

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.

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PRELIMINARY EXAMINATION

Volume II of II

BEFORE THE HONORABLE TRAVIS REEDS

Dearborn, Michigan - Wednesday, October 16, 2019

APPEARANCES:

For the People:

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For the Defendant:

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WITNESSES:

PEOPLE

None

WITNESSES:

DEFENDANT

None

EXHIBITS:

IDENTIFIED

RECEIVED

None

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Novi, Michigan

Wednesday, October 16, 2019 - at 2:29 p.m.

THE COURT: All right, People versus Nicholas Remington, 2019-2169 - or I'm sorry, 2619. Appearance please?

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

MR. ROCKIND: Neil Rockind for Nicholas Remington, your Honor.

THE COURT: All right, so we're here today for the bind over decision. Is there any more argument that either of you would like to make?

MR. ROCKIND: There - there is one issue that we need to address, I think, before the Court - the Court will take up. We - the Court ordered the disclosure of I think 30-days' worth of cell phone extraction of Denis Preka's personal cell phone.

THE COURT: With the protective order, yes.

MR. ROCKIND: With the protective order. We had - we had, generally speaking, agreed that a protective order would be appropriate and we did exchange versions. Ms. Hand and I did exchange versions of the protective order. We have not been able to agree on some - some of the language. I have a proposed order, she has a proposed stipulation and protective order.

1           The - I don't want to speak for her. The - I - I -  
2 she drafted one. I thought it was - it was pretty  
3 limiting. I objected to that. She said to make some  
4 proposed changes. I then did, I sent one over myself that  
5 I thought was appropriate. I think the sticking point  
6 really is, from my view, there is a - a portion of my  
7 proposed order which I am happy to tender to the Court  
8 that Ms. Hand objects to because she believes it allows me  
9 to provide my client with a copy, either printed or  
10 otherwise, of the - the contents. I had a concern about  
11 being able to limit my client from being able to - to have  
12 the phone or to have - have the contents, since it's  
13 discovery related to his case.

14           And the second issue - and we got that - one of the  
15 provisions in my - in my proposed order actually says that  
16 the information will be - that our use of the information  
17 will be limited to what the People believe will be the  
18 reasonable use in the defense of the case and I think Ms.  
19 Hand had an objection, with that thinking that that  
20 allowed me somehow to --

21           MS. HAND: Judge --

22           THE COURT: May I - may I have a copy of each of  
23 your orders before you give your argument, Ms. Hand?

24           MS. HAND: Yes, Judge.

25           THE COURT: So that I can follow along?

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MS. HAND: Sure.

MR. ROCKIND: I have a - I have a copy of mine that has an actual caption on it.

THE COURT: Okay, thank you.

MR. ROCKIND: And both Mr. Lewis and I signed it - both Mr. Lewis and I signed ours.

MS. HAND: There's some crossing off, Judge, because I - I was willing to concede a couple of my paragraphs, but I --

THE COURT: Okay.

MS. HAND: Did you want - you wanted me first, did you say?

THE COURT: No, go ahead and I'm going to take a moment to look them over carefully after you're done. Go ahead.

MS. HAND: Okay. All right, Judge, there were just a couple things with defense counsel's proposed order. One was it didn't include the dates, which I included the dates, so 30 days prior to the date of the offense through the most recent communication inside the phone. Again, I don't have a problem - I actually brought it with me to tender to defense counsel.

THE COURT: Okay.

MS. HAND: I do have a problem with him being able to provide a physical copy either digital or - or a

1 hard copy to his client for his client's own possession.  
2 Judge, the defendant is not an officer of the Court. He  
3 is facing a life offense, so any penalty that the Court  
4 could impose should the defendant decide not to obey a  
5 court order, which we know from his past history that he  
6 does have inclination not to obey court orders.

7 I don't think there's any reason he needs a physical  
8 copy. Counsel is free to, you know, share it with him  
9 either hard copy or digitally while he's present with him.  
10 But to actually hand him the material, I don't believe  
11 that there's a sanction appropriate for the defendant  
12 should he violate the Court's order. I don't - I've never  
13 had a situation where a protective order allowed the  
14 materials to actually go into the hands of the defendant  
15 as opposed to the defense team.

16 My - my proposed order limited it to Mr. Rockind and  
17 Mr. Lewis to have possession of it and to review it. Of  
18 course, use it for the defense. I have no objection to -  
19 defense counsel indicates he would want his staff and  
20 maybe a defense investigator also to be able to look at  
21 that. I think that's reasonable.

