

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PEOPLE OF THE STATE OF MICHIGAN,

vs

Case No. 19-272593-FC

NICHOLAS MAXIMILLIAN REMINGTON,

Defendant.

STATUS CONFERENCE

BEFORE THE HONORABLE VICTORIA A. VALENTINE

PONTIAC, MICHIGAN - TUESDAY, MAY 18, 2021

APPEARANCES:

For the People:

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For the Defendant:

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WITNESS

PAGE

(None.)

EXHIBITS:

(None offered.)

1 Pontiac, Michigan

2 Tuesday, May 18, 2021

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4 (At 9:05 a.m., proceedings convened.)

5 THE CLERK: Your Honor, now calling the case
6 People v Remington, 2019-272593-FC.

7 MR. KEAST: Thank you. Good morning. Marc
8 Keast on behalf of the People.

9 THE COURT: Mr. Rockind.

10 MR. ROCKIND: Neil Rockind for Nicholas
11 Remington. Good morning.

12 THE COURT: Okay. What's the status, please?

13 MR. KEAST: Judge, we were here, well probably
14 about a month ago now, for a motion argument and a ruling
15 from the Court. It's my understanding that the Court was
16 going to issue a written opinion regarding the remand. In
17 the meantime, the Court had set this status conference
18 about 30 days out so I could ensure that I have all
19 discovery tendered to defense counsel.

20 I did meet with the officer in charge, I believe
21 last week or the week prior. I filed a pleading with the
22 Court indicating that I met with the officer in charge. I
23 reviewed his file, compared it with my file, and tendered
24 all discovery to defense counsel. All discovery at that
25 point was complete. There was one document, I believe,

1 that had not been turned over. It was a screenshot of a
2 Snapchat. I could not --

3 THE COURT: Just so I'm understanding, this is
4 an additional item that you still haven't turned over or
5 you did now?

6 MR. KEAST: No, I have, after I met with the
7 detective.

8 THE COURT: Okay.

9 MR. KEAST: I couldn't confirm from my own file
10 if that had been sent to defense, so I sent it to
11 Mr. Rockind. I sent him an email, as well as Mr. Lewis.
12 And then I filed what I titled as People's statement of
13 complete discovery, as of May the 4th, 2021. So that is
14 where we are today.

15 THE COURT: What was the additional Snapchat?

16 MR. KEAST: I had, looking at the document I
17 filed, Judge, I met with the officer in charge at my
18 office, May the 4th. Upon request, Detective Balog brought
19 his entire file with him to the meeting. I had already
20 requested Novi Fire Department, and they're called run
21 sheets, the EMS report, and any fire department report, so
22 I obtained that on that date as well. That was also
23 tendered.

24 I also found in his file a two-page screenshot
25 of a Snapchat conversation between witness Matt Harrington

1 and the defendant. That screenshot was referenced in the
2 report, but the actual screenshot had not been turned over
3 to the prosecutor's office, so I obtained that and turned
4 it over to counsel.

5 THE COURT: Okay. Mr. Rockind.

6 MR. ROCKIND: So I can't really take issue with
7 any of that. I don't agree that all discovery has been
8 provided. So I want to -- and I have to draw a
9 distinction, and it's a distinction that the Court drew
10 when we were here previously before you, and I think one
11 that I addressed in my responsive filing to -- I think the
12 date of my pleading was May 7th, we filed a pleading at
13 around 11:58 a.m.

14 So I have -- I'm not in a position, nor do I
15 think it's warranted, to excuse or to make excuses for
16 Detective Balog. I'm not in a position to say that, and I
17 told Mr. Keast this and I want to make it real clear, I'm
18 not faulting Mr. Keast or the current administration with
19 any of the discovery or Brady failures that occurred
20 during this case prior to Mr. Keast taking over the case.
21 But those Brady failures are still, in my opinion, there
22 are still question marks and there are still concerns and
23 those Brady and discovery failures lay at the feet of,
24 according to Brady, either the prosecutor who handled the
25 case, which in this case was Ms. Hand, or anybody within

1 her sphere of influence or within her sphere of control,
2 which is from Brady, and that included Detective Balog.

