a wrongfully dismissed conspiracy charge or uphold a conviction for that offense where the appellate court opines that the defendant could have been charged with conspiracy to commit an illegal act instead of conspiracy to commit a legal act in an illegal manner. Despite the charging authority and discretion conferred upon the prosecuting official to charge a defendant with conspiracy to commit a legal act in an illegal manner, the Court of Appeals declines to acknowledge the crime's existence and validity as a charge, even where conspiracy to commit an illegal act could have been charged instead. Undoubtedly, the Court of Appeals decisions in cases like this have impermissibly infringed on the doctrine of separate powers.

This case is a textbook example of how the Michigan Court of Appeals has overstepped its legal bounds in criminal conspiracy cases involving agreements to commit a legal act in an illegal manner. By the appellate court's reasoning and holding, there is no fathomable scenario, no matter how far-fetched it may seem, where one could actually conspire to commit a legal act in an illegal manner. Such an interpretation of the conspiracy statute nullifies the crime of conspiracy to commit a legal act in an illegal manner, as well as the separate penalties prescribed for that type of conspiracy. In light of the foregoing, the decision of the Court of Appeals in this case should be reversed, and this Court's guidance is necessary to educate the trial and appellate court judges in evaluating similar future cases of this nature.

STATEMENT OF QUESTION PRESENTED

DID THE DISTRICT COURT ABUSE ITS DISCRETION IN BINDING DEFENDANT OVER TO THE TRIAL COURT FOR CONSPIRACY TO COMMIT A LEGAL ACT IN AN ILLEGAL MANNER?

Defendant's Answer: "Yes"

People's Answer: "No"

Trial Court's Answer: "Yes"

Court of Appeals' Answer: "Yes"

Amicus Curiae's Answer: "No"

STATEMENT OF FACTS

The PAAM accepts and adopts the facts as stated in Appellant's Brief on Appeal as complete and accurate for this Court's decision.

ARGUMENT

THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN RULING TO BIND DEFENDANT OVER TO THE TRIAL COURT FOR CONSPIRING TO COMMIT A LEGAL ACT IN AN ILLEGAL MANNER, AND BOTH THE TRIAL AND APPELLATE COURTS ERRED AS A MATTER OF LAW BY HOLDING OTHERWISE.

STANDARD OF REVIEW

The Court reviews a district court's bind over decision for an abuse of discretion without giving the trial court's subsequent ruling on a motion to quash that decision any deference. *People v Yamat*, 475 Mich 49, 52; 714 NW2d 335 (2006); *People v Hudson*, 241 Mich App 268, 276; 615 NW2d 784 (2000). An abuse of discretion occurs when the outcome selected falls outside the range of reasonable and principled outcomes. *People v Unger*, 278 Mich App 210, 217; 749 NW2d 272 (2008). However, although a district court's bindover decision is reviewed for an abuse of discretion, when the trial court's interpretation of a statute is challenged on appeal, the Court reviews de novo those questions involving statutory interpretation. *People v Droog*, 282 Mich App 68, 70; 761 NW2d 822 (2009).

ARGUMENT

The purpose of a preliminary examination is to determine whether there is probable cause to believe that an offense has been committed and that the defendant is the person who committed the offense. MCL 766.13; *People v Plunkett*, 485 Mich 50, 57; 780 NW2d 280 (2010); MCR 6.110(E). Probable cause is established by evidence sufficient to cause a person of ordinary

prudence and caution to conscientiously entertain a reasonable belief of the defendant's guilt. *Plunkett*, 485 Mich at 57; *People v Henderson*, 282 Mich App 307, 312; 765 NW2d 619 (2009). However, the probable cause standard of proof requires less evidence than proof beyond a reasonable doubt. *People v Mason*, 247 Mich App 64, 71; 634 NW2d 382 (2001). Thus, the prosecution must only present *some evidence* of each element to establish probable cause. *Henderson*, 282 Mich App at 312. And the evidence may be either direct or circumstantial, and any reasonable inferences arising from that evidence is also permissible. *People v Greene*, 255 Mich App 426, 444; 661 NW2d 616 (2003). And if the evidence conflicts or raises a reasonable doubt of guilt, the district court is obligated to bind the defendant over for trial, and the jury, not the court, is then tasked with resolving those conflicts and questions. *People v Goecke*, 457 Mich 442, 469-470; 579 NW2d 868 (1998).

The criminal conspiracy statute, in relevant part, states the following:

Any person who conspires together with [one] or more persons to commit an offense prohibited by law, or to commit a legal act in an illegal manner is guilty of the crime of conspiracy punishable as provided herein:

- (a) Except as provided in paragraphs (b), (c) and (d) if commission of the offense prohibited by law is punishable by imprisonment for 1 year or more, the person convicted under this section shall be punished by a penalty equal to that which could be imposed if he had been convicted of committing the crime he conspired to commit and in the discretion of the court an additional penalty of a fine of \$10,000.00 may be imposed.