22 The other part that I believe actually is on page one  
23 of defense counsel's order, he indicates that the parties  
24 understand the protected information as contained in the  
25 discovery should be protected from use and disclosure

1 beyond what is reasonably necessary for the effective  
2 defense of this matter. To me, that's putting, you know,  
3 the fox in charge of the hen house.

4 The - the Court is the one which deems what is  
5 necessary. Defense counsel doesn't get to deem what  
6 disclosure is necessary. The whole purpose of the  
7 protective order is that there is no disclosure beyond  
8 that of Mr. Rockind, Mr. Lewis and perhaps the defense  
9 investigator. For him to say, "I get to know sua sponte  
10 or determine what disclosure beyond what you order is  
11 necessary for his defense," then - then why even have a  
12 protective order?

13 MR. ROCKIND: Okay, so let me respond to that.

14 THE COURT: Sure.

15 MR. ROCKIND: The first order that we have from  
16 the prosecutor's office limited disclosure to Mr. Lewis  
17 and I only. It did not include - define defense counsel  
18 in the most limited way possible. It did not include  
19 references to - it didn't include references to even my  
20 staff, to investigators, to anybody else. I - when I read  
21 that I - I objected to that. When I went further I read  
22 it didn't even permit the original order that the  
23 prosecutor gave me, the way we read it, didn't permit us  
24 to even show it to our client, which I think was - was  
25 problematic.

1           And so some of those issues, I think, have been  
2 ironed out. So that - that prompted my - my proposed order  
3 to be sent to - which we prepared, which we've used and -  
4 and have received from the government and some other  
5 federal cases, which we actually have used in some cases  
6 where there's been a need for a protective order.

7           My concern, quite candidly, is that the prosecutor  
8 objects, the State objects apparently and called somehow  
9 the fox guarding the henhouse. I - I don't view myself as  
10 a fox. I don't view this as hens. I don't view this as  
11 anything that's worth those sorts of - of analogies or  
12 metaphors because that suggests that somehow we're more  
13 apt to do something inappropriate than the prosecutor is  
14 and I'm - I - and I - and I take exception to that.

15           Let me say this: I don't think it's ever appropriate  
16 in any circumstance for a defense lawyer who's preparing a  
17 case for defense to have to seek either the - the  
18 prosecutor's consent or to have to go to the Court to seek  
19 what we believe is reasonable use of the material in the  
20 defense of our case. That would mean that - and - and  
21 just to kind of play that out, were the case ultimately to  
22 be decided by you or were you the - the trial court, that  
23 would mean that I would have to either file something ex  
24 parte seeking permission to use it for particular purpose  
25 and reveal that. And if the Court wasn't comfortable



1 hearing an ex parte motion from me in that regard I'd have  
2 to then share with the prosecutor what my desires were and  
3 how I intend to defend my client and I don't think that  
4 any - anything including the Sixth Amendment would require  
5 us to have to pierce that veil.

6 I'm an officer of the court. Mr. Lewis is an officer  
7 of the court. I wasn't comfortable signing an order that  
8 didn't allow us to show our client the material. I wasn't  
9 comfortable with the definition of defense counsel on the  
10 original proposed orders and those things have been ironed  
11 out.

12 But in terms of our desire to use the material as -  
13 as reasonably necessary as we determine it to defend our  
14 client, we are limited. We're officers of the court and I  
15 - I don't think neither Mr. Lewis nor myself have any  
16 interest in putting ourselves in a position to engage in  
17 unreasonable use of this material. And the protective  
18 order, I think that we propose is appropriate in the case.  
19 I'd ask the Court - to - to enter it and to sign it.

20 THE COURT: I think one of the issues is  
21 oftentimes in the case of a protective order if there is  
22 an issue about content the Court can review it in camera  
23 and then excise some of the things that may not be  
24 relevant. In this case, for example --

25 MR. ROCKIND: I think we should have gotten the

1 entire - I think we shouldn't even had to go this route,  
2 as your Honor knows from my original --

3 THE COURT: I remember your argument.

4 MR. ROCKIND: Yeah, and I don't - I don't - I  
5 think it was well-placed and made in good faith and but  
6 here we are. So --

7 THE COURT: Right.

8 MR. ROCKIND: I just - I mean this is an  
9 extraction --

10 THE COURT: So what I'm going to do is I'm going  
11 to look at these over - these over and I'll come up with  
12 an order. Before we leave today, you'll have one.

