Michigan Supreme Court
Lansing, Michigan

Syllabus

Chief Justice:
Bridget M. McCormack

Chief Justice Pro Tem:
David F. Viviano

Justices:
Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh

This syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader.

Reporter of Decisions:
Kathryn L. Loomis

PEOPLE v WOOD

Docket No. 159063. Argued March 4, 2020 (Calendar No. 6). Decided July 28, 2020.

Keith E. Wood was convicted following a jury trial in the 77th District Court of jury tampering, MCL 750.120a(1), for having distributed a pamphlet promoting the concept of jury nullification outside the courthouse at which the pretrial hearing of a man named Andrew Yoder was scheduled to begin. The pamphlet asserted that jurors could vote their conscience, that jurors could not be forced to obey a juror oath, and that a juror had the right to hang a jury if he or she did not agree with other jurors. Defendant handed the pamphlet to two women who told him that they had been summoned to the court for jury selection. The case against Yoder never went to trial because Yoder entered into a plea agreement. After being charged in district court with obstruction of justice, MCL 750.505, and jury tampering, defendant moved to dismiss both charges, arguing with regard to the jury-tampering charge that the term "juror" in MCL 750.120a(1) did not include people who were summoned for jury duty but never selected or sworn. The district court, Kimberly L. Booher, J., dismissed the obstruction charge but denied the motion with regard to the jury-tampering charge, for which defendant was ultimately convicted. Defendant appealed his conviction in the Mecosta Circuit Court, arguing that the government had violated his First Amendment right of free speech, that MCL 750.120a(1) was unconstitutionally vague, and that he had not received a fair trial. The circuit court, Eric R. Janes, J., affirmed defendant's conviction. After granting defendant's application for leave to appeal, the Court of Appeals, MURRAY, C.J., and CAMERON, J. (MURPHY, J., dissenting), also affirmed his conviction, holding in a published opinion that the term "juror" includes a person summoned for jury duty and that MCL 750.120a was not unconstitutional as applied to defendant, nor was it unconstitutionally vague or overbroad. 326 Mich App 561 (2018). The Supreme Court granted defendant's application for leave to appeal. 504 Mich 975 (2019).

In an opinion by Justice CLEMENT, joined by Chief Justice MCCORMACK and Justices ZAHRA, BERNSTEIN, and CAVANAGH, the Supreme Court *held*:

Individuals who are merely summoned for jury duty and have not yet participated in a case are not jurors for purposes of MCL 750.120a(1). Therefore, defendant did not attempt to influence the decision of any "juror" as that term is used in MCL 750.120a(1).

1. MCL 750.120a(1) makes it a misdemeanor for a person to willfully attempt 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. The statute does not define "juror," but dictionaries generally define it either narrowly, as "one member of a jury," or broadly, to include those summoned for jury duty. Taking "juror" in the context of the provision at issue, which prohibits an individual from influencing a juror's decision "in any case," the most reasonable interpretation is that when individuals are merely summoned for jury duty, they are not jurors because they have yet to participate in a case. The earliest point at which individuals summoned for jury duty may be considered as participating in any particular case is venire selection because, before that, a summoned individual might never be assigned to a venire and thus might never be attached to any case at all. This narrower interpretation of "juror" is supported by reading MCL 750.120a in harmony with MCL 750.120, which prohibits bribing any person summoned as a juror, because the context suggests that the word has a broader meaning in MCL 750.120 than it does in MCL 750.120a(1). The Legislature chose not to include the language "any person summoned as a juror" when it enacted MCL 750.120a and chose not to include the language "in any case" in MCL 750.120, which suggests that MCL 750.120a applies to a broader group of people. Further, the etymology of "juror" shows that swearing an oath is central to the definition of "juror," but when individuals are summoned for jury duty, they have yet to be sworn in for any official proceedings. Although the voir dire oath on its own may not transform an individual into a juror, it is some indication that a person is participating in a case as required under MCL 750.120a(1). Finally, while Chapter 13 of the Revised Judicature Act (RJA), MCL 600.1300 *et seq*., uses "juror" to include those summoned for jury duty, it also uses the term in both broader and narrower senses throughout the act, and it is not clear that Chapter 13 of the RJA should be read *in pari materia* with MCL 750.120a because these statutes have a scope and aim that are distinct and unconnected.

2. Defendant talked to individuals who had been summoned for jury duty but had yet to participate in any court proceedings that would make them a part of any case. When defendant approached the individuals to whom he handed pamphlets, they had neither entered the courthouse nor sat as part of a venire nor sworn an oath. Further, none of the individuals summoned for jury duty on the day of the Yoder trial ultimately participated in a case for purposes of MCL 750.120a(1) because they were dismissed before any proceedings began. Defendant, therefore, did not attempt to influence the decision of any "juror" as that term is used in MCL 750.120a(1).

3. The constitutional arguments defendant raised were not reached because the case was decided on statutory grounds.

Reversed and remanded for further proceedings.

Justice VIVIANO, joined by Justice MARKMAN, dissenting, would have held that the ordinary meaning of "juror" in this context includes not only empaneled jurors but also summoned jurors, because almost all the dictionaries from the period in which MCL 750.120a was enacted included summoned jurors in the definition of "juror." He explained that the meaning of "juror" broadened over the beginning of the 20th century as the procedures for summoning jurors changed and that the broadened meaning of "juror" was well established in 1955, the year MCL 750.120a was enacted. He noted that the majority did not take stock of the dictionaries discussed and that the definitions the majority cited were not inconsistent but instead were closely related subsenses that were better read together as a single definition. He explained that the phrase "in any case" in MCL 750.120a demonstrated that the breadth of the statute reaches cases that have not yet

proceeded to trial. Moreover, he stated that the majority's reliance on MCL 750.120 overlooked the historical development of the word "juror" and the fact that that section also applies to individuals summoned for "any case" by its use of the phrase "any suit, cause, or proceeding." Further, he stated that allowing improper influence before jurors are chosen and sworn but disallowing it afterward would merely regulate the timing of improper influence, which would not further the statute's purpose, collected from the text, of preventing individuals from asserting improper influence over judicial proceedings. Under this interpretation, defendant's actions fell within the statutory proscription of jury tampering by seeking to influence a summoned juror. Justice VIVIANO further stated that this interpretation would avoid any First Amendment concerns because it would render the statute sufficiently definite, would not sweep in a substantial amount of protected speech, and was narrowly tailored in its application to defendant's conduct. Accordingly, he would not have reversed the Court of Appeals' judgment.

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OPINION

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FILED July 28, 2020

S T A T E O F M I C H I G A N

SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v No. 159063

KEITH ERIC WOOD,

Defendant-Appellant.

BEFORE THE ENTIRE BENCH

CLEMENT, J.

A criminal statute, MCL 750.120a(1), prohibits any individual from willfully attempting to "influence the decision of a juror in any case by argument or persuasion . . . ." In this case, we consider the meaning of "juror" under this statute. Defendant was charged with jury tampering after handing pamphlets outside a courthouse to individuals arriving for their first day of jury duty. We hold that the individuals here who were merely summoned for jury duty and had not participated in a case were not jurors under MCL 750.120a(1).

I. FACTS AND PROCEDURAL HISTORY

What does the case of Andrew Yoder, an Amish man indicted for violating environmental regulations, have to do with jury nullification? Very little. But the two converge in defendant's case. At some point, defendant, Keith E. Wood, became interested in jury nullification, the concept that a jury can vote to acquit even if it finds that the accused violated the law beyond a reasonable doubt.[1] Yoder's case also "piqued [defendant's] interest" after he learned of the case through an "email blast" sent to several people. Defendant claims—and it is not disputed—that he neither personally knew Yoder nor had any contact with him. Nevertheless, defendant attended the pretrial hearing in the Yoder case on November 4, 2015, at which the court scheduled Yoder's trial for November 24th.

On the morning set for Yoder's trial, defendant showed up and began handing out pamphlets outside the courthouse's front entrance to anyone who would take one. The pamphlets—entitled "Your Jury Rights: True or False?"—promoted jury nullification.[2] Defendant had found the pamphlets at the website of the Fully Informed Jury Association

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[1] Jury nullification has "solid historical credentials," the most famous case in American history being that of John Peter Zenger, who was charged, during the colonial period, by the British with criminal sedition. 6 LaFave et al, Criminal Procedure (4th ed), § 22.1(g), p 29. He was ultimately acquitted by the jury even though he had violated the law. *Id*. at 30. Under jury nullification, "a jury in a criminal case has the power to acquit even when its findings as to the facts, if literally applied to the law as stated by the judge, would have resulted in a conviction." *Id*. at 29.

[2] For example, the pamphlets explained that "[y]ou may, and should, vote your conscience" and advised that "[y]ou have the right to 'hang' the jury with your vote if you cannot agree with other jurors!"

(FIJA).[3] They mentioned nothing specifically about the Yoder case. When asked why he handed out pamphlets that morning, defendant answered that he "believed that there were going to be a lot of people around the courthouse and it was going to give [him] a really good opportunity to educate" them. According to defendant, he had no interest in the outcome of the Yoder case. Defendant also testified that he did not know that the Yoder case was going to be the only case scheduled for November 24th. After spending some time handing out pamphlets to a number of people, defendant was arrested. And the Yoder case, before any proceedings began, was ultimately resolved through a plea bargain, and the summoned individuals were sent home.

Defendant was charged with one count of jury tampering,[4] MCL 750.120a(1), and one count of obstruction of justice, MCL 750.505. Before trial, defendant moved to dismiss both charges, but the district court dismissed only the obstruction charge. As to the jury-tampering charge, defendant argued that he had not attempted to influence a "juror" as that term is used in MCL 750.120a(1), and he raised several constitutional arguments, including a First Amendment free-speech challenge.

