

**STATE OF MICHIGAN
IN THE 13TH JUDICIAL CIRCUIT COURT
FOR THE COUNTY OF ANTRIM**

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

Case No. 2022-5165-FH
(consolidated case)

Honorable CHARLES M. HAMLYN

v

SHAWN MICHAEL FIX,
ERIC MOLITOR,
MICHAEL JOHN NULL, and
WILLIAM GRANT NULL,

Defendants.

- **OBJECTION AND RESPONSE to use of Co-conspirator Statements at Trial**
- **REQUEST FOR EVIDENTIARY HEARING**

Proof of Service: 4/14/2023

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**OBJECTION AND RESPONSE TO PEOPLE'S MOTION FOR USE OF CO-
CONSPIRATOR STATEMENTS**

NOW COMES, the Defendant, William Null, by and through his counsel, Damian Nunzio of The Nunzio Law Firm, P.C. and hereby respectfully objects to the People's motion to use co-conspirator statements pursuant to MRE 403 and the protections outlined in a criminal

defendant's right to a fair trial under the 5th and 14th Amendment to the United States Constitution, and Article 1, Section 17 of the Michigan Constitution.

REQUEST FOR AN EVIDENTIARY HEARING

Defendant, William Null, requests a hearing on the matter. This Court should be fully apprised of the facts before ruling that 1. A conspiracy existed; and 2. that William Null knew the overall goals of the conspiracy and agreed to participate.

Prior testimony taken at the preliminary examination will not apprise this Court of all the facts. Further, the rules of evidence apply at a preliminary examination,¹ whereas at an evidentiary hearing, the rules of evidence do not apply.²

Finally, the people have only offered written descriptions of the recorded statements; these statements have not been transcribed by a certified court reporter. The tone, background noise, and context of the statements in the conversations that are being heard and are important.

¹ MCL 766.11b **Rules of evidence; exception; hearsay testimony; "controlled substance" defined.** (1) The rules of evidence apply at the preliminary examination except that the following are not excluded by the rule against hearsay and shall be admissible at the preliminary examination without requiring the testimony of the author of the report, keeper of the records, or any additional foundation or authentication:

(a) A report of the results of properly performed drug analysis field testing to establish that the substance tested is a controlled substance.

(b) A certified copy of any written or electronic order, judgment, decree, docket entry, register of actions, or other record of any court or governmental agency of this state.

(c) A report other than a law enforcement report that is made or kept in the ordinary course of business.

(d) Except for the police investigative report, a report prepared by a law enforcement officer or other public agency. Reports permitted under this subdivision include, but are not limited to, a report of the findings of a technician of the division of the department of state police concerned with forensic science, a laboratory report, a medical report, a report of an arson investigator, and an autopsy report.

² MCR 6.508 Procedure; Evidentiary Hearing; Determination (C) Evidentiary Hearing. If the court decides that an evidentiary hearing is required, it shall schedule and conduct the hearing as promptly as practicable. At the hearing, the rules of evidence other than those with respect to privilege do not apply. The court shall assure that a verbatim record is made of the hearing.

BRIEF IN SUPPORT

Factual Background

Despite the People's very broad statement of facts, these are the facts that apply to William Null. William Null was not a member of the Wolverine Watchmen. William Null did not meet any members of the Wolverine Watchmen. William Null was a member of the Michigan Liberty Militia, not a group classified by the FBI as a terrorist enterprise.

During the COVID-19 pandemic, William Null, like many other Michiganders and United State Citizens did not like the United States' or the State of Michigan's response to the Pandemic and lockdowns. Many individuals, such as William Null, exercised their constitutionally protected right of free speech.

As fear gripped the country, William Null started socializing and networking with other militia groups. COVID-19 was a time of universal panic and people feared the shutdown of our government, general law, and order, as well as communication systems.³ William Null was one of those individuals. In order to better network, William Null attended FTXs, or Field Training Exercises, with other militia groups.

MRE 801(d)(2)(E)

The People rely on MRE 801(d)(2)(E), which states:

(d) Statements Which Are Not Hearsay. A statement is not hearsay if—

(2) *Admission by Party-Opponent.* The statement is offered against a party and is

(E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy on independent proof of the conspiracy.

