

STATE OF MICHIGAN
IN THE 52-1 DISTRICT COURT FOR THE CITY OF NOVI

STATE OF MICHIGAN,

v

Docket No. 19-0002619

NICHOLAS REMINGTON,
Defendant.

PRELIMINARY EXAMINATION

Volume I of II

BEFORE THE HONORABLE TRAVIS REEDS

Dearborn, Michigan - Friday, September 27, 2019

APPEARANCES:

For the People:

MS. BETH HAND P47057
1200 N. Telegraph Road
Pontiac, MI 48341
248-858-0656

For the Defendant:

MR. NEIL ROCKIND P48618
36400 Woodward Ave.
Suite 210
Bloomfield Hills, MI 48304
248-208-3800

MR. RANDALL LEWIS P46134
2000 Town Center
Southfield, MI 48075
248-263-6800

Recorded by:

MS. CAROL HUNT CER 7445
248-305-6502

Transcribed by:

MS. NICOLE R. OLSON CER 7173
313-943-4223

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Novi, Michigan

Friday, September 27, 2019 - at 1:28 p.m.

THE COURT: Are we ready to begin on the Remington matter?

MS. HAND: Yes, your Honor.

MR. ROCKIND: Yes, your Honor.

THE COURT: All right, People versus Remington, 2019-2619.

MS. HAND: Good afternoon, your Honor, Beth Hand appearing on behalf of the People.

MR. ROCKIND: Neil Rockind P48618, I'm counsel - co-counsel, I should say, for Nicholas Remington.

THE COURT: Thank you.

MR. LEWIS: Good afternoon, your Honor, my name is Randall Lewis and I'm co-counsel for Mr. Remington.

THE COURT: All right and would you have Mr. Remington please state his name for me for the record?

MR. ROCKIND: Yes. Tell us your name.

THE DEFENDANT: Nicholas Remington.

THE COURT: Thank you. All right, do we have any preliminary matters before we begin?

MS. HAND: There is a stipulation I'd like to place on the record, your Honor.

THE COURT: Okay, thank you.

MS. HAND: Your Honor, the defense is

1 stipulating to People's proposed exhibit number one, which
2 is the autopsy protocol, authored in this case by Dr.
3 Hanosh. And - as well as the fact that if Dr. Hanosh
4 were, in fact, here to testify that he would testify that
5 the decedent Denis Preka's cause of death in this matter
6 was the - the ingestion of the controlled substances
7 methylenedioxymethamphetamine and methylone.

8 THE COURT: Is that correct, Mr. Rockind?

9 MR. ROCKIND: Not entirely.

10 THE COURT: Okay.

11 MR. ROCKIND: My stipulation - my stipulation is
12 that Dr. Hanosh, first of all, for exam purposes I - I did
13 advise Ms. Hand that I was stipulating to Dr. - the
14 autopsy protocol, which we will for exam purposes. And
15 that - that were Dr. Hanosh to testify that - I have to
16 get out my report here, but he would say everything that
17 Ms. Hand said. I think that the autopsy protocol
18 identifies the - the drugs as - I have it here. Ms. Hand,
19 what page are you reading from in terms of the --

20 MS. HAND: I wasn't reading, but the - the
21 opinion is on page six of eight, three, four, methylene,
22 dioxymethamphetamine and a metabolite MDMA.

23 MR. ROCKIND: Right.

24 MS. HAND: I'm sorry, MDA.

25 MR. ROCKIND: Correct.

1 MS. HAND: That's fine. I misspoke when I
2 said --

3 MR. ROCKIND: I'll stipulate to it.

4 MS. HAND: MDMA.

5 MR. ROCKIND: I'll stipulate to that, that that
6 is what he would testify to if he were to testify here at
7 the preliminary examination. And I know I told Ms. Hand
8 that I had no objection to the court receiving, for exam
9 purposes, a copy of the autopsy protocol and that - that
10 opinion.

11 THE COURT: Okay.

12 MR. ROCKIND: And --

13 THE COURT: That's all --

14 MR. ROCKIND: Just to --

15 THE COURT: - exhibit one?

16 MS. HAND: Yes, your Honor.

17 THE COURT: Okay.

18 MR. ROCKIND: And that's just entirely for
19 examination purposes and for no other purpose other than
20 that.

21 THE COURT: All right, I understand. So, based
22 on the stipulation it's admitted at this point and either
23 of you can use that exhibit in the course of the exam.
24 Any other preliminary matters?

25 MS. HAND: No, your Honor.

1 THE COURT: Sequestration?

2 MR. ROCKIND: Yes, please.

3 THE COURT: All right.

4 MR. ROCKIND: We move for sequestration, your
5 Honor.

6 THE COURT: All right, sequestration is ordered.
7 If you're not the officer or detective in charge, the
8 defendant or the first witness, please excuse yourself to
9 the hall until it's your turn to testify.

10 Any other preliminary matters?

11 MR. ROCKIND: No, your Honor.

12 THE COURT: Please call your first witness.

13 MS. HAND: Your Honor, before I call my first
14 witness I am going to move for admission of People's
15 exhibit number two. It is a self-authenticating document.
16 I have provided defense counsel a copy of it. It is a
17 probation violation plea and sentencing before the
18 Honorable Judge Hala Jarbou in the Circuit Court on
19 Wednesday, May 15, 2019, where the defendant did, in fact,
20 make statements. So I'm moving for its admission and I
21 believe it's self-authenticating, if I could approach?

22 THE COURT: Mr. Rockind?

23 MR. ROCKIND: I have objections as to relevance
24 and as to foundation, which I'm happy to make if the Court
25 wants me to make them now?

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THE COURT: Okay, go ahead.

MR. ROCKIND: So, first, the --

THE COURT: Actually, before we get to the relevance part, can you - can you tell me what you think the - the purpose of the admission of the exhibit would be?

MS. HAND: Judge, during this proceeding the defendant indicated that - the judge was questioning him relative to his violation of probation. She asked him what he did, he said, "I took offensive videos of someone. I dumped water on them and" - and then she said, "Someone that was overdosing? Dying?" And the defendant said, "Yes, they died." So, the purpose is to show his presence during the taking of these videos.

THE COURT: I see, okay.

MR. ROCKIND: So number one, we've got - here's my - my first objection is that Mr. Remington was in custody at the time that the actual colloquy for, I guess, argument purposes and foundation purposes begins a bit sooner with the Court asking the following question on page 14, "Tell me what you've done. Articulate that to me and how you're going to improve." And at that time Mr. Remington was in custody and was being questioned by the Court.

Secondly, he pled no contest previously.

1 Third, he is - at the time this is a Holmes Youthful
2 - he was on Holmes Youthful Trainee status, which he still
3 is, so the record should be sealed. It's not a public
4 record.

5 And the fourth is if he was on Holmes Youthful
6 Trainee status for that offense and so that's a non-public
7 record and it should be sealed. And additionally the - by
8 way of further foundation you've got - the transcript
9 occurred on May - it was - possibly occurred May 15, 2019
10 and there is a two-month gap approximately between the
11 incident date, which was March 18 and March 19th. So, the
12 - whatever quote admissions unquote are that are contained
13 or that the People wish to admit within this document are
14 not contemporaneous with the event, that they are two
15 months later with much after acquired information. And --

16 THE COURT: Did he have Counsel present when
17 these statements were made?

18 MR. ROCKIND: What's that? He did, your Honor.

19 THE COURT: Did Mr. Remington have Counsel
20 present at the --

21 MR. ROCKIND: He did, your Honor.

22 THE COURT: - hearing in front of Judge Jarbou?

23 MR. ROCKIND: He did. And I - and they're not
24 relevant. Not relevant to whether or not Mr. Remington
25 actually - well, they're not relevant to whether a drug

1 was delivered, they're not relevant to whether a drug was
2 delivered by him to the decedent.

3 THE COURT: Okay. All right, thank you. Those
4 objections are overruled and I'll admit the document.

5 MS. HAND: May I admit, Judge.

6 THE COURT: Yes.

7 MS. HAND: And did you want People's exhibit
8 number one also, your Honor?

9 THE COURT: Sure. Thank you. Anything else?

10 MS. HAND: No, your Honor.

11 THE COURT: All right. Now let's call your
12 first witness.

13 MS. HAND: People call Officer Hashim.

14 THE COURT: Thank you. Officer, you've been
15 called as a witness. Please make your way up to the
16 witness chair. Watch your step on that little ramp. Get
17 yourself settled in the chair and I'll ask you to raise
18 your right hand and take an oath.

19 OFFICER HASHIM: Yes.

20 THE COURT: Do you solemnly swear or affirm that
21 the testimony you're about to provide shall be the truth,
22 the whole truth and nothing but the truth, so help you,
23 God?

24 OFFICER HASHIM: I do, your Honor.

25 THE COURT: Thank you very much. Please start

1 off by stating your full name and spelling your last name
2 for the benefit of the court recorder.

3 THE WITNESS: Officer Alan Hashim, H-A-S-H-I-M.

4 THE COURT: Your witness.

5 MS. HAND: Thank you.

6 ALAN HASHIM

7 Called by the People at 1:34 p.m. and sworn by the Court,
8 testified:

9 DIRECT EXAMINATION

10 BY MS. HAND:

11 Q How are you - how are you employed, sir?

12 A I'm a police officer with the City of Novi Police
13 Department.

14 Q And how long have you been a police officer with Novi?

15 A Fourteen years plus.

16 Q All right and how - were you a police officer anywhere
17 else prior?

18 A Yes, in Detroit.

19 Q How many years?

20 A Almost three years.

21 Q Sir, were you working in your capacity as a police officer
22 in the morning hours of March 19, 2019?

23 A Yes, ma'am.

24 Q Did you have occasion, sir, to go to 23132 Meadowbrook in
25 the City of Novi?

1 A Yes.

2 Q And what was your purpose, sir, for going to that
3 location?

4 A We received a call of a subject who was having difficulty
5 breathing.

6 Q All right and did - were you alone or with a partner when
7 you arrived?

8 A I was by myself.

9 Q All right, do recall approximately what time - not
10 exactly, but approximately what time you were dispatched
11 to that location?

12 A Around 9:11.

13 Q All right and approximately how long did it take you to
14 get there?

15 A I don't recall exactly, a few minutes.

16 Q Okay. Upon your arrival to that location were there any
17 occupants inside the home?

18 A I observed - there was Sergeant Manar and Officer Patalla,
19 who was riding with him and also the son of the homeowner
20 or the homeowner.

21 Q Okay. All right and in addition to the - the son of the
22 homeowner were there any other occupants that were not
23 police personnel?

24 A The --

25 Q That --

1 A The deceased.

2 Q Okay, that's what I want to ask you.

3 A Yes.

4 Q All right and when you went into the house what door of
5 the home did you enter?

6 A The entrance.

7 Q The front door?

8 A Yeah, the front door.

9 Q Okay and when you went into the front door did - at that
10 point were you able to see the decedent?

11 A Yes, ma'am.

12 Q All right, did you go about identifying the decedent?

13 A Sergeant Manar made the identification.

14 Q Okay. All right and how was the decedent positioned when
15 you arrived?

16 A He was lying down on his side in the foyer.

17 Q Okay. Is the foyer carpeted?

18 A No.

19 Q Okay, so this is a tile - tile?

20 A If my memory serves me right, yeah, it's tile.

21 Q Okay and which direction was the decedent's head facing?
22 Towards the door or away from the door?

23 A It's - his head was facing away from the door.

24 Q Okay. Was he clothed?

25 A Yes.

1 Q All right and how many persons have you, in your
2 experience, seen that are deceased?

3 A A few.

4 Q Okay, can you give a better estimate than a few? More
5 than 50?

6 A About.

7 Q Okay. All right and was the - did you touch the decedent?

8 A No.

9 Q Okay, at some point in your presence was the decedent
10 pronounced dead?

11 A Yes.

12 Q And how did that process occur?

13 A Superior Ambulance and Novi F.D. arrived to the scene and
14 they did the strip and of course the - one of the
15 ambulance personnel called Providence Hospital and the
16 pronouncement was made.

17 Q Okay. Did you interview the homeowner's son?

18 A Yes.

19 Q All right. And did anybody else non-police related
20 arrived at the scene while you were present?

21 A Connor.

22 Q Okay. And approximately how long after you were present
23 did this person by the name of Connor arrive?

24 A Maybe half an hour, 25 minutes. I - I don't have a
25 specific time.

1 Q All right. Did Detective Balog arrive, as well?
2 A Detective Balog and Detective Wilson.
3 Q Okay. Did - and I think you already said this, but did
4 you move or disturb the body in any way?
5 A No.
6 Q Can you briefly tell me the demeanor of the homeowner?
7 A Basically - based on my conversation with him it seems as
8 if he wants us to finish this investigation.
9 Q Okay, is he hurrying you out of the house?
10 A In a way. That's how I felt.
11 Q Okay. All right, did the - did you obtain the cell phone
12 information of this person Paul?
13 A The actual cell phone?
14 Q No, like the number. His cell phone number.
15 A Somehow it was obtained. I don't recall if I got it or
16 Detective Balog got it, but it was obtained.
17 Q It was obtained?
18 A Yes.
19 Q Okay.
20 MS. HAND: I have no further questions.
21 THE COURT: Cross-examination?
22 MR. ROCKIND: Sure.
23 CROSS-EXAMINATION
24 BY MR. ROCKIND:
25 Q Mr. Hashim --

1 A Yes.

2 Q Good afternoon.

3 A Good afternoon, sir.

4 Q You - you arrived at the house, right?

5 A Yes, sir.

6 Q Do you happen to recall the address?

7 A I don't remember the address.

8 Q And you've indicated that you spoke with someone who you
9 believe to be the - the son of the homeowner?

10 A Yes.

11 Q Did you get information about them before you arrived at
12 the home?

13 A No, sir. Once - once I arrived.

14 Q You arrived?

15 A Yes.

16 Q And then there has been - obviously there is a deceased
17 young man there?

18 A Yes.

19 Q And there are some other officers there, you said?

20 A Yes.

21 Q Was there any paramedic staff or any medical team there at
22 that point?

23 A After the fact, yes.

24 Q After the fact. And there was a young man who the
25 prosecutor identified as Paul?

1 A Yes.

2 Q Did you - did you - did you discuss or - let me ask a
3 different. Did you meet with him or converse with him
4 upon entering into the house?

5 A After everything was settled, sir, yes.

6 Q And how did you identify - at some point you said, "Who is
7 the - are you homeowner?" or "Are you the caller?" or
8 something of that sort?

9 A Yes.

10 Q And did you get his identification at that point?

11 A I don't recall if it was a driver's license, but yes, he
12 did provide me with a name.

13 Q You did more than just talk to him, didn't you?

14 A Yes.

15 Q Did you - did you go anywhere else in the house?

16 A I was in the foyer area and kitchen area.

17 Q Foyer area and kitchen area?

18 A Yes. And the living room - and the surrounding area
19 basically.

20 Q Did you see any narcotic paraphernalia in the foyer area?

21 A No, sir.

22 Q Did you see any narcotics paraphernalia in the kitchen?

23 A No.

24 Q You said you got the sense that the young man's name was
25 Paul Wiedmaier, is that right?

1 A Yes.

2 Q And did you get the sense from Mr. Wiedmaier that - you
3 said according to the prosecutor that he was trying to
4 quote hustle you along to get the investigation finished
5 quickly, unquote, or something along those lines?

6 A Yes.

7 Q Is that based on his - his demeanor, his level of
8 cooperation, uncooperative, all of the above?

9 A He was cooperative, but just the way I was talking to him
10 it seemed as if he's like, "Let's finish this whole
11 process."

12 Q You keep using your hands kind of this way so that -
13 unfortunately we don't have --

14 A Basically rushing. Rushing.

15 Q I just want the record to show that this is kind of like
16 nudging, rushing--

17 A Rushing the --

18 Q That's the impression that you got?

19 A Yes. That's - that's how I felt.

20 Q And it sounded like you have about - you've been around 50
21 or so dead people?

22 A I - I've been around the dead bodies, yes.

23 Q And I assume that you've interviewed a fair number of
24 witnesses over the course of your career?

25 A Yes.

1 Q So using all of that experience, that's what allowed you
2 to - to at least form that thought in your head, that this
3 young man was sort of trying to usher you along a little -
4 a little too quickly for your comfort?

5 A Yes.

6 Q So I assume you asked him, "Why are you trying to hustle
7 us along? What's your problem? What's the deal?" right?

8 A I don't recall if I asked him that question or not.

9 Q Well --

10 A As I explained to you, he was very - he was cooperative.

11 Q Right.

12 A But that's the impression I received from our
13 conversation.

14 Q And then when this other young man came back his name was
15 - identified himself as Connor?

16 A Connor, yes.

17 Q And did you communicate with this young man at all?

18 A Yes.

19 Q And was he trying to hustle you along as well?

20 A No.

21 Q He was entirely cooperative?

22 A Yes.

23 MR. ROCKIND: Nothing else, your Honor, thank
24 you.

25 THE COURT: Any redirect?

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MS. HAND: No, your Honor.

THE COURT: Thank you for your testimony.

THE WITNESS: Thank you, your Honor. Thank you very much.

(At 1:42 p.m., witness excused)

MS. HAND: Your Honor, we call Detective Balog.

MR. ROCKIND: I couldn't hear, your Honor.

THE COURT: Detective Balog.

MR. ROCKIND: Balog?

MS. HAND: May this witness be excused, your Honor?

THE COURT: Yes.

MR. ROCKIND: Yes. As far as we're concerned, yes.

OFFICER HASHIM: Thank you very much. Thank you, your Honor.

THE COURT: You're welcome. Please raise your right hand. Do you solemnly swear or affirm that the testimony you are about to provide shall be the truth, the whole truth and nothing but the truth, so help you, God?

DETECTIVE BALOG: I do.

THE COURT: Thank you very much. Please start off by stating your full name and spelling your last name for the benefit of the court recorder.

THE WITNESS: Steve Balog, B-A-L-O-G.

1 THE COURT: Your witness.

2 MS. HAND: Thank you.

3 DETECTIVE STEVE BALOG

4 Called by the People at 1:42 p.m. and sworn by the Court,
5 testified:

6 DIRECT EXAMINATION

7 BY MS. HAND:

8 Q How are you employed, sir?

9 A I'm a detective with the Novi Police Department.

10 Q How long have you held that position?

11 A For approximately six years.

12 Q And how long have you been in law enforcement?

13 A Over 23 with the Novi Police Department.

14 Q Okay. Drawing your attention, sir, to March 19, 2019 in
15 the morning hours of that day did you have occasion to go
16 to 23132 Meadowbrook Road?

17 A I did, yes.

18 Q And what was your purpose for going to that location?

19 A To investigate a death.

20 Q All right and upon your arrival to that location who was
21 present?

22 A On the scene it was Officer Hashim, Sergeant Manar, the
23 victim Denis Preka, Paul Wiedmaier, who is the homeowner
24 or homeowner's son and Connor Gibaratz.

25 Q Okay. And once at that scene did you - you said you saw

1 the victim in this case, Denis Preka, correct?

2 A I did, yes.

3 Q All right and approximately how many death scenes have you
4 participated in?

5 A In a 23-year career I'd say 50 at least.

6 Q Okay and what was the condition of the decedent's body
7 when you came upon it?

8 A He was on his right side, there was obvious rigor and
9 lividity to his body. He did have some vomit on the left
10 side of his head - what appeared to be vomit, I should
11 say. His head was facing east. He was propped up. He
12 had a - I believe it was a speaker and a gas can was
13 propping up him.

14 Q Like a radio speaker?

15 A A radio speaker or it was like a amplifier or something to
16 that effect.

17 Q Okay.

18 A Propped up behind him. He had a blanket pulled up a
19 little bit - about halfway up his body and like I said,
20 that was just kind of propped up to prevent him from
21 rolling over.

22 Q Okay. Was - was it apparent to you at that point that he
23 was deceased?

24 A Absolutely.

25 Q All right and based on your years of experience did it

1 appear to you that he had been deceased for some period of
2 time?

3 A It did.

4 MR. ROCKIND: I'm going to object to lack of
5 foundation.

6 THE COURT: Sustained.

7 MS. HAND: All right.

8 BY MS. HAND:

9 Q You - you've indicated that you've been involved in at
10 least 50 death scenes?

11 A Correct.

12 Q Okay and are you familiar with the process of rigor
13 mortis?

14 A Yes.

15 Q And have you been trained in the process of rigor mortis?

16 A Yes.

17 Q Okay and where have you received that training?

18 A I've been to several homicide investigative schools,
19 police academy and just career experience.

20 Q Okay. Have you come in contact with other individuals who
21 have had the presence of rigor?

22 A Yes.

23 Q Okay and when you say lividity what do you mean by that?

24 A Blood pooling.

25 MR. ROCKIND: Judge, I'm going to - again, I'm

1 going to object. I can voir dire, but this is - this is
2 not - these are not perceptions of lay witnesses. This is
3 now going into expert opinion. This is additional
4 specialized knowledge and if the prosecutor wants to
5 qualify him as an expert then we have to go through that
6 process. But this is --

7 THE COURT: Possibly. She's trying to lay a
8 foundation so far with his training. I'm going to give
9 you your opportunity to voir dire, but let's let her
10 finish that process first.

11 MR. ROCKIND: If he's going to testify as an
12 expert.

13 MS. HAND: I'm not asking for expert testimony,
14 Judge. If I could finish?

15 THE COURT: Of course.

16 MS. HAND: Thank you.

17 BY MS. HAND:

18 Q Were you present when the body was removed from the house?

19 A Yes, I was.

20 Q And who removed the body from the house?

21 A The medical examiner's office.

22 Q Okay and about how long after you arrived on the scene -
23 well, I didn't ask you that. Was the medical examiner
24 there - their office there before or after you got there?

25 A After.

1 Q All right and about how long after you got there?

2 A Probably an hour I would say.

3 Q Okay. And did you move the body or touch the body prior
4 to the medical examiner's office arriving?

5 A I did touch the body and typically I do that as a
6 detective just to check for the rigor to see if the body
7 is stiff and he was --

8 MR. ROCKIND: Again, I'm just gonna object.

9 This --

10 THE COURT: It's a factual recitation at this
11 point. Overruled.

12 MS. HAND: Thank you.

13 MR. ROCKIND: When you use terms like - I'm just
14 gonna - when you use terms like rigor mortis or rigor or
15 livor mortis, you're using technical, medical,
16 pathological terms, which requires, at least as to my
17 objection, a form of expertise.

18 THE COURT: All right. Thank you. That's
19 overruled.

20 BY MS. HAND:

21 Q Okay, was the body stiff?

22 A Yes.

23 Q And was the body colder than normal?

24 A Yes.

25 Q Okay. Did you in fact take a picture of the thermostat in

1 the home?

2 A I did, yes.

3 Q All right and do you recall what the thermostat setting on
4 the --

5 A I don't recall specifically. I'd have to review the
6 photographs, but I believe that 70-ish, I do believe.

7 Q Okay. All right. And you say you were able to observe
8 pooling of the blood?

9 A Yes.

10 Q Okay, is that something that you see with your own eyes?

11 A It is, correct. It's a darkening of the skin, purplish
12 color at the lower level of the body.

13 Q Okay and when you say the lower level of the body, which
14 part of the decedent's body would have been lower given
15 the way that he was positioned?

