212 A.3d 1
Supreme Court of Pennsylvania.

IN RE: Return of Seized Property
of LACKAWANNA COUNTY
Petition of: Commonwealth of Pennsylvania

No. 93 MM 2018
|
Argued: December 5, 2018
|
Decided: July 17, 2019

Synopsis

Background: Count moved for return of property seized pursuant to search warrant issued by Anthony A. Sarcione, J., the supervising judge of the statewide investigating grand jury. The Court of Common Pleas, Lackawanna County, No. 17 CV 5927, John L. Braxton, Senior Judge, and Michael J. Barrasse, P.J., found that the Lackawanna County Court of Common Pleas, rather than the supervising judge of the Statewide investigating grand jury, had jurisdiction to adjudicate the merits of the County's motion for the return of property. The Office of the Attorney General appealed.

Holdings: The Supreme Court, No. 93 MM 2018, Dougherty, J., held that:

[1] supervising judge of statewide investigating grand jury had the power to issue search warrants for county's property, and

[2] county's motion for return of seized property had to be presented to the same supervising judge in the first instance.

Vacated and remanded.

Donohue, J., filed dissenting opinion, joined by Todd, J.

Procedural Posture(s): Appellate Review.

West Headnotes (7)

[1] **Criminal Law** Scope of Inquiry
Criminal Law Statutory issues in general

The Supreme Court will address legal questions on a plenary basis, and to the extent it must engage in statutory interpretation and analysis of its own procedural rules, it will apply conventional interpretative principles.

[2] **Courts** Power to regulate procedure

The issuance of a search warrant is subject to the power of the Supreme Court to govern court procedures. U.S. Const. Amend. 4; Pa. Const. art. 5, § 2.

[3] **Grand Jury** Conduct of proceedings in general

Supervising judge of statewide investigating grand jury was authorized to act in all counties in the Commonwealth with respects to investigations, presentments, reports, and all other proper activities of the grand jury, which included the power to issue search warrants for county's property, which were sought in connection with and to further an investigation of the grand jury. U.S. Const. Amend. 4; Pa. R. Crim. P. 200; 42 Pa. Cons. Stat. Ann. § 4550(a).

1 Cases that cite this headnote

[4] **Courts** Power to regulate procedure
Searches and Seizures Authority to Issue

All common pleas court judges in the Commonwealth inherently possess the power to issue search warrants, subject only to the Supreme Court's power to govern court procedures. U.S. Const. Amend. 4; Pa. Const. art. 5, § 2.

1 Cases that cite this headnote

[5] **Searches and Seizures** Authority to Issue

Where the Supreme Court appoints a common pleas court judge to supervise a multi-county or statewide investigating grand jury and empowers the judge to act in multiple judicial districts, that

grant of authority includes the inherent power to issue search warrants in any of those districts, so long as the warrants relate to an investigation of the grand jury; under those circumstances, the supervising judge is an "issuing authority" in those judicial districts. U.S. Const. Amend. 4; Pa. R. Crim. P. 200.

3 Cases that cite this headnote

[6] **Searches and Seizures** Disposition of property seized

County's motion for return of property seized pursuant to search warrants issued by supervising judge of statewide investigating grand jury had to be presented to the same supervising judge in the first instance; the Supreme Court order appointing the supervising judge was sweeping, covered all applications and motions generally related to the work of the grand jury, and the county's motion for return of property fell within that reach, as it challenged the validity of the search warrants issued in connection with a grand jury investigation, and any alternative to the supervising judge addressing a motion for return in the first instance would likely result in unnecessary delay caused by the Commonwealth's need to obtain permission from the supervising judge to disclose otherwise-secret grand jury material.

U.S. Const. Amend. 4; 42 Pa. Cons. Stat. Ann. § 4544(b); Pa. R. Crim. P. 200.

1 Cases that cite this headnote

[7] **Searches and Seizures** Disposition of property seized

When the Supreme Court grants grand jury supervising judges multi-county or statewide jurisdiction, they maintain the same power and authority as are vested in judges of the district where the search occurred and the motion for return of seized property is filed, at least with respect to matters relating to the grand jury's investigation; in this sense, a supervising judge has the same jurisdictional authority over the relevant county as any other judge in that district, and should exercise that jurisdiction to address the motion for return as originally filed on the appropriate common pleas court docket; if, upon being presented with the motion the supervising judge determines there are no outstanding concerns for grand jury secrecy, perhaps because the term of the grand jury has expired or an indictment has already issued, the judge may decline to hear the motion and it may instead be considered in the normal course under applicable rules and procedures. Pa. R. Crim. P. 200, 588(A).

***2** Appeal from the Order of the Lackawanna County Court of Common Pleas at No. 17No. 17 CV 5927 dated May 11, 2018. John L. Braxton, Senior Judge, Michael J. Barrasse, President Judge.

Attorneys and Law Firms

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SAYLOR, C.J., BAER, TODD, DONOHUE, DOUGHERTY, WECHT, MUNDY, JJ.

OPINION

JUSTICE DOUGHERTY

This appeal concerns a motion for return of property filed by several Lackawanna County governmental entities ("County") relative to materials seized by the Office of Attorney General ("OAG"). The OAG seized the County's property pursuant to search warrants issued by

the Supervising Judge of the 41st Statewide Investigating Grand Jury. We consider whether the County's motion for return was properly filed in the Lackawanna County Court of Common Pleas, and whether it must be ***3** adjudicated by the Supervising Judge. We also consider whether the Supervising Judge was empowered to issue the underlying search warrants.

I. Background

As the issues in this case relate to the 41st Statewide Investigating Grand Jury, we begin by providing some brief context regarding its formation. On November 30, 2016, then-Pennsylvania Attorney General Bruce Beemer petitioned this Court, pursuant to the Investigating Grand Jury Act, 42 Pa.C.S. §§ 4541-4553, for an order directing the convening of a multicounty investigating grand jury having statewide jurisdiction to investigate organized crime or public corruption or both. *See In re Application of Beemer*, 174 MM 2016 (Nov. 30, 2016). This Court, through an order signed by Chief Justice Saylor,[1] granted the Attorney General's application on December 9, 2016, as required by the Act. *See* 42 Pa.C.S. § 4544(a) (where Attorney General's application for multicounty grand jury satisfies relevant statutory criteria, the Court shall issue order granting application within ten days).

Consistent with the dictates of 42 Pa.C.S. § 4544(b), the Court's order included an array of content typical of such orders. For example, it designated the location of the 41st Statewide Investigating Grand Jury in Montgomery County, and specified the manner in which the jurors were to be selected. The order also appointed a Supervising Judge, the Honorable Anthony A. Sarcione, Judge of the Court of Common Pleas for the 15th Judicial District, Chester County, and instructed that "[a]ll applications and motions relating to the work of the [41st] Statewide Investigating Grand Jury — including motions for disclosure of grand jury transcripts and evidence — shall be presented to the Supervising Judge." Order, 12/9/2016, at 1.[2] Further, pursuant to Section 4544(b)(2), the order provided that "[w]ith respect to investigations, presentments, reports, and all other proper activities of the [41st] Statewide Investigating Grand Jury, Judge Sarcione, as Supervising Judge, shall have jurisdiction over all counties throughout the Commonwealth of Pennsylvania." *Id.* at 1-2. And finally, the order directed Judge Sarcione to maintain control of transcripts, evidence, and matters occurring before the grand jury as provided by Pa.R.Crim.P. 229 and 42 Pa.C.S. § 4549. *Id.* at 3.

After the 41st Statewide Investigating Grand Jury was empaneled and an investigation was ongoing, an OAG Special Agent and a Pennsylvania State Trooper applied to Judge Sarcione for four warrants to search and seize certain property belonging to the County. *See* Applications for Search Warrants, Reproduced Record ("R.R.") at 67a, 72a, 77a, and 82a. On September 20, 2017 and September 21, 2017, Judge Sarcione approved the warrants. *Id.* Thereafter, the OAG, in conjunction with the Pennsylvania State Police, executed the search warrants upon the Lackawanna County Prison, the Lackawanna County Community Corrections Center, the Lackawanna County Administration ***4** Building, and the Lackawanna County Center for Public Safety.[3] The OAG seized various materials pursuant to the warrants, including computers, hard drives, email servers, and other files, documents, and records. *See* Receipts/Inventory of Seized Property, R.R. at 84a-117a.

On November 9, 2017, the County filed a motion for return of property pursuant to Pa.R.Crim.P. 588.[4] Notably, the County filed its motion in the Lackawanna County Court of Common Pleas, which comprises the 45th Judicial District. The matter was assigned to the Honorable John Braxton, Senior Judge of the Court of Common Pleas for the 1st Judicial District, Philadelphia County.[5]

In its motion, the County advanced a threefold argument to support its claim of entitlement to lawful possession of the seized materials. First, the County argued the underlying search warrants were unconstitutionally general and overbroad. *See* Motion for Return of Property, R.R. at 50a-53a. Second, it asserted the seizing of judicial and other governmental officials' property infringed upon various privacy interests and legal privileges. *See id.* at 54a-59a. Third, it claimed the search warrants were invalid under Pa.R.Crim.P. 200. *See id.* at 60a-62a.

With respect to this final claim, the County explained a "search warrant may be issued by any issuing authority within the judicial district wherein is located either the person or place to be searched." *Id.* at 60a, *quoting* Pa.R.Crim.P. 200. The County noted the places to be searched were all located in Lackawanna County, *i.e.*, in the 45th Judicial District, yet Judge Sarcione identified his title on the search warrants as

a Court of Common Pleas Judge in the 15th Judicial District. According to the County, "[a]s a member of the 15th Judicial District — not the 45th — Judge Sarcione did not have authority to issue the search warrants under Pa.R.Crim.P. 200 for items to be seized in Lackawanna County." *Id.* at 61a.