³ Demirbas, N. & Kutlu, R. Effects of COVID-19 Fear on Society's Quality of Life. *Int J Ment Health Addict.* 2022 20(5) 2813-2822. doi: 10.1007/s11469-021-00550-x

A conspiracy requires:

A criminal conspiracy is a partnership in criminal purposes, under which **two or more individuals voluntarily agree to effectuate the commission of a criminal offense**. The individuals must **specifically intend** to combine to pursue the criminal objective, and the offense is complete upon the formation of the agreement. The intent, including **knowledge of the intent**, must be shared by the individuals. Thus, there must be proof showing that the parties specifically intended to further, promote, advance, or pursue an unlawful objective. Direct proof of a conspiracy is not required; rather, proof may be derived from the circumstances, acts, and conduct of the parties [People v Jackson, 292 Mich App 583, 588 (2011) (internal quotation marks and citations omitted).]

Where a defendant “is unaware of the overall objective of an alleged conspiracy or lacks any interest in, and therefore any commitment to, that objective, he is not a member of the conspiracy.” People v Justice, 454 Mich 334, 347 (1997) (emphasis added).

Conspiracy is a continuing offense. In fact, a conspiracy “is presumed to continue until there is affirmative evidence of abandonment, withdrawal, disavowal, or defeat of the object of the conspiracy.” People v Denio, 454 Mich 691, 709 (1997), quoting United States v Castro, 972 F 2d 1107, 1112 (CA 9, 1992).

a. Independent evidence of conspiracy

The people have not offered this Court any independent evidence in relation to William Null and the alleged conspiracy that Adam Fox masqueraded. The independent evidence that the people rely on involves the Wolverine Watchmen, who William Null never interacted with or knew.

b. Statements made during the conspiracy & in furtherance of the conspiracy.

The people have not offered any evidence that support that William Null was a member of the conspiracy. In fact, in People’s proposed statement 53, Exhibit A, page 33, William Null states after hearing Adam Fox’s plan: “To be honest with **you, you’d** be better off shooting her.

I'm telling you, *you'll* get twenty-five. *You* won't get two life sentences." Emphasis added. Then Null states: I got a brother [UI] –.

This statement speaks to the fact that William Null does not consider himself a part of Adam Fox's group. This is evidenced by the "you" vs. "we." Not only did he indicate that Fox would get caught, but Fox's plan would carry two life sentences. The written statement does not include William Null's tone—he is literally laughing at Adam Fox.

The second part of William Null's statement include "I got a brother –." If you listen carefully, he is saying I got a brother with a case.⁴

After people's proposed statements 52, 53, 54, 55, 56, 57, 61, 62, 63, 64, 65, 66 William Null tells the individuals in the car that he hopes that the isn't place [where they are driving to] isn't in Grand Rapids.⁵ This indicates that he has not been apprised of the details and plans for the evening, despite what the people allege.

Statement 68 is out of context—completely. The people have written:

Bill Null: I'm down to do a little recon and shit. I don't know, like you said, I just don't know what the fuck. I, I start shit with my government all the time to fight them in court.

The context is that they are speaking about masks. Then William Null starts talking about his deck at his home and fighting ordinances.⁶

Statements 69-71, Exhibit A, 40-42 reference the allege objectives of the recon. At no point prior are there any statements that indicate that William Null, Michael Null and

⁴ Mr. Null intend on producing the Judgement of Sentence from his brother's case (Not Michael Null) at the evidentiary hearing.

⁵ UCE 6361 Luther 9-12-2023 at 09:47:30.

⁶ UCE 6361 Luther 9-12-2023 at 10:30:00.

UCE Mark are looking out for suspicious vehicles. These statements are out of context and do not support a conspiracy.

Because the people have not shown by a preponderance of the evidence that William Null knew the general objectives of the conspiracy and agreed to be a part of the conspiracy, statements 1-55 should not be admitted. Statements 56-71 should be redacted for to comply with the rules of evidence.

