

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARKEY LAMONT WALKER,

Defendant-Appellant.

UNPUBLISHED
February 25, 1997

No. 196567
Ingham Circuit Court
LC No. 95-069239

ON REMAND

Before: Griffin, P.J., and McDonald, and C. W. Johnson*, JJ.

PER CURIAM.

Defendant is charged by information with open murder, MCL 750.316c; MSA 28.548(3), and the possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant filed a motion in the circuit court to quash the information, claiming defects in the grand jury proceeding resulting in defendant's indictment. The circuit court rejected defendant's claims and denied the motion to quash. On April 12, 1996, in docket No. 192273, this Court denied defendant's application for leave to file an interlocutory appeal. In lieu of granting leave to appeal, our Supreme Court remanded the case to this Court for expedited consideration as on leave granted, 452 Mich 871 (1996). We affirm the order denying the motion to quash.

On January 13, 1995, in docket No. 181751, this Court granted a petition to conduct a multi-county grand jury pursuant to MCL 767.7b(1) and (2); MSA 28.947(2). On April 27, 1995, grand jurors from Clinton, Eaton, and Ingham Counties indicted defendant on charges of open murder and felony-firearm. The charges stem from the Ingham County murder of Jerome Carson. On the strength of the indictment, a Clinton Circuit Court judge issued a warrant for defendant's arrest. Thereafter, defendant waived preliminary examination and an Ingham County prosecutor filed a felony information charging defendant with open murder and felony-firearm.

On appeal, defendant claims that the trial court erred in refusing to quash the felony information. Defendant contends that this Court's order establishing the grand jury violated MCL 767.3; MSA

* Circuit judge, sitting on the Court of Appeals by assignment.

28.943 by failing to specify the crimes to be investigated. Defendant also argues that a multi-county grand jury cannot indict him for a crime committed in one county. Without reaching the merits of these claims, we conclude that the errors, if any, in the grand jury proceeding are harmless.

In Michigan, criminal charges can be filed by either information or indictment. See MCR 6.110(A); MCR 6.112(B); *People v Harris*, 37 Mich App 179, 180; 194 NW2d 414 (1971), rev'd on other grounds *People v Duncan*, 388 Mich 489; 201 NW2d 629 (1972). Either charging mechanism provides the circuit court jurisdiction over felony charges. See MCL 767.1; MSA 28.941; MCR 6.112(B); see, e.g., *Duncan, supra* at 492-493, 494; *People v Weathersby*, 204 Mich App 98; 514 NW2d 493 (1994). The only substantive difference between the two procedures is the way each is achieved. Whereas an information is predicated by a signed complaint, an indictment results from grand jury deliberation.

The extent to which a warrant is achieved through the grand jury process is irrelevant. A complaint merely initiates criminal proceedings by documenting the allegations against defendant. Regardless whether allegations are set forth in a document entitled "complaint" or "indictment," the process is identical. In either case, the allegations are tested by preliminary examination before charges can be filed in circuit court. Once defendant is bound over for trial, the information governs the charges and the document stating the original allegations becomes irrelevant. *People v Lauer*, 41 Mich App 4, 7; 199 NW2d 534 (1972); see *People v Hunt*, 442 Mich 359, 363; 501 NW2d 151 (1993). The information is presumptively drafted with reference to the facts disclosed at the preliminary examination. *Hunt, supra* at 363, citing *People v Kahler*, 93 Mich 625, 627; 53 NW 826 (1892).

Where, as here, the defendant waives the preliminary examination, the information may charge defendant with any offense alleged in the document initiating proceedings in district court. *People v McDonald*, 233 Mich 98; 206 NW2d 516 (1925). Accordingly, defendant was denied no due process by the fact that allegations against him were initially set forth by an indictment instead of a complaint.

In the present case, the prosecution proceeded under both charging mechanisms. However, in lieu of using the indictment, the prosecutor charged defendant via a sufficiently detailed felony information. See MCL 767.45(1); MSA 28.985(1). Thus, under Michigan's dual system of charging by information or indictment, the valid information independently sustains the filing of charges against defendant in Ingham Circuit Court. Because the information in the present case is valid, the alleged errors in the grand jury process did not undermine the circuit court's jurisdiction. Accordingly, the alleged errors, if any, in the grand jury process are harmless and the trial court correctly denied defendant's motion to quash.

Affirmed.

/s/ Richard Allen Griffin

/s/ Gary R. McDonald

/s/ Charles W. Johnson