On November 13, 2017, the OAG filed a response to the County's motion. Without confirming or denying the existence of a grand jury investigation due to secrecy concerns, the OAG nevertheless challenged ***5** the lower court's jurisdiction to hear the motion for return. *See* Response to Motion for Return, R.R. at 126a-127a.[6] In support, the OAG pointed to this Court's order appointing Judge Sarcione as Supervising Judge and, in particular, the order's instruction that "[a]ll applications and motions relating to the work of the [41st] Statewide Investigating Grand Jury ... shall be presented to the Supervising Judge." *Id.* at 127a, *quoting* Order, 12/9/2016 at 1. In the OAG's view, the order supplied Judge Sarcione with "exclusive jurisdiction" over the County's motion for return because the motion challenged search warrants issued in connection with an investigation of the 41st Statewide Investigating Grand Jury. *Id.*

Two days later the parties appeared for a hearing before the lower court. The County contested the notion Judge Sarcione had jurisdiction over the motion, arguing there is "no authority for a civil matter or a return of property [motion] to be heard by a grand jury." N.T. 11/15/2017 at 5; *see also id.* (contending a motion for return of property "does not belong in a grand jury proceeding"). The County further challenged Judge Sarcione's authority to issue the underlying search warrants, on the basis "there is nothing in the Grand Jury Act that authorizes search warrants." *Id.* at 8. In response, the OAG maintained the relevant source of authority as to both matters was this Court's December 9, 2016 order which, according to the OAG, granted Judge Sarcione "jurisdiction over all counties throughout the Commonwealth" and authorized him "to handle any ancillary matters that may come up throughout the course of the grand jury conducting [its] business." *Id.* at 6. As the OAG believed the motion for return to be ancillary to the work of the 41st Statewide Investigating Grand Jury, it requested the "entire matter be sealed and transferred to Judge Sarcione." *Id.* at 7. Following oral argument, the court held the matter under advisement.[7]

On May 11, 2018, the lower court issued an opinion and order, ostensibly limited to the jurisdictional question. *See* Trial Ct. Op., 5/11/2018, at 1 ("This Opinion and Order will solely address proper jurisdiction of this matter and will not address the substantive Motion on the merits."). In sum, the court determined the Lackawanna County Court of Common Pleas, rather than the Supervising Judge of the 41st Statewide Investigating Grand Jury, had jurisdiction to adjudicate the merits of the County's motion for return of property. *Id.* at 9. In reaching this conclusion, the court reasoned Rule 588 controlled, in that it "explicitly states that a motion for return of property 'shall be filed in the [c]ourt of [c]ommon [p]leas for the judicial district in which the property was seized." *Id.* at 8, *quoting* Pa.R.Crim.P. 588(A). As additional support, the court cited *In re Seized Property of Bartholomew*, 26 Pa.D & C.4th 122 (C.P. Lehigh 1995), wherein a common ***6** pleas court judge adjudicated a motion for return of property even though the property had been seized pursuant to a search warrant issued by a statewide investigating grand jury. The lower court recognized "the issue of proper jurisdiction was not discussed" in the *Bartholomew* case, but nevertheless found that nonbinding authority "directly on point" and "persuasive." Trial Ct. Op., 5/11/2018, at 4, 9.[8] Finally, regarding the underlying search warrants issued by Judge Sarcione, the court remarked the Investigating Grand Jury Act "makes no mention of search warrants" and Pa.R.Crim.P. 200 "specifically indicates" search warrants must be issued by an issuing authority within the relevant judicial district. *Id.* at 9.

On May 21, 2018, the OAG filed an application to reconsider and to certify the court's order for immediate appeal pursuant to 42 Pa.C.S. § 702(b). Simultaneously, the OAG filed in this Court a petition for permission to appeal or, in the alternative, a petition for review. The County opposed both filings.

On June 20, 2018, the lower court denied the OAG's application insofar as it sought reconsideration, but granted the OAG's request to certify the order for immediate appeal. Thereafter, this Court directed that the matter be determined upon full appellate briefing and oral argument.[9]

[1] The OAG presents the following two issues for this Court's review:

1. Did the lower court err in ruling it had the authority to address Lackawanna County's motion for return of property concerning property seized pursuant to warrants issued by the supervising judge of the [41st] Statewide Investigating Grand Jury, when the Supervising Judge had exclusive authority to hear Lackawanna County's Motion?

2. Whether, as a preliminary matter, the Supervising Judge of the [41st] Statewide Investigating Grand Jury had the authority to issue the search and seizure warrants executed in this matter, when the Supervising Judge has statewide authority with respect to the grand jury investigations he oversees, including the investigation associated with the warrants in this case?

OAG's Brief at 4. We address these legal questions on a plenary basis, and to the extent we must engage in statutory interpretation and analysis of our own procedural ***7** rules, we apply conventional interpretative principles. *See In re Fortieth Statewide Investigating Grand Jury*, —— Pa. ——, 191 A.3d 750, 756 (2018).

II. Arguments of the Parties

The OAG maintains Judge Sarcione, in his capacity as Supervising Judge, has exclusive authority to address the County's motion for return because it relates to property seized through search warrants issued in connection with an investigation of the 41st Statewide Investigating Grand Jury. *See* OAG's Brief at 14. As the OAG sees it, the lower court erroneously reached the opposite conclusion because it failed to "understand how supervising judges' authority conforms with the various statutes, rules, and orders involved in the underlying legal actions here." *Id.*

In this regard, the OAG begins by outlining what it believes to be the source of Judge Sarcione's authority to adjudicate the motion for return of property. It primarily points to this Court's December 9, 2016 order appointing Judge Sarcione as Supervising Judge — specifically, the order's instruction that " '[a]ll applications and motions relating to the work of the [41st] Statewide Investigating Grand Jury ... shall be presented to the Supervising Judge.' " OAG's Brief at 21, *quoting* Order, 12/9/2016, at 1. The OAG explains the County's motion for return, like the search warrants upon which the motion is premised, relate to the work of the 41st Statewide Investigating Grand Jury. As such, the OAG concludes this Court's own directive requires that the motion " 'shall be presented to the Supervising Judge.' " *Id.* at 22, *quoting* Order, 12/9/2016, at 1.

The OAG proceeds to address the lower court's treatment of Pa.R.Crim.P. 588. It argues the lower court wrongly concluded Rule 588 prevents Judge Sarcione from addressing the motion for return since, in its view, the Rule does nothing more than dictate venue. *See* OAG's Brief at 24-27. Thus, the OAG explains, while on its face the Rule requires that a motion for return shall be filed in the court of common pleas for the judicial district in which the property was seized — *i.e.*, in Lackawanna County — "this does not prevent the Supervising Judge from hearing the motion or from it being 'presented to the Supervising Judge.' " *Id.* at 22, *quoting* Order, 12/9/2016, at 1. The OAG insists there is "no conflict" between Rule 588(A) and this Court's directive that all motions relating to the work of the 41st Statewide Investigating Grand Jury shall be presented to Judge Sarcione. *Id.*

From that premise the OAG prescribes two mechanisms that it believes would effectuate the intent of this Court's order while simultaneously adhering to Rule 588(A). First, it argues Judge Sarcione is authorized to hear the County's motion for return as filed in Lackawanna County. *Id.* at 23. This is permissible, the OAG contends, because this Court's order supposedly granted Judge Sarcione statewide jurisdiction with regard to any matters concerning the work of the 41st Statewide Investigating Grand Jury and he therefore "has the same jurisdictional authority over Lackawanna County as any judge of the 45th Judicial District[.]" *Id.* Alternatively, the OAG posits there is "no legal obstacle preventing the matter from being [ ] transferred to the docket associated with the underlying grand jury investigation." *Id.* at 24. It notes that proceeding in this manner would be consistent with other Pennsylvania Rules of Procedure that dictate a default venue but also permit transfer to a different venue when the law and circumstances of a case warrant. *See id.* at 24-27, *citing* Pa.R.Crim.P. 130 and Pa.R.Civ.P. 1006. In short, the OAG asserts Rule 588(A) "merely defaults to the reasonable position that a motion involving ***8** the return of property should be filed in the Common Pleas court where the property is located[,]" but it "does not prevent transfer of the matter to some other forum when such transfer is legally warranted." *Id.* at 26-27.

Having concluded Judge Sarcione possesses exclusive jurisdiction to address the motion for return of property and that Rule 588(A) does not operate to prevent or constrict that authority, the OAG continues that the lower court's contrary decision undermines the fundamental principles associated with the proper functioning of statewide investigating grand juries. *See id.* at 27-30. Relying on this Court's longstanding recognition that "[t]he secrecy of grand jury proceedings is indispensable to the effective functioning of a grand jury[,]"

and this compelling need for secrecy "call[s] for a strong judicial hand in supervising the proceedings[,]" *In re Dauphin County Fourth Investigating Grand Jury*, 610 Pa. 296, 19 A.3d 491, 502-03 (2011) (internal quotations and citations omitted), the OAG claims these principles will be frustrated if Judge Sarcione is prevented from adjudicating the motion for return. *See* OAG's Brief at 31. This is so, the OAG argues, because it will be limited if not entirely barred from effectively responding to the substance of the County's motion, as it implicates protected grand jury material. *See* OAG's Brief at 31. Although the OAG concedes it may seek a disclosure order from Judge Sarcione to discuss some of the otherwise-secret matters with the lower court and the County, it stresses that "given the need to ensure an [e]ffective ongoing investigation, which may be targeting parties to the underlying motion or their affiliates, any disclosure may need to be limited." *Id.* The OAG submits the lower court's decision creates "a cumbersome process ripe for the unwarranted divulgence of secret information[,]" and it deems that burdensome process "wholly unnecessary ... and antithetical to the fundamental principles governing grand jury practice." *Id.* at 31-32.