When the district court denied his motion to dismiss the jury-tampering charge, defendant sought leave for an interlocutory appeal, but the circuit court denied his

[3] According to its website, FIJA's mission is to "empower[] jurors to uphold individual rights and liberty by instilling in them a rich understanding of their protective role, including jurors' right to refuse to enforce unjust law." FIJA, *What We Do* <https://fija.org/what-we-do/overview.html> (accessed June 18, 2020) [https://perma.cc/6NGM-9WYG].

[4] While the prosecution prefers to use "Juror—attempting to influence" as the name for the charge, we will follow the lead of the lower courts in referring to defendant's charge, periodically, as "jury tampering."

application, as did the Court of Appeals "for failure to persuade the Court of the need for immediate appellate review." *People v Wood*, unpublished order of the Court of Appeals, entered December 2, 2016 (Docket No. 334410). This Court also denied leave. *People v Wood*, 500 Mich 963 (2017).

A jury trial was then held on the jury-tampering charge. Although defendant had handed pamphlets to a number of people outside the courthouse, his jury-tampering charge was based on his interactions on the morning of Yoder's trial with Jennifer Johnson and Theresa DeVries, both of whom had been summoned for jury duty. As for Johnson, she testified that when she arrived for the first time at the courthouse, she approached defendant at the front entrance of the courthouse because she saw others walking up to defendant and thought she was supposed to check in with him. She could not remember whether she had told defendant that she was checking in for jury duty or whether defendant had asked if she was there for jury duty; either way, it was clear to defendant that she was there for jury duty. Defendant then handed her a pamphlet and pointed to the door. As for DeVries, she testified that when she showed up for the first time, as she walked up to the courthouse, defendant approached her and asked, " 'Are you here for jury selection?' " She answered, "Yes." Defendant then handed her a pamphlet and said, " 'Do you know what your rights are for being . . . on jury duty?' " She said, "Oh," grabbed the pamphlet, and walked into the courthouse.

After the prosecution rested, defendant moved again to dismiss the charge, but the district court denied the motion. Over defendant's objection, the district court instructed the jury as to the elements of jury tampering, stating in relevant part, "The word 'juror' includes a person who has been summoned to appear in court to decide the facts in a

specific trial." The jury convicted defendant of jury tampering. Defendant then appealed in the circuit court, which affirmed his convictions.

In the Court of Appeals, defendant raised three arguments. First, defendant argued that he had not tampered with a "juror in any case" because the ordinary meaning of "juror" is someone who serves on a jury and no jury had been sworn. He also argued that the statute is at least ambiguous in this regard and, as a result, the rule of lenity should apply. Second, defendant argued that if the Court of Appeals were to accept the prosecution's interpretation of "juror," then the statute would violate his First Amendment right to free speech. Third, defendant argued that the statute was void for vagueness under due-process principles. The Court of Appeals affirmed his conviction in a split, published decision. In doing so, the majority held that "juror" under MCL 750.120a(1) included those summoned for jury duty, "even if never selected [or] sworn to serve on a jury." *People v Wood*, 326 Mich App 561, 571; 928 NW2d 267 (2018). The majority also denied defendant's constitutional claims. The dissent, however, would have held that there is no juror for purposes of MCL 750.120a(1) "at the point in time that [a person] has merely been summoned for jury duty and arrives at the courthouse." *Id*. at 592 (MURPHY, J., dissenting).

Defendant sought leave to appeal in this Court, raising the same issues as below, and we granted leave to appeal and heard oral argument. *People v Wood*, 504 Mich 975 (2019). We disagree with the Court of Appeals and reverse its decision.

II. ANALYSIS

The issue in this case is the proper interpretation of the term "juror." We review this question of statutory interpretation de novo. *People v Gardner*, 482 Mich 41, 46; 753 NW2d 78 (2008). MCL 750.120a(1) provides:[5]

> 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.

According to defendant, "juror" in MCL 750.120a(1) includes only the individuals who are selected and sworn to serve on a jury. The prosecution, by contrast, argues that "juror" includes all the individuals summoned for jury duty. Although we do not decide, on the basis of the facts here, whether "juror" should be interpreted as narrowly as defendant proposes, we nevertheless disagree with the prosecution's broad interpretation.[6]

"We begin by construing the language of the statute itself." *People v Maynor*, 470 Mich 289, 295; 683 NW2d 565 (2004). Our goal is to determine the "plain and ordinary" meaning of "juror" as used in this statute. *People v Monaco*, 474 Mich 48, 55; 710 NW2d 46 (2006). The text of MCL 750.120a(1) prohibits a person from influencing the decision of a juror, but the statute fails to provide a definition of "juror." We start, therefore, by

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[5] Other provisions prohibit different means of improperly affecting the judgment of the jury. See MCL 750.120 (bribery); MCL 750.120a(2) (intimidation); MCL 750.120a(4) (retaliation).

[6] There are several possible lines of demarcation that could be drawn to determine when a summoned individual becomes a "juror," such as when that person joins a venire or joins a jury. But we need not decide where that line is to resolve this case.

consulting dictionary definitions "to determine the plain and ordinary meaning" of "juror." *People v Rea*, 500 Mich 422, 428; 902 NW2d 362 (2017).

Dictionaries generally provide two definitions of the word "juror." On the one hand, as defendant argues, some dictionaries define "juror" narrowly as "one member of a jury." *Black's Law Dictionary* (Deluxe 4th ed); see also, e.g., *Webster's Third New International Dictionary* (1961) ("[O]ne of a number of men sworn to deliver a verdict as a body[.]")[7]. On the other hand, as the prosecution argues, these same dictionaries also define "juror" more broadly to include those summoned for jury duty. See *Black's Law Dictionary* ("The term is not inflexible, and besides a person who has been accepted and sworn to try a cause 'juror' may also mean a person selected for jury service."); *Webster's Third New International Dictionary* ("[A] person designated and summoned to serve on a jury."). Thus, contrary to the dissent's position, these dictionaries support both parties' interpretations.

To determine which of the dictionary definitions is the most reasonable, we then interpret "juror" in its context—not in isolation. *Breighner v Mich High Sch Athletic Ass'n, Inc*, 471 Mich 217, 232; 683 NW2d 639 (2004). MCL 750.120a(1) prohibits an individual from influencing a juror's decision "in any case." In that context, we agree with the Court of Appeals dissent that when individuals are merely summoned for jury duty, they are not jurors because they have yet to participate in a case. For example, a summoned individual may become a juror in a case when they join a venire, "the group of potential jurors in the

[7] "Dictionaries tend to lag behind linguistic realities[.]" Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* (St. Paul: Thomson/West, 2012), p 419. As a result, "it is generally quite permissible to consult" a dictionary published within a reasonable time after the statute being construed was enacted. *Id*.

courtroom from which a defendant's petit jury [is] selected." *People v Bryant*, 491 Mich 575, 583 n 4; 822 NW2d 124 (2012) (drawing a distinction in a case involving the Sixth Amendment's "fair cross section" requirement, which prohibits the exclusion of certain segments of the population from the jury, between the venire and the jury pool, "the group of people summoned to appear for jury duty on a particular day"). When the venire is selected, summoned individuals are assigned to a specific case and are then subject to voir dire. In other words, venire selection is the earliest point at which individuals summoned for jury duty may be considered as participating in any particular case because, before that, a summoned individual may never be assigned to a venire and thus might never be attached to any case at all. To demonstrate this point, imagine a situation in which there are multiple trials scheduled at a courthouse for a single day. In that situation, those summoned for jury duty could participate in any one of those scheduled cases; it is not until venire selection that anyone could possibly be considered assigned to a case—let alone be considered a juror under MCL 750.120a(1). The dissent argues that "case" suggests a broader set of proceedings than just the trial, and thus "juror" encompasses the summoned individuals here. But even if that is true, the language still suggests that summoned individuals have to participate in some sort of proceedings before becoming jurors. Here, Johnson and DeVries had only been summoned for jury duty at the time defendant interacted with them; they had not become part of a venire.

MCL 750.120, the neighboring bribery statute, also supports our narrower interpretation of "juror" because its context suggests that the word has a broader meaning there than it does in MCL 750.120a(1). MCL 750.120 provides:

> Any person summoned as a juror or chosen or appointed as an appraiser, receiver, trustee, administrator, executor, commissioner, auditor, arbitrator or referee who shall corruptly take anything to give his verdict, award, or report, or who shall corruptly receive any gift or gratuity whatever, from a party to any suit, cause, or proceeding, for the trial or decision of which such juror shall have been summoned, or for the hearing or determination of which such appraiser, receiver, trustee, administrator, executor, commissioner, auditor, arbitrator, or referee shall have been chosen or appointed, shall be guilty of a felony.

We read MCL 750.120 and MCL 750.120a harmoniously because "we examine . . . statute[s] as a whole, reading individual words and phrases in the context of the entire legislative scheme." *Madugula v Taub*, 496 Mich 685, 696; 853 NW2d 75 (2014). We also generally presume that when the language of two statutes is different, "the drafters acted intentionally and purposely in their inclusion or exclusion." *People v Peltola*, 489 Mich 174, 185; 803 NW2d 140 (2011). Here, the Legislature was aware of the language in MCL 750.120, which was enacted in 1931,[8] and deliberately chose not to include the same language in MCL 750.120a(1), which was enacted in 1955.[9]

MCL 750.120 presents two differences from MCL 750.120a(1). First, it refers to "[a]ny person summoned as a juror." By including that language in MCL 750.120, the Legislature suggested a broader range of people who may not be bribed, as it conditions the group of individuals who may be charged under MCL 750.120 with the act of being summoned. Its failure to include that same language in MCL 750.120a(1) evinces an intent to narrow the class of persons subject to criminal liability under the statute. The prosecution's interpretation would also render "any person summoned" surplusage because

[8] 1931 PA 328.