3 And I'm not going to relitigate all of the
4 issues that we raised with you about the odd timing of
5 interviews, the appearance of concerted action to
6 interview a 404(b) witness long before there's a trial, to
7 interview a witness and then have no notes of the
8 interview, and then that witness -- no documentation. I
9 mean, Detective Balog is there to memorialize an interview
10 but there's no notation of the interview, no record of the
11 interview, no documentation. And he only prepared,
12 basically a three-line report, 17 months later, when I
13 brought that issue to Mr. Keast's attention and he
14 directed Detective Balog to prepare a report. You just
15 can't tell me that that's coincidence. I don't buy that.
16 That's just not --

17 THE COURT: We have discussed this. There's one
18 thing that Mr. Keast did not indicate that I believe I
19 made a record of that was perhaps not clear enough, but I
20 wanted you to meet with Ms. Hand and get an affidavit from
21 Ms. Hand that everything had been turned over.

22 MR. KEAST: Judge, that's something that counsel
23 and I discussed, and I had honestly been waiting for the
24 Court's order regarding that. When I tendered my pleading
25 to the Court I also, you know, informed Mr. Rockind and

1 Mr. Lewis that that's what I was going to be doing. He
2 indicated to me that it was his belief that the Court
3 ordered an affidavit, that I meet with Ms. Hand. I did not
4 -- I guess I either didn't understand that to be the
5 Court's order or I misheard the Court. So I was seeking
6 some clarification from the Court today. And if that is
7 part of the order, I certainly will do that, Judge.

8 And I did want to point out that Mr. Rockind did
9 also state that to me, but when we spoke last week I said,
10 well, let's speak with Judge Valentine just to make sure
11 that that was the course of action the Court prefers.

12 MR. ROCKIND: And Judge there was -- I apprised
13 Mr. Keast that I -- the reason I filed a responsive
14 pleading to Mr. Keast's update was I wanted, not that the
15 Court would forget, but I wanted to continue to make a
16 record that I thought the Court had asked some very good
17 questions when we were before Your Honor previously. As
18 you know, my position was that this discovery failure and
19 the Brady issues here warranted dismissal.

20 The Court, at the time, didn't agree, then
21 ordered that Mr. Keast would have to, that was my
22 recollection, would have to get -- not just to review the
23 discovery, but your concern was, what else is out there
24 that wasn't memorialized or recorded, and the only way
25 that you could begin to address what wasn't memorialized

1 or recorded, in other words what was share verbally or
2 what was said to one another, or what was agreed not to
3 put into writing or agreed to reduce to writing, would be
4 for Detective Balog and for Ms. Hand to have to provide
5 affidavits.

6 And I don't believe there's an affidavit from
7 Detective Balog as of this point. And I know there's not
8 an affidavit from Ms. Hand. I will say that in our
9 pleading, I did make mention of that to Mr. Keast, and I
10 appreciate the Court reminding -- I shouldn't say this,
11 but I appreciate the Court having a recollection that that
12 was a portion of the remedy that you had -- that you were
13 going to order.

14 And on page 2 of my responsive pleading, I noted
15 that there was still a gap, a hole, there's still a piece
16 of exculpatory evidence that is missing from -- that has
17 not been disclosed. And it would not be contained within
18 the Novi Police Department's file. I mean, it should be,
19 but it's not. And that is that there was a meeting in
20 early 2020 between Ms. Hand, a res gestae witness named
21 Paul Wiedenmeyer, who's actually an eyewitness, and an
22 unknown third person. This was discussed previously before
23 Judge Alexander. Judge Alexander had directed Ms. Hand
24 that that would have to be disclosed. Ms. Hand said, well,
25 we haven't disclosed it yet. And then he said, well, you

1 have to.