Finally, the OAG proffers that there is a limit to a supervising judge's authority to entertain a motion for return of property relating to a search warrant issued in connection with a grand jury investigation. *See id.* at 32-33. Specifically, it suggests this rule applies only when there is an ongoing grand jury investigation or where grand jury secrecy concerns are present; absent these conditions, the OAG sees no reason why a motion for return of property could not be heard by a non-grand jury judge. *See id.*

Turning next to the issue of the search warrants, the OAG again identifies this Court's order appointing Judge Sarcione as Supervising Judge as the authority permitting him to issue search warrants statewide. It argues the order, which tracks the language of 42 Pa.C.S. § 4544(b)(2), states Judge Sarcione "(1) shall have jurisdiction over all counties throughout the Commonwealth, (2) including " '[w]ith respect to **investigations**, presentments, reports, and all other proper activities of [the Grand Jury].' " OAG's Brief at 35, *quoting* 42 Pa.C.S. § 4544(b)(2) (emphasis supplied by the OAG). Thus, according to the OAG, Judge Sarcione had statewide jurisdiction with respect to any investigative activity of the 41st Statewide Investigating Grand Jury. *See id.*

Working from that assumption, the OAG argues that "[be]cause Judge Sarcione had explicit statewide jurisdiction over all the Grand Jury's investigations, he was an 'issuing authority' in Lackawanna County" as understood by Pa.R.Crim.P. 200. *See id.* at 36, *citing* Pa.R.Crim.P. 200, cmt. ("[a]ny judicial officer who is authorized to issue a search warrant and who issues a warrant is considered an 'issuing authority' for purposes ***9** of this rule"). In support of its position an "issuing authority" under Rule 200 is not limited to judicial officers whose commissions are linked to the judicial district where the property or person to be searched or seized is located, the OAG points to other examples where issuing authorities have been empowered to authorize search warrants in judicial districts where they do not normally sit. *See id.* at 36-37 (comment to Rule 200 acknowledges power of appellate court judges and justices to issue search warrants anywhere in Pennsylvania); *id.* at 37-39 (discussing collaborative agreements between judicial districts which permit visiting active judges and district justices to issue search warrants in judicial districts outside the one in which they sit). These examples, the OAG asserts, prove there is "nothing remarkable" about judges issuing search warrants outside their own judicial district, "so long as their authority [to do so] is otherwise legally authorized." *Id.* at 37. As described, the OAG believes this Court's order and 42 Pa.C.S. § 4544(b)(2) provided Judge Sarcione with such legal authority, and it consequently faults the lower court to the extent it agreed with the County that Rule 200 prohibited Judge Sarcione from issuing the underlying search warrants.

The OAG also challenges the County's argument below that Judge Sarcione could not issue the search warrants on the basis that, under the Investigating Grand Jury Act, search warrants are not identified as an investigative resource of the grand jury and the issuance of search warrants is not mentioned as a power of the grand jury. *See* OAG's Brief at 41, *citing* 42 Pa.C.S. § 4542 (investigative resources of the grand jury) and 42 Pa.C.S. § 4548(a) (powers of investigating grand jury). As the OAG puts it, the County's argument is "fundamentally flawed" because it misunderstands the nature and purpose of investigating grand juries. *Id.* On this point, the OAG explains the powers of an investigating grand jury delineated in the Investigating Grand Jury Act "are **in addition to** the investigative resources and powers otherwise available to law enforcement in a criminal investigation." *Id.* (emphasis in original); *see also id.* at 42 ("the investigative resources of the grand jury set forth the legal mechanisms which enable grand juries to

gather potentially valuable evidence that may be otherwise inaccessible to law enforcement absent the power of a grand jury to acquire it"). The OAG asserts these additional resources advance the core purpose of the Investigating Grand Jury Act by enabling the Commonwealth to investigate and prosecute crimes which may otherwise go undetected; they do not, however, circumscribe the ordinary investigative tools and techniques that law enforcement may employ in the course of a criminal investigation. *See id.* at 42. In sum, the OAG argues search warrants are just one of many ordinary investigative tools available to law enforcement in a criminal investigation, and nothing in the Investigating Grand Jury Act precludes their use to further a grand jury investigation. *See id.* at 42-43.

The County quite naturally disputes the OAG's position on both issues. Regarding who may properly decide the motion for return of property, the County argues this issue is "squarely and completely resolved" by Rule 588(A), because it directs that motions for return shall be filed where the property was seized. County's Brief at 15-16. The County submits there is nothing in this Court's order appointing Judge Sarcione as Supervising Judge, or in the Investigating Grand Jury Act, that creates an exception to the procedure outlined in Rule 588(A). *See id.* at 17.

On a more foundational level, the County challenges the OAG's interpretation of ***10** the powers granted to Judge Sarcione. While the County acknowledges this Court's order conferred upon Judge Sarcione statewide jurisdiction, it argues this jurisdiction extends only to "investigations, presentments, reports, and **all other proper activities** of said investigating multicounty grand jury." *Id.* at 17, *quoting* 42 Pa.C.S. § 4544(b)(2) (emphasis supplied by the County). In the County's view, a motion for return of property "cannot in any way be deemed a 'proper activity' of an investigating grand jury." *Id.* In a similar way, the County contests the OAG's understanding of the separate directive in this Court's order that all applications and motions relating to the work of the 41st Statewide Investigating Grand Jury shall be presented to Judge Sarcione. According to the County, its motion for return "does not reference or implicate grand jury testimony or any proceeding before the grand jury and therefore does not relate to 'the work' of the grand jury." *Id.* at 18.

As for the OAG's suggestion that transferring the motion for return of property from Lackawanna County to Judge Sarcione would comply with both this Court's order and Rule 588(A), the County argues that employing such a procedure would be inappropriate for several reasons. For one thing, the County claims this procedure, which amounts to a request for change of venue, is waived because the OAG never requested a change of venue in the lower court. *See id.* at 18-19. The County argues, even if the OAG had not waived this claim, the Pennsylvania Rules of Procedure cited by the OAG — including Pa.R.Crim.P. 130 and Pa.R.Civ.P. 1006 — "do not apply and are not satisfied here." *Id.* at 19. From the County's perspective, the OAG failed to develop a factual record necessary to satisfy any standard for a change of venue, and thus there is no support in the record for such a change. *See id.* at 19-20.

Finally, to the extent the OAG invokes grand jury secrecy as support for its position that Judge Sarcione is empowered to address the motion for return of property, the County submits this is a red herring since the County's motion "does not address or implicate any secret grand jury matters." *Id.* at 20. The County submits the execution of the warrants was a "very public event that attracted wide attention and publicity[,]" and it generally avers "there is nothing secret about the events that are the subject of the motion for return of property." *Id.* at 20-21. Moreover, the County continues, the motion for return advances facial and threshold legal challenges to the seizures "that do not implicate or require consideration of any matters that occurred before the grand jury." *Id.* at 21. The County reasons that because the OAG has not substantiated its asserted need for secrecy, "it can only be concluded that secrecy is not a legitimate basis to reassign the motion for return of property." *Id.* at 22.

Moving to the second issue concerning Judge Sarcione's authority to issue the underlying search warrants, the County cites Pa.R.Crim.P. 200 as dispositive. The County interprets Rule 200 as endowing a judge with authority to issue search warrants only in the locality from which he or she was elected. *See id.* at 23. In this case, since Judge Sarcione was elected in Chester County, the County argues it necessarily follows that he lacked authority to issue warrants in Lackawanna County. *See id.* Furthermore, the County rejects the OAG's attempt to analogize Judge Sarcione's powers as Supervising Judge to those of appellate judges, who undoubtedly may "issue search warrants anywhere within the state." Pa.R.Crim.P. 200, cmt. The County argues the statewide jurisdiction afforded to appellate judges is easily distinguishable, as they are elected to statewide office, whereas Judge Sarcione ***11** was not. *See* County's Brief at 26 n.10. As well, the County summarily discards the OAG's reference to collaborative arrangements between counties which permit visiting judges to exercise

the same power and authority as judges in the assigned district, because Lackawanna County is not party to any such agreement. *See id.* at 26.

The County finally dismisses the OAG's argument the Investigating Grand Jury Act and this Court's order appointing Judge Sarcione as Supervising Judge conferred upon him the power to issue search warrants coextensive with the jurisdiction of the 41st Statewide Investigating Grand Jury. As the County explains, the Investigating Grand Jury Act provides the investigating resources of the grand jury "shall include but not be limited to the power of [ ] subpoena, the power to obtain the initiation of civil and criminal contempt proceedings, and every investigative power **of any grand jury** of the Commonwealth." *Id.* at 24, *quoting* 42 Pa.C.S. § 4548(a) (emphasis supplied by the County). *See also* 42 Pa.C.S. § 4542 (describing the investigative resources of the grand jury). The County asserts that, since grand juries have no statutory authority to issue search warrants, the Investigating Grand Jury Act "does not trump or supplant Rule 200." *Id.* Similarly, the County argues that even though Section 4544(b)(2) and this Court's order granted Judge Sarcione statewide jurisdiction over all "proper activities" of the grand jury, the issuance of search warrants is not a "proper activity" of a grand jury and, consequently, "this section does nothing to enlarge the scope of authority conferred by Rule 200." *Id.* at 24-25. For these reasons, the County deems irrelevant the OAG's description of search warrants as ordinary investigative tools that may be used in addition to the express statutory powers conferred to investigating grand juries. *See id.* at 25. Whether this is true "changes nothing[,]" the County concludes, because Judge Sarcione "had no power under Rule 200 or any other rule or statute to issue a warrant in any other county." *Id.* [10]

III. Analysis

We find it helpful to address the issues presented in reverse order. We thus begin by considering whether Judge Sarcione, as Supervising Judge of the 41st Statewide Investigating Grand Jury, had authority to issue the search and seizure warrants for the County's property. [11]

***12** *a. Authority to Issue Search Warrants*

Article V of the Pennsylvania Constitution establishes a unified judicial system vested with the judicial power of the Commonwealth. PA. CONST. art. V, § 1. Although the Constitution does not enumerate every specific power inherent in courts and incidental to the grant of judicial authority under Article V, the Judicial Code serves to codify some of these non-particularized powers. Section 323 of the Judicial Code provides:

> Every court shall have power to issue, under its judicial seal, every lawful writ and process necessary or suitable for the exercise of its jurisdiction and for the enforcement of any order which it may make and all legal and equitable powers required for or incidental to the exercise of its jurisdiction, and, except as otherwise prescribed by general rules, every court shall have power to make such rules and orders of court as the interest of justice or the business of the court may require.