13 MR. ROCKIND: So I - and then because I don't -  
14 my proposal was, I - I know that we're here for a proposed  
15 bind over, and any additional arguments. I don't know what  
16 material is on the phone and I'm not going to sacrifice my  
17 ability to - to - I don't know if there's any need to --

18 MS. HAND: Go sit down, please.

19 THE COURT: I'm sorry, say it again?

20 DEPUTY HIX: Ma'am, we need you to go to the  
21 back or out. I'm sorry.

22 MS. HAND: Sorry, your Honor.

23 THE COURT: That's okay. Thank you, Ms. Hand.  
24 Go ahead, Mr. Rockind.

25 MR. ROCKIND: So I - I'm of the - I don't know

1           what relation the contents have to the defense of the  
2           case. I don't --

3                     DEPUTY HIX: Ma'am --

4                     THE COURT: Larry, why don't you call me down a  
5           couple deputies.

6                     DEPUTY HIX: I already did.

7                     THE COURT: Go ahead, Mr. Rockind.

8                     MR. ROCKIND: So I was gonna propose that the  
9           Court enter that we receive disclosure of the - the  
10          contents that the Court directs to be disclosed and that  
11          we be given additional time to look at the material to  
12          decide if it, in any way, requires us to seek any  
13          additional arguments or it impacts our arguments in the  
14          case. So, I was going to seek the Court to give us that  
15          opportunity before the proofs are closed.

16                    THE COURT: Can you both approach for one  
17          moment?

18                    (At 2:39 p.m., off the record)

19                    (At 2:42 p.m., back on the record)

20                    THE COURT: Thank you both very much. I  
21          appreciate that. I'm going to take all of your arguments  
22          into account and look at this order. We will have an  
23          order today so that the records can be given to Mr.  
24          Rockind today. Thank you for bringing them, Ms. Hand.

25                    So, my question at the bench was do you think you

1 would prefer me to make that decision first and then we'll  
2 move on to the next --

3 MS. HAND: Either way, Judge. It makes no  
4 difference to me.

5 THE COURT: Okay.

6 MR. ROCKIND: I told you what I thought. I - I  
7 was of the opinion that there should be disclosure. We  
8 should have the evidence. We should be able to look at it  
9 and decide how it plays into our presentation of evidence  
10 here in district court and then - and then be given time  
11 to process that and include it before we - the Court rules  
12 on, you know, the decision to bind over.

13 THE COURT: All right, what I'm going to do then  
14 is I'm going to take a short recess. I'm going to look  
15 these orders over and we'll come up with - I'll come up  
16 with a final draft and then I'll be back in --

17 MR. ROCKIND: I was going to add that I - I -  
18 the last - I told Ms. Hand, the last paragraph of the - of  
19 her proposed order --

20 MS. HAND: I agreed to strike it, Judge. I --

21 MR. ROCKIND: Okay, I know, but --

22 MS. HAND: I agreed to strike a lot of things.

23 MR. ROCKIND: You did, I understand. I'm not  
24 suggesting that Ms. Hand --

25 MS. HAND: All right, well, you're arguing about

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it.

MR. ROCKIND: - was stepping on my neck with a heel, I'm just saying that we - we reached agreement on those things but we had a couple of --

THE COURT: Yeah, I'm looking at it right now. There's cross marks all through it and I think that the --

MR. ROCKIND: We have a couple of --

THE COURT: The Court's inherent authority to enforce its orders is clear anyway. I don't think we need it in there.

MR. ROCKIND: Okay.

MS. HAND: Thank you.

MR. ROCKIND: Thank you, Judge.

THE COURT: Short recess.

MR. ROCKIND: Thank you.

THE COURT: Well, actually hold on everyone. Please have a seat. I have a summary thing. I'm going to stay on the record.

MR. ROCKIND: With us or you want us to --

THE COURT: No, no. Not with you. Actually I'll wait on this one. I'm going to take a short recess.

(At 2:44 p.m., off the record)

(At 3:30 p.m., back on the record)

THE COURT: All right, recalling the Remington matter, 2019-2619.

