

STATE OF MICHIGAN
IN THE SUPREME COURT

THE PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v.

RICHARD LOUIS BAIRD,

Defendant-Appellant.

SUPREME COURT NO. _____
COURT OF APPEALS NO: 357715
LOWER COURT NO. 21-047375-FH

**DEFENDANT-APPELLANT'S INTERLOCUTORY
APPLICATION FOR LEAVE TO APPEAL**

ORAL ARGUMENTS REQUESTED

PREPARED BY:

RANDALL S. LEVINE (P30672)
ANASTASE MARKOU (P45867)
Attorneys for Defendant-Appellant

BUSINESS ADDRESS:

136 East Michigan Avenue, 14th Fl
Kalamazoo, Michigan 49007
(269) 382-0444
Rlevine@levine-levine.com
Amarkou@levine-levine.com

TABLE OF CONTENTS

TABLE OF CONTENTS..... ii

INDEX OF AUTHORITIES..... iii

STATEMENT OF APPELLATE JURISDICTION vii

JUDGMENT APPEALED FROM AND RELIEF SOUGHT viii

EXPLANATION OF REASONS TO DECIDE INTERLOCUTORY APPEAL ON MERITS...ix

STATEMENT OF QUESTIONS PRESENTED..... xviii

STATEMENT OF FACTS 1

ARGUMENT 5

I. THE CIRCUIT COURT AND THE COURT OF APPEALS ERRED AS A MATTER OF LAW IN FINDING THAT A DEFENDANT CHARGED WITH A FELONY AFTER AN INQUIRY CONDUCTED BY A JUDGE UNDER MCL 767.4 IS NOT ENTITLED TO A PRELIMINARY EXAMINATION WHERE THE LANGUAGE OF THE GOVERNING STATUTE, THE RULES OF STATUTORY CONSTRUCTION, THE LEGISLATIVE HISTORY AND PRECEDENT REQUIRES THAT SUCH A DEFENDANT BE AFFORDED THE STATUTORY RIGHT TO PRELIMINARY EXAMINATION.....5

CONCLUSION..... 30

INDEX OF AUTHORITIES

	Page(s)
Cases	
<u>Application of Romney,</u> 381 Mich 1 (1968)	28
<u>Baker v General Motors Corp.,</u> 409 Mich 639 (1980)	7
<u>Blair v United States,</u> 250 US 273, 39 S.Ct. 468, 63 L.Ed. 979] (1919)	28
<u>Coleman v Alabama,</u> 399 US 1 (1970)	12, 13
<u>Dussia v Merman,</u> 386 Mich 244 (1971)	7
<u>Glancy v Roseville,</u> 457 Mich 580, 577 N.W.2d 897 (1998)	24
<u>Guitar v Bieniek,</u> 402 Mich 152 (1978)	7
<u>Hemans v US,</u> 163 F2d 228 (6th Cir 1947)	20
<u>In re Colacasides,</u> 379 Mich 69 (1967)	20, 21
<u>In re Harrand,</u> 254 Mich 584 (1931)	20
<u>In re Petition for Investigation into Conduct of Recount and Investigation of November, 1934,</u> <u>Election in Wayne County,</u> 270 Mich 328 (1935)	19
<u>In re Slatterly,</u> 310 Mich 458 (1945)	20
<u>Macomb Co. Prosecutor v Murphy,</u> 464 Mich 149, 627 NW2d 247 (2001)	8
<u>People v McCrea,</u> 303 Mich 213 (1942)	10, 18
<u>People v Allen,</u> 15 Mich App 387 (1968)	28, 29
<u>People v Anderson,</u> 501 Mich 175 (2018)	13
<u>People v Bellanca,</u> 386 Mich 708 (1972)	17, 29
<u>People v Crawford,</u> 429 Mich 151 (1987)	12, 13, 14
<u>People v Dennis,</u> 128 Mich App 235 (1983)	8

<u>People v Duncan,</u> 388 Mich 489 (1972)	Passim
<u>People v Dungey,</u> 356 Mich 686 (1959)	28, 29
<u>People v Ewald,</u> 302 Mich 31 (1942)	20
<u>People v Flick,</u> 487 Mich. 1 (2010)	5
<u>People v Glass,</u> 464 Mich 266 (2001)	Passim
<u>People v Green,</u> 322 Mich App 676 (2018)	3, 4, 22
<u>People v Hall,</u> 435 Mich 599 (1990)	14, 3
<u>People v Hancock,</u> 326 Mich 471 (1950)	28, 29
<u>People v Idziak,</u> 484 Mich 549 (2009)	5
<u>People v Johnson,</u> 427 Mich 98,(1987)	17
<u>People v Katt,</u> 468 Mich 272 (2003)	5
<u>People v Lewis,</u> 501 Mich 1 (2017)	12, 13
<u>People v Morris,</u> 228 Mich App 380 (1998)	8, 27, 28
<u>People v Mouradian,</u> 110 Mich App 815 (1981)	8
<u>People v Pichitino,</u> 337 Mich 90 (1953)	29
<u>People v Reading,</u> 307 Mich 616 (1943)	29
<u>People v Roxborough,</u> 307 Mich 575 (1943)	10, 18, 29
<u>People v Starr,</u> 457 Mich. 490 (1998)	5
<u>People v Yost,</u> 468 Mich 122 (2003)	14
<u>Petition of Dohaney,</u> 317 Mich 441 (1947)	28
<u>Roberts Tobacco Co. v Michigan Department of Revenue,</u> 322 Mich 519 (1948)	7
<u>Shannon v Ottawa Circuit Judge,</u> 245 Mich. 220, 222 N.W. 168 (1928)	24

United States v Calandra,
 414 U.S. 338, 94 S.Ct. 613, 38 L.Ed.2d 561 (1974)..... 28

Statutes

MCL 6.112(B)..... 12
 MCL 600.601 15
 MCL 600.631 15
 MCL 600.8101 15
 MCL 600.8311 15
 MCL 600.8501 15
 MCL 760.1 8
 MCL 764.1a 9
 MCL 766.1 8, 13, 16, 17
 MCL 766.9(1) 16
 MCL 767 10, 17, 19
 MCL 767.1 Passim
 MCL 767.10 9
 MCL 767.18 25
 MCL 767.2 9, 24
 MCL 767.23 25
 MCL 767.23a 25
 MCL 767.25(3) 26
 MCL 767.3 and 767.4 Passim
 MCL 767.40 10, 14
 MCL 767.42 13
 MCL 767.5, 767.4 11
 MCL 767.7 11, 9, 23
 MCL 767.9 9
 MCL 777.69 8
 Michigan Constitution of 1963, Art 6, §3 7
 Michigan Constitution of 1963, Article IV, section 13 14
 Michigan Constitution of 1963, Article IV, sections 11-14 14

Rules

MCR 6.001 11
 MCR 6.101 11
 MCR 6.108 15
 MCR 6.110 8
 MCR 6.110(C) and (D) 13
 MCR 6.110(G) 12
 MCR 6.112 24
 MCR 6.112(B) 3, 24, 25
 MCR 7.205(A)(1) 7

MCR 7.303(B)(1)..... 7
MCR 7.305(B) 9, 12
MCR 7.305(B)(5)..... 9
MCR 7.305(B)(5)(b) 11
MCR 7.305(C)(2)..... 7
MCR 6.110(A)..... 11

Other Authorities

62 Wayne Law Review 123..... 6
s 28..... 21

STATEMENT OF APPELLATE JURISDICTION

Defendant-Appellant filed a Motion to Proceed Upon a Formal Complaint in Conformity with MCL 767.4 and for Remand for Preliminary Examination. Co-Defendants charged with felonies joined Mr. Baird's Motion and provided additional arguments in support of the demand for a preliminary examination.¹

The Circuit Court heard oral argument on Mr. Baird's Motion on April 6, 2021. The Circuit Court denied the Motion of Mr. Baird and his co-defendants in an opinion and order dated June 16, 2021. (Exhibit A)

Mr. Baird then timely filed his Interlocutory Application for Leave to Appeal pursuant to MCR 7.205(A)(1), with the Michigan Court of Appeals. The Court of Appeals denied the Application in an order dated August 25, 2021. (Exhibit B)

This Court has jurisdiction pursuant to Michigan Constitution of 1963, Art 6, §3 and as implemented by MCR 7.303(B)(1). This Application for Leave is timely filed within 56 days of the Court of Appeal's order denying the Application for Leave to Appeal. MCR 7.305(C)(2).

¹ Mr. Baird filed his Motion in the 7th Judicial Circuit Court in File Number 21-047375 FH. The following co-defendants with the corresponding file numbers joined Mr. Baird's Motion and some supplemented with additional arguments that all co-defendants joined: Agen (21-047372-FH), Ambrose (21-047373-FH), Ambrose (21-047374-FH), Early (21-047376-FH), Early (21-047377-FH), and Peeler (21-047379-FH),

JUDGMENT APPEALED FROM AND RELIEF SOUGHT

Mr. Baird is appealing the Circuit Court order dated June 16, 2021. The trial court refused to remand the matter despite the clear language in the statute that requires a preliminary examination be held when a person is charged by a judge conducting an inquiry into possible charges under MCL 767.4,(the judicial role often referred to colloquially as a “one man grand jury”). The decision of the Circuit Court denies Mr. Baird his statutory right to a preliminary examination. The Court of Appeals erred as a matter of law in affirming the Circuit Court’s decision. The legal error committed by the Circuit Court and Court of Appeals can only be remedied now, before a trial is held, so that Mr. Baird can contest and challenge the allegations against him in the District Court at a preliminary examination.

