INDEX OF EXHIBITS

People v. Nicholas Maximillian Remington - Case No. 19-272593-FC

Judge Victoria A. Valentine / FOIA Review Packet - Prepared for Michael Bullotta

Exhibit	PDF Pages	Document / Date	Contents / Attorney Review Focus
A	2-17	**Feb. 11, 2021** Pretrial Transcript	Pretrial before Judge Valentine. Defense raises alleged Brady/discovery issues and newly disclosed police reports/documents; no witnesses or exhibits offered.
B	18-44	**Mar. 8-9, 2021** Bond / Discovery Materials	Victim Advocate email; stipulated bond-reduction order; March 9 Bond Motion transcript. Keast states two reports were not previously provided, calls them exculpatory, and attributes further delay to the State.
C	45-59	**Apr. 9, 2021** People's Briefs + Exhibit 1	People's response and supplemental brief addressing alleged nondisclosure. Timeline identifies supplemental reports #9 and #10; Exhibit 1 includes the relevant Novi PD report pages.
D	60-104	**Apr. 14, 2021** Motion to Dismiss Transcript	Motion to dismiss hearing. Karen McDonald appears for the People. Keast addresses favorable evidence/discovery issues and proposed remedy; court questions missing notes, interviews, and whether all discovery was revealed. No witnesses or exhibits offered.
E	105-119	**Apr. 15, 2021** Pretrial Transcript	Court announces remand and requires a full search for discovery and affidavits regarding completeness. Discussion of further discovery, former APA Hand, and transparency. No witnesses or exhibits offered.
F	120-136	**May 18, 2021** Status Conference Transcript	Keast reports May 4 file comparison with Detective Balog and additional production, including a Snapchat screenshot and EMS material. Court reiterates affidavit requirement and announces exclusion of Hulkolas Snapchat evidence.
G	137-150	**May 21, 2021** Opinion & Order + Supporting Material	Opinion and Order on Motion to Dismiss with Prejudice. Court orders discoverable information produced, excludes Hulkolas Snapchat evidence as unreliable, requires affidavits, and remands to a new district judge. Supporting excerpt/report/Snapchat images follow.
H	151-174	**June 9, 2021** Motion for Relief from Order Transcript	Hearing concerning former APA Hand's requested relief from the May 21 order/affidavit requirement. Court and counsel discuss the State's discovery obligations, personal knowledge, and outstanding Brady/disclosure concerns.
I	175-237	**2019-2023** Post-Order / Supporting Records	July 22, 2021 Opinion and Order regarding former APA's motion; remand correspondence; Novi/OCP communications; criminal-history records; later emails and FOIA materials; witness communications; and supporting Snapchat threat screenshots.

NOTE: Page ranges above refer to the combined indexed PDF, with this index as page 1. The source packet contains 236 pages. This index is descriptive and intended to help counsel locate the underlying records quickly.

Primary FOIA review points: identify and obtain the two reports described as favorable/exculpatory; records supporting each discovery representation; proof of receipt/disclosure dates; and OCP-Novi communications concerning supplemental reports, discovery, remand, and completeness of the file.

EXHIBIT

A

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PEOPLE OF THE STATE OF MICHIGAN,

vs Case No. 19-272593-FC

NICHOLAS MAXIMILLIAN REMINGTON,

Defendant.

_____/

PRETRIAL

BEFORE THE HONORABLE VICTORIA A. VALENTINE

PONTIAC, MICHIGAN - THURSDAY, FEBRUARY 11, 2021

APPEARANCES:

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Cheryl McKinney, CSMR-5594
About Town Court Reporting, Inc.
248-634-3369

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WITNESS PAGE

(None.)

EXHIBITS:

(None offered.)

Pontiac, Michigan

Thursday, February 11, 2021

- - -

(At 1:43 p.m., proceedings convened.)

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

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

The People consent to this hearing via Zoom, Judge.

MR. ROCKIND: Neil Rockind, P48618. I'm co-counsel for Nicholas Remington and we consent to the matter being heard via Zoom, Your Honor.

MR. LEWIS: Good afternoon, Your Honor. My name is Randall Lewis and I'm co-counsel for Mr. Remington also, and we consent to this Zoom hearing also.

THE COURT: Thank you.

Go ahead, Mr. Rockind.

MR. ROCKIND: So there's a long history to this case. There were four motions, really five motions that were up before your predecessor. He heard one of them in December of 2020.

THE COURT: This is the Snapchat case.

MR. ROCKIND: This is the Snapchat case. There are four motions that are up. I'm going to share with the

Court, I don't want to take up a lot of your docket time, I think at one point Mr. Keast and I -- well, Mr. Lewis, Mr. Keast and I, were actually proposing to actually chat with you to sort of give you an update on where the case is, but since that time we've sent Mr. Keast a Brady v Maryland letter. We believe that there were Brady violations that occurred in the district court before Mr. Keast and in the succeeding 16 months before Mr. Keast took over the case. We've made Mr. Keast aware of those.

He has been, I'll say, diligent, in attempting to gather evidence and get it to us. The most recent disclosures that Mr. Keast made to us contained some police reports and some other documents that were never tendered to us in the 16 months since the bind-over of the case. And I believe one of those, a couple of those in particular, are critical. I think one of those actually is worthy of at least another motion to quash and probably a motion before the Court and an evidentiary hearing.

I say that -- I don't take that position lightly. We have gone back and forth with the previous prosecutor who was assigned to the case. Mr. Keast was -- he and I have had a lot of discussions. Mr. Lewis and Mr. Keast have had a lot of conversations about it. Let me just say that there's a piece of evidence that was disclosed to us that was made -- that was turned over to

the prosecution in the middle of the exam before the closing arguments in the preliminary examination that completely undermine the basis, from our perspective, of the bind-over.

Mr. Keast and I were talking last Friday about Brady issues and I shared with him that I wasn't comfortable discussing that issue on Friday because I hadn't fully kind of wrapped my brain around it. I have since then. We prepared some preliminary motions or writings, and we intend to provide those to the Court. I'll certainly have that discussion with Mr. Keast about what we have uncovered in the materials that he's provided to us.

But this is a pretty serious allegation, pretty serious case. My client is a 21-year-old facing life imprisonment and I believe there were substantial Brady issues that have now infected the case.

I'm not asking Mr. Keast or the Court to argue those at this point, but I think that they're significant enough that, one, they need to be brought to the Court's attention; I think, two, they should be the subject of additional motions and filings and I want the Court to be aware of that.

The Snapchat issues are very complex and I appreciate the Court identifying his case. I don't want

to minimize the impact of this case on both the decedent's family and/or Mr. Remington, both young people who were impacted by the events of the incident. But this is a case that involves a highly technical area related to Snapchat evidence, and that is the evidence really against Mr. Remington.

