STATE OF MICHIGAN

IN THE COURT OF APPEALS

CITY OF PLYMOUTH,

Plaintiff-Appellant,

v

MICHAEL McINTOSH,

Defendant-Appellee.
_____/

Court of Appeals
Case No. 297614

Wayne Circuit Court
Case No. 09-026400-AR

35th District Court
Case No. 09-P335573A

BRIEF ON AMICI CURIAE MICHIGAN MUNICIPAL LEAGUE AND MICHIGAN TOWNSHIPS ASSOCIATION

PROOF OF SERVICE

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STATEMENT OF INTEREST

The Michigan Municipal League is a non-profit Michigan corporation whose purpose is the improvement of municipal government and administration through cooperative effort. Its membership is comprised of 521 Michigan local governments of which 450 are also members of the Michigan Municipal League Legal Defense Fund. The Michigan Municipal League operates the Legal Defense Fund through a board of directors. The purpose of the Legal Defense Fund is to represent the member local governments in litigation of statewide significance.

This brief amici curiae is authorized by the Legal Defense Fund's Board of Directors whose membership includes: the president and executive director of the Michigan Municipal League, and the officers and directors of the Michigan Association of Municipal Attorneys: Stephen K. Postema, city attorney, Ann Arbor; Randall L. Brown, city attorney, Portage; Lori Grigg Bluhm, city attorney, Troy; Eric D. Williams, city attorney, Big Rapids; Clyde J. Robinson, city attorney, Kalamazoo; James O. Branson, III, city attorney, Midland; James J. Murray, city attorney, City of Boyne City and Petoskey; Robert J. Jamo, city attorney, Menominee; John C. Schrier, city attorney, Muskegon; Andrew J. Mulder, city attorney, Holland; and William C. Mathewson, general counsel, Michigan Municipal League.

The Michigan Townships Association is a Michigan non-profit corporation whose membership consists of in excess of 1,230 townships within the State of Michigan (including both general law and charter townships), joined together for the purpose of

providing education, exchange of information and guidance to and among township officials to enhance the more efficient and knowledgeable administration of township government services under the laws and statutes of the State of Michigan. This brief amici curiae is authorized by the Board of Directors of the Michigan Townships Association.

STATEMENT OF THE ISSUES

I. IS A SECOND SWORN COMPLAINT REQUIRED TO BE FILED WITH THE TRIAL COURT WHEN DEFENDANT PLEAD NOT GUILTY BEFORE THE MAGISTRATE?

II. DO STATUTES TAKE PRECEDENCE OVER AND SUPERSEDE COURT RULES?

STATEMENT OF FACTS

Amici Curiae, the Michigan Municipal League and Michigan Townships Association, rely on the Statement of Facts as set forth in the Brief of Plaintiff-Appellant, City of Plymouth.

ARGUMENT

ONCE A SWORN COMPLAINT IS FILED WITH THE DISTRICT COURT, WHETHER BEFORE OR AFTER A PLEA OF "NOT GUILTY" TO AN OFFENSE COGNIZABLE IN THAT COURT, THE MATTER MAY PROCEED TO TRIAL.

The material facts of this case are repeated numerous times, every day, in every jurisdiction in the State of Michigan: An individual is observed by a police officer committing a criminal offense cognizable in the state district courts, the individual is issued a citation to which the officer has sworn to the charge and statements contained therein, and the citation commands the individual to appear before a judicial magistrate on a specified date. When the individual does appear before the magistrate on the scheduled date, he pleads not guilty and is prepared to proceed to trial on the charge. The question presented by this admittedly proper procedure is whether, upon a plea of not guilty, a prosecutor must then issue and file another "sworn complaint" and secure the issuance of an arrest warrant before the case may actually proceed to trial. As discussed in the Appellant Brief submitted on behalf of the City of Plymouth, such a procedure is not required by either the court rules or statutes of this state, would be redundant of the procedures utilized in this case, and would create unnecessary burdens on all parties without enhancing the fairness of the proceedings or promoting justice.

In the case at bar the issue arises in the context of a traffic offense. There is no dispute that the defendant, Michael McIntosh, was properly stopped, arrested, and charged with the misdemeanor crime of operating a motor vehicle while intoxicated, an offense punishable, *inter alia*, by imprisonment for no more than 93 days. There is no

dispute that Mr. McIntosh was given proper notice of the charge and that a signed and sworn written citation was filed with the district court, setting forth the details of the offense. There is no dispute that Mr. McIntosh appeared on the date scheduled for his arraignment, and that he pled not guilty to the charge. And there is no dispute that he was accorded a jury trial which resulted in a finding that he was guilty of driving while impaired. Mr. McIntosh argues, however, that his conviction was improper because, following his plea of not guilty, the prosecutor should have then been required to file a "sworn complaint" and an arrest warrant should have issued – alleged omissions that defendant's counsel did not note until the jury was in the midst of its deliberations and which did not effect the trial proceedings themselves. The district court disagreed with this assertion, finding that the jurisdiction of the court was established by the filing of the sworn citation and the defendant's appearance in court: No additional charging documents, and no arrest warrant, were necessary.