....

- (c) If commission of the offense prohibited by law is punishable by imprisonment for less than 1 year, except as provided in paragraph (b), the person convicted under this section shall be imprisoned for not more than 1 year nor fined more than \$1,000.00, or both such fine and imprisonment.
- (d) Any person convicted of conspiring to commit a legal act in an illegal manner shall be punished by imprisonment in the state prison for not more than 5 years or by a fine of not more than \$10,000.00, or both such fine and imprisonment in the discretion of the court.

MCL 750.157a. Thus, proof of conspiracy to commit a legal act in an illegal manner is sufficiently established where the prosecution shows: (1) a combination or agreement, express or implied, between two or more persons; (2) to commit a legal act in an illegal manner, or by unlawful means. See *People v Meredith*, 209 Mich App 403, 408; 531 NW2d 749 (1995); *People v White*, 147 Mich App 31, 35-36; 383 NW2d 597 (1985). However, the gist of criminal conspiracy is the agreement itself, and because it is often difficult to identify the objectives of an unlawful agreement, direct proof is not essential, and the crime can be established from the circumstances, acts, and conduct of the conspirators. *People v Mass*, 464 Mich 615, 632; 628 NW2d 540 (2001); *People v Justice*, 454 Mich 334, 347; 562 NW2d 652 (1997).

Here, Defendant was charged with conspiracy in an information alleging that he and Yowchuang:

did unlawfully conspire, combine, confederate and agree together with one another to submit nominating petitions with valid signatures to the Michigan Secretary of State by falsely signing the petitions as the circulator contrary to MCL 750.157a.

(Appellant's Appx 70a). In light of the allegations and charge and the evidence presented at the preliminary examination, it is clear that the district court properly bound Defendant over to the trial court. The undisputed evidence established that Defendant and Yowchuang agreed to submit nominating petitions to the State containing voter signatures that counted to get McCotter's name on the ballot—a legal act. But if the petitions were submitted without a circulator signature, the State would not count or accept the valid voter signatures. Thus, Defendant and Yowchuang agreed to violate MCL 168.544c(7)(c), i.e. falsely signing as the circulators, in order to get the State to accept the petitions and count the voter signatures for McCotter's name to get on the ballot—an illegal manner to accomplish the legal act. As such, the district court properly bound Defendant over for trial on the conspiracy charge.

Despite the lower courts' holdings to the contrary, Defendant's conduct fell squarely within the scope of the criminal conspiracy statute. The prosecution was not obligated to show that each conspirator knew the full scope of the conspiracy or participated in carrying out each detail. *People v Grant*, 455 Mich 221, 237, n 20; 565 NW2d 389 (1997). Even if a defendant joins a conspiracy after the formation, or aids the conspiracy with an understanding of its purpose, that defendant then becomes a party to the conspiracy. *People v McCracken*, 88 Mich App 286, 290; 276 NW2d 609 (1979). More importantly, the scope of a conspiracy is a question of fact properly left for a jury, not the courts. See *People v Harris*, 110 Mich App 636, 643; 313 NW2d 354 (1981) ("It is likewise a factual issue whether a particular act or

crime committed was fairly within the intended scope of the common criminal enterprise.”). And when evidence conflicts or raises a reasonable doubt of guilt, the district court is obligated to bind a defendant over for trial so that the jury can resolve those conflicts. *Goecke*, 457 Mich at 470.

Here, the people alleged that Defendant agreed to help Yowchuang get McCotter’s name on the ballot. But Defendant and the lower courts claimed that Defendant agreed only to falsely sign nominating petitions. The evidence at the preliminary examination established that Defendant and Yowchuang agreed to both acts, thereby creating a question of fact for the jury to decide. Further, the Court of Appeals ignored the well-established principle that the gist of a criminal conspiracy is the agreement itself, not the acts that Defendant engaged in after formulating the criminal agreement. See *Mass*, 464 Mich at 632. While Defendant and Yowchuang may have committed the acts that the appellate court claims the two conspired to commit, the agreement between the two is what controls the opinion. And that agreement was much larger than the acts themselves.

Along with the preceding arguments, the lower courts also erred by improperly interpreting the criminal conspiracy statute in a manner that impermissibly nullified, and rendered surplusage, a large portion of the law. The overriding goal for interpreting a statute is to determine and give effect to the Legislature’s intent. *People v Peltola*, 489 Mich 174, 181; 803 NW2d 140 (2011). The most reliable indicator of the Legislature’s intent is the plain language of the statute itself. *Id.* at 181. The rules of statutory interpretation

require that every word of the statute must be given its ordinary meaning, although a dictionary may be consulted when the words are not defined, and the statutory language must be read harmoniously together to give the statute effect as a whole. See *id.* at 181.