And we thought it was important to ask the Court to have this matter set for pretrial. We set it for a pretrial. Mr. Keast and I have talked about whether we should have a meeting with the Court to sort of give the Court a roadmap of where we are and where we think the case is likely to go. That was all before these Brady issues came up. Well, not before they all came up, I should say, before the most recent Brady issues appeared on our radar.

MR. KEAST: Judge, I think at this point what we need is a motion date. Mr. Rockind has let me know much of what he just disclosed to the Court --

THE COURT: Okay, now with regard to the motion -- say it again, sir.

MR. KEAST: I'm sorry, Judge.

THE COURT: Say it again.

MR. KEAST: I'm sorry, Judge, can you hear me now?

THE COURT: Yeah, I can hear you. Go ahead.

MR. KEAST: I think what we just need is a motion date. I don't know if Mr. Rockind would rather address his motions that were filed in 2020 first, or the motions that he's referring to right now. I leave that up to Mr. Rockind, they're his motions to praecipe. So whatever schedule the Court would like to give us, that's fine with me, Judge.

THE COURT: So, Mr. Rockind, with regard to the motions, you indicated you don't want some heard yet but you --

MR. ROCKIND: I think the Brady motion should be heard. I think that the Brady motion, we're going to file a Brady motion along with a request for a hearing and request for an evidentiary hearing on the subject. I think it's that important. We'll lay out our reasons why in the motion and I'll certainly -- I'll certainly share with Mr. Keast in a conversation our -- he's been, I think -- I'll just say we've apprised him of the concerns that we have and he's been, I don't want to say receptive, but he's been diligent and he's been, I think, at least interested in hearing what our concerns are. So I'm not going to sandbag him, we'll let him know what they are, but I think it's important enough that we're going to motion it up for the Court.

I'd like that motion, which will probably

include a motion to quash and a motion for the Brady v Maryland violation and its impact on the bind-over and on the present, the status of the case, we should hear those first. I can have those probably filed, I would say, within three weeks.

THE COURT: How much time would you need to respond, sir?

MR. KEAST: I would appreciate if Mr. Rockind would praecipe it two weeks after receipt of the prosecutor's office, so I'd have adequate time to research whatever issue he's referring to.

Perhaps the best way to address it right now, Judge, is a pretrial five weeks from today's date, that way we could have all motions praeciped prior to that pretrial date and we know where we're going.

MR. ROCKIND: The Brady motion is, I think -- the other motions are important and they're involved. We had been holding out hope that we would be able to have a live hearing before Judge Alexander at various points because we have some materials that we wanted to show the court as to how we believe the Snapchat evidence doesn't meet the standards of admissibility and we have some, I don't want to say props, but we have some demonstrative exhibits that we thought would help. Which is, I know, unusual in an oral motion, but because this area is highly

technical, we wanted to have those, particularly for Judge Alexander --

THE COURT: The argument with regard to a business record of Snapchat, since they don't maintain it, what's the argument?

MR. ROCKIND: Well, it's involved. So there's one related to the certification. The certification of the business records under 901 doesn't meet the standards. Michigan's 901 authentication rule is different than the federal rule. The certification that was provided by the quote/unquote recordkeeper from Snapchat was made by an employee of Snapchat that cannot be contacted, that no one's had any direct contact with. It was made in a writing. It wasn't signed. It wasn't made under oath. And I don't even believe she's an employee of Snapchat, I thinks she works for another company called Accenture, which does --

MR. KEAST: Judge, I'm sorry.

Mr. Rockind, maybe we can argue the motion on the motion date.

MR. ROCKIND: Well, the Judge just asked me what the basis was, so --

MR. KEAST: It's very complicated.

MR. ROCKIND: I was just trying to give the Court some insight.

And the other is that they're not kept by, the records, they're not kept by Snapchat. The content of the records, there are pieces missing. Snapchat has a policy of erasure and non-preservation. We have records that we attached, our motion filing has probably seven to nine exhibits that are attached about Snapchat's policy, that they don't preserve records, that their policy is deletion and not salvation. Those were just some of the issues related to the Snapchats.

THE COURT: So with regard to your motions, you want three weeks to file them, two weeks for Mr. Keast to respond to them.

And then Mr. Keast, you're requesting a pretrial prior to the motions being heard, is that my understanding?

MR. KEAST: Either we could have a pretrial date on the date of our motions, or if the Court would like to set a control date, you know, five or six weeks out, just to make sure we have everything addressed.

THE COURT: With regard to a pretrial date, that the pretrial date, if the intention is that the parties might reach a resolution, I guess I'd want to know that before the Court (indiscernible) the time to go through everything. I want you to understand that I do take all the motions very seriously, as well as the case law, or

any other law that's submitted.

MR. ROCKIND: I would suggest that we schedule a pretrial. I'd like to get the Brady motion filed. It's going to be involved. And we'll file a request for a hearing because it involves a constitutional -- an allegation of a constitutional violation and may impact the proceedings. I'd like to have that motion heard and ruled on. We can have a pretrial after that. And then if the Court -- the Court may have a ruling that impacts how the case proceeds forward at that point.

So I don't have a problem with a pretrial in six weeks, but that'll give us time to get the motion filed, get Mr. Keast's response. We'll praecipe the motion up for an argument before the Court. The Court will decide if it's going to give us what its ruling is on the Brady issue and whether we get a remand or whether it's a dismissal. All, I think, are -- whether there's going to be an evidentiary hearing where the parties involved in the Brady violation may have to testify, all of that is, I think, on the table.

THE COURT: So Mr. Rockind, all I'm trying to do is determine timing right now. You said you need three weeks to file it. Mr. Keast wants two weeks' notice before he has to appear, I guess, at the motion hearing, so we're working, hearing it five weeks or six weeks?

MR. ROCKIND: Six weeks for pretrial?

MR. KEAST: That would be great, thank you.

THE COURT: So my question, again, is not when is the pretrial. My question is, when are you going to have your motion hearing?

MR. ROCKIND: I want to give Marc whatever time he needs. I can have it to him within three weeks. He needs two weeks to review it. I guess we can -- he wants to get his answer filed. That gives us probably -- how much time do you need to write an answer, Marc?

MR. KEAST: How is March 24th? It's Wednesday morning.

THE COURT: Does that work?

MR. ROCKIND: Let me look, Your Honor. Thank you.

Yes, Your Honor, March 24th works for us.

THE COURT: Okay, so March 24th will be your motion hearing date.

With regard to the time, you need to go to my protocol, click on the link with regard to the Zoom calendar, it'll give you the exact time of your hearing. You should check that a couple days before, not too far in advance, because those are subject to change as far as time.

Mr. Bush, I want you to allot out an hour for

the hearing.

You think that's enough time, an hour, or do you guys need more than that?