2 And then despite, you know, requests, there's
3 been no documentation, no notes or any other information
4 about that meeting. There's no contemporaneous notes about
5 the meeting. I mean, frankly, at this point, I will be
6 impressed if Ms. Hand and whomever was there even
7 acknowledge the meeting, although I'm sure -- I don't want
8 to be a cynic, but I'm anticipating -- again, I'm not
9 faulting Mr. Keast or Ms. McDonald. I'm saying I'm
10 anticipating that what I'll get is going to be sort of an
11 acid-washed version of what actually took place, but we'll
12 have to wait and see.

13 Again, I don't fault Mr. Keast for that. I don't
14 fault Ms. McDonald for that. I say that because I think
15 that the recent history of calling into question a case
16 from 14 years ago, I think reveals their interest in, and
17 their willingness to examine whether there's been
18 potential misconduct in prior cases. And I'm not in a
19 position to say whether there was or there wasn't in that
20 case 14 years ago, but I think it's important to note
21 that, again, I'm not faulting Ms. McDonald or Mr. Keast.

22 But that interview was not memorialized. It was
23 never disclosed by Ms. Hand. There's no recording of it.
24 It has never been mentioned. It's not mentioned in the
25 Novi Police Department file apparently. And I think that's

1 important because that should, I think, to go in a circle
2 but with a point, reveal to the Court that a review of the
3 Novi Police Department's file does not resolve --

4 THE COURT: I never thought it did.

5 MR. ROCKIND: Whether everything --

6 THE COURT: The only person who has the
7 information of everything that's out there, I think would
8 possibly be Ms. Hand, and the person with the obligation
9 would be Ms. Hand. So that's why I requested the
10 affidavit, Mr. Keast, with Ms. Hand. And I think I
11 mentioned at the last hearing that I thought that would be
12 a precarious position to put you in, and I apologized
13 because you have no idea whether or not the information
14 she's providing is accurate or not because you weren't
15 involved. So if it's not in your file, I don't know how
16 you would determine it, but that's why I wanted the
17 affidavit from Ms. Hand.

18 Also, your opinion is completed. I'm going to
19 hold it for another day. I wanted to go through the
20 preliminary exam transcript. I have, I think, both parts
21 now. I only had one previously. I will tell you that the
22 Snapchat information will be excluded. As far as anything
23 from the (indiscernible) account, that's going to be
24 excluded. I just can't find any -- I can't find anywhere
25 where it would be reliable at this point.

1 MR. ROCKIND: Thank you, Judge.

2 MR. KEAST: Judge, I'm sorry, just so I'm clear
3 -- well, I suppose we could wait for the opinion too, but
4 just the question I had for the Court; counsel had
5 requested exclusion of the Snapchat account as a remedy
6 for Brady violations. We had yet to argue the reliability
7 of, and foundation of the Snapchat argument. Is that, I
8 guess asking the Court to show the Court's hand at this
9 point, is that the ruling, that it's based upon the Brady
10 violation, or is it on the reliability of the records
11 themselves?

12 THE COURT: I understand, and it's cited as the
13 fact that it is a remedy with regard to the Brady
14 violation, I'm more -- I would say in my mind it was more
15 the thought process of it just can't be reliable based
16 upon the arguments that Ms. Hand was making to the court
17 at the exact same time that she had information otherwise.
18 It's just not reliable, in my opinion.

19 MR. ROCKIND: I appreciate that, Judge.

20 What's interesting is that the, just so you
21 know, the screenshot that was provided to us that we never
22 observed or never received, we've analyzed that screenshot
23 in depth, and I will share with you that our analysis is
24 that screenshot actually corroborates that the Snapchat
25 logs that were provided by the prosecution previously,

1 which were actually in an Excel spreadsheet, which were
2 modifiable and capable of being modified and added to,
3 that those -- that further -- we believe that the Snapchat
4 provided to us, that screenshot, was further exculpatory
5 evidence and it further undermined the reliability of the
6 actual Excel spreadsheet and of the Snapchat records.

