STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v.

Case Nos. 19-272593-FC
Hon. James M. Alexander

NICHOLAS REMINGTON,

Defendant.

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ORDER RE: REQUEST FOR IN-PERSON HEARING

This matter is before the Court on Defendant's request for in-person hearings for pretrial motions. Pursuant to MCR 2.119(E)(3), the Court dispenses with oral argument.

Defendant is charged with delivery of a controlled substance causing death. On January 21, 2020, Defendant filed these motions: (1) Motion to Quash, (2) Motion to Suppress, (3) Motion to Disqualify the Oakland County Prosecutor's Office, and (4) Motion to Exclude. And on February 19, 2020, the People filed a Motion to Admit MRE 404(b) Evidence.

The Motions were originally set for hearing on February 16, 2020, but have been adjourned numerous times due to the Pandemic and Defendant's request for an in-person hearing. The adjournments have been at the Defendant's request.

Given the ongoing nature of the Pandemic and the directives the Court has received to do as much as it can remotely, the Court, on November 2, 2020, asked the parties to brief the issue whether Defendant has right to an in-person hearing on a motion.

Defendant has not provided any law indicating that he has a constitutional right to be present at a hearing. The People have presented an unpublished Court of Appeals Opinion, *People v Lanaville*, COA #331531, decided May 16, 2017. The *Lanaville* defendant claimed he was entitled to a new trial because he was not allowed to be physically present at "critical stages of the proceedings". The Court of Appeals rejected his claim, stating:

> However, despite Defendant's right to be physically present at any aspect of the trial where his "substantial rights might be adversely affected," the general rule is "that motions, conferences and discussions of law, even during trial, do not involve substantial rights vital to the defendant's participation in his defense." Thus, defendant's constitutional right to be physically present at critical stages of his trial was not infringed. *Id.* (internal citations omitted).

The Court adopts the reasoning of the *Lanaville* decision. Additionally, the Michigan Supreme Court has required Courts to do as much remotely as possible. (Admin Order 2020-6). And, as late as November 15, 2020, the Governor of Michigan, through the Department of Health and Human Services, has ordered as much as can be done remotely to be done that way. Zoom technology is available to allow Defendant to be remotely available for the hearing. He and his attorney may be placed in breakout rooms for confidential attorney-client discussions. His substantial rights will not be adversely affected.

For the reasons cited above, Defendant's Motion for a live hearing is DENIED. The Court shall schedule the Motions for hearing on December 4, 2020 at 10:30 a.m. The Court will provide Zoom instructions prior to the hearing.

IT IS SO ORDERED.

November 17, 2020
Date

/s/ James M. Alexander
Hon. James M. Alexander JT
Circuit Court Judge