MR. ROCKIND: I think an hour for the Brady motion is fine, yes.

THE COURT: With regard to the pretrial, we'll do the pretrial on the Thursday after, which would be April 1st. Your client is in custody. It would be a one o'clock pretrial.

Anything else?

MR. ROCKIND: No, Your Honor.

MR. KEAST: Not from the People. Thank you, Judge.

MR. ROCKIND: Judge, I know the Court is new to the criminal docket, or relatively new; new to me. We intend to make a bond motion. Our client's bond is a million dollars cash surety. Does the Court accept those orally or do you require a filed motion to address bond?

THE COURT: With regard to the bond motion, because it is a significant bond, and I believe that it's already had a bond motion at the district court level, if I'm --

MR. ROCKIND: Multiple, yes.

THE COURT: Okay. So then I want Mr. Keast to have the opportunity to know what your argument is and how

it's different and to respond to it. So with regard to this matter, I am going to require it to be in writing. You need to give Mr. Keast the proper notice. So you can schedule that for a hearing as well.

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

MR. KEAST: Thank you, Judge.

MR. LEWIS: Thank you, Your Honor.

MR. ROCKIND: I'll give you a call, Marc, all right.

MR. KEAST: Sounds good.

THE COURT: Thank you.

MR. ROCKIND: All right. Thank you.

(At 1:56 p.m., proceedings concluded.)

- - -

CERTIFICATION

I certify that this transcript, consisting of 15 pages, is a true and accurate transcription, to the best of my ability, of the video proceeding in this case before the Honorable Victoria A. Valentine on Thursday, February 11, 2021, as recorded by the clerk.

Videotape proceedings were recorded and were provided to this transcriptionist by the Circuit Court and this certified reporter accepts no responsibility for any events that occurred during the above proceedings, for any inaudible and/or indiscernible responses by any person or party involved in the proceedings, or for the content of the videotape provided.



/s/ Cheryl McKinney, CSMR-5594
About Town Court Reporting, Inc.
248-634-3369

EXHIBIT

B

Outlook

Bond change on Remington case, and updated status, PO# 19-65104

From Kennedy, Nicole A <kennedyn@oakgov.com>
Date Mon 3/8/2021 10:22 AM
To linda nobiletravel.com <linda@nobiletravel.com>
Cc Keast, Marc A <keastm@oakgov.com>

1 attachment (77 KB)
Scanned Document.pdf;

Linda,

Marc Keast just found out over the weekend some information/evidence defendant did not have during the examination. It may require a remand back to the district court, or defense may file a motion to dismiss. Remand would be more appropriate.
Please call Marc so he can explain what the evidence issue is.

However, with this information, the defendant's bond must be modified. Please see the attached order explaining the modifications, I am sure he will post. As of right now he has not, but I have to assume he will, soon.

To get notification when he does post, please register with company called VineLink, once register and defendant posts bond, you will get notice. Our office does not get notice of defendant posting. PLEASE REGISTER AS SOON AS POSSIBLE.
To register can do online or by phone with Vinelink:
1-800-700-7657
Or
https://www.vinelink.com/#state-selection

choose state and follow from there. Need defendant full name: Nicholas Maximillian Remington and Date of Birth: 12-10-98

Sorry for the upsetting and urgent email, I left a message also….. I have to step away from my desk for a meeting soon, so I emailed you in case I miss your call back. With this information, register with vinelink and call Marc for the legal issue: his phone number
248-858-0211
And he is cc'ed in this email also.

Sorry for upsetting news, let me know if me to listen to you later,

OFFICE OF THE PROSECUTING ATTORNEY
County of Oakland | Karen D. McDonald

Nicole Kennedy, Victim Advocate
Victim Services Section
1200 N. Telegraph Rd.

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STATE OF MICHIGAN
IN THE OAKLAND COUNTY CIRCUIT COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

vs.

CASE #: 2019-272593-FC
Hon. Victoria A. Valentine

NICHOLAS REMINGTON,

Defendant.

/

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/

STIPULATION TO MODIFY DEFENDANT'S BOND STATUS AND FOR THE IMPOSITION OF CONDITIONS OF PRE-TRIAL RELEASE

NOW COMES the State of Michigan and Nicholas Remington, by their through their respective counsel, and hereby stipulate to the following facts and relief:

1. Mr. Remington was bound over to the Oakland County Circuit Court on October 16, 2019 following a multiple day preliminary examination before the Hon. Travis Reeds;
2. At the time of the bind over decision, Mr. Remington's bond had been fixed at One Million ($1,000,000.00) Dollars Cash/Surety;
3. The interests of justice warrant an immediate reduction of Mr. Remington's bond;
4. Evidence disclosed to the defense by the undersigned Assistant Prosecuting Attorney, which was not disclosed by the previously assigned Assistant

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Prosecuting Attorney, may necessitate a remand to the District Court and/or further litigation that must commence prior to a trial;

5. This will cause further delays to this case;
6. Any delay pertaining to the aforementioned evidence shall be attributable to the State;
7. Accordingly, in the interests of justice, the parties stipulate to the following bond and conditions of pretrial release that shall take place immediately:

   a. Defendant's bond shall be set at $10,000.00 cash/surety;
   b. Defendant shall be subject to GPS/Electronic Monitoring/Home Confinement;
   c. Defendant shall be prohibited from the use of social media;
   d. Defendant shall be permitted to go to his lawyer's office, medical and dentist visits/appointments; and,
   e. Defendant shall be permitted to attend college or university via virtual classes.
   f. Defendant shall have no contact with anyone who may be a witness in this case.
   g. Defendant shall be prohibited from the use of any controlled substances and/or alcohol
   h. All other bond conditions imposed by the 52/1 District Court shall remain in place.

SO STIPULATED:

DATE: 3/7/2021

DocuSigned by:
C76DCD565D7A457...

ASSISTANT PROSECUTOR

DATE: 3/7/2021

DocuSigned by:
A3C14FFC03704DC...

COUNSEL FOR DEFENDANT

IT IS SO ORDERED:

DocuSign Envelope ID: 7F05DDE4-23A3-4235-81E6-E9937C26EF00

HON. VICTORIA VALENTINE DATE:
CIRCUIT COURT JUDGE

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PEOPLE OF THE STATE OF MICHIGAN,

vs Case No. 19-272593-FC

NICHOLAS MAXIMILLIAN REMINGTON,

Defendant.

_____/

BOND MOTION

BEFORE THE HONORABLE VICTORIA A. VALENTINE

PONTIAC, MICHIGAN – TUESDAY, MARCH 9, 2021

APPEARANCES:

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WITNESS PAGE

(None.)

EXHIBITS:

(None offered.)

Pontiac, Michigan

Tuesday, March 9, 2021

- - -

(At 3:34 p.m., proceedings convened.)