42 Pa.C.S. § 323. Section 912 of the Judicial Code similarly establishes that every court of common pleas "shall have power to issue, under its judicial seal, every lawful writ and process ... as such courts have been heretofore authorized by law or usage to issue[,]" and every judge of a court of common pleas "shall have all the powers of a judge or magisterial district judge of the minor judiciary." 42 Pa.C.S. § 912. And Section 1515 of the Judicial Code expressly states magisterial district judges shall have jurisdiction "to issue warrants and perform duties of a similar nature[.]" 42 Pa.C.S. § 1515(a)(4); *see also* 42 Pa.C.S. § 1123(a)(5) (same with regard to Philadelphia Municipal Court judges). Taken individually or together, these statutes make clear the issuance of a search warrant is a judicial power granted to common pleas court judges, among others.

[2] However, the judicial power to issue search warrants is not without limits. As the Superior Court observed more than thirty years ago, "the issuance of a search warrant is subject to the power of the Supreme Court to govern court procedures." *Commonwealth v. Dumont*, 370 Pa.Super. 155, 536 A.2d 342, 347-48 (1987). [12] And, in fact, this Court, being reposed with the supreme judicial power of the Commonwealth, including

the power to prescribe general rules governing practice, procedure, and the conduct of all courts, *see* PA. CONST. art. V, §§ 2, 10, has on multiple occasions exercised its rule-making power and adopted a number of rules pertaining to search warrants. *See, e.g.*, Pa.R.Crim.P. 200-212. Most germane to the present issue, and the subject of competing interpretations by the parties, is Rule 200. This Rule, as noted, provides that "[a] search warrant may be issued by any issuing authority within the judicial district wherein is located either the person ***13** or place to be searched." Pa.R.Crim.P. 200.

Generally, Rule 200 permits common pleas court judges to issue search warrants only in the judicial district in which they sit and only so long as the person or place to be searched is located within that judicial district. This conclusion necessarily follows from the Rule's express language, which tethers "issuing authority" — defined under Pa.R.Crim.P. 103 as "any public official having the power and authority of a magistrate, a Philadelphia arraignment court magistrate, or a magisterial district judge" — to the phrase "within the judicial district wherein is located either the person or place to be searched." Pa.R.Crim.P. 200. In this way, the Rule restricts the territorial jurisdiction in which an issuing authority may issue a search warrant to the judicial district in which the issuing authority sits, the parameters of which are generally the county. *See* 42 Pa.C.S. § 901(a) (establishing boundaries of judicial districts). [13]

This is not to say, however, that the definition of an "issuing authority within the judicial district" is strictly limited to officials whose commissions are linked to the judicial district where the property or person to be searched is located. *See* County's Brief at 23 (arguing a judge can only issue search warrants in "the locality from which he or she was elected"). Rather, we agree with the OAG that the inquiry more broadly turns on "whether the issuing authority in question has the power to issue the warrant in the particular judicial district." OAG's Brief at 36. *See* Pa.R.Crim.P. 200, cmt. ("Any judicial officer who is authorized to issue a search warrant and who issues a warrant is considered an 'issuing authority' for purposes of this rule."). Indeed, as the OAG aptly notes by way of example, this Court has expressly authorized president judges in certain judicial districts to assign judges to sit in districts where they were not elected, and those judges so assigned are empowered with the same rights as any other jurist in that district. *See* 204 Pa. Code §§ 29.101-29.105 (approving inter-judicial-district assignments to promote continuous judicial coverage and granting assigned judges "the same power and authority as are vested in a judge or district justice of the assigned district"). In a similar way, judges temporarily assigned from one judicial district to another pursuant to this Court's broad powers to make such assignments, *see* PA. CONST. art. V, § 10(a) and Pa.R.J.A. 701(C)(2), are authorized to "hear and determine any matter with like effect as if duly commissioned to sit in such other court." 42 Pa.C.S. § 4121(a). These examples serve to highlight that there are multiple ways in which an issuing authority may come to be "within the judicial district" for purposes of Rule 200.

***14** **[3]** The relevant question that remains, then, is whether Judge Sarcione, in his role as Supervising Judge of the 41st Statewide Investigating Grand Jury, was authorized to act in Lackawanna County. We conclude he was, and that his authority derived from this Court's order appointing him as Supervising Judge. Notably, our order expressly granted Judge Sarcione jurisdiction over all counties in the Commonwealth "[w]ith respect to **investigations**, presentments, reports, and all other proper activities of the [41st] Statewide Investigating Grand Jury[.]" Order, 12/9/2016, at 1-2 (emphasis added). In our view, this grant of statewide jurisdiction relative to "investigations" was sufficiently broad to include within its scope the power to issue search warrants sought in connection with and to further an investigation of the 41st Statewide Investigating Grand Jury.

[4] The County's arguments do not undermine this conclusion. The County focuses its efforts on explaining why the issuance of a search warrant is not a "proper activity" of the grand jury. *See, e.g.*, County's Brief at 24 (discussing 42 Pa.C.S. §§ 4542 and 4548(a) and concluding "[g]rand juries have no statutory authority to issue warrants"). Not only does this argument ignore the fact that this Court granted Judge Sarcione statewide jurisdiction with respect to "investigations" generally, but it also betrays a fundamental misunderstanding of the question involved. The issue is not, as the County contends, whether investigating grand juries have the power to issue search warrants; it is whether the judges who supervise grand juries possess that power. As we have explained, all common pleas court judges in this Commonwealth inherently possess the power to issue search warrants, subject only to this Court's power to govern court procedures. Nothing in the Investigating Grand Jury Act alters this paradigm or restricts the inherent powers of supervising judges. *See* *In re Investigating Grand Jury of Philadelphia County (Appeal of Drapczuk)*, 495 Pa. 186,

433 A.2d 5, 6-7 (1981) (concluding 42 Pa.C.S. § 4548(a) "in no respect provides, even implicitly, that the power[s] set forth [in the statute] are either exclusive to the grand jury or intended to displace valid, fundamental powers of the court").

Relatedly, we agree with the OAG that the Investigating Grand Jury Act is intended to expand, rather than narrow, the arsenal of investigative tools at the Commonwealth's disposal when conducting an investigation. The Act implicitly recognizes this principle by requiring the attorney for the Commonwealth to allege, prior to submitting an investigation to the grand jury, "that one or more of the investigative resources of the grand jury are required in order to adequately investigate the matter." 42 Pa.C.S. § 4550(a). We have commented this imposition of a jurisdictional predicate that "the normal law enforcement resources of [the Commonwealth] must be inadequate" before an investigation may be submitted to a grand jury is "[c]entral to the Act's purpose[.]" *In re County Investigating Grand Jury of April 14, 1981 (Appeal of Krakower)*, 500 Pa. 557, 459 A.2d 304, 307 (1983). It seems obvious that central purpose is to supply the Commonwealth with **additional** investigative tools — *i.e.*, the powers and investigative resources of the grand jury — so that it may ferret out criminal activity not otherwise able to be detected or effectively pursued through traditional law enforcement techniques alone. *See*, *e.g.*, *id.* ("the investigating grand jury has been given resources to enable it to investigate and gather evidence otherwise unobtainable"); W.R. LAFAVE *ET AL.*, CRIMINAL PROCEDURE, § 8.1(a) ("Utilizing its investigative authority, the grand jury uncovers evidence not ***15** previously available to the prosecution, and thereby provides the sword that enables the government to secure convictions that might otherwise not be obtained."). There was thus nothing improper about the OAG's practice of obtaining the search warrants from Judge Sarcione where its purpose was to further an ongoing investigation of the 41st Statewide Investigating Grand Jury. [14]

[5] In conclusion, we hold that where this Court appoints a common pleas court judge to supervise a multi-county or statewide investigating grand jury and empowers the judge to act in multiple judicial districts, that grant of authority includes the inherent power to issue search warrants in any of those districts, so long as the warrants relate to an investigation of the grand jury. Under those circumstances, the supervising judge is an "issuing authority" in those judicial districts as defined by Pa.R.Crim.P. 200. Here, Judge Sarcione possessed statewide jurisdiction with respect to all investigations of the 41st Statewide Investigating Grand Jury, and the search and seizure warrants for the County's property related to one of those investigations. Accordingly, Judge Sarcione was empowered to authorize the warrants. [15]

b. Authority to Hear Motion for Return of Property

[6] We now consider who may properly address the County's motion for return of property and we find the answer to this question is relatively simple: because the motion for return challenges the search warrants issued by Judge Sarcione, which in turn relate to the work of the 41st Statewide Investigating Grand Jury, the motion must be presented to Judge Sarcione in the first instance.

This conclusion directly follows from the language in this Court's order appointing Judge Sarcione as Supervising Judge. Once more, that order instructs "[a]ll applications and motions relating to the work of the [41st] Statewide Investigating Grand Jury — including motions for disclosure of grand jury transcripts and evidence — shall be presented to the Supervising Judge." Order, 12/9/2016, at 1. [16] The ***16** breadth of this directive is sweeping, covering all applications and motions generally relating to "the work" of the 41st Statewide Investigating Grand Jury. Although the County disputes that its motion fits within this category because it "does not reference or implicate grand jury testimony or any proceeding before the grand jury[,]" County's Brief at 18, the directive's scope is not as narrowly tailored as the County describes. Rather, under its plain terms, it applies broadly to any application or motion "relating to the work" of the grand jury. The County's motion for return of property falls within this reach, as it challenges the validity of the search warrants issued in connection with an investigation of the 41st Statewide Investigating Grand Jury and, if successful, the County's motion would deprive the grand jury of the very evidence it seeks to consider to further its investigation.