16 A The right-hand side and right side of his face, right side
17 of his legs.

18 Q Were the - were the decedent's eyes open or closed when
19 you first came in contact with him?

20 A Partially open, I believe.

21 Q All right. Did you interview the individuals that were at
22 the scene?

23 A Yes, I did.

24 Q Okay and you've already identified their names. Have you
25 spoken with those individuals on - on more than one

1 occasion?

2 A Yes, I did.

3 Q All right. The defendant in this case, not - without
4 getting into what he said, have you heard him speak
5 before?

6 A Yes, I have.

7 Q On about how many occasions?

8 A In person, twice I believe. On video other times.

9 Q Okay. So are you able to distinguish in your opinion the
10 voice - between the voices of Paul and Connor?

11 MR. ROCKIND: I'm sorry, Judge, I'm going to
12 have to - I don't mean to keep interposing objections.

13 THE COURT: That's okay, what's your objection?

14 MR. ROCKIND: My - my objection is first of all
15 if - if the prosecutor is attempting to lay a foundation
16 that this man - well, I'm going to object to lack of
17 foundation in terms of the - at this point, this witness
18 being able to attempt to identify Mr. Remington's voice.
19 There's no evidence as to the number - the - he said
20 twice. No evidence as to how long, how long those
21 interviews were, no evidence as to how much familiarity he
22 has with that individual being able to compare his voice
23 to others and there are some cases out there that say that
24 absent that level of familiarity someone can't make an
25 identification of someone else in the video or in audio,

1 which is where I believe the prosecutor is going. I can
2 get the case and I don't know if the Court wants to --

3 THE COURT: All right, I think it might be a
4 little premature at this point. I'll reserve the ruling
5 until Ms. Hand is done asking him those foundational
6 questions.

7 MS. HAND: Thank you.

8 BY MS. HAND:

9 Q How long did you - did you talk to Paul for total?

10 A In total?

11 Q Mm-hmm.

12 A At least probably an hour.

13 Q Okay on all the - on how many occasions did you speak with
14 Paul?

15 A Once at his home and then one other time in the interview
16 room of the Novi Police Department, so roughly - it could
17 be over an hour and a half, then.

18 Q Okay. You said only one other time in the Novi Police
19 Department or was there an additional time?

20 A I believe there - yep, twice I spoke with him.

21 Q Okay.

22 A In the Novi Police Department.

23 Q All right. And about how many times did you speak with
24 Connor?

25 A At least four.

1 Q Okay. And about what was the total amount of time that
2 you --

3 A Roughly two hours.

4 Q Okay.

5 THE COURT: The objection is overruled, Mr.
6 Rockind.

7 MS. HAND: Thank you.

8 BY MS. HAND:

9 Q Did you - sir, did you have an opportunity to obtain or
10 author any search warrants in this case?

11 A Yes, I did.

12 Q All right. Specifically, did you author a search warrant
13 for Snapchat information?

14 A Yes, I did.

15 Q All right and whose - whose Snapchat information were you
16 attempting to obtain by those search warrants?

17 A I was attempting to obtain Hulkolas, which is Nicholas
18 Remington's screen name. I was attempting Olgas, who is
19 Olga Lowry's screen name, who is an individual that I
20 spoke with from the University of Michigan; and also
21 Connor Gibaratz, who was on the scene at the time.

22 Q Okay and of those three individuals whose information you
23 attempted to obtain, what information was Snapchat able to
24 provide you?

25 A Snapchat was able to provide me information from Hulkolas,

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which is Nicholas Remington's --

MR. ROCKIND: Judge, I'm going to object to any allegation that Hulkolas is Nicholas Remington's absent a foundation or records. It's hearsay.

MS. HAND: Well, Judge, I - I disagree because it's - well, for a couple reasons. And I can lay it - I'm going to lay a further foundation, but under MRE 1101, ownership information for preliminary examination purposes is admissible via hearsay and if you are the owner of a Snapchat account that information can be testified to. It's no different than you're the owner of a house or a car.

MR. ROCKIND: Judge, that's - it's an interesting and clever, I think, attempt to apply 1101 to this; 1101 if we're just going to be hyper-technical 1101 subsection B discusses the rules other than those with respect to privileges do not apply in the situations and proceedings.

And then when you get to subsection eight, preliminary examinations, "At preliminary examinations in criminal cases hearsay is admissible to prove with regard to property the ownership, authority to use, the value, possession and entry." There is nothing else related to that other than property.

THE COURT: Okay, sustained at this point, but I

1 haven't heard what the detective had obtained to tie that
2 nickname to the defendant yet. I don't think we've had an
3 opportunity to hear those questions. Go ahead, Ms. Hand.

4 MS. HAND: Thank you.

5 BY MS. HAND:

6 Q Sir, how did - how did you end up with the - requesting
7 the account of Hulkolas?

8 A The police department as provided a video that was
9 authored by Hulkolas.

10 MR. ROCKIND: Judge, again, I'm going to - I -
11 I'm sorry, this is - this seems like this is probably the
12 entire preliminary exam is going to be about these - the
13 Snapchats, so we have to be a bit vigilant.

14 THE COURT: It has been so far, or objections
15 anyway.

16 MR. ROCKIND: And the word authored, again,
17 suggests that a person created it or someone associated
18 with an account created it. There is - there is an
19 absence of foundation that's a conclusion and I object to
20 that.

21 He can surely say that he received the video, but he
22 can't go and just begin to describe the content of it or
23 who the author of it was or what account authored it,
24 because that is a conclusion or opinion not borne out by
25 the evidence and beyond his - his - the lack of

1 foundation.

2 THE COURT: All right, thank you. Overruled.

3 MS. HAND: He - he overruled, so you can go
4 ahead.

5 THE COURT: You can answer the question, if you
6 remember it.

7 BY MS. HAND:

8 Q You got videos from --

9 A Yes, I received the videos through our police department.
10 Snapchat, the way Snapchat works is people public -
11 publicly display things on Snapchat. It's a social media
12 - pictures, text messages and other things. We received
13 several video snippets that were tied together from the
14 scene prior to the victim Denis Preka's death that day on
15 the 19th.

16 Q Okay. Did you have a phone number that you associated with
17 Nicholas Remington?

18 A Yes, I did.

19 Q Okay and was that phone number associated with the
20 Snapchat account?

21 A Yes, it was.

22 Q That you received?

23 MR. ROCKIND: I'm going to - Judge, I'm going to
24 object again to that. That requires - there's a record.
25 I know Ms. Hand is - hasn't really asked the detective

1 much to allow him to actually give a narrative, the
2 questions have been pretty much yes or no. But - but the
3 concern that I have is that that question and answer
4 requires the detective to actually say, "Is there a phone
5 number associated with this account?" Which then he says,
6 "Yes." There's a lack of foundation for that. What is
7 the foundation? Is it a record? Is it a piece of paper?
8 Is it something that he got from a source? That's hearsay
9 and lack of foundation.

10 THE COURT: You're objecting before we get to the
11 foundation, though, Mr. Rockind. I understand you're
12 quick on the trigger, but --

13 MR. ROCKIND: Yeah, but there's - but this - he's
14 offering - well, we're not at the how did you attempt to
15 associate this with - this account with the person, we're
16 just getting to summaries of information. That's my
17 objection.

18 MS. HAND: Well, Judge, and - and I disagree
19 with Counsel and I - I greatly apologize. I left a little
20 in haste from my office and did not grab my court rules,
21 but I think Counsel omitted a very important portion -
22 thank you, Judge - of MRE 1101 and that is that the
23 hearsay objection also pertains to the authority to use.

24 And so, if the officer learned through his
25 investigation that the defendant was the person who had

1 the authority - or authority to use this phone and use
2 this Snapchat account, I believe that the objection to
3 foundation is misplaced as it relates to the preliminary
4 examination.

5 MR. ROCKIND: But - see, I - I - and I didn't
6 omit anything. I read the entire rule and I hope the
7 record will bear that out. I didn't skip any part of it.
8 I read the rule.

9 At preliminary examinations in criminal cases hearsay
10 is admissible to prove with regard to property the
11 ownership, authority to use value, possession and entry.
12 The prosecutor just skipped over, we didn't even - there's
13 no - we didn't get to an issue of phone. There's no
14 question about a phone. There was a question about -
15 there was a summary question of is there a phone number
16 associated with this account. And it --

17 THE COURT: Well, the phone number - no, the
18 question was, "Is there a phone number associated with
19 Nicholas Remington?" That was the question.

20 MR. ROCKIND: Sure. It's - and again, that has
21 nothing to do - that completely skips over what - I don't
22 even think this section of the rules of evidence apply to
23 a phone number. But this completely skips over to
24 property. But we just completely skip over the --

25 THE COURT: Well, it's yours, right? I mean,

1 you pay for it. You can take it with you if you go to
2 another company. Your number goes with you.

3 MR. ROCKIND: I don't think the prosecutor
4 actually asked a question about phones. She asked a
5 question about a phone number.

6 THE COURT: That's what I mean, the number.
7 Isn't that something that you own?

8 MR. ROCKIND: I - do your Honor consider your
9 phone number to be your --

10 THE COURT: Yeah, when I was in practice I mean
11 I had a phone number that was --

12 MR. ROCKIND: The phone is different than -
13 I --

14 THE COURT: No --

15 MR. ROCKIND: I'm just making my objection.

16 THE COURT: Okay.

17 MR. ROCKIND: I think that the prosecutor
18 skipped over - I think she literally skipped over a couple
19 of steps, so --

20 THE COURT: I appreciate that and I will
21 overrule the objection. Thank you.

22 BY MS. HAND:

23 Q Did you, in fact, then receive the information for a
24 Snapchat account associated with the phone number of
25 Nicholas Remington and Hulkolas?

1 A Yes, I did.

2 MS. HAND: Judge, I'm going to mark as People's
3 proposed exhibit number three a certificate of
4 authenticity from Snapchat. May I approach the witness,
5 your Honor?

6 THE COURT: Yes. Please show that to Mr.
7 Rockind.

8 MS. HAND: He has it.

9 THE COURT: Okay.

10 MR. ROCKIND: I have it, your Honor.

11 THE COURT: Thank you. This is three?

12 MS. HAND: Three, yes, your Honor.

13 BY MS. HAND:

14 Q Sir, do you recognize what that is that I handed you?

15 A Yes, I do.

16 Q What is it?

17 A This is a certificate of authenticity from Snapchat.

18 Q Okay and did that certificate of authenticity accompany
19 the receipt of the documents that you received from
20 Snapchat?

21 A Yes, it did.

22 Q And what kind of documents - in what format did you
23 receive the documents from Snapchat?

24 A Snapchat sends everything via email. It was a Microsoft
25 Excel spreadsheet with different text messages, which are

1 Snaps from the account of Hulkolas. There was also
2 videos, photographic images that were also included in
3 documents that I received from Snapchat.

4 Q All right, and you provided those to me, I'm assuming?

5 A Yes.

6 Q Okay. All right.

7 MS. HAND: Judge, for - I'm going to move for
8 admission for exam purposes, Judge, in - in two ways.

9 One, there is a - a disk that I have provided to
10 defense counsel that contains all of the information, the
11 videos. And then inside that same disk is a - an Excel
12 spreadsheet with the actual written documents of the - I
13 guess they're called Snapchats. So I'm going to mark
14 those virtually at this point, because they're already in
15 my computer.

16 But the - the thumb drive as four and I'd move to
17 mark the actual printed out copy of the Snapchats as
18 People's proposed exhibit five. And based on - and I
19 did also, so the Court is aware, provide Counsel notice of
20 my intent to admit these as a business record under
21 902(11).

22 MR. ROCKIND: Judge, I have an objection. I
23 have a - I have a --

24 THE COURT: Please, take your time.

25 MR. ROCKIND: I have a little bit of voir dire

1 and then I just have a --

2 THE COURT: Sure.

3 MR. ROCKIND: I have voir dire on - so,
4 Detective Balog, good afternoon.

5 THE WITNESS: Good afternoon, sir.

6 MR. ROCKIND: Sorry for all the objections over
7 form and I don't want to keep tripping over myself and so
8 I'm not very successful with those so far.

9 THE WITNESS: No problem.

10 MR. ROCKIND: Just so I understand, you - you
11 sent off a - there's a - an email which - to make a
12 request for Snapchat to provide records, right?

13 THE WITNESS: There's a preservation letter,
14 yes.

15 MR. ROCKIND: And then you did that, you sent
16 off the preservation letter?

17 THE WITNESS: Correct.

18 MR. ROCKIND: And then you ultimately obtained a
19 search warrant, correct?

20 THE WITNESS: Correct.

21 MR. ROCKIND: Was there any communication
22 between you and Snapchat or any representative of Snapchat
23 between those two dates?

24 THE WITNESS: I do not believe so, no.

25 MR. ROCKIND: Did you have any actual - other

1 than electronic communication, did you have any verbal
2 telephone, face to face communication with any
3 representative of Snapchat?

4 THE WITNESS: No, I don't believe so.

5 MR. ROCKIND: You - do you remember the date
6 that you sent off your preservation letter?

7 THE WITNESS: I believe it was April fifth.

8 MR. ROCKIND: And do you remember the date that
9 you got your search warrant?

10 THE WITNESS: April eighth.

11 MR. ROCKIND: Did you send the search warrant to
12 the contact information that you had at Snapchat?

13 THE WITNESS: That's correct, yes.

14 MR. ROCKIND: And the info - the contact
15 information at Snapchat is just a general email address or
16 found in the law enforcement guide?

17 THE WITNESS: That's correct.

18 MR. ROCKIND: Is that fair to say?

19 THE WITNESS: Correct.

20 MR. ROCKIND: And how soon after you sent off
21 your request, your - your search warrant did you get a
22 response from Snapchat?

23 THE WITNESS: It was, I believe, a month and a
24 half.

25 MR. ROCKIND: If I - if I understand the - when

1 you - Snapchat responds via email?

2 THE WITNESS: Correct.

3 MR. ROCKIND: And I don't mean to be too - I'm
4 not trying to take this outside of voir dire, this is just
5 focused on the - the foundation for this. But I just want
6 to know when you received the email from Snapchat did it
7 come from an individual or did it come from the same law
8 enforcement --

9 THE WITNESS: It come from the law enforcement.

10 MR. ROCKIND: And then when you got the email
11 did it have - we don't have a copy of the actual email
12 that you received. Could you share with me again under -
13 just for foundational purposes, what was the contents of
14 the email?

15 THE WITNESS: The content of the email itself,
16 it gives you a - I guess it would be kind of like a
17 password information where you have to go in and - and
18 type in some information and then the email comes directly
19 to you in the Microsoft Excel spreadsheets and different
20 snippets, files that you open.

21 MR. ROCKIND: All right. Is it fair to say that
22 what you received from Snapchat is actually a letter from
23 Snapchat, a cover letter?

24 THE WITNESS: Correct.

25 MR. ROCKIND: Was that in a file itself or was

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that just attached to the emails like a PDF?

THE WITNESS: I believe that was PDF.

MR. ROCKIND: And then it also - there's a certification that's also attached to the email, correct?

THE WITNESS: Correct, yes.

MR. ROCKIND: And - and the certificate of authenticity was also attached as a PDF.

THE WITNESS: Correct.

MR. ROCKIND: And then attached to that is - you know what a ZIP file is, right?

THE WITNESS: Correct, yes.

MR. ROCKIND: And then there's a single ZIP file that was attached to the email, correct?

THE WITNESS: A single ZIP file?

MR. ROCKIND: Yes.

THE WITNESS: I believe so.

MR. ROCKIND: You get it and then the information that you testified to appeared?

THE WITNESS: Yes, I believe so, yes.

MR. ROCKIND: There weren't two ZIP files, there was a single ZIP file?

THE WITNESS: I believe there was just one.

MR. ROCKIND: And you provided all that to the prosecutor and as far as you're aware the prosecutor provided all that to the defense --

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THE WITNESS: I believe so.

MR. ROCKIND: As far as you're aware.

THE WITNESS: As far as I'm aware, yes.

MR. ROCKIND: Okay. Since that time you've had - and is it fair to say that - just so I - I'm going to address the certification issue in a second. But when you click on the ZIP file it opens up to information from Snapchat itself, right?

THE WITNESS: Correct.

MR. ROCKIND: And one was there - there's an Excel spreadsheet that is labeled chat, right?

THE WITNESS: Yes

MR. ROCKIND: And then there's a bunch of - there's a - some other Excel spreadsheets, one is related to subscriber, which is subscriber information?

THE WITNESS: Yes.

MR. ROCKIND: There is one for chat group, right?

THE WITNESS: Yes.

MR. ROCKIND: There is one --

MS. HAND: I --

MR. ROCKIND: This is - this is part of the foundation for --

MS. HAND: Foundation, I guess my question, Judge, is what is the objection to the admission based on

1 902(11)?

2 MR. ROCKIND: I'm going to get there. I - I'm
3 getting there in one second, I promise. There is - I'm
4 near the end of this.

5 And there is another Excel spreadsheet that deals
6 with chat stories, right?

7 THE WITNESS: Correct.

8 MR. ROCKIND: Okay and then just - then you have
9 all the files related to attachments and things of that
10 sort?

11 THE WITNESS: Yes.

12 MR. ROCKIND: And that's the sum total of what
13 you got from - from Snapchat, right?

14 THE WITNESS: Yes.

15 MR. ROCKIND: And then the prosecutor said that
16 she was gonna introduce a printed - I believe said a
17 printed Excel spreadsheet which purportedly contains Snaps
18 and chats and alleged communications, is that right?

19 THE WITNESS: Correct.

20 MR. ROCKIND: And have you - I presume it's - is
21 it - did you print - did you just print that right off of
22 the Excel spreadsheet that was on the --

23 THE WITNESS: Yes.

24 MR. ROCKIND: In the ZIP files?

25 THE WITNESS: Yes.

1 MR. ROCKIND: So that's not created separately,
2 right?

3 THE WITNESS: Correct.

4 MR. ROCKIND: Okay. So, Judge, I have a couple
5 of objections. Let me start by - could I tender for the
6 Court - could we tender just a copy of the certificate of
7 authenticity for your Honor to review? Have you seen it,
8 your Honor?

9 THE COURT: No.

10 MR. ROCKIND: Do you have an objection if I show
11 the Court just a copy of it?

12 MS. HAND: That's fine.

13 MR. ROCKIND: May I approach, your Honor?

14 THE COURT: Yes, thank you.

15 MR. ROCKIND: I think this is - what - what
16 People's exhibit number is that, Detective?

17 THE WITNESS: Exhibit three.

18 MR. ROCKIND: Okay. So, first, your Honor, the
19 - would your Honor take a look at the certificate of - of
20 the - I guess the authenticating certificate that I
21 provided the Court?

22 THE COURT: I'm doing so right now.

23 MR. ROCKIND: So, if your Honor will take a look
24 it's - it's not sworn. Federal Rule of Evidence 803, which
25 is 28 USCA, which also is related to business records,

1 says the following and I have a copy here for the
2 prosecutor.

3 MS. HAND: I don't care what the federal rules
4 say.

5 MR. ROCKIND: You will in a second. Can I
6 tender a copy to the court?

7 THE COURT: Yes.

8 MR. ROCKIND: Under - you will. Under 803(A) -
9 if you take a look, 803 then we get to subsection 6,
10 that's records of a regularly conducted activity, a record
11 of an act, event, condition, opinion or diagnosis and then
12 if you look, your Honor, it - under subsection D in the
13 second page, it says "All these conditions are shown by
14 the testimony of the custodian or another qualified
15 witness or by a certification that complies with rule
16 902(11) or (12) or with a statute permitting
17 certification."

18 Your Honor, if you take a look at the - in the --

19 THE COURT: What's the relevance of the federal
20 rules? Let's take a look the Michigan rules.

21 MR. ROCKIND: I understand. Your Honor, there's
22 a - if you look in the certification that was provided by
23 this person from Snapchat they actually reference the
24 statute, providing the Court with the statute, there is a
25 federal statute that allows - I'm providing the Court

1 with a copy of it.

2 THE COURT: Thank you.

3 MR. ROCKIND: Which allows for a - an unsworn
4 statement to be used and there's a federal statute that
5 allows the unsworn statement to be used and if you read
6 under the federal rule, your Honor, there - under 902(11),
7 which is the authentication - the federal authentication
8 rule, your Honor, actually allows for an unsworn statement
9 to be used for authentication purposes.

10 The Michigan rule - the Michigan rule actually
11 requires an under oath statement for authentication. I
12 have copies of 803(6) and if the Court wants I have copies
13 of 902(11).

14 THE COURT: I'm reading 902(11) now. It says
15 under oath, I understand.

16 MR. ROCKIND: Yes.

17 THE COURT: Okay.

18 MR. ROCKIND: The certification that is provided
19 associated with the Snapchat - that purportedly certifies
20 these records does not comply with MRE 902(11). It is not
21 under oath. We have other objections too, but - which I
22 can get to, but this is a - this is the --

23 THE COURT: Well, isn't a declaration under -
24 under penalty of perjury, a consequence of violation of an
25 oath? In other words, how could you be subjected to the

1 penalty of perjury if you're not under oath?

2 MR. ROCKIND: Judge, under - that's why I
3 provided the Court with the federal statute. The federal
4 statute as I provided the Court actually calls for a - a
5 declaration or a certification which is actually not under
6 - under oath. Federal statute, which is why 28 US Code
7 1746 says, "Unsworn declaration under penalty of perjury."
8 And in - in Federal Rule 902(11) where everybody was - I
9 know I was - I took a bit of time to get there but I
10 wanted to give the Court as much information as I could,
11 under 902(11) the - it references statutes. It actually
12 references - if your Honor takes a look there is a
13 specific reference under 902(11) for - and I'm going to
14 pull it out of here.

15 THE COURT: 902(11) doesn't reference any
16 statutes in the Federal Rule.

17 MR. ROCKIND: Not - Federal Rule 902(11)?
18 Federal Rule 902(11) actually does.

19 THE COURT: I don't think you gave me a copy of
20 that then.

21 MR. ROCKIND: I did but I can give the Court
22 another copy if want.

23 THE COURT: Is that this one?

24 MR. ROCKIND: That is --

25 THE COURT: I thought this was what you handed

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me.

MR. ROCKIND: Federal Rule of Evidence

902(11) --

THE COURT: Okay, let's look to the third page, which is --

MR. ROCKIND: It's a - a certified document of a regularly-conducted activity.

THE COURT: I don't see a statute listed in there. I see a rule, 803.6(A-C).

MR. ROCKIND: Right and then keep going as shown by a certification of the custodian or another qualified person that complies with a federal statute for a rule subscribed by the Supreme Court. That's different than Michigan law.

Michigan law requires that the custodian of records actually provide and take an oath. The federal statute that the record keeper in this case relied on is a federal statute that may - if we were in Federal Court or applying the federal rules may suffice. Michigan requires an oath, period. And the witness - the - the custodian, the record custodian from Snapchat did not take an oath. She specifically says she did not.

It - it's not pursuant to oath, it's pursuant to 28 USC 1746, which is not under oath. There is no - or taken. There is no notary. There's nothing with which

1 this is - to indicate this is an under-oath statement. In
2 fact, the statute relied on specifically says it's not
3 sworn and it's not under oath. It just doesn't comply.

