

STATE OF MICHIGAN



IN THE 7TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF GENESEE

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

Case No. 21-047373-FH (Ambrose)
21-047374-FH (Ambrose)
21-047375-FH (Baird)
21-047379-FH (Peeler)
21-047378-FH (LYON)

v

GERALD AMBROSE
RICHARD BAIRD
NICOLAS LYON
NANCY PEELER,

FILED

FEB 17 2022 168

GENESEE COUNTY CLERK
BY DEPUTY CLERK

HON. ELIZABETH A. KELLY

Defendants.

ORDER DENYING DEFENDANTS' MOTIONS TO DISMISS

At a session of said Court held at the Courthouse
In the City of Flint, County of Genesee, Michigan
Wednesday, February 16, 2022:

PRESENT: THE HONORABLE ELIZABETH A. KELLY

I. INTRODUCTION

Acting in his capacity as a one-person grand juror, on January 8, 2021, the Honorable David Newblatt, signed an indictment charging NICOLAS LYON (hereinafter "Defendant") with ten separate counts. More specifically, Defendant was charged with nine counts of involuntary manslaughter and one count of willful neglect of duty.

On July 2, 2021, Defendant filed a "Motion to Dismiss" and "Memorandum in Support of Motion to Dismiss." On August 5, 2021, Defendant filed a "Supplemental Memorandum in Support of Motion to Dismiss" and the People filed a "Response in Opposition to Defendant's



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Motion to Dismiss.” Next, Defendant filed an additional “Supplemental Memorandum in Support of Motion to Dismiss.”

Likewise, similarly situated defendants, GERALD AMBROSE, RICHARD BAIRD, and NANCY PEELER, filed joinders to Defendant’s motion to dismiss. As such, this order is controlling over all relevant briefs and joinders related to Defendant’s original motion to dismiss. It should be noted that some of the arguments raised in defendants’ joinder briefs have already been addressed by this Court. However, this Court gives defendants the benefit of the doubt that they did not intentionally file inappropriate cumulative pleadings.

II. STANDARD OF REVIEW

Some of the issues presented in Defendants’ motions relate to the application and interpretation of the one-person grand jury statutes. “[I]t is well established that the interpretation and application of statutes is a question of law that is reviewed *de novo*.” *People v Webb*, 458 Mich 265, 274 (1998) (emphasis added). Therefore, the application and interpretation of the one-person grand jury statutes are reviewed *de novo*. Likewise, to the extent that Defendants’ motions address constitutional questions, those issues are also reviewed *de novo*. *Wayne Co v Hathcock*, 471 Mich 445, 455 (2004).

III. ANALYSIS

A. MCL 767.3 and 767.4 Confer Charging Authority upon the One Person Grand Jury

As previously held by this Court, MCL 767.3 and 767.4 confer charging authority upon the one-person grand jury.

1. The One-Person Grand Jury Issues Indictments

The statutes that create the citizens' grand jury and the one-person grand jury grant those bodies the power to issue indictments upon a finding of probable cause. See MCL 767.4; MCL 767.3; MCL 767.23.

The Michigan Compiled Laws create the citizens' grand jury and provide it with authority to issue indictments upon a finding of probable cause. More specifically, MCL 767.23 states that in a citizens' grand jury, "No indictment can be found without the concurrence of at least 9 grand jurors." Moreover, MCL 767.23a states, "A [citizens' grand jury] may indict a person for an offense committed in any county over which the grand jury has jurisdiction." Likewise, the Michigan Compiled Laws grant the one-person grand jury authority to issue indictments upon a finding of probable cause. See MCL 767.3; MCL 767.4. Notably, MCL 767.3 states in relevant part:

Whenever by reason of the filing of any complaint, which may be upon information and belief, or upon the application of the prosecuting attorney or attorney general, any judge of a court of law and of record shall have **probable cause** to suspect that any crime, offense or misdemeanor has been committed within his jurisdiction, and that any persons may be able to give any material evidence respecting such suspected crime, offense or misdemeanor, such judge in his discretion may make an order directing that an inquiry be made into the matters relating to such complaint, which order, or any amendment thereof, shall be specific to common intent of the scope of the inquiry to be conducted, and thereupon conduct such inquiry.

MCL 767.3 (emphasis added). Additionally, MCL 767.4 states in relevant part:

If upon such inquiry the judge shall be satisfied that any offense has been committed and that there is **probable cause** to suspect any person to be guilty thereof, he may cause the apprehension of such person by proper process and, upon the return of such process served or executed, the judge having jurisdiction shall proceed with the case, matter or proceeding in like manner as upon formal complaint. The judge conducting the inquiry under section 3 shall be disqualified from acting as the examining magistrate in connection with the hearing on the complaint or **indictment**, or from presiding at any trial arising therefrom, or from

hearing any motion to dismiss or quash any complaint or **indictment**, or from hearing any charge of contempt under section 5, except alleged contempt for neglect or refusal to appear in response to a summons or subpoena.

