

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.

PRETRIAL

BEFORE THE HONORABLE VICTORIA A. VALENTINE

PONTIAC, MICHIGAN - THURSDAY, APRIL 15, 2021

APPEARANCES:

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WITNESS

PAGE

(None.)

EXHIBITS:

(None offered.)

1 Pontiac, Michigan

2 Thursday, April 15, 2021

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4 (At 11:25 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. The People consent to this
9 hearing via Zoom.

10 MR. ROCKIND: Neil Rockind on behalf of Nicholas
11 Remington. We consent to the hearing via Zoom.

12 MR. LEWIS: Good morning, Your Honor. Randall
13 Lewis on behalf of Mr. Remington. We consent via Zoom
14 also.

15 THE COURT: Okay, with regard to this matter,
16 this is a pretrial. We did have a motion yesterday which
17 was pretty lengthy in time. The Court is going to issue
18 an opinion with regard to the motion; however, I am going
19 to remand it down to the district court for a new
20 preliminary examination, which will be detailed in the
21 opinion.

22 So with regard to this matter, I don't think
23 that the current dates are going to be acceptable, but I
24 don't want to lose sight of anything, so I am going to put
25 you on the docket for a status conference in 60 days.

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Does that sound appropriate?

MR. KEAST: Yes, Judge. Once I receive the order, I'll send it to the 52-1 District Court as well. It's been my experience that when a case is remanded the circuit court sends that order, but I'll follow up with the 52-1 District Court and then I'll coordinate with counsel on that as well.

THE COURT: So Mr. Keast, one of the issues that I'd like to address, is that I would like to have it go to a new judge.

MR. KEAST: That would just need to be spelled out in the Court's order, I believe.

THE COURT: Okay. Not to suggest in any manner whatsoever that the judge did anything inappropriately, but based upon the arguments and the admissions made in the hearing, I'd like somebody with fresh eyes and doesn't have the history with regard to the status of the matter to be able to review the case.

MR. KEAST: Certainly, Judge. As long as that is spelled out in the Court's order, then I can indicate that to the 52-1 court administrator as well.

THE COURT: Thank you.

With regard to discovery, with regard to the preliminary examination, I'm going to need affidavits that discovery is going to be fully complied with and that

1 there has been not only a -- anything in possession or
2 control and that there has been a search done with regard
3 to any and all discovery whatsoever.

4 MR. KEAST: Certainly, Judge.

5 THE COURT: Any questions?

6 MR. KEAST: Not from the People, thank you,
7 Judge.

8 THE COURT: What additional time, Mr. Lewis, and
9 Mr. Rockind, would you need with regard to discovery?

10 MR. LEWIS: I'm sorry, Your Honor?

11 THE COURT: What additional time would you need
12 with regard to discovery?

13 MR. ROCKIND: That's difficult to answer. In
14 terms of what they're going to provide to us, you mean?

15 THE COURT: Well, they're required to provide
16 everything to you.

17 MR. ROCKIND: Right.

18 THE COURT: Including making a search for
19 anything in their possession or control. So my question
20 is, I don't know what other information, I guess time to
21 absorb or other avenues that you would need with regard to
22 your additional discovery.

23 MR. ROCKIND: Forty-five days.

24 Is that enough, you think, Randy?

25 MR. LEWIS: Yeah. Yes.

1 MR. ROCKIND: I mean, it depends on what there
2 is, obviously.

3 MR. LEWIS: Right. But I'm sure if there's -- if
4 we need additional time, Marc will stipulate.

5 MR. KEAST: Sure.

6 THE COURT: I mean, one of the issues that I
7 raised yesterday is with regard to any witnesses, whether
8 or not they had any notes as well.