On appeal to the circuit court, however, the conviction was vacated because the filing of a sworn complaint by the prosecutor, and the issuance of an arrest warrant, were determined to be pre-requisites to trial following a plea of not guilty, although admittedly sufficient to procure a plea of guilt. Noting that the Michigan Court Rules do provide that a citation may serve as the sworn complaint required by MCL 764.9g(1), the circuit court nevertheless concluded that

> this permissive process of the court rule is null and void by virtual [sic] of MCL 764.9g when the defendant pleads not guilty and seeks a trial. The plea of not guilty activates certain due process requirement [sic]

> contemplated by a prosecutor's signed compliant [sic] and request for warrant.
>
> In this case, the prosecutor did not follow the clear and specific mandate of MCL 764.9g(1). Therefore, the court was without lawful jurisdiction to proceed to trial in this case. Defendant's conviction is vacated.
>
> (Opinion and Order, 3/21/2010, p 4)

In so ruling, the circuit court misinterpreted and misapplied the relevant Michigan statutes and court rules which require nothing more than was done in this case. Nor do the requirements of due process require more, or support the vacating of the defendant's conviction. On this appeal Mr. McIntosh asserts that "subsequent to his plea of not guilty, * * * constitutional and statutory procedures required a magistrate's finding of reasonable cause to believe that he committed the offense as charged in the sworn complaint." (Defendant/Appellee's Brief, p 3) He similarly argues that "the magistrate was required to issue an arrest warrant, authorized by the prosecutor, after the trial court's determination of reasonable cause" and that "Plaintiff/Appellant and the trial court have denied his fundamental due process rights, by failing to issue an arrest warrant in this case, after the presentation of a sworn complaint alleging the commission of an offense and upon a finding of reasonable cause by a magistrate that Defendant committed the offense." (Defendant/Appellee's Brief, pp 3-4) To the extent that Mr. McIntosh seeks to rely on his "fundamental due process rights," he was accorded all of the process to which he was due. Nor has he cited any authority which would suggest otherwise.

Indeed, Michigan case precedent, including *People v McGee*, 258 Mich App 683 (2003), is contrary to Mr. McIntosh's position. In *McGee, supra*, the defendant was

charged with making a false report of a felony, which charge was amended just before trial to add a count of perjury. The defendant complained that the allowance of the added charge, to which she was convicted, had violated both her statutory right to a preliminary hearing, as well as her due process rights. The Court of Appeals rejected each argument.[1] With regard to the question of due process, the Court explained:

> No person may be deprived of life, liberty, or property without due process of law. In a criminal case, due process generally requires reasonable notice of the charge and an opportunity to be heard. "A person's right to reasonable notice of a charge against him, and an opportunity to be heard in his defense - a right to his day in court - are basic in our system of jurisprudence; and these rights include, at a minimum, a right to examine the witnesses against him, to offer testimony, and to be represented by counsel." "Lack of adequate notice violates a defendant's right to due process and mandates reversal." But the constitutional notice requirement is not an abstract legal technicality; it "is a practical requirement that gives effect to a defendant's right to know and respond to the charges against him." So, to establish a due process violation, a defendant must prove prejudice to his defense. Whether an accused is accorded due process depend on the facts of each case. [citations omitted]
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> (258 Mich App, 699-700)

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[1] With regard to the alleged statutory right to a preliminary examination, the Court of Appeals held that the trial court had had jurisdiction to allow the amendment of the complaint, without a preliminary examination, when it had earlier properly acquired that jurisdiction as to the original charge. It further noted that while a preliminary examination might assist in fulfilling the constitutional requirement that the accused be informed of the nature of the charge, its principal purpose was to determine if there was sufficient evidence that a crime had been committed and that the defendant had committed it. However, as in the case at bar, the defendant had actually been convicted of the crime, the record had disclosed neither unfair surprise or prejudice, and defendant was simply complaining about the procedure which had omitted the "probable cause" phase. Thus, the Court observed: "In light of her conviction, defendant does not and cannot contend that the prosecutor would not have been able to establish the crime of perjury, or probable cause to believe defendant committed the crime." (258 Mich App, 696-697) Accordingly, and regardless of the procedural issue raised, the conviction could stand.

