RECEIVED by MSC 8/28/2025 2:33:15 PM

STATE OF MICHIGAN
IN THE SUPREME COURT

No. 167595

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee.

v.

TODD DOUGLAS ROBINSON,

Defendant-Appellant.

APPEAL FROM THE
MICHIGAN COURT OF APPEALS
No. 365226

BRIEF OF THE CRIMINAL DEFENSE ATTORNEYS OF MICHIGAN AS AMICUS CURIAE IN SUPPORT OF TODD DOUGLAS ROBINSON

Matthew A. Monahan
613 Abbott St., Suite 500
Detroit, Michigan 48226
(313) 967-5832

John Minock
339 E. Liberty St
Suite 200
Ann Arbor, MI 48104
(734) 668-2200

Christine A. Pagac P67095
CDAM Amicus Advisor
10721 E Jefferson Ave #14506
Detroit, MI 48214
(313) 288-8555

RECEIVED by MSC 8/28/2025 2:33:15 PM

Table of Contents

Table of Authorities....2
Issues Presented....4
Summary of the Argument....5
Argument....6
I. A one-man grand juror cannot vest a circuit court with subject-matter jurisdiction by filing a void indictment. Also, a circuit court lacks subject-matter jurisdiction over a criminal case absent a preliminary examination and bindover....6
A. This Court should recognize that the problem here extends beyond mere statutory interpretation. The issue is constitutional. .7
B. Constitutional issue aside, subject-matter jurisdiction only vests in a circuit court following preliminary examination and bindover. 13
C. Robinson gets relief because the failure of subject-matter jurisdiction to vest was a jurisdictional defect. 18
Conclusion 21

RECEIVED by MSC 8/28/2025 2:33:15 PM

Table of Authorities

Cases

Genesee Cnty Prosecutor v. Genesee Cir Judge,
391 Mich 115 (1974) 15
Hodge v State Farm Mut Auto Ins Co,
499 Mich 211 (2016) 17
Houseman v. Kent Cir. Judge,
58 Mich 364 (1885) 13, 14
In re Elliott,
315 Mich 662 (1946) 15
Judicial Attorneys Ass'n v. Michigan,
459 Mich 291 (1998) 12
Makowski v. Governor,
495 Mich. 465, 852 N.W.2d 61 (2014) 13
Oslund,
2024 WL 5240629 ..... 16, 17
People ex rel. v. Leonard Papp,
386 Mich 672 (1972) 11, 12
People v. Curtis,
389 Mich 698 (1973) 15
People v. Dochstader,
274 Mich 238 (1936) 15
People v. Glass,
464 Mich 266 (2001) 14
People v Dickerson,
164 Mich 148 (1910) 7, 9, 12
People v Evans,
72 Mich 367 (1888) 5, 14, 15, 16
People v Goecke,
457 Mich 442 (1998) 16
People v Peeler,
509 Mich 381 (2022) ..... Passim
People v Smith,
502 Mich 624 ..... 11, 12
People v Washington,
508 Mich 107 (2021) 14, 16, 20, 21

RECEIVED by MSC 8/28/2025 2:33:15 PM

Statutes & Constitutional Provisions

MCL 767.3 ..... Passim
MCL 767.4 ..... Passim
Mich Const. 1963 art III, § 2 10

Rules

MCR 6.502(G) 4, 21
MCR 6.508(D) 4

RECEIVED by MSC 8/28/2025 2:33:15 PM

Issues Presented

1. Can a judge, acting as a one-man grand juror under MCL 767.3 and MCL 767.4, vest a circuit court with subject matter jurisdiction by filing a void indictment and the circuit court proceeding without a preliminary examination?
2. Does *People v Peeler*, 509 Mich 381 (2022), even pose an issue of retroactivity to cases on collateral review?
3. Is Todd Robinson entitled to relief from judgment per MCR 6.502(G) and MCR 6.508(D)?

RECEIVED by MSC 8/28/2025 2:33:15 PM

Summary of the Argument

The case boils down to a simple question, albeit with a twist. Can a one-man grand juror vest a circuit court with subject matter jurisdiction over a criminal case by filing a void indictment? And can that same circuit court then proceed to trial without preliminary examination and bindover? To frame those questions is almost to answer them: No. *People v Peeler* 509 Mich 381, 400 (2022); *People v Evans*, 72 Mich 367, 387-88 (1888). Separation of powers bars a court from investigating and initiating criminal charges—that's the work of the executive. Even if a court could do such a thing, a judge appointed under the one-man grand juror statutes has no authority to indict. MCL 767.3, 767.4. And this Court's precedent says jurisdiction never vests if the preliminary examination and bindover does not occur. For the reasons that follow, this Court should reverse the decision below.