1 MS. HAND: Beth Hand on behalf of the People.

2 MR. ROCKIND: Neil Rockind for Nicholas  
3 Remington.

4 THE COURT: Have you had an opportunity to  
5 review the order? I combined some of your various terms.

6 MS. HAND: Yes, your Honor.

7 THE COURT: Okay, that's the order I'm going to  
8 enter if there is a stipulation to it, Mr. Rockind?

9 MR. ROCKIND: I'm sorry, your Honor, can I have  
10 a second?

11 THE COURT: Yeah, of course, please do.

12 MS. HAND: Judge, I would just note there is - I  
13 think there is one typographical error. It's not the - it  
14 says contests instead of content in under paragraph B for  
15 advice of counsel.

16 THE COURT: It - B you said?

17 MS. HAND: B, advice of counsel, it says  
18 contests instead of contents, I think it's supposed to be?

19 THE COURT: Sure, one moment.

20 MR. ROCKIND: I'm sorry, your Honor, I'm trying  
21 to talk to my client.

22 THE COURT: That's okay. Go ahead and talk to  
23 him. This is not a - I was retyping it myself, so that's  
24 probably - contents, for sure. That's exactly right. Any  
25 others?

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MS. HAND: That was it, Judge.

THE COURT: Okay, I'll get it reprinted.

(At 3:31 p.m., off the record)

(At 3:39 p.m., back on the record)

THE COURT: All right, we're recalling Remington. Note both of your appearances, 2019-2619.

MS. HAND: I thought you said noting both of your appearances.

THE COURT: I did note your appearances. Okay. Any - any issue with the - with the order?

MS. HAND: No, your Honor. I think --

MR. ROCKIND: No.

THE COURT: Excellent.

MR. ROCKIND: Just - just so I'm clear, though, defense counsel - it says defense investigators and defense counsel and support staff. I presume that that includes our associate attorneys in our office and --

THE COURT: That's part of your support staff, isn't it?

MR. ROCKIND: I just want to make sure, because the order that we had prepared, and I think Ms. Hand's correction ultimately includes - included associate attorneys, but as long as we're all on the same page it's fine.

MS. HAND: Yes.

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THE COURT: Okay, we'll make the correction of the typographical error and then you can sign it and --

MR. ROCKIND: Mr. Lewis isn't here. Would it be okay if I sign it for him or do you want a separate signature for Mr. Lewis?

THE COURT: If you have his permission you can sign it.

MR. ROCKIND: I'll sign it.

THE COURT: Okay, great. All right, next let's - let's deal with the issue with regard to bind over and I'll note, Mr. Rockind, that you've already objected, saying that you want to access and review this added discovery information before I make my decision, correct?

MR. ROCKIND: Yes.

THE COURT: Okay, anything else besides that with regard to that particular --

MR. ROCKIND: Actually I want to make one additional argument, if I could.

THE COURT: Go ahead.

MR. ROCKIND: Regarding the issue of bind over. It - I know that the - we litigates, I think, pretty extensively the issue of the admissibility of these Snapchat conversations and the snaps. And I believe that at least in the case presented by the State at the preliminary examination I think it's fair to say that the



1 - that the Snapchat conversations really formed the bulk  
2 if not the - the entirety of the evidence that the State  
3 is relying on to bind Mr. Remington over.

4 And after going through the Snapchats themselves, and  
5 I know the Court was given a - a large volume of them to  
6 review and not just review in writing or printed, but also  
7 given - I think was given a thumb drive that may have had  
8 some of the actual digital media on them that you could do  
9 the click and link to.

10 THE COURT: It did.

11 MR. ROCKIND: I - there was a lot of material  
12 for the Court to go through. I think that it's important  
13 for the Court to, at least as you contemplate relying on  
14 the Snapchats, to at least consider that there are - when  
15 you go through them that there are messages at the  
16 beginning that reveal some conversations that there isn't  
17 a - a predicate to and that there are - appears to be no -  
18 they almost are standalone, there are parts of  
19 conversations that are missing and I think I can give the  
20 Court some - if the Court is interested I can give the  
21 Court some specific references to portions of the  
22 Snapchats where - up from essentially the beginning all  
23 the way through April, specific conversations where there  
24 are - there's communication that there's no - that the  
25 communication appears to be in response to something, but

1 there's no predicate, there is nothing prefacing it,  
2 there's no preparatory remarks or, for example, if there  
3 was - just a couple for the Court's edification, there's  
4 one from March 24<sup>th</sup> at 21:29, a message incoming from  
5 Connor that says, "That's definitely your dad versus my  
6 dad." And that's just a standalone comment. There's no -  
7 nothing that appears to be responding to, there's no  
8 references to Dad before that, there's no references to  
9 Dad after that and I think that that - there are other  
10 examples that I can go through where there's an incoming  
11 on March 24<sup>th</sup> at 23:31, which is some comment that says,  
12 "Ha ha, you're right" with nothing else before it or after  
13 it.