[9] 1955 PA 88.

if the word "juror" is broad enough to include those who have merely been summoned for jury duty, it would be unnecessary to clarify what was already inherent in the meaning of "juror." *People v Pinkney*, 501 Mich 259, 282; 912 NW2d 535 (2018) (" '[W]e must give effect to every word, phrase, and clause and avoid an interpretation that would render any part of the statute surplusage or nugatory.' ") (citation omitted).

The dissent argues that the difference is a "vestige of the earlier, and narrower, meaning of 'juror' "; according to the dissent, MCL 750.120 uses "any person summoned" because "juror" in 1846, when the first version of the statute was enacted, only meant one who serves on a jury.[10] The Court of Appeals majority also found MCL 750.120 unhelpful because it believed that the Legislature "used the phrase '[a]ny person summoned' to describe the act of being called for jury duty, just as it used a descriptive phrase for the rest of the positions listed in the statute, i.e., '[a]ny person . . . chosen or appointed as[.]' " *Wood*, 326 Mich App at 573. In other words, the choice of language was merely stylistic. But without additional textual evidence, we find both arguments insufficient to rebut this Court's presumption that the Legislature intended the difference in word choice between the two statutes, and we find both arguments insufficient to overcome the rule against surplusage.[11]

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[10] See 1846 RS, ch 156, § 10.

[11] Although the dissent agrees that the statutes should be read harmoniously together, the dissent also gives less weight to the difference in language because it believes that MCL 750.120a(1) is capable of only one interpretation. We disagree. As noted earlier, the language of MCL 750.120a(1) supports the narrower definition of "juror." And, at the very least, the language is ambiguous enough that MCL 750.120 provides helpful information—especially in light of this Court's presumption that differences between related statutes are intentional.

Second, MCL 750.120 does not include the "in any case" modifier that is present in MCL 750.120a(1). So even if we did believe that "[a]ny person summoned as" was merely stylistic, that would not explain the choice to include "in any case" in MCL 750.120a(1) but not in MCL 750.120. As we noted earlier, that phrase, in light of the context, limits the meaning of "juror" to individuals who have participated in a case. By contrast, the absence of "in any case" from the bribery statute suggests, again, a potentially broader group of people to whom that statute applies.

The dissent, like the Court of Appeals majority and the prosecution, also asserts that the "purpose" of MCL 750.120a(1) means that the term "juror" must include everyone summoned for jury duty. Looking at the language in MCL 750.120a and the surrounding statutory framework, the dissent argues that "the concrete purpose of the statute, collected from the statutory language, is to prevent individuals from asserting improper influences over judicial proceedings." We do not disagree. See Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* (St. Paul: Thomson/West, 2012), p 56 (finding the purpose to be an appropriate consideration in statutory interpretation when it is "derived from the text, not extrinsic sources"). This purpose, however, does not help us choose between the possible meanings of "juror" because both the prosecution's and defendant's proposed definitions accomplish the goal of protecting the integrity of the jury. The prosecution's definition may indeed accomplish that goal in a broader way by expanding the scope of the term "juror." But our job is not to choose which definition the Legislature *should* have adopted to accomplish its goal in the best possible way; our goal is to interpret the text that is provided to us. See *id*. at 57 ("Purpose sheds light only on deciding which of various *textually permissible meanings* should be adopted. No text pursues its purpose at all

costs."). It is within the realm of possibility—and not an absurd result as the dissent suggests—that the Legislature wanted a narrower definition of "juror" in MCL 750.120a(1). Consider that the Legislature could have chosen a narrower definition of "juror" because of possible First Amendment concerns—such as those raised by defendant here—and relied on other traditional methods of eliminating jurors who may have been improperly influenced, like voir dire, for-cause removal, and peremptory strikes. Using those familiar methods of eliminating biased jurors would not, as the prosecution argues, "negate any ability of the law to achieve its goal." We need not, however, dwell for long on what the Legislature meant to do. Our point is that the "purpose" of MCL 750.120a(1) does not help us choose between the possible meanings. If we were, instead, to adopt the broader definition of "juror," solely because we felt that it would better accomplish the purpose of the statute, we would be basing our decision on intuitions. And "[l]ike most intuitions, it finds [the Legislature] to have intended what the intuitor thinks [the Legislator] *ought* to intend," not what it actually did. *Deal v United States*, 508 US 129, 136; 113 S Ct 1993; 124 L Ed 2d 44 (1993), superseded by statute as stated in *United States v Davis*, 588 US ___ n 1; 139 S Ct 2319 n 1 (2019).[12]

The oath offers another signal that an individual is participating in "any case." The etymology of "juror" shows the centrality of the oath. "Juror" can be traced from the Latin word for "jury," *jūrāre*, meaning "to swear." See *Oxford English Dictionary* (2d ed); see also *People v Cain*, 498 Mich 108, 134; 869 NW2d 829 (2015) (VIVIANO, J., dissenting)

[12] If the Legislature disagrees with our interpretation, it is free, at any time in the future, to clarify the meaning of "juror," as other states have done. See, e.g., SD Codified Laws 22-12A-12 (making it illegal to influence "a juror, or any person summoned or drawn as a juror").

(underscoring that "the etymological roots of the word 'jury' " "can be traced back to the French words '*juré*' and '*jurée*' and the Latin word '*jurare*,' which mean 'sworn,' 'oath,' and 'to swear,' respectively"). But at the time that individuals in the community are summoned for jury duty, they have yet to be sworn in for any official proceedings. Summoned individuals can get sworn at two points during judicial proceedings. First, if they are assigned to a venire, they are given the voir dire oath. MCR 6.412(B) ("Before beginning the jury selection process, the court should give the prospective jurors appropriate preliminary instructions and must have them sworn."). Second, the smaller group of the venire selected to serve on the jury receive their final oath for the trial. MCL 768.14 ("You shall well and truly try, and true deliverance make, between the people of this state and the prisoner at bar, whom you shall have in charge, according to the evidence and the laws of this state; so help you God."). Although the voir dire oath on its own may not transform an individual into a juror, it is some indication that a person is participating in a case as required under MCL 750.120a(1). *Cain*, 498 Mich at 135 n 28 (VIVIANO, J., dissenting), citing *Merriam-Webster's Collegiate Dictionary* (2014) ("Indeed, oaths are so integral to the concept of a jury that, in common parlance, one who refuses to take a required oath is deemed a 'nonjuror.' ").

Finally, the prosecution argues that Chapter 13 of the Revised Judicature Act (RJA), MCL 600.1300 *et seq*., uses "juror" to include those summoned for jury duty and that the RJA should be read harmoniously with MCL 750.120a(1). The Court of Appeals majority also suggested as much when it noted that MCL 600.1334 and MCL 600.1344 use "juror" to "apply to those persons summoned for jury duty but not necessarily selected and sworn." *Wood*, 326 Mich App at 574 n 4. Chapter 13 of the RJA establishes the procedures for

selecting individuals for jury service. But, like the jury-tampering statute, the RJA fails to provide a definition of "juror." See MCL 600.1300. Recognizing that, the prosecution argues that "juror" is used throughout this chapter of the RJA to refer to individuals summoned for jury duty. A review of the RJA, however, shows that while it uses "juror" in the sense the prosecution argues for, it also uses it in both broader and narrower senses. For example, MCL 600.1349 states that "[n]o juror may be subject to an action, civil or criminal, on account of any verdict . . . ." This provision appears to refer to a juror as a member of a jury because only jury members can render verdicts; it makes those jurors immune from lawsuits for their decision. Then, there are other places in Chapter 13 where the RJA seems to refer to everyone on the jury list as a juror—even when they have yet to be summoned—which would be an even broader definition of "juror" than the one for which the prosecution advocates. See, e.g., MCL 600.1321(2) ("If there are not sufficient names on the segregated list for any district court district, the board shall . . . obtain as many additional jurors as needed for that district."). Because of this variance in usage, the RJA, like the purpose of MCL 750.120a(1), does not help us decide the meaning of "juror." Instead, it presents its own complexities in making this determination. It is also not clear that Chapter 13 of the RJA should be read *in pari materia* with MCL 750.120a(1) because they both have a "scope and aim [that] are distinct and unconnected." *People v Mazur*, 497 Mich 302, 313; 872 NW2d 201 (2015). Although they both deal with jurors, the purpose of MCL 750.120a(1) is to prevent jury tampering, while the purpose of Chapter 13 of the RJA is to set forth procedures for ultimately selecting a jury.

In sum, under MCL 750.120a(1), an individual summoned for jury duty is not a juror when he or she merely shows up at the courthouse for jury duty. Defendant here

talked to individuals who had been summoned for jury duty but had yet to participate in any court proceedings that would make them a part of any case. When defendant approached Johnson and DeVries, they had neither entered the courthouse nor sat as part of a venire nor sworn an oath. And all the individuals summoned for jury duty on the day of the Yoder trial, ultimately, did not participate in any case because they were dismissed before any proceedings began. Defendant, therefore, had not discussed jury nullification with any "jurors" as that term is used in MCL 750.120a(1). Because the individuals summoned for jury duty here had not participated in any meaningful sense in the proceedings of a case, we need not decide whether the term "juror" in MCL 750.120a(1) is limited to those who serve on a jury. We also need not reach defendant's constitutional arguments because we have decided this case on statutory grounds. *J & J Constr Co v Bricklayers & Allied Craftsmen, Local 1*, 468 Mich 722, 734; 664 NW2d 728 (2003) ("[I]t is an undisputed principle of judicial review that questions of constitutionality should not be decided if the case may be disposed of on other grounds.").

III. CONCLUSION

We hold that the individuals here who were merely summoned for jury duty and had not yet participated in a case were not jurors under MCL 750.120a(1). Therefore, we reverse the Court of Appeals' decision and remand to the district court for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

Elizabeth T. Clement
Bridget M. McCormack
Brian K. Zahra
Richard H. Bernstein
Megan K. Cavanagh

S T A T E O F M I C H I G A N

SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v No. 159063

KEITH ERIC WOOD,

Defendant-Appellant.