In the case at bar, as in *McGee*, the procedural issues raised do not implicate due process. As the *McGee* Court observed: "Defendant does not claim that the amended information was insufficient to invoke the constitutional protection against double jeopardy or to apprise defendant of the nature of the charges." (258 Mich App, 701)

Rather, and notwithstanding the invocation of due process principles, the question before the Court is controlled by Michigan's statutes and court rules. However, neither the statutes nor the court rules support the interpretation advanced by the defendant, or the relief accorded by the circuit court.

The Michigan court rules and statutes that have been promulgated to control the process applicable to the initiation and prosecution of criminal proceedings recognize a distinction between the treatment of felony charges and the treatment of misdemeanor charges, between the treatment of criminal charges that fall within the jurisdiction of the circuit courts and the treatment of criminal charges that fall within the jurisdiction of the district courts. Yet, the effect of the circuit court's ruling is to engraft the procedures intended for the initiation and prosecution of felonies onto all misdemeanor and ordinance violations, notwithstanding the clear intent of both the Supreme Court and the Legislature to simplify and facilitate the proceedings regarding misdemeanors. The ruling below is also directly contrary to the provisions of MCR 6.002:

> These rules are intended to promote a just determination in every criminal proceeding. They are to be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

Yet, the interpretation of the circuit court adds complexity, expense and delay to the procedures, without adding any fairness to the administration of criminal proceedings or promoting a just determination.[2]

MCR 6.001(A) and (B)[3] specify the court rules which govern matters of procedure in criminal cases cognizable in the circuit courts (referred to as felony cases), and those procedures applicable to criminal cases cognizable in the district courts (referred to as misdemeanor cases). Notably, most of the "preliminary proceedings" as set forth in MCR 6.101 through MCR 6.125 are not applicable to misdemeanor cases, including those that pertain to the issuance of complaints [MCR 6.101], arrest warrants [MCR 6.102(A), (B) and (C)], and preliminary examinations [MCR 6.110]. There is, for example, no provision for the holding of a preliminary examination, where a probable cause determination would be made, in cases cognizable in the district court. Yet, the procedure advocated by Mr. McIntosh would create the equivalent of such a requirement when a plea of not guilty is entered.

Of particular relevance to the circumstances presented in the case at bar, MCR 6.615 sets forth specific procedures applicable to "misdemeanor traffic cases." It provides that such a case may be commenced by one of two specified procedures, either

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[2] Indeed, the procedures advocated by the defendant in this case could significantly circumscribe the discretion of the prosecutor to, thereafter, dismiss the charges short of trial. See, e.g., *People v Glass*, 464 Mich 266, 278 (2001).

[3] MCR 6.001(B) provides: "**(B) Misdemeanor Cases.** MCR 6.001-6.004, 6.005(B) and (C), 6.006, 6.102(D) and (F), 6.106, 6.125, 6.427, 6.445(A)-(G), and the rules in subchapters 6.600-6.800 govern matters of procedure in criminal cases cognizable in the district courts."

of which is sufficient to invoke the jurisdiction of that court, and it is important to note the difference between these procedures which, on their face, closely resemble each other:

MCR 6.615(A)(1)(a) provides that a misdemeanor traffic case can be commenced by "[s]ervice by a law enforcement officer on the defendant of a written citation, and the filing of the citation in the district court." Indeed, in the case at bar the officer did serve Mr. McIntosh with a written citation, which citation was filed in the district court.

MCR 6.615(A)(1)(b) provides that a misdemeanor traffic case may also be commenced by "[t]he filing of a sworn complaint in the district court and the issuance of an arrest warrant," while further providing that "[a] citation may serve as the sworn complaint and as the basis for a misdemeanor arrest warrant." In other words, a citation may be utilized as the complaint required in order to secure an arrest warrant when such action is necessary to compel the accused to appear before the court, but it is not necessary to do so in order to commence the case when the procedures of §(A)(1)(a) are satisfied. As discussed below, the citation that was served on Mr. McIntosh in this case did meet the requirements of a "sworn complaint." It was also filed in the district court. And while it sufficed "as a basis for a misdemeanor arrest warrant," it was not necessary to use it in this way in this case because the offense was committed in the presence of the officer and there is no dispute that it was legally permissible to take Mr. McIntosh into custody without securing an arrest warrant. Further, MCR 6.615(A)(2) provides that the citation itself serves as a summons to command the initial appearance of the defendant and to secure a plea to the violation alleged. In the case at bar, Mr. McIntosh did appear

on the scheduled date, and he did enter a plea. Thus, no arrest warrant, issued pursuant to MCR 6.615(B), was necessary to secure either his presence or his plea.[4]

Since Mr. McIntosh appeared and pled "not guilty," the case at bar was a "contested case" to which the provisions of MCR 6.615(D) were pertinent. As relevant to this case, that court rule provided that the case could not be heard until a citation was filed with the court: "A contested case may not be heard until a citation is filed with the court." There is no dispute, however, that the citation *was* filed with the court and thus, there was no impediment to proceeding to trial following the plea of not guilty.

