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July 16, 2020

Via email

Kerene Moore
Michigan Department of Civil Rights
Cadillac Place
3054 West Grand Boulevard, Suite 3-600
Detroit, MI 48202

Brandon Davis, Director
Office of Oversight and Public Accountability
300 Monroe Ave NW
Grand Rapids, MI 49503

**Re: Complaint Regarding Jury Tampering by Grand Rapids Police
Department Detective**

Dear Ms. Moore and Director Davis,

We are writing to you Ms. Moore, as the attorney leading the investigation into the Grand Rapids Police Department (GRPD), and to you Director Davis, as the Director of the Grand Rapids Office of Oversight and Public Accountability, to make you aware of a situation involving the GRPD that strikes at the heart of our criminal justice system. It is so significant that we are sure that you will agree with us that it warrants investigation to determine what happened, including whether appropriate discipline was imposed, and to assist in developing policies, procedures and officer training to make sure it never happens again.

On or about December 4, 2019 a sitting juror in a criminal matter, during deliberations, contacted a Grand Rapids Police Detective, Robert James Zabriskie, and the two of them engaged in a text message conversation about another juror who did not want to vote guilty. The detective's account of the conversation is recorded in his testimony during a hearing held after the prosecutor brought the exchange to the attention of the court. A transcript of the hearing is attached. Based on the exchange, a mistrial was declared in the case. To our knowledge, the officer has not been disciplined in any way.

During the text exchange, Detective Zabriskie almost immediately made comments that could influence the juror's deliberations, texting that "we need good people to show up and say they don't have a preconceived notions about guilt or innocence, and then, find the defendant guilty. Duh." The juror recounts frustration with the other juror who was unwilling to vote guilty. Detective Zabriskie appears to provide legal advice and advocate to have the dissenting juror, who was reportedly convincing other jurors to vote not guilty, expelled. Expulsion of a dissenting juror could obviously steer the outcome of deliberations. When the juror who was texting reported that other jurors were beginning to consider the dissenting juror's point of view, Detective Zabriskie told her to "just vote guilty and stick to [her] convictions." Detective Zabriskie, who has been with the GRPD for over 24 years and serves as an instructor, should have known right from the beginning that it was inappropriate to communicate with a sitting juror. Yet he ignored that, inquired about the status of deliberations, provided legal advice, and attempted to sway the outcome.

What also sticks out in the exchange is that Detective Zabriskie introduced race into the conversation. In response to comments about the dissenting juror being "obnoxious" and highly emotional, he asked: "is this a black lady?" The introduction of race into the conversation by the detective shows a deeper prejudice that is all too common in police forces and in the criminal justice system. Why would this detective assume that a woman who is obnoxious or highly emotional is Black? Why would this detective assume that only a Black juror could care about the concerns that this woman had raised about the quality of the evidence?

Additionally, immediately after learning that the dissenting juror was Black, the detective changed tactics. He went from (a) telling the juror that he was corresponding with that she had the option to either vote guilty and see what happens or try to get the juror expelled, to (b) solely recommending that she seek to have the dissenting Black juror expelled. Pushing for the expulsion of Black jurors on the basis of their race is more than evidence of a willingness to take racially discriminatory actions, even when they clearly violate the law. It is a flagrant attempt to undermine defendants' constitutional right to a jury of their peers and threatens the entire criminal justice system. That a GRPD detective would show such little regard for the laws that he is sworn to uphold is extremely troubling. The fact that a GRPD detective would violate such important laws in service of racial discrimination is completely unacceptable.

We are also deeply concerned that there was no investigation by the prosecutor's office. If this communication had been with anyone other than a detective, there would have been an investigation by the prosecutor's office and probably jury tampering charges for the individual that engaged in the communication. We would therefore ask that your investigation include inquiry into the failure of the prosecutor's office to take any action here.

We would ask that both of your offices open investigations into this matter and, based on those investigations, recommend further actions including appropriate discipline for the detective and

necessary policy and procedure changes, as well as training, at the GRPD to prevent any further such instances.

Thank you for your attention.

Sincerely,

Miriam Aukerman
Elaine Lewis
ACLU of Michigan

Anthony Greene
ACLU of Michigan Cooperating Attorney