RECEIVED by MSC 8/28/2025 2:33:15 PM

Argument

I. A one-man grand juror cannot vest a circuit court with subject-matter jurisdiction by filing a void indictment. Also, a circuit court lacks subject-matter jurisdiction over a criminal case absent a preliminary examination and bindover.

A judge, acting as one-man grand juror, indicted Todd Robinson with open murder. Three days later, the prosecutor's office filed an Information—without conducting a preliminary examination and obtaining a bindover. Robinson went to trial, a jury convicted him, and he received a life sentence. His direct appeal ended in affirmance. Now, on postconviction review, he raises a subject-matter jurisdictional challenge to his conviction.

Robinson should prevail on either of two theories. Using an outdated statutory scheme, commonly known as the one-man grand juror, the Jackson County Circuit Court usurped the prosecutorial function and charged Robinson with murder. Even worse, the circuit court failed to follow the plain text of the one-man grand juror statutes, which prohibit a judge from filing an indictment.

RECEIVED by MSC 8/28/2025 2:33:15 PM

A. This Court should recognize that the problem here extends beyond mere statutory interpretation. The issue is constitutional.

In a system of separated powers, the Legislature cannot give to the judiciary powers properly belonging to the Executive. *People v Dickerson*, 164 Mich 148, 153 (1910). And yet, with the one-man grand juror statutes, MCL 767.3; MCL 767.4, the Legislature has shifted the executive's prosecutorial power to the judiciary. *Dickerson*, 164 Mich at 153 ("We think it clear that the preparation for and conduct of the trial on behalf of the people are acts executive and administrative in character"). This case offers this Court the best vehicle to reiterate a clear, and longstanding point of law: our Constitution prevents the Legislature from turning judges into prosecuting attorneys. The one-man grand juror statutes violate separation of powers.

Look to the broad powers given to courts by the plain text of the statutes. MCL 767.3 begins with a sweeping statement: "Whenever by reason of the filing of *any complaint*, which may be upon information and belief . . . *any judge* of a court of law and of record *shall have probable cause* to suspect that any crime . . . has been committed within his jurisdiction." Unpack that. "Any complaint" allows anyone to raise the

specter of criminal activity. Based on "any complaint," the judge "*shall have* probable cause" to suspect that a crime has occurred.

The statute continues. Probable cause having been established, the judge "in his discretion may make an order directing that an inquiry be made into the matters relating to such complaint . . . and thereupon conduct such inquiry." MCL 767.3. Now, the judge who received the complaint has unchecked authority to order an investigation and lead the investigation. The only guardrail, at this point, is the judge's discretion.

It gets worse. In conducting the investigation, the judge "shall require such persons to attend before him as witnesses and answer such questions as the judge may require concerning any violation of law about which they may be questioned within the scope of the order." MCL 767.3. Here, the early 20th Century Legislature gave the court authority to compel witnesses to appear before it and compel those witnesses to answer the court's questions. If need be, the court can issue subpoenas. MCL 767.3.

This Court still recognizes the power "to select[] and appoint[] witnesses," is "in no sense a judicial act." *Dickerson*, 164 Mich at 153. Indeed, giving any court the power to select witnesses "would entirely

RECEIVED by MSC 8/28/2025 2:33:15 PM

change the character of criminal procedure, and would seriously endanger, if not absolutely destroy, those safeguards which our Constitution has so carefully enacted for the protection of the accused." *Id.*

Return to the text of the one-man grand juror statutes. If, after hearing from the witnesses that the court compelled, the court is "satisfied" that a crime happened and there's probable cause to believe a person committed it, then the court "may cause the apprehension of such person by proper process." MCL 767.4. The statute commands exactly what it says: a court can issue an arrest warrant. See *Peeler*, 509 Mich at 399.

And then, trial proceedings commence. Once the person is arrested, "the judge having jurisdiction shall proceed with the case, matter or proceeding in like manner as upon formal complaint." MCL 767.4. Before getting to the main event, however, the text's directive to proceed "in like manner *as upon formal complaint*" requires the court to hold a preliminary examination. 509 Mich at 393 (emphasis added). As the court said in *Peeler*, "[w]e know how that process works too:" preliminary examination and bindover. *Id.*

RECEIVED by MSC 8/28/2025 2:33:15 PM

RECEIVED by MSC 8/28/2025 2:33:15 PM

To summarize, this case is not a rehash of *Peeler*. Instead, the defect here is constitutional and it implicates subject-matter jurisdiction. The one-man grand juror statutes permit judges to investigate crime, interview witnesses, and initiate criminal charges. This case presents an issue not reached in *Peeler*, 509 Mich at 400, i.e., an indictment issued by a one-man grand juror enables the judiciary to usurp the prosecutorial function.

Ours is a system of separated powers, a principle made clear by the Constitution. "The powers of government are divided into three branches: legislative, executive and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution." Mich Const. 1963 art III, § 2. Home in on that last line. No constitutional provision "expressly provide[s]" that a judge may exercise powers given to the executive.

Only the executive has the power to investigate and prosecute crime. This Court has recognized as much—going back to 1910, as the multiple cites to *Dickerson* indicate. And *Dickerson* remains good law. See *People v Smith*, 502 Mich 624, 666 (Markman, J., concurring) (citing *Dickerson*).

RECEIVED by MSC 8/28/2025 2:33:15 PM

The best example of *Dickerson*'s continued relevance is *People ex rel. v. Leonard Papp*, 386 Mich 672 (1972). Fifty some years ago, a circuit court tried to countermand a prosecutor's charging decision. *Papp*, 386 Mich at 676. The prosecutor filed an Information charging one count of possession of a stolen motor vehicle. *Id.* When trial day came, the judge granted a motion to allow the accused to plead to a less serious, uncharged offense. *Id.* The judge ignored the prosecutor's objection, established a factual basis for the more serious, charged offense, then nonetheless accepted a plea to the less serious offense. *Id.* at 677.

From the Court of Appeals, the prosecutor sought a writ of superintending control. *Id.* The Court of Appeals said no, so the prosecutor came to this Court. *Id.* at 677-78. This Court framed the question presented as a separation of powers challenge. *Id.* at 673. What to make of a court's decision, "on her own initiative," to determine "under which of two admittedly applicable statutes a prosecution will be instituted, where neither statute represents a lesser included offense of the other"? *Id.* at 683.

Answer: separation of powers prevented the judge from standing in the shoes of a prosecutor. *Id.* at 684. A prosecutor draws power from the

RECEIVED by MSC 8/28/2025 2:33:15 PM

Constitution, and "conduct[ing] a prosecution on behalf of the people . . . is an executive act." *Id.* at 683, citing Const 1963, art VII, § 4; see also *People v Dickerson*, 164 Mich. 148, 153 (1910) ("From the foundation of our government, it has been the duty of the prosecuting attorney to prepare the case for the people."). But in overriding the prosecutor's charging call, the judge usurped "an executive function and part of the duties of the prosecutor." *Id.* at 683-684. Plea annulled and sentence vacated. *Id.* at 685.

True, separated powers doesn't require hermetically sealed branches. *Judicial Attorneys Ass'n v. Michigan*, 459 Mich 291, 296 (1998). The doctrine permits some play in the joints. *Smith*, 502 Mich at 665-66 (Markman, J., concurring) (collecting cases). What violates the principle is allowing the "whole power of one branch" to fall into "the same hands which possess the whole power" of another branch. *Makowski v. Governor*, 495 Mich. 465, 482, 852 N.W.2d 61 (2014) (cleaned up).

Even accepting the pragmatic nature of separated powers, it's hard to see how the one-man grand juror statutes pass constitutional muster. The statutes cede the prosecutorial function to the judiciary. Per the statutes, judges investigate crimes, compel fact witnesses to appear and

RECEIVED by MSC 8/28/2025 2:33:15 PM

answer questions, decide what crime to charge, and issue arrest warrants. Thus, judges initiate trial proceedings. This system violates separation of powers.

Generally, a judge has no lawful path to exercising the powers of another branch. *Houseman v. Kent Cir. Judge*, 58 Mich 364, 367 (1885) (any law "conferring upon the judiciary the exercise of powers belonging to either of the others, cannot be regarded as valid."). Specifically, the judiciary has no authority to charge a crime and thus vest itself with subject-matter jurisdiction over a criminal cases. But that's what happened here, so the charging decision in Todd Robinson's case suffers from a jurisdictional defect.[1] *Houseman*, 58 Mich at 367.

B. Constitutional issue aside, subject-matter jurisdiction only vests in a circuit court following preliminary examination and bindover.