14 And I think what these - if I went through and I -  
15 and I actually pointed out each of these specific  
16 examples, and I have a list of about - look to be about 15  
17 to 18 examples here. What your Honor would see is that  
18 there are references, there are these conversations  
19 contained not just what I referred to last time as - as  
20 omissions, but I can point to specific parts of these Snap  
21 conversations that are - are missing and they are -  
22 they're missing a part of the conversation, which goes  
23 back to this - the point that Snapchat's own internal -  
24 it's a - well, it's a public documentation. It's law  
25 enforcement guide and its own proficiency rating, which we

1 presented to the Court in support of our - our petition -  
2 our position that the Snapchats should not be admissible  
3 as either business records or as self-authenticating  
4 records pursuant to the certification.

5 These are not reliable enough to be - to be  
6 sufficiently acceptable and not trustworthy enough to be  
7 accepted as business records and self-authenticating. And  
8 I'm certainly prepared to go before the Court makes what  
9 is a very important decision in the lives of all the  
10 people who are interested about this - this - this - this  
11 case and this decision to go through each and every one of  
12 these and - and to point them out. I think that they're  
13 important and I hope that if I do that that the Court will  
14 reconsider in a way since the proofs are still open and  
15 the reliability of these Snapchats as admissible evidence  
16 under the two court rules that - and the two rules of  
17 evidence that the prosecution attempted to rely on and if  
18 the Court did, at least initially agree to admit and  
19 consider the evidence based upon. And so, I mean, I'm  
20 prepared to do that for the Court and --

21 THE COURT: First of all, I don't think the  
22 proofs are still open.

23 MR. ROCKIND: Well, I - then I would move to  
24 reopen the proofs and allow me to re-examine these and go  
25 through each individual specific - we litigated this

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issue.

THE COURT: Right, so I don't know why we need to do it again.

MR. ROCKIND: Well, because I'm trying to - I'm - there was a lot that was addressed with the Court when - the - when the State moved to admit the Snapchats they moved to admit it - based on a certification and then on two specific rules of evidence. And I presented a lot of different information to the Court to attempt to reveal to the Court that the predicate for the admissibility of business records and the predicate for the admissibility of self-authenticating records is that they are sufficiently trustworthy.

Records can't be sufficiently trustworthy to be relied upon as other business records or as - as self-authenticating records worthy of admission without a live witness if there are gaps and omissions and missing messages and - and inaccurate content. It doesn't go to weight, it literally goes to admissibility. To admit - for you and I to have a text conversation back and forth and then someone were to admit just as a business record one text message that I sent to you or that you sent to me, and we know that there are other messages before and after, there's a - I think a - it's not a weight issues, it's an admissibility - it - it's an admissibility issue.

1 It reveals that the records that contain - that are  
2 purported to contain and to be sufficiently trustworthy to  
3 rely on are not, in fact, trustworthy. They're not, in  
4 fact, sufficiently trustworthy to rely on for business  
5 records.

6 So, to the extent that I can, I do want to reopen the  
7 proofs and I do want to go through each of these  
8 individual Snaps and point out the omissions if the Court  
9 will - will - will entertain that - that motion, if it  
10 will --

11 THE COURT: Okay, response, Ms. Hand?

12 MS. HAND: Well, Judge, he doesn't have to  
13 reopen the proofs to do that. The Snaps are in evidence.  
14 The Court has already admitted them. He wants to sit here  
15 and argue to the Court each of them, there's no - there is  
16 no need to reopen proofs. And I would indicate, Judge,  
17 that it does go to the weight, not the admissibility and  
18 the - the records are complete. There is a certification  
19 indicating that they are.

20 Sometimes, Judge, you might text somebody and in the  
21 middle of the text decide to pick up the phone and call  
22 them. That doesn't mean that the text portion of it is  
23 not reliable, it just means that maybe there was another  
24 conversation by virtue of another form of media, whether  
25 it's verbal or otherwise that may have occurred in the

1 interim. It doesn't make your records not reliable.

