

# Order

Michigan Supreme Court  
Lansing, Michigan

June 28, 2016

Robert P. Young, Jr.,  
Chief Justice

150148

Stephen J. Markman  
Brian K. Zahra  
Bridget M. McCormack  
David F. Viviano  
Richard H. Bernstein  
Joan L. Larsen,  
Justices

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellant,

v

SC: 150148  
COA: 314706  
Wayne CC: 12-010198-FH

DON DALE YOWCHUANG,  
Defendant-Appellee.

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By order of November 26, 2014, the application for leave to appeal the August 5, 2014 judgment of the Court of Appeals was held in abeyance pending the decision in *People v Seewald* (Docket No. 150146). On order of the Court, the case having been decided on April 25, 2016, 499 Mich 111 (2016), the application is again considered. Pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we REVERSE the judgment of the Court of Appeals, and we REMAND this case to the Wayne Circuit Court to reinstate the bindover decision of the 16th District Court and for further proceedings consistent with this Court's opinion in *People v Seewald*.



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 28, 2016

  
Clerk

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellant,

UNPUBLISHED  
August 5, 2014

v

PAUL CHARLES SEEWALD,  
Defendant-Appellee.

No. 314705  
Wayne Circuit Court  
LC No. 12-010198-FH

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellant,

v

DON DALE YOWCHUANG,  
Defendant-Appellee.

No. 314706  
Wayne Circuit Court  
LC No. 12-010198-FH

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Before: JANSEN, P.J., and SAAD and DONOFRIO, JJ.

PER CURIAM.

In these consolidated appeals, the prosecution appeals the circuit court's orders that dismissed the charges for conspiracy to commit a legal act in an illegal manner under MCL 750.157a(d). For the reasons stated below, we affirm.

**I. FACTS AND PROCEDURAL HISTORY**

These consolidated cases involve the fallout from former Congressman Thaddeus McCotter's failed bid for reelection in 2012. Defendants Paul Seewald and Don Yowchuang worked as staffers in McCotter's district office, and had some responsibility for collecting signatures from voters so McCotter could be placed on the 2012 ballot. The collection of such signatures is governed by a series of statutes found in MCL 168.542, *et seq.* MCL 168.544f required McCotter to collect at least 1,000 "signatures of qualified and registered electors" to gain placement on the 2012 ballot. MCL 168.544c mandates that these signatures be recorded on a nominating petition, and that the petition be signed and dated by the "circulator" of the

petition. Under MCL 168.544c, a “circulator” is the person who physically circulates the nominating petition.<sup>1</sup>

The day before the nominating petitions were due, Yowchuang discovered that several of the petitions had not been signed by their circulators, which meant that the signatures they contained would not count toward the 1,000 signatures needed to place McCotter on the ballot. Yowchuang informed Seewald of the problem, and they decided to solve it, after a fashion, by signing the petitions themselves. Yowchuang then submitted the petitions to the Secretary of State. Both subsequently admitted that they signed the petitions with the knowledge that it was illegal, with the purpose of filing illegitimate petitions with the Secretary of State.

The state discovered the irregularities in McCotter’s nominating petitions, and charged Seewald and Yowchuang with falsely signing nominating petitions, a misdemeanor under MCL 168.544c(8),<sup>2</sup> and with conspiracy to commit a legal act in an illegal manner, a felony under MCL 750.157a(d). The case began in district court, which agreed with the prosecution, and bound defendants over on both charges.

In circuit court, Seewald filed a motion to quash the bindover on the conspiracy charges, which the court granted. In its explanation of the dismissal, the circuit court stressed that Seewald and Yowchuang did not conspire to do a legal act. Instead, the court stated that they conspired to do something illegal: sign their names as circulators on the nominating petitions, in violation of MCL 168.544c. Accordingly, the court found that the state’s conspiracy charge had no merit.

On appeal, the prosecution asks that we reverse the circuit court’s motion to quash the conspiracy count under MCL 750.157a(d), and reinstate the charge.