Defendant-Appellant requests that this Honorable Court grant the Application for Leave to Appeal, reverse the trial court’s decision and order a remand to District Court for preliminary examination on all felony counts.

**EXPLANATION OF REASONS TO DECIDE INTERLOCUTORY APPEAL ON
MERITS**

Mr. Baird is entitled to a preliminary examination where a judge has initiated proceedings after an inquiry under MCL 767.4. Mr. Baird is one of several defendants in this politically charged² prosecution who seeks to vindicate his statutory right to preliminary examination. Deciding this case on the merits now will settle an important legal issue in a complex and multi-faceted political prosecution.

A. Reasons to Grant the Application and Relief Requested

This Honorable Court will grant an Application for Leave to Appeal if the appellant meets one of the grounds listed in MCR 7.305(B). Mr. Baird can satisfy several of the grounds listed. This Honorable Court should grant the Application for Leave to Appeal and order the relief requested.

The decision of the Court of Appeals in denying the Application for Leave on its merits is clearly erroneous and will cause a material injustice to Mr. Baird and his similarly situated co-defendants. See MCR 7.305(B)(5). Mr. Baird's argument before the Circuit Court and Court of Appeals rested primarily on the language of MCL 767.4.

The Circuit Court's decision was so wrong as a matter of law that to refuse to decide this case on its merits, and reverse the Circuit Court, would perpetuate a poorly reasoned decision that utterly ignored the statutory language of MCL 767.4, the rules of statutory construction, and prior precedent. MCL 767.4 requires that a case proceed as upon formal **complaint** after a judicial inquiry initiates criminal proceedings against a defendant. All felonies that proceed by complaint in this State require that a defendant be afforded the statutory right to a preliminary examination.

² See Section C below.

Further, MCL 767.4 specifically mandates that when proceeding as upon formal complaint, the judge who conducted the inquiry cannot serve as the examining magistrate, i.e., the magistrate conducting the preliminary examination. These terms cannot be read out of the statutory language; yet the Circuit Court did just that, contrary to the established rules of statutory construction.

Further, the legislative history of MCL 767.4 also clearly supports Mr. Baird's position that he is entitled to a preliminary examination when charged with a felony after a judicial inquiry. Public Act No. 196 of 1917, now codified as MCL 767. 3 and MCL 767.4, required a preliminary examination when it was enacted. In People v McCrea, 303 Mich 213 (1942) and People v Roxborough, 307 Mich 575 (1943), the Michigan Supreme Court upheld the propriety of the same judge conducting a preliminary examination on the charges even though that judge had conducted the prior judicial inquiry. In 1947, the legislature did NOT, then, eliminate the right to a preliminary examination but amended MCL 767.4 to specifically prohibit the judge who conducted the judicial inquiry from conducting the subsequent preliminary examination. The practice authorized by the decisions in McCrea and Roxborough for the same judge to carry out both functions was corrected by the amendment to the statute in 1947. P.A. 1947, No. 33, Imd. Eff. April 8.; Michigan One-Man Grand Jury Is Nullified, 33 J. AM. JUD. Soc. 58 (1949). The Historical and Statutory Notes to MCL 767.4 provide: "The 1947 amendment at the end of the first sentence, added: "Provided, That the justice or judge conducting the inquiry under section 3 of this act 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." Ultimately, the Circuit Court's decision fundamentally misunderstood the position of Mr. Baird and wrongly attributed

precedential value to cases that simply do not, even remotely, justify the denial of Mr. Baird's statutory right to a preliminary examination.

Further, this error will cause a material injustice where Mr. Baird's right to a preliminary examination in this matter will be irrevocably denied unless this Honorable Court reverses the decision of the Court of Appeals. (See Section B below that discusses why this Application should be decided on its merits.)

This Honorable Court should also grant the Application and remand for a preliminary examination where the Court of Appeals' decision conflicts with a Michigan Supreme Court decision. See MCR 7.305(B)(5)(b). In People v Duncan, 388 Mich 489 (1972), this Honorable Court addressed whether the statutory provisions governing a citizen's grand jury granted defendants the right to a preliminary examination.³ This Honorable Court engaged in statutory construction to answer that question. In doing so, the Duncan Court specifically contrasted the language contained in the judicial inquiry provisions at MCL 767.3 and 767.4 with the language found in the citizen's grand jury statutory provisions. Duncan found that defendants are entitled, based on the language of the statutory provisions at issue, to a preliminary examination, after charges are issued at the conclusion of a judicial inquiry, but defendants are not entitled to preliminary examination after being indicted by a citizen's grand jury. So, Duncan found as a matter of law that defendants charged with felonies after a judicial inquiry are entitled to a preliminary examination. No case since Duncan has reversed the analysis and finding regarding the statutory language at MCL 767.4 which, as a matter of statutory construction, requires a preliminary examination.

³ Impanelling a citizens grand jury is governed by MCL 767.7, et seq. and is a distinct procedure from the judicial inquiry pursuant to MCL 767.5, 767.4 at issue in this matter.

Admittedly, in People v Glass, 464 Mich 266 (2001), the Michigan Supreme Court reversed the Duncan Court's decision to afford those charged by citizen's grand jury with a preliminary examination as a matter of public policy. However, Glass only reversed that portion of Duncan which created a right to a preliminary examination for those charged by a citizen's grand jury for public policy reasons. Therefore, Glass thereby affirmed the continued validity of the portion of Duncan that found that those charged by a citizen's grand jury do not have a statutory right to a preliminary examination. To be clear, Glass did NOT reverse the finding in Duncan that persons charged after a judicial inquiry are entitled to a preliminary examination as a matter of statutory construction.

To the extent that this Honorable Court finds that the Duncan case does not clearly grant a statutory right to a preliminary examination after felony criminal proceedings are initiated at the conclusion of a judicial inquiry, our State needs clarification that defendants do have such a statutory right.

Finally, this Honorable Court should grant the Application for Leave to Appeal because the issue involves a legal principle of major significance to the state's jurisprudence. MCR 7.305(B). The judicial inquiry process is a Michigan anachronism. The right to a preliminary examination is a critical stage of the proceedings in Michigan. See Coleman v Alabama, 399 US 1 (1970); See also the concurring opinion of Justice McCormick in People v Lewis, 501 Mich 1, 13-17 (2017). An innocent accused should be screened out by our State's preliminary examination process. People v Crawford, 429 Mich 151, 161-162 (1987). The preliminary examination is a critical stage in the proceedings. Coleman v Alabama, 399 US 1 (1970). As explained in Coleman, the right to counsel attaches at the preliminary examination because the hearing:

(1) can expose weaknesses in the prosecution's case through cross-examination;

- (2) lays the groundwork for later impeachment at trial;
- (3) affords the defense an opportunity to effectively discover the prosecutor's case; and
- (4) gives the defense a chance to determine facts related to bail or psychiatric examinations.

Coleman, 399 US at 9; See also the concurring opinion of Justice McCormick in People v Lewis, 501 Mich 1, 13-17 (2017).

At a preliminary examination, probable cause can only be based on legally admissible evidence. See MCR 6.110(C) and (D). Further, a magistrate at a preliminary examination must consider all of the evidence, including the credibility of witnesses to determine if probable cause exists. People v Anderson, 501 Mich 175 (2018). Fundamentally, this Honorable Court has repeatedly emphasized the importance of a defendant's statutory right to a preliminary examination through its case law and court rules.

B. This Application Must Be Decided on its Merits

This Application must be heard on its merits where a defendant in a criminal case can only vindicate his preliminary examination rights through an appeal before trial. See People v Crawford, 429 Mich 151 (1987).

The availability of an interlocutory appeal is the remedy that affords protection in those cases where an innocent accused should have been screened out by the preliminary examination process. People v Crawford, 429 Mich 151, 161-162 (1987). Crawford explained that where there has been some denial of a right to a preliminary examination, the appropriate remedy is to seek interlocutory appeal in the Court of Appeals, and if unsuccessful in that Court, the defendant should then seek leave to the Michigan Supreme Court. Crawford, at 161-162.

In fact, in People v Hall, 435 Mich 599, 601-603 (1990), this Honorable Court found that error related to a preliminary examination is not a ground for vacating a subsequent conviction

where the defendant received a fair trial. See People v Yost, 468 Mich 122 (2003). In Yost, the case principally relied upon for Mr. Baird’s position that this Honorable Court must consider this interlocutory Application on its merits, the Supreme Court chastised the Court of Appeals in that case for denying the interlocutory appeal for “failure to persuade the Court of the need for immediate review.” Yost, footnote 2. The Yost Court noted that the asserted reason from the Court of Appeals “was flawed.” Yost, footnote 2. In so finding that the Court of Appeals must decide an interlocutory appeal on its merits where a defendant is appealing an error related to a preliminary examination, the Yost Court correctly found that an interlocutory appeal before trial is the only available remedy for an aggrieved defendant; given the Hall Court’s decision that errors regarding preliminary examination are essentially not subject to review after trial.

C. The People Should Not be Permitted to Deprive the Defendants of a Preliminary Examination

The question of whether a prosecutor can deprive a defendant of their statutory right to preliminary examination, by initiating a prosecution through the use of the judicial inquiry process provided for by MCL 767.3, MCL 767.4, rather than by proceeding traditionally by sworn complaint in the district court has significant jurisprudential value for the State of Michigan.