There's an alternative path to relief for Robinson, and it runs through statutory text. Courts don't have "inherent subject matter jurisdiction." *People v Washington*, 508 Mich 107, 121-22 (2021). It comes from "constitutional and statutory provisions." *Id*. Our Constitution says

[1] Another way to say it: in light of *Dickerson* and *Papp*, a judge has no authority to sit as prosecuting attorney, so the court has no jurisdiction over the matter prosecuted. See Const. 1963, art. 6, §§ 1 and 13.

RECEIVED by MSC 8/28/2025 2:33:15 PM

circuit courts have "original jurisdiction in all matters not prohibited by law . . ." Const 1963, art VI, § 13.

In criminal cases, what allows subject-matter jurisdiction to vest in a circuit court? A preliminary examination, resulting in a bindover. *People v. Glass*, 464 Mich 266 (2001); *People v Evans*, 72 Mich 367 (1888). Bindover occurs following a finding of probable cause that a crime occurred and that the accused committed it. Only then does the circuit court obtain subject-matter jurisdiction over the case. *Evans*, 72 Mich at 387-88.

Start with *Evans*. That case arose out of a daughter's allegation that her father sexually assaulted her. *Evans*, 72 Mich at 369. When the daughter testified at a preliminary examination, the justice found no probable cause. *Id.* at 385-86. No probable cause meant no valid return. *Id.* at 387-88. No valid return meant subject-matter jurisdiction never vested in the circuit court. *Id.* This Court tossed the conviction. *Id.*

Evans remains law. *Genesee Cnty Prosecutor v. Genesee Cir Judge*, 391 Mich 115, 119 (1974) ("The circuit court acquires jurisdiction of a criminal prosecution 'upon the making of a proper return from the magistrate before whom the defendant had been examined or waived

RECEIVED by MSC 8/28/2025 2:33:15 PM

examination.'"); *People v. Curtis*, 389 Mich 698, 707 (1973) (no circuit court jurisdiction over criminal case until magistrate files the return); *People v. Dochstader*, 274 Mich 238, 244 (1936) (twice citing *Evans* for the proposition that the magistrate's failure to find probable cause left the circuit court without jurisdiction "at the time of filing the information" so the conviction was vacated); see also *In re Elliott*, 315 Mich 662, 675 (1946) ("The circuit court had jurisdiction of the defendant upon the filing in the circuit court of the return of the magistrate . . . binding the defendant over to the circuit court for trial.")

People v Goecke, 457 Mich 442 (1998), doesn't change matters. True, *Goecke* can be read multiple ways. In one stroke, *Goecke* says the magistrate's return vested the circuit court with *personal* jurisdiction over the accused, whereas the court had subject matter jurisdiction simply by operation of "the class of case." *Goecke*, 457 Mich at 459. But sentences later, *Goecke* added: "Had no return been filed, the circuit court would not have acquired jurisdiction *over the case or the accused*. *Id.* at 459, citing *Evans*, 72 Mich at 387-88.

Goecke's cite to *Evans* is telling and elucidates a flaw in the State's argument here. It is no doubt true, as the State reminds, that subject-

matter jurisdiction is "not dependent on the particular facts of the case but, instead, is dependent on the character or class of the case pending." *Washington*, 508 Mich at 121; see also *People v Oslund*, No. 165544, -- Mich-- (2024); 2024 WL 5240620 at p *5 (Cavanaugh, CJ, concurring). However, it is likewise true that "a court's subject-matter jurisdiction may be dependent on the pleaded allegations." *Oslund*, 2024 WL 5240629, at *8 (Cavanaugh, CJ, concurring), citing *Hodge v State Farm Mut Auto Ins Co*, 499 Mich 211, 213 (2016).

But those general principles only go so far, and not far enough to answer the question presented. As *Goecke* and *Evans* both remain good law, they must be read together. They stand for the principle that vesting subject-matter jurisdiction, in a specific case, requires a case-specific finding of probable cause by a magistrate. See *Oslund*, 2024 WL 5240629, at *5 (explaining that the circuit court's jurisdiction over a child turned on a case-specific, fact-intensive finding, by a magistrate judge). Any other read of *Goecke* would silently overrule *Genesee Cnty Prosecutor*, *Curtis*, *Dochstader*, and *Evans*. Given this Court's jurisprudence before and after *Goecke*, it did not silently unsettle nearly a century of settled law.