4 THE COURT: Okay. What's your response, Ms.
5 Hand?

6 MS. HAND: Judge, the custodian of records
7 indicates that they - they're under the penalty of
8 perjury. That the foregoing is true and to the best of
9 their knowledge. I believe that it comports with 902(11).
10 It - it indicates everything that 902(11) require it to
11 indicate in order to admit the records as a business
12 record.

13 MR. ROCKIND: I have other objections, too.

14 THE COURT: Okay, bear with me. Do you have any
15 more Ms. Hand?

16 MS. HAND: No, your Honor.

17 THE COURT: Okay. I think that the certificate
18 of authenticity, because it specifically requires a
19 declaration it is a declaration under penalty of perjury,
20 that that's going to satisfy Michigan's 902(11) as an
21 oath. There is no other way you could be subjected to
22 perjury unless you - you're under oath first.

23 MR. ROCKIND: Well, I was trying to --

24 THE COURT: It's a --

25 MR. ROCKIND: The Federal Statute I provided the

1 Court does not require an oath in order to be subject to
2 perjury. It says unsworn.

3 THE COURT: Okay. I - I'm reading the statute.
4 We're going to have to agree to disagree on the
5 interpretation of that, but for purposes of application of
6 Michigan Rule 902(11) I think this certificate of
7 authenticity satisfies the concept of the oath that is
8 required.

9 MR. ROCKIND: We have some other --

10 THE COURT: Go ahead. What's your other
11 objections to the --

12 MR. ROCKIND: Okay.

13 THE COURT: - proposed exhibits?

14 MR. ROCKIND: Sure. So, your Honor, I - let me
15 get my notes here, which is - so, the other issues we
16 have, your Honor, is first - and that's why I did - I
17 attempted to lay a foundation for what was received from
18 Snapchat by Detective Balog and I'm more than willing to
19 allow them to pull up the - the disk that was provided to
20 the prosecutor and the prosecutor provided to me.

21 If you take a look at the certificate that your Honor
22 just looked at the certificate actually was provided on a
23 particular date. The certificate actually indicates that
24 the - that whenever this individual that I'll get to in a
25 second, that she is actually certifying that there are two

1 ZIP files. Your Honor, as part of the - Detective one
2 testified that he did not receive two ZIP files and as an
3 offer to the Court I can tell you that the discovery disk
4 that we received did not contain two ZIP files. We only
5 received one ZIP file.

6 So, there are concerns about that that I think are
7 important to be shared with the - with the Court, that's
8 part of our objection.

9 THE COURT: It says there's an internal
10 reference number, 4047262.

11 MR. ROCKIND: Do you see where it says two ZIP
12 files, your Honor?

13 THE COURT: I do.

14 MR. ROCKIND: We only have one ZIP file.

15 THE COURT: Was there something that had
16 something associated with that internal reference number
17 that's cited in that same sentence?

18 MR. ROCKIND: I guess I don't understand the
19 Court's - the Court's query.

20 THE COURT: Okay, number three says attached is
21 a true and correct copy of two ZIP files --

22 MR. ROCKIND: Which we only got one.

23 THE COURT: - of data associated with Snapchat
24 identified Hulkolas with internal reference number such
25 and such.

1 MR. ROCKIND: We only received on ZIP file.

2 THE COURT: I understand but is that internal
3 reference number part of the exhibit in any way?

4 MR. ROCKIND: I - you know, I'd have to pull out
5 the - the --

6 THE COURT: If you know. If you don't know,
7 that's fine.

8 MR. ROCKIND: I don't know the answer to that,
9 your Honor.

10 THE COURT: Okay.

11 MR. ROCKIND: There are - the other issues that
12 we - so - so this is - one of the - one of the issues that
13 I can walk the Court through is that what I believe what
14 is on the ZIP file, which is what is certified by that
15 record, is different from the - the typed copy or the -
16 the People's next exhibit that intends to introduce. They
17 - they're different. They're substantially different.

18 And one of the reasons that I wanted to go through
19 that with the Court was that the differences are
20 significant. What is certified on the - what is
21 certified --

22 THE COURT: What is - I - I understand the
23 concept and I'm going to let you finish, but for purposes
24 of admissibility as opposed to the weight of the evidence
25 if there are discrepancies, how does that go to

1 admissibility?

2 MR. ROCKIND: Well, because the document --

3 THE COURT: Which is where we're at now.

4 MR. ROCKIND: Because it --

5 THE COURT: We're stuck on admissibility.

6 MR. ROCKIND: It - because if the State wants to
7 introduce - because I - I'm trying to work through it to -
8 it's a - it's a rather sort of - it's a - it's a rule of
9 evidence intensive issue. What is certified on that disk,
10 assuming that the Court accepts this - the certificate of
11 authenticity, what is certified on the disk is different
12 from the - what is this printed copy. We received the
13 printed copy. The printed copy, the hard copy that the
14 State wants to introduce apparently, contains 1,189
15 messages. The e-copy or the ZIP copy of these chats
16 actually contains only 720 messages.

17 What is this - this written copy is not a - the one
18 that they want to introduce is not certified. The written
19 copy, if you were to actually try to print the Excel
20 spreadsheet that's on the - purportedly certified, it's
21 not the same. In fact, there are significant Snap
22 conversations that are different. For example, there are
23 - there are communications on the hard copy that the
24 People, I believe, what to introduce that are not actually
25 on the - the ZIP copy, on the e-copy.

1 So, the hard copy is not certified. The hard copy
2 itself that the State wants to introduce is not a
3 certified record. It wasn't certified by Snapchat.

4 THE COURT: How do you know?

5 MR. ROCKIND: Because they're different.

6 Because the e-copy and the hard copy - the Court can go
7 through it itself. If I take the - the e-copy and take it
8 to your computer and attempt to download it and you'll see
9 that the two are not the same.

10 THE COURT: Okay.

11 MR. ROCKIND: They're different.

12 THE COURT: The fact that they're different -
13 they both came from Snapchat, right?

14 MR. ROCKIND: Well, no, I - the - I - I - that's
15 why I attempted to lay a foundation with the Court. There
16 is a - we can pull the disk out and we can plug it in.
17 For example, from the - the e-file, which is on the - the
18 disk, the e-file itself has - there are - it - it's
19 substantially different. I mean, I can work through the
20 Court what the differences are, but I guess I'm trying to
21 - you're asking me how I know, it's not my job to lay the
22 foundation that this written copy that the State wants to
23 introduce actually came from Snapchat.

24 In fact, I'm going to suggest to the Court that the
25 way we received it in discovery suggests that it's - it's

1 not the e-copy. All that certificate does is verify what
2 is in a - is certified, the authenticity quote/unquote or
3 a ZIP file. We established the testimony the ZIP file
4 contains an Excel spreadsheet and that Excel spreadsheet
5 is different from this printed copy that the People want
6 to introduce.

7 THE COURT: Okay. I understand your argument,
8 but I'm not seeing anything that would make me believe
9 that the detective or that the People modified something.

10 MR. ROCKIND: I'm not suggesting anybody
11 modified it.

12 THE COURT: Right, so if it came from
13 Snapchat --

14 MR. ROCKIND: I don't know that it did. Here --

15 THE COURT: Well --

16 MR. ROCKIND: It's - as opposed to doing this,
17 can I --

18 THE COURT: The fact that it's different --

19 MR. ROCKIND: But this is - this is --

20 THE COURT: And you didn't come up with it,
21 right?

22 MR. ROCKIND: Judge, this is important. Can I
23 suggest this?

24 THE COURT: Go ahead.

25 MR. ROCKIND: If the Court takes the - if the

1 Court wants to utilize the disk, not a printed copy of it,
2 just the disk and utilize the disk which is - is allegedly
3 - then that - then that would be - that would fit within
4 the certification. A separately printed copy - I object
5 to the separately printed copy because they can't
6 establish that that is the same copy that is purportedly
7 certified.

8 THE COURT: All right, I respectfully disagree.
9 So, let me make this ruling.

10 MR. ROCKIND: But, can I --

11 THE COURT: I'm going to --

12 MR. ROCKIND: Because there are other - there
13 are other --

14 THE COURT: - accept this certificate --

15 MR. ROCKIND: There are other objections I have
16 to it.

17 THE COURT: Okay. I'm going to accept the
18 certificate of authenticity. And, as I've already
19 indicated, I'm ruling that it applies under 902(11) under
20 the Michigan Rules. If you have any other objections with
21 regard to the admissibility let's go through them.

22 MR. ROCKIND: Sure. It - is the Court willing
23 to actually just compare the two to confirm whether --

24 THE COURT: I will once they're admitted,
25 because that goes to what they mean, but not their

1 admissibility.

2 MR. ROCKIND: Okay.

3 THE COURT: In other words, the detective's
4 already testified --

5 MR. ROCKIND: But the written copy is not
6 certified.

7 THE COURT: Excuse me one moment, Mr. Rockind.

8 MR. ROCKIND: Sure.

9 THE COURT: I've heard the detective testify
10 that he got the email from Snapchat in response to the
11 search warrant. He printed what was on there without
12 changing it in any way. You're saying that what he
13 printed is different from the digital copy, but you're not
14 attributing that to any sort of malfeasance on the
15 detective's part.

16 MR. ROCKIND: I'm saying that it - I know from
17 the disk, we have the disk. I am telling you and I hope
18 the Court will attempt to - before you admit the written
19 copy let's put the disk in and take a look at what's on
20 the - the e-file. The e-file doesn't match what is on the
21 actual - this hard copy. I don't know where the - if the
22 hard - the claim is that the hard copy was printed
23 directly from - from the disk, it's not possible to have
24 done that. It's not the same. This - the information on
25 the purported hard copy does not match up with what's on

1 the disk.

2 THE COURT: What's the response to that?

3 MS. HAND: Well, first of all, I'm at a complete
4 disadvantage because I really don't know what a ZIP file
5 means. If Neil - if Mr. Rockind wants to look in my
6 computer to make sure this looks like his disk when he
7 opens it, I think these are two ZIP files and I copied my
8 disk. Isn't that two ZIP files?

9 MR. ROCKIND: No.

10 MS. HAND: Isn't it?

11 MR. ROCKIND: No, it's not.

12 MS. HAND: When you hit that? I don't know.

13 MR. ROCKIND: It's not - these are not two ZIP
14 files, your Honor. So --

15 MS. HAND: I think it is.

16 THE COURT: Okay, but --

17 MR. ROCKIND: These are not ZIP files. These
18 are PDFs.

19 MS. HAND: Okay, well when I put in the disk and
20 I click on it that's what comes up.

21 MR. ROCKIND: You have to go back one.

22 MS. HAND: I'm in the E, not the D.

23 MR. ROCKIND: All right, but there's a --

24 MS. HAND: All I can think of is maybe there's a
25 disconnect in the copying, but I mean I have --

1 MR. ROCKIND: We - we only have in ours, we have
2 one single ZIP file. That ZIP file contains one Excel
3 spreadsheet. That one Excel spreadsheet has about half of
4 the - the - the Snapchats and the communications that are
5 purportedly attached that are part of this disk, which is
6 the People - they are not the same.

7 MS. HAND: Judge, I - I gave him that printout.
8 That is - I don't think that's exact printout of
9 everything on here, because I printed mine out from here.
10 I don't - that wasn't a - just some extra ones that I had
11 originally when they presented the case for the warrant.
12 So, he has - he has the complete --

13 THE COURT: He has what you have.

14 MS. HAND: He has what I have and it's just in a
15 different format.

16 MR. ROCKIND: And I'm not - I'm not suggesting
17 that, but wait. But that's what I'm - that's what I'm
18 trying to point out. Your Honor has admitted the
19 certification?

20 THE COURT: Yes.

21 MR. ROCKIND: So if the - the certification
22 certifies a - an Excel spreadsheet and information is in a
23 ZIP file and I - what I'm telling the Court is that even
24 the prosecutor just now in her recitation can't tell you
25 that this - that the information that's in this - which we

1 got as part of discovery, and I can tell you the exact
2 date we got it --

3 MS. HAND: Well, Judge, I'm not admitting that.
4 I am admitting the printout of the Excel spreadsheet from
5 this disk. I didn't print --

6 THE COURT: Right.

7 MS. HAND: I have that --

8 THE COURT: Again, the fact that it doesn't go
9 to admissibility, it goes to what it means, its weight.

10 MR. ROCKIND: Can I see what the - the document
11 the prosecutor --

12 THE COURT: Yes, please. Take your time and
13 take a look. I would have thought that in the two and a
14 half months that we've had this you would have been able
15 to do that already, but let's do it now.

16 MR. ROCKIND: So --

17 THE COURT: Do you have any more objections
18 other than --

19 MR. ROCKIND: I do - I do and - and the
20 prosecution --

21 THE COURT: Okay, go ahead.

22 MR. ROCKIND: The prosecution has them printed
23 separately, so I need to take a look and see if these are
24 - because I - if these are from the disk as opposed to
25 from this - this hard copy that we received the very first

1 day as part of discovery. This was provided to us on - I
2 think it was June 19th, we got a disk of Snapchat logs,
3 which I believe is what the People are attempting to
4 admit.

5 THE COURT: Okay.

6 MR. ROCKIND: Then we got a printout of Snap
7 conversations that was 40 pages.

8 THE COURT: Okay, I understand it's lengthy, but
9 we're three months from that date.

10 MR. ROCKIND: But that's what - the 40 pages is
11 not on that drive, which I'm trying to tell the Court.
12 And if it's accepted you're accepting a drive - you're
13 accepting 40 pages of Snapchat logs, let --

14 THE COURT: Well, then, where did they come
15 from?

16 MR. ROCKIND: It's not my responsibility to have
17 the answer to that question. I don't have an answer.

18 THE COURT: It is a --

19 MR. ROCKIND: I know it's not in the drive. I
20 can tell you that they're not on the drive.

21 THE COURT: Okay.

22 MR. ROCKIND: They are - they are
23 conversations --

24 THE COURT: Well, we have a foundational witness
25 who is - let me just ask the detective. Is what the

1 prosecutor has in her exhibit something that you had
2 printed yourself or could print from what you received
3 from the Snapchat --

4 THE WITNESS: Yes.

5 THE COURT: - response to the search warrant?

6 THE WITNESS: Yes.

7 MR. ROCKIND: Let me make sure we're talking
8 about the same thing. So, when we talk - as part of -
9 when you - you're aware that there was at some point
10 provided to the prosecutor a 40-page Excel printed --

11 THE WITNESS: I provided the prosecutor whatever
12 Snapchat provided to me.

13 MR. ROCKIND: Can I approach the witness, your
14 Honor, just so I can --

15 THE COURT: Sure, yeah.

16 MR. ROCKIND: This - do - I'm showing you just
17 what is my copy, but I want to - have you seen that
18 before?

19 THE WITNESS: Sorry, your Honor, old eyes.

20 THE COURT: That's okay.

21 THE WITNESS: That's what happens when you hit
22 46.

23 THE COURT: I know, I'm getting there myself.

24 THE WITNESS: Yes, this is some of the Snapchat
25 text information that I received.

1 MR. ROCKIND: Are you saying that - that the
2 document that I've handed you, which is a 40-page log of
3 Snap conversations, is on the disk that has been certified
4 by Snapchat as - that you're --

5 THE WITNESS: This is - this is information that
6 Snapchat sent to me via the email.

7 MR. ROCKIND: Is that in the ZIP file?

8 THE WITNESS: If it was sent to me through
9 Snapchat in a ZIP file, yes.

10 MR. ROCKIND: I'm trying to be very precise
11 about this, because the - there are two different - have
12 you compared that with what's on the disk?

13 THE WITNESS: Again, what - what --

14 MR. ROCKIND: Detective Balog, have you compared
15 the Excel spreadsheet that I've just handed you with the
16 copy, have you compared that for content or with - with
17 what's on the disk?

18 THE WITNESS: I don't have the disk before me.
19 I mean --

20 MR. ROCKIND: Have you - have you compared
21 whether that was even on the disk?

22 THE WITNESS: I guess I'm not getting what
23 you're asking. I - I can't compare this --

24 THE COURT: Well, you can't - you haven't shown
25 me that he actually had what you handed him before today's

1 date. He had the information, but not that exact stack of
2 paperwork.

3 MR. ROCKIND: Well, did you have this stack of
4 papers before? I mean, there's 40-pages of Snapchat logs
5 that were provided as part of the discovery in the case,
6 is that right?

7 MS. HAND: Well, Judge, he can't - he can only
8 say --

9 THE COURT: Okay.

10 MR. ROCKIND: There's 40 pages of discovery.

11 THE COURT: Okay.

12 MR. ROCKIND: I - I'm trying to be - your Honor,
13 I --

14 THE COURT: He's already laid a foundation. He
15 print - he gave what he had from Snapchat.

16 MR. ROCKIND: But he hasn't identified - your
17 Honor, this is --

18 THE COURT: Did you obtain any other information
19 from Snapchat ever at any point other than that one email
20 response from them?

21 THE WITNESS: No, I did not.

22 MR. ROCKIND: Okay, so what I'm saying is that
23 when we hook up Ms. Hand's computer and we look at this
24 Excel spreadsheet that's on it, you're saying that that
25 document that you're currently looking at, that Excel

1 spreadsheet, you're saying that that is on - that that's
2 on that disk. Under oath?

3 THE WITNESS: It should be, correct.

4 MR. ROCKIND: Well, what explanation would there
5 be for it not being on the disk?

6 THE WITNESS: It could be --

7 MR. ROCKIND: Who's doing the talking in the
8 background?

9 THE COURT: Yes, no one talk please except the
10 lawyers or the witness.

11 THE WITNESS: If it is not on that then I have
12 no explanation for it other than an error, but I believe
13 it is on there.

14 MR. ROCKIND: An error - an error in - an error
15 in terms of what? An error on Snapchat's part?

16 THE WITNESS: No, an error on my part or
17 downloading, possibly. I mean, if it's not there then
18 it's an error on my behalf, but I believe it's there. I
19 recognize some of these text messages, reading them in the
20 past.

21 MR. ROCKIND: I understand and I'm not trying to
22 stand over your shoulder. I'm trying to establish what
23 this document is - so if we look at the disk you're saying
24 that if it's not - which you can see that if this - what
25 I'm showing you here, this 40-page Excel spreadsheet is

1 not on the disk, would you concede to me that it is not -
2 was not provided to you by Snapchat?

3 THE COURT: I'm sorry --

4 MR. ROCKIND: Yes, if this is not on the disk.
5 If this is not on the disk that the prosecution intends to
6 - that you provided to her that you intend to play in
7 court. Would you concede this was not provided by
8 Snapchat? Not - wasn't provided as part of this
9 certification?

10 THE WITNESS: No, it was provided by Snapchat.

11 MR. ROCKIND: What --

12 THE WITNESS: Again, everything that I -
13 everything that Snapchat provided me as provided to the
14 prosecutor.

15 MR. ROCKIND: That --

16 THE WITNESS: If you're saying that it's missing
17 then I don't know how it's missing other than there could
18 be an error. I can --

19 MR. ROCKIND: An error in downloading it or --

20 THE WITNESS: That's a possibility. If you're
21 saying that then that's a possibility. Do I doubt it? I
22 doubt it, yes. I believe everything that I have from
23 Snapchat was presented to the prosecutor.

24 MR. ROCKIND: So --

25 THE COURT: Do you have any other objections?

1 MR. ROCKIND: I do. I do, your Honor, and I'd
2 like to take a - there's one conversation I can really
3 focus on to know whether these were - these are the same.
4 But - so here are the other - the other issues that - that
5 we have, your Honor.

6 THE COURT: Okay.

7 MR. ROCKIND: There is - I don't believe that
8 the Snapchat records, your Honor knows that these suffice
9 particularly related to the - the content of the
10 communications that these qualify as - as business records
11 and I want to attempt to make the - the - the argument as
12 to why.

13 THE COURT: Okay.

14 MR. ROCKIND: As your Honor knows, the purpose
15 in admitted business records is that they are inherently -
16 that they are inherently reliable and carry with them
17 sufficient guarantees of trustworthiness.

18 And to have information that, as your Honor knows,
19 under 104(B) and then under 110(A) - 1101(A), we're
20 allowed to present other information when the Court is
21 attempting to establish the admissibility of documents and
22 I want to give the Court some of that because I believe
23 that there is a - there is a - these - the chat
24 conversations don't qualify as - as a - business records.
25 And so - can I do that with - with --

1 THE COURT: Yeah, explain to me what you - what
2 you --

3 MR. ROCKIND: Sure.

4 THE COURT: The basis of your argument.

5 MR. ROCKIND: Sure. So, first of all you've got
6 information from Snapchat presents - creates a Snap Law
7 Enforcement Guide. Have you seen that? So - can I
8 provide a copy to the Court?

9 THE COURT: Sure.

10 MR. ROCKIND: The Snap Law Enforcement Guide
11 itself, your Honor, when you take a look at it and this is
12 available online. The Snap Law Enforcement Guide, were
13 you to turn to, your Honor, page - page four on how
14 Snapchat works, the People are - I believe what they want
15 to do is they want to introduce these logs to attempt to
16 show what communications occurred between two user
17 accounts.

18 And page four, if you look at the third paragraph, it
19 says, "Snap servers are designed to automatically delete a
20 Snap after it has been viewed by all intended recipients.
21 Snap servers are designed to automatically delete an
22 unopened Snap sent directly to a recipient after 30 days
23 and an unopened Snap and group chat for 24 hours." You go
24 down to another two lines, "Snap servers are designed to
25 automatically delete a Snap in a user's story 24 hours

1 after the user posts a Snap but the user may delete part
2 or all" and then if you go to the next section about next
3 page on chat, it says, "Our servers are designed to
4 automatically delete one to one chats once the recipient
5 has opened the message and both the sender and recipient
6 have left the chat screen depending on the user's chat
7 settings."

8 THE COURT: Okay.

9 MR. ROCKIND: Continues on about unopened chats
10 and talks about --

11 THE COURT: What --

12 MR. ROCKIND: And then talks about - if you look
13 at the last page - and on page 10, your Honor --

14 THE COURT: So what does that have to do with --

15 MR. ROCKIND: I'll share because Snap servers
16 are designed to automatically delete most user account is
17 described in subsection three, and if you take a look,
18 your Honor, there is more documentation that Snap even
19 publishes.

20 We've got a transparency report, which I can provide
21 to the Court, that Snaps recovery rate even pursuant to
22 court orders or search warrants or overall recovery rate
23 of recovering data is 87 percent. Which means that what
24 the State is trying to do is to introduce information from
25 Snapchat and what they're trying to do is introduce - they

1 can't even verify that all of the communications are, in
2 fact, provided. That all communications between two
3 account holders is provided because, as I have here, you
4 will see that Snap even says that they are - their default
5 is to delete.

6 THE COURT: Okay.

7 MR. ROCKIND: Now how - now how does that all
8 relate?

9 THE COURT: How does that --

10 MR. ROCKIND: Sure.

11 THE COURT: - go to admissibility?

12 MR. ROCKIND: Well --

13 THE COURT: Again, that should be an argument
14 for weight.

15 MR. ROCKIND: It goes to admissibility - and I -
16 and I'm - and I appreciate the Court asking. It goes to
17 weight in part because we've got some cases that talk
18 about, and I have a case here, it's People versus Jambor.