The government has deliberately chosen to proceed by judicial inquiry in this matter in a misguided effort to circumvent the Defendant’s statutory right to a preliminary examination. An understanding of the history of the “Flint Water Crisis Prosecutions”⁴ is necessary in order for the Court to understand why this is so.

⁴ This phrase has been used repeatedly to describe the government’s prosecution of members of former Governor Snyder’s administration and other top ranking government officials for their alleged role in the decision to switch to the Flint River as a drinking source for citizens of Flint.

The government initially charged several persons with various crimes in connection to what has become known at the Flint Water Crisis. The charges were authorized by use of the traditional method of filing a complaint followed by preliminary examination. The investigation and charges in the initial Flint Water Crisis proceeded under the direction of Special Counsel Todd Flood, who had been appointed by former Attorney General Bill Schutte in January of 2016.

Some of the charges were dismissed, some of the defendants resolved their cases with plea agreements and some of the cases were bound over after lengthy preliminary examinations.⁵

The preliminary examination against Nick Lyon, former Director of the Michigan Department of Health and Human Services (MDHHS) took twenty-six (26) days spanning eleven (11) months before bind over in August 2018. The cases were assigned to Judge Joseph Farah, who was scheduled to rule in February 2019 on Lyon's Motion to Quash the Information, based upon an alleged abuse of discretion by the district court at preliminary examination.

A new Attorney General was sworn in on January 1, 2019, and inherited the Flint Water Crisis prosecutions. Attorney General Dana Nessel appointed special counsel Fadwa Hammoud to undertake the responsibility for prosecution of Flint Water Crisis cases in January 2015. She immediately sought a six (6) month delay, ostensibly to review "newly discovered evidence". The government's motion to delay the proceedings was denied on May 3, 2019, and the Motion to Quash was scheduled for hearing on June 14, 2019.

On the day before the Court was scheduled to rule, the government moved to dismiss all of the pending prosecutions entirely on June 13, 2019. This was an obvious effort to avoid the

⁵ Charges against Michael Glasgow of Flint were dismissed early on, and six people – Adam Rosenthal, Michael Prysby, Stephen Busch and Liane Shekter-Smith of MDEQ, Corinne Miller of MDHHS, and Daugherty Johnson of the Flint Department of Public Works – all eventually pled guilty to misdemeanors. Preliminary examinations were held in cases filed against Nick Lyon, Dr. Eden Wells, Nancy Peeler, and others.

potentially disastrous outcome for the government should Judge Farah quash the Informations and dismiss the case(s).

Approximately nineteen (19) months later the government decided to recharge the same defendants against whom charges had been dismissed previously upon the government's own motion, and to charge additional defendants of the Snyder administration not previously named in the first case.⁶ However, rather than face the prospect of lengthy preliminary examinations on the "new cases" (as well as renewed preliminary examinations on the "old cases") the government decided, as a matter of strategy to attempt an end run around the statutory right to preliminary examination. They did so by electing to proceed under an anachronistic proceeding known as a judicial inquiry provided for by MCL 767.3, 767.4 (hereinafter judicial inquiry proceeding). This effort was undertaken with the specific purpose of denying the defendants the due process rights that they would normally have enjoyed in conducting the statutorily required preliminary examination. By proceeding with the judicial inquiry proceeding provided for by MCL 767.3, 767.4, the government was able to proceed unhampered by defendants' Sixth Amendment Right to counsel and confrontation during the process, which is normally afforded to an accused during a preliminary examination. Consequently, the government, in tandem with the Judge conducting the judicial inquiry (sometimes referred to as the one man grand juror) issued Indictments based on evidence that was presented by the government that went completely unchallenged in a proceeding that was shrouded in secrecy.⁷

⁶ Governor Snyder, Transformation Manager Richard Baird and Press Secretary Jerrold Agen.

⁷There was no legitimate reason to employ a one man grand jury. The government had investigated the case for several years and had all the evidence it used during the judicial inquiry proceeding before it was initiated.

The government chose to utilize a one man grand jury deliberately in order to shield the evidence it proffered in this secret proceeding from the defendants and their counsel. There was no reason for impaneling a one man grand juror to conduct a judicial inquiry in this case, other than to enjoy the benefit of offering evidence to the one man grand juror that was completely free from challenge. The government was hoping to gain an advantage by using this so-called one man grand jury to file charges to avoid preliminary examinations. (See “New Flint water criminal cases will move faster than former court proceedings: All nine defendants will go straight to trial under grand jury process,” ABC 12 NEWS, www.abc12.com/2021/01/14/new-flint-water-criminal-cases-will-move-faster-than-former-court-proceedings/(Jan 14, 2021)). By proceeding in this fashion, the government was hoping to avoid the prospect of having charged cases that would not survive preliminary examination after cross examination of its witnesses, which is the time-tested method for the discovery of truth.

Although the government has been able to convince Circuit Court Judge Elizabeth Kelly, (who was assigned to all of the Flint Water case prosecution cases) that a charge returned after judicial inquiry does not require a preliminary examination, this decision was clear error. **The statute by its very terms, if interpreted according to established rules of statutory construction and in accordance with its legislative history, grants defendants the right to a preliminary examination after being charged by indictment with a felony following a judicial inquiry pursuant to MCL 767.3 and 767.4.**

STATEMENT OF QUESTIONS PRESENTED

1. Whether the Circuit Court and the Court of Appeals Erred as a Matter of Law in Finding that a Defendant Charged with a Felony after an Inquiry Conducted by a Judge under MCL 767.4 is Not Entitled to a Preliminary Examination Where the Language of the Governing Statute, the Rules of Statutory Construction, the Legislative History and Precedent Requires that such a Defendant be Afforded the Statutory Right to Preliminary Examination?

Defendant-Appellant answers: “Yes”

Plaintiff-Appellee answers: “No”

STATEMENT OF FACTS

I. INTRODUCTION

This case has arisen as part of the “Second Wave” of criminal prosecutions related to the Flint Water Crisis.⁸ After the Attorney General dismissed the First Wave cases pending trial in the Genesee County Seventh Circuit Court, Chief Judge Duncan Beagle appointed Seventh Circuit Court Judge David Newblatt to conduct a judicial inquiry pursuant to MCL 767.3 and 767.4. The Order of Appointment was entered on January 9, 2020. Such a judicial inquiry has sometimes been referred to as a “one man grand jury”. The Michigan “One Man Grand Jury” was created by statute in 1917.⁹ On January 14, 2021, the Defendant was arraigned on charges contained in an “Indictment” issued by the “One Man Grand Juror,” Judge Newblatt. See Charging Document, Exhibit C. A second Pretrial Conference is now scheduled for October 28, 2021 before the Honorable Judge Elizabeth Kelly.

Defendant-Appellant filed a Motion to Proceed Upon a Formal Complaint in Conformity with MCL 767.4 and for Remand for Preliminary Examination. Co-Defendants charged with felonies joined Mr. Baird’s Motion and provided additional arguments in support of the demand for a preliminary examination.¹⁰

⁸ The original (First Wave) cases were charged by complaint authorized by the Office of Special Counsel Todd Flood. Plea agreements were reached in some of the cases and the remainder were dismissed on motion of the government after bind over following preliminary examination had occurred.

⁹ See Mich. Comp. Law. Ann. §§ 767.3, 767.4 (West 2016) (present statutory authority on the one-man grand jury); see also Robert G. Scigliano, *Inquisitorial Proceedings and Separation of Functions: The Case of the Michigan One-Man Grand Jury*, 38 U. Det. L.J. 882, 886-89 (1960)(recounting the history of the one-man grand jury).

¹⁰ Mr. Baird filed his Motion in the 7th Judicial Circuit Court in File Number 21-047375 FH. The following co-defendants with the corresponding file numbers joined Mr. Baird’s Motion and some supplemented with additional arguments that all co-defendants joined: Agen(21-047372-FH), Ambrose (21-047373-FH), Ambrose (21-047374-FH), Early (21-047376-FH), Early (21-047377-FH), and Peeler (21-047379-FH). Mr. Baird expects that these co-defendants will also file Applications for Leave and join in Mr. Baird’s arguments.

The Circuit Court heard oral argument on Mr. Baird's Motion on April 6, 2021. (See Transcript of Oral Argument, Exhibit D). The Circuit Court denied the Motion of Mr. Baird and his co-defendants in an opinion and order dated June 16, 2021.

II. CIRCUIT COURT'S ERRONEOUS REASONING AND DECISION

Mr. Baird's argument before the Circuit Court rested primarily on the language of MCL 767.4. In particular, that statute mandates that, once a judge finds probable cause to initiate criminal proceedings, the action shall move forward as "upon **formal complaint.**" The Circuit Court erred in failing to address this clear statutory language. MCL 767.4 also states that once criminal proceedings are initiated by a judge who conducts the inquiry, that same judge cannot be the "**examining magistrate,**" a phrase that can only mean the magistrate who shall conduct a preliminary examination. Yet, the Circuit Court ignored that language also, choosing instead to focus on the word "**indictment**" rather than the remaining language in MCL 767.4 that dictates HOW a case shall proceed.

Again, Mr. Baird asserted, and continues to assert, that the rules of statutory construction mandate a finding that he is entitled to a preliminary examination. Independent of the clear language of MCL 767.4, the statutory scheme at MCL 767.1 et. seq., coupled with related statutes and corresponding court rules and the legislative history of the provisions, require a finding that Mr. Baird is entitled to a preliminary examination. The Circuit Court chose to ignore the rules of statutory construction. For instance, the Circuit Court actually found that because MCL 767.4 contains the word "indictment," that process was indistinguishable from a citizen's grand jury process, despite the vast differences in statutory language governing the two processes.