## II. STANDARD OF REVIEW

A district court’s decision to bind over a defendant is reviewed for an abuse of discretion. *People v Hudson*, 241 Mich App 268, 276; 615 NW2d 784 (2000). “The standard for reviewing a decision for an abuse of discretion is narrow; the result must have been so violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or an exercise of passion or bias.” *People v Torres (On Remand)*, 222 Mich App 411, 415; 564 NW2d 149 (1997). “A circuit court’s decision with respect to a motion to quash a bindover order is not entitled to deference because this Court applies the same standard of review to this issue as the circuit court. This Court therefore essentially sits in the same position as the circuit court when determining whether the district court abused its discretion.” *Hudson*, 241 Mich App at 276. In other words,

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<sup>1</sup> In addition to the statute itself, see *Keyes v Hare*, 360 Mich 610, 616–618; 104 NW2d 781 (1960) (interpreting an older version of MCL 168.544c to mandate that the “circulator” of a nominating petition be the person who actually circulates the petition).

<sup>2</sup> The relevant section, the text of which is unchanged, is now found at MCL 168.544c(11) per 2014 PA 94.

we review “the circuit court’s decision regarding the motion to quash a bindover only to the extent that it is consistent with the district court’s exercise of discretion.” *Id.*

The legal standard a district court must follow in order to bind over a defendant for trial following a preliminary examination is set forth in MCL 766.13,<sup>3</sup> which states:

If it shall appear to the magistrate at the conclusion of the preliminary examination that a felony has been committed and there is probable cause for charging the defendant therewith, the magistrate shall forthwith bind the defendant to appear before the circuit court of such county, or other court having jurisdiction of the cause, for trial. [MCL 766.13.]

The probable cause standard of proof is less than proof beyond a reasonable doubt. *People v Mason*, 247 Mich App 64, 71; 634 NW2d 382 (2001). To bind a defendant over on a charge following a preliminary examination, the district court must find there is direct or circumstantial evidence regarding each element of the crime charged. *Hudson*, 241 Mich App at 278.

And, though a district court’s bindover decision is reviewed for an abuse of discretion, if the trial court’s interpretation of a statute is challenged on appeal, as here, we review the matter de novo, as we review all issues of statutory interpretation. *People v Droog*, 282 Mich App 68, 70; 761 NW2d 822 (2009). A Court’s primary task in construing a statute is to discern and give effect to the Legislature’s intent. *People v Gillis*, 474 Mich 105, 114; 712 NW2d 419 (2006). If a statute is unambiguous on its face, the Legislature is presumed to have intended the meaning plainly expressed and further judicial interpretation is not permitted. *People v Tombs*, 260 Mich App 201, 209; 679 NW2d 77 (2003).

### III. ANALYSIS

MCL 750.157a criminalizes conspiracy. It begins with a general criminalization of conspiratorial actions: “[a]ny person who conspires together with 1 or more persons to commit an offense prohibited by law, or to commit a legal act in an illegal manner is guilty of the crime of conspiracy punishable as provided herein.” MCL 750.157a. The provision then goes on to specify different conspiratorial actions that are punishable under the statute. The subsection at issue, MCL 750.157a(d), reads:

Any person convicted of conspiring to commit *a legal act in an illegal manner* shall be punished by imprisonment in the state prison for not more than 5 years or by a fine of not more than \$10,000.00, or both such fine and imprisonment in the discretion of the court. [Emphasis added.]

MCL 750.157a does not define the terms “legal act” or “illegal manner.” Accordingly, we may consult a dictionary to “aid our goal of construing those terms in accordance with their

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<sup>3</sup> MCL 766.13 has since been amended by 2014 PA 123.

ordinary and generally accepted meanings.” *People v Haynes*, 281 Mich App 27, 29; 760 NW2d 283 (2008). “Legal act” is defined as “[a]ny act not condemned as illegal.” *Black’s Law Dictionary* (9th ed). Something is “illegal” when it is “[f]orbidden by law” or “unlawful.” *Black’s Law Dictionary* (9th ed). The word “manner” means “a way of doing, being done, or happening; mode of action, occurrence, etc.” *Random House Webster’s College Dictionary* (1997).

Here, the prosecution unconvincingly claims the circuit court erred when it granted Seewald’s motion to quash the bindover and dismiss the conspiracy charge under MCL 750.157a(d). In fact, the circuit court was correct to quash the bindover because defendants did not violate MCL 750.157a(d) under a proper reading of that statute.