Moreover, under the County's view, parties could seek to obtain indirectly through the motion for return process that which they clearly would be prohibited from obtaining directly due to grand jury secrecy concerns. Indeed, despite the County's assertion at the hearing before the lower court that it does not "seek the affidavit[s] of probable cause" supporting the search warrants, N.T. 11/15/2017 at 7, the County pointedly argued in its motion for return that "[t]he search warrants are not carefully tailored, **supported**

by probable cause, nor circumscribed with particular exactitude." Motion for Return of Property, R.R. at 59a (emphasis added); *see id.* at R.R. 53(a) (declaring the search warrants unconstitutional "for their lack of particularity and their overbreadth"). These claims are undoubtedly aimed at the sealed affidavits of probable cause supporting the issuance of the search warrants, and a court will necessarily have to examine the probable cause basis set forth in those affidavits to adequately address the County's contentions. *See, e.g.*, *Commonwealth v. Waltson*, 555 Pa. 223, 724 A.2d 289, 292 (1998) (rejecting overbreadth challenge and explaining that "where probable cause exists to support the search of the area so designated, a warrant will not fail for lack of particularity") (citation omitted); *Commonwealth v. Grossman*, 521 Pa. 290, 555 A.2d 896, 900 (1989) ("[I]n any assessment of the validity of the description contained in a warrant, a court must initially determine for what items probable cause existed. The sufficiency of the description must then be measured against those items for which there was probable cause."). Consequently, the OAG's concern the County's motion for return will intrude upon protected grand jury matters is not merely theoretical; it is a certainty. And that is precisely why the Supervising Judge of the 41st Statewide Investigating Grand Jury must be the one to entertain it. *See generally In re Dauphin County Fourth Investigating Grand Jury*, 19 A.3d at 504 (explaining "the supervising judge has the singular role in maintaining the confidentiality of grand jury proceedings"). [17]

***17** Our final task is to determine the proper manner in which a motion for return of property relating to a search or seizure made in connection with a grand jury investigation is to be presented to the supervising judge of the grand jury. We find the most logical course in such circumstances is for the aggrieved party to file the motion in the court of common pleas for the judicial district in which the property was seized, as Pa.R.Crim.P. 588(A) demands, and for the Commonwealth to then move to have the matter as filed on that docket presented to the supervising judge.

[7] As we have said, when this Court grants supervising judges multi-county or statewide jurisdiction, they maintain the same power and authority as are vested in judges of the district where the search occurred and the motion for return is filed, at least with respect to matters relating to the grand jury's investigation. In this sense, a supervising judge has the same jurisdictional authority over the relevant county as any other judge in that district, and should exercise that jurisdiction to address the motion for return as originally filed on the appropriate common pleas court docket. If, upon being presented with the motion the supervising judge determines there are no outstanding concerns for grand jury secrecy — perhaps because the term of the grand jury has expired or an indictment has already issued — the judge may decline to hear the motion and it may instead be considered in the normal course under applicable rules and procedures.

This approach best accommodates Rule 588, our intent that all matters relating to the work of a grand jury be presented to the supervising judge, and the secrecy concerns attendant to grand jury matters. It also serves to further judicial economy. As this case demonstrates, any alternative to the supervising judge addressing a motion for return in the first instance will likely result in unnecessary delay caused by the Commonwealth's need to obtain permission from the supervising judge to disclose otherwise-secret grand jury material. This delay and uncertainty regarding what may be revealed in response to a motion for return is eliminated if the matter is first presented to the supervising judge, who is uniquely tasked with guarding the confidentiality of such matters. Accordingly, we conclude that when a motion for return concerns a search or seizure made in connection with a grand jury investigation, it is the supervising judge of that grand jury who must initially consider it, doing so upon the docket on which it was originally filed in the relevant county. [18]

*18 IV. Conclusion

In his role as Supervising Judge of the 41st Statewide Investigating Grand Jury, Judge Sarcione was empowered to issue search warrants in any judicial district, provided that the warrants related to an investigation of the 41st Statewide Investigating Grand Jury. Because there is no dispute the search and seizure warrants for the County's property related to such an investigation, Judge Sarcione was authorized to issue them. Further, because the County's motion for return of property challenges the validity of those search warrants, it relates to the work of the 41st Statewide Investigating Grand Jury and must be presented to the Supervising Judge, who shall adjudicate the motion or conclude it does not raise grand jury secrecy concerns. As the lower court reached the opposite conclusions, we vacate its order and remand for proceedings consistent with this Opinion.

Chief Justice Saylor and Justices Baer, Wecht and Mundy join the opinion.

Justice Donohue files a dissenting opinion in which Justice Todd joins.

JUSTICE DONOHUE, Dissenting

I respectfully dissent from the learned Majority's Opinion. In my view, it improperly grants an investigating grand jury with the authority to utilize search warrants in its investigations, not because the Investigating Grand Jury Act, 42 Pa.C.S. §§ 4541-4553 (the "Act"), confers any such power, but rather because the supervising judge, like any common pleas court judge, has the power to issue search warrants. In so doing, the Majority holds that the investigative powers of a grand jury are commensurate with the powers of the supervising judge and of law enforcement generally. The Majority ignores that the opposite is true, and that the sole source of the investigative powers of the grand jury is the Act. The Majority never engages in any statutory construction to determine what authority the General Assembly actually bestowed upon an investigating grand jury. As our recent jurisprudence firmly establishes, an investigating grand jury has no authority other than that conferred by the Act. *In Re: Fortieth Statewide Investigating Grand Jury*, 197 A.3d 712, 721 (Pa. 2018) (in Pennsylvania, "the investigating grand jury process is solely a creature of statute").[1] As we have recognized, there ***19** is "no authority to suggest that the [adoption of the Act] provided a license to go beyond that which the legislature explicitly and carefully delineated." *In re County Investigating Grand Jury of April 24, 1981*, 459 A.2d 304, 306 (Pa. 1983).

The question before us is an issue of first impression for this Court, namely whether the Act authorizes a grand jury to use search warrants as an investigative tool. Majority Op. at 6–7, 14–15. If it does, the supervising judge can issue the warrant. However, if the Act specifically defines the investigative tools of the Grand Jury and does not include the utilization of search warrants, then any authority the supervising judge may have as a common pleas court judge is totally irrelevant to the propriety of the issuance of a warrant. This is a straightforward question of statutory interpretation that requires us to construe the Act pursuant to our standard tools of construction. Because the Act specifically defines the investigative resources of the grand jury, and because search warrants are neither explicitly nor by implication included in those resources, I dissent from the Majority's contrary conclusion.

We must look to the Act to determine whether search warrants are an investigative resource available to the grand jury when it conducts an investigation. Pursuant to our canons of statutory interpretation, our goal is to "ascertain and effectuate the intention of the General Assembly." 1 Pa.C.S. § 1921(a). When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit. *Id.* § 1921(a). In ascertaining the intention of the General Assembly, we must presume that the General Assembly intends the entire statute, including all of its provisions, to be effective. *Id.* § 1922(2). The best indication of the General Assembly's intent is the plain language of the statute. *Malt Beverages Distrib. Ass'n v. Pa. Liquor Control Bd.*, 974 A.2d 1144, 1149 (Pa. 2009).

As a result, we must interpret the relevant language of the Act to discern the investigative powers of an investigating grand jury. Section 4548 of the Act provides, in relevant part, as follows:

> (a) General rule. – The investigating grand jury shall have the power to inquire into offenses against the criminal laws of the Commonwealth alleged to have been committed within the county or counties in which it is summoned. **Such power shall include the investigative resources of the grand jury which shall include but not be limited to the power of subpoena, the power to obtain the initiation of civil and criminal contempt proceedings, and every investigative power of any grand jury of the Commonwealth.** Such alleged offenses may be brought to the ***20** attention of such grand jury by the court or by the attorney for the Commonwealth, but in no case shall the investigating grand jury inquire into alleged offenses on its own motion.
>
> * * *
>
> (c) Other powers. – Except for the power to indict, the investigating grand jury shall have every power available to any other grand jury in the Commonwealth. The jurisdiction, powers and activities of an investigating grand jury shall not, if otherwise lawful, be limited in any way by the charge of the court.

42 Pa.C.S. § 4548(a), (c) (emphasis added).

Section 4548 thus provides that an investigating grand jury has the "power to inquire" into violations of the criminal laws of the Commonwealth, and that this power to inquire may be effectuated by the mechanisms included in the "investigative resources of the grand jury." Section 4548 then lists certain investigatory mechanisms that are included within the ambit of "investigative resources of the grand jury," specifically the power of subpoena, the power to obtain the initiation of civil and criminal contempt proceedings, and every investigative power of any grand jury of the Commonwealth. This list, however, is modified by the phrase "shall include but not be limited to." In this regard, it is first important to note that this phrase does not modify the "investigative resources of the grand jury," but rather modifies the specifically enumerated powers that follow that phrase. As such, the inclusion of the phrase "shall include but not be limited to" cannot be read to provide that grand juries have at their disposal the "investigative resources" set forth in the Act along with other non-specified powers not included in that section. Instead, by modifying the specifically listed investigative resources, the phrase connotes that the General Assembly merely intended that the powers specifically listed in section 4548 may not be exhaustive of all of the investigative resources of the grand jury. *See, e.g., Dep't of Envtl. Prot. v. Cumberland Coal Res., LP*, 102 A.3d 962, 976 (Pa. 2014) ("[I]t is widely accepted that general expressions such as "including," or "including but not limited to," that precede a specific list of included items are to be considered as words of enlargement and not limitation.").