19 THE COURT: Okay.

20 MR. ROCKIND: I have a copy for the prosecutor
21 and I'll provide the Court with a copy of it here.

22 THE COURT: Okay.

23 MR. ROCKIND: The business record exception is
24 based on the inherent trustworthiness of business records.
25 But the trustworthiness is undermined and can no longer be

1 presumed when the records are prepared in anticipation of
2 litigation. And I'm going to get to the - their - how
3 this applies to this.

4 The - the Court - it goes on, "A firm conviction in
5 the found that the report was inadmissible under MRE 803.6
6 because it was prepared in anticipation of litigation and
7 therefore was not sufficiently trustworthy." I've
8 provided the Court with some information as to why
9 evidence from Snapchat is not sufficiently trustworthy,
10 because there are - it's default is to delete. That -
11 evidence is deleted that is on the Snapchat server.

12 THE COURT: Well, this - these documents have
13 not been admitted, so you --

14 MR. ROCKIND: Well --

15 THE COURT: You've shown me some things for
16 demonstrative purposes, but --

17 MR. ROCKIND: But, Judge, --

18 THE COURT: - you haven't proven to me that
19 they're inaccurate. You haven't proven to me any of that
20 yet. You're just saying that.

21 MR. ROCKIND: First of all, I'm just saying -
22 well, your Honor, I'm happy to mark these but under
23 104(B) --

24 THE COURT: I mean, you've said that they're
25 only 87 percent retrieval rate. That hasn't been proven.

1 You're just saying that.

2 MR. ROCKIND: Your Honor --

3 THE COURT: You'd need a witness, too, don't
4 you? To get something admitted?

5 MR. ROCKIND: Well, not under - not - not for
6 this purpose, your Honor. Now we're just talking about -
7 here's - here's Snapchat's transparency report. Now we're
8 actually talking about the - the rules of evidence, as
9 your Honor knows, don't apply when we're addressing issues
10 like 1104. We're addressing the admissibility of
11 evidence.

12 Under 104(B) and 11 - 11 and - and 1101(A) in terms
13 of establishing the admissibility of evidence the rules of
14 evidence don't apply.

15 THE COURT: Okay.

16 MR. ROCKIND: And I know your Honor knows that
17 and so that's what I'm trying to do is to give the Court
18 information to show you that the Snapchat information is
19 not - a Snap itself is not - it's not sufficiently
20 trustworthy.

21 The second thing, and I want to explain the
22 difference between this - this spreadsheet or this Excel
23 spreadsheet and the reasons why the Jambor case and
24 another case, which is the McDaniel case, that was cited
25 there and why those really apply. And this is how --

1 THE COURT: Let me ask you a question. And I
2 hate to interrupt your flow, but just by way of example.
3 So, you're saying that because there's not a 100 percent
4 accuracy of retrieval rate that the document can't
5 possibly be admissible because it's incomplete?

6 MR. ROCKIND: Well --

7 THE COURT: So if I were to have a subpoena,
8 let's say, to the Wayne County Register of Deeds and for
9 some reason, maybe they are, maybe they're not, they
10 weren't 100 percent accurate down there at the Register of
11 Deeds in Wayne County, that all of their records would
12 then be inadmissible because they're not perfect. That
13 can't be so.

14 MR. ROCKIND: Well, no. so, your Honor, first
15 of all - and it's a - it's a - I'm not trying to frustrate
16 the Court.

17 THE COURT: You're not frustrating me, I'm just
18 - I don't - I don't think your argument carries water.

19 MR. ROCKIND: Well, let me - let me - well, let
20 me --

21 THE COURT: So far, any way.

22 MR. ROCKIND: Well, let me just sort of kind of
23 explain how this all ties in here. The - the records that
24 have been provided were assembled. They were - this Excel
25 spreadsheet was assembled by Snapchat. It was created

1 with - when Mr. - when Mr. Remington was actually a
2 suspect or target of the investigation. This was the -
3 the receipt of it, the creation of it and the receipt of
4 it were actually created and it was received in
5 anticipation of litigation. And I want to compare the two
6 things that we're talking about.

7 Let's use your example of - of information or records
8 of the Register of Deeds or medical records. So, if we've
9 got - let's just use the medical record example. We've
10 got nurses that make vital entries. Those entries into -
11 into records related to patients, they have an independent
12 basis of existence. They exist standing alone of whether
13 or not there is litigation or whether there's a suspect.

14 And if I want to get those records those - that date
15 is created by a nurse or by someone at the hospital and
16 it's entered into a medical record and it's - and it's
17 saved in a medical record and it sits there until someone
18 - if someone actually seeks it. The nurse that took the
19 vitals actually knows what the vitals were and relies upon
20 those vitals as a part of their actual day-to-day
21 responsibilities.

22 And if I wanted to do a - an analysis some time later
23 and I wanted to seek out all of the records, so I wanted
24 to know how this nurse did her job on a particular day,
25 for example, there are two ways to go about it. One way

1 would be to - to send a subpoena or a search warrant to
2 the hospital and get all of that nurse's records for that
3 day. And then what I could do is go through each
4 individual record, which would be business records because
5 those - they have an independent basis for existence and I
6 could literally then take each individual piece and then I
7 could make my own spreadsheet and attempt to present that
8 to the Court.

9 THE COURT: But I - you're not convincing me
10 there is any difference. These were not Snapchat --

11 MR. ROCKIND: Well --

12 THE COURT: Let me finish. Snapchat is not
13 saving these images or what have you, what we would call
14 them, documents or Snaps or stories or whatever they are,
15 for the purposes of litigation. They were collected after
16 the request, but they were not stored for litigation --

17 MR. ROCKIND: These are - but these are --

18 THE COURT: - purposes.

19 MR. ROCKIND: No, but Judge, but that's - this
20 goes back to the point I was trying to make. One, they
21 have an issue with storage, because they claim that the
22 default, which I've provided the Court is - is deletion.
23 Two, they have an issue with - they have an issue - so
24 their - their default is deletion. They concede in their
25 law enforcement guide that they have - that they delete

1 records and that they are deleted as a matter of course.
2 Their transparency rate in terms of record retention and
3 record retrieval is 87 percent, which means that unlike
4 the - and then these - this data is assembled, so when
5 people actually enter in - date into Snapchat they
6 actually have - they enter into a chat. The chat is then
7 on a screen. The information is then sent to another
8 phone.

9 What's happened here is that Snapchat has - because
10 they're in anticipation of litigation and because Mr.
11 Remington was a suspect, Snapchat has assembled the data.
12 It would be similar to rather than giving me all the
13 medical records with the individual nurse entries that
14 have their own existence, that - that have their own
15 independent basis for existence, it would be like me going
16 to the hospital and saying, "Don't just - don't give me
17 all the medical records. I want you to go together and I
18 want you to assemble a chart with this nurse's name, with
19 this date, with the patient's name and the vital - and -
20 and I want you to send me a chart. I don't want all the
21 individual records."

22 And here's the difference: that would not be - that
23 - that chart that they would send me, that Excel
24 spreadsheet that they would send me, that's actually not
25 the data. That's not what is stored. That's not the data

1 that - that's - that is stored quote/unquote as part of
2 its - its everyday business. That would be stuff that is
3 someone's interpretation or someone's recitation and their
4 condensation of it into a - a chart. And - and were the
5 Court to - the reason how this all kind of comes
6 together --

7 THE COURT: That's purely speculative on your
8 part on at this point, Mr. Rockind.

9 MR. ROCKIND: Well - okay. Then I'm going to
10 propose this. I would like before the Court concludes the
11 preliminary examination I would like your Honor to order
12 or enter an order that a representative of - from Snapchat
13 come to court.

14 THE COURT: Why would I do that?

15 MR. ROCKIND: Because the only way for the
16 defense in this case, Mr. Lewis and myself on Mr.
17 Remington's behalf in an effort to actually confront the
18 evidence and to get past the quote speculation unquote
19 that your Honor suggests is at the root of my argument, is
20 to have somebody from Snapchat come to court and - and
21 explain. And explain that it is or it's not. And here is
22 the problem: Snapchat won't provide an expert. They say
23 so in their law enforcement guide. They will not provide
24 someone to come to court.

25 THE COURT: Well, you have subpoena powers to

1 this hearing. Why didn't you subpoena someone if you felt
2 that the - they're - the prosecutor is telling me that
3 they're satisfied with their evidence that they want to
4 admit. Right? So now we're at admissibility. If I admit
5 that evidence and then you want to challenge its
6 effectiveness, what it means, what its weight. That's for
7 you to do, not her, right?

8 MR. ROCKIND: Judge --

9 THE COURT: She has to prove her case, right?

10 MR. ROCKIND: Yeah, but it --

11 THE COURT: At this level?

12 MR. ROCKIND: This is - this is - this is an
13 issue of - this is an issue of admissibility, not an issue
14 of weight. Because now we're talking about whether or not
15 - was this document created in anticipation of litigation
16 in response to a search warrant --

17 THE COURT: You're - what you've now speculated
18 is - now you've not only said it was created in
19 anticipation of litigation, but that someone interpreted
20 it and thereby - and by creating a spreadsheet, that there
21 was some level of interpretation there to take raw data
22 and put it into a spreadsheet. That I don't --

23 MR. ROCKIND: What - your Honor --

24 THE COURT: I don't see any - I don't see
25 anything you've told me that leads me to believe that

1 beyond pure speculation.

2 MR. ROCKIND: Well, I gave you the - the
3 reasoning why. I'm not - your Honor, this is a - the
4 Snapchat Law Enforcement Guide, one says that the only
5 people that can actually seek data from Snapchat are - are
6 law enforcement agents. They don't even - they actually
7 say users can't. There is actually nothing other than law
8 enforcement guide or law enforcement access, search
9 warrants and - and the like for Snapchat. And they
10 specifically say in their guide that they will not provide
11 testimony.

12 So Mr. Remington, through Mr. Lewis and I, we can't
13 even - we don't even have the ability - it's completely
14 one-sided to confront the evidence. Now, when I --

15 THE COURT: Well, I imagine that - isn't this -
16 I don't do Snapchat, but isn't there some sort of user
17 agreement that a person accepts when they download it?
18 Isn't all this in there?

19 MR. ROCKIND: I don't have an answer for that,
20 your Honor.

21 THE COURT: Okay.

22 MR. ROCKIND: So - the --

23 THE COURT: Do you have any other objections?

24 MR. ROCKIND: The other --

25 THE COURT: Do you have any other objections to

1 its admissibility?

2 MR. ROCKIND: I do. I do. And where I - where
3 I can make an offer of proof to the court, because we
4 haven't gotten to the actual document, for the Court to
5 actually see the - the Snaps that the State purportedly
6 wants to introduce, there are characters in these Snaps
7 that you - your Honor, were you to look at it, again under
8 104(B) and 1101(A) your Honor would see that these are not
9 characters.

10 It's clear that someone just - somehow, someone - a
11 person, a program took data from another source and
12 attempted to put it into this table to create - these are
13 not individual Snaps that were given to us one-by-one,
14 this is a table that was assembled for purposes of
15 complying with the search warrant. And there's date in
16 here that is not - clearly is not type. It is - there's -
17 there is ones that are even absent. They're blank. I
18 mean, could show you the first page of mine, they're
19 entirely blank, which means that they're not reliable.

20 So, the last thing I wanted to point out is this case
21 that I think is - is very much on point and I certainly -
22 unfortunately my success rate with the - the Court,
23 despite my effort is - it's a bit low. This is a - a case
24 that specifically addresses - United States versus Brown.
25 It is a Third Circuit case, so I know that it's not

1 binding on the Court, but it is pretty persuasive and it
2 makes a pretty compelling argument as to why these are not
3 business records and I'm going to - this addresses the
4 issue of business records and self-authentication.

5 And in this case, your Honor, the Brown case which is
6 a Third Circuit case that dealt with an attempt to admit
7 Facebook records and the - the government attempted to or
8 did admit these as self-authenticating and they were
9 Facebook chat conversations. And if I could draw your -
10 your Honor's attention to - and the reason why is that
11 this Court explains, I think, better than I ever could or
12 - or anybody could, why the - the content of the chat
13 communications are not part - are not covered by the
14 business record. And it says on page eight of 23, "Versus
15 with non-digital records we assess that the communications
16 at issue are in their entirety. Business records that may
17 be self-authenticated by way of a certificate from a
18 records custodian under 902(11) of the Federal Rules of
19 Evidence."

20 And then you go on to page nine in the middle and it
21 says, "The government's contention that it authenticated
22 the Facebook chat logs by way of 902 under which extrinsic
23 evidence is not required for certain documents that they
24 are sufficient indicia of the liability as to be self-
25 authenticating. Specifically the government relies on

1 Rule 902(11), which provides that records of a regularly
2 conducted activity had fallen to the hearsay exception
3 under Rule 803(6), more commonly known as the business
4 records exception and may be authenticated by way of
5 certificate from the records custodian as long as a
6 proponent of the evidence gives the adverse party
7 reasonable notice and makes the record and certificate
8 available for inspection in advance of trial” and it cites
9 the rule. “The viability of the Government’s position
10 turns on whether Facebook chat logs are the kind of
11 documents that are properly understood as records of a
12 regularly conducted activity under Rule 803(6), such that
13 they qualify for self-authentication under Rule 902(11).
14 We conclude that they are not and that any argument to the
15 contrary misconceives the relationship between
16 authentication and relevance, as well as the purpose of
17 the business records exception to the hearsay rule.”

18 They then discuss the issue of relevance. It - we’re
19 not - we’re not even at that point here, so skipping ahead
20 to page 11 of 23, which is the first full paragraph, “The
21 Government’s theory of self-authentication, which is
22 identical to the one that the State is advancing here,
23 also fails for a second reason. It is predicated on a
24 misunderstanding of the business records exception itself.
25 Rule 803(6) is designed to capture records that are likely

1 accurate and reliable in content as demonstrated by the
2 trustworthiness of the underlying sources of information
3 and the process by which and purposes for which that
4 information is recorded.”

5 I’m going to skip down if I can, your Honor, but it
6 says, “Here Facebook does not purport to verify or rely on
7 the substantive contents of the communications in the
8 course of its business. At most the records custodian
9 employed by the social media platform can attest to the
10 accuracy of only certain aspects of the communications
11 exchanged over that platform. That is confirmation that
12 the depicted communications took place between certain
13 Facebook accounts on particular dates or particular times.
14 There is no more sufficient” - excuse me, let me say it
15 again. “This is no more sufficient to confirm the
16 accuracy or reliability of the contents of the Facebook
17 chats than a postal receipt would be to attest to the
18 accuracy or reliability of the contents of the enclosed
19 mailed letter.”

20 And then they cite to a case. “Communications
21 content, such as the contents of letters, phone calls, and
22 emails are not directed to a business but are simply sent
23 via that business” was the case that - example the Court
24 gave.

25 “We held that the District Court erred in admitting

1 bank records as business records under 803(6), even though
2 the records verified the dates and amounts and certain
3 deposits and receipts because signification other portions
4 of these documents have not been independently verified
5 and the records custodian lacked 'knowledge as to the
6 accuracy of the information on which the bank documents
7 was based or as to the knowledge of the persons who
8 prepared the records.' If the Government here had sought
9 to authenticate only the time stamps on the Facebook chats
10 the fact that the chats took place between particular
11 Facebook accounts and similarly technical information
12 verified by Facebook in the course of a regularly-
13 conducted activity, the records might be more readily
14 analogized to bank records or phone records conventionally
15 authenticated and admitted under Rules 902(11) and
16 803(6)."

17 Then I skip - I'm going to go forward, "It suffices
18 for us to conclude that considered in their entirety the
19 Facebook records are not business records under 803(6) and
20 thus cannot be authenticated by way of Rule 902(11). In
21 fact, the Government's position would mean that all
22 electronic information whose storage or transmission could
23 be verified by a third-party service provider would be
24 exempt from the hearsay rules, a novel proposition indeed
25 and one we are unwilling to espouse."

1 In essence, what they're saying, your Honor is that
2 the content of the chats is not something that - that
3 Snapchat - in that case Facebook, in this case Snapchat is
4 actually going through - they aren't relying on it. It's
5 not part of - they're not verifying it, they're not
6 comparing the - the information contained in the Snap --

7 THE COURT: Well, first of all, I'm trying to
8 skim Browne.

9 MR. ROCKIND: I'm sorry.

10 THE COURT: It's difficult for me to do these
11 cases - to look at these cases and analyze them on the
12 fly. However, in a - in a brief review of Browne it
13 appears to me that what the Browne court is saying is that
14 absent evidence that the author of the social media
15 conversations was who it was purported to be, but the
16 records themselves, the - the actual text could be
17 authenticated, but not who did it necessarily just based
18 upon the custodians --

19 MR. ROCKIND: Your Honor --

20 THE COURT: And I'm reading here --

21 MR. ROCKIND: Yeah, I'm sorry, the case actually
22 says - I know I'm giving it to you on the fly, but the
23 case says a little bit more than that. The case says that
24 they can't be verified as business records and self-
25 authenticated as business records because what Facebook in

1 that case is - all that Facebook is - is doing and in this
2 case Snapchat, they rely on the account names, they
3 account on the metadata of the sending and receiving.
4 They rely on the fact that they're sent and received on
5 this particular day. But nobody is going through --

6 THE COURT: I - I'm reading on this, it says,
7 "If the Government" - and this is page, what - it's
8 difficult from the copy - 12 --

9 MR. ROCKIND: The - the bottom, your Honor.

10 THE COURT: - 12 of 23.

11 MR. ROCKIND: It's probably the bottom.

12 THE COURT: "If the Government here had sought to
13 authenticate only the timestamps on the Facebook chat" --

14 MR. ROCKIND: Yes.

15 THE COURT: "The fact that the chats took place
16 between particular accounts and similarly technical
17 information in the course of regularly conducted activity,
18 the records might be more readily analogized to bank
19 records or phone records" --

20 MR. ROCKIND: Right.

21 THE COURT: - "conventionally authenticated
22 under 902(11)." So, the fact that --

23 MR. ROCKIND: The content --

24 THE COURT: - they existed, but not who did
25 them. In other words, the content - and that's what the

1 prosecutor so far --

2 MR. ROCKIND: The content's inadmissible. The -
3 what that case is saying is what they tried to do in that
4 case was to admit as business records, they tried to admit
5 the actual chat and text conversations and to say that
6 because these were part of a business - a quote/unquote
7 record provided by Facebook, that not just the times and
8 the accounts and the metadata, but the actual content,
9 what was said, was that was admissible. That's the - the
10 - the - and what - what that court says is that it's not.

11 MS. HAND: Your Honor, can I chime in?

12 THE COURT: Okay, yep. Go ahead.

13 MS. HAND: Thank you. Even if you took Mr.
14 Rockind's argument at - to be true, which I - and I don't
15 believe it is - A, as he indicated, the Browne case is not
16 binding on this Court. B, it - if you wanted to follow
17 the Browne case reasoning and I haven't read it yet
18 because even though I provided this notice months ago, no
19 one indicated they were going to have an issue with it.
20 But, that's fine.

21 Even if you - even if you took the wording that he's
22 just relying on that you could take the metadata and the
23 dates and the times and that - the receiver and sender to
24 be true and that you shouldn't - that the content of the
25 conversation couldn't be considered to be a business

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record.

Then the content of the conversation, your Honor, is admissible under 803(B)(4) - I'm sorry, 804(B)(3) because these are statements of the defendant that are against the defendant's interests. They are statements by a party who is not taking the stand, an opposing party that I am offering into evidence and the statements of the other individuals in the conversations themselves, they are being admitted to give light to the response and the communications between the other user and the defendant.

So, even in the light most favorable to him, that for somehow the only information that is quote acceptable under a business record, time, date, user, sender, the conversation themselves is still admissible under the other rule of evidence and that is under 804(B)(3). These are akin to text messages that are - are admitted in - in court on a daily basis relative to the user and sender when the - one of the participants in a conversation is the defendant.

So, you - you don't - I mean you can - I think his argument is incorrect, but even if you found that the business portion of it didn't pertain to the content, the content still comes in under 804(B)(3).

MR. ROCKIND: Now here - here's the problem with that. The problem with that is so - now we're talking

1 about 804(B)(3), they want to actually admit, apparently,
2 they want to - so let's follow that through. So they want
3 to claim --

4 MS. HAND: I'm just giving an alternative.

5 MR. ROCKIND: - that there is a - right, but
6 they want to say there's a declarant who is unavailable
7 and I presume they want to say the declarant who is
8 unavailable is - is Mr. - Mr. Remington and they want to
9 say because he's unavailable that his statements, which
10 are quote against interests could be - it would be
11 admissible at the proceeding, if that's the analysis that
12 I - that the prosecutor is making, which goes back to the
13 point that I was trying to make earlier and I - I don't
14 want to keep - I don't want to rehash it, but this all
15 ties together.

16 One, they can't establish - the relevance. They
17 can't establish that - that Mr. Remington actually is the
18 one that made these entries or made these chats. Two, if
19 they're going to try to --

20 THE COURT: That's different from relevance.

21 MR. ROCKIND: I - if they're going to try to
22 admit that they're - well, if he didn't make them they're
23 not relevant. Can we agree with that? I mean --

24 THE COURT: No, they - someone could have made -
25 anything can be relevant if it moves the needle one way or

1 the other. It doesn't - he doesn't have to make it or not
2 make it for it to be relevant potentially.

3 MR. ROCKIND: Okay, it - putting aside the
4 issue, I'll accept the friendly amendment to the argument
5 that I was making that is that it - putting side - if he -
6 they - if he didn't make them then they aren't 804(B)(3).
7 That's number one. So --

8 THE COURT: That's probably true.

9 MR. ROCKIND: So, okay. So they can't even
10 establish that he made them.

11 THE COURT: Let me ask you - let me ask you this.
12 Now, I understand - my limited understanding of Snapchat
13 is that sometimes there are pictures, for example. Now,
14 let's say there is a picture of the defendant. Would that
15 weight on whether or not he authored it?

16 MR. ROCKIND: Well, you've got two different
17 things --

18 THE COURT: I mean, could there be other facts
19 that circumstantially would authenticate --

20 MR. ROCKIND: Pictures - their pictures are
21 different then the way that Snapchat works, the - the way
22 I understand this Snapchat to - to work, is that there are
23 - there are pictures that can be posted in one-on-one
24 chats. There can be a story that one posts and then
25 people can response to it and there can be conversations

1 that go on back and forth.

2 There's a lot of variations of this. But what's
3 being admitted here is - again, your Honor is not getting
4 those. If you - have you ever used Snapchat, your Honor?

5 THE COURT: I have not.

6 MR. ROCKIND: So, if you and I were to just
7 create, you know, a - a test Snapchat account - an account
8 and we were to do it, it would have a certain look to it.
9 The look of it would be your picture, it would be your
10 account with your color and your - your emoji, mine. I
11 would --

12 MS. HAND: Well, Judge, I - I'm going to --

13 MR. ROCKIND: Let me just --

14 MS. HAND: I mean, no - no offense to Mr.
15 Rockind that he's like holding himself out to be a
16 Snapchat expert.

17 MR. ROCKIND: No, I'm not.

18 MS. HAND: Well, he --

19 MR. ROCKIND: I'm not, but somebody should be
20 if we're going to actually claim that - that this - that
21 these Snaps - this is the point.