VIVIANO, J. (*dissenting*).

This case presents a relatively straightforward question: what would the word "juror" as used in the jury-tampering statute have meant to an ordinary user of the English language when the statute was enacted? The majority holds that defendant Keith Wood cannot be guilty of jury tampering under MCL 750.120a(1) because he did not influence a "juror," which it defines narrowly to exclude individuals who have been summoned for jury duty. But the majority misreads the statute. The ordinary meaning of "juror" in this context includes summoned jurors. This conclusion follows from a close and comprehensive examination of the dictionaries from the relevant period, almost all of which included summoned jurors in the definition of "juror." It follows, too, from a proper reading of the statutory context and purpose as discerned from the text. Under this interpretation, defendant's actions fell within the statutory proscription of jury tampering by seeking to influence a summoned juror. I would also conclude that this interpretation is sufficiently definite to avoid any First Amendment concerns. For these reasons, I dissent.

I. JURY-TAMPERING STATUTE

"In every case requiring statutory interpretation, we seek to discern the ordinary meaning of the language in the context of the statute as a whole."[1] "The words of a statute . . . should be interpreted on the basis of their ordinary meaning and the overall context in which they are used."[2] "To determine the ordinary meaning of undefined words in the statute, a court may consult a dictionary."[3]

The statute at issue in this case, MCL 750.120a(1), provides:

> 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.

This case turns on the meaning of the term "juror." It is not defined in the Michigan Penal Code, MCL 750.1 *et seq*.; therefore, we first turn to a dictionary to ascertain the ordinary meaning of that term.[4] Because the jury-tampering statute was enacted in 1955, the meaning of "juror" turns upon dictionaries from that period.[5] The best practice, when

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[1] *TOMRA of North America, Inc v Dep't of Treasury*, ___ Mich ___, ___; ___ NW2d ___ (2020) (Docket Nos. 158333 and 158335); slip op at 4.

[2] *People v Flick*, 487 Mich 1, 10-11; 790 NW2d 295 (2010).

[3] *People v Tennyson*, 487 Mich 730, 738; 790 NW2d 354 (2010).

[4] *Id*. at 738.

[5] See *Ronnisch Constr Group, Inc v Lofts on the Nine, LLC*, 499 Mich 544, 563 n 58; 886 NW2d 113 (2016) ("In ascertaining the meaning of a term, a court may determine the meaning at the time the statute was enacted by consulting dictionaries from that time."). Because "[d]ictionaries tend to lag behind linguistic realities," it is also appropriate here to consult dictionaries from after 1955 to understand how language was used at that time. Scalia & Garner, *A Note on the Use of Dictionaries*, 16 Green Bag 2d 419, 423 (2013).

employing dictionaries, is to use multiple versions from the relevant period so that outliers can be identified and rejected in favor of those offering a "more advanced semantic analysis . . . ."[6]

Here, a brief overview of the historical development of the word "juror" provides a useful starting point, as it displays how the word broadened during the 20th century. Beginning in 1846, when a number of Michigan's bribery and corruption statutes were first enacted,[7] and running through the early 20th century, "juror" was narrowly defined in every dictionary I could locate as, or as something equivalent to, "one who serves on a jury."[8] In

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See also Aprill, *The Law of The Word: Dictionary Shopping in the Supreme Court*, 30 Ariz St L J 275, 287 (1998) ("Because of the inevitable time delay between collection of citations and publication of a dictionary, dictionaries must lag behind current use of the language. A dictionary with a 1996 publication date will not describe completely how language is being used in 1996.").

[6] *A Note on the Use of Dictionaries*, 16 Green Bag at 422 & nn 14 and 15, citing *MCI Telecom Corp v American Tel & Tel Co*, 512 US 218, 225-228; 114 S Ct 2223; 129 L Ed 2d 182 (1994) (weighing various definitions of the term "modify" to determine the meaning of the term in 47 USC 203), and quoting Sinclair, *Guide to Statutory Interpretation* (2000), p 137 (" '[I]f you use a dictionary, use more than one and check editions from the date of enactment as well as current.' "). See also Harrell, *Dictionary Research for Lawyers*, 48 Colo Lawyer 8, 9 (May 2019) ("Researchers should consult multiple secondary sources, when available, to overcome potential inaccuracies, shortcomings, and biases of individual sources.").

[7] See, e.g., 1846 RS, ch 156, § 10 (predecessor of current MCL 750.120, which used the phrase "any person summoned as a juror").

[8] *Webster's Elementary School Dictionary* (1914) ("A member of a jury."); *A Primary School Dictionary of the English Language* (1880) ("One who serves on a jury."); *An American Dictionary of the English Language* (1861) ("One that serves on a jury; one sworn to deliver the truth on the evidence given him concerning any matter in question or on trial."); *An American Dictionary of the English Language* (1857) ("One that serves on a jury."); *An American Dictionary of the English Language* (1853) ("One who serves on a

the 1930s—possibly coinciding with increases in the number of jurors being summoned; reforms to the manner of selecting, summoning, and compensating them; and the advent of professional court administration over these new processes[9]—dictionaries began reflecting a broader meaning of "juror," encompassing summoned jurors.[10]

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jury."); *A Dictionary of the English Language* (1851) ("One who serves on a jury."); *A Dictionary of the English Language* (1846) ("One who serves on a jury.").

[9] See generally King, *Juror Delinquency in Criminal Trials in America, 1796-1996*, 94 Mich L Rev 2673, 2691 (1996). As of 2007, state courts estimated that nearly 32 million jury summonses were mailed annually—corresponding to about 15% of the nation's adult population—in order to secure enough jurors to hear cases. See National Center for State Courts Center for Jury Studies, *The State-of-the-States Survey of Jury Improvement Efforts—Executive Summary*, p 2, available at <http://www.ncsc-jurystudies.org/__data/assets/pdf_file/0018/5319/sos_exec_sum.pdf> (accessed July 14, 2020) [https://perma.cc/9DHA-4BPM]. This represents a significant expansion of the jury summons over its use around the time the predecessor to MCL 750.120 was enacted. At that time, only about 5 to 6% of the population in Illinois, for example, were ever summoned, and often courtroom bystanders were used throughout the Midwest when the summoned individuals failed to appear. See McDermott, *The Jury in Lincoln's America* (Athens: Ohio University Press, 2012), pp 31, 33, 51. In addition, the scope of the potential jury pools expanded over the course of the 20th century, introducing new groups into jury service. See Friedman, *American Law in the 20th Century* (New Haven: Yale University Press, 2002), pp 264-266. All of these changes reflect the realities of the administration of the jury system as it stood at the time MCL 750.120a(1) was enacted. See, e.g., *Ballentine's Law Dictionary* (3d ed) (defining "juror" as "[a] person on the jury list or roll—any person in a county, city, district, or other venue listed for jury service for a definite period, such as a year, or for an indefinite period. A person whose name has been drawn from the jury list or roll and placed in the jury wheel or box. In common usage, a venireman—a person whose name has been drawn from the wheel for a venire or special venire and who has been summoned by a writ of venire and is thereby upon the jury panel for a term of court, or part of a term, or a panel from which jurors are to be selected for a particular case. Most narrowly defined, a member of a jury which has been sworn to try a case") (citation omitted). These changes might help explain the expansion in the meaning of "juror."

[10] See *Webster's Student Dictionary* (1938) (defining "juror" to mean "[i]n legal procedure, a member of a jury or a person summoned to serve on a jury."); *Webster's Collegiate*

By 1955, this broadened meaning was well established. All but one of the dictionaries that I found from around that year define "juror" to include individuals summoned to be on jury duty. *Webster's New International Dictionary*, published in 1953, defines "juror," in the legal context, as "a member of a jury, or one designated and summoned to serve on a jury."[11] The Court of Appeals below employed a similar definition from a contemporaneous dictionary that had a usage note stating, " ' "*Juror*" is uniformly used by the jurists most familiar with the subject as including persons designated or ordered to be summoned as *jurors*.' "[12] *Webster's New Practical Dictionary*, from 1957, defines it as, in a legal procedure, "a member of a jury or a person summoned to serve on a jury."[13] Some, like *Webster's Seventh New Collegiate Dictionary*, from 1963, use both

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Dictionary (1936) (defining "juror" to mean "[a] member of a jury, or one summoned to serve on a jury").

[11] *Webster's New International Dictionary of the English Language* (1953). See also *Webster's New World Dictionary of the American Language* (1966) ("[A] member of a jury or jury panel[.]"); *New Century Dictionary of the English Language* (1953) (defining "juror" as "[o]ne of a body of persons sworn to deliver a verdict in a case submitted to them; a member of any jury; also, one of the panel from which a jury is selected"). At the time, a jury "panel" was broadly defined to mean "**1 a** (1) : a schedule containing names of persons summoned as jurors (2) : the group of persons so summoned (3) : JURY 1."); *Webster's Seventh New Collegiate Dictionary* (1963). See also *American College Dictionary* (1953) ("10. *Law*. a. the list of persons summoned for service as jurors. b. the body of persons composing a jury."); *Webster's New World Dictionary of the American Language* (1966) ("7. in *law*, *a*) originally, a piece of parchment on which were recorded the list of persons summoned for jury duty. *b*) later, the list itself. *c*) the jurors as a whole.").

[12] *People v Wood*, 326 Mich App 561, 572; 928 NW2d 267 (2018), quoting *Webster's New Int'l Dictionary* (1955).