2 THE COURT: Okay, the motion to reopen the  
3 proofs is denied. You can certainly argue anything you  
4 want to by way of - of objection to the bind over. So,  
5 Ms. Hand, at this point I assume you're moving to bind  
6 over?

7 MS. HAND: Well, I thought I - I am, your Honor,  
8 if I didn't.

9 THE COURT: All right. Okay, now your response,  
10 Mr. Rockind?

11 MR. ROCKIND: Judge, I object to the bind over.  
12 The - the entirety of the - the case is - are these  
13 Snapchats. We presented the Court with, I think,  
14 sufficient information to warrant the Court to - to - to  
15 disregard and to refuse to admit the Snapchats, and when I  
16 moved to reopen the proofs I don't - I don't think it was  
17 lost on the Court that my purpose in doing that was for us  
18 to address again the issue of admissibility of these  
19 Snapchats.

20 This - the contention is is that these Snapchats are  
21 as reliable as business records for - for foundational  
22 purposes as medical records, as weather records, as  
23 records that we rely on - that business rely on every day.  
24 Snapchat is not relying on and no one at Snapchat is  
25 relying on the actual content of these Snapchats. There

1 are gaps and holes and omissions in the Snapchats that  
2 reveal - there are lines in that - in those graphs that  
3 are just blank.

4 There - I mean, I'm talking about a message from this  
5 account to another sender, or the sender of this account  
6 which is blank. There's no content, there's no  
7 attachment. So what - how do we explain that? Is the  
8 explanation that somehow this empty - this empty cell in  
9 this - this Excel spreadsheet, that somehow that  
10 represents error? That it represented nothing? That  
11 there was nothing there?

12 Look, I would suggest to your Honor that there are  
13 business records that are admissible and records that are  
14 admissible as business records are admitted for a specific  
15 purpose, because the individuals that make the notations  
16 in those records rely upon them. Like the nurse that does  
17 the vitals at the hospital, that person is making entries  
18 into - into medical records and into files each and every  
19 time someone comes in for a checkup or a treatment and  
20 they're making those because they - that individual knows  
21 that one, he or she did the activity. They actually did  
22 the vitals and took them, two they noted them and three  
23 they entered them in the - the - the records for purposes  
24 of the hospital and others relying on that content.

25 There's nothing about the - the content of these

1 messages that indicates that anybody at Snapchat is  
2 relying on the content. And second, there are gaps and  
3 omissions. These are just not nearly as - it seems hard  
4 to believe we're attempting to take Snapchat conversations  
5 by a corporation, by an entity, by a website --

6 MRS. THOM: Honestly. You're --

7 DEPUTY TOURNEAU: Ma'am, you're out.

8 MR. ROCKIND: Maybe there comes a point where  
9 the Court should hold this woman in contempt, as difficult  
10 as that might be.

11 THE COURT: Well, we're not - we're not there.

12 MR. ROCKIND: I understand that it's a difficult  
13 - I understand that this is a difficult issue.

14 THE COURT: It is.

15 MR. ROCKIND: And I said it last time, Judge. I  
16 - I have children and I am sympathetic. Believe me, I am.

17 THE COURT: I understand.

18 MR. ROCKIND: And if it were appropriate for me  
19 to say something to - to the family, I would do that.

20 THE COURT: Let's - I'm not going to hold her in  
21 contempt.

22 MR. ROCKIND: I doubt that they want me to, but  
23 I would. I - I have children.

24 THE COURT: I understand, Mr. Rockind.

25 MR. ROCKIND: The idea that I'm sitting here and



1           mocking or making fun of anybody, is --

2                         THE COURT: Okay, you've made your point, Mr.  
3           Rockind. Let's move on with the issue at hand. I'm not  
4           gonna hold her in contempt at this point, so let's keep  
5           going.

6                         MR. ROCKIND: Judge, I think that there is a  
7           Snapchat - itself, the information you presented to the  
8           Court, Snapchat's default is deletion. It is erasure.  
9           Snapchat says that it is - it's default is to erase. It  
10          says its default is not to preserve information on its  
11          servers. Snapchat itself says that its proficiency rating  
12          and producing information in response to a subpoena or a  
13          court order is not 100 percent, it is less.

14                        And I raise those issues with the Court because if  
15          you compare that to medical records, imagine if in  
16          response to medical records the hospital said to you, they  
17          - they started with, "We don't keep all of our records.  
18          We don't keep all of the data that we present. We don't  
19          keep everything that's presented. We keep some and our  
20          default is not to preserve medical information." But then  
21          someone tries to admit some medical information and say,  
22          "This is a certified record."