7 MR. KEAST: Just so I'm clear, I want to make
8 sure that when the Court issues the order, we're talking
9 about two different things. And that's why -- I'm not
10 trying to split hairs here, but there was an argument
11 counsel made in the motion filed and response by Ms. Hand,
12 that the Snapchat, by nature of the fact that they are
13 deletion by default, I think that's the line counsel used,
14 were not reliable. And because of the certification of
15 authenticity that was filed by Snapchat complied with the
16 Federal Rules of Evidence as opposed to Michigan Rules of
17 Evidence.

18 But we haven't addressed that on the record, so
19 I just want to -- I hate to just keep coming back on the
20 same argument, that's why I'm bringing it up, Judge.

21 MR. ROCKIND: Is the Court going to address
22 those things in its ruling, Your Honor?

23 THE COURT: No, I didn't get into whether or not
24 the Snapchat is a business record, whether or not -- in
25 other cases. I mean, if you look at all of them -- and I

1 do a lot of research with regard to the issues in this
2 case because of the fact that they are, I guess probably
3 people don't see them very much. And, you know, I just
4 want to be fair to both parties. I think you're both in a
5 bad position. And Mr. Keast, I think I'm a little bit more
6 sympathetic to your position because you didn't put
7 yourself where you are.

8 MR. KEAST: I appreciate that.

9 THE COURT: With regard to, you know, Snapchat,
10 it's not that they're always unreliable. You can, you
11 know, have someone testify as to the issues with regard to
12 if it's their account, etc., and that they had control
13 over it. That's not what happened here. That's just
14 absolutely what flies in the face of deceit to the Court,
15 is that it was not in the control of the defendant at the
16 time that the arguments were being made. And that was the
17 majority of the basis for the argument that Ms. Hand was
18 making. And you'll see the citations in the opinion.

19 (Indiscernible) Mr. Rockind to reopen anything,
20 that all of the -- that the record was complete with
21 regard to the Snapchat, etc. So, you know, yes, I can use
22 it as a sanction, but I don't find it reliable to begin
23 with. If I did find it reliable, would I use it as a
24 sanction; I don't know. I cited both, but I don't find it
25 reliable.

1 MR. ROCKIND: All right. Well, thank you,
2 Judge.

3 MR. KEAST: We'll review the opinion.
4 Should we have a status conference again,
5 perhaps, after the parties have had an opportunity to
6 review that, and see where we stand?

7 THE COURT: Sure. I gave you 14 days from the
8 date of the order. I'll probably issue it today or
9 tomorrow. There's one more thing I wanted to look at. But
10 the -- I gave you 14 days from the date of the order for
11 the affidavits, and I gave you 10 days from the date of
12 the order -- I can't remember for what, but I know there's
13 10 days in there.

14 Mr. Busch, do you happen to recall?
15 Well, anyway, you'll get it today or tomorrow.

16 MR. ROCKIND: All right, Your Honor.

17 MR. KEAST: Fair enough, Judge.

18 MR. ROCKIND: Thank you very much, Your Honor.

19 THE COURT: Anything else? I did push it back
20 down to the district court with a new judge as well.

21 MR. ROCKIND: Okay, Your Honor.

22 MR. KEAST: Thank you, Judge. I'll coordinate
23 with the 52-1 District Court and defense counsel.

24 THE COURT: Okay.

25 MR. ROCKIND: Thank you very much, Your Honor.

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THE COURT: Thank you.

MR. KEAST: Thank you for your time.

(At 9:20 a.m., proceedings concluded.)

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CERTIFICATION

I certify that this transcript, consisting of 16 pages, is a true and accurate transcription, to the best of my ability, of the video proceeding in this case before the Honorable Victoria A. Valentine on Tuesday, May 18, 2021, as recorded by the clerk.

Videotape proceedings were recorded and were provided to this transcriptionist by the Circuit Court and this certified reporter accepts no responsibility for any events that occurred during the above proceedings, for any inaudible and/or indiscernible responses by any person or party involved in the proceedings, or for the content of the videotape provided.

A handwritten signature in black ink, reading "Cheryl McKinney". The signature is written in a cursive, flowing style.

/s/ Cheryl McKinney, CSMR-5594
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