Finally, the Circuit Court's opinion lacks a grasp of the fundamental difference between *dicta* and a holding. As an example, the Circuit Court actually determined that People v Glass,

464 Mich 266 (2001), prohibited a preliminary examination for those “charged” under MCL 767.4, even though Glass concerned, only, the right to a preliminary examination for those charged by a citizen’s grand jury. The Glass Court in no way specifically considered the statutory language at MCL 767.4 to determine that a person “charged” under that statute is not entitled to a preliminary examination. In fact, the Glass Court, at least implicitly, accepted the reasoning of People v Duncan, 388 Mich 489 (1972) that a person charged by a citizen’s grand jury does not have a statutory right to a preliminary examination as opposed to those whose criminal proceedings are initiated under MCL 767.4. Glass only reversed the portion of Duncan that created a right to a preliminary examination for those charged by a citizen’s grand jury for public policy reasons; thereby affirming the continued validity of the portion of Duncan that found that those charged by citizen’s grand juries do not have a statutory right to a preliminary examination. In fact, Glass actually supports Mr. Baird’s position that a court rule created by the Michigan Supreme Court regarding the right to a preliminary examination (in this case MCR 6.112(B)) cannot supersede a statutory right granted by the legislature.

The Circuit Court also misunderstood the Court of Appeals holding in People v Green, 322 Mich App 676 (2018). To be as clear as possible, the defendant in Green never asserted that the language of MCL 767.4 requires a finding that a person is entitled to preliminary examination if charged with a felony. Moreover, the Green Court never addressed questions of statutory construction regarding the meaning of MCL 767.4 because the defendant in that case never raised that issue! Finally, the fundamental holding in Green is somewhat confused, but essentially boils down to the standard of review enunciated in People v Hall, 435 Mich 599, 601-603 (1990) that certain types of error, if they exist, are subject to a harmless error analysis if the person had the right to a fair trial. Unfortunately, the language in Green is sloppy but overly broad language in a

case cannot constitute precedent where a specific issue was never addressed! Put another way, any language in Green that might be construed to find that a person “charged” under MCL 767.4 is not entitled to preliminary examination is clearly *dicta* so the Circuit Court was wrong in relying on the Green decision in support of its basis to deny Mr. Baird his statutory right to a preliminary examination.

This Honorable Court must reverse the decision of the Circuit Court and Court of Appeals and order a remand to the District Court for a preliminary examination.

ARGUMENT

I. THE CIRCUIT COURT AND THE COURT OF APPEALS ERRED AS A MATTER OF LAW IN FINDING THAT A DEFENDANT CHARGED WITH A FELONY AFTER AN INQUIRY CONDUCTED BY A JUDGE UNDER MCL 767.4 IS NOT ENTITLED TO A PRELIMINARY EXAMINATION WHERE THE LANGUAGE OF THE GOVERNING STATUTE, THE RULES OF STATUTORY CONSTRUCTION, THE LEGISLATIVE HISTORY AND PRECEDENT REQUIRES THAT SUCH A DEFENDANT BE AFFORDED THE STATUTORY RIGHT TO PRELIMINARY EXAMINATION

A. STANDARD OF REVIEW

An appellate court sitting in review of a lower court's decision on questions of statutory interpretation are reviewed *de novo*. People v Idziak, 484 Mich 549, 554 (2009); People v Flick, 487 Mich. 1, 8-9 (2010). Put another way, questions of law are reviewed *de novo* on appeal. People v Katt, 468 Mich 272, 278 (2003); People v Starr, 457 Mich. 490, 494 (1998).¹¹

The Circuit Court utterly ignored the clear language of MCL 767.4 in denying the motion for a remand for a preliminary examination. The Circuit Court focused on only one word in MCL 767.4, "indictment," to the exclusion of the other critical words and phrases used in that statute. The Circuit Court also ignored the statutory scheme at issue and prior precedent as evidenced by its total misunderstanding of the meaning of certain cases that simply do not hold that a person "charged" under MCL 767.4 is not entitled to a preliminary examination.

The law requires the opposite of the conclusion reached by the Circuit Court. Mr. Baird is entitled to a preliminary examination.

¹¹ The Circuit Court, among its various mistakes of law, applied a "de novo" standard of review even though the Court was not reviewing a decision of a lower court.

B. ANALYSIS

1. The Function of a “One Man Grand Juror” is to Authorize a Complaint Upon Which an Examining Magistrate Must Hold a Preliminary Examination

Although a Defendant indicted by a traditional citizen’s grand jury is not entitled to a preliminary examination,¹² a defendant “indicted” by a one-man grand juror in Michigan has an absolute right to a preliminary examination. MCL 767.4¹³.

The **so-called** “one-man grand juror” statute in Michigan provides that,

“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 be guilty thereof, ...**the judge** having jurisdiction shall proceed with the case, ...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...” MCL 767.4 (emphasis added.)

The statute clearly provides that an examining magistrate (presumably a neutral and detached District Court Judge) must hold a probable cause hearing (preliminary examination) on the complaint or indictment.¹⁴ Furthermore, the statute disqualifies the one-man grand juror from presiding at a trial (should bind over occur) or from hearing a motion to dismiss or quash any

¹² See People v Glass, 464 Mich 266 (2001) where the Michigan Supreme Court held that a defendant is not entitled to a preliminary examination after being indicted by a multi-person, traditional citizen’s grand jury, overruling a portion of People v Duncan, 388 Mich 489 (1972). Glass involved a multi-county citizen’s grand jury, nothing like the judicial inquiry in our case.

¹³ See 62 Wayne Law Review for a discussion regarding the right to a preliminary examination when a one man grand jury is utilized contrasted with use of a citizen’s grand jury where no such right exists. “A defendant indicted by a traditional grand jury is not entitled to have a preliminary examination following indictment, but a defendant ‘indicted’ by a one man grand jury is entitled to such an examination.” 62 Wayne Law Review 123. See also People v Glass, 464 Mich 266 (2001), holding that no right to preliminary examination exists when a citizen’s grand jury is utilized.

¹⁴ Although the statute allows for the judge to issue an “indictment” it clearly requires that the judge proceed with the case in a like manner as upon **formal complaint** once charges are authorized. So, call the charging document what you will, a defendant is entitled to proceed “. . . in like manner as upon formal complaint . . .” See 1 Gillespie Mich. Crim. Law & Procedure, §8.24 (2nd Ed), which notes that the judge who conducts the inquiry cannot be the judge to hold the preliminary examination.

indictment or from hearing any charge of contempt under Section 5 except alleged contempt for refusal to appear in response to a summons or subpoena.

Two specific terms contained within the “one man grand jury” statutory provisions require a finding that Mr. Baird is entitled to a preliminary examination: (1) the use of the word “**complaint**”; and (2) the prohibition of the judge who conducted the investigation from acting as the “**examining magistrate**.” Put simply, defendants charged with felony offenses are entitled to preliminary examinations upon the issuance of felony “**complaints**.” And, the “**examining magistrate**” is the magistrate authorized to conduct preliminary examinations in the State of Michigan.

2. **Rules of Statutory Construction Mandate that a Preliminary Examination be Held After a “One Man Grand Juror” Authorizes Charges**

The primary rule of statutory construction is to ascertain and give effect to the intention of the legislature. All other rules of statutory interpretation serve but as guides to assist the courts in determining such intent. Dussia v Merman, 386 Mich 244 (1971).

In construing one provision of a statute, the provision must be read in connection with other pertinent provisions thereof and meaning must be given to it consistent with the general pre sought to be accomplished. Roberts Tobacco Co. v Michigan Department of Revenue, 322 Mich 519 (1948).

No word should be treated as surplusage or rendered nugatory. Baker v General Motors Corp., 409 Mich 639 (1980). Individual portions of a statute must be read in the context of related provisions. Guitar v Bieniek, 402 Mich 152 (1978). In construing one provision of a statute, the provision must be read in connection with other pertinent provisions thereof and meaning must be given to it consistent with the general purpose sought to be accomplished. Roberts Tobacco Co.

v Michigan Department of Revenue, 322 Mich 519 (1948). “We construe an act as a whole to harmonize its provisions and carry out the purpose of the Legislature.” Macomb Co. Prosecutor v Murphy, 464 Mich 149, 159-160; 627 NW2d 247 (2001). Courts cannot assume that the Legislature inadvertently omitted from one statute the language that it placed in another statute, and then, on the basis of that assumption, apply what is not there. People v Morris, 228 Mich App 380, 384 (1998).

Finally, where the language of a statute is ambiguous, any ambiguities in its interpretation must be resolved in favor of the defendant. People v Dennis, 128 Mich App 235 (1983); People v Mouradian, 110 Mich App 815 (1981).

a. A “Complaint” has a specific meaning in the Michigan Code of Criminal Procedure and the Michigan Court Rules

Mr. Baird recognizes that he has no constitutional right to a preliminary examination. He is, however, entitled to a preliminary examination in this case by statute and court rule. See MCL 766.1 et. seq. and MCR 6.110.

To begin with, the “one man grand jury” statute is part of a comprehensive legislative scheme organized under the “Code of Criminal Procedure,” otherwise designated as Act 175 of 1927. The Code of Criminal Procedure encompasses provisions that range from MCL 760.1 through MCL 777.69. Pursuant to recognized rules of statutory construction, this Honorable Court must consider related statutory provisions in finding that Mr. Baird is entitled to a preliminary examination where, as here, a judge, acting as a “one man grand jury,” charges felony offenses.