[13] *Webster's New Practical Dictionary* (1957).

understandings—i.e., members of the jury and summoned jurors—as coordinate subsenses (which I discuss more below) in the same definition entry: "**1. a :** a member of a jury **b :** a person summoned to serve on a jury[.]"[14] Legal dictionaries from this time, such as *Black's Law Dictionary*, define "juror" as "[o]ne member of a jury," but with a usage note explaining that "[t]he term is not inflexible, and besides a person who has been accepted and sworn to try a cause 'juror' may also mean a person selected for jury service."[15] Another legal dictionary included this broader definition encompassing summoned jurors.[16]

All these dictionaries support my interpretation, including those that list empaneled and summoned jurors as coordinate subsenses. In the present context, the definitions with the related subsenses indicate that both are included as a single definition of "juror," not as

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[14] *Webster's Seventh New Collegiate Dictionary* (1963). See generally Explanatory Note 11.2, p 12a ("Boldface lowercase letters separate coordinate subsenses of a numbered sense or sometimes of an unnumbered sense."). Other dictionaries from that period follow the same template. See *Webster's Third New International Dictionary* (1966) (defining "juror" as "**1 a :** one of a number of men sworn to deliver a verdict as a body **:** a member of a jury **b :** a person designated and summoned to serve on a jury"); *American Heritage Dictionary of the English Language* (1969) (defining "juror" as "**1. a.** A person serving as a member of a body sworn to hear and hand down a verdict on a case. **b.** A person called or designated for jury duty"). I did locate one dictionary that lists these understandings as distinct senses of the word. See *American College Dictionary* (1953) ("**1.** one of a body of persons sworn to deliver a verdict in a case submitted to them; a member of any jury. **2.** one of the panel from which a jury is selected."). Even this dictionary may be read as supporting my interpretation. See note 26 of this opinion.

[15] *Black's Law Dictionary* (Rev 4th ed). We need not determine whether the term "juror" is a legal term of art because, as discussed in the text, the definitions in both lay and legal dictionaries are the same. Therefore, it is proper to rely on both types of dictionaries. See *Hecht v Nat'l Heritage Academies, Inc*, 499 Mich 586, 621 n 62; 886 NW2d 135 (2016).

[16] See *Ballentine's Law Dictionary* (3d ed).

distinct alternatives. A "sense" is a "basic unit[] of [dictionary] entry organization[,] the most distinct component parts of the dictionary article."[17] A subsense, in turn, is a "a specific sense of a word or phrase that is derived from, included in, or closely related to a broader sense and that may be grouped with the broader sense in a dictionary[.]"[18] Generally, when confronting different, distinct *senses* of a word, we "must use the context in which a given word appears to determine its aptest, most likely sense."[19] But when confronting coordinate *subsenses*, those related understandings may be read together if appropriate.[20] For example, "the word *knife* could signify a range of objects, from a piece of cutlery to a medical instrument to a weapon," but "*knife* in its general ordinary sense, meaning 'a sharp instrument for cutting,' can be used to signify all of these sub-senses together at the same time."[21] A prohibition of knives on airplanes would therefore

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[17] Lew, *Identifying, Ordering and Defining Senses*, in Jackson, ed, *The Bloomsbury Companion to Lexicography* (London: Bloomsbury Publishing Plc, 2013), § 4.9, p 1.

[18] *Merriam-Webster Online Dictionary* <http://merriam-webster.com/dictionary/subsense> (accessed July 15, 2020) [https://perma.cc/V2FW-J2RC]. See also *Lexico Online Dictionary* <http://lexico.com/definition/subsense> (accessed July 15, 2020) [https://perma.cc/PA3M-MUNV] (defining a subsense as "[a] subsidiary sense of a word defined in a dictionary").

[19] Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* (St. Paul: Thomson/West, 2012), p 418. See also *In re Erwin Estate*, 503 Mich 1, 33; 921 NW2d 308 (2018) (VIVIANO, J., dissenting) ("[W]hen a word has more than one definition, the context determines the sense in which the Legislature used the word.").

[20] See Lew, *Identifying* at § 4.9, p 8 ("[S]ubsenses should be allowed to be nested under the main sense.").

[21] Camper, *Arguing Over Texts: The Rhetoric of Interpretation* (New York: Oxford University Press, 2018), ch 3, p 46.

encompass any type of knife.[22] Under this reasoning, courts have recognized that a definition of a single term can include multiple subsenses.[23] In fact, numerous courts, including the United States Supreme Court, have concluded that the term "juror" in similar contexts includes both summoned and empaneled jurors.[24]

I found only one lay dictionary from this period that defines "juror" simply as a "member of a jury."[25] This dictionary is less probative, however, and not simply because it stands alone. In light of the historical development of the term "juror," this dictionary

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[22] *Id*.

[23] See *State v Guzman*, 366 Or 18, 25; 455 P3d 485 (2019) ("The listed subsenses [of 'counterpart'] have the same core of meaning—a high degree of similarity."); *State v Fries*, 344 Or 541, 546 n 5; 185 P3d 453 (2008) (describing how two out of the four pertinent subsenses of "possession" may apply in context); *Wetherell v Douglas Co*, 342 Or 666, 679; 160 P3d 614 (2007) (describing how two subsenses of "profit" may apply as they both refer to some consideration of expenses and revenue).

These principles do not necessarily apply when analyzing the relationship between two distinct *senses* of a word. Cf. *Reading Law*, p 418. However, because of the close relationship between summoned and empaneled jurors—which is apparent whether both are included in the same definition or as coordinate subsenses—these understandings of the word "juror" are best read together even in the one contemporaneous dictionary I found listing them as distinct senses. See note 16 of this opinion.

[24] See *United States v Russell*, 255 US 138, 143-144; 41 S Ct 260; 65 L Ed 553 (1921) (jury tampering); *United States v Aguilar*, 21 F3d 1475, 1482 (1994) (obstruction of justice), rev'd in part on other grounds 515 US 593 (1995); *United States v Jackson*, 607 F2d 1219, 1222 (CA 8, 1979) (improperly influencing jury); *State v Solomon*, 120 A3d 661, 665; 2015 ME 96 (2015) (jury tampering); *State v Bowers*, 270 SC 124, 130; 241 SE2d 409 (1978) (same); *State v Tucker*, 170 So 3d 394 (La Ct App, 2015) (same); *Nobles v State*, 769 So 2d 1063, 1065-1066 (Fla Ct App, 2000) (same).

[25] *The Holt Intermediate Dictionary of American English* (1966).

appears to reflect the word's older meaning.[26] And, in general, little "can validly be inferred from the fact that a particular meaning is not recorded for a particular word," as sometimes the omission can be due to practical concerns like space constraints during publishing.[27] Given that this outlier provides a less sophisticated semantic analysis, I decline to rely on it.

In sum, almost all contemporaneous lay and legal dictionaries provide that both prospective and empaneled jurors are included in the definition of the term "juror." The majority does not take stock of the dictionaries discussed above or the consensus that emerges that "juror" had a broad meaning when MCL 750.120a was enacted. After a superficial reading of only two dictionaries—one lay and one legal—the majority summarily dispenses with the dictionary as a tool to assist us in determining the ordinary meaning of "juror." What is more, the majority fails to appreciate that the definitions it

[26] See *A Note on the Use of Dictionaries*, 16 Green Bag at 422 ("Occasionally most dictionaries will define a word inadequately—without accounting for its semantic nuances as they may shift from context to context—and a given dictionary will improve on the others. When that is so, the more advanced semantic analysis will be preferable."). It is noteworthy, too, that the majority likewise refrains from using these dictionaries.

[27] Cunningham et al, *Plain Meaning and Hard Cases*, 103 Yale L J 1561, 1615 (1994). See also *Law of the Word*, 30 Ariz St L J at 297 ("[N]o dictionary has a monopoly on the truth. Dictionaries include common meanings of words. They do not, however, include all meanings. They may well exclude meanings that are quite ordinary although less common. Furthermore, dictionary definitions may fail to include a particular definition of a word either because the meaning was not among those included in the citation file or because the meaning was sacrificed to constraints of abstraction and of space.").

cites as inconsistent alternatives are instead closely related subsenses of the word "juror," which are better read together as a single definition.[28]

My interpretation also draws support from the broader statutory context, which illustrates why both understandings of "juror" apply in this case.[29] Recall that MCL 750.120a(1) criminalizes "willful[] 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[.]" The principal phrase giving context to "juror" is "in any case." This phrase provides context because it indicates that the defendant need not have any particular connection with the case—e.g., as a party or participant—that he or she seeks to influence: the target can be a "juror" in "any case." Because "case" means a suit or action involving an "aggregate of facts,"[30] there must be an actual, particular case.

The use of "case" demonstrates the statute's breadth, as it reaches cases that have not yet proceeded to trial. This is shown by the simple fact that while a "case" may result in a "trial," the two terms have distinct meanings. The "trial"—i.e., the "judicial examination . . . of the issues between the parties"—is only part of the larger case.[31] The

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[28] See *ante* at 7, citing *Webster's Third New International Dictionary* (1961).

[29] See *Feyz v Mercy Mem Hosp*, 475 Mich 663, 685 n 62; 719 NW2d 1 (2006) ("[B]ecause a word can have many different meanings depending on the context in which it is used, and because dictionaries frequently contain multiple definitions of a given word, . . . it is important to determine the most pertinent definition of a word in light of its context."); *Reading Law*, p 70 ("Most common English words have a number of dictionary definitions, some of them quite abstruse and rarely intended. One should assume the contextually appropriate ordinary meaning unless there is reason to think otherwise.").

[30] *Black's Law Dictionary* (Rev 4th ed).

