

SUPREME COURT
STATE OF MICHIGAN

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

-vs-

MSC No.
COA No: 338733
Lower Case No. 16-010745-01
Wayne County Circuit Court

JACQUES JEAN KABONGO,

Defendant-Appellant.

WAYNE COUNTY PROSECUTING ATTORNEY
Attorney for Plaintiff-Appellee

SHELDON HALPERN (P14560)
Attorney for Defendant-Appellant

DEFENDANT-APPELLANT’S APPLICATION FOR LEAVE TO APPEAL

NOW COMES Defendant-Appellant, Jacques Jean Kabongo, by and through his attorney, Sheldon Halpern, and pursuant to MCR 7.303(B)(1) and MCR 7.305 does seek leave to appeal the February 20, 2019 Order denying timely Motion for Reconsideration of the December 27, 2018 Michigan Court of Appeals Opinion and Order affirming conviction from Wayne County Circuit Court, and states in support:

1. Defendant-Appellant, Jacques Jean Kabongo, was convicted, after jury trial of carrying a concealed weapon, (MCL 750.27) and was sentenced on May 10, 2017 to 1 year non-reporting probation and 50 hours of community service. (Sent., 11). Appeal of Right was taken and the Michigan Court of Appeals affirmed his conviction in an unpublished Opinion and Order issued December 27, 2019. Timely Motion for

Reconsideration was filed and denied by Order entered February 20, 2019. Defendant-Appellant seeks Leave to Appeal.

2. This case presents issues among which one concerns a jury's use of impeachment evidence and request to review the impeachment evidence and the trial court's response. There is need for clarification on how to respond to a jury request to review impeachment evidence offered during trial. In this case the jury asked to review the police reports used to impeach the testifying officers and the trial court told the jury the reports were not admitted as evidence and could not be considered. The defense counsel requested the judge also instruct upon the use of impeachment evidence and this request was denied. Shortly after this exchange, the jury reached a verdict of guilty. MCR 7.305(B) (3) provides that leave should be granted where the issue involves a legal principle of major significance to the state's jurisprudence. The current jury instructions do not anticipate jury requests as made in this case. The jury wanted to review the impeachment evidence and was told it was not evidence. Where instructions have the effect of removing impeachment evidence from a trial, then the reliability of the entire trial is in doubt. Any efforts to test the prosecution's case by cross examination and use of impeachment evidence is negated by the instructions telling the jury they may not consider impeachment evidence. Such a process gives only lip service to the right of confrontation and the right to a fair trial.

3. This case also presents disturbing abuses of voir dire to remove African Americans from the jury, and the prosecutor making up 'facts' to justify removal of a juror.

4. Additional issues involving violation of court orders in reference drugs, violence and guns in connection with the arrest of Defendant-Appellant.

5. Defendant-Appellant incorporates herein by reference his Brief in Support of this Application.

WHEREFORE, Defendant-Appellant seeks Leave to Appeal the February 20, 2019 Order denying timely Motion for Reconsideration of the December 27, 2018 Michigan Court of Appeals Opinion and Order affirming conviction from Wayne County Circuit Court, and upon consideration of the merits, vacate the conviction and remand for a new trial.

Respectfully submitted by:

LAW OFFICES OF SHELDON HALPERN, P.C

/s/ SHELDON HALPERN
SHELDON HALPERN (P14560)
Attorney for Defendant-Appellant Kabongo
26339 Woodward Avenue
Huntington Woods, MI 48070
(248) 554-0400
shalpern@sbcglobal.net

Date: March 26, 2018