Moreover, this section further provides for the electronic filing of the citation, with the proviso that the court **may** require that a paper also be signed and filed: "If the citation is filed electronically, the court may decline to hear the matter until the citation is signed by the officer or official who issued it, and is filed on paper." While the citation in this case was filed electronically, the court did not exercise its discretion to require a paper filing. Thus, the final clause MCR 6.615(D)(1)[5] is not at issue and did not provide a permissible basis for the dismissal of the case.

Thus, pursuant to the pertinent court rules, the case against Mr. McIntosh was properly commenced, without the need for an arrest warrant to issue. When the pertinent statutory provisions are concerned, the result is no different. Moreover, these provisions

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[4] Thus, while one may argue that the case against Mr. McIntosh was commenced under §(A)(1)(b), the procedures of §(A)(1)(a) were also sufficient to commence it, thus securing the court's jurisdiction.

[5] "A citation that is not signed and filed on paper, when required by the court, may be dismissed with prejudice."

clearly distinguish between the "complaint" and the "warrant," although the arguments advanced by Mr. McIntosh treat them as one. But it is only when an arrest warrant is needed to secure the presence of the defendant that a complaint must be filed to initiate the procedures leading to the issuance of the warrant. Thus, MCL 764.1 distinguishes the methods used to procure arrest warrants for the apprehension of persons charged with crimes, depending on whether they have been charged with a "93-day offense". Further elaborating on these requirements regarding the issuance of arrest warrants, MCL 764.1a(1) provides that a warrant shall be issued by a magistrate when he is presented with "a proper complaint alleging the commission of an offense and a finding of reasonable cause to believe that the individual accused in the complaint committed that offense." Pursuant to §764.1a(2), the finding of reasonable cause may be based on, *inter alia*, the factual allegations of the complainant as set forth in the complaint. Similarly, §764.1d provides that a complaint "shall recite the substance of the accusation against the accused." These provisions do not, by their terms, require the issuance of complaints in all cases, but discuss the procedure for securing an arrest warrant when necessary.

Of note, §764.1e(1) provides that, for purposes of the preceding sections regarding the issuance of warrants, "a complaint signed by a peace officer shall be treated as made under oath if the offense alleged in the complaint is a misdemeanor or ordinance violation for which the maximum permissible penalty does not exceed 93 days in jail or a fine, or both, that was committed in the signing officer's presence or that was committed under circumstances permitting the officer's issuance of a citation under section 625a or 728(8)

of the Michigan vehicle code" **and** "if the complaint contains the following statement immediately above the date and signature of the officer: "I declare under the penalties of perjury that the statements above are true to the best of my information, knowledge, and belief." §764.1e(2) provides that a peace officer who knowingly makes a materially false statement is guilty of a felony and is in contempt of court, thus providing substantial penalties for any abuse of the procedure provided in these situations and an added assurance that these simplified procedures, which dispense with the prosecutor's signature, are appropriate. Thus, when these requirements are met, as they were in the case at bar, the statutory provisions allow for the issuance of an arrest warrant without the involvement of a prosecutor at this stage of the proceedings. Of course, when there is a plea of not guilty it will not be possible for the case to proceed to trial and verdict without the involvement of a prosecutor. But, unless there is reason to secure an arrest warrant, no additional documentation is necessary in order to proceed to trial. [The purpose of the arrest warrant is to compel the accused to appear before the court to answer the charge.]

Nor do the provisions of MCL 764.9a through 9g compel the procedure advocated by Mr. McIntosh. Indeed, contrary to the holding of the circuit court, these provisions provide even greater flexibility in the procedures utilized for 93-day offenses. §764.9a(1) provides an alternative to the filing of an order allowing the arrest warrant under MCL 764.1 when a minor offense is being charged, allowing the prosecuting attorney to "issue a written order for a summons addressed to a defendant, directing the defendant to appear before a magistrate * * * at a designated future time". §764.9a(3) provides that such a

summons may be served in the same manner as a warrant. The summons thus takes the place of the warrant, conserving judicial resources. Also, and importantly, it may also avoid the actual arrest and taking into custody of the accused, thus preserving the liberty for the accused and the resources of the police.