The language of the so-called “one man grand jury” statute specifically provides that if the judge, acting as a so-called “one man grand juror” finds probable cause, the case shall proceed as if by “**formal complaint.**” The term used is “complaint,” **not** Indictment. The provisions

governing an actual citizen's grand jury do NOT require that a case proceed as if upon "formal complaint" once an indictment is issued. The phrase "...in like manner as upon formal complaint..." in 767.4 describes the process, regardless of the name of the charging document. Thus, within MCL 767.1 et. seq. itself, the legislature has distinguished between proceedings under MCL 767.3 and MCL 767.4 and indictments issued by citizen's grand juries.

Other aspects of the Code of Criminal Procedure demonstrate that Mr. Baird is entitled to a preliminary examination based on the rules of statutory interpretation. The term "complaint" is also used elsewhere throughout the Code of Criminal Procedure. See MCL 764.1a. Therefore, the legislature clearly understood the meaning of the word "complaint."

Further, the legislature understood the difference between an "Information" and an "Indictment." For instance, MCL 767.2, which is part of the Code of Criminal Procedure, provides that "Indictments" shall be treated the same as "Informations."

Also, close examination of the language used throughout the Code of Criminal Procedure MCL 767.1 et. seq. further demonstrates that persons who are charged by a "one man grand jury" are treated differently than those "indicted" by an impaneled citizen's "grand jury." A judge acting as a "one man grand jury" need not be impaneled. Instead, a sitting judge can direct that an "... inquiry be made . . ." and then conduct the inquiry herself. MCL 767.3.

An actual citizen's grand jury utilizes a very specific process that requires that, (1) jurors be summoned (MCL 767.7) and (2) jurors be impaneled by the administration of a specific oath (MCL 767.9) and (3) jurors be sworn an oath (MCL 767.10). No such requirements exist when a "one man grand jury" is utilized because a judge has been appointed to make an "inquiry," not be sworn as a juror.

A citizen's "grand jury" seats "no more than 17 persons nor less than 13 persons". Again, the detailed process required for the impaneling of an actual "grand jury" is substantially different than the process for the appointment of a judge (i.e., a so-called "one man grand jury").

Nothing in the statutory provisions that enumerate the powers which may be exercised by an actual citizen's grand jury provide for the filing of a complaint or the holding of a preliminary examination by an examining magistrate. Moreover, the only option an actual citizen's grand jury has is to either elect not to "indict" or to file an indictment in accordance with the specific terms of the governing statute. An actual citizen's grand jury is not empowered to file a "Complaint" or an "Information."

Furthermore, the specific language used by the legislature in the Code of Criminal Procedure, MCL 767.40 provides that an "information" shall be filed after the proper return is "... filed by the examining magistrate and by the prosecuting attorney of the county as informant." This language mirrors the earlier language in the so-called "one man grand jury" provision at MCL 767.4 that references the "examining magistrate", a clear reference to a preliminary examination. The People obsess over the use of the word "indictment" in MCL 767.4. Yet, the People take the word out of context. In the citizen's grand jury statutory provisions, the only type of charging document authorized under the provisions is an "indictment", whether charged as a felony or misdemeanor. In other words, the citizen's grand jury statutory provisions permits only the issuance of indictments. MCL 767.4, in describing the type of charging document to be issued, repeatedly uses the phrase "complaint or indictment" and does NOT mandate the name for the charging document utilized. The charging document can be called a "complaint" OR an "indictment". The lack of specificity on the necessary name for any charging document issued after an inquiry under MCL 767.4 makes sense because, regardless of the name of the charging

document, in ALL cases where probable cause is found, the case must proceed “. . . in like manner as upon formal complaint.” Again, the fact that MCL 767.4 permits the charging document to be called a “complaint **or** indictment” is not found anywhere in the citizen’s grand jury statute, again demonstrating that the legislature does not treat them the same or as “equal”. The People claim that a judge conducting a judicial inquiry under MCL 767.3 and MCL 767.4 is “equal” to a citizen’s grand jury, and thus, Mr. Baird is not entitled to a preliminary examination because MCL 767.4 contains the word “indictment”. Yet, the statutory provisions governing actual citizen’s grand juries are so different in kind from the judicial inquiry provisions that to equate the two utterly ignores the many important and substantive differences in the language.

The Michigan Court Rules also draw a clear distinction between complaints, informations, and indictments. To begin with, MCR 6.001 explains that the rules in subchapters 6.000-6.500 govern matters of procedure cognizable in circuit court, i.e., felony cases (MCR 6.001), while matters cognizable in District Court are governed under the following rules: MCR 6.001-6.004, 6.005(B) and (C), 6.006, **6.101**, 6.102(D) and (F), 6.103, 6.104(A), 6.106, **6.110(A)**, 6.125, 6.202, 6.425(E)(3), 6.427, 6.430, 6.435, 6.440, 6.445(A)-(G).

The filing of a “complaint” is governed by MCR 6.101, which states that “. . . a complaint is a written accusation that a named or described person has committed a specified criminal offense . . .” and initiates the case. MCR 6.101 is a rule that governs actions cognizable in District Court, including the filing of the complaint, NOT circuit court. Complaints start in the district court and examining magistrates hold preliminary examinations before the circuit court can take jurisdiction upon the filing of an Information.

Finally, the Rule governing preliminary examinations, MCR 6.110(A), when describing the right to a preliminary examination, specifically notes, “. . . Upon waiver of the preliminary

examination, the court must bind the defendant over for trial on the charge set forth in the **complaint** or any amended **complaint** . . .” (emphasis added). When the court binds a matter over to circuit court for further proceedings, the District Court must do the following: “. . . Immediately on concluding the examination, the court must certify and transmit to the court before which the defendant is bound to appear the prosecutor's authorization for a warrant application, **the complaint**, a copy of the register of actions, the examination return, and any recognizances received . . .” MCR 6.110(G) (emphasis added).

Informations can only be filed after a defendant has had a preliminary examination or waived it, and are strictly governed by rules applicable to Circuit Courts, not District Courts. MCL 6.112(B). Indictments are filed without a preliminary examination at MCL 6.112(B), again a rule that governs Circuit Court procedure.

The People attempt to explain that MCL 767.4 repeatedly uses the phrase “complaint or indictment” to differentiate between misdemeanors and felonies charging documents. Yet, MCL 767.4 does not specifically provide that misdemeanors shall be charged by complaint and felonies by indictment. Again, the People’s argument fails IF the process described under MCL 767.4 differs in kind from the citizen’s grand jury process because if the two processes are different in kind as evidenced by the statutory language of each, then case law prohibiting preliminary examinations after a citizen’s grand jury indicts cannot be applied to charges issued after a judicial inquiry under MCL 767.4. The language in MCL 767.4 is so different from the language used in the citizen’s grand jury statutory provisions that the statutes must be considered separately.

The court rules, like the statutory provisions, clearly make a distinction between “complaints”, “informations”, and “indictments.”

Circling back to the so-called “one man grand jury” statute at MCL 767.4, the statute reads in pertinent 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 be guilty thereof, ...**the judge** having jurisdiction shall proceed with the case, ...in like manner as upon **formal complaint** . . .” The only way to find that the phrase “formal complaint” does NOT grant Mr. Baird the right to a preliminary examination is to render utterly meaningless the repeated distinctions drawn in the Code of Criminal Procedure and the Court Rules between the words “complaint,” “information,” and “indictment.” The legislature intended that all those charged by complaint be entitled to preliminary examinations in the State of Michigan.

This point is reinforced by additional review of related statutory provisions. MCL 766.1 et. seq. sets forth the general rules for all preliminary examinations. MCL 766.1 provides, at least implicitly, that all those charged with felonies are entitled to preliminary examinations. The remaining portions of MCL 766.1 et. seq. describes the process involved in the holding of preliminary examinations. While 766.1 et. seq. provides the statutory framework for preliminary examinations, MCL 767.1 et. seq. at MCL 767.42 specifically references the filing of Informations after conducting a preliminary examination. Given that the statutory language governing citizen’s grand juries do NOT provide for a preliminary examination, there would simply be no reason to reference preliminary examinations at all in 767.42 UNLESS those “charged” under MCL 767.4 were entitled to a preliminary examination.

b. The term “Examining Magistrate” has a Specific Meaning in the Michigan Code of Criminal Procedure and the Michigan Court Rules

References to an examining magistrate contained within 767.4 lend further support to Mr. Baird’s argument that he is entitled to a preliminary examination. MCL 767.4 provides: “. . . 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 . . . ” (emphasis added). The provisions governing an actual citizen’s grand jury do NOT contain any language indicating that the case must be heard initially by an “examining magistrate”, yet MCL 767.4 specifically requires that process. Thus, within MCL 767.1 et. seq. itself, the legislature has distinguished between proceedings under MCL 767.3 and MCL 767.4 and indictments issued by citizen’s grand juries.

A related provision demonstrates quite clearly that the phrase “. . . **examining magistrate** . . .” means the magistrate conducting the preliminary examination. MCL 767.40 provides that an “information” shall be filed after the proper return is “. . . filed by the **examining magistrate** and by the prosecuting attorney of the county as informant.” Thus within MCL 767.1, et seq ,the phrase “examining magistrate” means the judicial official who conducts the preliminary examination.

c. A Circuit Court Judge derives her authority from the Michigan Constitution; an “examining magistrate” is enabled by statute

An examining magistrate is NOT a circuit court judge. A magistrate cannot conduct felony trials on Indictments or Informations. The words used by the legislature must have actual meaning! A circuit court judgeship is a constitutionally created position in the judicial branch. See Michigan Constitution of 1963, Article IV, sections 11-14. The Michigan Constitution specifically designates when a circuit court judge shall have original jurisdiction and explains that the circuit court has supervisory and general control over “inferior courts.” Michigan Constitution of 1963, Article IV, section 13. The Michigan Constitution does not create “magistrates.” “Magistrates” and District Court Judges are legislatively created.