MCL 767.4 (emphasis added).

In *Green*, the Michigan Court of Appeals indicated that the one-person grand jury issues indictments after a finding of probable cause. *People v Green*, 322 Mich App 676, 687. The court stated, “[B]ecause [the one-person grand jury] is an alternative charging procedure, it does not replace . . . the preliminary examination as defendant asserts.” *Id.* (quotations omitted). Both the one-person grand jury and the preliminary examination “serve the same function: to determine whether there is probable cause to believe that a person committed a crime.” *Id.* “Moreover, in both a one-person grand jury and a preliminary examination, the individual who decides whether there is probable cause is the same: a judge. MCL 767.3 (one-person grand jury); MCL 766.13 (preliminary examination).” *Id.*

Parallel to a citizens’ grand jury, a one-person grand jury has the power to issue indictments upon a finding of probable cause. Here, the Honorable David Newblatt acted as a one-person grand juror and returned indictments against Defendant pursuant to MCL 767.3 and MCL 767.4. As noted above, MCL 767.4 states, “If . . . the judge shall be satisfied that . . . there is **probable cause** to suspect any person to be guilty thereof, he may cause the apprehension of such person . . . and . . . shall proceed with the case . . . in like manner as upon formal complaint.” MCL 767.4 (emphasis added). Additionally, MCL 767.4 goes on to say, “The judge conducting the inquiry under [MCL 767.3] shall be disqualified from acting as the examining magistrate in connection with the hearing on the complaint or **indictment**[.]” MCL 767.4 (emphasis added). In *Green*, the Michigan Court of Appeals, provided a useful interpretation of MCL 767.3 and 767.4. The court indicated that MCL 767.3 and MCL 767.4 are the statutes that create the one-person grand jury. *Id.* In fact, according to the court’s interpretation of MCL 767.4, the statute directs the trial court to “proceed

with the case after the one-person grand jury returns an indictment.” *Id.* at 685 (quotations omitted). Likewise, the court held that the one-person grand jury issues these indictments after a finding of probable cause. *Id.* at 687. Therefore, the case law is clear: upon a finding of probable cause, a one-person grand jury returns an indictment and MCL 767.4 directs the trial court to proceed with the case following the issuance of that indictment. Thus, this Court finds that the one-person grand jury does in fact issue indictments and does not merely perform an investigatory function.

2. Indictments Issued by One-Person Grand Juries and Citizens’ Grand Juries are Equal in the Eyes of the Law

Indictments issued by a one-person grand jury carry equal weight to indictments issued by a citizens’ grand jury. In both situations, indictments are issued by a grand jury after a finding of probable cause. See *Green*, 322 Mich App at 687.

The Michigan Court Rules acknowledge that a grand jury may be comprised of a single grand juror. See MCR 6.107(A); MCR 6.005(I)(1). For example, MCR 6.107(A) states, “Whenever an indictment is returned by a **grand jury or a grand juror**, the person accused in the indictment is entitled to the part of the record, including a transcript of the part of the testimony of all witnesses appearing before the **grand jury or grand juror**[.]” MCR 6.107(A) (emphasis added). Additionally, MCR 6.005(I)(1) states, “A witness called before a **grand jury or a grand juror** is entitled to have a lawyer present in the hearing room while the witness gives testimony.” MCR 6.005(I)(1) (emphasis added).

In *Green*, while discussing a defendant’s right to counsel, the Michigan Court of Appeals said, “[T]he one-person grand jury procedure is used to determine whether criminal proceedings should be instituted against an individual by way of an indictment[.]” *Green*, 322 Mich App at

685. Moreover, the court indicated “in both a one-person grand jury and a preliminary examination, the individual who decides whether there is probable cause is the same: a judge. MCL 767.3 (one-person grand jury; MCL 766.13 (preliminary examination).” *Id.* at 687. In other words, in *Green*, the Michigan Court of Appeals made it clear that, like a citizens’ grand jury, a one-person grand jury has the power to issue formal indictments. *Id.*

Moreover, when discussing indictments, the Michigan Court Rules use the phrase “grand jury or a grand juror.” MCR 6.107(A); MCR 6.005(I)(1). The use of the word “or” indicates that the two forms of grand juries are interchangeable and are held in the same and/or similar light by the Michigan Court Rules. Additionally, nothing in the Michigan Court Rules indicate that indictments issued by a one-person grand jury are inferior to those issued by a citizens’ grand jury.