22 MS. HAND: But Judge this again goes to the - to
23 the --

24 THE COURT: I'm sorry, go ahead.

25 MS. HAND: It goes to the weight and not the

1 admissibility, Judge. He's saying this is no different
2 than us having to prove that the holder of a cell phone is
3 the person - or the person making the text messages is the
4 account holder of the phone and that can be shown, Judge,
5 by the contents itself under the authentication rules and
6 in order to get to that the Court can say, "Okay, I'm
7 admitting these records, but guess what? I find that there
8 is nothing in these records that shows that the defendant
9 was the person sending or receiving the - the chats,"
10 which the Court, after you look at it, there is no way
11 it's going to happen.

12 THE COURT: He - his argument is who is the
13 author, is it proven by this. That's different. I mean,
14 the same as with an email, you don't necessarily know that
15 the email --

16 MR. ROCKIND: In part.

17 THE COURT: - was sent by so and so --

18 MR. ROCKIND: But in part it is and then the
19 other issue that I have, which I was trying to share with
20 the Court, that because Snapchat has - admits in the
21 documents I gave you, this is all part of 104(B) and under
22 11 - 1101(A), which is evidence - the rules of evidence
23 are suspended to address the admissibility of evidence
24 that because Snapchat concedes that its default is to
25 delete, that it doesn't save data and it only has an 87

1 percent overall retrieval rate when - when date is
2 requested and by way of offer of proof when you take a
3 look at these you'll see that there are figures, there are
4 symbols, there's absences, there's information that is
5 absent that it is not - one - it's not sufficiently
6 reliable to admit it as a business record.

7 It's not sufficiently trustworthy as a business
8 record, but to then address the prosecutor's argument
9 about use - authentic - these being authenticated as or
10 admissible as Mr. Remington's statements, then your Honor
11 we have an issue with that.

12 You're claiming that these are his statements and
13 when you take a look at them you'll see that there are
14 clearly errors, omissions and because there are deletions
15 they can't then come to court and say that, "Well,
16 Snapchat deletes the stuff." There are entries that are -
17 are missing. There's configurations that don't make
18 sense. There's - and what I would suggest to the Court is
19 that you can't then say that these are accurate statements
20 that can be attributed to the accused. If we're going to
21 admit his statements they should be his statements.

22 And there's - again, what - I feel in a way that
23 there's a shifting of the burden because as you - you
24 know, it's so easy for someone to make the - the argument
25 in response to an attempt to exclude evidence that the

1 data is - that it goes to the - the weight and not
2 admissibility. This is an admissibility issue.

3 These records have to be - have to have sufficient
4 indicia of trustworthiness and reliability. For the Court
5 to look at these, you'll see that they don't, that they
6 don't match up with what's on the - the hard copy does not
7 match up with what's on the disk and that there are
8 configurations and - and you can't even - there are
9 omissions, there are absences, because Snapchat concedes
10 that they delete certain entries, that they can't even
11 guarantee that these are all the communications. It
12 doesn't go to weight, it goes to admissibility. They
13 can't say that these are trustworthy and reliable.

14 THE COURT: Okay. All right, thank you. I've
15 carefully listened and I've tried to give you as much
16 leeway as I can to make all the arguments that you want.
17 I don't find that any of them are persuasive with regard
18 to the threshold for admissibility, so the - the records
19 are admitted.

20 MS. HAND: Thank you, your Honor.

21 BY MS. HAND:

22 Q When you had the opportunity to sort of review the records
23 sent to you by Snapchat you said part of those were
24 videos?

25 A Yes.

1 Q And did you have the opportunity to review those videos?
2 A Yes, I did.
3 Q And you indicated that you were present in the home on -
4 at 23132 Meadowbrook, correct?
5 A Correct.
6 Q And the videos that you observed relative to the evening
7 prior to the morning that you arrived?
8 A Yes.
9 Q Were those videos - did they depict the house that - could
10 you tell that they were taken in the house that you were
11 in that morning?
12 A I did, yes.
13 Q Okay and were you able to identify the voices and/or
14 people on those videos?
15 A Yes.
16 Q We'll start with people. Who were you able to physically
17 observe on the video as being people?
18 A The victim, Denis Preka; the homeowner, Paul Wiedmaier.
19 Q Were you able to see other --
20 MR. ROCKIND: Judge, I'm just gonna - again, I
21 don't mean to keep doing it, but in the absence of calling
22 the two young men who were there who could probably
23 identify the individuals there, People versus Nolan. The
24 case is 2017 Mich App, 1792 and it - it prohibits someone
25 in the detective's position from attempting to identify in

1 a video the - individuals in the video absent a more
2 historical background with the --

3 THE COURT: I've already heard the detective
4 testify that he met these people. He talked with them for
5 hours. You're saying that there's a case that tells that
6 he can't identify them on a video after that?

7 MR. ROCKIND: I --

8 THE COURT: What's the case exactly? Can you
9 cite it for me?

10 MR. ROCKIND: Yeah, People versus Nolan, 2017
11 Mich App Lexis 1792, your Honor.

12 THE COURT: I'm sorry, the last part?

13 MR. ROCKIND: Lexis 1792.

14 THE COURT: 1792? And that stands for the
15 proposition that --

16 MR. ROCKIND: So we agree that Sergeant Ford's
17 testimony referencing defendant as the person depicted in
18 the surveillance video impermissibly invaded the province
19 of the Trier of fact. The issue of whether defendant in
20 the courtroom was the person depicted in the surveillance
21 photo is a determination improperly left to the jury and
22 there is no indication on the record nor is there any
23 argument that this sergeant was in any better position
24 that the Trier of fact to make the identification.

25 THE COURT: Okay, but we're here for preliminary

1 examination, right?

2 MR. ROCKIND: Yes, your Honor.

3 THE COURT: Okay, overruled.

4 BY MS. HAND:

5 Q We - and you indicated that you were able to identify the
6 voices on the video?

7 A Yes.

8 Q Okay. I'm going - the video that you got emailed to you,
9 do you know what a filter is?

10 A Yes, I do.

11 Q Okay. So - and you had the opportunity to look through
12 the Snapchat records themselves?

13 A Correct.

14 Q When you look at the Snapchat records on the thumb drive
15 that you provided, does the filter lay on top of the video
16 or is it a separate - help me out here - a line on the
17 video? On the - on the records?

18 A On the records itself it is a separate entry.

19 Q Okay.

20 A The video - the - some of the filters are overlaid onto
21 the video itself. That's the way that Snap does the - the
22 overlays.

23 Q Okay.

24 A So the --

25 Q So if I said --

1 THE COURT: I don't know what a filter is.
2 What's a filter?

3 THE WITNESS: It would be if like if somebody
4 wanted to put extra things onto a photograph. Rabbit ears
5 is on Snapchat or statements or texting. Overlays.

6 THE COURT: I'm sorry, go ahead.

7 MS. HAND: Thank you. And thank - thanks,
8 Judge, I learned that myself.

9 BY MS. HAND:

10 Q So - all right, so when we look at the actual admission,
11 which is People's exhibit number four, the overlay will be
12 - do you know if it's going to be the one under or the one
13 above the video, if you recall?

14 A I don't recall.

15 MS. HAND: May I publish the - some of the
16 videos to the Court, your Honor?

17 THE COURT: Sure.

18 MS. HAND: Is it showing up there?

19 THE COURT: And this is exhibit - which exhibit?

20 MS. HAND: Four.

21 THE COURT: So exhibit four is admitted over
22 strenuous objection by Mr. Rockind.

23 MS. HAND: It's up? Okay.

24 THE COURT: Can you see, Ms. Hand?

25 MS. HAND: I can see it on my computer.

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THE COURT: Okay.

MS. HAND: So - and, Judge, just for the Court's knowledge as well as defense counsel, so that I didn't have to make the Court watch me try to find these videos I did - I moved some of them to this file over here called Remington so that the Court - so that we didn't have to search from the entire --

THE COURT: Can you see, Mr. Rockind?

MR. ROCKIND: I can, your Honor.

MS. HAND: Oh, sorry.

(At 3:01 p.m., video played)

BY MS. HAND:

Q Can you identify the person in that video?

A That was the victim, Denis Preka.

Q Okay and is - can you tell the Court what it's saying now?

A This is a - the overlay or a filter.

MS. HAND: Okay, is the Court able to read it from the Court's position?

THE COURT: Bear with me for a moment. I can read it.

MR. ROCKIND: Can you just read that into the record so we - because I know there is no video of the --

THE COURT: Sure, would you mind reading it, Ms. Hand?

MS. HAND: Sure. "He fucking know how ta," T-A,

1 "srunit," S-R-U-N-I-T, "Going straight cross-eyed up in
2 this bitch. Game over. Time to sleep." And at the upper
3 left-hand corner there appears to be some hearts with
4 smiley faces.

5 THE COURT: Okay, that seems correct.

6 MR. ROCKIND: Thank you, your Honor.

7 THE COURT: You're welcome. Thank you.

8 (At 3:03 p.m., video played)

9 BY MS. HAND:

10 Q Can you tell from - who's saying, "Keep your eyes
11 straight, dammit?"

12 A Nick Remington.

13 Q Okay. And that chair that the victim is rocking in, is
14 that a chair located inside this house?

15 A Yes, it is.

16 Q Can you tell whose voice that was?

17 A It sounds like Nick Remington, yes.

18 Q And what is that that we're seeing?

19 A It's another overlay, another filter.

20 MS. HAND: Your Honor, for the record it
21 indicates, "I just want him to stop being cross-eyed. I
22 spoke to Jesus. He said he - he said he wanted my
23 guardian angels." And then underneath that it says, "Wave
24 check" and at the top it looks like a - a play button.

25 THE COURT: That sounds correct.

1 (At 3:04 p.m., video played)

2 BY MS. HAND:

3 Q And could you tell whose voice that is?

4 A Yes, Nick Remington.

5 A Again, could you tell the voice?

6 A The loudest voice, Nick Remington, yes.

7 Q Okay, who is that person walking behind the victim?

8 A That is the homeowner's son, Paul Wiedmaier.

9 Q And when the, "I'll punch you in the," excuse my French,
10 "fucking jaw," who was saying that?

11 A That's Paul.

12 Q Okay could you tell whose voice that one was?

13 A Yes, Nick Remington.

14 Q All right and this is what?

15 A Again, it's a filter and an overlay.

16 MS. HAND: And, Judge, this says, "We been
17 taking turns cause I say it hydrates him. Who else is up
18 RN?"

19 BY MS. HAND:

20 Q All right, and this is just a photo, correct?

21 A Correct.

22 Q All right.

23 MS. HAND: And, Judge, for the record, the photo
24 says - and who is pictured in the photo?

25 THE WITNESS: That is the victim, Denis Preka.

1 MS. HAND: All right and it says, "Ding, ding,
2 ding. It's watering time. Novi, Tuesday, 1:50 a.m."
3 BY MS. HAND:
4 Q And then there is an emoji on there, right?
5 A Correct.
6 Q Or I guess it's a Bitmoji, right?
7 A I believe so.
8 Q Okay. Did you see that - this Bitmoji on other Snapchat
9 Pictures?
10 A I - I don't recall.
11 Q Okay, fair enough. Can you tell the laugh on that one?
12 A I've never heard him laugh, but again --
13 MR. ROCKIND: I'm going to object to any attempt
14 to characterize --
15 THE COURT: Sustained.
16 MS. HAND: Okay.
17 BY MS. HAND:
18 Q The location of the victim at that point, could you tell
19 where in the house the victim as locate with the coffee
20 mug?
21 A Yes, it appeared to be the exact spot where I found him in
22 the morning.
23 Q When you received the videos via email, were they - did
24 they appear to be in sequence time wise?
25 A I don't believe they were in sequence or timeline.

1 Q Okay. Did you notice when you watched the videos as a
2 whole - have you ever laid them all out and watched them
3 as a whole?
4 A Individually?
5 Q Yes. Individually but all in - simultaneously, like one
6 right after the other?
7 A The original videos, yes. I have don't that, correct.
8 Q Okay, did you notice a progression of the clothing of the
9 victim during the course of the timeline?
10 A Yes, I did.
11 Q And what was that?
12 A Started off fully clothed and by the end he was stripped
13 down to just, I believe, a T-shirt and jeans.
14 Q Okay, when you say fully clothed initially --
15 A Jacket, I believe, he had - he had a jacket on.
16 Q Okay.
17 A Socks.
18 Q All right. Did the - did the victim appear to have more
19 than one shirt on as the night went by?
20 A Yes, I believe he did, yes.
21 Q Okay.
22 (At 3:08 p.m., video played)
23 BY MS. HAND:
24 Q And can you see what that says? "This man" --
25 A Yes, "Wins the Oscar" --

1 Q "For best drama"?

2 A "For best drama", yes.

3 Q Is that another overlay?

4 A It is, correct.

5 Q And do you see the word underneath it? Insomnia?

6 A Insomnia, okay.

7 (At 3:09 p.m., video played)

8 MS. HAND: Okay, Judge, some of these are
9 duplicates because they show up more than once on the
10 disk.

11 BY MS. HAND:

12 Q Okay, so is this just another picture?

13 A It's another picture, yes, of the victim, Denis Preka.

14 MS. HAND: Judge, for the record, it indicates,
15 "He ripped himself a new vagina. Judgment day."

16 BY MS. HAND:

17 Q And do you see the - the hand here with the water bottle?

18 A Yes.

19 Q All right. Are you - do you recall whose hand that would
20 be?

21 A I believe that's Paul. He seemed to be wearing the same
22 flannel shirt.

23 Q And the same Adidas?

24 A Correct.

25 Q Okay. And then this also has a Bitmoji over it?

1 A Yes.

2 Q Okay. Can you tell what room of the house at this point
3 the victim is laying out?

4 A I believe that's the foyer area.

5 Q Okay. Did the foyer have these rugs in it?

6 A The foyer did have some rugs, correct.

7 Q Okay.

8 (At 3:10 p.m., video played)

9 BY MS. HAND:

10 Q Could you tell who was saying that?

11 A Yes, Nick Remington.

12 (At 3:10 p.m., video played)

13 BY MS. HAND:

14 Q Was the bucket at that location when you found the
15 decedent?

16 A Not when I saw him, no. I don't believe.

17 Q Do you recall - did - was there a bucket in the foyer that
18 you recall?

19 A I don't recall offhand. And I'd to reflect the
20 photographs.

21 Q Okay, you said that the - the decedent had vomit on his
22 face?

23 A Appeared to be some vomit.

24 Q Okay.

25 A On the left side.

1 Q Did you find any buckets with vomit in the house?

2 A I didn't observe any, no.

3 Q Okay.

4 (At 3:11 p.m., video played)

5 BY MS. HAND:

6 Q Do - where were they standing in that - that video?

7 A I believe that's right in the foyer area.

8 Q Okay, when you come through the foyer what room of the
9 house do you go into?

10 A As - as you enter the front foyer of the home to the left
11 would be like a living room sitting area and if you walk
12 straight you would go right into the kitchen.

13 Q Okay.

14 A And to the right would be another living/family room area.

15 (At 3:12 p.m., two videos played)

16 MS. HAND: All right. And I'm sorry, Judge,
17 there is a couple more I do want the Court to see.

18 BY MS. HAND:

19 Q Detective, do you recall a video where they're actually
20 pouring water on - on the victim?

21 A Yes.

22 MS. HAND: If I could ask defense counsel, is
23 there an objection to me playing the disk that I gave you
24 that shows the videos in sequence that came from this?

25 MR. ROCKIND: If I - so - I guess we can object

1 to relevance, but is - is the - is the - is this the
2 sequence that they were provided to the detective
3 originally? Is that the sequence that he was given them
4 originally or --

5 MR. ROCKIND: What I'm trying to figure out
6 is --

7 MS. HAND: I can ask the detective.

8 BY MS. HAND:

9 Q So, the - the tape that you gave us just has Snapchat
10 videos on it. Did - is that the one you got via email?

11 A That was the one that was provided to Sergeant --

12 Q Okay.

13 A The files were then provided to me.

14 Q And are all of the videos that were on that one disk that
15 you provided to me and likewise to defense counsel, are
16 all those videos - did you verify that they are inside of
17 this Snapchat log?

18 A They are in that log, correct.

19 MS. HAND: Judge, if there's no objection I'd
20 like to play - I think it's a little easier for the Court
21 to see the entire picture as opposed to - and they all did
22 come from People's exhibit three and I could mark it as
23 People's exhibit five.

24 MR. ROCKIND: So the objection is to relevance,
25 the relevance of the videos. There is - the charge in the

1 case, as your Honor knows, is delivery of a controlled
2 substance causing death.

3 THE COURT: Yes.

4 MR. ROCKIND: And these videos don't show Mr.
5 Remington in any way providing or delivering the drug to
6 Mr. Preka.

7 THE COURT: Just so I'm clear, this is a - a
8 compilation of videos done by someone other than law
9 enforcement?

10 THE WITNESS: Yes.

11 THE COURT: Then I think I'd rather go through
12 them one at a time.

13 MS. HAND: Okay.

14 THE COURT: So the objection is sustained. Not
15 for relevance but for authenticity.

16 MS. HAND: Well, Judge, I - I don't know just -
17 so the - if the defendant - if defense counsel, maybe he
18 won't stipulate but each of the videos on that disk are on
19 this am - am I - am I --

20 THE COURT: In other words --

21 MS. HAND: Well I know. I don't know --

22 THE COURT: I - I don't know if the compilation
23 was manipulated in any way.

24 MS. HAND: If his objection is relevance --

25 MR. ROCKIND: Judge, I - I --

1 MS. HAND: That each of - I know he's objecting
2 to relevancy, but I don't think he's object - I don't
3 think he's asserting that --

4 MR. ROCKIND: My objection is - my objection is
5 relevance. If the Court gets past the relevance
6 objection, which I'm certainly hoping that you don't, but
7 let's address that first.

8 The videos are - these are individual snippets of
9 videos that - that your Honor is looking at, one-by-one on
10 this that obviously the People are intending to introduce.
11 We - we object to relevance. So, let - let's address the
12 relevance argument first if we could and then the Court --

13 THE COURT: Okay. Why do you think they're not
14 relevant?

15 MR. ROCKIND: Because they don't show Mr.
16 Remington actually - they don't show Mr. Remington
17 delivering a drug, mention a drug, discuss a drug. They
18 don't show him actually engage in any act associated with
19 the commission - the alleged commission of a crime.

20 THE COURT: Okay and what's your response, Ms.
21 Hand?

22 MS. HAND: Judge, I - I have to show that the
23 defendant delivered the controlled substance methylene
24 dioxymethamphetamine so clearly the actions of the victim
25 and the way that the victim is acting on the video, as

1 well as the defendant's presence during the course of the
2 evening leading up to the death of the victim, I don't
3 know how anything could be more relevant.

4 MR. ROCKIND: Well, there - there are clearly,
5 as you can see in the video other individuals in the
6 house. There is no testimony as to the - the time of
7 consumption, the method of consumption, method of
8 provision or the individual that provided any drug to Mr.
9 Preka.

10 These videos don't establish - they don't in any way,
11 shape or form even under the standard of relevance, which
12 is do they have any tendency to - to make fact and
13 controversy more or less likely? They don't.

14 THE COURT: Okay.

15 MS. HAND: But --

16 THE COURT: I'm going to find that they're
17 relevant, but I will say I haven't seen anything yet other
18 than presence at a scene where someone is clearly
19 intoxicated by something.

20 MS. HAND: Agreed, you haven't, Judge. But
21 there - the rest of the logs --

22 THE COURT: So, they're admissible, but --

23 MS. HAND: Okay.

24 MR. ROCKIND: So I guess if the Court --

25 THE COURT: Based on pure relevance. In other

1 words, the presence of the defendant at the scene at the
2 time is relevant. It doesn't prove that he gave him the
3 drugs.

4 MS. HAND: I agree.

5 THE COURT: So far I haven't seen anything like
6 that.

7 MS. HAND: I agree.

8 MR. ROCKIND: So I think for exam purposes and
9 for - for expediency, and obviously we have a lot of
10 objections that - to these for a variety of reasons, but
11 without waiving any of those I think for expediency
12 maybe --

13 THE COURT: To play them --

14 MR. ROCKIND: You can look at the compilation of
15 them for --

16 THE COURT: All right. Based on that, for exam
17 purposes only, I'll take a look at it.

18 MS. HAND: Thank you.

19 (At 3:17 p.m., video played)

20 MS. HAND: I have no further questions of this
21 witness, your Honor.

22 THE COURT: Cross-examination?

23 MR. ROCKIND: Can I have a second, Judge?

24 THE COURT: Yes, please take your time.

25 CROSS-EXAMINATION

1 BY MR. ROCKIND:

2 Q I just have a couple of questions about - we'll get back
3 to this in a second, but very briefly, if I understand
4 correctly you testified that you participate in an
5 interview with Connor - is his last name pronounced
6 Gibaratz?

7 A It's Gibaratz.

8 Q And how many times - you said you interviewed him or met
9 with him more than one time, is that right?

10 A That's correct.

11 Q And all of those interviews at a - at the police station?

12 A Some were at the police station and one was at the Wayne
13 County Jail.

14 Q Okay. And your interview with Mr. Gibaratz at the police
15 station was - was video recorded, was it not?

16 A Correct.

17 Q And I presume your interview with him or - or discussion
18 with him at the Wayne County Jail was not video recorded,
19 is that correct?

20 A That's correct.

21 Q And so you indicated that you interviewed - I think it's
22 Paul Wiedmaier, correct?

23 A Correct.

24 Q And you met with him at the police station, is that right?

25 A Yes.

1 Q And you met with him more than one time?

2 A Yes.

3 Q And how many times did you meet with Mr. Wiedmaier?

4 A I believe it was once at his home and then once again at
5 the police department and then another time later on.

6 Q Okay, let's be precise. Besides the one time at his home
7 are you talking about a time other than the date of the --

8 A Yes.

9 Q Now let me just finish so we have - I'm not - I want to
10 make it easier for the court recorder to ultimately
11 transcribe our interaction, okay? The - the - the first
12 time that you described at his home, was that the date of
13 the actual - of - of your response to the home and
14 response to the emergency?

15 A Yes.

16 Q And the second time occurred at the police station?

17 A Correct.

18 Q And then another time occurred at the police station?

19 A Correct.

20 Q And was the second time - approximately when was that? Do
21 you know the date?

22 A The second time that I interviewed him at the police
23 station?

24 Q Yes, the first time at the police station. The second
25 interview of him --

1 A The next day.

2 Q The next day. Was that video recorded?

3 A Yes.

4 Q Subsequent to that you interviewed him again at the police
5 station, is that right?

6 A Correct.

7 Q And when was that?

8 A Several months later.

9 Q Was that in July?

10 A I believe so.

11 Q Was that approximately July first?

12 A I - I don't recall.

13 Q Who - who was a witness to that interaction with Mr.
14 Wiedmaier other than you?

15 A The prosecutor.

16 Q And did you ask the witness questions?

17 A Yes.

18 Q Did Ms. Hand - Ms. Hand also asked Mr. Wiedmaier questions
19 as well, correct?

20 A Yes.

21 Q And how long did that interview or interaction between
22 you, Ms. Hand and Mr. Wiedmaier take place?

23 A Twenty minutes, maybe.

24 Q Twenty minutes. And was that video recorded?

25 A That was not.

1 Q Did you make - did you take --

2 MR. ROCKIND: Strike that.

3 BY MR. ROCKIND:

4 Q I presume in an effort to keep track of what Mr. Wiedmaier
5 was saying you took some form of notes, field notes during
6 that interview?

