

Perjury and Jurisdiction When Testimony Was Delivered Via Two-Way Technology

Question Presented

Can the government prosecute a witness for perjury in Michigan where the witness testified out-of-state via two-way technology?

Short Answer/Research Points

Likely yes. Michigan permits courts to assert jurisdiction where a criminal offense produces substantial and detrimental effects within the state. Although there is no Michigan case law defining “substantial and detrimental” for purposes of the jurisdictional statute—in fact, the only published decisions analyze Michigan’s territorial jurisdiction in the context of homicide and child sex abuse—the U.S. Supreme Court has previously explained that “[p]erjury is an obstruction of justice; its perpetration well may affect the dearest concerns of the parties before a tribunal.” *United States v. Norris*, 300 U.S. 564, 574 (1937).

A court will sustain a perjury charge if a person lawfully required to tell the truth willfully misrepresented material facts. *People v. Honeyman*, 546 N.W.2d 719 (Mich. Ct. App. 1996). A “materially false statement” is one that could have affected the course or outcome of a proceeding. *Id.* It could be argued that, if an individual falsely testifies *out-of-state* such that he could change the outcome of a proceeding *in Michigan*, there will be a detrimental effect on the Michigan criminal justice system.

The Michigan Court Rules permit the use to two-way interactive video in trials to take testimony from individuals based in locations outside the court room upon a showing of good cause and with the defendant’s consent. Insofar as the witness was required to tell the truth and willfully misrepresented material facts, the offense likely produced the substantial and detrimental effects within Michigan necessary for the state to assert jurisdiction.

Case Law

***People v. Honeyman*, 546 N.W.2d 719 (1996)**

Honeyman articulates the elements of perjury. They are as follows: an administration to the witness of an oath authorized by law and by a competent authority; an issue or cause to which facts sworn to are material; and the willful false statements or testimony by defendant regarding such facts.

Statute(s)

MICH. COMP. LAWS. ANN. § 762.2. CRIMINAL OFFENSES COMMITTED WITHIN STATE; REQUIREMENTS FOR PROSECUTION

Sec. 2. (1) A person may be prosecuted for a criminal offense he or she commits while he or she is physically located within this state **or outside of this state if any of the following circumstances exist:**

(a) He or she commits a criminal offense wholly or partly within this state.

(b) His or her conduct constitutes an attempt to commit a criminal offense within this state.

(c) His or her conduct constitutes a conspiracy to commit a criminal offense within this state and an act in furtherance of the conspiracy is committed within this state by the offender, or at his or her instigation, or by another member of the conspiracy.

(d) A victim of the offense or an employee or agent of a governmental unit posing as a victim resides in this state or is located in this state at the time the criminal offense is committed.

(e) The criminal offense produces substantial and detrimental effects within this state.

(2) A criminal offense is considered under subsection (1) to be committed partly within this state if any of the following apply:

(a) An act constituting an element of the criminal offense is committed within this state.

(b) The result or consequences of an act constituting an element of the criminal offense occur within this state.

(c) The criminal offense produces consequences that have a materially harmful impact upon the system of government or the community welfare of this state, or results in persons within this state being defrauded or otherwise harmed.

MICH. COMP. LAWS. ANN. § 750.422 PERJURY COMMITTED IN COURTS

Any person who, being lawfully required to depose the truth in any proceeding in a court of justice, shall commit perjury shall be guilty of a felony, punishable, if such perjury was committed on the trial of an

indictment for a capital crime, by imprisonment in the state prison for life, or any term of years, and if committed in any other case, by imprisonment in the state prison for not more than 15 years.

MICH. COMP. LAWS ANN. § 750.423. PERJURY; FALSE DECLARATION GIVEN UNDER OATH OR UNDER PENALTY OF PERJURY; PENALTY

(1) Any person authorized by a statute of this state to take an oath, or any person of whom an oath is required by law, who willfully swears falsely in regard to any matter or thing respecting which the oath is authorized or required is guilty of perjury, a felony punishable by imprisonment for not more than 15 years.

(2) Subsection (1) applies to a person who willfully makes a false declaration in a record that is signed by the person and given under penalty of perjury. As used in this subsection:

(a) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(b) “Signed” means the person did either of the following to authenticate or adopt the record:

(i) Executed or adopted a tangible symbol.

(ii) Attached to or logically associated with the record an electronic symbol, sound, or process.

MICH. COURT RULE 6.006. VIDEO AND AUDIO PROCEEDINGS

(A) Defendant in the Courtroom or at a Separate Location. District and circuit courts may use two-way interactive video technology to conduct the following proceedings between a courtroom and a prison, jail, or other location: initial arraignments on the warrant or complaint, probable cause conferences, arraignments on the information, pretrial conferences, pleas, sentencing for misdemeanor offenses, show cause hearings, waivers and adjournments of extradition, referrals for forensic determination of competency, and waivers and adjournments of preliminary examinations.

(B) Defendant in the Courtroom--Preliminary Examinations. As long as the defendant is either present in the courtroom or has waived the right to be present, on motion of either party, district courts may use telephonic, voice, or video conferencing, including two-way interactive video technology, to take testimony from an expert witness or, upon a showing of good cause, any person at another location in a preliminary examination.

(C) Defendant in the Courtroom--Other Proceedings. As long as the defendant is either present in the courtroom or has waived the right to be present, upon a showing of good cause, district and circuit courts

may use videoconferencing technology to take testimony from a person at another location in the following proceedings:

- (1) evidentiary hearings, competency hearings, sentencing, probation revocation proceedings, and proceedings to revoke a sentence that does not entail an adjudication of guilt, such as youthful trainee status;
- (2) with the consent of the parties, trials. A party who does not consent to the use of videoconferencing technology to take testimony from a person at trial shall not be required to articulate any reason for not consenting.

(D) Mechanics of Use. The use of telephonic, voice, video conferencing, or two-way interactive video technology, must be in accordance with any requirements and guidelines established by the State Court Administrative Office, and all proceedings at which such technology is used must be recorded verbatim by the court.

This project was supported by Grant No. 2017-YX-BX-K002 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Department of Justice's Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the SMART Office. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice