

# Court of Appeals, State of Michigan

## ORDER

People of MI v Quinn Anthony James

Docket No. 345189

LC Nos. 17-010977-FH; 18-001850-FH; 18-005252-FC

William B. Murphy  
Presiding Judge

David H. Sawyer

Douglas B. Shapiro  
Judges

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The Court orders that the motion for immediate consideration is GRANTED.

The Court orders that the application for leave to appeal is DENIED for failure to persuade the Court of the need for immediate appellate review.

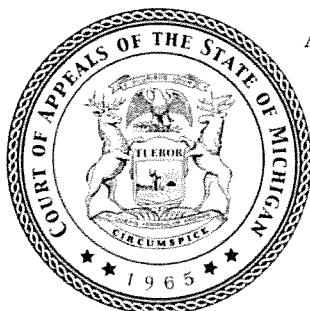
Sawyer, J. Because I would grant peremptory reversal or, in the alternative, grant leave to appeal, I respectfully dissent.

There are two fundamental questions presented here: First, the necessity of disqualifying the Kent County Prosecutor's office and, second, the authority of the circuit court to do so. I would grant peremptory reversal because, even assuming that the authority exists, I see no necessity to do so. Defendant presents, at best, vague allegations of potential due process violations because a victim advocate employed by the prosecutor's office escorted the victim to a preliminary hearing and that employee had had a personal relationship with defendant. In his brief on appeal, defendant states that it must be determined whether the employee "ever talked with any of the prosecutors on the case about her thoughts and feelings about Mr. James, and whether those statements impacted prosecutorial impartiality in any of his cases." Defendant further suggests the need to establish how the "relationship might have impacted prosecutorial decisions in the case" but without even the merest of speculation as to how any of this could have prejudiced defendant.

The employee at issue, who is not an assistant prosecuting attorney, is a victim-advocate, yet defendant seems concerned that she may have advocated for the victim. Moreover, even assuming that the employee may have harbored some unknown animosity towards and tried to influence the prosecutor's decision, it is unclear to me how that is relevant. If it influenced the prosecutor's charging decision, the preliminary examination was the vehicle to ensure that the prosecutor had a basis to bring the charge. If, as defendant suggests, it may have influenced plea negotiations, defendant has no due process right to a plea other than to plead as charged. Indeed, the fact that defendant waited a substantial amount of time after learning of the involvement of the employee and bringing this motion shortly before trial speaks more to defendant's desire to create delay and perhaps obtain a more lenient

prosecutor than it does to any real concern of unfair prejudice. Simply put, defendant does not even present the possibility of an issue that, to me, would warrant disqualifying the prosecutor's office and necessitate the appointment of a special prosecutor.

But, even accepting the possibility exists of a necessity for disqualification, there is the question of the circuit court's authority to entertain that question and, ultimately, to grant defendant's motion. I believe that this presents a significant question regarding separation of powers. While there may be circumstances under which the courts are justified in invading the prerogatives and decisions of a constitutional officer of the executive branch, we must do so with extreme restraint and only upon a showing of absolute necessity. Moreover, I reject the idea that we should allow the proposed evidentiary hearing to go ahead and allow the defendant his fishing expedition. Holding the hearing itself represents a judicial incursion into the province of the prosecutor. This itself demands extreme restraint by the courts. Accordingly, even if persuaded that defendant might realistically be able to establish the need for disqualification, I would nevertheless grant leave to appeal to address the issue whether the circuit court possesses the authority to hold the hearing and grant the requested relief. Until we can, with adequate briefing, argument, reflection, and thought, determine with constitutional certainty that it is appropriate for the courts to venture into this territory, the hearing should not be held.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

**AUG 30 2018**

Date

  
Chief Clerk