STATE OF MICHIGAN

IN THE DISTRICT COURT FOR THE 67-5 JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF MICHIGAN,

v. D.C.#21G00047SM

RICHARD DALE SNYDER,

Defendant.

_____/

ORDER ON DEFENDANT'S MOTION TO QUASH THE INDICTMENT FOR LACK OF JURISDICTION AND TO DISMISS THE CASE FOR IMPROPER VENUE

At a session held on the 18th day of March, 2021

PRESENT HONORABLE WILLIAM H. CRAWFORD II, DISTRICT JUDGE

This matter comes before the Court on Defendant Snyder's Motion To Quash the Indictment for Lack of Jurisdiction And To Dismiss the Case for Improper Venue. The Indictment in this case charges the defendant, former Governor Richard Dale Snyder, with two counts of willful neglect of duty under Michigan Compiled Laws section 750.748. The defendant, Richard Snyder asserts that the Indictment must be quashed and dismissed for two reasons, both related to the defendant's position that none of his alleged failures to act occurred in the City of Flint.

In support of his motion the defendant first argues that because a single-judge grand jury convened by the 7th Circuit Court is limited to indicting for offenses committed *within* Genesee County, any indictment returned by that grand jury that purports to charge offenses committed *outside* Genesee County, lacks jurisdiction and must be quashed. This assertion lacks merit due to the fact that the grand juror in this case, Circuit Judge David J. Newblatt noted the place of offense in the indictment, as Genesee County. There is no dispute that pursuant to statute a single-county grand juror has authority to investigate and charge crimes committed within his jurisdiction. MCL 767.3 and 767.4. Here, Judge Newblatt was sitting as a single-judge grand juror in Genesee County who upon finding probable cause, has authority to issue and return an indictment within his jurisdiction. The Indictment itself lists the Place of Offense as Genesee County. This Court notes that pursuant to MCL 767.723a, a multicounty

grand jury is specifically required to "...specify in the indictment the county or counties in which the offense took place."

Though not directly applicable, it still makes sense that if the grand juror in exercising his understanding of his jurisdiction in this matter, had believed a crime to have been committed in another county, that he would have listed such county as a place of offense. Since the only county listed, Genesee County, is within the grand juror's jurisdiction, multicounty jurisdiction is not invoked, and therefore the motion to quash is denied.

Next, the Defendant argues that the Indictment should be dismissed for improper venue, citing the office holder's official location or residence in Lansing, Ingham County, Michigan. Also, that Lansing as the "seat of power" is the location where the duty arises and is necessarily where the crime of neglect is allegedly committed, thus concluding that official omissions occur at a public officer's official residence as a matter of law. Thus the Court considers this motion in the context of an attack on the pleadings and the assertion that legally, the crimes as charged could never be properly charged in Genesee County.

The parties agree in general, that venue is proper in the county where the crime was committed. *People v McBurrows, 504 Mich 308 (2019)*. The instant charges of Willful Neglect of Duty have honed a sharp dispute regarding the location of the alleged crimes. The parties spar over the dissection of the "essential verb" in the controlling statute MCL 750.478 and not surprisingly reach opposite conclusions on whether the duties at issue are specific enough to constitute a duty 'enjoined by law'.

In support of their respective positions both Defendant Snyder and the People cite civil case law which sets forth venue analysis and reasoning in mandamus and civil suits against public officers. While those cases are instructive they are not necessarily determinative in deciding the issue at bar.

The defendant contends that the foundation for the charge of willful neglect of duty is the defendant's public office, and that it is his alleged neglect, in his official capacity, that gives rise to a violation. As such, it is the official location or residence that is necessarily where the alleged crime is committed. The court recognizes in the absence of clear precedence, that there may be merit to this argument. The Defendant relies on the *McBurrows* case to support his position, while the People distinguish the case based upon its distinct fact pattern, and argue the difference between the foreseeability and effects of the defendant's actions in the *McBurrows* case versus the foreseeability and alleged connection to the effects of Defendant Snyder's actions or omissions in this case.

The People also assert that the instant allegations of omission involve actions that were taken or not taken in Genesee County and that the alleged crime itself occurred in Genesee County. Furthermore, they claim that Defendant Snyder's duty to inquire into the performance, condition and administration of public offices and officers was in Flint, as well as the duty to declare a state of emergency and/or disaster. They argue that in

order to fulfill his duties that the defendant would have to not only make contact with entities located or operating in Flint, but also that he would have to supervise actions in Flint and effectuate policies in Flint. And they conclude that his failure to do so necessarily occurred in Flint.

The People also note that the offense of willful neglect of duty is a crime of omission, in that the offense is based upon the failure to act, rather than a wrongful act that was taken. They referenced several federal court cases that recognized that when a governmental official operates across the state, venue in an action against that official is not limited to the seat of government, and that an official does not necessarily have a single residence for venue purposes. While those were civil venue cases, The People also cite the United States Supreme Court criminal case ruling in *Johnston v United States, 351 US 215 (1956),* for its holding that when a crime is based on a failure to act, venue is generally appropriate where the action should have been taken. *Johnston at p.220.*

This Court also does not summarily dismiss the People's argument in regard to the Attorney General being able to designate venue under certain circumstances.