Further legislative distinctions exist between the “circuit court,” the “district court,” and “magistrates.” The Michigan legislature clearly understood the difference between a Circuit Court Judge, a District Court Judge and an examining Magistrate. Legislation clearly and unequivocally distinguishes between these three distinct judicial offices.

The specific jurisdiction of circuit court judges (created by the Michigan Constitution) is defined by statute MCL 600.601 through MCL 600.631. The District Courts are created by statute MCL 600.8101, et seq (not the Michigan constitution).

The legislature has specifically vested the District Court with jurisdiction to conduct preliminary examinations. See MCL 600.8311. And the legislature has created “magistrates” (MCL 600.8501, et. seq) to handle matters solely within the jurisdiction of the District Court; **NOT** the Circuit Court. See also MCR 6.108 which provides that a magistrate can conduct a probable cause conference. While it may be fair to speak of an “examining magistrate” and a “District Court Judge” interchangeably, there is absolutely no authority under the Michigan Constitution, the Michigan statutes, or the Michigan Court Rules, to equate a “magistrate,” a position of purely statutory creation, with a “Circuit Court Judge,” a position created by the Michigan Constitution. To suggest that the phrase “examining magistrate” contained within MCL 767.4 means the same as Circuit Court Judge is to ignore the clear distinction made by the Constitution and the legislature.

To find that the phrase “examining magistrate” means anything other than a magistrate or District Court judge conducting a “preliminary examination” is to utterly ignore the language of our Constitution, our statutes, and our court rules.

Given the rules of statutory construction and the exhaustive analysis of the statutory provisions and court rules applicable to preliminary examinations just provided, there is simply

only one meaning for the phrase “examining magistrate”: the “examining magistrate” is the person who must conduct the preliminary examination after a one-man grand juror’s findings are “proceed(ed) upon in a like manner as upon formal complaint”. MCL 767.4.

MCL 766.1 et. seq. cements the point that the phrase “examining magistrate” in MCL 767.4 means the magistrate conducting the preliminary examination. MCL 766.1 et seq. governs the process involved in the holding of preliminary examinations. That statutory section governing preliminary examinations is replete with references to the “magistrate” or “examining magistrate.” In fact, the provisions relating to a preliminary examination throughout 766.1 et. seq. consistently, repeatedly, and almost exclusively, use the term “magistrate” to describe the person who will be conducting the preliminary examination.

The statutory provisions that govern preliminary examinations specifically use the exact same phrase, “examining magistrate,” that is used in MCL 767.4 on at least two occasions. For instance, MCL 766.1 states: “The state and the defendant are entitled to a prompt examination and determination by the **examining magistrate** in all criminal causes and it is the duty of all courts and public officers having duties to perform in connection with an examination, . . .” MCL 766.9(1) also uses the phrase “examining magistrate” in describing the court official who conducts the preliminary examination: “Upon the motion of any party, the **examining magistrate** may close to members of the general public the preliminary examination of a person . . .”

The Circuit Court utterly ignored the phrase “examining magistrate” in MCL 767.4, despite its well-known and established meaning in Michigan law. There was no point in including the phrase “examining magistrate” unless a defendant has a right to a preliminary examination.

Thus, MCL 767.4 presumes that felony charges issued by the judge shall start in the district court level with a preliminary examination. Otherwise, the phrase “examining magistrate” in MCL 767.4, would be meaningless.

d. The History And Context of MCL 767.3 And MCL 767.4 Demonstrate The Legislature’s Intent To Require A Preliminary Examination For A Defendant Charged With Felony Offenses By A Judicial Investigation Conducted Pursuant To Those Statutes

To the extent there is any remaining question about the meaning of the statutory phrases and terms in MCL 767.3 and MCL 767.4, the legislative history of the amendments to MCL 767.4 demonstrate that the legislature intended for persons charged with felonies after a judicial inquiry to have a right to a preliminary examination in front of judge different than the one who performed the judicial inquiry.

Where the right to a preliminary examination has been created by statute, the accused and the state have a right to a prompt preliminary examination. MCL 766.1; People v Johnson, 427 Mich 98,(1987). The right to preliminary examination required by these statutes primarily serves a “filtration process”, to cease “judicial proceedings where there is a lack of evidence that a crime was committed or that the defendant committed it.” People v Johnson, 427 Mich 98, 104 (1987); Waite, John Barker, Michigan’s One-Man Grand Jury Before the Supreme Court, 31 J.Am. JUD. 184 (1948). A preliminary examination after the filing of charges by a judicial investigation “is a critical stage of our criminal process. People v Bellanca, 386 Mich 708, 712 (1972).

Public Act No. 196 of 1917, now codified as MCL 767. 3 and MCL 767.4, required a preliminary examination when it was enacted. The Legislature recognized in passing these statutes that there is a special need for a “filtration process” as an essential check on the extraordinary combination of powers it reposed in a single judge to be solely responsible for a judicial

investigation to issue subpoenas and take testimony from witnesses, to both cite and find recalcitrant witnesses in contempt in secret proceedings, and then to exercise the awesome power to charge an accused with felony offenses.

The authority of the same judge based on these statutes to both act as a judicial investigator and then to hold the preliminary examination on felonies he charged was challenged in 1942 on due process grounds in People v McCrea, 303 Mich 213, 248 (1942) and in People v Roxborough, 307 Mich 575, 580 (1943) Both decisions affirmed the practice at that time but also affirmed the Legislature's intent to authorize preliminary examinations following the filing of felony indictment by the so-called one man grand juror. The practice authorized by the decision in McCrea and Roxborough for the same judge to carry out both functions was later corrected by amendment to the statute in 1947. P.A. 1947, No. 33, Imd. Eff. April 8.; Michigan One-Man Grand Jury Is Nullified, 33 J. AM. JUD. Soc. 58 (1949).

In McCrea, this Court ruled that Judge Homer Ferguson, who had been appointed by the circuit judges of Wayne County to act as a "one-man grand jury (3 Comp. Laws 1929, §17217 [Stat. Ann. § 28.943])", *id* at 224, " was authorized and empowered to act as the examining magistrate in conducting McCrea's examination and to order him held for trial." *Id* at 249. ("The fact that Judge Ferguson had acted as a one-man grand jury and had filed presentment with the Governor for McCrea's removal did not disqualify him from holding the preliminary examination.") *Id* at 248 McCrea, a former Wayne County Prosecuting Attorney, was charged by Judge Ferguson in an indictment with conspiracy to obstruct justice and then found guilty by a jury of that charge after he was bound over for trial by Judge Ferguson in an information charging the same offense. 303 Mich 223 - 224 This Court then followed its holding in McCrea, that the judge who conducted the grand jury proceedings was authorized to preside over the preliminary

examination that followed in People v Roxborough. That case presented the same issue by another defendant charged in the same judicial inquiry by Judge Ferguson. 307 Mich 575, 580 (1943).

The Legislature then amended MCL 767.3 in 1947, P.A. 1947, No. 33, Imd. Eff. April 8, to fix the problem in the statute about which McRea had complained, one that allowed Judge Ferguson to conduct the preliminary examination in the same case he had investigated and charged. In so doing, the Legislature affirmed its intent that the judicial inquiry statute, now MCL 767.4, requires a preliminary examination before a defendant, accused by a judge appointed pursuant to MCL 767. 3, is required to stand trial. The Historical and Statutory Notes to MCL 767.4 provide: “The 1947 amendment at the end of the first sentence, added: “Provided, That the justice or judge conducting the inquiry under section 3 of this act 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.” The Legislature could have eliminated the right to a preliminary examination for those charged with felonies after a judicial inquiry in 1947 but instead chose to retain the right to a preliminary examination while simultaneously eliminating the possibility that the same judge could conduct both.

The rules of statutory construction demand a finding by this Honorable Court that Mr. Baird is entitled to a preliminary examination.

e. A Judge Proceeding under MCL 767.3 and 767.4 is Not Acting as a Grand Jury

The purpose of the procedure under MCL 767.3 and 767.4 is different in kind than an actual citizen’s grand jury. Gillespie, Michigan Criminal Law and Procedure, section 8:32 (2d Edition) details the purpose of the so-called one-man grand jury proceeding:

“ . . . It is, in its nature, a proceeding for the discovery of crime and the apprehension of criminals under the control of the judge and not under the control of either the prosecuting attorney or the attorney general, one in which the public is interested, and which is entrusted by the statute, to the court . . .” citing to In re Petition for Investigation into Conduct of Recount and Investigation of November, 1934, Election in Wayne County, 270 Mich 328 (1935)

“ . . . The function of proceedings under the statute is to determine whether there is probable cause to suspect that any crime, offense, or misdemeanor has been committed within the jurisdiction of the court. Officials are vested with power to subpoena witnesses, compel their attendance, and take their testimony and to punish for contempt. When the inquiry satisfies the judge that there is probable cause to suspect that any person is guilty of any offense, the judge may cause the apprehension of that person, and **subsequent proceedings are similar to those on a formal complaint** . . .” citing to Hemans v US, 163 F2d 228 (6th Cir 1947).