If section 4548 was the only pronouncement as to what mechanisms are included within the "investigative resources of the grand jury," the phrase "shall include but not be limited to" might provide the Majority with some basis to argue that that search warrants are implicitly included in the non-exhaustive list set forth in section 4548. In civil cases, the phrase "shall include but not be limited to" would typically invoke the venerable statutory construction doctrine of ejusdem generis, pursuant to which other items may be included in the list if they are construed to be of the "same kind or class" as the specifically identified items. *Id.* (citing, e.g., *Steele v. Statesman Ins. Co.*, 607 A.2d 742, 743 (Pa. 1992)). No such analysis need be, nor may be, conducted here, however, because the General Assembly eliminated any question regarding the specific investigatory mechanisms included in "investigative resources of the grand jury" by explicitly defining the term in the definitional section of the Act:

> **Investigative resources of the grand jury.** The power to compel the attendance of investigating witnesses; the power to compel the testimony of investigating witnesses under oath; the power to take investigating testimony from witnesses who have been granted immunity; the power to require the production of documents, records and other evidence; the power to obtain the initiation of civil and criminal contempt proceedings; ***21** and every investigative power of any grand jury of the Commonwealth.

42 Pa.C.S. § 4542.

Based upon this definition, the exclusive list of statutorily designated "investigative resources of the grand jury" is as follows:

- the power to compel the attendance of investigating witnesses
- the power to compel the testimony of investigating witnesses under oath
- the power to take investigating testimony from witnesses who have been granted immunity
- the power to obtain the initiation of civil and criminal contempt proceedings
- the power to require the production of documents, records and other evidence
- every investigative power of any grand jury of the Commonwealth

The obvious, and for present purposes striking, observation from reviewing this list of investigative resources is **the absence of any reference to search warrants**. This result compels the application of a fundamental principle of

statutory construction, namely the doctrine of expressio unius est exclusio alterius, meaning that the expression of one thing is to the exclusion of others. *Atcovitz v. Gulph Mills Tennis Club, Inc.*, 812 A.2d 1218, 1223 (Pa. 2002). According to this doctrine, "the court may not supply omissions in the statute when it appears that the matter may have been intentionally omitted." *Commonwealth v. Spotz*, 716 A.2d 580, 590 (Pa. 1998). In short, if the General Assembly had intended for the issuance of search warrants to be an investigatory resource of investigating grand juries, it could easily have listed this resource in section 4542's definition of "investigative resources of the grand jury." Alternatively, it could have imbued investigating grand juries with "every investigative power of law enforcement in this Commonwealth." The General Assembly clearly did not do either of these things and thus we may not infer that it intended for search warrants to be an investigative resource available to the grand jury. *See, e.g.*, *Snyder Brothers, Inc. v. Pa. Util. Comm'n*, 198 A.3d 1056, 1071 (Pa. 2018) ("It is axiomatic that, 'if the General Assembly defines words that are used in a statute, those definitions are binding.' "); *see also* *Pa. Allstate Ins. Co. v. Heffner*, 421 A.2d 629, 630 n.4 (Pa. 1980) ("The definitions given by the legislature to the terms of a statute are controlling.").

In addition to the lack of any express reference to search warrants, their use is clearly not authorized by any of the investigative resources actually identified in section 4542. The first four items on the list plainly refer to the various subpoena powers of investigating grand juries. Rule 234.1(a) of the Pennsylvania Rules of Civil Procedure provides that a "subpoena is an order of court commanding a person to testify at a particular time and place. It may also require the person to produce documents or things which are under the possession, custody or control of that person." Pa.R.C.P. 234(a). The power to compel the attendance and testimony of investigating witnesses under oath, which, taken together with the power to obtain civil and criminal contempt procedures, amounts to the power to issue subpoenas and enforce compliance through contempt proceedings. The "power to take investigating testimony from witnesses who have been granted immunity" refers again to the power to issue and enforce subpoenas ad testificandum, and extends this power to include the power to request an order of immunity in order to ***22** facilitate a witness's testimony. [2] Section 4542 defines investigative tools of the grand jury to include the issuance of subpoenas duces tecum and ad testificandum.

The fifth item on the list, "the power to require the production of documents, records and other evidence," likewise does not authorize the grand jury to utilize search warrants to obtain information or evidence to assist in an investigation. The "power to require production" anticipates an action on the part of the **possessor** of the documents, records and evidence, i.e., to produce them to the grand jury. [3] A search warrant, conversely, requires no action by the possessor of the information or things. The execution of a search warrant is a seizure **from** the possessor, not a production **by** the possessor. A production of documents and other evidence by the possessor is accomplished by way of subpoena.

Finally, the investigating grand jury's power to utilize "every investigative power of any grand jury of the Commonwealth" does not authorize the use of search warrants. The only other grand jury of the Commonwealth is the indicting grand jury, which, unlike an investigating grand jury, is not a creature of statute. [4] As of 2012, the indicting grand jury's limited powers and procedures are delineated in the Pennsylvania Rules of Criminal Procedure. *See* ***23** Pa.R.Crim.P. 556–556.13. These rules imbue the indicting grand jury with many of the same powers of the investigating grand jury. For example, as with the investigating grand jury, the indicting grand jury's most significant power, and that which is explicitly provided by the rules of criminal procedure, is the power of **subpoena**. Pa.R.Crim.P. 556.11(A)(1) (authorizing grand jury to "inquire into violations of the criminal law through subpoenaing witnesses and documents"). As with the Act, our Rules of Criminal Procedure neither expressly nor implicitly provide that an indicting grand jury is empowered to utilize search warrants to obtain information, evidence or testimony to aid in its investigation.

As illustrated by the foregoing statutory analysis, the Act provides an investigating grand jury with various powers relative to subpoenas, but it does not provide the grand jury with the power to request, issue or execute search warrants. The Majority, without citation to the Act or resort to any rules of statutory construction, holds to the contrary. It reasons as follows:

> Relatedly, we agree with the OAG that the Investigating Grand Jury Act is intended to expand, rather than narrow, the arsenal of investigative tools at the Commonwealth's disposal when conducting an investigation. The Act

> implicitly recognizes this principle by requiring the attorney for the Commonwealth to allege, prior to submitting an investigation to the grand jury, "that one or more of the investigative resources of the grand jury are required in order to adequately investigate the matter." 42 Pa.C.S. § 4550(a). We have commented this imposition of a jurisdictional predicate that "the normal law enforcement resources of [the Commonwealth] must be inadequate" before an investigation may be submitted to a grand jury is "[c]entral to the Act's purpose[.]" *In re County Investigating Grand Jury of April 14, 1981 (Appeal of Krakower)*, 459 A.2d 304, 307 (Pa. 1983). It seems obvious that central purpose is to supply the Commonwealth with additional investigative tools — i.e., the powers and investigative resources of the grand jury — so that it may ferret out criminal activity not otherwise able to be detected or effectively pursued through traditional law enforcement techniques alone. *See, e.g., id.* ("the investigating grand jury has been given resources to enable it to investigate and gather evidence otherwise unobtainable")[.]

Majority Op. at 14.

With all respect due, nothing in the language of the Act provides that the General Assembly's intent was to "expand, rather than narrow," the investigative tools at the Commonwealth's disposal in the manner envisioned by the Majority. The pronouncement in section 4550(a) of the Act that a matter needs to be submitted to a grand jury because "one or more of the investigative resources of the grand jury are required in order to adequately investigate the matter," is not in any respect an implicit call to expand the investigative resources of the grand jury beyond those resources expressly provided in the Act. To the contrary, as this Court observed in the *Appeal of Krakower* decision cited by the Majority, section 4550(a)'s declaration signals that a grand jury is necessary because normal law enforcement resources are inadequate. Under the Act, an investigative grand jury possesses an important, and immensely powerful, investigative recourse not available to normal law enforcement – namely, the power to demand and procure information, evidence and testimony through its subpoena power. Unlike search warrants, subpoenas may be issued and enforced without any showing of **probable** ***24** **cause**. *Cf.* U.S. Const. amend. IV. (providing that search warrant shall issue only "upon probable cause[.]"); *Commonwealth v. Johnson*, 160 A.3d 127, 140 (Pa. 2017) (explaining that a search warrant is premised upon the existence of "a fair probability that evidence of a crime will be found in a particular place"). Through its subpoena power, an investigating grand jury may uncover evidence of criminal conduct that might otherwise elude law enforcement. The investigating grand jury can proceed on mere suspicion; law enforcement may not.

Given the powerful nature of this investigative tool available to the investigating grand jury, important pre-deprivation protections governing the issuance and enforcement of subpoenas were intended by the General Assembly to avoid encroachment on individual rights. As the United States Supreme Court observed, a subpoena "remains at all times under the control and supervision of a court[,]" and "[g]rand juries are subject to judicial control and subpoenas to motions to quash." *United States v. Dionisio*, 410 U.S. 1, 10, 12, 93 S.Ct. 764, 35 L.Ed.2d 67 (1973). Significantly, a witness resisting compliance with a subpoena can raise objections to production, all of which are asserted **prior** to providing the documents, evidence or testimony sought by the grand jury.[5] See *Robert Hawthorne, Inc. v. Cnty. Investigating Grand Jury*, 412 A.2d 556, 561, n.12 (Pa. 1980). This pre-deprivation review process also protects the investigation by allowing the Commonwealth to refashion subpoenas when credible challenges are lodged. *See, e.g.*, Wayne R. LaFave, et al., *Criminal Procedure,* § 8.3(c).

The Majority does not explain, nor does it follow, that granting an investigating grand jury the power to utilize search warrants when conducting an investigation in any respect expands the investigative tools at the Commonwealth's disposal. Normal law enforcement already has at its disposal the power to obtain evidence through the use of search warrants (where probable cause exists). Section 4550(a)'s reference to a need to use "one or more of the investigative resources of the grand jury" to investigate a matter may only be understood as a call for utilization of an investigative power unique to the grand jury under the Act – the power of subpoena to obtain information, evidence or testimony without a prior showing of probable cause.

The Majority further contends that "searches and subpoenas offer different advantages" and that "[t]he unique advantages offered by each investigative tool underscore why the Commonwealth may properly employ either or both in relation to a grand jury investigation." Majority Op. at 15

n.14. It is not the unique advantages of an investigative tool that renders it available to the grand jury. Instead, the ***25** source of the investigative powers available to the grand jury is the Act itself.