[31] *Id.*

statute demonstrates the difference between these two terms by using both in MCL 750.120a(1), excepting from the criminal prohibition arguments or persuasion made "in open court in the trial of the case." The statute thus recognizes that a trial occurs as part of a case, but it does *not* limit a "juror" to someone serving in a specific trial or in any trial whatsoever. A case will, of course, begin before the jury is empaneled and the trial begun. As long as a particular case exists, prospective jurors who have not yet been involved in a trial, but only summoned with the possibility of hearing the case, fit within the statute.[32]

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[32] This difference between "trial" and "case" demonstrates why an oath is not required to make a person a "juror." My position in *People v Cain*, 498 Mich 108, 134, 139; 869 NW2d 829 (2015) (VIVIANO, J., dissenting), was that "[t]he essence of the jury is, and always has been, the swearing of the oath"; thus, "a jury is not a jury until it is sworn." The majority cites my dissent in *Cain* as support for its position that an oath is required to become a juror. I firmly disagree. The question in *Cain* was whether "the failure to properly swear *the jury*" required a new trial. *Id*. at 114 (opinion of the Court) (emphasis added). But "jury" and "juror" are different concepts. The relevant definitions of "jury" contain an essential requirement that the jury be "sworn." *Webster's Seventh New Collegiate Dictionary* (1963) (defining "jury" as "a body of men *sworn* to give a verdict on some matter submitted to them; *esp*: a body of men legally selected and *sworn* to inquire into any matter of fact and to give their verdict according to the evidence"); *Black's Law Dictionary* (Rev 4th ed) ("A certain number of men, selected according to law, and *sworn* (*jurati*) to inquire of certain matters of fact, and declare the truth upon evidence to be laid before them.") (emphasis added); see also *Cain*, 498 Mich at 134 n 32 (VIVIANO, J., dissenting), quoting 1 Pollock & Maitland, *The History of English Law* (2d ed) (Cambridge: Oxford University Press, 1968), bk I, ch VI, p 138 (" 'The essence of the jury . . . seems to be this: a body of neighbors is summoned by some public officer *to give upon oath* a true answer to some question.' "). By contrast, the dictionary definitions discussed above demonstrate that prospective jurors are still jurors even though they have only been summoned to appear and not sworn. In any event, I recognize that the *Cain* majority concluded, contrary to my dissent, that "the error of failing to properly swear the jury did not undermine the proceedings with respect to the broader pursuits and values that the oath seeks to advance." *Cain*, 498 Mich at 122 (opinion of the Court). Further, though "juror" and "jury" come from the same historical root, "juror" is used more broadly. See notes 9 through 18 of this opinion and accompanying text (explaining how "juror" more commonly refers to individuals summoned for jury duty, even before the jury is formed and sworn); cf. *Oxford English Dictionary* (2d ed) ("The word [juror] has the same

Contrary to the majority's assertion, the statute does not limit its application to "sworn" jurors only. It could have done so by, for example, using language similar to that in MCL 750.120a(3), which provides that "Subsections (1) and (2) do not prohibit any *deliberating juror* from attempting to influence other *members of the same jury* by any proper means."[33] No such language appears in the related subsection at issue here, MCL 750.120a(1), indicating that no such limitations should be read into this subsection.

The thrust of the majority's argument focuses on MCL 750.120, which it claims is context demonstrating that "juror" does not apply to both prospective and empaneled jurors.[34] That statutory section makes it a felony for "[a]ny person summoned as a

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historical development as is seen in JURY, but has now a wider range of application than *juryman* and *jury-woman*, being freely used historically of members of the ancient inquests out of which the jury system arose, as well as of members of a jury chosen to adjudicate between competitors, and award prizes, to whom 'juryman' is seldom applied.").

[33] Emphasis added.

[34] I agree with the majority that the two statutes should be read harmoniously or *in pari materia*, but I decline to give MCL 750.120 the great weight that the majority gives it. MCL 750.120 was enacted by 1931 PA 328, but a previous version of the jury-tampering statute using the "any person summoned as a juror" language was first enacted in 1846. See 1846 RS, ch 156, § 10. MCL 750.120a was enacted more than 100 years later by 1955 PA 88. While "statutes are to be interpreted in the light of, and with reference to, others *in pari materia*," that principle carries "additional weight when applied to acts passed at one and the same session." *City of Lansing v Bd of State Auditors*, 111 Mich 327, 333; 69 NW 723 (1896). See also 82 CJS, Statutes, § 480, p 628 ("The rule that statutes in pari materia should be construed together and harmonized, if possible, applies with peculiar force to statutes passed at the same session of the legislature, especially where they are passed or approved on the same day.") (boldface omitted). But if a statute, especially a later statute, is "clear on its face and when standing alone is fairly susceptible of but one construction," it should be applied as written. 73 Am Jur 2d, Statutes, § 97, p 336. In sum, while I agree with the majority that MCL 750.120a should certainly be read harmoniously or *in pari materia* with the other sections of Chapter XVII of the Michigan Penal Code, it is proper to give more weight to the language of MCL 750.120a itself rather than to MCL 750.120

juror . . . [to] corruptly receive any gift or gratuity whatever, from any party to any suit, cause, or proceeding, for the trial or decision of which such juror shall have been summoned . . . ."[35] The majority reads "summoned as a juror" to indicate that additional language is necessary for "juror" to include summoned jurors. According to the majority, if "juror" already included summoned jurors, then there would be no need to include the phrase "[a]ny person summoned as a juror." Thus, the majority interprets "summoned" as language that broadens the scope of the statute beyond what the word "juror" would cover.[36] Further, according to the majority, MCL 750.120 does not include the "in any case" language, which also indicates a "potentially broader group of people to whom that statute applies."[37]

The majority overlooks the historical development of the word "juror" and the corresponding statutory history of MCL 750.120. The predecessor to that statute was enacted in 1846.[38] At that time, as noted above, the ordinary meaning of "juror" was narrower, including only those who sat on the jury.[39] This historical understanding of the meaning of "juror" as expanding to include a person summoned to serve as a juror is also

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generally, as the majority does. As previously discussed, that plain language of MCL 750.120a already supports a conclusion that "juror" includes both prospective and empaneled jurors.

[35] MCL 750.120.

[36] See *ante* at 9-10.

[37] *Ante* at 11.

[38] 1846 RS, ch 156, § 10.

[39] See note 10 of this opinion and accompanying text.

supported by the manner in which the definition is set forth (i.e., with historically ordered subsenses) in numerous dictionaries.[40] This analysis might explain why the Legislature used the formulation "[a]ny person summoned as a juror" in MCL 750.120—i.e., to ensure that prospective jurors (not just seated jurors) were covered by the statute. The phrase is thus a vestige of the earlier, and narrower, meaning of "juror."[41]

The majority also attempts to make hay about the lack of the phrase "any case" in MCL 750.120, but the majority never acknowledges a substantially similar phrase later in the statute. A portion of the statute prohibits a "person summoned as a juror" from "receiv[ing] any gift or gratuity whatever, from a party to any suit, cause, or proceeding, for the trial or decision of which such juror shall have been summoned." A "case," as explained above, means a suit or action. So MCL 750.120 does, in fact, contain words

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[40] See e.g., *Merriam-Webster's Collegiate Dictionary* (2003) (defining "juror" in relevant part as "**1 a :** a member of a jury **b :** a person summoned to serve on a jury"). As stated in the Explanatory Notes, "[t]he order of senses within an entry is historical," and "[w]hen a numbered sense is further subdivided into lettered subsenses, the inclusion of particular subsenses within a sense is based upon their semantic relationship to one another, but their order is likewise historical subsense 1a is earlier than 1b, 1b is earlier than 1c, and so forth." *Id*. at p 20a.

[41] There is no need in this case to decide whether "juror" in MCL 750.120 has retained its original meaning throughout its various reenactments, the most recent of which came when the definition was in the process of expansion. See 1931 PA 328; see generally MCL 8.3u (providing that reenacted portions of statutes "shall be construed as a continuation of such laws and not as new enactments"). Instead, it is sufficient here to explain how the linguistic context in which this statute arose might have shaped the language used in ways that did not reflect ordinary usage more than a century later when MCL 750.120a was passed. It is also worth noting that, on occasion, vestigial language from early versions of a statute remains on the books without much legislative consideration of how or whether it continues to fit. Cf. *People v Pinkney*, 501 Mich 259, 280; 912 NW2d 535 (2018) (explaining how a provision was kept in the penal law despite inconsistent changes elsewhere).

meaning the same thing as "any case." In this respect, then, it covers the same ground as MCL 750.120a(1): both apply to individuals summoned for any case.[42] Thus, the majority's reliance on MCL 750.120 is unavailing.[43]

A proper contextual analysis in this case includes consideration of statutory purpose "in its concrete manifestations as deduced from close reading of the text."[44] The objective

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[42] The majority also analyzes whether the Revised Judicature Act (RJA), MCL 600.101 *et seq*., provides further context for the definition of "juror" in MCL 750.120a(1). I agree with the majority that the RJA provides no assistance to us in our resolution of this case. The RJA should not be read *in pari materia* with MCL 750.120a because the two statutes only incidentally refer to the same subject material (jurors) with a "scope and aim [that] are distinct and unconnected." *People v Mazur*, 497 Mich 302, 313; 872 NW2d 201 (2015). The RJA creates much of the procedural framework applicable in the courts, whereas MCL 750.120a enacts a substantive criminal offense, albeit one that deals with court actions. Any overlap is incidental.

[43] Despite largely premising its interpretation on context in general and MCL 750.120 in particular, the majority fails to consider the anomaly it creates in the broader statutory framework. Under the majority's interpretation, it would appear that since MCL 750.119(1)—which also was originally enacted in 1846 RS, ch 156, § 9—prohibits corrupting a "juror" by gifts or gratuities, its original meaning would not apply to prospective jurors; yet MCL 750.120 would criminalize a prospective juror's acceptance of such gifts. This would mean that an individual could corrupt a prospective juror without fear of criminal penalty under MCL 750.119(1), but the corrupted prospective juror would be criminally liable under MCL 750.120 for taking such a gift. This asymmetry does not appear to make much sense. Of course, if "juror" in MCL 750.120 bears its original meaning—as I posited it might—the same anomaly appears. Unlike the majority's interpretation, however, my interpretation of MCL 750.120a(1) is grounded on the plain meaning of the words used in that statute and does not center upon MCL 750.120.

