

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 II of II

BEFORE THE HONORABLE TRAVIS REEDS

Dearborn, Michigan - Wednesday, October 16, 2019

APPEARANCES:

For the People:

MS. BETH HAND P47057
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For the Defendant:

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1 issue.

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

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

14 Records can't be sufficiently trustworthy to be
15 relied upon as other business records or as - as self-
16 authenticating records worthy of admission without a live
17 witness if there are gaps and omissions and missing
18 messages and - and inaccurate content. It doesn't go to
19 weight, it literally goes to admissibility. To admit -
20 for you and I to have a text conversation back and forth
21 and then someone were to admit just as a business record
22 one text message that I sent to you or that you sent to
23 me, and we know that there are other messages before and
24 after, there's a - I think a - it's not a weight issues,
25 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 19th 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 methyldone 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?

1 THE COURT: We're reprinting it and it will be
2 here momentarily.
3 MR. ROCKIND: Can I approach when we're done
4 with --
5 THE COURT: Of course.
6 (At 4:01 p.m., proceeding concluded)
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1 STATE OF MICHIGAN)
2)
3 COUNTY OF OAKLAND)
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6 I certify that this transcript, consisting of 34 pages
7 inclusive, is a complete, true, and correct transcript, to the
8 best of my ability, of the proceedings held and testimony taken
9 in this case on October 16, 2019.

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November 12, 2019

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