“ . . . The statute provides for inquisitorial proceedings for the discovery of crime and the apprehension of offenders in the nature of a grand jury or inquest, with a criminal **complaint** made on personal knowledge or on information and belief, with witnesses summoned in support of the complaint before a warrant is issued . . .” citing to In re Harrand, 254 Mich 584_(1931)

“ . . . **The supreme court has said that proceedings under the statute are not considered as prosecutions and proceedings for crimes** (citing to People v Ewald, 302 Mich 31 (1942)) but, **after a warrant has been issued and the accused is brought before the examining magistrate for an examination, it then becomes a criminal proceeding** within the meaning of the federal statute rendering it unlawful to travel from the state in interstate commerce with intent to avoid giving testimony . . .” Hemans v US, 163 F2d 228 (6th Cir 1947)(Emphasis added)

Regardless of whether the document which brings Mr. Baird before the court is called a “Complaint” or an “Indictment,” the statute requires that once charges are issued the court . . shall proceed with the case, “**...in like manner as upon formal complaint . . .**” So, even if one chooses to continue to refer to the charging document in this case as an “Indictment,” the statute requires that proceedings move forward “ . . . in like manner . . .” as upon formal complaint.

Fundamentally, proceedings initiated under MCL 767.3 and 767.4 are investigative in nature and not judicial in the typical sense. See In re Colacasides, 379 Mich 69 (1967) and In re

Slatterly, 310 Mich 458 (1945).¹⁵ In In re Colacasides, the defendant challenged the provisions at MCL 767.3 and MCL 767.4 on due process and separation of powers grounds. The Supreme Court noted that the process under MCL 767.3 and MCL 767.4 was a proper delegation of investigative powers to the judicial branch and was akin to certain powers of the conservators of the peace, and thus, the provisions did not violate the separation of powers doctrine. More pertinent to the question before this Honorable Court, the In re Colacasides Court rejected the due process challenge to the use of the so-called “one man grand jury” process because of the protection contained in the statute:

“ . . . Today, a witness called before the grand juror is entitled to the presence and assistance of counsel in the room where he is being examined. C.L.1948, s 767.3, as amended by P.A.1965, No. 251 (Stat. Ann. 1965 Cum. Supp. s 28.943). **The grand juror no longer may act as the examining magistrate at a hearing on a complaint or indictment resulting from the inquiry,¹¹ nor may he hear any motions to dismiss or quash any such complaint or indictment;** he may not hear any charge of contempt arising out of the inquiry,¹² except for neglect or refusal to appear in response to a summons or subpoena issued by him; and he may not preside at a trial resulting from the inquiry. C.L.S.1961, s 767.4 (Stat. Ann. 1954 Rev. s 28.944). No longer does the statute permit a grand juror to search out criminal conduct generally¹³ but, instead, it requires the order authorizing the inquiry, and the complaint upon which such order is based, to ‘be specific to common intent of the scope of the inquiry.’ . . .” In re Colacasides, at 98-99 (emphasis added)

The Supreme Court found that the statutory provisions survived a due process challenge in part because the judge who acted as the inquisitor under the statutes, could not act as the “examining magistrate.”

Moreover, there is not a single case that has reviewed the statutory language discussed in this Brief and held that, as a matter of statutory interpretation, a person who is charged under these

¹⁵ While not part of the argument before this Honorable Court, there is a serious question whether the statutes at MCL 767.3 and MCL 767.4 violate Michigan’s Constitutional provision requiring the separation of powers found at Article III, section 2, where those statutes authorize a judge to engage in functions of the Executive branch.

two statutory provisions is not entitled, as a statutory right, to a preliminary examination.¹⁶ The Circuit Court relied upon People v Green, 322 Mich App 676 (2018), for such a proposition yet neither the holding, nor the dicta in Green can support such a finding. In Green, the issue raised was whether his trial counsel was ineffective because he failed to object to the use of a statutory “one-person grand jury” to indict defendant on the basis that it unduly impinged on his Sixth Amendment right to counsel and to confront witnesses against him. Because the court found no constitutional right to counsel during grand jury proceedings, it rejected the defendant’s claim that his trial counsel was ineffective. While Green reiterated that there is no constitutional right to a preliminary examination, a point already conceded by Mr. Baird, that *dicta* language in Green cannot, even remotely, be stretched to stand for the proposition that Mr. Baird does not have a statutory right to a preliminary examination under MCL 767.3 and MCL 767.4 pursuant to the rules of statutory construction. Unfortunately, the language in Green was entirely too broad and not tightly written to facts of the case and the issues raised causing confusion. Not a single case, before or after Green, has held that, as a matter of statutory construction, a defendant is not entitled to his statutory right to a preliminary examination after being charged under MCL 767.3 and MCL 767.4. Again, the Circuit Court just ignored the statutory language and the rules of statutory construction in wrongfully denying Mr. Baird his statutory right to a preliminary examination.

All of this suggests that the term “one man grand jury” is a misnomer because it is not really a grand jury at all. Although Michigan case law has referred to the process provided for by

¹⁶Counsel has reviewed as many cases as possible that cite the relevant statutory provisions. Counsel could not find a single case that denied a defendant the right to a preliminary examination if the person was charged under MCL 767.3 and MCL 767.4.

MCL 767.3 and 767.4 as akin to a one man grand jury, the statute describes a process quite different than that involved in the impaneling of a citizen's grand jury.

First, and foremost, nowhere in MCL 767.4 can you find the phrase "grand jury," unlike in the following sections where the phrase is used, repeatedly. Further, the titles for both MCL 767.3 and MCL 767.4 do NOT contain the phrase "grand jury;" again unlike the later provisions of MCL 767.1 et. seq. See by contrast MCL 767.7, 767.7a-g, 767.8-767.23, and 767.25. To treat the peculiar one-judge inquiry process as being the same as an actual "citizen's grand jury" is to ignore the numerous differences in the processes described and specific language used by the legislature.¹⁷

The "one man grand juror" is a rarely used and peculiar mechanism available in the State of Michigan as an alternative to charging felony offenses after a statutorily sanctioned judicial inquiry has been made. **It does not abrogate the statutory right to a preliminary examination simply because it is different than the traditional process for filing of a complaint. Nor is the right to preliminary examination abrogated because the judicial inquiry has, for whatever reason, become known in common parlance as a "one man grand jury".**

The Circuit Court relied upon People v Glass, 464 Mich 266 (2001), yet Glass had nothing whatsoever to do with whether the language in MCL 767.4 requires a preliminary examination for those who have been "charged" pursuant to the process set forth in that statute. Glass actually supports the position of Mr. Baird, not the decision of the Circuit Court. The Glass Court, at least implicitly, accepted the reasoning of People v Duncan, 388 Mich 489 (1972) that a person charged

¹⁷ MCL 767.3 repeatedly describes the process as an inquiry. Admittedly, as it related to the rights of a witness to have counsel present, MCL 767.3 does use the phrase "grand jury" once. However, MCL 767.3 and MCL 767.4 are vastly different in language and processes than an actual citizen's grand jury.

by a citizen's grand jury does not have a statutory right to a preliminary examination as opposed to those whose criminal proceedings are initiated under MCL 767.4. Duncan analyzed the statutory language at 767.4 as opposed to the citizen's grand jury provisions and found that the language in 767.4 provides a statutory right to a preliminary examination yet the provisions relating to the citizens grand juries did not contain language granting such a right. Duncan found that those charged after a judicial inquiry, as a matter of statutory construction, have a right to a preliminary examination while those indicted by a citizen's grand jury do not have such a statutory right. Glass only reversed the portion of Duncan that created a right to a preliminary examination for those charged by a citizen's grand jury for public policy reasons; thereby affirming the continued validity of the portion of Duncan that found that those charged by citizen's grand juries do not have a statutory right to a preliminary examination and those charged under MCL 767.4 do have a right to a preliminary examination.

Also, in Glass, the Michigan Supreme Court specifically found that the question of whether a defendant is entitled to a preliminary examination is a substantive question, NOT a question of practice and procedure. To the extent that the trial court relied upon MCR 6.112(B)¹⁸ or other court rules for its finding that Mr. Baird is not entitled to a preliminary examination, that was error. As Glass specifically held:

“ . . . The establishment of the right to a preliminary examination is more than a matter of procedure and beyond the powers vested in the Court by Const. 1963, art. 6, § 5; it is a matter of public policy for the legislative branch. Shannon v. Ottawa Circuit Judge, 245 Mich. 220, 222, 222 N.W. 168 (1928); People v. Piasecki, supra; Glancy v. Roseville, 457 Mich. 580, 590, 577 N.W.2d 897 (1998) . . . ” Glass, 269-

¹⁸ As the staff comment to the 1989 adoption of MCR 6.112 states unequivocally, subsection B was meant to set forth in the Michigan Court Rules, the processes contained in MCL 767.1 and MCL 767.2, which govern the jurisdiction over Informations (MCL 767.1) and require that Indictments and Informations be treated the same in Circuit Court (MCL 767.2). MCR 6.112(B) cannot be read, based on its language or the staff comment to deny a person the right to a preliminary examination if charged under MCL 767.4.

270.

“The Michigan Supreme Court is not authorized to enact court rules that establish, abrogate or modify the substantive law.” People v Glass, 464 Mich 266, 269 (2001).

Therefore, the statute trumps MCR 6.112(B) and the other court rules cited by the Circuit Court. Until the Legislature acts to amend 767.3 and 767.4, a defendant charged under this provision with a felony is entitled to the process provided for in the Statute: a preliminary examination.