[44] *Reading Law*, p 20; see also *id*. ("The evident purpose of what a text seeks to achieve is an essential element of context that gives meaning to words."); *In re House of Representatives Request for Advisory Opinion Regarding Constitutionality of 2018 PA 368 & 369*, 505 Mich 884, 928 (2019) (VIVIANO, J., dissenting) (" '[T]he purpose of a law must be collected chiefly from its words, not from extrinsic circumstances.' Similarly, in his seminal treatise, Justice COOLEY recognized that intent 'is to be found in the instrument itself rather than extrinsic sources.' ") (quotation marks and citations omitted); Cooley, Constitutional Limitations (1st ed), p 55 ("It is to be presumed that language has been

of MCL 750.120a, clearly apparent from its text, is to prevent an individual from influencing decisions of jurors. Both Subsections (1) and (2) proscribe this conduct. Subsection (1) pertains specifically to "willful[] attempts" to influence the decision of those jurors "by argument or persuasion," whereas Subsection (2) focuses on influence "by intimidation." The surrounding provisions reflect the same thrust, proscribing actions that improperly impair the impartiality of another's official conduct.[45] Therefore, the concrete purpose of the statute, collected from the statutory language, is to prevent individuals from asserting improper influences over judicial proceedings.

This statutory framework also supports the conclusion that the definition of "juror" includes both empaneled and summoned jurors. If the surrounding statutes in general, and MCL 750.120a in particular, seek to ensure the impartiality of jurors, it would be exceedingly strange to prohibit individuals from influencing empaneled jurors but to allow them to influence summoned jurors who might eventually render decisions. Summoned jurors, should they be chosen and sworn as members of a jury, will naturally become empaneled jurors. Allowing improper influence before those jurors are chosen and sworn

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employed with sufficient precision to convey [the intent], and unless examination demonstrates that the presumption does not hold good in the particular case, nothing will remain except to enforce it.").

[45] For example, MCL 750.117 prevents individuals from bribing public officers, and MCL 750.118 prohibits public officers from accepting those bribes. MCL 750.119 prohibits one from bribing jurors, among other individuals, and MCL 750.120 prevents a juror from accepting a bribe that influences the juror's verdict. MCL 750.122 prohibits a person from giving something of value to discourage or influence a witness's testimony in judicial proceedings. All of those proscribed actions are wrongful attempts to assert an improper influence over another's official decision.

but disallowing it afterward would merely regulate the timing of the improper influence. In fact, for these very reasons, the Supreme Court of Maine has gone so far as to suggest that the interpretation the majority reaches here constitutes an "absurd result."[46] In opting for this result by selecting the narrower definition of "juror," the majority has opened a chasm in the statutory framework because now, as long as the corruption occurs before the jury is empaneled, the corrupter cannot be liable under MCL 750.120a(1).

In sum, the majority concludes that the term "juror" in MCL 750.120a(1) includes only empaneled jurors, but I believe that the ordinary meaning of "juror" in context includes both empaneled and summoned jurors. In this case, then, the trial judge properly instructed the jury as to the meaning of "juror." Consequently, I would affirm the conviction if the statute, as properly interpreted, is constitutional, which I turn to next.

II. FIRST AMENDMENT

Because I conclude that MCL 750.120a applies to both empaneled and prospective jurors, I must also grapple with defendant's First Amendment challenge. Fortunately, this Court is not the first to address a jury-tampering statute that applies to both empaneled and prospective jurors; other jurisdictions have concluded that those statutes are constitutional. I do so as well.

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[46] *Solomon*, 120 A3d at 665 ("It is inconceivable that the Legislature intended to prohibit attempts to improperly influence jurors who have been selected to serve, while allowing free rein to anyone who wants to improperly influence potential jurors who are awaiting possible selection in response to a traverse jury summons. The definition of 'juror' suggested by [the defendant] would lead to an absurd result and we decline to adopt such an interpretation.").

The First Amendment of the United States Constitution provides, in pertinent part, that "Congress shall make no law . . . abridging the freedom of speech[.]"[47] Political speech, such as "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."[48] The First Amendment generally prevents the government from "proscribing speech, or even expressive conduct, because of disapproval of the ideas expressed."[49] Any content-based speech restriction must satisfy strict scrutiny; i.e., "it must be narrowly tailored to promote a compelling Government interest."[50] The government may constitutionally regulate the content of protected speech only "if it chooses the least restrictive means to further the articulated interest."[51]

Defendant raises facial and as-applied challenges to the statute. In the former, he claims that the statute is unconstitutionally overbroad, which constitutes a facial

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[47] US Const, Am I. That provision is applicable to the states through the Fourteenth Amendment. *In re Chmura*, 461 Mich 517, 529; 608 NW2d 31 (2000).

[48] *McCullen v Coakley*, 573 US 464, 488-489; 134 S Ct 2518; 189 L Ed 2d 502 (2014) (quotation marks and citation omitted; second alteration in original).

[49] *RAV v City of St Paul*, 505 US 377, 382; 112 S Ct 2538; 120 L Ed 25 305 (1992) (citations omitted).

[50] *United States v Playboy Entertainment Group, Inc*, 529 US 803, 813; 120 S Ct 1878; 146 L Ed 2d 865 (2000).

[51] *Sable Communications of Cal, Inc v FCC*, 492 US 115, 126; 109 S Ct 2829; 106 L Ed 2d 93 (1989). See also *Playboy Entertainment Group, Inc*, 529 US at 813 ("If a less restrictive alternative would serve the Government's purpose, the legislature must use that alternative.").

challenge.[52] "Before ruling that a law is unconstitutionally overbroad, this Court must determine whether the law 'reaches a substantial amount of constitutionally protected conduct.' "[53] Because the overbreadth doctrine is "strong medicine," it should be used "sparingly and only as a last resort," and especially not "when a limiting construction has been or could be placed on the challenged statute."[54] In addressing an overbreadth challenge, a court must first construe the challenged statute because "it is impossible to determine whether a statute reaches too far without first knowing what the statute covers."[55] Second, after giving the statute a proper construction, a court must determine whether it "criminalizes a substantial amount of protected expressive activity."[56]

The United States Court of Appeals for the Ninth Circuit has addressed a case that is very similar to this one. In *Turney v Pugh*, 400 F3d 1197 (CA 9, 2005), the defendant passed out fliers, which invited people to call the Fully Informed Jury Association (FIJA), outside the county courthouse.[57] He approached three prospective jurors, some of whom were wearing badges identifying them as such, and told them to contact the FIJA. The

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[52] *People v Rapp*, 492 Mich 67, 72-73; 821 NW2d 452 (2012).

[53] *Id*. at 73, quoting *Village of Hoffman Estates v The Flipside, Hoffman Estates, Inc*, 455 US 489, 494; 102 S Ct 1186; 71 L Ed 2d 362 (1982). Criminal statutes in particular must be scrutinized with care, as "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.

[54] *Broadrick v Oklahoma*, 413 US 601, 613; 93 S Ct 2908; 37 L Ed 2d 830 (1973).

[55] *United States v Williams*, 553 US 285, 293; 128 S Ct 1830; 170 L Ed 2d 650 (2008).

[56] *Id*. at 297.

[57] *Turney*, 400 F3d at 1198.

defendant was convicted of jury tampering under Alaska Stat § 11.56.590(a), which provides that a person is guilty of jury tampering if he or she " 'communicates with a juror' " with an intent to " '(1) influence the juror's vote, opinion, decision, or other action as a juror; or (2) otherwise affect the outcome of the official proceeding.' "[58] The Alaska Supreme Court construed the statute as prohibiting "communications intended to affect how the jury decides a specific case" in situations where the speaker has an "intent to influence the outcome" and knows that he or she is communicating with a juror.[59] Under that construction, the court held that the statute was not unconstitutionally overbroad.[60]

On the defendant's collateral challenge to his conviction, the Ninth Circuit agreed.[61] In determining whether the statute prohibited a substantial amount of protected speech, the court noted that the First Amendment, while protective of speech concerning judicial proceeds, did not "shield the narrow but significant category of communications to jurors made outside of the auspices of the official proceeding and aimed at improperly influencing the outcome of a particular case."[62] The statute also did not sweep in a substantial amount

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[58] *Id*. at 1199, quoting Alas Stat § 11.56.590(a).

[59] *Turney v State*, 936 P2d 533, 540-541 (Alas, 1997).

[60] *Id*. at 541.

[61] *Turney*, 400 F3d at 1198.

[62] *Id*. at 1203. In reaching that conclusion, the court examined two cases in which the United States Supreme Court distinguished protected publications regarding judicial proceedings and speech intended to improperly influence jurors. See *Bridges v California*, 314 US 252, 271; 62 S Ct 190; 86 L Ed 192 (1941) ("The very word 'trial' connotes decisions on the evidence and arguments properly advanced in open court. Legal trials are not like elections, to be won through the use of the meeting-hall, the radio, and the newspaper. But we cannot start with the assumption that publications of the kind here

of protected speech, such as innocent advice to jurors, political demonstrations outside a courthouse, or the mass publication of political ideas.[63] Innocent advice was not implicated by the statute because such advice is not given with the intent to "influence the outcome of a particular case."[64] Political demonstrations were not implicated because the statute was narrowly targeted at conduct infringing the substantial state interest in the judicial process.[65] Finally, the statute did not implicate the mass dissemination of political ideas, such as newspaper or television advertisements, because "the speaker would have to *know* that she or he was communicating with a juror in order to be guilty of jury tampering."[66]

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involved [i.e., newspaper editorials] actually do threaten to change the nature of legal trials, and that to preserve judicial impartiality, it is necessary for judges to have a contempt power by which they can close all channels of public expression to all matters which touch upon pending cases."), and *Wood v Georgia*, 370 US 375, 389; 82 S Ct 1364; 8 L Ed 2d 569 (1962) ("[I]t is important to emphasize that this case does not represent a situation where an individual is on trial; there was no 'judicial proceeding pending' in the sense that prejudice might result to one litigant or the other by ill-considered misconduct aimed at influencing the outcome of a trial or a grand jury proceeding. . . . Moreover, we need not pause here to consider the variant factors that would be present in a case involving a petit jury.").

