

**STATE OF MICHIGAN
IN THE COURT OF APPEALS**

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff/Appellee,

-vs-

KEITH ERIC WOOD,

Defendant/Appellant.

**EMERGENCY MOTION FOR
BOND PENDING APPEAL AND
TO STAY EXECUTION ON
CONVICTION/SENTENCE**

**FILE NO.: _____
CIRCUIT CO. NO: 17-24073-AR**

**HONORABLE ERIC R. JANES
CIR. CT. JUDGE ON APPEAL**

**Brian E. Thiede (P32796)
Mecosta County Prosecutor
Attorney for Plaintiff/Appellee
400 Elm Street, Room 206
Big Rapids, MI 49307
231-592-0141**

**David A. Kallman (P34200)
Stephen P. Kallman (P75622)
KALLMAN LEGAL GROUP, PLLC
Attorneys for Defendant
5600 W. Mount Hope Hwy.
Lansing, MI 48917
(517) 322-3207/Fax: (517) 322-3208**

**EMERGENCY MOTION FOR BOND PENDING APPEAL AND TO STAY
EXECUTION ON CONVICTION/SENTENCE**

NOW COMES the Defendant, **KEITH ERIC WOOD**, by and through his attorneys, Kallman Legal Group, PLLC, and respectfully asks this court to grant his emergency motion for bond pending appeal and to stay execution on his conviction/sentence pursuant to MCR 7.209, and states in support as follows:

1. On July 21, 2017, Defendant was sentenced in Mecosta County District Court on his conviction of Attempted Jury Tampering, contrary to MCL 750.120a, which is a one-year misdemeanor.

2. The trial Judge ordered Mr. Wood to serve eight weekends in jail with the balance of the sentence of forty-five days to be suspended pending completion of 120 hours of community service. He was ordered to pay fines and costs of \$545.00 and serve six months of probation with the usual terms and conditions (Exhibit A).

3. Mr. Wood filed an immediate appeal by right to the Mecosta County Circuit Court on July 21, 2017, along with a Motion to Stay Sentence and to grant a Bond Pending Appeal.

4. Isabella County District Judge Eric R. Janes was appointed to hear the motion and appeal.

5. After oral argument on July 21, 2017, Judge Janes granted Mr. Wood's motion, stayed execution of his sentence, and set a \$20,000.00/10% bond on appeal.

6. Mr. Wood posted bond that same day and was released.

7. After briefing by the parties, including amicus briefs in support of Mr. Wood filed by the ACLU of Michigan and the Fully Informed Jury Association, Judge Janes heard oral argument on February 2, 2018.

8. Upon the completion of oral argument, Judge Janes then read his decision from the bench and filed a written opinion and order right after the hearing denying Mr. Wood's appeal for the reasons stated in the opinion and order (Exhibit B).

9. Mr. Wood then made an oral motion for stay of his sentence and for bond pending appeal to this Honorable Court which was denied by Judge Janes. A written order was entered on February 6, 2018 (Exhibit C).

10. An application for Leave to Appeal has been filed this same date and Mr. Wood brings this motion to request that this Honorable Court stay the execution of his sentence and grant him bond pending appeal.

11. Mr. Wood is a resident of this state, has maintained regular employment for his entire adult life, and has never been convicted of a felony. Defendant had not been convicted of any crime except for a single prior misdemeanor drinking and driving offense (operating while impaired) approximately 20 years ago. Otherwise, Defendant has never been arrested or involved with the criminal justice system.

12. Mr. Wood is married and has eight young children, including a young baby. His family is solely dependent on him for economic support and transportation requirements. Defendant is self-employed and must work to support his family and to maintain health care insurance and coverage, which is particularly critical based on his family's circumstances. He will suffer irreparable harm if this motion is not granted.

13. Through February 2, 2018, Mr. Wood was free on bond since the incident for which he stands convicted. His bond was continued after the conviction; he violated no laws and always complied with the orders of the trial and circuit courts to appear; there is no risk of his fleeing and he would voluntarily surrender himself if and when required after this matter is concluded if his appeal is not successful. Further, Mr. Wood will immediately notify the Court if he needed to change his address and would comply with all conditions required by the Court.

14. After Judge Janes' ruling on February 2, 2018, Mr. Wood was immediately taken into custody and served the weekend in the Mecosta County jail.

15. If bond were granted and the execution of Mr. Wood's sentence was stayed by this Court, he would continue to reside at his current residence in Michigan, with his wife and children.

16. Mr. Wood has filed an Application for Leave to Appeal, has ordered the transcript of the oral argument (Exhibit D), has received an expedited copy of the transcript (Exhibit E), and will proceed in a timely fashion with postconviction and appellate action in this case.

17. Mr. Wood asserts that while he has been convicted in this case and has an old, prior misdemeanor drinking and driving conviction, he is certainly not a violent person, is not at all likely to pose a danger to others, and is not a risk to flee or to cause further harm.