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

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

THE COURT: Thank you.

MR. ROCKIND: Neil Rockind, P-number 48618, on behalf of Nicholas Remington. And we would consent to this hearing via Zoom and to waiving Mr. Remington's presence for this proceeding.

THE COURT: Thank you.

I am in receipt of an order, stipulated order requesting to reduce bond from $1 million to 10,000 and a tether. Correct?

MR. KEAST: That is correct, Judge.

MR. ROCKIND: Yes, Your Honor.

THE COURT: Mr. Keast, why don't you go ahead and address the bond issue.

MR. KEAST: Yes, Judge.

As the Court knows, I was assigned the case in January of this year. I spoke with Mr. Rockind a number of times regarding some issues regarding discovery I did

discover from the beginning, in January, obtained a copy of the police report from beginning to end, and sent it to defense counsel. I think January the 28th of 2021, are what my notes reflect.

Counsel and co-counsel, Randy Lewis, went through the discovery. They made me aware last Tuesday night that there were two reports in particular that were not turned over to defense. It appears that those two reports were in the prosecutor's office possession in September or October of 2019. In my opinion, those two reports are exculpatory in nature and should have been turned over in a timely fashion. They were not.

I believe Mr. Rockind and his office may be filing a motion regarding that. I have suggested my own remedy to Mr. Rockind. That is included in the stipulated order, Judge. In my opinion, a remand, at a minimum, is necessary in this case. That will cause further delay to this case being adjudicated. Defendant has been in custody, I believe since the beginning of this case. In my opinion, the delay, at this point moving forward, is attributable to the State.

So because of that, I do believe that a stipulated order to the effect that was submitted to this Court is appropriate in this case. I have informed the officer in charge, as well as the victim's mother, of the

decision that we have made. They both understand the situation that we're in, Judge.

THE COURT: Okay. With regard to the bond conditions, for some reason it won't let me scroll down on the proposed order. Read me the bond conditions.

MR. KEAST: Mr. Rockind, do you have that in front of you?

MR. ROCKIND: I do.

Your Honor, I'm going to, if you don't mind, I'm actually in a sweatshirt.

THE COURT: That's fine.

MR. ROCKIND: So with permission -- I mean, I can come on if you want the video or I could just do an audio feed. It's entirely up to you. I hope you don't mind if I -- it's really up to you. I just don't want to offend the decorum of the court by appearing in a sweatshirt.

THE COURT: I am more than aware of the fact that I gave you about five minutes to choose to go on --

MR. ROCKIND: Mine says "Family is everything, hustle all day," or something like that.

THE COURT: Whatever you're comfortable with, Mr. Rockind.

MR. ROCKIND: Oh, I don't mind appearing, I mean, it's fine, I just didn't want to, you know, to

undermine the solemnity of the court proceedings.

THE COURT: No, I'm fine with that, sir.

MR. ROCKIND: So the bond conditions currently, according to the order, proposed, order, will reduce the bond to a $10,000 cash surety, no 10 percent bond. Mr. Remington will be subject to global position electronic monitoring and home confinement. We envision that that will involve one specific tether unit, and the purpose of that tether unit would be that he would be on home confinement. The tether unit will have the ability to track his global positioning if he's permitted to leave for any of the permitted travel. And I don't mean travel out of state, I mean travel from his home other than --

THE COURT: Right, to meet with you and something else, right?

MR. ROCKIND: I'm sorry?

THE COURT: Is that to meet with you?

MR. ROCKIND: To meet with us, to meet at my office. And we will certainly give Pretrial Services my office address. And if he has any scheduled medical and dental visits. And if those are -- if he has those, we'll of course provide proof or verification that he has them in advance and that he attended them after.

He's a student at the University of Michigan and he will be able to attend college university via virtual

classes but not actually go to campus or go to a college campus. So he will be on what is the equivalent of home confinement other than for what I would call essential -- for some essentials. And those essentials are specified as lawyer's office, doctor's office, dentist's office. After that, he's going to be at home.

He's not to have contact with anybody who is identified as a witness in the case. He shall be prohibited from the use of any controlled substances or alcohol. And he will -- and he's prohibited from the use of social media.

I didn't want to get into, I can if the Court wants me to get into the Brady issues, but they're really -- I alluded to them once during our last pretrial conference. I think I alluded to them in a letter regarding the status of the case --

THE COURT: I read everything. I'm pretty familiar.

MR. ROCKIND: Okay. No doubt. And there's more, and we have some motions to file. The purpose of today is because we anticipate that there could be some delays related to this issue, and as a result we are stipulating to a reduction of Mr. Remington's bond.

THE COURT: Are you also stipulating to go back down to the district court for a preliminary exam?

MR. ROCKIND: No, not at this point, Your Honor.

THE COURT: Okay.

MR. ROCKIND: I know the People -- if you'll permit me to say this. Mr. Keast and I have had a lot of conversations back and forth about this case. I attempted to apprise Mr. Keast of what I believe were some of the disclosure issues. He has been -- he has been, I think, patient and diligent and has been responsive to what I have -- what I have advised him I believe to have occurred. And he's, I think, done his own investigation to look into that.

I think the disagreement at the moment is -- I don't even know if the disagreement is to the extent of it. I think the real disagreement at the moment is probably of what is the remedy. We have a view of what the remedy is. The State has a view of what the remedy is. And I think that's going to -- that may have to be fleshed out in some kind of a motion. And we've got a motion to -- a couple of motions that we're prepared to file.

MR. KEAST: If I might just add on to that, Judge. That is why that sentence is included about a potential remand, because defense is not prepared to stipulate, and that's fine. But I would agree with Mr. Rockind, I think the disagreement at this point -- and

I say "this point" because as I come into this case, I come in with, I guess, a fresh look, and I'm open to really everything; as I discover things I speak with Mr. Rockind. But I think at this point we have a disagreement as to the ultimate remedy, so that is why -- the remand is one potential, but either way I believe there will be additional delay in this case.

THE COURT: Okay. Couple things. I can't pull this up at all. I have to restart my computer.

The bond conditions, I want there to be no drug paraphernalia. No drugs. Not being around anybody with regard to drugs. I know it's only to leave the home, but I don't want people coming there either.

MR. ROCKIND: Can we just add, so I have -- we can add it to the proposed order. So no drug paraphernalia. Okay.

THE COURT: No drugs.

MR. ROCKIND: Right, we have that.

THE COURT: No one -- not be around anybody who is using any illegal substance.

MR. ROCKIND: Okay, not to be --

THE COURT: No contact with anybody.

MR. ROCKIND: It says not to be in the company or presence of someone using illicit drugs --

THE COURT: Possession, not just using.

MR. ROCKIND: Possession, okay.

THE COURT: Does he have a criminal record?