Another procedure intended to facilitate the procedures which may be utilized in some cases, as provided in 764.9c, is an "appearance ticket", which may be used when an individual has already been arrested without a warrant, and in lieu of bringing that person before a magistrate "without unnecessary delay". (MCL 764.13) Pursuant to §764.9c, with some exceptions not here relevant, "if a police officer has arrested a person without a warrant for a misdemeanor or ordinance violation for which the maximum permissible penalty does not exceed 93 days in jail or a fine, or both, instead of taking the person before a magistrate and promptly filing a complaint as provided in section 13 of this chapter, the officer may issue to and serve upon the person an appearance ticket as defined in section 9f of this chapter and release the person from custody."[6] This procedure also has the benefit of simplifying, facilitating and expediting the process, for the benefit of all parties. However, if the defendant who has been served with an appearance ticket does not appear, and pursuant to MCL 764.9e, the court may then "issue a summons or a warrant of arrest based on the complaint filed."

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[6] §764.9f defines "appearance ticket" as "a complaint or written notice issued and subscribed by a police officer or other public servant authorized by law or ordinance to issue it directing a designated person to appear in a designated local criminal court at a designated future time in connection with his or her alleged commission of a designated violation or violations of state law or local ordinance for which the maximum permissible penalty does not exceed 93 days in jail or a fine, or both. * * *"

§764.9d provides that (except as provided by sections 9f and 9g), if a police officer has issued and served an appearance ticket, at or before the time it is returnable, he "shall file or cause to be filed in the local criminal court in which it is returnable a complaint charging the person named in the appearance ticket with the offense specified therein." As discussed above, a complaint signed by a police officer which is consistent with the provisions of §764.1e suffices as the complaint, and if it is filed, the provisions of §9d are satisfied. So too, such a complaint satisfies the provisions of MCL 764.9g(1), which provides:

> (1) When under the provisions of section 9b or 9c an officer issues an appearance ticket, an examining magistrate may accept a plea of guilty or not guilty upon the appearance ticket, without the necessity of a sworn complaint. If the offender pleads not guilty, no further proceedings may be had until a sworn complaint is filed with the magistrate. A warrant for arrest shall not issue for an offense charged in the appearance ticket until a sworn complaint is filed with the magistrate.

Thus, an appearance ticket suffices, without the necessity of a sworn complaint, in order to permit the magistrate to accept a plea from the defendant. However, if the plea is "not guilty" it is necessary that there be a "sworn complaint" filed before further proceedings may be had. An appearance ticket is not, itself, a "sworn complaint," but if it conforms to the provisions of §764.1e, and is made under oath, the appearance ticket not only suffices as a "complaint," but also as a "sworn complaint" so as to allow further proceedings to be had and, if a warrant for arrest becomes necessary, for the issuance of that warrant. By its terms, the critical phrase, "[i]f the offender pleads not guilty, no further proceedings may be had until a sworn complaint is filed with the magistrate" does

not mandate that further documentation be provided if a "sworn complaint" has already been filed.

In the case at bar, there can be no dispute that a "sworn complaint" was filed with the magistrate and it matters not whether it was filed before, or after, the magistrate took the defendant's plea.

As the appellant, City of Plymouth, has argued, the procedures mandated in both the statutory law and the court rules were satisfied in this case. Those procedures provided a fair and efficient process which placed minimal burdens on both Mr. McIntosh individually, and on the system of justice. Contrary to his argument, following his plea of "not guilty" to the traffic offense of which he was charged and as to which he appeared before a judicial magistrate, Mr. McIntosh was not entitled to be arrested pursuant to an arrest warrant authorized by a prosecutor; nor was he entitled to the magistrate's determination of reasonable cause.

RELIEF REQUESTED

Amici, the Michigan Municipal League and Michigan Townships Association, respectfully request that this Court reverse the opinion of the circuit court and affirm the holding of the trial court.

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PROOF OF SERVICE

Proof of Service: I certify that a copy of a **BRIEF ON AMICI CURIAE MICHIGAN MUNICIPAL LEAGUE AND MICHIGAN TOWNSHIPS ASSOCIATION; PROOF OF CONSENT TO ESERVE** and this **PROOF OF SERVICE** were served on the following attorneys of record by ■ eservice and ■ regular email at their respective email addresses shown below.

Date of Service: October 25, 2010

Signature: /s/ Enis J. Blizman
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