Less than one year ago, in *In Re Fortieth Statewide Investigating Grand Jury*, this Court forcefully recognized that the Act "reflects the legislature's ultimate policy decisions" with regard to grand jury practice (including "the manner in which it may receive and consider evidence"), and that as a result this Court "may not usurp the province of the legislature by rewriting" its provisions. *In Re Fortieth Statewide Investigating Grand Jury*, 197 A.3d at 721. The ultimate policy decision made by the General Assembly was to allow the grand jury to investigate without probable cause of criminal activity through its power of subpoena, but to require opportunities for pre-production objections to specific demands for information. This balance was struck by the General Assembly and it is not for this Court to rewrite the Act.[6] Today, however, the Majority does in fact rewrite the explicit definition of "investigative resources of the grand jury" in the Act to provide investigating grand juries with the power to utilize search warrants. In so doing, the Majority conflates the investigative tools available to **law enforcement** generally in conducting an investigation with the unique investigative tools of a **grand jury** provided under the Act to aid in its investigatory proceedings. The Majority imbues the grand jury with the judge's authority rather than acknowledge that the grand jury's existence and authority derives from the Act, and reads into the Act an additional grand jury investigative power not conferred by the General Assembly. As explained herein, the Act simply does not authorize the use of search warrants as an investigative tool that may be utilized by a grand jury.

For these reasons, I respectfully dissent. I would affirm the decision of the Court of Common Pleas of Lackawanna County.

Justice Todd joins this dissenting opinion.

All Citations

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Footnotes

1 *See* 42 Pa.C.S. § 4542 (in the context of the Investigating Grand Jury Act, defining the "Supreme Court" as the Chief Justice or another designated Justice).

2 Effective December 3, 2018, the Honorable Lillian H. Ransom, Judge of the Court of Common Pleas for the 1st Judicial District, Philadelphia County, assumed the role of Supervising Judge of the 41st Statewide Investigating Grand Jury. Although we specifically refer to Judge Sarcione throughout this Opinion, these references are properly understood as generally describing the Supervising Judge of the 41st Statewide Investigating Grand Jury.

3 We recognize the media has previously reported on certain aspects of the grand jury's investigation and Judge Sarcione has granted the OAG leave to disclose the existence and general focus of the investigation. *See* OAG's Response to County's Memorandum of Law in Support of Motion for Return, R.R. at 214a-215a. Nevertheless, because the nature of the grand jury's investigation is not relevant to the legal issues presented in this case, we do not discuss it.

4 Rule 588 provides, in relevant part:

> A person aggrieved by a search and seizure, whether or not executed pursuant to a warrant, may move for the return of the property on the ground that he or she is entitled to lawful possession thereof. Such motion shall be filed in the court of common pleas for the judicial district in which the property was seized.

Pa.R.Crim.P. 588(A).

5 As the OAG explains in its brief, Judge Braxton was appointed to hear the County's motion after the entire Lackawanna County bench recused from the matter. *See* OAG's Brief at 9 n.1. This court-wide recusal was necessitated by the fact the seized materials included copies of "emails for all agencies, departments, and institutions affiliated through the Lackawanna County email exchange server[,]" which included the Court of

Common Pleas. Declaration of Michael Brown, R.R. at 119a-120a. *See also* Letter from OAG Counsel to the County, 11/3/2017, R.R. at 131a (explaining the "email exchange databases had to be seized in their entirety due to the commingling of all county employees" but asserting it did not intend to search "[t]he content of any judicial emails or communications (or any other county office or department not related to the search warrant)").

6 In its response, the OAG asserted other arguments as well, including that the County's motion was improperly filed on a miscellaneous civil docket, rather than on a criminal docket. *See* Response to Motion for Return, R.R. at 126a-127a. Before this Court, the OAG explains it has "opted not to directly pursue [this argument] on appeal." OAG's Brief at 20 n.7. Accordingly, we do not discuss it further.

7 At the conclusion of the hearing, the court granted the County's request to file additional briefing. The County subsequently filed a memorandum of law in support of its motion on November 22, 2017. The OAG responded on December 7, 2017, and the County filed a reply on December 15, 2017. Because the substance of the parties' supplemental briefing is reflective of the arguments they present in their briefs to this Court, which we detail below, we do not recount those arguments here.

8 In contrast, the court found the OAG's reliance on *In re Investigating Grand Jury of Philadelphia (Petition of Miller)*, 527 Pa. 432, 593 A.2d 402 (1991), unpersuasive. In that case, this Court considered a challenge to a search warrant issued for the purpose of obtaining evidence "for use before the grand jury[,]" but the challenge was unrelated to the judge's authority to issue the warrant. *Id.* at 404.

9 In its brief, the County argues there is "no basis for the exercise of jurisdiction by this Court" and, instead, "appellate jurisdiction properly lies in the Commonwealth Court[.]" County's Brief at 2. We disagree. As we indicated in our order granting briefing in this matter, the lower court's ruling, which Judge Braxton certified for immediate appeal, affects an investigation conducted by the 41st Statewide Investigating Grand Jury. That being so, our jurisdiction over this appeal is secure, and our decision to permit the appeal is a matter of discretion. *See* Pa.R.A.P. 3331(a)(3) (directing that an appellate challenge to an order "directly affecting an investigating grand jury or any investigation conducted by it" is to be filed in the Supreme Court); *see also* 42 Pa.C.S. § 702(b) (specifying that, upon a lower tribunal's certification of a nonfinal order, the appellate court may, "in its discretion, permit an appeal"); Pa.R.A.P. 3331(a)(5) (providing for appellate review of order affecting grand jury matters where certification per 42 Pa.C.S. § 702(b) is entered).

10 The Pennsylvania Association of Criminal Defense Lawyers ("PACDL") has filed an *amicus curiae* brief in support of the County focusing "solely on the statutory construction of 42 Pa.C.S. § 4548 and 42 Pa.C.S. § 4542 and whether the Act grants to a supervising judge ... the authority to issue a search warrant." PACDL's Brief at 8. As the County does, PACDL concludes "the statutory powers of an investigating grand jury do not include the power to issue search warrants." *Id.* The OAG responds to both the County's and PACDL's arguments in its Reply Brief, wherein it reiterates many of the points raised in its principal brief.

11 We recognize the issue of whether Judge Sarcione was empowered to authorize the underlying search warrants arguably goes to the merits of the County's motion for return of property, and yet the lower court purported to "solely address proper jurisdiction." Trial Ct. Op., 5/11/2018, at 1. However, it seems clear to us the lower court implicitly decided the search warrant issue as well. *See id.* at 9 (concluding Pa.R.Crim.P. 200 and the absence of any mention of search warrants in the Investigating Grand Jury Act "support [the] County's position"). In any event, the parties have ably addressed the issue, and all recognize it is inseparably intertwined with the jurisdictional question presented. *See, e.g.*, OAG's Brief at 33 (the lower court's apparent agreement with the County on the search warrant issue "contributed to the Court's ultimate ruling" and "warrants addressing here"); County's Brief at 22-23 (the OAG's arguments regarding jurisdiction are "premised on the assumption that Judge Sarcione had authority to issue the warrants in the first place"); PACDL's Brief at 7 (the "core issue before this Court" is whether the power to issue search warrants is a power of the investigating grand jury; "[a]ll other matters ... are ancillary to that main issue"). For these reasons, we proceed to address both matters presented.

12 The *Dumont* Court explained its categorization of the issuance of a search warrant as procedural flowed from the definition of "legal process," sometimes referred to as "lawful process," which " 'means a summons, writ, **warrant**, mandate or other process issuing from a court." 536 A.2d at 347, *quoting* Black's Law Dictionary at 1085 (5th Ed. 1979) (emphasis supplied by Superior Court). We note the Judicial Code provides a similar definition of "process." *See* 42 Pa.C.S. § 102 (defining "process" as a "document evidencing a command of a court or of a magisterial district judge"). This Court has also generally recognized "the decision to issue a search warrant is a judicial decision." *PG Pub. Co. v. Com.*, 532 Pa. 1, 614 A.2d 1106, 1108 (1992).

13 We say "restricts" because there is some authority supporting the notion that, absent statutory or procedural rules to the contrary, a common pleas court judge's inherent judicial power to issue a search warrant extends statewide. *See* WASSERBLY, MOORE, & SCHNEIDER, WEST'S PA. PRAC., CRIMINAL PRACTICE § 19:9 ("In view of *Commonwealth v. McPhail*, 547 Pa. 519, 692 A.2d 139 (1997) (plurality opinion), which discussed the statewide jurisdiction of the court of common pleas under Article 5, § 1, of the Pennsylvania Constitution in a 'unified judicial system,' the power of a court of common pleas to issue warrants may theoretically extend outside its judicial district."); *see also Commonwealth v. Ryan*, 484 Pa. 602, 400 A.2d 1264 (1979) (recognizing a magisterial district judge has "at least" county-wide jurisdiction and therefore has power to issue a search warrant outside of the magisterial district but within the judicial district). *But see* 42 Pa.C.S. § 931 (explaining the process of the courts of common pleas "shall extend beyond the territorial limits of the juridical district[,]" but only "to the extent prescribed by general rule").

14 *Amicus* PACDL suggests the Commonwealth should not be able to seek search warrants in the context of a grand jury investigation because "the subpoena duces tecum mechanism can be utilized to procure the same information." PACDL's Brief at 25. *See* 42 Pa.C.S. § 4542 (including "the power to require the production of documents, records and other evidence" as an investigative resource of the investigating grand jury). To be sure, the "basic advantage of the grand jury stems from its ability to use the subpoena authority of the court" which, among other benefits over a search warrant, can issue without a showing of probable cause. LAFAVE, *supra* at § 8.3(a). But notwithstanding the advantages a subpoena offers, in certain investigations a search warrant may still be preferable or even necessary. *See id.* at § 8.3(c) n.19 (listing the benefits of search warrants as compared to subpoenas, such as eliminating the possibility the party in possession may destroy, conceal, or alter documents). The unique advantages offered by each investigative tool underscore why the Commonwealth may properly employ either or both in relation to a grand jury investigation. *See id.* at § 8.8(g) ("Since searches and subpoenas offer different advantages, prosecutors may appropriately use both search warrants and subpoenas to obtain related material in the same investigation, sometimes from the same party.").