9 Anything else?

10 MR. ROCKIND: I guess the -- and this, I guess,
11 is something that Mr. Keast will have to figure out based
12 on the Court's ruling, but one of the issues that we
13 raised during our motion hearing was that there was
14 information in the possession of the former assistant
15 prosecutor. And I don't know that her interests are, in
16 particular, aligned with the State and the State's
17 attorneys at this point. I'm not saying that they're not,
18 but based upon the presentation of both of the parties, I
19 think there are -- it would seem like Mr. Keast would
20 almost have to consult with Ms. Hand, which I think is a
21 challenge. Not, I guess, she's unavailable, but there are
22 particular issues, and I don't know if Ms. Hand would be
23 needed for a hearing of some sort. I'm not sure.

24 THE COURT: Okay, so I'm not sure what you're
25 asking me, Mr. Rockind.

1 MR. ROCKIND: Well, because the Court is asking
2 the prosecutor to do a diligent search, and the concern
3 that we had -- and then to prepare an affidavit. And the
4 question is, can Mr. Keast do that without relying on
5 Ms. Hand's representations.

6 THE COURT: Well, I guess I'm not going to tell
7 him how to proceed, but I would imagine --

8 MR. ROCKIND: I know. I'm more just
9 conceptually trying to figure out how we -- so we had
10 obviously sought alternate remedies other than dismissal,
11 we had sought suppression of the Snapchat evidence. I
12 don't know if the Court -- is the Court addressing that in
13 its --

14 THE COURT: I am. I am, yes.

15 MR. ROCKIND: So I don't know if, when we go
16 back, if that impacts the presentation at the exam, I
17 don't know if that is evidence that will be permitted.
18 Obviously, I'll wait for the Court's order on that.

19 But the reason why I bring up this issue about
20 their ability to do this diligent search is that this
21 diligent search would potentially involve communicating
22 with and relying on the representations of the previous
23 prosecutor, who has already -- you know, there were always
24 issues presented. And I guess if Mr. Keast is comfortable
25 doing that, or if we need a hearing with Ms. Hand, I don't

1 know, I'm just sort of throwing that out there because I
2 haven't seen the Court's order. I just know that the
3 State's going to be obligated to submit affidavits. If
4 that means Mr. Keast, if that means Detective Balog, then
5 so bit it. I mean, you know, if Detective Balog is going
6 to prepare an affidavit making some representations, you
7 know, God bless him.

8 THE COURT: Mr. Keast, anything you want to
9 state, sir?

10 MR. KEAST: Judge, it's hard to answer any of
11 those questions at the moment. I think, if I may suggest a
12 course of action, I think once we obtain the Court's
13 order, then we'll have a better idea as to which direction
14 to take with any affidavits regarding discovery.

15 But this case would be remanded to the
16 52-1 District Court, at that time I'm sure counsel and I
17 can agree upon a date for preliminary examination to
18 continue. And then from there we'll have the opportunity
19 for my own diligent search of the file, speaking with the
20 witnesses, as well as counsels', regarding any discovery
21 owed to the People. So I think if -- I don't want to get
22 too ahead of ourselves, is basically what I'm saying,
23 Judge.

24 MR. ROCKIND: And Judge, we may be -- if there's
25 an issue regarding the witnesses who Ms. Hand did not

1 call, but who have been the subject of, at least in one
2 respect, regarding the motion, I don't know if these --
3 because there's a -- I explained yesterday there was a
4 pending civil lawsuit that was filed in the middle of a
5 criminal case, which of course now complicates things.

6 If the witnesses are going to assert a privilege
7 of any sort we're going to seek, in fundamental fairness,
8 that the State actually permit the witnesses to testify
9 with use immunity. And I know Mr. Keast and I, we can
10 talk about that after we've seen the order, but the
11 concern that we have, is that because of the events that
12 have transpired, that Mr. Remington's right to have the
13 case fully litigated could be compromised.

14 THE COURT: Okay. And with regard to, you're
15 requesting -- you're going to be requesting the
16 prosecutor's office to grant immunity to --

17 MR. ROCKIND: Well, I can talk to Mr. Keast
18 about that. I'm just sort of trying to -- because once
19 you remand it, the district court -- once you remand it,
20 the district court is going to begin to want to set dates.
21 We've got 45 days for us, that we've said we would need
22 from when Mr. Keast gets that, when he submits to us, this
23 is all the discovery we have. If there's nothing new, we
24 don't need the time. If there's some more information and
25 there are affidavits we have to review, then we'll take

1 the 45 days.