MR. ROCKIND: He does, Your Honor. He's actually -- he's on -- this is -- he's on probation to Judge Poles. So he's on HYTA probation to Judge Poles. There's a bond in that case.

THE COURT: There's a bond?

MR. ROCKIND: There is a bond in that case, correct.

THE COURT: And what was the case for?

MR. ROCKIND: I believe that was a possession case. But I don't, you know, I don't want to speak out of turn, because I don't represent him in that case. I haven't. Mr. Lewis did.

MR. KEAST: It looks like a possession of controlled substance, that's correct.

THE COURT: User or dealer?

MR. ROCKIND: It was a possession case. It was not (indiscernible).

MR. KEAST: That's correct.

THE COURT: Twenty-five or less?

MR. KEAST: From the charge code, I can't tell if it was 25 or less for the cocaine or heroin, or if it was just a controlled substance, which could be methamphetamine or any other type of drug. I'm going to

see if I can find that out.

THE COURT: Mr. Busch, Mr. Soba [ph], can you pull that case and give me a case number?

THE CLERK: Do you happen to know what year that was filed?

MR. ROCKIND: I can tell you in one second. Give me a second here.

Judge, to be frank with you, I have not looked at Mr. Remington's criminal history in a very long time.

THE COURT: That's okay.

THE COURT: I believe there may have been some misdemeanors, but I don't want -- again, I don't --

MR. KEAST: I have a CCH now.

MR. ROCKIND: Okay. I don't want to misstate something. I'll rely on what the prosecutor has to say about that.

MR. KEAST: It looks like we have a conviction of an ordinance violation, destruction of personal property -- I'm sorry, that was dismissed. In 2018, a trespass, misdemeanor trespass, out of Northville Township. In 2017, there were two counts of possession. One was possession of analogs. Judge, that tells me it could be anything from an amphetamine pill, Vicodin, Xanax, of the like. As well as a possession of marijuana. Those were both from 2017. Both have been taken under

74-11 status. And I believe he was on probation for those offenses, if I'm not mistaken.

MR. ROCKIND: Then, you know what, you can be right, it would be 74-11 as opposed to HYTA. Again, I didn't handle -- I haven't appeared on that case, and so I'll rely on whatever Mr. Keast says is his criminal history.

MR. KEAST: That's from this court, so that would make sense.

THE COURT: Can you read me -- was that everything, Mr. Rockind, with regard to what's on the bond order?

MR. ROCKIND: That's everything that we had on our proposed stipulation. The remaining -- I should add, Judge, that there's an additional provision at the bottom which says all other bond conditions imposed by the 52-1 District Court shall remain in place. And I could try to pull up that bond order. Again, I didn't look at it very carefully at the time because -- in fact, let's see if I have it here.

I do have it in front of me. I can share it, if you want to see it, Judge.

THE COURT: Yeah, can you share it?

MR. ROCKIND: I can.

THE COURT: You're going to have to refile your

stip, too, because with the change I just indicated, it's not even letting me log back in to pull it out.

MR. ROCKIND: Can you see this?

THE COURT: Yep.

MR. ROCKIND: So this is from this case. I can blow it up if you want, but Nicholas Remington --

THE COURT: (Indiscernible).

MR. ROCKIND: Yes, ma'am.

So it was no contact with the family of Denis Preka or any witnesses. Standard conditions here, Pretrial Services, no new offenses, drug tests, GPS tether prior to release, no contact with witnesses.

THE COURT: I think there's a couple more witnesses that aren't named on there.

MR. KEAST: That must have been from the initial witness list --

MR. ROCKIND: That was from the -- this was actually at his arraignment. So I would -- I would -- I think that an appropriate order is going to prohibit him, as it would, I think, any defendant, from having contact with any listed witness. And there's an information that's filed which contains a list of the witnesses and we'll certainly reference that, if we need to, in an additional order.

THE COURT: Yeah, but don't you have an issue

because the prosecutor's office, you're indicating, didn't disclose certain witnesses; isn't that, Mr. Keast, what you were indicating?

MR. KEAST: Not witnesses, Judge, material.

MR. ROCKIND: So to give the Court just -- I'm going to give the Court as much of an impartial thumbnail sketch as I can. There's a couple of -- there's a couple of potential -- so one is Detective Balog. He's at the center of one of these issues. There's not going to be any contact with Detective Balog. He's the officer in charge of the case.

The other was an investigator from -- who's part of a disclosure issue that we've raised before, who I believe was a now-retired investigator from the prosecutor's office. His name is Terry Healey [ph]. I don't foresee there being any contact between a private investigator, or an investigator who used to work for the prosecutor's office, having any contact with Mr. Remington voluntarily one way or the other.

The issues that are now the subject to our motions and of this stip and order relate to Snapchats that came from Mr. Remington's, or I should say the account that was identified as Mr. Remington's account, while he was in jail and could not have sent them. And so that information is the information --

THE COURT: Okay.

MR. ROCKIND: And there was a lot of information that Mr. Keast and I have talked about. There were actual Snapchats. There were search warrants and affidavits. There were letters written to Snapchat. There was investigation into it. There were disclosures. None of that was provided to us during the preliminary examination when these issues were being litigated and during the subsequent year up until Your Honor taking over the -- I should say Your Honor being assigned to the case.

And I think more importantly, Mr. Keast taking over the case, and he and I having frank conversations about the Brady issues that I was concerned about and Mr. Keast just doing a total review of the file and delivering to us what he had. So it's not really any witnesses that weren't identified, I think it's more that there was evidence, exculpatory evidence that was not disclosed to the defense during the preliminary examination, during the original motion filings, including our motion to quash and the State's response to the motion to quash, that were not disclosed that I think we agree -- well, I want to state, I believe that could have made a difference in the outcome of the decision of the magistrate. I'm not saying it would have, but it certainly -- so one of the issues we're addressing -- so I

don't think that -- I don't think that's going to be an issue. There's no new witnesses that were identified with whom he could have, Mr. Remington could have contact.

THE COURT: Okay. You have on there, no social media?

MR. ROCKIND: We have no social media on there. Mr. Keast believed that that was an important condition. And I had a suspicion that the Court would probably prohibit Mr. Remington, if it were inclined to grant the order, to prohibit social media because, look, freedom is more important than social media.

THE COURT: Right. So with regard to the social media by his own act or a third party's. I don't want any -- anything out there with regard to social media at all. And I know that he's going to have to use a computer, you're indicating, for his classes --

MR. ROCKIND: Let me be frank. I mean, I know some of these conditions sometimes are not -- I think they're difficult to enforce. But we take very seriously the fact that Mr. Remington has the potential to be released on bond throughout the pendency of the case. I know that's not an easy decision that's reached by the prosecutor's office. I don't think it's an easy decision that is to be reached by the Court and agreeing to the stipulated order.