15 To be clear, we hold only that Judge Sarcione was authorized to issue the search and seizure warrants for the County's property. We do not address any other challenges to the validity of the warrants raised in the County's motion for return of property.

16 Parenthetically, we note this particular directive is not required by the Investigating Grand Jury Act. *See* 42 Pa.C.S. § 4544(b) (mandating the inclusion of certain content in order convening multicounty investigating grand jury, but also explaining that "[a]ll matters to be included in such order shall be determined by the justice issuing the order in any manner which he deems appropriate").

17 Even if the County had not argued in its motion that it was challenging the search warrants on overbreadth or particularity grounds, we would reach the same result. Artful legal drafting cannot avoid the fact that, at bottom, any challenge to a search warrant issued in connection with an investigating grand jury affects the work of the grand jury and may require delving into secret grand jury matters. *See generally In re Fortieth Statewide Investigating Grand Jury*, 191 A.3d at 762 n.21 ("[T]o be effective, secrecy must extend to some range of matters beyond what happens before the grand jury in a grand jury room."); SARA SUN BEALE & WILLIAM C. BRYSON, GRAND JURY LAW & PRACTICE, § 5.6 ("If the disclosure of the documents in context reveals something about the grand jury's investigation, the policy of grand jury secrecy has been breached regardless of whether the documents on their face related directly to the grand jury's activities."). In

fact, since a motion for return necessarily requests relinquishment of the seized property, the rules governing secrecy will be directly implicated where the seized property has already been presented to the grand jury. *See, e.g.*, Pa.R.Crim.P. 229 (requiring supervising judge to establish procedures for supervising custody "[w]hen physical evidence is presented before the investigating grand jury").

18 Based on our disposition, we decline to endorse the OAG's alternative proposal to allow motions for return of property to be transferred to the docket associated with the underlying grand jury investigation. Our procedural rules do not contemplate the process envisioned by the OAG, and crafting a procedural mechanism of that scale is a function more appropriately reserved for our Criminal Procedural Rules Committee. Along those same lines, we believe it would be prudent for the Criminal Procedural Rules Committee to consider adopting a procedure requiring motions for return relative to property seized per warrants issued by a grand jury supervising judge to be filed on the docket for the grand jury investigation in the county in which the grand jury has been empaneled. In our view, such a procedure, if feasible, would most effectively facilitate this Court's intent that matters relating to grand jury proceedings be directed to the supervising judge. For now, we see no impediment to a supervising judge simply entertaining a motion for return as filed on the docket in the relevant county. Indeed, as the OAG points out, the County does "not address or contest" this proposed course. *See* OAG's Reply Brief at 13 n.4.

1 Though once creatures of common law, investigating grand juries' powers and procedures are now circumscribed by the Act. *In re County Investigating Grand Jury of April 24, 1981*, 459 A.2d 304, 306 (Pa. 1983) (citing *Robert Hawthorne, Inc. v. County Investigating Grand Jury*, 412 A.2d 556, 559 (Pa. 1980) (holding that grand jury investigation's legality was to be measured by the provisions and requirements of the Act, not the common law)). In *In Re: Fortieth Statewide Investigating Grand Jury*, we specifically held as follows:

> [T]he investigating grand jury process is solely a creature of statute, the Investigating Grand Jury Act, and, as such, the General Assembly has specified in detail therein a grand jury's duties and the procedures to be utilized in carrying out its designated tasks. The Act is therefore the product of a deliberative legislative process whereby various policy questions regarding the empaneling of an investigative grand jury, the duration of its existence, **the manner in which it may receive and consider evidence,** the circumstances under which it may issue a report, and the conditions under which that report may be disseminated to the public were carefully considered and evaluated by that lawmaking body. Accordingly, the various provisions of the Act governing the term and existence and operation of the grand jury – including the grand jury's receipt and consideration of evidence, its preparation of a report, and the role of the supervising judge – reflect the legislature's ultimate policy decisions on those matters. *See* 42 Pa.C.S. §§ 4545, 4546, 4548, and 4552. In responding to the present constitutional challenge, our Court may not usurp the province of the legislature by rewriting the Act to add hearing and evidentiary requirements that grand juries, supervising judges, and parties must follow which do not comport with the Act itself, as that is not our proper role under our constitutionally established tripartite form of governance.

In Re: Fortieth Statewide Investigating Grand Jury, 197 A.3d at 721 (emphasis added).

2 *See also* 42 Pa.C.S. § 5947 (further providing that the Attorney General or a district attorney may apply for an immunity order with regard to grand jury proceedings); *In re Martorano*, 346 A.2d 22, 23-24 (Pa. 1975) (describing process for obtaining immunity order and compelling testimony via contempt procedures).

3 Consistent with this understanding, Black's Law Dictionary (11th ed. 2019) defines subpoena duces tecum as a "subpoena ordering the witness to appear in court and to bring specified documents, records or things."

4 The indicting grand jury has a long history in Pennsylvania. In Pennsylvania, proceedings may be initiated by either criminal information ("a formal accusation filed by a prosecuting officer without the intervention of the grand jury") or a grand jury indictment. Ken Gormley, *The Pennsylvania Constitution: A Treatise on Rights and Liberties*, § 13.2[a], 422-423 (2004). The Pennsylvania Constitution of 1790 implicitly provided for the indicting grand jury by limiting the prosecution from proceeding against persons by information. It stated "[t]hat no person shall, for any indictable offence, be proceeded against criminally by information" except in

certain specific cases such as "by leave of the court, for oppression and misdemeanor in office." Pa. Const. of 1790 art. IX, § 10 (now in art. I, § 10); *see also* Gormley, at § 13.2[b], 424 (citing *Appeal of Hartranft*, 85 Pa. 433, 453 (1877) (Agnew, J. dissenting) (referring to the grand jury as "one of the boasted bulwarks of English liberty handed down to us, and protected by the Declaration of Rights. No man can be tried for a crime except upon a bill of indictment found by a grand jury.")).

In 1973, the Pennsylvania Constitution was amended to also allow courts of common pleas of each county, with the approval of the Supreme Court, to provide for the initiation of criminal proceedings by information. Pa. Const. art. I, § 10 (1973). As a result, the indicting grand jury fell out of practice. I have uncovered no authority providing that indicting grand juries had the power to obtain search warrants at common law.

In 2012, this Court, by way of the Pennsylvania Rules of Criminal Procedure, revived the indicting grand jury in response to the need to control witness intimidation occurring as a result of preliminary hearings. *See* Pa.R.Crim.P. 556-556.13; Pa.R.Crim.P. 556, cmt. (stating that "[t]his rule was adopted in 2012 to permit the use of an indicting grand jury as an alternative to the preliminary hearing" and explaining that this Court, simultaneous to the promulgation of the new rules of criminal procedure governing the indicting grand jury, issued an order "requir[ing] that each of the judicial districts must petition the Court for permission to resume using the indicting grand jury, **but only** as provided in these rules") (emphasis in original). Under the current iteration of the indicting grand jury, its rules and procedures are governed by our rules of criminal procedure.

5 Dissimilarly, the search warrant process does not allow adversarial pre-deprivation process or challenges. To the contrary, a challenge to the legality of a search warrant is brought after the search and seizure has occurred and results in the drastic remedy of suppression of illegally obtained evidence as well as the "fruits of the poisonous tree." *Commonwealth v. Fulton*, 179 A.3d 475, 489-92 (Pa. 2018). Seized documents can be immediately made available to the grand jury. Although a motion for the return of property is an available remedy to any persons impacted by the seizure, there is no protection from disclosure to the grand jury prior to its admission. Given the vulnerability of the grand jury process to abuses of power and the nature of the pre-deprivation process afforded to individuals subjected to subpoenas versus search warrants, it is eminently reasonable that the General Assembly deemed subpoenas, but not search warrants, as suitable grand jury investigatory resources.

6 The investigating grand jury context also demands greater secrecy than exists with regard to the execution of a search warrant. Secrecy is "indispensable to the effective functioning of a grand jury." *In re Dauphin Cnty Fourth Investigating Grand Jury*, 19 A.3d 491, 502-03 (Pa. 2011) (citing *In re Investigating Grand Jury of Phila. Cnty. (Appeal of Phila. Rust Proof Co.)*, 437 A.2d 1128, 1130 (Pa. 1981)). Issuance and service of a grand jury subpoena (unlike execution of a search warrant) may be accomplished discretely, without drawing public attention. *See* Pa.R.Crim.P. 114(B)(3)(a) and Pa.R.C.P. 234.2 (b)(1)-(3) (acknowledging methods of service for subpoenas, including by mail). By contrast, execution of a search warrant often involves a public show of force. *See* LaFave, Criminal Procedure, at § 8.3(c), n.23 & accompanying text (comparing subpoenas and search warrants as investigative tools, stating that subpoenas readily achieve goal of "keep[ing] from the target and the public the grounding for the selection of particular records and evidence" and in contrast to hearing on search warrant, "any hearing challenging the subpoena can be readily closed"); *see also* Pa.R.Crim.P. 207 (describing manner of entry into premises for purposes of executing search warrant). In this case, the execution of the search warrants garnered widespread public attention. Stacy Lange, Search Warrants Served for Lackawanna County Offices, WNEP.com, Sept. 21, 2017, https://wnep.com/2017/09/21/search-warrants-served-fo-lackawanna-county-offices/ ("It was a sight that shocked many passersby: troopers and agents out in force at the Lackawanna County Prison in Scranton pulling boxes and files from the place.").

In light of the publicity garnered by execution of search warrants and the secrecy required by the grand jury process, the Act instead envisions the use of subpoenas as the principal "investigative resource of the grand jury." 42 Pa.C.S. §§ 4542, 4548(a).

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