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:

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EXHIBITS:

(None offered.)

Pontiac, Michigan

Tuesday, May 18, 2021

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

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

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

THE COURT: Mr. Rockind.

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

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

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

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

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

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

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

THE COURT: Okay.

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

THE COURT: What was the additional Snapchat?

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

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

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

THE COURT: Okay. Mr. Rockind.

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

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

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

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

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

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

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

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

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

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

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

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

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

have to.

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

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

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

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

THE COURT: I never thought it did.

MR. ROCKIND: Whether everything --

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

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

MR. ROCKIND: Thank you, Judge.

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

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

MR. ROCKIND: I appreciate that, Judge.

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

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

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

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

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

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

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

MR. KEAST: I appreciate that.

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

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

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

MR. KEAST: We'll review the opinion.

Should we have a status conference again, perhaps, after the parties have had an opportunity to review that, and see where we stand?

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

Mr. Busch, do you happen to recall?

Well, anyway, you'll get it today or tomorrow.

MR. ROCKIND: All right, Your Honor.

MR. KEAST: Fair enough, Judge.

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

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

MR. ROCKIND: Okay, Your Honor.

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

THE COURT: Okay.

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

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.

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