We're going to make sure that Mr. Remington is aware of that when -- when we're referring to social media, we mean, you know, nothing; not doing it, not asking someone to do it. And I have a -- I just think that if there was a hint that Mr. Remington was directing others to post on social media that it would -- there are enough people that are watching what Mr. Remington is doing or watching the case that I think that it would get discovered.

THE COURT: You said he's in school at U of M?

MR. ROCKIND: He goes to University of Michigan, correct.

THE COURT: Okay.

MR. ROCKIND: Ann Arbor.

THE COURT: Anything else that you want to state, Mr. Keast?

MR. KEAST: No, Judge. I appreciate the opportunity to amend the order on the record here today. I agree with everything that we have in the stipulated order and everything the Court has said as well.

THE COURT: Okay. I do need a new order and I need --

MR. ROCKIND: (Indiscernible), Your Honor, for us to, for Mr. Keast and I to work on that now? I can send it to him via DocuSign, or if he's more comfortable

preparing, amending it and sending it to me and I can DocuSign and we can get it to the Court?

THE COURT: Yeah, that's fine. My issue is, can you send it both via the upload and email it to my staff?

MR. ROCKIND: Yes.

THE COURT: It's not letting me in my signing mechanism at all.

MR. ROCKIND: Your Honor, just so you know, that was how I wanted to do it originally, I wanted to send you the stip and order to your chambers and I -- and I was told to just file -- I'm not blaming your staff. I mean, I'm sure you guys are inundated with all kinds of stuff.

THE COURT: No, no, no, no, that's how we would choose to do it, I just have -- there's some issue going on where it's not letting me into the document at all.

MR. ROCKIND: Can we review, just so -- because I'm going to type up the order as soon as I get off the phone. Can we just review what the additional conditions are besides what's on the stip and order? So I have no drug -- additionally, besides what's already on there, no drug paraphernalia, no drugs, not to be in the company or presence of anyone using and/or possessing illicit drugs. What else, just so I --

THE COURT: I hate to lawyer it up, but just, I mean, as far as the defendant in this case, I don't want

him to be in possession of any drugs either, not just using or paraphernalia, but no possession of any drugs whatsoever as well.

MR. ROCKIND: We will reiterate no possession or use by defendant.

THE COURT: And then not in the presence of anybody in possession, use. I actually don't want him -- I want him on home arrest, I'm just having a caveat in case someone comes to his home, that they say, well, it's my parents' friend or something.

MR. ROCKIND: Got it. Okay.

THE COURT: Cousin or whatever.

MR. ROCKIND: And then we have the no use of social media, and we have the -- do you want -- Judge, there's provisions within the 52-1 District Court order that require him to test four times a week for alcohol and drugs. He would have to leave the house to do that. Is that a condition that you still want to be in place?

THE COURT: Yeah.

MR. ROCKIND: Okay. And Pretrial Services monitoring.

THE COURT: Yeah. So that means tether from them. And I don't know if they tether him before he gets out.

MR. ROCKIND: I think they do, don't they? I

mean, that's --

THE COURT: Depends if it's Pretrial Services or MDOC, right, Mr. Keast?

MR. ROCKIND: I don't think it would be an MDOC tether because he's not in prison, so I think it'd have to be -- it'd have to be Pretrial Services.

MR. KEAST: If it's a condition they'll tether him before he's let out.

MR. ROCKIND: I think they won't let him out of the jail without a tether.

THE COURT: Okay. I don't know what his other bond conditions were, of the other case.

Did he VOP on that case, then?

MR. KEAST: The violation is a result of --

MR. ROCKIND: This is the basis for the probation violation, this charge.

THE COURT: I know, but has he gone in front of the judge on a VOP?

MR. ROCKIND: He's gone in front of Judge Jarbou and that case has been adjourned for the pendency of -- the outcome of this case.

THE COURT: Okay. Yeah, so the only reason I want you to send me that order two ways is because I can't get into the system, which I normally would not tell you to email it at all because --

MR. ROCKIND: I will do it now.

THE COURT: Okay.

MR. ROCKIND: So I'm going to do exactly what we added with the conditions that you have here.

THE COURT: Okay. And Mr. Keast, you're in agreement with all the conditions and you're stipulating, it's your stipulation with regard to reducing the bond from the million to 10,000?

MR. KEAST: That's correct, Judge.

THE COURT: Okay. With the tether. Okay. Okay, thank you.

MR. ROCKIND: Thank you very much, Judge.

(At 3:55 p.m., proceedings concluded.)

- - -

CERTIFICATION

I certify that this transcript, consisting of 22 pages, is a true and accurate transcription, to the best of my ability, of the video proceeding in this case before the Honorable Victoria A. Valentine on Tuesday, March 9, 2021, as recorded by the clerk.

Videotape proceedings were recorded and were provided to this transcriptionist by the Circuit Court and this certified reporter accepts no responsibility for any events that occurred during the above proceedings, for any inaudible and/or indiscernible responses by any person or party involved in the proceedings, or for the content of the videotape provided.



/s/ Cheryl McKinney, CSMR-5594
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EXHIBIT

C

FILED Received for Filing Oakland County Clerk 4/9/2021 9:49 AM

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v

CR 2019-272593-FC
HON. VICTORIA VALENTINE

NICHOLAS MAXIMILLIA REMINGTON,

Defendant.
_____/

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PEOPLE'S BRIEF IN RESPONSE TO DEFENDANT'S SUPPLEMENT TO MOTION TO QUASH AND DISMISS WITH PREJUDICE

STATEMENT OF FACTS AND PROCEDURAL HISTORY

This case was bound over on the charge of Delivery of a Controlled Substance Causing Death after preliminary examinations conducted in the 52-1 District Court on September 27, 2019, and October 16, 2019. Defendant filed a motion to quash on January 21, 2020. The People filed a response on March 16, 2020. Judge Alexander did not rule on the initial motion to quash and that is still pending before this Court. Undersigned Assistant Prosecuting Attorney was assigned this case on January 4, 2021. Former Assistant Prosecuting Attorney Beth Hand filed the initial response to Defendant's motion to quash and included a statement of facts. The People rely upon that portion of the brief and incorporate that herein. Defendant has also filed a motion to dismiss with prejudice. Both of Defendant's motions are based upon the same argument – that the

previously assigned Assistant Prosecuting Attorney failed to disclose certain pieces of exculpatory evidence. As such, this responsive pleading addresses both claims to avoid duplicative pleadings.

Defendant has provided a "scorecard," of the individuals in each of his motions to alert this Court to the parties involved in what has been stated as an attempt to provide context. While not disclosing all communications between undersigned Assistant Prosecuting Attorney and counsel for the Defendant, the People believe it is necessary to provide its own recap of relevant dates and contacts. The following information is submitted to this Court under information and believe that all are true and accurate:

January 4, 2021: Undersigned Assistant Prosecuting Attorney was assigned this file. A phone call was placed to defense counsel sometime between that date and January 6, 2021. Defense counsel followed up with the email attached to his motion as Exhibit A.