2 So my concern is, is that that 45 days is what
3 we would need to review whatever new information there is
4 from Mr. Keast and the State. And then we would have --

5 MR. KEAST: If I may interrupt. Are you saying
6 you'd rather the case stay in circuit court for the next
7 45 days before it's remanded?

8 MR. ROCKIND: I'm just trying to rely on -- the
9 Judge asked how much -- how much time we would need after
10 you make your final representations regarding the
11 discovery.

12 MR. LEWIS: I think that's a good idea.

13 MR. ROCKIND: We just said 45 days --

14 MR. LEWIS: Neil, I think that's a good idea,
15 what Marc just said. I think that we should keep it here
16 until we're ready to do the remand order. Because we have
17 to talk to Marc about -- well, we have to see the Court's
18 order first on the Snapchat, but we're going to have to
19 talk to Marc.

20 THE COURT: (Indiscernible) with the Snapchat. I
21 mean, there needs to be -- there needs to be complete
22 transparency with regard to any and all discovery, any and
23 all information. You know, going back a year and a half to
24 make police reports and notes, I'm not satisfied with. And
25 I'm not satisfied with regard to the review, you know,

1 ensuring that everything was looked for and turned over.
2 And it's not that I have any information, it's only,
3 Mr. Keast, that you weren't able to honestly answer
4 questions, which I sincerely appreciate from your office,
5 that you've been completely, you know, transparent. And,
6 you know, I see a very bright road ahead with regard to
7 how things are going to change and be done differently.

8 And your honesty with regard to not having
9 requested certain information from witnesses, etc., is
10 refreshing, but I need to make sure that both of our
11 functions, all of our functions in the judicial system are
12 upheld for the entire public. So I want to make sure that
13 there is enough sufficient time for you, sir, to satisfy
14 yourself and to present an affidavit that everything has
15 been searched for and that there has been -- anything
16 that's in your custody or control has been turned over.

17 MR. KEAST: I appreciate that, Judge. If I may
18 suggest that if the Court were to order remand as part of
19 the written order, it could have a date, perhaps 30 or 45
20 days out, for the actual date of remand. That way we could
21 be in front of Your Honor until we go through
22 independently this file to make sure that discovery is
23 complete. And that way, Judge, we can address it with you,
24 since you know, you know, the underlying facts of this
25 case and you're aware of the recent motions, you just

1 ruled on the motions.

2 THE COURT: Okay. So sir, with regard to this,
3 let me suggest this, how about if I keep the case for
4 right now, that I reopen discovery with regard to a full
5 search with regard to possession, anything in possession
6 or control, including any additional information that
7 Mr. Rockind or Mr. Lewis want to receive from witnesses,
8 etc., and that you guys work together on any and all
9 discovery issues and I have you come back in the 30 days
10 so that we can see if you're ready to proceed back down to
11 the district court.

12 MR. KEAST: I think that sounds fair.

13 MR. LEWIS: That sounds great. Because right
14 now we're all just thinking out loud.

15 THE COURT: Okay. I understand.

16 Okay, so that's what we'll do then, I'm going to
17 have a date in approximately 30 days. It can be a little
18 longer if you need, Mr. Busch.

19 THE CLERK: Thank you, Judge, that would be
20 5/20/2021, 9 a.m., if you want it on a Thursday.

21 THE COURT: You know, let's give them their own
22 separate date. They seem to require a little bit of
23 additional time, which I think is appropriate.

24 THE CLERK: In that case, can we do 5/18/2021,
25 9 a.m.?

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THE COURT: Does that work for everyone?

MR. KEAST: It does, Judge.

MR. ROCKIND: Yeah.

MR. LEWIS: Yes, Your Honor. Thank you.

THE COURT: Thank you everyone.


(At 11:38 a.m., proceedings concluded.)

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CERTIFICATION

I certify that this transcript, consisting of 14 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 Thursday, April 15, 2021, as recorded by the clerk.

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