The Michigan appellate courts are clear that one-person grand juries – like citizens’ juries – issue indictments after a determination of probable cause. Hence the court’s language in *Green* that the “one-person grand jury procedure is used to determine whether criminal proceedings should be instituted against an individual by way of an indictment[.]” *Green*, 322 Mich App at 685. Taking this further, the case law illustrates that the one-person grand jury and citizens’ grand jury perform the same function: they find the probable cause necessary to issue an indictment. This is precisely what has occurred in these cases and Defendant has not made a showing that the one-person grand jury’s indictments carry less weight than those issued by a citizens’ grand jury.

Ultimately, MCL 767.3 and 767.4 confer charging authority upon the one-person grand jury and Defendant’s argument to the contrary is not persuasive. In other words, this Court is not persuaded that the one-person grand jury merely performs an investigatory function. Instead, a one-person grand jury issues indictments that carry equal weight as indictments issued by a citizens’ grand jury.

B. The One-Person Grand Jury Statutes Do Not Violate the Separations of Powers

Doctrine

Here, this Court is faced with the argument that the one-person grand jury violates the separation of powers. More specifically, this Court is faced with the contention that, unlike a traditional grand jury, if the one-person grand jury statute confers the power to indict, then the statute would violate the separation of powers doctrine.

1. The Michigan Supreme Court Consistently Upholds the Constitutionality of the One-Person Grand Jury

Here, Defendant asserts that the one-person grand jury's constitutionality is an unsettled question. However, decades of Michigan Supreme Court precedent establish otherwise.

In *Slattery*, the Michigan Supreme Court held that the one-person grand jury system does "not impose non-judicial duties upon the judiciary." *In re Slattery*, 310 Mich. 458, 465 (1945). In fact, the Court held, "So that there may be no further question, we hold that the judge conducting a [one-person] grand jury proceeding is acting in a judicial capacity." *Id.* at 467.

Likewise, in *Colacasides*, the Michigan Supreme Court addressed a defendant's contention that the one-person grand jury system violated the separation of powers doctrine. *In re Colacasides*, 379 Mich. 69, 89 (1967). More specifically, the defendant alleged that a judicial officer cannot simultaneously wield subpoena power and the power to perform investigations "without violating the separation of powers" *Id.* at 90. Notably, the defendant was indicted by the one-person grand jury that performed the investigation. *Id.* at 77-78. The Court rejected the defendant's separation of powers argument and held, "that the one-man grand jury statute does not violate either our State Constitution's separation of powers provision or the Fourteenth Amendment's due process clause" *Id.* at 75.

Here, Defendant attempts to treat the one-person grand jury's constitutionality as an open question. However, as indicated above, the Michigan Supreme Court held that a judge conducting a one-person grand jury proceeding is acting in a judiciary capacity. *In re Slattery*, 310 Mich at 467. Later, the Michigan Supreme Court specifically addressed the separation of powers issue now presented to this Court. The Court stated, "the one-[person] grand jury statute does not violate either [Michigan's] Constitution's separation of powers provision or the Fourteenth Amendment's due process clause." *Colacasides*, 379 Mich at 75. Therefore, the one-person grand jury's constitutionality is not an open question. Instead, the answer is clear: the one-person grand jury does not violate the separation of powers doctrine.

2. The One-Person Grand Jury Performs a Judicial Function

Defendant argues that the one-person grand jury system violates the separation of powers doctrine because the one-person grand jury statutes confer power reserved for the executive branch to the judicial branch. In essence, Defendant asserts that the one-person grand jury is performing an executive function and not a judicial inquiry. Notably, Defendant does not challenge the constitutionality of the traditional grand jury system.

In *Slattery*, the defendant challenged "the constitutionality of the '[one-person] grand jury statutes,' claiming that they impose non-judicial duties on a judge, and that one cannot be held in contempt if he testifies before a non-judicial body." *Slattery*, 310 Mich at 463. To address this challenge, the Michigan Supreme Court was forced to address whether the one-person grand jury system performs judicial functions. In response, the Court cited to multiple United States Supreme Court opinions that held the same thing: the grand jury process is a "judicial inquiry." *Id.* at 465; see also *Cobbledick v United States*, 309 US 323, 327 (1940); *Hale v Henkel*, 201 US 43, 66 (1906).

In *Pichitino*, the Michigan Supreme Court outlined the three types of charging instruments in Michigan: the filing of a (1) information; (2) indictment by a traditional grand jury; and (3) indictment by a one-person grand jury. *People v Pichitino*, 337 Mich 90, 92-93 (1953). The Court held that the Michigan's legislature intended for the "three [instruments] to stand together." *Id.* at 94.

As mentioned earlier, MCL 767.3 and MCL 767.4 confer charging authority upon the one-person grand jury. Much like the Michigan Supreme Court's interpretation of the legislature's intent in creating the one-person grand jury system, this Court holds that one-person grand juries and citizens' grand juries carry equal weight in the eyes of the law. The one-person grand jury is an alternative charging procedure, and, like a citizens' grand jury, the one-person grand jury is performing a judicial inquiry. Therefore, the one-person grand jury system does not violate the separation of powers doctrine.

