

STATE OF MICHIGAN
IN THE MECOSTA COUNTY 77th DISTRICT COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

Case No. 15-45978-FY

v.

HON.

KEITH ERIC WOOD,

Defendant.

Attorney for Plaintiff
Office of Mecosta County Prosecutor
400 Elm Street, Room 206
Big Rapids, Michigan 49307
231-592-0141

Attorney for Defendant
David A. Kallman (P34200)
5600 W. Mount How Hwy.
Lansing, Michigan 48917
517-322-3207

MOTION TO QUASH SUBPOENAS
SERVED ON PROSECUTING ATTORNEY AND
ASSISTANT PROSECUTING ATTORNEY

Facts:

Defendant has served two subpoenas duces tecum on the office of the prosecutor in this matter. In the subpoenas, defendant orders that the attorneys (Brian Thiede and Nathan Hull) testify, and produce “[a]ll communications related to this case, including, but not limited to, written notes, e-mails, text messages, and voicemails, either sent or received to any Mecosta County employee and/or Mecosta County court employee, including, but not limited to, Magistrate Thomas Lyon and Judge Peter Jaklevic.”

Law and Argument:

Michigan Court Rule 6.201 discusses the scope of discovery in a criminal matter and requires the production of certain documents, statements, and tangible evidence upon request. Under the Rule, the only discoverable statements are those that are “written or recorded... pertaining to the case by a lay witness *whom the party may call at trial.*”¹ Unlike in civil cases, where discovery is limited only by relevancy and its ability to lead to admissible evidence, criminal discovery has a very specific scope. As pointed out in *People v. Greenfield*, 271 Mich. App. 442 (2006), “discovery in criminal cases is constrained by the limitations expressly set

¹ MCR 6.201(A)(2) (*emphasis added*).

forth in the reciprocal criminal discovery rule [MCR 6.201],”² An attorney’s “mental impressions, conclusions, opinions, or legal theories” (generally referred to as work-product) is a recognized privilege which is prohibited under MCR 6.201(C).³

The subpoenas provided by defendant demand information which is not discoverable in a criminal matter. To begin, the demand for communications “sent or received” is an improper request for attorney work-product in this matter. Any mental impressions, conclusions, opinions, or legal theories would be protected under the law and are not subject to defendant’s demands. In addition, the subpoena seems to be seeking a copy of any communications “related to the case” regardless of their relevancy to the criminal matter, and regardless of whether the “Mecosta County employee” may or may not be a witness for the People. This exceeds the scope of defendant’s right to discovery.

In addition, a subpoena *duces tecum* must specify with “as much precision and particularity as is possible” the records desired.⁴ Subpoenas *duces tecum* which seek to inquire into irrelevant matters should properly be quashed.⁵ Discovery under the law, no matter how liberally applied, cannot be construed to allow an “impermissible fishing expedition”⁶ Here, the defendant does just that in his demand for all communications to and from all Mecosta County employees regarding the criminal matter, regardless of their relation to the case. Defendant seeks to demand irrelevant emails and voice messages, and has provided no legal basis for this demand.

The Michigan Rules of Professional Conduct require that a “lawyer shall not act as an advocate at a trial in which the lawyer is likely to be a *necessary witness*”⁷ It is important to note that “attorneys are not necessary witnesses if the substance of their testimony can be elicited from other witnesses”⁸ In this matter, neither Brian Thiede nor Nathan Hull are necessary witnesses. In this case, any relevant or discoverable information to which the Prosecutor, or his Assistant may testify, can be elicited by multiple other witnesses. In *People v. Petri*, 279 Mich. App. 407, defendant sought to disqualify a prosecutor from handling a criminal matter on the

² *Greenfield* at 447.

³ MCR 6.201(C)(2); *People v. Gilmore*, 222 Mich. App. 442 at 450-452 (1997)

⁴ *Cross Co. v. Aunited Auto., and Agr Implement Workers of America, Local 155*, 377 Mich. 202 at 215-216 (1966)

⁵ *Millard for Use and Benefit of People v. Skillman*, 341 Mich. 461 (1951)

⁶ *Augustine v. Allstate Ins. Co.*, 292 Mich. App. 408 at 419-420; Quoting: *VanVorous v. Burmeister*, 262 Mich. App. 467 at 477 (2004).