7 A There was no notes, no.

8 Q You didn't take any notes?

9 A I don't believe so, no.

10 Q Well, did you assign Ms. Hand to take notes?

11 A I didn't assign - I can't assign the prosecutor --

12 Q So there was no note taking at all?

13 A No.

14 Q How was the - how was the content of the conversation
15 memorialized other than yours - other than your memory or
16 Ms. Hand's memory?

17 A I - I don't recall.

18 Q How would one attempt to reconcile what Mr. Wiedmaier said
19 during that interview if there is no video recording,
20 there are no notes and - and - by either you or Ms. Hand?

21 A It was --

22 MS. HAND: Reconcile it - Judge, objection to
23 the form of the question.

24 MR. ROCKIND: Sure, I'll - I'll - I'll --

25 MS. HAND: He's not testified, so.

1 MR. ROCKIND: I'll withdraw it. I'll rephrase
2 it.

3 BY MR. ROCKIND:

4 Q How would - you understand what memorialization means, of
5 an interview, right?

6 A Of course.

7 Q And video would allow us to actually see the interview,
8 we'd know exactly what questions were put to him and what
9 his answers were, right?

10 A Correct.

11 Q And note taking, of course, as you would agree is not as -
12 as accurate or as precise as is a video recording, yes?

13 A Correct.

14 Q But it still allows some method of - of memorializing what
15 was said and the ability to refresh recollection, et
16 cetera, right?

17 A Yes.

18 Q Neither of those were undertaken, is that right?

19 A I did not. I don't recall if the prosecutor did.

20 Q Well, let's - another way it to attempt to rely on your
21 memory and prepare some kind of formal police report,
22 right?

23 A Yes.

24 Q So where's your police report from the interview with Ms.
25 Hand and Mr. Wiedmaier?

1 A That was not documented in a police report.

2 Q It was not?

3 A No.

4 Q Why not?

5 A I - I just didn't do it.

6 Q Did you deliberately choose --

7 A No, it wasn't --

8 Q Let me just ask you the question and you can answer it any
9 way you want. Did you deliberately choose not to video
10 record this interview between you, Ms. Hand and Mr.
11 Wiedmaier?

12 A It wasn't - I guess you could say it was a choice, we went
13 into a larger room to have more room.

14 Q Okay. Did you - do you have a cell phone?

15 A Yes.

16 Q Does your cell phone have the means of recording some kind
17 of voice memo or voice recording?

18 A It does.

19 Q Did you use that to - to record the interview?

20 A No.

21 Q Did you just decide not to do that?

22 A I did. It was an informal interview.

23 Q What does that mean?

24 A It was informal --

25 Q Well, it's part of the case, right?

1 A Correct.

2 Q And it involved - you're the detective assigned to it?

3 A Yes.

4 Q The prosecutor is the one prosecuting the case?

5 A Correct.

6 Q You have an obligation to preserve exculpatory evidence,
7 don't you?

8 A Correct.

9 Q So how would we know if there was anything exculpatory
10 produced during that interview if you call it quote
11 informal and it wasn't recorded and there's no note
12 taking?

13 A If there was anything different it would have been
14 documented.

15 Q What do you mean different?

16 A Different from a statement or --

17 Q You mean - you're telling us - did you keep track of
18 whether or not there were any inconsistencies or
19 contradictions in your interviews - in your prior
20 interviews with Mr. Wiedmaier?

21 A I don't do that by note taking, I do that just by memory.

22 Q So without getting into the content, were there
23 contradictions or inconsistencies? Yes, right? There
24 were.

25 A Not necessarily.

1 Q Well then why --

2 A Slight --

3 Q Did anybody during that interview actually - you said not
4 necessarily. What does that mean?

5 A Slight differences to what he said.

6 Q Did he change the story at all?

7 A He - he - not necessarily, he used - if you want me to
8 tell you what he said --

9 Q No, not that. I'm not - I want to know whether or not he
10 changed --

11 MS. HAND: I guess what's the relevance of him -
12 I - I understand him asking whether or not he took notes
13 during an interview, but to ask him to comment on whether
14 or not the interviews were different, this - this person
15 is not a witness at this point, so how is this relevant to
16 the determination of probable cause? This might be very
17 relevant at trial, but how is this relevant to the
18 determination of probable cause that this Court has to
19 make with whether or not the People meet their burden to
20 show that the defendant - this is not relevant for the -
21 for this proceeding.

22 THE COURT: Overruled.

23 MR. ROCKIND: Well, I think I have the right to
24 cross-examine the - the detective.

25 THE COURT: You won.

1 MR. ROCKIND: On his investigation.

2 THE COURT: You won one, Mr. Rockind.

3 MR. ROCKIND: One, all right.

4 BY MR. ROCKIND:

5 Q So I don't want to get into the content, because that
6 would be hearsay okay? I just want to know whether or
7 not did - at any point did you - just you, did you accuse
8 Mr. Wiedmaier of telling different stories?

9 A I did not, no.

10 Q Did Ms. Hand in your presence accuse him of telling
11 different stories?

12 MS. HAND: Objection, that would be hearsay,
13 Judge. Objection.

14 MR. ROCKIND: I'm not --

15 THE COURT: Sustained.

16 BY MR. ROCKIND:

17 Q So you said that there were minor inconsistencies. Again,
18 I don't want to get into the content, but you noted - you
19 noted those in your mind, yes?

20 A Correct.

21 Q And you - you would agree that - you know, what - when a
22 potential witness changes his or her story or contradicts
23 him or herself that could be deemed exculpatory evidence?

24 A Correct.

25 Q But that wasn't preserved?

1 A His statement wasn't necessarily content other than --
2 Q I just want to know - you said minor inconsistencies,
3 yes?
4 A Yes.
5 Q And that can be exculpatory and - and I asked that that
6 wasn't preserved?
7 A No.
8 Q Okay. Let me ask - let me go on, if I could, to another -
9 to another subject. I want to talk a little bit about at
10 some point you did retrieve Mr. Preka's cell phone, is
11 that right?
12 A Correct.
13 Q And you retrieve that from his - from his clothing or from
14 the vehicle?
15 A It was in the home on top of the kitchen - I guess it
16 would be an island area.
17 Q And it was off when you retrieved it?
18 A When - I believe it was off, yes.
19 Q And was that phone submitted by you for some type of cell
20 phone or expert data extraction?
21 A Yes.
22 Q And where - where was that - what officer did you submit
23 that phone to to do a cell phone extraction?
24 A Detective Stempien.
25 Q And did he complete a cell phone extraction?

1 A Yes, he did.

2 Q And you provided the - the contents of the extraction to
3 the prosecutor?

4 A Yes.

5 Q I'm talking about of Mr. Preka's phone.

6 A Correct.

7 Q So they have in their possession a - a Cellebrite
8 extraction showing messages and texts and things of that
9 sort?

10 A I do believe so, yes.

11 Q When you say you believe so, I just want to - I - because
12 you believe that that's been tendered or you know if
13 that's been tendered in discovery at all?

14 A I don't know that, no.

15 MR. ROCKIND: Your Honor, we don't have a cell
16 phone extraction from the - Mr. Preka's phone.

17 THE COURT: Okay.

18 MR. ROCKIND: That has not been tendered to us.

19 MS. HAND: That's correct. It has not, Judge.

20 THE COURT: Okay.

21 MR. ROCKIND: So, I - I - we would seek an order
22 from the Court to provide that to us as part of the
23 evidence in the case, your Honor. So --

24 THE COURT: Okay.

25 MR. ROCKIND: As part of discovery.

1 MS. HAND: Well, and Judge I - I would object to
2 that. This is the - the victim's phone and so he is not a
3 witness to this case. So, anything in the - I mean, if
4 the Court orders it I have to give the text messages maybe
5 the day of his death or any text messages between him and
6 the defendant, which I don't believe there are any.

7 MR. ROCKIND: Judge, I - I don't accept that
8 limitation at all.

9 THE COURT: Well, let her finish please, Mr.
10 Rockind.

11 MR. ROCKIND: Sure.

12 MS. HAND: How - how is the victim - the court
13 rules say that I have to provide a statement of any
14 witness that - but this is not a witness, Judge. He's not
15 a witness. He's not here. He's not alive, so I don't how
16 he - how he can be a witness or anything that he said
17 considered to be a statement of a witness.

18 MR. ROCKIND: This is evidence. This was
19 seized. This was located - to lay a foundation I believe
20 this was identified and discovered at the scene. It was
21 located, it was taken into evidence is what I understand
22 and then - and that it was turned over to a - to a police
23 expert who is expert in cell phone data extraction. The -
24 the materials were extracted and they exist in the police
25 file. That's part - that is part of the case. That's

1 part of the evidence in the case. I mean --

2 MS. HAND: And I --

3 MR. ROCKIND: And of the issues in the case, of
4 course, is the - the - the source of - of the consumption
5 of drugs. I'm stunned that we haven't gotten that. I
6 think if the Court were in our shoes you'd be equally
7 stunned that it wasn't provided. It is evidence in the
8 case. We have the right to analyze it and - and make our
9 own analysis of the import of it.

10 MS. HAND: I - I disagree, Judge, and like I said
11 I don't think that the - the defense is entitled to the
12 contents of the decedent's cell phone in its entirety
13 unless, of course, there's exculpatory information in
14 there.

15 THE COURT: Is there?

16 MS. HAND: No, Judge.

17 MR. ROCKIND: Well, Judge --

18 MS. HAND: There's no - there's no conversation
19 at all between the defendant and the - and the decedent.

20 MR. ROCKIND: But that's not the - are we really
21 having a conversation about a piece of evidence found at
22 the scene that was taken into evidence --

23 MS. HAND: It wasn't taken into evidence at that
24 time, I don't believe, Judge.

25 THE COURT: So I think there - I think that we

1 may be arguing about --

2 MR. ROCKIND: I'm arguing that we're entitled to
3 all of the evidence that was taken from the scene.

4 THE COURT: Let - let's make sure that we're --

5 MR. ROCKIND: Sure.

6 THE COURT: As I'm hearing it from what Ms.
7 Hand --

8 MR. ROCKIND: I thought he would just say - I
9 thought he would say turn it over. I didn't even think
10 we'd have a debate about it, to be frank with you. I'm
11 just --

12 THE COURT: Are you --

13 MR. ROCKIND: I can voir dire some more.

14 THE COURT: Are you entitled, Mr. Rockind, to
15 something that the decedent - a picture that he took two
16 years ago and is stored on his phone?

17 MR. ROCKIND: I'm entitled --

18 THE COURT: Are you entitled to that, yes or no?

19 MR. ROCKIND: Yes. Yes. I am. I'm entitled --

20 THE COURT: How is that relevant to this case?

21 MR. ROCKIND: Well - well, wait a minute. But
22 that's not the standard for disclosure of evidence,
23 whether it's relevant or not. Relevance is a standard for
24 admissibility, not for whether or not we are entitled to
25 receive evidence in the case. This is a cell phone that

1 was found at the scene. There is an issue of - of - of
2 the consumption of a drug that caused the death of the -
3 of the decedent.

4 THE COURT: But --

5 MR. ROCKIND: The cell phone was there and it
6 was submitted. There was a police report; I'm sure
7 there's a cell phone extraction report, I presume.

8 THE COURT: But doesn't 6.201 talk about
9 relevance to the case?

10 MR. ROCKIND: It's a - it's statement pertaining
11 to the case. But what --

12 THE COURT: Because --

13 MR. ROCKIND: Can I ask this other question?
14 Was there - was there a cell phone extraction report that
15 was actually prepared?

16 THE WITNESS: Yes.

17 MR. ROCKIND: That's a police report prepared by
18 police officers, right?

19 THE WITNESS: It is a report of the phone's
20 contents.

21 MR. ROCKIND: Prepared by a police officer?

22 THE WITNESS: Correct.

23 MR. ROCKIND: As part of this - it's a police
24 report.

25 MS. HAND: I have no problem giving him the cell

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phone police report.

MR. ROCKIND: But no, Judge --

MS. HAND: They took the information --

MR. ROCKIND: No, no, no, no, no. There's an extraction. There's data.

THE COURT: Is the - is the data - how is the data organized?

MS. HAND: It's organized by - there's --

THE COURT: By date?

MS. HAND: Well, there's some areas that - yeah, you could look at it by date. There's pictures, there's videos, there is - I - I haven't gone through it with a fine-tooth comb. There's emails. But, I mean, that - my - my point is, Judge, I don't think that it is discoverable. Why - so they --

THE COURT: It was obtained by the officer. It was - it was requested and manufactured by the officer at his request.

MS. HAND: Correct.

THE COURT: I would think that at least, let's say, the month leading up to the alleged incident would - that time period would be something that defense should be able to at least examine on their own.

MS. HAND: If the Court wants to --

THE COURT: I agree with you, the things that

1 happened years ago, I mean I have pictures on my phone of
2 my children from when they were little. My son is a
3 junior at Michigan State. That couldn't possibly be
4 relevant to this case.

5 MS. HAND: If the Court orders me to give him a
6 month's worth of material or a month-worth of text
7 message. I mean, if the Court wants to say
8 communication --

9 THE COURT: I think you should give him a month
10 of everything that was extracted a month before.

11 MS. HAND: Even pictures?

12 THE COURT: I mean, I'll do a protective order.
13 It's not to be disseminated.

14 MR. ROCKIND: I'm - we're not disseminating
15 anything in the case. Of course we're not going to
16 disseminate. We want to look at it to see whether or not
17 it fits with our theory of the case or whether - we just -
18 we have a right to it. So I - I'll sign a protective
19 order. I'll - I'll be limited by that. I'm not going to
20 disseminate it to - the only - it can literally be for my
21 staff, for attorney's eyes and staff or Mr. Lewis' eyes
22 and staff or --

23 THE COURT: Only attorney of record --

24 MR. ROCKIND: We'd want to be able to show our
25 client, but that's it.

1 THE COURT: I won't --

2 MR. ROCKIND: We won't - we won't copy, other
3 than to have - for us to look at it. We won't disseminate
4 it outside of our offices or to show the client. We might
5 - if we want to --

6 THE COURT: I'll enter that order

7 MS. HAND: Okay.

8 THE COURT: Let's prepare that and get it done.

9 MS. HAND: It the entirety or just for 30 days,
10 Judge.

11 THE COURT: Just the 30 days up to --

12 MS. HAND: Up to, okay.

13 THE COURT: Up to the decedent's passing.

14 MS. HAND: Okay.

15 BY MR. ROCKIND:

16 Q All right, so the last thing I wanted to --

17 MR. ROCKIND: Could I just - could you pull up
18 the - the chat on the --

19 BY MR. ROCKIND:

20 Q Is it - is it fair to say - while - while the prosecutor
21 is doing that, Detective Balog, that you saw this - the -
22 the string of videos and filters that were pieced together
23 and played in open court, right?

24 A Yes.

25 Q You saw those, right?

1 A Yes.

2 Q Can we concede that each of those videos was made at a
3 different point in time?

4 A Yes.

5 Q And that it - unlike - this is not a video of an event
6 that just ran for three or four hours, right?

7 A Correct.

8 Q These were momentary, five/10 second - I mean I'm - I'm
9 estimating, but five/10 second clips that ultimately were
10 put together, right?

11 A Yes.

12 Q Is it fair to say that you - you don't - you don't have
13 personal knowledge of what transpired between Mr. Preka
14 and anybody in that house prior to any of those individual
15 clips being taken?

16 A Correct.

17 Q Nor after?

18 A Correct.

19 Q Is it fair to say that you don't know what communications
20 occurred between Mr. Preka and - and any individual in
21 that house before any of those clips were made?

22 A Correct.

23 Q Nor after?

24 A Correct.

25 Q In fact, as you sit here and testify - let me - let me say

1 it differently. And you have not seen any continuously-
2 running clip of video from the beginning of - to the end
3 when Mr. Preka was on the ground, it's just those
4 segments, right?

5 A No, every - what video are you -

6 Q Let me ask it differently.

7 A Sorry.

8 Q Yeah, I - I think I've already asked it, but there's no
9 long, continuous, like a three or four-hour surveillance
10 video where you would be able to look at and take those
11 individual clips and compare it to when those occurred in
12 the timeline, right?

13 A That's correct, no.

14 Q Okay. So let --

15 MR. ROCKIND: Thank you for that.

16 BY MR. ROCKIND:

17 Q Just - just so - there - there's a chat message - I guess
18 this is the Excel spreadsheet?

19 A Correct.

20 Q Contained on the disk, right?

21 A That's correct.

22 Q And this is - what was the - the dates were April fifth,
23 do you remember that? Can you see that?

24 A I - I can see April fifth, yes

25 Q And so this --

1 MR. ROCKIND: So just for the record, your
2 Honor, the last - would you agree, Detective, that the
3 last - well, the last one that we saw was April fifth some
4 time, like 12:38 or something like that and we can't see
5 it anymore, but there was - but that was April fifth was
6 the last entry, right?

7 THE WITNESS: On - last entry on the screen that
8 you have there?

9 BY MR. ROCKIND:

10 Q Yes.

11 A If you're saying so, yes. I can't see it from here.

12 Q And then the first one down here is March 18, it's a -
13 looks like 12:13:54. Do you see that?

14 A Yes.

15 Q Okay.

16 MS. HAND: Not 12:13:54, 00.

17 MR. ROCKIND: That would be 12:13.

18 MS. HAND: What's UTC?

19 MR. ROCKIND: 00:13:54.

20 BY MR. ROCKIND:

21 Q Are there any messages on that and - that you're aware of
22 from April sixth and seventh?

23 A I don't - I don't see any on there. I'd have to look at
24 it. I don't have it before me.

25 Q Okay.

1 MR. ROCKIND: Can I have one second, your Honor?
2 THE COURT: Take your time.
3 MR. ROCKIND: Your Honor, I have nothing else to
4 ask of Detective Balog at this point.
5 THE COURT: Redirect?
6 MR. ROCKIND: Thank you.
7 MS. HAND: Nothing else, Judge.
8 THE COURT: Thank you, Detective. You can
9 resume your seat.
10 THE WITNESS: Thank you.
11 (At 3:41 p.m., witness excused)
12 THE COURT: Next witness?
13 MS. HAND: Your Honor, People call Sergeant
14 Jennings.
15 THE COURT: Okay. All right, thank you, sir.
16 You've been called as a witness. Please make your way up
17 to the witness chair. Watch your step on that little
18 ramp. Please get yourself settled in the chair and raise
19 your right hand for an oath. Do you solemnly swear or
20 affirm the testimony you are about to provide shall be the
21 truth, the whole truth and nothing but the truth, so help
22 you, God?
23 SERGEANT JENNINGS: I do.
24 THE COURT: Thank you very much. Please have a
25 seat and start off by stating your full name and spelling

1 your last name for the benefit of the court recorder.

2 THE WITNESS: Sean Jennings, J-E-N-N-I-N-G-S.

3 THE COURT: Thank you, your witness.

4 MS. HAND: Thank you.

5 SERGEANT SEAN JENNINGS

6 Called by the People at 3:41 p.m. and sworn by the Court,
7 testified:

8 DIRECT EXAMINATION

9 BY MS. HAND:

10 Q How are you employed, sir?

11 A With the Oakland County Sheriff's Office.

12 Q And where are you currently assigned?

13 A To the narcotics enforcement team.

14 Q All right and how long have you been a police officer?

15 A Twenty-eight years.

16 Q And how long have you been a member of the narcotics
17 enforcement team?

18 A Approximately 14 of those years.

19 Q Okay. And have you previously been qualified as an expert
20 in the area of narcotics trafficking?

21 A Yes.

22 Q And as part of that expertise are you familiar with
23 language that is commonly used during drug transactions?

24 A Yes.

25 Q Or by the drug trade?

1 A Yes.

2 MS. HAND: Do I have a stipulation as to his
3 qualifications or would you like me to go through them?

4 MR. ROCKIND: Judge, as long as we can get a - I
5 mean, I know Sergeant Jennings, so we'll for exam purposes
6 stipulate that he is an expert in - what's the field that
7 you're qualifying him in?

8 MS. HAND: Narcotics trafficking.

9 MR. ROCKIND: In narcotics trafficking.

10 THE COURT: Okay, thank you. Go ahead.

11 MS. HAND: Thank you.

12 BY MS. HAND:

13 Q Sir, in preparation for your testimony did you have an
14 opportunity to review some printed documents of Snapchat
15 text chats?

16 A Yes.

17 Q Okay. So are you familiar with the term plug?

18 A Yes.

19 Q And what does a plug mean to you in the narcotics
20 trafficking world?

21 A A plug means a supplier of drugs, a person who sells to
22 customers.

23 Q Okay. In your experience do people trade - or do people
24 pay for drugs in things other than cash?

25 A Yes.

1 Q Okay, can you explain some of the things in your
2 experience that you know people would use as currency for
3 drugs?
4 A Traffickers will also - they will take drugs for drugs,
5 also usually it's - other items they will take instead of
6 cash would be like personal items.
7 Q Bridge cards?
8 A Radios, stereo equipment, things of that nature.
9 Q Okay, bridge cards?
10 A Sure, any personal property,
11 Q Okay. Are you familiar with the - the street drug Molly?
12 A Yes.
13 Q Okay. Are you familiar with its chemical name?
14 A The - MDMA, yes.
15 Q Okay. All right. And --
16 A It's a long name. I can't pronounce the --
17 Q Okay, if I said it would you recognize it?
18 A Yes.
19 Q 3,4-methylenedioxymethamphetamine?
20 A There you go.
21 Q Okay. All right, so Molly, is that - usually sold in pill
22 or a powder form?
23 A Molly is usually in powder form.
24 Q Okay and then the term ecstasy that we talk about, is
25 Molly a powder form of ecstasy?

1 A Yes.

2 Q Okay and ecstasy is normally found - is sold in what form?

3 A In a pill form.

4 Q Okay. Are you familiar with the term Addys?

5 A Yes.

6 Q Okay and what is that slang for?

7 A For the Adderall, prescription pill Adderall.

8 Q Okay, is Adderall also an amphetamine?

9 A Yes.

10 Q Okay. What about shrooms?

11 A What the term shrooms - that's be for psilocybin
12 mushrooms.

13 Q Okay. And what the - the term meth?

14 A Meth would be methamphetamine.

15 Q Okay. All right. I'm going to draw your attention to -
16 I'm not going to go through all these. You - you have the
17 Snapchats. Are your divided up by user and sender?

18 A Yes.

19 Q Okay. All right.

20 MR. ROCKIND: Could I - could I stand near
21 someone and see what they're looking at? I don't --

22 THE COURT: Sure.

23 MS. HAND: Sure.

24 MR. ROCKIND: Maybe over there? I can --

25 THE COURT: You can go wherever you want.

1 MR. ROCKIND: I just wanted to stand over - I'm
2 not going to --

3 THE WITNESS: No.

4 MR. ROCKIND: Stand over here and take a look at
5 what you're looking at?

6 THE WITNESS: Sure.

7 MR. ROCKIND: Thank you.

8 MS. HAND: Or I'm happy to stand on the edge and
9 we can look at the podium together. That might make --

10 MR. ROCKIND: Whatever you want. I just want to
11 know what he's looking at, so I can --

12 MS. HAND: Okay.

13 THE COURT: Sure.

14 BY MS. HAND:

15 Q So, I think these are in alphabetical order, is that
16 right?

17 A I believe so.

18 Q Okay, I'm going to just skip to a couple of them. There
19 is one that is C Zeug - Z - Z-E-U-G - did you find yours?