3. Performing an Executive Function is Not Enough to Violate the Separation of Powers Doctrine

As noted previously, Defendant asserts that the one-person grand jury violates the separation of powers doctrine because it is performing an executive function. As beforementioned, the one-person grand juror is not performing an executive function. Nevertheless, Defendant's argument misses the mark: even if the one-person grand jury performed an executive function, that alone would not be enough to violate the separation of powers doctrine.

In *Makowski*, the Michigan Supreme Court held, "[w]hile the Constitution provides for three separate branches of government, . . . the boundaries between these branches need not be airtight." *Makowski v Governor*, 495 Mich 465, 482 (2014) (citations and quotation marks omitted). "In fact, in designing the structure of our Government and dividing and allocating the

sovereign power among three co-equal branches, the Framers of the Constitution sought to provide a comprehensive system, but the separate powers were not intended to operate with absolute independence.” *Id.* (citations and quotation marks omitted). “The true meaning of the separation-of-powers doctrine is that the whole power of one of these departments should not be exercised by the same hands which possess the whole power of either of the other departments; and that such exercise of the whole would subvert the principles of a free Constitution.” *Id.* (citations and quotation marks omitted).

As outlined in *Makowski*, simply performing a function that is normally intended for another branch of the government is not enough to violate the separation of powers. Instead, Defendant must show that the one-person grand jury statute allocates “the whole power of either of the other” branches to the judiciary. *Id.* Therefore, this Court is not persuaded that the one-person grand jury violates the separation of powers doctrine.

**C. THE ONE-PERSON GRAND JURY SYSTEM DOES NOT VIOLATE DUE
PROCESS**

Finally, Defendants asserts that the one-person grand jury system violates due process (1) because there is no local court rule governing the one-person grand jury process and (2) because of the one-person grand jury’s lack of investigative spending. Neither of these arguments hold water.

First, Defendant alleges a due process violation because the Genesee County Circuit Court does not have any local rules regarding the one-person grand jury process. Defendant relies on MCL 767.3, which states, “the designation of the judge to conduct the inquiry shall be made in accordance with the rules of such court.” However, Defendant’s reliance is misplaced. MCL 767.3 establishes that the designation of the one-person grand juror rests within the local court’s

authority. Nothing in the statute requires the local court to adopt a one-person grand jury specific court rule or makes it a violation of due process to fail to adopt such a rule.

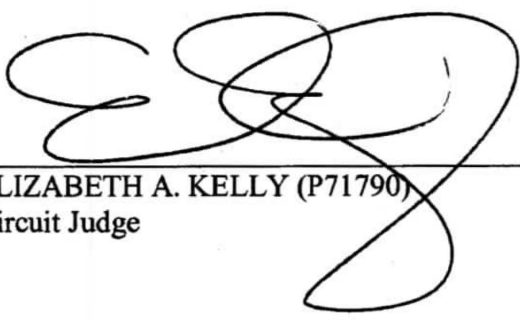
Second, Defendant alleges that the one-person grand jury system violates due process because the grand jury did not incur expenses relating to the grand jury investigation. Defendant asserts that the lack of spending demonstrates that the Attorney General's office was presenting the case to the grand jury, instead of the grand jury acting unassisted. Defendant's argument ignores the clear language of MCL 767.3. MCL 767.3 states, (1) one-person grand jury proceedings may be initiated "upon the application of the prosecuting attorney or attorney general" and "[a]ny judge, prosecuting attorney or special prosecuting attorney, or the attorney general participating in the in any inquiry . . . shall thereafter be disqualified" from certain appointments and elections for a set period of time. Therefore, MCL 767.3 clearly contemplates the participation of the Attorney General's office and Defendant has failed to demonstrate why the Attorney General's participation violates due process. Ultimately, this Court is not persuaded that the one-person grand jury system violates due process.

D. CONCLUSION

Defendant attempt to strike down Michigan's one-person grand jury system through statutory interpretation and constitutional challenges. However, all of Defendant's arguments fail (1) because MCL 767.3 and MCL 767.4 confer charging authority upon the one-person grand juror, (2) because the one-person grand jury system does not violate the separation of powers doctrine, and (3) the one-person grand jury system does not violate due process. Therefore, Defendant has failed to state a claim for which relief may be granted. For the foregoing reasons, Defendant's motion is DENIED.

NOW THEREFORE, IT IS ORDERED: Defendant's "Motion to Dismiss" is DENIED
for the reasons stated above.

Dated: 2/16/2022



ELIZABETH A. KELLY (P71790)
Circuit Judge