

STATE OF MICHIGAN  
IN THE 86<sup>TH</sup> JUDICIAL DISTRICT COURT  
FOR THE COUNTY OF ANTRIM

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v

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

Defendants.

Nos. 20-2921-FY3, 20-2924-FY3,  
20-2918-FY3, 20-2912-FY3, 20-  
291-FY3

Hon. Michael S. Stepka

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**THE PEOPLE'S MEMORANDUM OF LAW REGARDING USE OF CO-  
CONSPIRATOR STATEMENTS AT PRELIMINARY EXAMINATION**

*Charges*

Defendants Sean Fix, Eric Molitor, Michael Null, and William Null are charged with providing material support or resources for an act of terrorism, contrary to MCL 750.543k(1)(b), and with possession of a firearm during the commission of a felony (felony-firearm), contrary to MCL 750.227b. Defendant Higgins is charged with providing material support or resources for an act of terrorism, contrary to MCL 750.543k(1)(b).

*Memorandum of Law*

The People will be seeking the admission of multiple statements made by co-conspirators pursuant to MRE 801(d)(2)(E) at the upcoming preliminary examination in this matter. The purpose of this memorandum of law is to provide this Court with the law relevant to the admission of such statements.

A. The general rule – MRE 801(d)(2)(E) – and burden of proof

Hearsay is a “statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” MRE 801(c). However, a statement is *not* hearsay if the statement is offered against a party and is “a statement by a coconspirator of a party during the course and in furtherance of the conspiracy on independent proof of the conspiracy.” MRE 801(d)(2)(E). The proponent of evidence, here being the People, bears the burden of establishing its relevance and admissibility. *Gilbert v DaimlerChrysler Corp*, 470 Mich 749, 781 (2004).

## B. Definition of “conspiracy”

Any discussion of whether a statement is admissible as a co-conspirator statement must begin with the definition of conspiracy and a discussion of whether a conspiracy existed in this matter. The definition of a criminal “conspiracy” is well-defined in Michigan case law as follows:

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

Significantly, under Michigan law, in order for a conspiracy to exist, there is no requirement that a prosecutor prove that any co-conspirator engaged in an “overt act” in furtherance of the conspiracy. *People v Seewald*, 499 Mich 111, 117 (2016). In other words, “[b]ecause the crime is complete upon the conspirators’ agreement, the prosecution need not prove that ‘the purpose contemplated by the unlawful agreement was accomplished’.” *Id.* at 117, quoting *People v Asta*, 337 Mich 590, 611 (1953).

It is well established in Michigan law “that it is not necessary that each of the coconspirators have full knowledge of the extent of the conspiracy.” *People v Hunter*, 466 Mich 1, 7 (2002). Specifically, “[i]t is not necessary to a conviction for conspiracy that each defendant have knowledge of all its ramifications.” *Id.*



(internal citation omitted). “Nor is it necessary that one conspirator should know all of the conspirators or participate in all of the objects of the conspiracy.” *Id.*

(internal citations omitted). It is also not required that each co-conspirator have been a member of the conspiracy from its inception. See *People v Taurianen*, 102 Mich App 17, 32 (1980). However, where a defendant “is unaware of the overall objective of an alleged conspiracy or lacks any interest in, and therefore any commitment to, that objective, he is not a member of the conspiracy.” *People v Justice*, 454 Mich 334, 347 (1997) (emphasis added).

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

### C. Cases interpreting MRE 801(d)(2)(E)

In *People v Martin*, 271 Mich App 280, 316–317 (2006), the Court of Appeals held that, to qualify under the hearsay exception to MRE 801(d)(2)(E), three requirements must be met. The People address the law regarding each of these requirements in detail below.

1. The proponent must establish by a preponderance of the evidence that a conspiracy existed through independent evidence.