20 A Yes.

21 Q Okay. And what is the first date on - I think it starts -
22 it goes backwards, right?

23 A Yeah, I believe the first date on the one that I'm showing
24 is March 18th.

25 Q Okay. And what is the approximate time?

1 A The time that shows on here would be 1540 hours.

2 Q And is that UTC time?

3 A That's correct.

4 MS. HAND: Your Honor, I'd ask the Court to take
5 judicial notice that UT - UTC time in Michigan ends the
6 third and fourth week of March, isn't that four hours
7 later than it actually is, so for example, midnight on the
8 19th would be 8:00 p.m. on the 17th. So for --

9 THE COURT: Any response, Mr. Rockind?

10 MR. ROCKIND: About what UTC is?

11 THE COURT: About taking judicial notice of that
12 time calculation?

13 MR. ROCKIND: No, I don't have any --

14 THE COURT: I will so make that ruling.

15 MS. HAND: Thank you, your Honor.

16 THE COURT: You're welcome.

17 BY MS. HAND:

18 Q All right and --

19 MR. ROCKIND: That's fine.

20 MS. HAND: Okay, so it's on the disk. All
21 right.

22 BY MS. HAND:

23 Q So can you go ahead and - is there any indication on that
24 particular chat thread regarding drug trafficking?

25 MR. ROCKIND: Can I - can I look over his? She

1 doesn't have hers.

2 THE COURT: Sure.

3 MS. HAND: I tried to find it.

4 BY MS. HAND:

5 Q While Mr. Rockind's looking, is there any evidence - is
6 there any conversation on that chat thread that indicates
7 drug trafficking?

8 A Yes.

9 Q Specifically any drug trafficking as it relates to Molly
10 or Mol?

11 A Yes.

12 Q Okay. Can you go ahead and read the text thread from -
13 from the earliest time to the - so starting on the back -
14 starting with the March 18th and going - I think you need
15 to be on the second page.

16 A Well, there is one on the - the first page. I believe it
17 was dated March 19th. It is --

18 MR. ROCKIND: What's the time?

19 THE WITNESS: 1741 UTC.

20 MR. ROCKIND: I believe that's correct, right?

21 MS. HAND: I'm going to approach to make sure --

22 THE COURT: Sure. Why don't you all just stand
23 together so we can just make sure the record is very clear
24 on what he is looking at and referencing.

25 MS. HAND: Okay.

1 THE COURT: Be as specific as possible.

2 BY MS. HAND:

3 Q Okay, so I'm going to start down here.

4 A Okay.

5 Q And go earliest --

6 A Yes.

7 Q Okay. All right, so starting with March 18th at 15:40:53

8 UTC, which would be what time? If this is military

9 time --

10 A You want the - in military time that would be 3:40 in the

11 afternoon.

12 Q Okay, so which would actually be one --

13 A There's three hours, right? So it would be 12 --

14 Q Four.

15 A If there's four hours that would be 11:40.

16 Q a.m.?

17 A a.m.

18 Q Okay. On the 18th?

19 A On the 18th.

20 Q Okay and the - from is on the second - or the --

21 A That's the first column.

22 Q First --

23 A Or the - yeah, with the names.

24 Q Okay.

25 A The screen names.

1 Q All right, so can you go ahead and indicate what it - what
2 it reads and from --
3 A From the bottom up?
4 Q Let's just call this person C, okay? Can we agree to call
5 him C?
6 A Call him C?
7 Q C?
8 A Okay.
9 Q All right.
10 A And are we just referring to Molly or do you want me to go
11 through the whole --
12 Q Just go through this whole drug trafficking.
13 A The whole drug trafficking. Okay, on the very bottom one
14 at 1540 UTC, C is inquiring to Hulkolas, "What kind of
15 drugs you got?"
16 Q Okay.
17 A And then at --
18 Q Twenty-one.
19 A What's that?
20 Q I was just - the next time frame.
21 A Oh, well the next time the drug trafficking Hulkolas
22 responds on 21:53 UTC, "No." But then it follows up at
23 21:54 with - but - with Hulkolas to C, "Bud, shroom, tab,
24 Mol and edibles."
25 MR. ROCKIND: Judge, so - so these - these

1 statements are not - have not been proven to be attributed
2 to Mr. Remington. No indication of how many people have -
3 had access to that account, who sent it, whether he sent
4 it. They're not admissions attributed to Mr. Remington.

5 THE COURT: Well, the detective testified that
6 that - that the account was associated with him.

7 MR. ROCKIND: I - I understand, but the specific
8 statement - the People, in order to utilize it, have to
9 utilize - to be able to argue, to articulate that it is -
10 prove that it is an admission by a party opponent. And
11 have they - to your satisfaction have they proved that the
12 account belongs to - arguable is registered to him, that
13 he's the one that sent that message? Even though the
14 account belongs to him, have they articulated to your
15 satisfaction that he's the one that sent that message?
16 Because otherwise it's irrelevant.

17 THE COURT: So far, yes.

18 MR. ROCKIND: They have?

19 THE COURT: Yes.

20 MR. ROCKIND: Okay.

21 MS. HAND: Okay --

22 THE COURT: Is this part of the group that was -
23 part of the printed version of exhibit three that was
24 admitted?

25 MS. HAND: Yes, your Honor.

1 THE COURT: Okay.

2 MR. ROCKIND: Is it the Court's position that -
3 just so - just so we don't have to go through every single
4 one of these, that every entry made by Hulkolas because
5 the account is registered to Mr. Remington, that those are
6 Mr. Remington's statements --

7 THE COURT: Yes.

8 MR. ROCKIND: -- without any additional proof?

9 THE COURT: At this point, yes.

10 MR. ROCKIND: So I just - as opposed to me
11 standing here and objecting to every one, let's just make
12 a continued objection so I don't have to do that.

13 THE COURT: Then that would be noted.

14 MR. ROCKIND: Okay.

15 MS. HAND: Can I provide this to the Court so
16 that we can move along?

17 THE COURT: Yes.

18 MR. ROCKIND: No, I think that makes sense. I
19 mean, this - this is --

20 THE COURT: It's already been admitted.

21 MR. ROCKIND: This is an exhibit. It has been
22 admitted, so --

23 MS. HAND: It is.

24 BY MS. HAND:

25 Q So could you go ahead --

1 A Do you want me to continue?

2 Q Yes, so the judge has a copy. You don't need to --

3 A Right, do you want me to just go up with the conversation
4 or go with the times, too?

5 Q With the - no, he has the times in front of him.

6 A Okay.

7 Q If you could just go up with the conversation.

8 A On who's saying what?

9 Q And more importantly indicate what it means to you as an
10 expert in narcotics trafficking.

11 A Okay, in the one I just stated from - from Hulkolas to C,
12 he said, "Bud, shrooms, tab, Mol and edibles," where were
13 - in the drug trafficking world we're talking marijuana,
14 mushrooms, tabs would be referred to generally acid or
15 LSD, Mol would be Molly and the edibles would be like
16 marijuana edibles.

17 Q Okay.

18 A Then in the next - the next one that was sent it says,
19 "KK, a 60, a gram." That's from Hulkolas to C. And he
20 then inquires with RN, which typically means right now,
21 and then again he states, puts in there, "We low on this
22 quarter." And then C responds, "Bet" which means okay and
23 then C --

24 THE COURT: Well, no, that one says Hulkolas
25 says, "Bet."

1 THE WITNESS: No, it was from - that was from.
2 From C to Hulkolas would be bet, I think. The C is
3 from --

4 THE COURT: Oh, I see. Gotcha. I'm sorry, yes.
5 I had - I see.

6 MS. HAND: The first column, your Honor, is -
7 combines both --

8 THE COURT: I see, yep.

9 MS. HAND: Okay.

10 THE WITNESS: And then C responds, "Mols" to
11 Hulkolas.

12 BY MS. HAND:

13 Q Meaning --

14 A Meaning Molly.

15 Q Okay.

16 A And then Hulkolas responds, "Sure, WYA", where you at?
17 And Hulkolas responds, "Okay, CJ. He might get there
18 before me." He's saying maybe to a partner or somebody
19 else, try him. Further up the thread Hulkolas - to see -
20 "He's got my stuff for you" meaning he's got the - the
21 Molly they were talking about - "for you." And then C
22 inquires to Hulkolas, "I - I picked up a gram of Mol
23 today." "And then he's got a rave" - both Mols, which is
24 Molly. "And he's got a rave on Friday and he's fittin to
25 get lit." And Hulkolas - then C responds to Hulkolas, who

1 - again the Fuego guy says he ran out. Hulkolas responds
2 to C, he says, "Cool. I got you. Cheaper than him",
3 meaning he's got product that's cheaper than this other
4 guy. And that return customers to him get the best deals.
5 And then Hulkolas responds to C again, says, "I got you.
6 He's 70 a gram right now and it's the last of this
7 quarter" meaning \$70 a gram for the Molly. And then
8 Hulkolas responds again right after that to C, "Pure
9 AF" --

10 Q Meaning?

11 A Which the AF is slang for - it would be pure as fuck. And
12 then Hulkolas gives C a - an address, I believe, to go to.
13 And I think that's it for the drug trafficking on that
14 thread.

15 Q Okay, it continues on the next page, right?

16 A Yes.

17 Q Okay.

18 A And Hulkolas is still sending messages to C stating that
19 he's got no scale, weight - he - he directs him to come to
20 the Panda Express side of where they're at. Hulkolas also
21 responds to C and says, "You better be alone," which is
22 common in the drug trafficking - when they make
23 transactions they like people to be alone, by themselves.
24 C responds to him, "True, no problem, boss." And Hulkolas
25 responds to C, "You know, I know a trap. Could supply

1 you, brother. I'm from Northville." And Hulkolas is
2 responding to C again, to "Hit up a CJ at him. He's got
3 you my stuff." More about weed, "My grower won the
4 cannabis cup." Talking - also talking about an indoor
5 grow operation, marijuana grow operation. He continues to
6 talk to C about, you know, "\$10 a gram but it sells for
7 \$20 easy for your custos," talking about the prices of
8 marijuana generally. And then he goes in to talk with
9 Hulkolas again, "I got better carts with no pesticides."
10 Again, carts is a common term for marijuana. Then
11 Hulkolas further up the thread inquires again that he is
12 the plug, says, "I am the plug." And Hulkolas also tells
13 C that they get a kilo of Mol, which is Molly, at a time.
14 And --

15 MR. ROCKIND: What's the date of this?

16 THE WITNESS: The date of that - of that text I
17 just said was March 28th.

18 MR. ROCKIND: Object to the relevance of March
19 28th, Judge.

20 MS. HAND: Your Honor, under People versus
21 Hartwick, which is a Michigan Court of Appeals case,
22 Judge, any indication regarding drug trafficking by the
23 defendant that is, in fact, relevant to show the
24 defendant's motive, desire or intent doesn't have to be
25 the day of. In Hartwick the circuit court judge - this is

1 an Oakland County case, allowed like 3,000 text messages
2 into evidence, some of them dating back years and as well
3 as discuss different drugs than the drugs for which the
4 defendant was on trial. And the Court of Appeals
5 indicated that in fact it was relevant.

6 MR. ROCKIND: It was found on the person's phone
7 at this - that was seized during the search warrant.

8 MS. HAND: Judge, this is --

9 MR. ROCKIND: This is - this is - this is
10 totally different.

11 MS. HAND: You don't stand any more for the
12 judge?

13 THE COURT: It's relevant --

14 MR. ROCKIND: She's trying to --

15 THE COURT: - to whether or not he's a drug
16 dealer or not. It's not - it doesn't necessarily tell me
17 anything about whether on the 18th of March or the 19th he
18 delivered drugs to the decedent, but it is relevant so the
19 objection is overruled.

20 MR. ROCKIND: I'm sorry I didn't stand, Judge.

21 THE COURT: That's okay. I understand, Mr.
22 Rockind.

23 MR. ROCKIND: I'm getting old.

24 THE WITNESS: And then C inquired to Hulkolas on
25 April fifth, the date at the very top - I think it's the

1 last message on this thread that, "You got Mols?" meaning
2 Molly.

3 BY MS. HAND:

4 Q Okay. And I'm going to show you know, could you go to M.
5 Harrington?

6 THE COURT: Is that on a different piece of
7 paper?

8 MS. HAND: It is. May I approach, Judge?

9 THE COURT: Sure. Do you want me to give you
10 that one back?

11 MR. ROCKIND: Judge, can I - I have to make - if
12 I were to give the prosecutor and your Honor our disk that
13 has these chats that we got as part of discovery, there is
14 no M. Harrington message. I - I have an idea of what I
15 want but there is no M. Harrington message on our disk.

16 MS. HAND: Judge, if Counsel wishes to adjourn
17 and we have another date of October second, if he wants to
18 come sit down at my office and if there was something that
19 for some reason didn't transfer to his - he's looking at
20 paper, which I agree with - that those pages aren't every
21 single message, but they are on the --

22 MR. ROCKIND: No, actually I - I'm looking at a
23 - that was part of discovery and we compared that to what
24 was on our disk. It's an M. Harrington message that was
25 not on our - was not on the disk. Specific - I know the

1 specific message that they're talking about, and that was
2 not on the disk.

3 THE COURT: Okay, so --

4 MS. HAND: But he has it. He's saying he --

5 THE COURT: Okay, but hold on a second. I -
6 because it's already three minutes after 4:00, and I can
7 tell we're definitely not going to get the exam done
8 anyway today, I don't think. Is that agreed by everyone?

9 MS. HAND: This is my last witness, Judge.

10 MR. ROCKIND: I don't know how much more she has
11 to go. Can I just see the message we're talking about?

12 THE COURT: Sure. Please come up and get it.
13 Why don't you both come up and look at it together. It
14 sounds like this - we might be getting to the most
15 important message of all.

16 MS. HAND: It - it is.

17 THE COURT: Because is this literally just a
18 couple of messages that are just the most important ones
19 that we're talking about?

20 MS. HAND: These are --

21 THE COURT: Then why don't I just take a 10-
22 minute break and you can look at it right here?

23 MR. ROCKIND: Let me see it on the computer.

24 THE COURT: If you would open it up from your
25 version --

1 MS. HAND: I will have to try to find it, yes.

2 THE COURT: Okay.

3 MS. HAND: They are not in alphabetical order on
4 there, which is a problem. I can --

5 THE COURT: Okay. Can we - can we try it for
6 five or 10 minutes and if it doesn't work I'll adjourn
7 it?

8 MS. HAND: Sure.

9 THE COURT: So everyone has their opportunity to
10 do whatever they need to do.

11 MS. HAND: Absolutely, Judge.

12 THE COURT: Okay, so I'm going to take a brief
13 recess, 10 minutes.

14 (At 4:04 p.m., off the record)

15 (At 4:11 p.m., back on the record)

16 THE COURT: 19-4619, I'll note all the
17 attorneys' appearances and the - and the defendant's
18 presence. Where do we stand, Ms. Hand?

19 MS. HAND: Your Honor, I was able to show it to
20 Mr. Rockind on my thumb drive and apparently there must be
21 - I trust him that I will recopy the thumb drive for him,
22 but he did view that it was on the original information
23 received.

24 THE COURT: So what would - what would be your
25 pleasure, Mr. Rockind? Would you like me to adjourn this

1 exam for more time --

2 MR. ROCKIND: No. No, no. The messages are
3 what they are and so our - all I wanted to do for purposes
4 of this discussion was to make sure that we - because I
5 know the disk that we have is - doesn't match what the
6 State has, but --

7 THE COURT: The discovery, okay. It sounds like
8 that's going to be correct.

9 MS. HAND: Yes.

10 MR. ROCKIND: To - to come back to present this
11 stuff again, I mean we made our - our relevance objection
12 and our attribution objection.

13 THE COURT: Okay.

14 MR. ROCKIND: So - and the Court has overruled
15 us.

16 THE COURT: Go ahead, then, Ms. Hand. Continue.

17 MS. HAND: All right.

18 BY MS. HAND:

19 Q So there is a - a - a message from M. Harrington, correct?

20 A Yes.

21 Q And what's the date and time on that one?

22 A It is - it began Tuesday, March 19th at 13:17 UTC, so that
23 would be 10:17, I believe.

24 Q So 13 is --

25 A Four hours is 13 - no, I'm sorry, it would be 9:17.

1 Q a.m. on the --

2 A Yes.

3 Q - 19th?

4 A That's correct.

5 Q Okay and what is the --

6 A It's from - the first message on this thread is from M.
7 Harrington to Hulkolas and it says, "You give that dude
8 meth?" which is short for methamphetamine. And at - on
9 the same date at 15:03 UTC, which would be 1:00 in the
10 afternoon, approximately - I'm sorry, 11:00 a.m.
11 approximately, Hulkolas responds to M. Harrington saying,
12 "Methylone, some Mol," which is Molly.

13 Q Did you go through all of the chats?

14 A Yes.

15 Q Okay, are there more than - more than one thread that
16 indicates that the Hulkolas is, in fact, a seller of the
17 controlled substance Molly?

18 A Yes.

19 Q Okay.

20 MS. HAND: Judge, I don't know if we need to
21 have the officer sit here and read all of these thread --

22 BY MS. HAND:

23 Q Are there any other thread messages where people are
24 asking what the - what's - what that guy's on or what -
25 what did that guy do? Do you recall those things?

1 A Yes.

2 Q All right, and what is the defendant's response?

3 MR. ROCKIND: I - I object to that.

4 BY MS. HAND:

5 Q What is Hulkolas' response?

6 A It's the same response, "Methylone, some Mol."

7 MS. HAND: Okay and I don't know if the Court
8 wants me to go through each of these or if - I - I trust
9 that the Court is very astute in interpreting --

10 THE COURT: Okay, can I see them? Could I see
11 the written --

12 MS. HAND: Sure.

13 THE COURT: Okay.

14 MS. HAND: And, Judge, I - I didn't mark those
15 formally, but those would be People's five.

16 THE COURT: Okay. All right. Cross-examine -
17 did you already cross-examine, Mr. Rockind? I don't think
18 you did yet.

19 MR. ROCKIND: I didn't.

20 CROSS-EXAMINATION

21 BY MR. ROCKIND:

22 Q Sergeant Jennings, the - is it Sergeant? Detective
23 Sergeant?

24 A Yes, sir.

25 Q Let me see if I just - you never - you personally have

1 never met Nicholas Remington, is that right?

2 A That's correct.

3 Q And I understand that you talk - you're testifying about
4 the terms and - terms and things that are commonly used in
5 drug trafficking, right?

6 A That's correct.

7 Q Okay. As opposed to things that you have personally heard
8 or observed Mr. Remington say, right?

9 A Correct.

10 Q Let me ask this about the - the - you have - you're
11 looking at what purports to be - there's a - it's a Excel
12 spreadsheet, right?

13 A I believe it's Excel.

14 Q It's a table, right? And the table contains what purport
15 to be chat messages between the account named Hulkolas and
16 other Snapchat accounts, right?

17 A Yes.

18 Q Do you have a Snapchat account?

19 A I do not.

20 Q And in the course of your investigations have you ever
21 come across a - an individual that utilized Snapchat?

22 A Yes.

23 Q What - fair to say you - you're at least familiar enough
24 that you know that Snapchat is a social media application,
25 right?

1 A Yes.

2 Q And all - an individual can sign up for an account,
3 correct?

4 A Yes.

5 Q And you would have a username and a password, right?

6 A That's correct.

7 Q Are you aware of anything that stops anybody from having
8 the same - from using that same name and password? In
9 other words, are you aware of anything that stops two --

10 MS. HAND: I'm going to object to the
11 foundation.

12 MR. ROCKIND: Well, I'm gonna - what do you
13 mean, he's testifying about records and I'm asking him a
14 question based on --

15 MS. HAND: He's testifying to what he sees on
16 the records, Judge. He's not - he's not --

17 MR. ROCKIND: Well, I'm not --

18 THE COURT: Overruled at this point.

19 BY MR. ROCKIND:

20 Q So - let me back up a second, just so I can lay a
21 foundation very simply. I presume you have an email
22 address, right?

23 A Yes.

24 Q And I presume you have just a - a password. I don't want
25 to know it and I'm not trying to pry, you have a password,

1 right?

2 A Yes.

3 Q And if you were to give me your email address and your
4 password I could access your email and post as the same
5 name or send a message under the same name, right?

6 A Yes.

7 Q Okay. And these messages all come from the account
8 Hulkolas or to the account Hulkolas, correct?

9 A That's correct.

10 Q Yeah, and you don't know at the - each individual message,
11 who had access to the Hulkolas account, correct?

12 A I do not.

13 Q And you don't know who sent the messages or who received
14 them, right?

15 A No.

16 MR. ROCKIND: Nothing else, your Honor, thank
17 you.

18 THE COURT: Redirect?

19 MS. HAND: None, your Honor.

20 THE COURT: Okay, thank you. You're free to
21 leave and go about your business. Is there any reason why
22 this witness needs to remain?

23 MS. HAND: No, your Honor.

24 MR. ROCKIND: No, your Honor, thank you.

25 THE WITNESS: Okay.

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(At 4:17 p.m., witness excused)

THE COURT: You said --

MS. HAND: People rest.

THE COURT: Okay, People rest. Okay, Defense - any witnesses from the defense? Do you need a moment?

MR. ROCKIND: No, I would - I - I don't have any witnesses present, your Honor, but I would - I would appreciate - you know what, I don't have any witnesses for preliminary examination. I'll just leave it at that.

THE COURT: Okay.

MS. HAND: Your Honor, People move to bind the defendant over as charged on the one count contained in the complaint and warrant, that being delivery of a controlled substance causing death.

As the Court is aware the cause of death was stipulated to and unfortunately Denis Preka did, in fact, consume methylenedioxymethamphetamine which did, in fact, result in his death. The question then for this Court is did the defendant deliver that substance to him?

Judge, in - in this particular case, as the Court is perusing, and I have no objection to coming back for a ruling if the Court wishes more time. I know it's a lot of material. And - as well as there's many more videos that are contained in People's exhibit three that clearly show that the defendant - this was not the only incident

1 where the defendant videotaped individuals reacting to the
2 consumption of drugs. And the laughter and the reaction
3 of the defendant is very similar in a lot of the other
4 videos. He's - he's run - I mean, his wording and his
5 demeanor as he's videotaping, if there's any doubt Mr.
6 Rockind indicates that, you know, to the officer that -
7 can - can you show that the - that in fact the defendant
8 is the user.

9 On that same day, if the Court takes the time to go
10 through the information received in Snapchat, the
11 defendant is doing selfies in a mirror and posting those
12 stories lives. So, there is no doubt, if the Court looks
13 at the Snapchat information, that the defendant is, in
14 fact, the person using this account on March 18th, on March
15 19th, and thereafter.