23                        What - and your Honor, I think, would rightly say,  
24          "But how? These are not trustworthy. These are not all  
25          of the records." Because you indicated as part of the

1 very foundation for your business that all of the - you  
2 don't preserve all of the data, that you erase data, that  
3 data is terminated or removed or erased.

4 But we're treating Snapchat records because someone  
5 who we don't know and we can't identify from another state  
6 and another country or another part of the - the country  
7 who didn't actually take an oath for treating these  
8 records as - and putting them in the same category, giving  
9 them the same treatment of admissible business records and  
10 the capability of being self-authenticated as records from  
11 a trusted institution like a hospital where individuals  
12 are relying on the entries that are made. And the  
13 individuals that are making the entries in those records  
14 are making them because they have a basis of knowledge to  
15 do so.

16 So, be that as it may, the other additional concern I  
17 have is that there are I don't believe that the - the  
18 State has sufficiently satisfied or proven that Mr.  
19 Remington was the one that sent some of those messages.  
20 They wish the Court to rely entirely upon the Snapchats.  
21 So their argument is this, I believe, that the account is  
22 registered to him. The content of their messages on that  
23 account and those messages on the account registered to  
24 him must be from him. And I would question that that's  
25 not the standard. They have to prove that those

1 statements are admissions by a party opponent. And they  
2 cannot prove and haven't proven absent any other evidence  
3 that Mr. Remington made those admissions or made the  
4 statements that the State is attempting to rely on.

5 So, we would object to the bind over, your Honor, and  
6 move to dismiss the case.

7 THE COURT: All right, thank you. Any response,  
8 Ms. Hand?

9 MS. HAND: Judge, the only thing I would  
10 indicate is that it's clear from the videos that are taken  
11 where the defendant is identified as the person taking the  
12 videos and the timing of the Snapchat messages, that it is  
13 the defendant who was the holder of the device sending  
14 these messages. And I think that was proven well beyond a  
15 probable cause standard.

16 THE COURT: Okay. So, there has been a lot of  
17 arguments made. I'm sure that those arguments are not  
18 done. However, there is a couple of things that were  
19 raised.

20 First of all is the incompleteness of the process of  
21 Snapchat. And in the digital age that we live in if we  
22 were to accept the defense's argument that it wouldn't  
23 qualify as a business record to have some digital media  
24 that's retrieved from that application then how would  
25 anything ever be admissible? In other words, isn't it -

1        isn't it prima fascia evidence that the account that's got  
2        your name and other things is your account unless there's  
3        some evidence to the contrary? Is it possible that  
4        someone could hack your account and make messages? Yes.  
5        That's true. That's always true. But to assume that, I  
6        don't think that's rational.

7                Was this account registered to him, were the messages  
8        made by him, that's the - another objection by the  
9        defense. I looked through every single one of these  
10       Snaps. Circumstantially, they clearly identify the  
11       username Hulkolas as Mr. Remington. There are references  
12       to the time frame of incarceration as being in jail. As  
13       what clearly appears to be a pattern of - of drug dealing  
14       at various different points there are requests for what  
15       appear to be Venmo payments, where Hulkolas is responding  
16       with Nicholas Remington 1.

17                There are Snaps where there is an address where  
18       Hulkolas is saying, "My addy is in Northville." That's  
19       where the defendant's address is. At one point I think  
20       the defendant - let me find it, at one point the defendant  
21       actually gives the street address in Northville of - of  
22       the house, so yes. All of those circumstantial facts  
23       could be made up by someone, but I think the more rational  
24       interpretation of all the context of these is that the  
25       Hulkolas is Mr. Remington.

1           I think it would be a defiance of reason to think  
2           otherwise. They're incomplete; you're absolutely right  
3           they're incomplete. But that doesn't mean that what's in  
4           there is wrong, it just means it's not complete. If you  
5           got a medical record and four pages of the medical records  
6           were not there that wouldn't mean that none of the medical  
7           records were admissible, but only that there were holes in  
8           that and that would go, in my opinion, to weight.

9           Obviously higher and better minds will look at it,  
10          but I just don't see any legitimate argument that this is  
11          not Mr. Remington's account and that the statements made  
12          there are somehow inherently untrustworthy just because  
13          they're not totally complete.