January 6, 2021 – January 27, 2021: In response to concerns expressed by defense counsel in his letter, undersigned A.P.A. contacted Detective Balog, the officer in charge of the investigation, to obtain a complete copy of all police reports so all parties could be assured discovery was complete.

January 28, 2021: A complete copy of the Novi Police Department report was obtained.

February 3, 2021: A packet of discovery, including supplemental reports #9 and #10 were mailed to defense counsel.

February 11, 2021: A pretrial conference was held before this Court. Defense counsel stated that he would be filing a motion regarding information learned through the discovery tendered.

March 2, 2021: Phone conversation occurred between undersigned A.P.A. and defense counsel. Defense counsel stated that he had never received supplemental reports #9 and #10, nor did former A.P.A. Hand disclose the contents of those reports to him.

March 3, 2021: Undersigned A.P.A. confirmed defense counsel's assertion that those reports were not included in any proof of service filed with either the District or the Circuit Court.

March 5, 2021: Undersigned A.P.A. had a phone conversation with defense counsel. Undersigned A.P.A. stipulated to the bond order signed by this Court on March 9, 2021, and suggested a remand to the District Court to cure any defect/violation incurred by nondisclosure of evidence referenced in supplemental reports #9 and #10.

Supplemental report #10 details a conversation between Ms. Linda Preka (decedent's mother), former A.P.A. Hand (married name of Wiegand) and the officer in charge of the investigation. *See* Exhibit 1. That report reflects that Ms. Preka was shown a snapchat message sent on the Defendant's account "Hulkolas," while the Defendant was incarcerated in the Oakland County Jail. As stated, it does not appear that the supplemental report, or information included in that supplemental report, was turned over to defense until undersigned A.P.A. obtained a copy from the Novi Police Department and mailed it in February of this year.

LAW AND ARGUMENT

The People must emphasize that this responsive pleading does not attempt to excuse or explain the nondisclosure of evidence favorable to the defense. The People acknowledge that the prior A.P.A. did not disclose the evidence referenced. The timeline referenced *supra* is not in dispute That is precisely why the People have stipulated to a remand to District Court, acknowledged that this remand will delay trial, acknowledged that the delay is attributable to the People, and stipulated to a bond modification. The dispute lies in the remedy. It is the People's position that neither dismissal nor a quash is warranted when an alternative remedy exists.

The seminal case regarding disclosure of evidence is *Brady v Maryland* 373 US 83 (1963) which held "[S]uppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good or bad faith of the prosecution." *Id* at 87. The *Brady* rule has been extended to information known to the police as well, imposing a duty on a prosecutor to "learn of any favorable evidence known to the others acting on the government's behalf in this case, including the police." *Strickler v Greene*, 527 US 263, 281 (1999). See also *Kyles v Whitley*, 514 US 419 (1995). To assert a successful *Brady* claim, a defendant must show the following: 1) the evidence is favorable to the accused, either because it is exculpatory, or because it is impeaching; 2) that evidence must have

been suppressed by the State, either willfully or inadvertently; and 3) prejudice must have ensued. *Strickler* at 281-282. As recognized by our Supreme Court in *People v Chenault*, 495 Mich 142, 149 (2014): "The Supreme Court of the United States held in *Brady* that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution."

There are two caveats found in *Brady* jurisprudence applicable to this well-settled rule of law. The first is that Brady does not extend to information that is available from another source, or if the defense was aware of the same information (*United States v Clark*, 928 F2d 733, 738, *Parker v Allen*, 565 F3d 1258, 1277 (2009), *United States v Zichittello*, 208 F3d 72, 103 (2000), *United States v Quintanilla*, 193 F3d 1139, 1149 (1999)). The second is that there is no duty to create evidence (*United States v Sukumolachan*, 610 F2d 685, 687 (1980), *Richards v Solem*, 693 F2d 760, 766 (1982).

As stated, these principles are well-settled, and the People certainly do not dispute them. The reason for the dispute as to remedy is simply because *Brady* is a **trial** right. *Brady* refers to a complete failure to disclose, not tardy disclosure. *Robertson v Lucas*, 753 F3d 606, 622 (2014). "*Brady* generally does not apply to delayed disclosure of exculpatory information, but only to a complete failure to disclose." *United States v Bencs*, 28 F3d 555, 560-561 (1994) (citations and internal quotation marks omitted).

Timing of disclosure was discussed in *People v Bosca*, 310 Mich App 1 (2015). In *Bosca*, medical records of witnesses who testified at the preliminary examination were not disclosed to the defense prior to the examination. Defense later asserted those records were exculpatory due to potential impeachment material contained therein. The Michigan Court of Appeals ruled that the failure to produce medical records prior to preliminary examination was not a *Brady* or discovery

violation because "[e]ven if the boys' injuries did not fully match their testimony, the discrepancy for purposes of the preliminary examination was irrelevant, as the district judge was not the ultimate finder of fact." *Id.* at 29-30. The Court of Appeals cited *People v Laws*, 218 Mich App 447, 452 (1996) in noting "where the evidence conflicts and raises a reasonable doubt regarding the defendant's guilt, the issue is one for the jury, and the defendant should be bound over." *Id.* Thus, while it is best practices to make disclosures of material as soon as possible, it does not appear to warrant dismissal or even retrial when the disclosure is late but made in time to prepare for trial.

In the instant case, Judge Reeds presided over the lengthy preliminary examination. He found that the evidence in fact did rise to the level of probable cause and bound the matter over for trial. On pages 5 and 6 of Defendant's brief in support of his motion to quash, Defendant suggested that Judge Reeds based his bind over decision on the snapchat records and arguments made by Ms. Hand regarding those records. A remand would serve to end speculation in that regard. While the People have agreed to remand this case so the defense can explore the information contained in the supplemental reports at the District Court level, the People expect Judge Reeds to reach the same conclusion – that a question of fact exists for the trier of fact and the case must be presented to a jury.