18. In this case, with all due respect to the lower courts, Mr. Wood is not guilty, and his conviction raises significant and substantial constitutional, statutory, legal and factual issues of merit. There were numerous procedural and legal errors committed in the trial court as delineated in the attached Application that must be addressed.

19. The standards for granting an appeal bond are set forth in *People v Giacalone*, 16 Mich App 352, 167 NW2d 871 (1969):

- a. the likelihood that the defendant will appear when required in response to the order of the court;
- b. the potential harm to the community from the defendant being at large while the appeal is pending;
- c. the substantiality of the grounds for appeal; and
- d. the risk to the administration of justice posed by release.

20. Mr. Wood satisfies the *Giacalone* standards:

a. He has numerous ties to the community, he works as an insurance salesman, and he has already demonstrated that he will appear in the future by his appearances at all court hearing dates required by the trial and appellate court.

b. He poses no potential for harm/danger to others and/or to the community and he fully complied with all bond conditions for the 18 months he was awaiting his trial and during his appeal to the Circuit Court.

c. There are significant issues of merit (both legal, statutory, and factual) in this appeal, including, but not limited to, that Mr. Wood was not permitted to raise any 1st Amendment defenses to the jury, that he was not permitted to argue all the elements of the charged criminal offense, that he was not allowed to argue that the wrong definition of the word “juror” was used by the court, and that he was not permitted to argue that there was no actual jury trial in which the jury tampering was alleged to have occurred.

d. There would be no risk to the administration of justice posed by Mr. Wood remaining free on bond and a stay of execution on his conviction as requested, and it is apparent that his seeking postconviction relief and his appeal are not simply for delay, as can be seen by the fact that Defendant has promptly begun the postconviction and appellate process.

21. If Mr. Wood is not granted bond immediately and a stay of execution on his conviction, he stands to suffer irreparable harm in the following respects:

a. If the execution of his sentence is not stayed and if he is not released from custody on bond, he will serve all of the jail term imposed before there is a final disposition of his appeal.

b. He is still self-employed, but if he is not allowed to remain free or be released forthwith on bond and the execution on his conviction/sentence stayed, it will impair his ability to maintain his self-employment and business and thereby support his family.

c. Mr. Wood has no felony convictions or any charges pending.

d. He will suffer the penalties imposed by the court in violation of his Constitutional and statutory rights.

21. This motion for bond pending appeal and to stay execution on conviction/sentence and the above-stated information demonstrate that Mr. Wood should be granted bond and a stay pending appeal in this case because if he is allowed to remain free on bond, he would not pose a

risk of danger to the community, nor would he be likely to flee the jurisdiction, particularly in light of the needs of his family and wife. In fact, Mr. Wood was free on bond pending trial in this case and has remained free ever since the time of his conviction without incident and without fleeing, knowing the consequences of his conviction.

22. The Prosecutor cannot deny Mr. Wood's assertions that:

a. He has strong ties to the community;

b. He has already demonstrated that he will appear and has appeared at all times required by the court and is not a risk to flee;

c. He poses no potential for harm (violence) to the community; and

d. There would be no risk to the administration of justice posed by his remaining free in the community with a stay of any execution on his sentence, nor is he pursuing the postconviction proceedings/appeal for the purpose of delay.

23. If Mr. Wood is incarcerated as ordered until the appellate process is completed, after any necessary motions, full briefing, hearings, and decisions on all appellate issues, the critical issue of Defendant serving a jail sentence will have been rendered moot. An irreparable injustice/harm will have occurred because of Defendant's incarceration, the loss of his ability to work full time to support his family, all of which will have occurred without due process of the law and his right to appeal, since his conviction may be overturned on a number of grounds, including a denial of his constitutional and statutory rights and protections.

24. The ends of justice would be served by this Honorable Court granting Mr. Wood's emergency motion for bond pending appeal and to stay execution on conviction/sentence, ordering that his current bond be continued or that a personal bond or recognizance required in this case be

conditioned on his pursuing this appeal in a timely fashion through the appellate courts, and ordering other conditions that may be required by the court rules and/or statute(s) in such cases.

25. The interests of justice, fairness, and due process require that Mr. Wood's emergency motion for bond pending appeal and to stay execution on conviction/sentence, be granted immediately and without delay.

WHEREFORE, for all the reasons stated above, Mr. Wood respectfully asks this Honorable Court to immediately consider his emergency motion for bond pending appeal and to stay execution on the conviction/sentence; grant a personal recognizance appeal bond and stay execution on the conviction/sentence; and release Defendant forthwith and allow him to remain free on bond pending appeal.

Respectfully submitted,

Dated: February 15, 2018.

David A. Kallman (P34200)
Attorney for Keith Wood