There are a number of instances in state law where venue is appropriate in more than one county. To name a few:

If offenses are allegedly committed on or within one mile of the boundary lines of 2 counties and it appears to the Attorney General that it is "impossible to determine within which county it occurred, the offense may be prosecuted in such county as the Attorney General designates. MCL 762.3

Offenses which include a death in one county resulting from a mortal wound, other violence or injury or poison inflicted or administered in another county, may be prosecuted and punished in either county. MCL 762.5

Embezzlement and identity theft may be charged in multiple counties depending upon the circumstances. MCL 762.10, MCL 762.10c.

And where it appears to the Attorney General that it is impossible to determine within which county a state offense is alleged to have occurred, the violation alleged to have been committed may be prosecuted and punished, or the examination held in such county as the attorney general designates. MCL 762.3(3) (c).

It appears from these statutes and others, that the state legislature does not want strict adherence to territorial boundaries applied to nebulous concepts of venue in such a fashion as to potentially impede justice. As noted by the People, this is especially true where the difficulty is compounded by the fact that willful neglect, because it is based on the failure to act, is an ongoing offense that begins from the time the duty first arose. Citing *United States v Canal Bridge Co., 631 F3d 647 (2011).*

The question is raised, might not this be the type of unique circumstance envisioned by the state legislators when they imbued the attorney general with this designation authority?

The Defendant is adamant that Ingham County is the only place where venue is proper. At oral argument the People acknowledged the burden of proving venue and insisted that Genesee County is where they should be given the opportunity to do so. Two seemingly irreconcilable positions, which might be reconciled if MCL 762.3(3)(c) applies and the attorney general is allowed to designate the proper county of venue.

The Court also ponders the potential challenges faced at trial if venue must be proved beyond a reasonable doubt to an Ingham County jury. Should it turn out that much of the testimony and evidence seems to favor an alleged crime occurring in Flint, a jury might be confused, leading to an undue presumption of reasonable doubt. Conversely, one might argue the opposite regarding a Genesee County jury being asked to decide venue should the evidence and testimony relate largely to events in Lansing. Thus it may be appropriate for the Attorney General to pick her poison under these circumstances and designate venue as allowed by statute. These issues may segue into the People's public policy argument, whose factors they claim weigh heavily in favor of venue being proper in Genesee County.

The court acknowledges the argument of the defendant relative to the *McBurrows* case. It is possible that the facts as alleged herein are similar enough to those in *McBurrows* that venue could ultimately be deemed proper in Ingham County. However, a part of the defendant's argument is that the departments and department heads that Governor Snyder allegedly would have failed to supervise are all located in Lansing. Yet, no mention is made of the somewhat new and unique involvement of the Emergency Manager(s) in Flint, and how supervision or alleged lack of supervision was to have taken place, where, how and by whom in the chain of command. Evidence may show that those duties were exercised in and limited to the City of Flint, as opposed to statewide jurisdiction.

The Court inquired at oral argument something to the effect of whether it was the position of the defendant that *had Governor Snyder resided in a construction trailer in the City of Flint for the duration of the events alleged in this case, and from that trailer, conducted supervision and issued all orders and directives or failed to supervise and issue orders and directives from the trailer, would venue still be proper in Ingham County based solely upon the fact that the defendant's official residence is there?* It is the defendant's position as argued on page 3 of his brief that "...not only is venue improper as a matter of law, but factually - *by any standard of proof* - the prosecution cannot establish venue for these alleged offenses in the City of Flint or anywhere else in Genesee County". Thus, Defendant's answer would have to be yes.

However, this Court does not feel comfortable in ruling as a matter of law that upon release of currently confidential grand jury information, there is no possible factual

development that might occur or no possible adducement of evidence at trial that might support a finding of proper venue in Genesee County.

The grand juror has returned an Indictment that lists the place of offense as the City of Flint. The Attorney General, with intimate knowledge of investigative information has owned this designation of locus delecti and has declared that they are prepared to prove venue at trial beyond a reasonable doubt in Genesee County. The People have distinguished the *McBurrows* case and *McBurrows* certainly was not decided in light of the unique application of duties, actions and inactions allegedly exercised in the City of Flint by certain state actors - department heads, emergency manager(s), and their designees and subordinates alleged to be subject to the oversight and supervision of Defendant Snyder during the relevant time periods in this matter.

For these reasons and those stated above, the court finds that the situs of the crime and venue could be proper in Genesee County as a matter of law, Defendants motion to dismiss is denied,

IT IS SO ORDERED

3-18-21

Dated

William H. Crawford II, District Judge