16 And if the Court looks at the Snapchat text messages
17 that we're going through, there are numerous messages
18 where people are asking, "What's that kid on?" in response
19 to - and again, it's hard for the Court, I understand,
20 because I can't put the videos into the time frame of the
21 Snapchat. The Court would have to look at the actual
22 tape. But the - these responses of - of what's this kid
23 on are coming on the heels of the timing of the posting of
24 these very disturbing videos of the defendant - I'm sorry,
25 the victim, near his death.

1 There is also, if the Court looks through the printed
2 messages, there is text messages from Paul Wiedmaier, who
3 was the individual identified at the scene. And shortly
4 before 911 was called in the morning he is Snapchatting
5 the defendant and the defendant is telling him to wake him
6 up, pour water on him and then after April fifth there -
7 there is - I'm sorry, right after - when I asked Detective
8 Balog approximately how - how long he was at the house, I
9 believe he indicated an hour and a half to two hours.

10 Shortly thereafter there is a Snapchat log from Paul
11 Wiedmaier to the defendant to meet us at the part across
12 the street from Northville High School. And then later
13 on, several days later, Paul Wiedmaier indicates to the
14 defendant that, "You weren't drinking at my house."

15 The defendant in this case is clearly the holder of
16 this account and when asked not what is he on but what did
17 you give him and he responds, "Methylone and some Mol."
18 Clearly that is a admission that he gave the substance,
19 which he references numerous times throughout the
20 Snapchat, to the decedent in this particular case.

21 And this creates a question for the Trier of fact,
22 your Honor, and I'm asking you to bind over as charged.

23 MR. ROCKIND: We object to a bind over. I'm not
24 going to go too far down the - the rabbit hole, but we
25 have contemporaneous - well, we've got videos that appear

1 to be relatively contemporaneous with events which there
2 is no drugs observed in which Mr. - the - Mr. Remington is
3 in the videos or is commenting or they're all joking,
4 there's in the background - no referencing, no admission
5 that he has given him the drug or saying, "This is what
6 the drug is" or anything else and then the People want to
7 introduce, I guess, the tie-in for them is the Snapchat
8 log and try to share with the Court that this is not how
9 Snapchat looks.

10 This is a - I don't even know what the best way to
11 describe it. This is - any word that I use to describe
12 the comparison of these logs to the - to actual Snapchat
13 communications is - is potentially offensive. These are -
14 these are an abomination. These are not - these have -
15 bear almost no relationship in look, feel or appearance to
16 Snapchat communications.

17 The one thing that I can assure the Court is what
18 Detective Jennings happened to testify to, that is that
19 there is neither he nor the prosecutor, with all due
20 respect, nor the Court can say even to a probable cause
21 standard that Mr. Remington is the one who entered - made
22 those entries on March 18th. All it would take is an
23 individual to know - or March 19th, excuse me. All it
24 would take someone to have access to the account and a -
25 and a password.

1 The fact of the matter is - is that there is no
2 evidence that Mr. Remington sent those other than the
3 claim that it just had to be him because it - it's his
4 account. And the fact of the matter is that there -
5 nothing ties him to those specific messages on that
6 specific day. There were other people that were in the
7 house that day.

8 So we object to a bind over, your Honor. And I - and
9 I'll reserve any - I don't want to waive any of the
10 objections that we raise. Obviously, we raised
11 substantial objections, excuse me, to the admission of the
12 Snapchat records and I don't want to waive that for
13 purposes of - of argument later on, your Honor.

14 THE COURT: Just so that I'm clear and make sure
15 that I didn't miss something during the testimony, was
16 there any evidence proffered that - of the Snapchat
17 username of the decedent?

18 MS. HAND: No, there was not. And may I just
19 briefly respond?

20 THE COURT: Yes, please.

21 MS. HAND: Judge, for - for Counsel to say that
22 there's no - nothing in evidence to suggest that the
23 defendant was the person using this account, Snapchat is a
24 - an application that's on your cell phone. And that you
25 send and receive these - these chats and these videos via

1 cell phone and the defendant even in one of the - like I
2 indicated earlier, in one of the Snap videos - the - the
3 Court I'm sure is aware of selfies. He's actually
4 photographing himself in a mirror holding his cell phone
5 and then sending - sending the - the story. So to say
6 it's not him and that somebody else got ahold of his
7 account and made these admissions, you know, flies in the
8 face of - of logic and it flies in the face of the
9 evidence that's presented.

10 Also in those messages, your Honor, there is people
11 asking - I - I can't remember if they're asking for his
12 name or his user and it - he - he responds, Nicholas
13 Remington. So there is no doubt that this account holder
14 and the user of this account was, in fact, the defendant
15 when you look at the totality of the circumstances.

16 THE COURT: Okay. So, I'm going to need to go
17 through these a little bit more closely.

18 MS. HAND: Please.

19 THE COURT: So, I just want to make sure,
20 because they're voluminous, so far what I - I'm concerned
21 with, and I want to look and see if the - I'm assuming
22 that the argument about admissibility is because since you
23 both have gone through this voluminous messaging back and
24 forth, that there is a question of fact assuming that the
25 messages are from the defendant and that the messages from

1 other people to and from the defendant are - are talking
2 to him and he's talking back. Assuming that's true it's a
3 question of fact for the Trier of fact, that he actually
4 handed or delivered in some fashion the drugs to Mr.
5 Preka. Are - is that true?

6 MR. ROCKIND: Are you asking me if - if- if you
7 conclude that Mr. Remington is the individual that sent
8 that message on that date --

9 THE COURT: Engaged in these conversations --

10 MR. ROCKIND: I mean, you're going to conclude
11 that there is a question of fact, even if I --

12 THE COURT: Okay.

13 MR. ROCKIND: But you're going to conclude --

14 THE COURT: In other words, there is enough in
15 there to raise a question of fact that he actually
16 provided the drugs to the decedent?

17 MS. HAND: Are you asking me?

18 THE COURT: Well, I --

19 MS. HAND: Yeah, I --

20 THE COURT: - know your position. Right.

21 MS. HAND: I think you just answered it --

22 MR. ROCKIND: Right. I mean, we - the reason
23 why we put up such a fight about the Snapchat and these
24 records is that this is not the way that these messages
25 look in - in reality. And the reason - I - I know maybe

1 we could have maybe just put it all in and then argued
2 this at this point about why we were raising challenges,
3 but there are - I can point to the Court, there are -
4 there is not a lot of grammar in these.

5 But there are odd sort of hieroglyphics and symbols
6 and other oddities like question marks and things that
7 appear in the middle of some statements or - or comments
8 in some of these messages, which clearly are not what an
9 individual messaged. Nobody types out the message with a
10 couple of - it says, you know, "Hi" and then all of a
11 sudden it has these odd symbols and I suspect that that's
12 attributed to how Snapchat, which retrieves the data in
13 anticipation of litigation and it populates a - an Excel
14 spreadsheet. I'm not - I don't use Excel, but I've been
15 told that - if your Honor knows Excel that when you cut
16 and paste into Excel, a lot of times the Excel spreadsheet
17 will not actually read the same - the language the same as
18 the input. That causes me great concern, because the
19 punctuation and grammar on some of these is absent and I
20 think that can change the context.

21 There are some additional messages that I think your
22 Honor will see that are blank, that are just absent which
23 means that they're missing data, which is why I was so
24 concerned about - see, if I were to - and this is why I
25 started to argue earlier and the prosecutor is standing up

1 and wants me to probably sit down, but if I were - if I
2 were to engage in Snapchat conversations right now we can
3 screenshot each one of those Snapchats.

4 And I can - we could look at the way that the - the
5 communication unfolded and I - we could then take that -
6 those communications and we could see how we each typed
7 those messages out and then we can compare that to a -
8 where someone could populate a Excel spreadsheet and we
9 can compare what's in there to what is in - in our phones
10 or what the screenshots are and we could verify the
11 accuracy and reliability of it. And we - we don't have
12 that here.

13 What I have is I have claim that one message that
14 somebody at Snapchat, this company, somehow took data in
15 response to a search warrant, put it into an Excel
16 spreadsheet, we don't know how they retrieved it. I don't
17 know whether it's a program or an algorithm or they pay
18 these - some clerks to sit there and do it by hand, I
19 don't know. But populated into an Excel spreadsheet
20 without - without comparing it to the actual screenshots
21 and then - and then tell you that that's - this is - this
22 is what this Hulkolas sent and Hulkolas received and I
23 don't know - you know, I simply don't know if that's
24 accurate.

25 That's - and literally the bind over, if you ask me,

1 the decision whether you bind over or not is entirely
2 dependent on your review of the Snapchat records. The
3 prosecution wants to use those as admissions.

4 THE COURT: Okay.

5 MR. ROCKIND: And that's why I put up such a - I
6 tried to be as technically challenging about them, because
7 I felt like I knew that that's the crux of their case at
8 this point. And because of that we are left with --

9 THE COURT: I'm going to have to give you - would
10 you like a decision date?

11 MS. HAND: Yes, Judge, can I just add one thing?

12 THE COURT: Yes.

13 MS. HAND: This is no different than - and I'm -
14 I don't know if the Court has seen it, but I'm assuming it
15 has, a cell phone dump. When a cell phone dump was done
16 by computer crimes, when they take the information out of
17 the phone if there is an emoji the emoji is replaced by a
18 symbol. So, that goes to whatever weight the jury wants
19 to give these little things that show up. But it has
20 nothing to do with the admissibility of it or the fact
21 that it was prepared, you know, in the course of
22 litigation. That simply isn't the case. But I just
23 wanted to add that for the Court's --

24 MR. ROCKIND: Can - can I raise the issue? This
25 is the issue I have. Okay, and I - I'm glad you're going

1 to take the time to look at it, your Honor. I appreciate
2 that. Ms. Hand and I, we've had a lot of battles over the
3 years and she - she's a very tough opponent, very tough,
4 capable litigant.

5 MS. HAND: But the --

6 MR. ROCKIND: No, no, no. There's no - but
7 what's happening is she's offering her - she's offering -
8 she's offering an explanation that is not under oath and
9 was not borne out by any technical knowledge.

10 MS. HAND: Isn't that what he's been doing this
11 whole time?

12 MR. ROCKIND: No, no, no - but - wait a minute.
13 But I'm doing it a different way. I'm doing it a
14 different way. It thought - I'm going to tell you this,
15 your Honor, I'm going to say this. I never in court - I'm
16 gonna do my job. I'm never going to be disrespectful to
17 Mr. Preka's family. Ever. Okay? I know they probably
18 don't appreciate the job that I have to do, but I'm never
19 going to disrespect those people, okay? And I hope they
20 understand that. Any argument I'm making, it's not to
21 belittle them or him or in any way. It's doing my job.

22 THE COURT: I understand.

23 MR. ROCKIND: So, I'm making arguments not to
24 advance why you should - how you should interpret this
25 evidence, I'm making my arguments to point out that the

1 evidence itself is not reliable enough why there's a level
2 of discomfort and why expert testimony should be required
3 by the people in order to offer an explanation about what
4 this - what - why there are hieroglyphics and - and
5 symbols that happen to be interspersed or why there are
6 gaps or absences. I'm not trying to testify to that or to
7 say that you should rely on that, I'm pointing them out to
8 say that those are inexplicable and that you should have a
9 - a doubt about the reliability of the records.

10 A cell phone dump and a cell phone extraction using
11 Cellebrite, which I think I am familiar with, is entirely
12 different. Because when you do a cell phone extraction
13 you're literally taking a mirror image. There's a program
14 designed to actually extract the data, it has a - it is a
15 program. We would have an expert, a police officer that
16 would come in to court here to explain the Cellebrite
17 program, to explain the different levels of - whether it's
18 a physical extraction or a logical extraction, the
19 difference between those things, how the Cellebrite
20 program works, what their training is, what filters they
21 use and then they'd be able to tell us that if there's any
22 doubt about it, which has happened to me in court, they
23 would bring the phone in and hook it up and say you can
24 compare it.

25 That's different than what we have here. We just

1 have an Excel spreadsheet and we're being told to extract
2 from that, to deduce from that that the Excel spreadsheet
3 means that these messages appeared on phones somewhere and
4 that the messages that were on phones were in the exact
5 same format and were actually entered by the two people
6 that - on both ends and one of which they're claiming was
7 the most important one, is that every time there is a
8 message sent by someone named Hulkolas that that person
9 was Nicholas Remington and that's not - that's just not
10 borne out by the evidence and that's why we - I - when you
11 asked me do I want to call any witnesses, the answer is I
12 don't have any witnesses to call today.

13 But, boy, I sure hope if it's not your Honor, I sure
14 hope that whoever our circuit court judge is, if you bind
15 over, or if you choose not to bind over or if you want to
16 delay, I sure hope that you order somebody from Snapchat
17 to appear and come and offer expert testimony and explain
18 the process by which these - this information is populated
19 into this Excel spreadsheet. Because right now we have no
20 explanation for them other than the prosecutors saying
21 that it's as reliable as if we looked at a phone, and
22 there's no evidence of that.

23 THE COURT: All right, so let's do this.

24 MR. LEWIS: Your Honor, can I just ask one
25 thing? The - the bond, you'll - you'll address that the

1 next time we're here, if we want to make a bond motion?

2 THE COURT: Sure.

3 MR. LEWIS: You don't want to do that today?

4 THE COURT: You can do it today if you'd like.

5 I don't - it doesn't matter to me. But I want - before we
6 get to that part I'd like to finalize what we're going to
7 do moving forward.

8 MR. LEWIS: Okay.

9 THE COURT: So, would you like to come back in a
10 week or two? Let me preface that by saying what I'd
11 really like to see, if possible. Can you have delivered
12 to the court here a copy for me of what you're now going
13 to give again to Mr. Rockind?

14 MS. HAND: Yes.

15 THE COURT: Along with a protective order?

16 MS. HAND: Yes.

17 THE COURT: Can that happen fairly soon? Maybe
18 within a week?

19 MS. HAND: Yes.

20 THE COURT: And then come back a week after that
21 perhaps, give you a chance to look everything - I'll look
22 very carefully. This is a serious case, it's very
23 important.

24 MS. HAND: Yes.

25 THE COURT: I'll make sure I give it --

1 MS. HAND: You're missing a page, Judge. If I
2 could approach with that?

3 THE COURT: Please.

4 MS. HAND: From five. And, Judge, I just want
5 to let you know and I'm sure Mr. Rockind figured it out,
6 so on the People's exhibit three, which I'm going to bring
7 you a copy of the thumb drive, the Excel spreadsheet is
8 done chronologically. I did a search engine so that the
9 Court and myself and - we could read her sender and
10 receiver, so they're not in the same order as you're going
11 to view them.

12 THE COURT: Okay.

13 MS. HAND: Okay, can I approach with the
14 remaining number five?

15 THE COURT: Sure.

16 MS. HAND: And did you want four? The video?
17 Or no?

18 THE COURT: Why not.

19 MS. HAND: Or you just want the thumb drive?

20 THE COURT: Sure.

21 MS. HAND: Okay.

22 THE COURT: I think I - I'll take a look at it
23 again.

24 MR. ROCKIND: Do you need us to prepare a
25 separate written protective order regarding the - the

1 decedent - Mr. Preka's cell phone?

2 THE COURT: Yes.

3 MR. ROCKIND: Okay. All right.

4 THE COURT: All right. Now, this - you have
5 another copy of this as well, yes?

6 MS. HAND: You have a copy?

7 THE COURT: I'm not super tech savvy, so I think
8 I hate to have your only one, because if I mess it up - if
9 you want to copy this and bring it back with the flash
10 drive --

11 MS. HAND: I'll give you - okay.

12 THE COURT: Okay, so lastly, housekeeping
13 mattes. So, the exhibit is three-quarters of a ream of
14 paper. Do you want me to count these pages so that the
15 record is very clear exactly how many pages of documents
16 you've given me?

17 MR. LEWIS: No, that's no necessary.

18 THE COURT: All right, so now do you have your
19 calendars to pick a return date?

20 MR. ROCKIND: Are you take - Judge, are you
21 taking argument or just going to rule that day?

22 THE COURT: I give you - I'll give you brief
23 argument --

24 MR. ROCKIND: No, I don't know that - because
25 I'm just trying to --

1 THE COURT: I'm just trying to rule, is what I'm
2 really trying to do, but I won't rule until I've taken the
3 time to really look at it all --

4 MR. ROCKIND: No, because I was going to say,
5 because if that's the case I don't know if both Mr. Lewis
6 and I are required that day.

7 THE COURT: You don't - you don't both need to
8 be here.

9 MR. ROCKIND: Okay. Let's just figure out which
10 one of us --

11 THE COURT: That will make the calendar easier.
12 So as long as one of the two of you can be present that
13 should be satisfactory just to hear bind over or no bind
14 over, right?

15 MR. ROCKIND: Yes, your Honor.

16 THE COURT: Okay. So, can either of you be here
17 the afternoon of - and Ms. Hand and someone from the
18 defense - be here the afternoon of October 30th? October
19 16th?

20 MR. ROCKIND: I do - I'm wondering - I'm just
21 looking to --

22 MS. HAND: Judge, I could do the information you
23 want by Tuesday, October first, which I should be able
24 to --

25 MR. ROCKIND: I'm here on the 16th anyway, your

1 Honor, for an exam in the afternoon.

2 THE COURT: Why don't we do it then?

3 MR. ROCKIND: I'm here - I have an exam in front
4 of you on the 16th, I guess, unless you want to do a
5 different day.

6 THE COURT: Let's do it the 16th.

7 MS. HAND: That's fine.

8 MR. ROCKIND: Doesn't mean I have to deal with
9 Ms. Hand on that other exam, does it?

10 THE COURT: Only if you're lucky. So that's the
11 16th at 1:30. Okay. Any other housekeeping matters that I
12 may have overlooked? I think that covered everything.
13 Protective order, copies of the exhibits, nothing else?

14 Go ahead and make your bond motion if you want to.

15 MR. LEWIS: Your Honor, the last time that Mr.
16 Rockind argued the bond there was an exchange between him
17 and Ms. Hand. There was certain representations that were
18 made to you that you were going to see videos that showed
19 the commission of this offense. I believe that was
20 represented to you two court appearances ago. Mr. Rockind,
21 the last time we were here he made representations to the
22 Court that you are not going to hear from any live witness
23 that comes in there that Mr. Remington admitted to
24 somebody that he delivered drugs to the decedent in this
25 case and I think that that's what was borne out here today

1 to a certain extent.

2 I'm not going to get back into all of the legal
3 issues that were raised today between Mr. Rockind, Ms.
4 Hand, what was admitted as business records, what's
5 disputed, whether they're actually business records or
6 not. That would be the subject of litigation at a later
7 time, if the Court chooses to bind over here.

8 The bottom line here is that he's - Mr. Remington, he
9 - you know, you did see a video here today, but on that
10 video what you see is - is kids horsing around. You see
11 kids laughing, multiple participants in these. I - I
12 would assert to the Court that if not for the unfortunate
13 death of the decedent in this case nobody would even be
14 looking at these videos and talking about how - that they
15 show evidence, that he delivered and that they show any
16 type of commission of an offense. They could just as
17 easily be interpreted as kids horsing around.

18 He's in jail on a million-dollar bond in this case
19 and as we represented to this Court before, you know, on
20 the previous occasions, he can be on - on home tether. He
21 still is on probation to Judge Jarbou, who continued his
22 HYTA status in another matter. His mom is always present
23 at all the court hearings in this case. He has
24 substantial community support. There is no reason to
25 believe that he's not going to appear back here. He has no

1 prior failures to appear in court. He was a student at
2 the University of Michigan.

3 I'm asking the Court to consider a bond that we'd
4 assert to the Court is more commensurate with what the
5 Court has seen so far in this case. I'm asking the Court
6 to consider \$100,000 10 percent bond. I believe that that
7 is a bond with conditions that your Honor could impose,
8 would assure his reappearance in court. You could issue
9 no contact with any potential witnesses in this case. You
10 can put any conditions on that the Court feels comfortable
11 with. But I assert to the Court that that's a bond where
12 he is going to appear back here. He's - has nowhere to
13 go. He's only a citizen of the United states. He doesn't
14 have dual citizenship and I - I would assert to the Court
15 that a million-dollar bond is excessive in this case.
16 Thank you.

17 THE COURT: Response?

18 MS. HAND: Your Honor, once the Court has the
19 opportunity to go through People's exhibits three and five
20 you will see that the defendant was dealing drugs the day
21 after the death of Denis Preka. There is absolutely no
22 remorse for the fact that the drugs he delivered to him,
23 and I submit to the Court that when you read the text
24 messages and it - if in fact you find, as I hope that you
25 do, that he is in fact the holder of this account. When he

1 indicates to Matt Harrington that he was the person that
2 gave him the meth and the Mol the next day, he's selling
3 drugs again.

4 And he continues to sell drugs. He's selling drugs
5 on a regular basis. He is a danger to the society and to
6 say that that is kids horsing around, I - I have a
7 completely different take on the videos that the Court
8 saw. This is an individual who was laughing, and I don't
9 - I have other words for it, but I'll just say a
10 disturbing laugh at the suffering that this individual was
11 going through. Pouring water on him, covering his mouth
12 with a - a cup when it's clear from the video that he's
13 having difficulty breathing. His eyes are black and
14 sunken in. His breathing is shallow. So the way they're
15 cleaning him up when he says clean as a whistle by pouring
16 water on him, this is not kids horsing around.

17 This is a defendant videotaping the end of the life
18 of another human being, which does in fact happen. The
19 life does end. Whether or not the video shows him
20 standing there watching it end or not the life has ended.
21 He knows it and the next day other people are calling him
22 for drugs and he's supplying them. This is a individual
23 with no remorse, no conscience, no sanctity for the - for
24 the human life and - and telling people that his product
25 his pure AF after another person just died. I don't know

1 that there is somebody that - well, I'm sure there are
2 people equally as dangerous, but this is a dangerous
3 person, a person who doesn't deserve to be a lower bond so
4 that he can potentially go out and harm other people when
5 he's already under court order. And when Judge Jarbou
6 continued him on probation he wasn't charged with this
7 offense, your Honor.

8 THE COURT: Okay. I want to take a look at all
9 of these. I did skim through some of them and I did see
10 what appears to be conversations about continuing drug
11 sales after the fact. I remember very clearly all of Mr.
12 Rockind's arguments and your responses. I understand that
13 the modern trend nationally is for bail reform and bond
14 modification. I understand our Constitutional
15 prohibitions, our court rule that talks about bond very
16 well.

17 But, at this point, until I see you next I'm going to
18 continue his bond. It is of concern that he's on
19 probation for a drug felony. It is of concern that it is
20 - it appears at least, on some - on cursory review that
21 he's continuing the narcotics trade. The protection of
22 the community is one of the factors I am to consider under
23 the current case law. So, for right now, I am going to
24 continue his bond. We'll see you on the 16th.

25 MS. HAND: Thank you, Judge. And thank you for

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the use of your court rules.

THE COURT: No problem.

(At 4:46 p.m., proceeding concluded)

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STATE OF MICHIGAN)
)
COUNTY OF OAKLAND)

I certify that this transcript, consisting of 181 pages inclusive, is a complete, true, and correct transcript, to the best of my ability, of the proceedings held and testimony taken in this case on September 27, 2019.

November 9, 2019

Nicole R. Olson CER 7173
19th District Court
16077 Michigan Avenue
Dearborn, Michigan 48126
313-943-4223