People's True intention

As filed on April 3, 2023, *People's Motion in Limine to Preclude Any Attempt by Defendants to Admit Their Own Hearsay Statements at Trial*, the People wish to cherry pick only the statements that support their theory of the facts is the only possible theory. They have gone as far to argue that the rule of completeness does not apply. *People's Motion in Limine to Preclude Any Attempt by Defendants to Admit Their Own Hearsay Statements at Trial*, pg. 8.

MRE 403

Even if this Court finds that the statements the people have attached to their motion are not hearsay statements, their statements should still be excluded. Michigan Rules of Evidence 403 provides:

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

While a conspiracy is ongoing and participants do not need to know everyone in the conspiracy, admitting statements from members of the wolverine watchman from 2019, People's exhibit A, No. 1-7, pages 19-20, have no probative value regarding William Null. Therefore, their

value is outweighed by the danger of unfair prejudice to William Null and those statements waste time and will mislead the jury as it relates to William Null's innocence in this case.

Statements 8-33, People's Exhibit A, pages 20-25, has no probative value as it relates to William Null. He was not a member of the wolverine watchmen, did not interact with WW, and there has been no evidence if he was aware of any of these statements, or agreed with these statements. Therefore, their value is outweighed by the danger of unfair prejudice to William Null and those statements waste time and will mislead the jury as it relates to William Null's innocence in this case.

Statement 34, People's Exhibit A, pages 25, probative value is outweighed by the danger of unfair prejudice to William Null. The statement is:

Fox: I had a meeting with Bill by June...I've filled him in...he's been in the loop since the beginning.

This is misleading. The people offer this as truth; however, there is no evidence that supports this. The Federal Government through surveillance, wire taps, and confidential human sources, tracked Adam Fox's life and were aware of all relevant and important meetings for Fox. There is no evidence that Fox talked to William Null in June of 2020 and "filled him in." Additionally, the context of this statement is so vague that the people have misconstrued the context of it and are using it to only support their theory. As evidenced in the People's later statements in Exhibit A, William Null was unaware of the plans of Adam Fox, especially in June and July of 2020.

Statements 36-51, People's Exhibit A, pages 25-32, has no probative value as it relates to William Null. There has been no evidence if he was aware of any of these statements or agreed with these statements. Therefore, their value is outweighed by the danger of unfair prejudice to

William Null and those statements waste time and will mislead the jury as it relates to William Null's innocence in this case.

Statements 52-71, People's Exhibit A, pages 32-72, have some probative value. However, that probative value is substantially outweighed by the danger of unfair prejudice because the statements do not include context. Without context, these statements will mislead the jury and confuse the issues.

Other Protections for Criminal Defendants

Admitting the statements in Exhibit A would violate William Null's right to present a defense. As a general matter, "[t]here is no doubt that based on the Fourteenth Amendment's Due Process Clause and the Sixth Amendment's Compulsory Process or Confrontation Clauses, the Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense." *People v. King*, 297 Mich App 465, 473; 824 NW2d 258 (2012) (quotation marks and citations omitted). Pursuant to their right to present a defense, criminal defendants, "at a minimum, ... have the right to ... put before a jury evidence that might influence the determination of guilt." *People v. Anstey*, 476 Mich 436, 460; 719 NW2d 579 (2006) (second alteration in original) (quotation marks and citations omitted). Without the whole statements with context, admission of these statements would infringe upon William Null's right to present a defense.

WHEREFORE, for the reasons stated above Defendant William Null requests this Honorable Court grant an evidentiary hearing, deny Prosecutions motion use of coconspirator statements at trial, and order other relief the Court deems just and appropriate.

Respectfully Submitted,

Dated: April 14, 2023

/s/ Damian D. Nunzio

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PROOF OF SERVICE

I, Damian D. Nunzio, appearing as the Attorney for Defendant William Null in the above-captioned matter, deposes and says a copy of Defendant's Objection to Consolidation, and Proof of Service, were served via e-file on the Court and all parties. I declare under the penalty of perjury the statement above is true to the best of my information, knowledge, and belief.

Dated: April 14, 2023

/s/ Damian D. Nunzio

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