Given the rules of statutory interpretation, it is evident that the plain language of the conspiracy statute unambiguously criminalizes conspiring with another person to commit: (1) an offense prohibited by law; or (2) a legal act in an illegal manner. See MCL 750.157a. In fact, a full reading of the statute further establishes that the Legislature intended to criminalize two types of conspiracy, given that both are punished separately. See MCL 750.157a(a-d). For instance, those who conspire to commit an “offense prohibited by law” face the same penalty as the offense they conspired to commit, while those who conspire to commit “a legal act in an illegal manner” face a separate and distinct five-year felony and \$10,000.00 fine. See MCL 750.157a(a-d). But the courts below have held numerous times, each as erroneous as the next, that when the scope of a conspiracy involves the commission of an illegal act, the “legal act in an illegal manner” portion is inapplicable. Such an interpretation means that every conspiracy would essentially constitute an agreement to commit an illegal act, eliminating the need for both portions of the statute and their separate punishments. Despite the prohibition of that interpretation, both of the lower courts made that interpretation, effectively and erroneously rendering a large portion of the statute surplusage and nugatory. See *Peltola*, 489 Mich at 181.

Finally, the lower courts' rulings improperly infringed upon both the legislative and executive authorities conferred in the separation of powers doctrine of the Constitution. Michigan's Constitution established the separation of powers doctrine, which provides, in relevant part, that:

The powers of government are divided into three branches: legislative, executive and judicial. No person exercising powers of one branch shall exercise the powers properly belonging to another branch except as expressly provided in this constitution.

Const 1963, art 3, § 2. This provision of our Constitution extends the legislative power to make the laws to the Legislature, and gives the judicial power of interpreting and applying those laws to the courts. *In re Rovas Complaint*, 482 Mich 90, 98; 754 NW2d 259 (2008). Additionally, the Constitution confers the executive power upon the prosecuting attorney, giving the prosecution the exclusive authority to determine whether to charge a defendant at all, and if so, what charge or charges to bring. *People v Smith*, 496 Mich 133, 141; 852 NW2d 127 (2014).

The Court of Appeals has started the recent trend of improperly reversing a defendant's conviction for, or affirming a dismissal of, conspiracy to commit a legal act in an illegal manner when it concludes that conspiracy to commit an offense prohibited by law would have been a more appropriate charge, and this case is not the first instance of such a legally unsupported conclusion. See, *e.g.*, *People v Butler-Jackson*, ___ Mich App ___; ___ NW2d ___ (2014) (pending this Court's decision on the prosecution's application for leave to appeal). In cases involving that erroneous conclusion, the lower court surely violates the

Constitution's clearly outlined separation of powers doctrine. Specifically, by rendering the second portion of the conspiracy statute, and its separate punishment, nugatory and surplusage, the Court of Appeals effectively eliminates the law created by the Legislature, thereby infringing on its power to make the laws. Additionally, by preventing a conviction or charge for conspiracy to commit a legal act in an illegal manner when the appellate court opines that conspiracy to commit an offense prohibited by law is more appropriate, the Court of Appeals unlawfully strips the prosecution of its executive authority to bring and pursue whatever charge it chooses. But the courts may not trump the prosecutor's charging decision or take away the Legislature's lawmaking authority by vacating a conviction or dismissing a charge without any legal basis. *Smith*, 496 Mich at 141. For this reason alone, this Court should intervene and reverse the appellate court.

RELIEF REQUESTED

The criminal conspiracy statute was designed to create two separate and distinct types of unlawful conspiracies, both of which are separately punished under the statute's plainly outlined provisions. Not only is a person prohibited from conspiring to commit an illegal act, but it is also a crime to conspire to commit a legal act in an illegal manner. Thus, where conspirators agree to commit a legal act, and they agree to commit an illegal act to accomplish their goal of committing the legal act, the conspirators are guilty of both types of conspiracy prescribed by the Legislature, and the prosecution has the authority to charge them with one or both of those crimes. The Court of

Appeals has failed to make that connection in cases involving both types of criminal conspiracy. This Court's guidance and instruction is necessary to cure that flaw and preserve the Constitution. For these reasons, and for those set forth in the Appellant's Brief on Appeal, the PAAM supports the People of the State of Michigan, and respectfully urges this Honorable Court to **REVERSE** the Court of Appeals and the trial court, **AFFIRM** the district court's decision, and **REINSTATE** the conspiracy charges against Defendant.

Respectfully Submitted,

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