

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK RYAN NICKERSON,

Defendant-Appellant.

---

UNPUBLISHED

March 13, 2007

No. 271459

Lapeer Circuit Court

LC No. 06-008723-AR

Before: Servitto, P.J., and Talbot and Schuette, JJ.

MEMORANDUM.

Defendant appeals, by leave granted, a circuit court order denying his application for leave to appeal from a district court order granting plaintiff's motion to compel discovery. We reverse both orders, and remand this case to the district court for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with the misdemeanor offenses of operating a motor vehicle while intoxicated, second offense, MCL 257.625(9)(b), and possession of open intoxicants in a vehicle, MCL 257.624a. Plaintiff filed a motion to compel discovery in district court, arguing that the court had the inherent power to order discovery in a criminal case in order to prevent trial by "surprise and ambush." The district court granted the motion, and ordered defendant to provide plaintiff with a witness list not less than ten days before trial.

Defendant sought leave to appeal to the circuit court. He argued that MCR 6.201, which governs discovery in criminal cases, applies only to felony cases, and noted that our Supreme Court had clearly stated as much in Administrative Order (AO) No. 1999-3. The circuit court denied the application, reasoning that discovery aided the proper administration of justice, and noting that other jurisdictions had held that a trial court has the inherent authority to grant discovery beyond that allowed by statute in criminal cases.

We review a trial court's decision regarding discovery for an abuse of discretion, and review the interpretation of a court rule de novo. *People v Phillips*, 468 Mich 583, 587; 663 NW2d 463 (2003).

MCR 6.201 governs discovery in a criminal case. *Id.* at 589; AO No. 1994-10. In *People v Sheldon*, 234 Mich App 68, 70-71; 592 NW2d 121 (1999), this Court noted that AO No. 1994-10 made no distinction between felony and misdemeanor cases, and on that basis held that MCR

6.201 applied to misdemeanor cases. Thereafter, our Supreme Court issued AO No. 1999-3, in which it stated that this Court's decision in *Sheldon, supra*, was based on an "erroneous" interpretation of AO No. 1994-10, and that "MCR 6.201 applies only to criminal felony cases."

MCR 6.201(A)(1) mandates discovery of witness lists. However, because this rule applies only to felony cases (AO No. 1999-3; see also *People v Greenfield (On Reconsideration)*, 271 Mich App 442, 450 n 6; 722 NW2d 254 (2006)), the argument advanced by plaintiff, that a trial court has the inherent authority to order discovery even in the absence of a statute or court rule, is without merit. Furthermore, the circuit court's reliance on foreign authority was misplaced in light of the existence of clear Michigan authority on this issue. The district court thus abused its discretion by granting plaintiff's request for discovery. *Phillips, supra* at 587.

The decisions of the district court and the circuit court are reversed, and this case is remanded to the district court for further proceedings. We do not retain jurisdiction.

/s/ Deborah A. Servitto

/s/ Michael J. Talbot

/s/ Bill Schuette