

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 7TH JUDICIAL CIRCUIT
GENESEE COUNTY

PEOPLE OF THE STATE OF
MICHIGAN,

Case No. 2021-047372-FH

Plaintiff,

Hon. Elizabeth Kelly

v

JARROD AGEN,

Defendant.

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PEOPLE'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS

Defendant Agen, as do other defendants in the Flint Water cases, improperly conflates the dismissal of an indictment and the dismissal of a case in its entirety. Pursuant to the ruling in *People v Peeler*, ___ Mich. (2022) (Docket No. 163667), slip op at 15, a one-person grand juror does not have the statutory authority to issue a formal indictment. Parties do not dispute this in light of the ruling. However, that is not the end of the inquiry.

Peeler also recognizes the authority of the one-person grand jury to initiate criminal proceedings by issuing a warrant upon a finding of probable cause.ⁱ *See id.* at 12–13 (“And the statute is clear about what it does authorize a judge to do. If, after conducting the 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*’ MCL 767.4 (emphasis added). In other words, the judge may authorize an arrest warrant. The statute didn’t authorize the judge to issue an arrest warrant explicitly and issue an indictment at the same time implicitly.”). In other words, the judge may authorize an arrest warrant. That a warrant exists for Agen’s apprehension—and for apprehension of all defendants charged in this matter—should be incontrovertible. Regardless, the People attached a copy of the warrant to their motion to remand. (See People’s Mot and Br to Remand as Upon Formal Complaint, Ex B.)) It exists, and that document does carry meaning. It also triggers certain procedures.

Under normal circumstances, an arrest warrant is issued “upon presentation of a proper complaint alleging the commission of an offense and a finding of reasonable cause to believe that the individual accused in the complaint committed the offense.” MCL

764.1a. However, a warrant issued under MCL 767.4 takes a slightly different path that arrives at the same destination. Under MCL 767.4 the one-person grand juror, not a magistrate issues the warrant. See MCL 767.4 (“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[.]”). *Peeler* expressly recognized this to be the issuance of a warrant. See *Peeler*, slip op at 13 (“And the statute is clear about what it *does* authorize a judge to do. In other words, the judge may authorize an *arrest warrant*.”) (emphasis in original). And, *Peeler* further explained how the matter should proceed once the arrest warrant is issued by the one-person grand juror:

[O]nce an accused has been apprehended, “the judge having jurisdiction shall proceed with the case, matter or proceeding in like manner *as upon formal complaint*.” In other words, the judge should treat the one-man-grand-jury-charged case the same as a case in which a formal complaint has been filed.

Id., slip op at 8 (emphasis added).

In neither MCL 767.4, nor in the text of *Peeler*, is there a requirement that a formal complaint--such as is repeatedly referenced in Defendant’s motion--ever be filed. Agen complains the People have not issued a sworn complaint or complied with MCR 6.101. This argument is meaningless, however, because MCL 767.4 directs that the case shall proceed “in like manner as upon formal complaint.” Thus, no actual complaint is necessary. Rather, MCL 767.4 states that the judge having jurisdiction shall proceed “*as*

upon formal complaint,” not “upon the filing of a formal complaint.”¹

The Supreme Court’s interpretation of the term “indictment” further confirms this point. The Court recognized that MCL 767.4 references “the hearing on the complaint or *indictment*” (emphasis added) following a finding of probable cause by a one-person grand jury. *Peeler*, slip at 11. But the Court explained that the term “indictment,” as found in MCL 767.4, is defined by MCL 761.1(g), which lists a number of documents, including a “warrant,” encompassed by the term “indictment.”² *Peeler*, slip op at 13. In holding that the one-person grand jury lacks statutory authority to issue an “indictment,” then, the Court clarified that it referred only “to a formal indictment issued by a one-person grand jury and not in the broader sense it is used in MCL 761.1(g).” *Peeler*, slip op at 15 n 4. In other words, the Court held that the one-person grand jury cannot issue a grand jury indictment that would take the place of a felony information,

¹ Agen also inexplicably complains that no list of witnesses has been provided but references no statute or court rule requiring such. If he is mistaking MCL 767.40a as necessitating a list of witnesses, that statute is clear that it is triggered only upon the *filing of an information*. See MCL 767.40a(1). The People request remand to district court to proceed as upon formal complaint, recognizing that he is entitled to a preliminary examination in light of *Peeler*. The People are not requesting a mere switch from a felony indictment to a felony information. Therefore, Agen’s complaint is a meritless red herring seemingly aimed only at unfairly casting aspersions at the People.

² “Indictment” means 1 or more of the following: (i) An indictment. (ii) An information. (iii) A presentment. (iv) A complaint. (v) A warrant. (vi) A formal written accusation. (vii) Unless a contrary intention appears, a count contained in any document described in subparagraphs (i) through (vi).” MCL 761.1(g).

thereby bypassing a preliminary examination.

Thus, per the Court in *Peeler*, the term “indictment” in MCL 767.4 is used “in the broader sense” of MCL 761.1(g), which defines “indictment,” *inter alia*, as a “warrant.” As a result, when MCL 767.4 references “the hearing on the complaint or *indictment*,” (emphasis added), the statute contemplates that the judge with jurisdiction shall conduct a preliminary examination on the warrant issued by the one-person grand jury. This accords with the statute’s directive that the case shall proceed “*as upon* formal complaint,” rather than requiring an additional charging document beyond the warrant.

So, while this Court must dismiss the Indictment to the extent it functions as a formal indictment that bypasses a preliminary examination, the appropriate next step is then to remand this matter to the district court for preliminary examination, in accordance with MCL 767.4 and *Peeler*. Again, this is because the warrant still exists, and that warrant was properly issued by the one-person grand jury. No part of *Peeler* calls this into question. In fact, the Court expressly stated it “may issue an *arrest warrant*.” See *Peeler*, slip op at 9 (emphasis in original). What that means with respect to the warrant issued in this matter is the question posed to this Court, and one not answered by *Peeler*.

Defendant’s only argument as to the warrant issued by the one-person grand jury—that the warrant is invalid because the indictment was improperly issued—falls flat. *Peeler* did not call into question the one-person grand jury’s probable-cause determinations. The warrant, which MCL 767.4 expressly authorized the

one-person grand juror to issue, and which was based on a finding of probable cause, does not “magically” become invalid simply because it was accompanied by an indictment that is now invalid.

The People filed their motion to remand in order to provide this Court the opportunity to determine what, if anything, should become of the warrants issued by the one-person grand jury, and to define where this case stands procedurally. This question was left open by *Peeler* in the disparity of relief granted. The Baird and Peeler cases were remanded for preliminary examination, consistent with the People’s current requested relief in all cases. Lyon’s indictment was dismissed.

This inevitably calls into question where the various Flint Water cases stand upon remand.

For the reasons expressed above, those cases stand ready to proceed to preliminary examination on the warrants issued by the one-person grand jury “as upon formal complaint.”³

Respectfully submitted,

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SG FW Agen, J./Ppl's Response to Def's Mot to Dismiss (Agen) AG 2021-0309219-A

³ The People also incorporate here the arguments set forth in their Motion to Remand and any argument set forth in their reply brief to the responses to the Motion to Remand, if permitted.