⁷ MRPC 3.7 (*emphasis added*)

⁸ *People v. Tesen*, 276 Mich. App. 134 at 144 (2006)

basis that the defendant believed him to be a "necessary witness." The trial court denied defendant's request, and the Court of Appeals upheld the decision. The Court of Appeals reasoned that "[b]ecause defense counsel failed to offer any particularized basis concluding that the prosecutor's testimony would be material to the defense, we uphold the trial court's denial of the motion to disqualify" (id at 419). In this case, neither the Prosecutor, nor his Assistant would qualify as a necessary witness, and the subpoenas and orders to appear should be quashed.

WHEREFORE, the People hereby request that this Honorable Court QUASH the SUBPOENAS served on the office of the Mecosta County Prosecuting Attorney.

12/7/15


Nathan L. Hull (P72265)

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on Dec 7 2015

- By: U.S. Mail
- Hand Delivered
- Certified Mail
- FAX
- Overnight Courier
- Other:

Signature 

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IN THE MECOSTA COUNTY 77th DISTRICT COURT**

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Attorney for Defendant

David A. Kallman (P34200)

5600 W. Mount How Hwy.

Lansing, Michigan 48917

517-322-3207

**MOTION TO QUASH SUBPOENAS DUCES TECUM
SERVED ON MECOSTA COUNTY DISTRICT COURT JUDGE
AND MAGISTRATE**

Facts:

Defendant has served two subpoenas duces tecum on Mecosta County District Court Judge, Peter Jaklevic and Mecosta County Magistrate Thomas Lyons. Within the subpoenas is an order to produce certain documents.

Law and Argument:¹

Michigan Court Rule 6.201 discusses the scope of discovery in a criminal matter and requires the production of certain documents, statements, and tangible evidence upon request. Under the Rule, the only discoverable statements (relevant to this issue) are those that are “written or recorded... pertaining to the case by a lay witness *whom the party may call at trial.*”² Unlike in civil cases, where discovery is limited only by relevancy and its ability to lead to admissible evidence, criminal discovery has a very specific scope. As pointed out in *People v. Greenfield*, 271 Mich. App. 442 (2006), “discovery in criminal cases is constrained by the limitations expressly set forth in the reciprocal criminal discovery rule [MCR 6.201].”³

¹ In an effort to refrain from needless repetition, the People hereby incorporate the relevant legal arguments asserted in the accompanying Motion to Quash Subpoenas Served on Prosecuting Attorney and Assistant Prosecuting Attorney

² MCR 6.201(A)(2) (*emphasis added*).

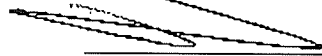
³ *Greenfield* at 447.

Defendant, in an apparent attempt to circumvent the criminal discovery rules, has sent the above listed subpoenas duces tecum. The subpoenas demand information which is not discoverable in a criminal matter. Defendant seems to be seeking a copy of any communications "related to the case" regardless of their relevancy to the criminal matter, which exceeds the scope of his right to discovery.

In addition, a subpoena tuces tecum must specify with "as much precision and particularity as is possible" the records desired.⁴ Subpoenas duces tecum which seek to inquire into irrelevant matters should properly be quashed.⁵ Discovery under the law, no matter how liberally applied, cannot be construed to allow an "impermissible fishing expedition"⁶ Here, the defendant does just that. He seeks to demand irrelevant emails and voice messages, and has provided no legal basis for this demand.

WHEREFORE, the People hereby request that this Honorable Court QUASH the SUBPOENAS, insofar as their request for production of materials, served on the Mecosta County District Court Judge, and Mecosta County Magistrate.

12/7/15



Nathan L. Hull (P72265)

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on Dec 7 2015

- By: U.S. Mail FAX
 Hand Delivered Overnight Courier
 Certified Mail Other:

Signature Cindy L. Sargent

⁴ *Cross Co. v. Aunited Auto., and Agr Implement Workers of America, Local 155*, 377 Mich. 202 at 215-216 (1966)
⁵ *Millard for Use and Benefit of People v. Skillman*, 341 Mich. 461 (1951)
⁶ *Augustine v. Allstate Ins. Co.*, 292 Mich. App. 408 at 419-420; Quoting: *VanVorous v. Burmeister*, 262 Mich. App. 467 at 477 (2004).