RECEIVED by MSC 8/28/2025 2:33:15 PM

RECEIVED by MSC 8/28/2025 2:33:15 PM

One other aspect of this case warrants comment. The opinion below articulates a rule applicable to future cases. Read for all its worth, the Court of Appeals said a court's decision to bring criminal charges, done in clear violation of the right to a preliminary examination and bindover, amounts to mere procedural error rendered harmless by a jury's conviction following trial. *People v Robinson*, No. 365226, –Mich App– (2024); slip op at 12. Nothing about the above language restricts the holding to postconviction cases. Going forward, an unfair and illegal charge gets whitewashed by a fair trial.

An example helps. Consider the procedural history in *Peeler*. After filing criminal complaints, the state's attorney general dismissed pending preliminary examinations and instead moved for the creation of a one-man grand juror inquiry. The one-man grand juror filed an indictment, and the judge before whom the case was pending denied the defense's challenge to the validity of the indictment. Even though the judge's charging decision failed to comport with the plain text of MCL 767.4 and disregarded a century of precedent requiring preliminary examination and bindover to secure subject-matter jurisdiction, Peeler's case proceeded until this Court stopped it.

RECEIVED by MSC 8/28/2025 2:33:15 PM

As long as *Robinson* remains good law, defects in subject-matter jurisdiction can remain incurable if they are mischaracterized as mere procedural errors. Fortunately, this Court's precedent, and our Constitution, compel a different result.

C. Robinson gets relief because the failure of subject-matter jurisdiction to vest was a jurisdictional defect.

Robinson's judge issued an indictment, which the statute didn't permit the judge to do. *Peeler*, 509 Mich at 400. And as *Peeler* explained, a judge-as-prosecutor hasn't had the authority to issue an indictment since 1949. *Id.* at 397. So, nothing about the no-indictment rule articulated in *Peeler* was new law. *Peeler* merely pointed out how the statute has read since the Legislature enacted it in 1917.

Compounding the error, as *Peeler* noted, Robinson's judge failed to heed the plain text of MCL 767.3, which provides that once an arrest warrant has issued, the judge "shall proceed . . . in like manner as upon formal complaint." *Id.* at 391. That language required a preliminary examination. *Id.* at 392-93. The point of a preliminary examination is to find probable cause. *Id.* at 394.

RECEIVED by MSC 8/28/2025 2:33:15 PM

One final point from *Peeler*. Probable cause to arrest differs from probable cause to bindover. *Id.* The latter requires a greater showing and imposes a different standard of proof, all of which *Peeler* explained. *Id.* So, the probable cause needed to effect Robinson's arrest didn't satisfy the showing needed to vest a circuit court with jurisdiction.

In sum, Robinson's circuit court never had subject-matter jurisdiction. As *Evans* made clear a century ago, and this Court has affirmed multiple times since, only following a probable cause finding by the magistrate does subject-matter jurisdiction vest in the circuit court. Here, though, the one-man grand juror issued an indictment without statutory authority to do so and the circuit court in turn failed to conduct the preliminary examination necessary to establish probable cause, justify a bindover, and vest the circuit court with subject-matter jurisdiction over the case.

Robinson is entitled to relief from judgment. His trial court lacked subject-matter jurisdiction, so "its judgment of sentence was void and [Robinson's] failure to raise the issue on direct appeal" or in "his first motion for relief from judgment" doesn't "render the judgment of sentence valid." *Washington*, 508 Mich at 132. Unlike any other error, "the lack of

subject-matter jurisdiction cannot be ignored for purposes of finality because the existence of subject-matter jurisdiction goes to the trial court's very authority to bind the parties to the action at hand." *Id.* Thus, even though "MCR 6.502(G) does not contain an exception for jurisdictional errors," Robinson is entitled to relief under 6.508(D)(3). *Id.*

RECEIVED by MSC 8/28/2025 2:33:15 PM

RECEIVED by MSC 8/28/2025 2:33:15 PM

Conclusion

For the reasons explained above, this Court should reverse the Court of Appeals and vacate Mr. Robinson's conviction.

Respectfully Submitted,

/s/ Matthew A. Monahan
Matthew A. Monahan P84051
Assistant Federal Defender
613 Abbott St., Suite 500
Detroit, Michigan 48226
Matthew_monahan@fd.org

/s/ John Minock
John R. Minock P24626
Cramer Minock & Sweeney
339 E. Liberty St., Ste 200
Ann Arbor, MI 48104-2258
jminock@cramerminock.com

Date: August 26, 2025

Word Count: 3078