Again, the prosecution asserts that defendants committed a “legal act in an illegal manner” under MCL 750.157a(d) when they: (1) signed nominating petitions as circulators, despite the fact that they did not circulate the petitions; and (2) submitted these petitions to the Secretary of State, with the intent of placing Thaddeus McCotter’s name on the ballot. This claim is without merit because at no time during their conspiracy did defendants engage in a “legal act.” Defendants decided to violate MCL 168.544c(7)(c) and 168.544c(8) when they signed nominating petitions as circulators, despite the fact that they did not circulate the petitions. This conduct is “illegal” because it is “forbidden by law”—namely, MCL 168.544c(7)(c) and 168.544c(8). Defendants then attempted to pass off these nominating petitions as valid and genuine by submitting them to the Secretary of State—and thus committed fraud.<sup>4</sup> The purpose of the conspiracy, then, was to defraud the Secretary of State, something which is also “illegal” because it is “forbidden by law.” It is thus impossible for defendants to have conspired to commit a “legal act in an illegal manner” under MCL 750.157a(d) because defendants did the exact opposite—they conspired to commit an *illegal* act in an *illegal* manner.

The prosecution attempts to circumvent this rather obvious fact through citation of defendants’ admission that their ultimate goal was to place McCotter’s name on the primary ballot, which the prosecution says, in and of itself, is a “legal act.” This expands the scope of the conspiracy beyond all reason. It also ignores the fact that had McCotter actually been placed on the ballot, it would not have been a “legal act” at all, because it would have been made possible by defendant’s defrauding of the Secretary of State.

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<sup>4</sup> See *Barkau v Ruggirello*, 113 Mich App 642, 647; 318 NW2d 521 (1982) (“ ‘Fraud’ is an intentional perversion or concealment of the truth for the purpose of inducing another in reliance upon it to part with some valuable thing or surrender a legal right”). See also *Cummins v Robinson Twp*, 283 Mich App 677, 695–696; 770 NW2d 421 (2009) (internal citations omitted) (holding that “[a]ctionable common-law fraud requires proof that: (1) the defendant made a material representation; (2) the representation was false; (3) when the defendant made the representation, the defendant knew that it was false, or made it recklessly, without knowledge of its truth as a positive assertion; (4) the defendant made the representation with the intention that the plaintiff would act upon it; (5) the plaintiff acted in reliance upon it; and (6) the plaintiff suffered damage”).

The immediate goal of defendants' misconduct was to defraud the Secretary of State through falsely signed nominating petitions.<sup>5</sup> They therefore did not violate MCL 750.157a(d), which requires that defendants conspire to effect a "legal act in an illegal manner."

#### IV. CONCLUSION

Accordingly, the district court misinterpreted MCL 750.157a(d) and allowed the conspiracy charge against defendants to proceed to circuit court. The circuit court thus properly quashed the bindover.

Affirmed.

/s/ Henry William Saad  
/s/ Pat M. Donofrio

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<sup>5</sup> We note (and the prosecution does as well) that another subsection of MCL 750.157a, MCL 750.157a(c), fits defendant's conspiratorial conduct exactly, as it criminalizes the commission of an offense "prohibited by law." We also note penalty for violation of MCL 750.157a(c)—imprisonment of "not more than 1 year" or a fine not "more than \$1,000.00, or both such fine and imprisonment"—is a misdemeanor, as is the underlying offense on which the conspiracy is based (violation of MCL 168.544c(7)(c) and MCL 168.544c(8)).

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Before: JANSEN, P.J., and SAAD and DONOFRIO, JJ.

JANSEN, P.J. (*dissenting*).

I respectfully dissent. I conclude that the end goal of defendants' conspiracy was to place Congressman McCotter's name on the ballot—itsself a legal act—and not merely to falsely sign the nominating petitions as circulators. Defendants' decision to falsely sign the nominating petitions as circulators in violation of MCL 168.544c was simply a necessary but illegal step taken in furtherance of their ultimate lawful objective. Therefore, in my opinion, defendants conspired "to commit a legal act in an illegal manner" within the meaning of MCL 750.157a(d). For this reason, I would reverse and remand to the district court for reinstatement of the charge of conspiracy to commit a legal act in an illegal manner under MCL 750.157a(d) against each defendant.

/s/ Kathleen Jansen