[63] *Turney*, 400 F3d at 1203-1204.

[64] *Id*. (emphasis omitted).

[65] *Id*. at 1204, discussing *Cox v Louisiana*, 379 US 559; 85 S Ct 476; 13 L Ed 2d 487 (1965). *Cox* rejected a facial challenge against an antipicketing statute that applied to attempts to influence judges, jurors, or others involved in the judicial process. *Cox*, 379 US at 560. The Court noted, "A State may adopt safeguards necessary and appropriate to assure that the administration of justice at all stages is free from outside control and influence." *Id*. at 562.

[66] *Turney*, 400 F3d at 1205.

Other courts have concluded that similar constructions given to jury-tampering statutes like the one analyzed in *Turney* are valid.[67]

Following those decisions here, I believe that MCL 750.120a(1) is not overbroad. The first step in our analysis is to construe the statute.[68] The statute has two relevant components. First, it regulates *willful* attempts to influence the decision of a juror in any case. We have held that willful acts are done without "carelessness or accident" but instead "knowingly and stubbornly and for the alleged unlawful purpose . . . ."[69] Applying these definitions, "willfully" in MCL 750.120a(1) requires that the defendant *know* that he or she is communicating with a juror and then act *intentionally* to influence the juror's decision in a case. Second, the statute also requires that the defendant act to influence a juror's decision *in any case*. As previously described, this reference to "case" means that there must be an *actual* case that the defendant is attempting to influence.

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[67] See *State v Springer-Ertl*, 610 NW2d 768, 777; 2000 SD 56 (2000) ("A reasonable interpretation of our statute confines its scope to conduct designed to influence specifically jurors and persons summoned or drawn as jurors. Consequently, the statute would not include situations where a person intends to inform the public or express a public opinion, regardless of whether jurors—drawn, summoned, or sworn—may be among the public. . . . With these constraints on the scope of [the South Dakota statute], the statute meets the constitutional requirements of notice and specificity without infringing on First Amendment rights."); *People v Iannicelli*, 449 P3d 387, 395; 2019 CO 80 (2019) (holding that, for the reasons set forth in *Turney*, criminal liability under the Colorado jury-tampering statute should be limited "to attempts to influence a person's vote, opinion, decision, or other action in a specifically identifiable case").

[68] *Williams*, 553 US at 293.

[69] *People v McCarty*, 303 Mich 629, 633; 6 NW2d 919 (1942). Contemporaneous lay and legal dictionaries defined "willful" as "intentional." See, e.g., *Webster's New Practical Dictionary* (1957) ("Intentional[.]"); *Black's Law Dictionary* (Rev 4th ed) ("Intending the result which actually comes to pass; designed; intentional; not accidental or involuntary.").

This construction renders MCL 750.120a(1) similar to the statute in *Turney*. There, the Ninth Circuit expressly approved of a statute that criminalized "knowingly communicating with a juror" intending to influence the outcome "of a specific case."[70] Our statute contains materially similar limiting requirements. Consequently, the Ninth Circuit's conclusion in *Turney* is relevant to this case. The statute is not overbroad because it is aimed to regulate "the narrow but significant category of communications to jurors made outside of the auspices of the official proceeding and aimed at improperly influencing the outcome of a particular case."[71] Further, it does not sweep in a substantial amount of protected speech because, for the reasons stated in *Turney*, it does not implicate a substantial amount of protected speech, such as innocent advice, political demonstrations, or the mass dissemination of political ideas.[72]

Defendant also asserts that applying the statute's prohibition on jury tampering to his conduct in influencing prospective jurors is unconstitutional. "An as-applied challenge, to be distinguished from a facial challenge, alleges 'a present infringement or denial of a specific right or of a particular injury in process of actual execution' of government action."[73] But the above construction of MCL 750.120a(1) also demonstrates why the statute, as applied to defendant's conduct in tampering with prospective jurors, is

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[70] *Turney*, 400 F3d at 1201 (emphasis omitted).

[71] *Id*. at 1203.

[72] *Id*. at 1203-1204.

[73] *Bonner v City of Brighton*, 495 Mich 209, 223 n 27; 848 NW2d 380 (2014) (citation omitted).

constitutional. As recognized by a litany of United States Supreme Court cases, the state has a strong interest in protecting the fair administration of justice and the impartiality of jurors.[74] The state has chosen the least restrictive means available: by applying the statute to *knowing* and intentional conduct aimed at a *known* juror in order to influence the *outcome* of an *actual case*.

Applying that narrow regulation to the facts of this case, defendant's actions fell within the conduct proscribed by the statute. Defendant was interested in Yoder's case. He attended a pretrial hearing and contacted a reporter for the Big Rapids Pioneer in an attempt to get the newspaper to report on the case. Defendant stated that the case "piqued" his interest because it "interested [him] that the government would have jurisdiction on somebody's private property." Then, on the day that he knew Yoder's trial would be held, defendant went to the courthouse and passed out the FIJA pamphlets to two individuals who he *knew* were jurors in order to influence their decisions.[75] That conduct evinces an

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[74] See, e.g., *Cox*, 379 US at 562 ("There can be no question that a State has a legitimate interest in protecting its judicial system from the pressures which picketing near a courthouse might create. Since we are committed to a government of laws and not of men, it is of the utmost importance that the administration of justice be absolutely fair and orderly."); *Wood*, 370 US at 383 ("[T]he right of courts to conduct their business in an untrammeled way lies at the foundation of our system of government . . . ."); *Gentile v State Bar of Nevada*, 501 US 1030, 1075; 111 S Ct 2720; 115 L Ed 2d 888 (1991) ("Few, if any, interests under the Constitution are more fundamental than the right to a fair trial by 'impartial' jurors . . . ."); *Williams-Yulee v Florida Bar*, 575 US 433, 446; 135 S Ct 1656; 191 L Ed 2d 570 (2015) ("[P]ublic perception of judicial integrity is a state interest of the highest order.") (quotation marks and citation omitted).

[75] This is evident because defendant handed both Johnson and DeVries a pamphlet *only after* he learned each of them was at the courthouse for jury service. Johnson, who initially believed that defendant was a courthouse official, approached him to ask for directions. During their brief conversation, defendant learned that she was there as a potential juror. Defendant then gave Johnson a pamphlet and directed her to go inside the courthouse.

intent to influence known jurors in an actual case. Therefore, defendant's as-applied challenge also fails because his conduct falls within the narrow proscription of MCL 750.120a(1).[76]

Then, as DeVries approached the courthouse, defendant took the initiative to approach her and specifically asked her if she was there for jury selection. When DeVries confirmed that she was, defendant handed her a pamphlet and said, " 'Do you know what your rights are for being a jury [sic]—on jury duty?' "

[76] Defendant also raises two other due-process contentions that are without merit. First, he claims MCL 750.120a(1) is void for vagueness. We have held that a penal statute may be unconstitutionally vague if it "(1) fail[s] to provide fair notice of what conduct is prohibited, (2) encourage[s] . . . arbitrary and discriminatory enforcement, or (3) [is] overbroad and imping[es] on First Amendment freedoms." *People v Lino*, 447 Mich 567, 576; 527 NW2d 434 (1994). However, this vagueness contention is without merit in light of the conclusions that I have already reached. Most importantly, the definition of "juror" is ascertainable to individuals who have access to a dictionary. See *People v Harris*, 495 Mich 120, 138 & n 49; 845 NW2d 477 (2014) (explaining that a statute is not vague when the meaning of the words can be ascertained by reference to a dictionary). As discussed above, anyone who cracked open a good dictionary in 1955—one that reflected the common usages of the day—would see that summoned jurors were jurors. The same holds true today, as the meaning of "juror" remains the same. See *Wood*, 326 Mich App at 572 (noting that modern dictionaries include summoned jurors in their definitions of "juror").

Second, defendant contends that he was denied a fair trial because he could not cross-examine the magistrate who confronted defendant outside the courthouse when he was passing out the FIJA pamphlets and also presided over his arraignment on the same day. A violation of the Confrontation Clause may occur if the defendant was prohibited from engaging in cross-examination to show a witness's bias. *Delaware v Van Arsdall*, 475 US 673, 678-680; 106 S Ct 1431; 89 L Ed 2d 674 (1986). But a denial of the right is subject to harmless-error review. *Id*. at 684. An analysis of the facts of this case shows that it was harmless error for the trial court to deny defendant the right to cross-examine the magistrate. The magistrate's testimony at defendant's trial only provided context for defendant's arrest, such as the magistrate's strong request that defendant stop passing out the pamphlets. Other witnesses, such as Johnson and DeVries, testified to the interactions they had with defendant that gave rise to defendant's criminal liability. The magistrate did not describe the pamphlet's content or testify about defendant's interactions with Johnson and DeVries. The magistrate's testimony was not material to defendant's conviction, and therefore, the denial of his right to cross-examine the magistrate was harmless.

III. CONCLUSION

In sum, the definition of "juror" in MCL 750.120a(1) includes both empaneled and prospective jurors. Under this interpretation, and as the statute was applied in this case, defendant's First Amendment contentions fail. For those reasons, I respectfully dissent from the majority's decision to reverse the judgment of the Court of Appeals.

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Stephen J. Markman