14          With regard to whether or not he actually gave the  
15          drugs to the decedent, that's a little tougher. There are  
16          many different responses that appear from the - a Snap  
17          that must have been posted on the 19<sup>th</sup> asking basically  
18          what is - what was he on, what was the kid on, what -  
19          various different versions of that where Hulkolas responds  
20          methydone, some Mol or Mol and some methydone at various -  
21          to various different people.

22          And there is also some - there is also one pretty  
23          relevant Snap from a person that appears to be named on  
24          this application as Connor Gibaratz. I looked at the  
25          information, Connor Gibaratz is endorsed as a witness.

1 Frankly, I would have liked to have heard from him.

2 MR. ROCKIND: Me too.

3 THE COURT: The statements are, "You gave him  
4 methylone and Mol? That's retarded. You fucking killed  
5 him. He's a dumbass, but you killed him." I think that's  
6 the most clear Snap that Mr. Remington actually provided  
7 the drugs, but for probable cause standard I think the  
8 People have met their burden that he did in fact provide  
9 the drugs and I'm going to bind this matter over to the  
10 Oakland County Circuit Court as charged.

11 MR. ROCKIND: Judge, would the Court consider  
12 reopening the proofs in order - and compelling Mr.  
13 Gibaratz to appear?

14 THE COURT: No, because I don't need that for  
15 probable cause purposes.

16 MR. ROCKIND: Judge, we would - before you take  
17 Mr. Remington --

18 THE COURT: Hold on a second.

19 MR. ROCKIND: We would ask --

20 THE COURT: We have a couple things we need to  
21 do first.

22 MR. ROCKIND: For that --

23 THE COURT: Bear with me for one moment.

24 MR. ROCKIND: Yes, your Honor.

25 THE COURT: Larry, can you go into my computer -

1 that's the password. Change that typographical error and  
2 - and reprint three copies of that, please. That should  
3 be contents and not contests.

4 Okay, I'm sorry, Mr. Rockind. I interrupted you.  
5 Would you please continue?

6 MR. ROCKIND: I'm sorry, your Honor.

7 THE COURT: That's okay.

8 MR. ROCKIND: I have - I know it's late in the  
9 day.

10 THE COURT: It's okay.

11 MR. ROCKIND: I have pushed multiple times, as  
12 your Honor knows, either individually or collectively with  
13 Mr. Lewis to seek the Court's indulgence in and/or  
14 approval in modifying the bond.

15 THE COURT: Okay.

16 MR. ROCKIND: And I do so again. I'm not going  
17 to go through all the arguments that I raised previously.  
18 I would just rely on those again. I would humbly ask the  
19 Court to reduce Mr. Remington's bond in the case to  
20 \$100,000 cash or surety, 10 percent with appropriate  
21 conditions of restraint.

22 THE COURT: Okay, so I've listened to all - very  
23 carefully to both of your arguments with regard to bond.

24 And I've already put my position on the record about

25 understanding the - the forum on bond that's sweeping this

1           country.

2           The problems that I have with this case with the  
3           reduction in bond are as follows. He's on probation for a  
4           felony involving drugs. We have a dead young person as a  
5           result of actions related to this case. It's very clear  
6           that Mr. Remington is a poor member of the community.  
7           He's a drug dealer. That's very clear from these Snaps.  
8           And the - and continuing behavior after this horrific  
9           event in dealing drugs, which could impact other people in  
10          the community, including potentially the death of other  
11          people.

12          While I understand that a million dollars is an awful  
13          lot of money, I think that my - my concern for the  
14          community is so high that I'm not going to lower the bond  
15          at this point. I don't know how I could possibly control  
16          him. If someone dying from something like this didn't  
17          stop him from dealing drugs no piece of paper that I sign  
18          is going to do that.

19                        MS. HAND: Thank you, your Honor.

20                        THE COURT: Okay. Would you please come up and  
21                        get your exhibit five so that it's not part of the court  
22                        record as well as the flash drive - or the thumb drive and  
23                        the disk?

24                        MR. ROCKIND: Do you have an order for us - do  
25                        you have the order for us to sign?



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THE COURT: We're reprinting it and it will be here momentarily.

MR. ROCKIND: Can I approach when we're done with --

THE COURT: Of course.

(At 4:01 p.m., proceeding concluded)

1 STATE OF MICHIGAN )  
2 )  
3 COUNTY OF OAKLAND )

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I certify that this transcript, consisting of 34 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 October 16, 2019.

November 12, 2019

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