There are two key phrases in this requirement. First, the existence of a conspiracy must be established by a “preponderance of the evidence.” *Id.* The existence of a conspiracy can be established by circumstantial evidence and inferences. *People v Till*, 115 Mich App 788, 794 (1982). Importantly, however, *no*

one need to actually be charged with conspiracy in order for this hearsay exception to apply. *People v Hall*, 102 Mich App 483, 489–490 (1980). In fact, much of the caselaw analyzing the admissibility of co-conspirator statements are cases where conspiracy was not charged.<sup>1</sup>

Second, there is the phrase “independent evidence.” What that means is that evidence of the conspiracy, including participation in the conspiracy by the defendant, must be established independently without reference to the statement the proponent is seeking to introduce as a co-conspirator statement. *People v Vega*, 413 Mich 773, 780–782 (1982). See also *People v Champion*, 97 Mich App 25, 29 (1980), *rev’d on other grounds* 411 Mich 468 (1981). The order in which proofs are presented is unimportant. As such, a court may admit a co-conspirator’s statement(s) contingent upon later production of the independent evidence required under MRE 801(d)(2)(E). *People v Till*, 115 Mich App at 794. See also *People v Losey*, 98 Mich App 189, 197–198 (1980), *rev’d on other grounds* 413 Mich 346 (1982).

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<sup>1</sup> Many published cases analyzing conspiracy involve charges such as first-degree felony murder, second degree murder and conducting a criminal enterprise. See *People v Martin*, 271 Mich App 280 (2006) – keeping, maintaining, or operating a house of ill-fame, bawdy house, or any house or place resorted to for the purpose of prostitution or lewdness and knowingly conducting or participating in the affairs of an enterprise directly or indirectly through a pattern of racketeering activity; *People v Till*, 115 Mich App 788 (1982) – two counts of first-degree felony-murder; *People v Hall*, 102 Mich App 483 (1980) – second-degree murder; and *People v Champion*, 97 Mich App 25 (1980) – second degree murder.

2. The proponent must establish that the statement was made during the course of the conspiracy

A statement is made “during the course” of a conspiracy if it is made before “the common enterprise has been fully completed, abandoned, or terminated,” such as when the agreement is successful or fails in meeting its objectives. *People v Bushard*, 444 Mich 384, 394 (1993). Financial dealings or other arrangements may be included in the course of the conspiracy if the objectives of the conspiracy included them beyond the agreed upon crime. *Id.* at 394–397.

3. The proponent must establish that the statement “furthered” the conspiracy

The requirement that the statement further the conspiracy should be construed broadly. Although idle chatter will not satisfy this requirement, statements that prompt the listener, *who need not be one of the conspirators*, to respond in a way that *promotes or facilitates* the accomplishment of the illegal objective will suffice. *Bushard*, 444 Mich at 395; *Martin*, 271 Mich App at 316–317 (2006).

D. Application

The People may introduce at the preliminary examination in this matter co-conspirator statements made by the following individuals (some of whom are also defendants in this case) as co-conspirator statements under MRE 801(d)(2)(E):

State defendants:

Paul Bellar  
Shawn Fix  
Brian Higgins  
Eric Molitor  
Joseph Morrison  
Pete Musico  
Michael Null  
William Null  
Max Wyckoff

Federal defendants:

Brandon Casserta  
Barry Croft  
Adam Fox  
Kaleb Franks  
Ty Garbin  
Dan Harris

Uncharged (unindicted) co-conspirators:

Jared Beauchene  
Frank Butler  
Solomon Clark  
Andrew Nickels  
Alex Davidson  
Jeremy Deeter  
Amanda Kellar  
Thomas Leager

James McIntosh  
Michael Morais  
Jada Morrison  
David Norris  
Brian Puffenberger  
James Kawasaki  
Stephen Robeson  
James Yonkers

Respectfully submitted,

Dana Nessel  
Attorney General



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Dated: August 15, 2022



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**PROOF OF SERVICE**



The undersigned certifies that on the 15th day of August 2022, a copy of the *People's Memorandum of Law Regarding Use of Co-Conspirator Statement at Preliminary Examination and Proof of Service* was served on the attorneys of record in the above-captioned case via electronic mail.

/s/ Brittani Wright

Brittani Wright