None of the cases which govern whether a person is entitled to a preliminary examination after an Indictment is returned by an actual citizen’s grand jury are applicable to the process where a judge conducts an investigation by himself. None of the safeguards provided for in the citizen’s grand jury process mentioned above exist when a one man grand juror is utilized.

There is not a single case that holds that persons charged after a judicial inquiry under MCL 767.4 are NOT entitled to a preliminary examination. Second, the judicial inquiry process as a practical matter and as a matter of law is not akin to a preliminary examination because at a preliminary examination, the defense can cross-examine witnesses and present evidence to contest the finding of probable cause, while a judicial inquiry is not remotely an adversarial proceeding.

Further, only citizen grand juries have the actual power to “indict.” For instance, MCL 767.18 mandates that grand juries not disclose the fact that an indictment for a felony has been found. Moreover, MCL 767.23 and MCL 767.23a specifically state that for grand juries convened under section 7c (not the “one man grand jury” provision), at least 9 members of the grand jury must concur in the indictment. Further, a multi-county citizen’s grand jury has the power to indict a person for an offense committed in any county over which the grand jury has jurisdiction. “If a citizen’s grand jury indicts a person under this subsection, the grand jury shall specify the county

or counties in which the offense took place in the indictment. . .” MCL 767.23a. The jurisdiction of the “one man grand jury” is limited to offenses that have occurred within the county of where the appointment was made.

Judge Newblatt charged several defendants with various offenses in documents filed as “Indictments.” It is unknown whether or not this label was affixed to the charging documents at the request of the government or by the unilateral decision of Judge Newblatt himself. However, all of the cases, including the **misdemeanors**, were charged by Judge Newblatt as “Indictments.”

Neither the government nor the so-called One Man Grand Juror can enjoy unfettered discretion to place the moniker of “indictment” upon a charging document so as to deprive a defendant of a substantive right created by the Legislature.

MCL 767.25(3) provides even more evidence that a true citizen’s grand jury (one that impanels at least 13 persons and not more than 17 persons) may actually indict for the commission of felony charges outside the county where it is impaneled. Moreover, other statutory provisions require that a citizen’s grand jury follow certain procedures when filing an indictment.

The fact that all of the defendants, including those charged with misdemeanors in this case, were “indicted” is corroborative of Defendant’s position that the name placed on the charging document is immaterial in this matter. Yet, the Circuit Court took that word, “indictment,” and created a chain of invalid and unsound premises that led to her error in denying Mr. Baird his right to a preliminary examination. Essentially, the Circuit Court found that because the word “indictment” is used, two premises/consequences necessarily followed. First, because an “indictment” is used in MCL 767.4, the process is necessarily the same as a citizen’s grand jury process which necessarily means that a defendant is not entitled to a preliminary examination under Glass. That argument is simplistic, rather than simple, because the use of one word in MCL

767.4, “indictment,” cannot, as a matter of common sense, necessarily convert the process described in MCL 767.4 into a citizen’s grand jury.

Moreover, the Circuit Court’s simplistic obsession with the word “indictment” ignores the rest of the language in MCL 767.4, including the phrases “upon formal complaint” and “examining magistrate,” as well as language in the citizen’s grand jury statutory provisions that clearly differentiate the two processes. In other words, the Circuit Court’s efforts to simplify its ruling gutted the language in MCL 767.4 and wrongfully ignored this State’s rules governing statutory construction.

In People v Morris, 228 Mich App 380 (1998), the Michigan Court of Appeals recognized that a traditional citizen’s grand jury is different in kind than a so-called one man grand jury, noting even the different requirements and processes for these two different types of investigative proceedings. In Morris, the Court of Appeals faced the opposite question this Court faces. In that case, the defendant claimed that a provision in MCL 767.3, the so-called “one man grand jury” provision, applied to a traditional multi-county citizen’s grand jury. In our case, we are claiming that law applicable to a citizen’s grand jury does not apply to proceedings under MCL 767.3 and MCL 767.4.

Morris rejected the defendant’s claim on several grounds. First, the Morris court noted that the two different proceedings contained in MCL 767.1 et. seq. contained different statutory requirements. The Court, relying on rules of statutory construction, noted that MCL 767.1 provides a “. . . **dual statutory scheme** . . .” and found that the provisions and requirements in MCL 767.3 and MCL 767.4 do NOT apply to traditional citizen’s grand juries.

The Court also noted that the traditional view given citizen’s grand juries argued against the application of provisions in the “one man grand jury” statute to citizen’s grand juries:

“ . . . Traditionally the grand jury has been accorded wide latitude to inquire into violations of criminal law. No judge presides to monitor its proceedings. It deliberates in secret and may determine alone the course of its inquiry. The grand jury may compel the production of evidence or the testimony of witnesses as it considers appropriate, and its operation generally is unrestrained by the technical procedural and evidentiary rules governing the conduct of criminal trials. “It is a grand inquest, a body with powers of investigation and inquisition, the scope of whose inquiries is not to be limited narrowly by questions of propriety or forecasts of the probable result of the investigation, or by doubts whether any particular individual will be found properly subject to an accusation of crime.” Blair v. United States, 250 U.S. 273, 282 [39 S.Ct. 468, 471, 63 L.Ed. 979] (1919).

The scope of the grand jury’s powers reflects its special **role** in insuring fair and effective law enforcement. A grand jury proceeding is not an adversary hearing in which the guilt or innocence of the accused is adjudicated. Rather, it is an *ex parte* investigation to determine whether a crime has been committed and whether criminal proceedings should be instituted against any person. The grand jury’s investigative power must be broad if its public responsibility is adequately to be discharged. [United States v. Calandra, 414 U.S. 338, 343–344, 94 S.Ct. 613, 617-618, 38 L.Ed.2d 561 (1974) . . .” Morris, at 384-385.

Thus, Morris held that proceedings conducted by citizen’s grand juries are different in kind than proceedings conducted by the so-called “one man grand jury” pursuant to the provisions contained in MCL 767.1, et. seq.

Fundamentally, proceedings under MCL 767.3 and MCL 767.4 are different in kind than the proceedings conducted by traditional grand juries. Using the phrase “one man grand jury” might very well be an easy shorthand way to describe the proceedings under MCL 767.3 and MCL 767.4, yet the judge acting under those provisions is NOT acting as an actual grand jury, given the clear rules of statutory construction and the applicable case law. In fact, several Michigan cases that discuss proceedings under MCL 767.3 and MCL 767.4 have repeatedly qualified the use of the phrase “one man grand jury” by prefacing the phrase with the words “**so called.**” See People v Allen, 15 Mich App 387 (1968); People v Hancock, 326 Mich 471 (1950); Petition of Dohaney, 317 Mich 441 (1947); People v Dungey, 356 Mich 686 (1959); Application of Romney, 381 Mich

1 (1968); People v Pichitino, 337 Mich 90 (1953); People v Reading, 307 Mich 616 (1943); People v Bellanca, 386 Mich 708 (1972); People v Roxborough, 307 Mich 575 (1943).¹⁹

Regardless, calling proceedings under a MCL 767.3 and MCL 767.4 a “one man grand jury” as a shorthand means to distinguish the process used under those enabling statutes cannot substitute for the clear and unequivocal statutory language used in these provisions. The name of the inquiry process is completely **irrelevant** where MCL 767.4 mandates that once criminal proceedings have been initiated by the judge, the case must proceed as upon formal complaint. MCL 767.4 dictates the process that must be followed when felony charges are authorized by the judge and that process requires a preliminary examination.

One may not substitute the phrase “one man grand jury” for the actual language contained in MCL 767.3 and MCL 767.4 without disregarding the intention of the legislature. In fact, in a number of cases that have discussed the MCL 767.3 and MCL 767.4 “so-called” “one man grand jury,” preliminary examinations were held and the right to a preliminary examination under these provisions was never questioned. See e.g., People v Allen, 15 Mich App 387 (1968); People v Hancock, 326 Mich 471 (1950); People v Dungey, 356 Mich 686 (1959).

Fundamentally, form can never replace substance. Mr. Baird is entitled to a preliminary examination, whether you call the judge who issued the charges a “one man grand jury” or not.

¹⁹ There are additional cases who use the phrase “so-called” in describing the process under MCL 767.3 and MCL 767.4.

III. CONCLUSION

Our state still values preliminary examinations and for good reason. Our state has determined that the best method to test whether probable cause exists in felony cases is to hold a contested preliminary examination. The People want to eliminate that right in this case, without any support in the statutory language or the case law of this state.

This Honorable Court must grant Defendant Baird's Application for Leave to Appeal. In summary, the Defendant is entitled to a remand for preliminary examination because the one man grand jury statute MCL 767.3; MCL 767.4:

1. Requires that upon a probable cause finding that the case proceed "**in like manner as upon formal complaint**";
2. Requires that an **examining magistrate** hold a hearing (preliminary examination) on the complaint.

For all of the above stated reasons, Mr. Baird requests this Honorable Court grant his Application for Leave to Appeal and remand this case for preliminary examination on all the charges pending against him.

LEVINE & LEVINE

Dated: October 20, 2021

By: /s/ Randall S. Levine
 RANDALL S. LEVINE (P30672)
 Attorneys for Defendant-Appellant

By: /s/ Anastase Markou
 ANASTASE MARKOU (P45867)
 Attorneys for Defendant-Appellant

BUSINESS ADDRESS:
 136 E. Michigan Ave., 14th FL
 Kalamazoo, MI 49007
 (269)382-0444