

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT – WAYNE COUNTY
CRIMINAL DIVISION

PEOPLE OF THE CITY OF LIVONIA,

Plaintiff-Appellee,

vs.

JANE JUN,

Defendant-Appellant.

Case No. 12-011442-01-AR

Hon. Richard M. Skutt

L/C Sixteenth District Court
No. 12L05694 OD-01

OPINION AND ORDER ON
DEFENDANT-APPELLEE'S APPEAL OF
MUTUAL DISCOVERY ORDER OF NOVEMBER 28, 2012

*At a session of the Court
held on January 3, 2013
at the Frank Murphy Hall of Justice
1441 St. Antoine, Detroit MI 48226
Present: HONORABLE RICHARD M. SKUTT*

This matter is before the court on Defendant's Interlocutory appeal of the Sixteenth District Court's November 28, 2012 Order Granting Mutual Discovery. Defendant Jun is charged with the misdemeanor offense of Operating While Impaired, second offense¹. Over defendant's objection, the District Court entered the Order Granting Mutual Discovery². The appeal of the district court's decision was filed and served on November 30, 2012, and there has been no response from the plaintiff in this matter.

¹ MCL 257.625(9)(b).

² Transcript of Pretrial Conference, November 28, 2012, at pp 5, 8-9.

Discovery in criminal proceedings is governed by MCR 6.201, which (on its face) is not applicable to misdemeanor proceedings³. Lest there be any question about the primacy of the Court Rules in this area, the Michigan Supreme Court ordered that "effective January 1, 1995, discovery in criminal cases heard in the courts of this state is governed by MCR 6.201 and not by MCL 767.94a; MSA 28.1023(194a). Const 1963, art 6, §5; MCR 1.104."⁴ This position has been repeatedly affirmed by decisions of the Supreme Court⁵.

After a Court of Appeals holding that MCR 6.201 applied to both felony and misdemeanor cases⁶, the Supreme Court issued a clarifying order "that MCR 6.201 applies only to criminal felony cases."⁷ Subsequent appellate court decisions have recognized the limitation of the Court Rule to felony cases only⁸; and, that there is no discovery in misdemeanor cases absent statutory or court rule authority⁹. In *Nickerson* the Court of Appeals specifically rejected the argument that a court has the inherent authority to order discovery. In its denial of leave to appeal in *Nickerson*, the Supreme Court noted, "As stated in the Staff Comment to the 2005 Amendment of MCR 6.610, the Court has declined to add a new MCR 6.610(F) providing for discovery in district court."¹⁰

A similar result was reached in *Hammond*¹¹ where the district court precluded witness testimony on behalf of a defendant who had not provided a witness list to the

³ MCR 6.001(B).

⁴ Administrative Order 1994-10.

⁵ *People v Phillips*, 468 Mich 583, 588-589 (2003).

⁶ *People v Sheldon*, 234 Mich App 68 (1999).

⁷ Administrative Order 1999-3.

⁸ *People v Greenfield*, 271 Mich App 442, 450 n6 (2006).

⁹ *People v Nickerson*, No 271459 (Ct App March 13, 2007).

¹⁰ *People v Nickerson*, 478 Mich 114 (2007).

¹¹ *People v Hammond*, No 291359 (Ct App, Oct 12, 2010).

prosecution. Following earlier case law the Court of Appeals found that "the district court erred in requiring defense counsel to fulfill a nonexistent duty of disclosure.

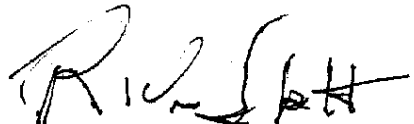
That is not to say that there are no discoverable materials in a district court misdemeanor proceeding. The statute under which defendant is being prosecuted requires that certain information be provided¹² and due process requires provision of exculpatory material¹³. However, there is no basis for the issuance of an expansive mutual discovery order as in this case.

Accordingly, as there is no statutory or rule based authority for discovery in misdemeanor cases, the district court has abused its discretion in entering the Order Granting Mutual Discovery.

IT IS THEREFORE ORDERED in lieu of Granting Leave to Appeal:

1. The decision of the district court entering the Order Granting Mutual Discovery is reversed; and
2. The matter is remanded to the district court for entry of an order granting discovery only of materials required by statute or such exculpatory materials as required by due process.

Dated: January 3, 2013



Circuit Judge

¹² *People v Lounsbury*, 246 Mich App 500, 503 (2001); MCL 257.625a(8).

¹³ *Brady v Maryland*, 373 US 83 (1963).