In his motion to dismiss, Defendant has cited to *United States v Coleman*, 862 F2d 455 (1988). Defendant's reliance upon this Second Circuit Court of Appeals case is misplaced as the United States Circuit Court did not issue a ruling consistent with Defendant's argument. In *Coleman*, Defendant was tried for a number of crimes in Federal District Court in Philadelphia, Pennsylvania. He was convicted at a retrial after the first trial resulted in a hung jury. Defendant claimed on appeal that the government's *Brady* violations from the first trial should have prevented the second trial from even taking place under the double jeopardy clause of the United States

Constitution. *Id.* 456-457. The Court, relying upon *Brady* itself and its progeny, disagreed. Citing to *Brady*, the Second Circuit recognized that the "aim of due process is not punishment of society for misdeeds of a prosecutor but avoidance of an unfair trial to the accused." *Id.* at 458, *Brady*, 373 US at 87. This is simply because the rule articulated in *Brady* is a ***trial*** right, a right to protect from an unfair ***trial***. Thus, while the material turned over to defense by the undersigned Assistant Prosecuting Attorney could be properly characterized as "*Brady* material," it does not follow that an untimely disclosure of said evidence authorizes a dismissal. This is especially true given the remedy proposed by the People.

Defendant has also cited to *Virgin Islands v Fahie*, 419 F3d 249 (2005), a Third Circuit Court of Appeals case to support his request for dismissal with prejudice. The Defendant in that case was arrested after he was shot while sitting in a vehicle, drove himself to the hospital, and was interviewed by police. The police officer who took the report observed a sawed-off shotgun in the back of his vehicle. Defendant was charged with possession of that weapon. *Id.* at 250-251. During trial, an ATF agent disclosed that he had run the weapon through a trace system and discovered that the gun's registered owner lived in Virginia and it was not reported stolen. Defense counsel objected on the grounds that this was possibly exculpatory information and a *Brady* violation. *Id.* at 251. The trial court in the U.S. Virgin Islands agreed and dismissed the case with prejudice. *Id.* The U.S. Virgin Islands District Court Appellate Division agreed that nondisclosure of the report was *Brady* material and a discovery violation, but dismissal was an abuse of discretion. *Id.* at 252. The Third Circuit noted that the United States Supreme Court has not imposed the most severe penalty available (i.e. dismissal with prejudice) when prejudice to the defendant has not been demonstrated. *Id.* at 254.

In reversing the dismissal, the Third Circuit of the United States Court of Appeals relied extensively on *United States v Morrison*, 449 US 361 (1981). In *Morrison*, federal DEA agents

interviewed the defendant after she had been indicted and retained counsel. Those agents did so knowing the defendant had an attorney, and in the course of this meeting attempted to induce the defendant to cooperate. The agents did this on two separate occasions. *Id.* at 362-363. Morrison subsequently entered into a conditional guilty plea and filed an appeal to challenge the indictment solely on the basis of the agents' conduct. The Third Circuit agreed with the defendant and found a Sixth Amendment violation and dismissed the indictment as a remedy. *Id.* at 363-364.

The United States Supreme Court, in assuming *arguendo* a Sixth Amendment violation, reversed the Third Circuit. The Supreme Court first acknowledged that "Sixth Amendment deprivations are subject to the general rule that remedies should be tailored to the injury suffered from the constitutional violation and should not unnecessarily infringe on competing interests." *Id.* at 364. The Court analyzed this violation in the context of other constitutional violations from notable Supreme Court jurisprudence and stated "[s]imilarly, when before trial but after the institution of adversary proceedings, the prosecution has improperly obtained incriminating information from the defendant in the absence of his counsel, the remedy characteristically imposed is not to dismiss the indictment but to suppress the evidence or to order a new trial if the evidence has been wrongfully admitted and the defendant convicted." *Id.* at 365. Importantly, the United States Supreme Court opined that "[m]ore particularly, absent demonstrable prejudice, or substantial threat thereof, dismissal of the indictment is plainly inappropriate, even though the violation may have been deliberate. This has been the result reached where a Fifth Amendment violation has occurred, and we have not suggested that searches and seizures contrary to the Fourth Amendment warrant dismissal of the indictment. The remedy in the criminal proceeding is limited to denying the prosecution the fruits of its transgression." *Id.* at 365-366.

Thus, the remedy in this case is exactly what has been suggested by the People. There has been no prejudice to the Defendant. The instant case does not have a trial date set. The Defendant

has filed multiple motions in January of 2020, but at Defendant's choosing those were not heard by this Court's predecessor. When the undersigned A.P.A. was made aware of an alleged discovery violation a bond modification was agreed upon. Defendant now seeks a windfall when a specifically tailored remedy is available.

The accepted principle articulated in *Morrison*, i.e., that a remedy should fit the constitutional violation, has been accepted time and time again. *People v Acevel*, 282 Mich App 379 (2009) is illustrative as the Court of Appeals discussed the proper remedy when blatant prosecutorial, judicial, and police misconduct resulted in a Due Process violation. In this infamous case, an Assistant Wayne County Prosecuting Attorney failed to correct the record after a police officer and civilian witness committed perjury while testifying at a hearing and subsequent trial. *Id.* at 383-384. This suborning and/or permitting perjury deprived the Defendant an opportunity to mount an effective defense. The Court of Appeals was called upon to determine if this violation should bar a retrial, which as *Morrison* articulated is the standard remedy for such a violation. In finding that retrial is the correct result, the Court first opined:

> the crux of the due process analysis in cases of alleged prosecutorial misconduct is whether the defendant received a fair trial. The remedy when a defendant receives an unfair trial because of prosecutorial misconduct is a new and, presumably, fair trial. This remedy naturally flows from the type of harm that the defendant has suffered. It does not follow that a due process violation should bar retrial, because such a remedy would be unduly broad and would fail to address the specific harm the defendant has suffered. Specifically, barring retrial on the basis of due process grounds would amount to "punishment of society for [the] misdeeds of a prosecutor" because it would permit the accused to go free." Further, our Supreme Court has noted, "[T]he protections of substantive due process [do not] require recognition of a remedy for the harm incident to one or more mistrials [unless it also places a defendant in double jeopardy]." *Id.* at 391(internal quotation omitted)

The Michigan Court of Appeals further held:

> Nor do we find, as defendant urges, that the court's and the prosecutor's disgraceful conduct itself should warrant a bar to retrial. Assuming that the acts of the trial judge and the prosecutor in this case violated Michigan's Rules of Professional Conduct, MRPC 3.4, and Code of Judicial Conduct, Canon 3, and were clearly opprobrious, the remedy for their

wrongs is accomplished in other forums, such as the Attorney Discipline Board and the Judicial Tenure Commission. These codes, however, do not confer upon a defendant any type of constitutional right or remedy. Rather, the particular constitutional right determines the constitutional remedy and these codes play no part in such decisions. For these reasons, we do not take the opportunity here to create a new remedy for a due process violation arising out of prosecutorial and judicial misconduct. *Id.* at 392 (internal quotations omitted).

The situation in the instant case does not rise to the level of judicial, police, and prosecutorial misconduct found in *Acevel*. Even if it did, the remedy to such misconduct must be specifically and narrowly tailored to protect the accused's Due Process rights. The procedural posture of this case is crucial. A trial date has not even yet been given by this Court. The People have agreed to allow the defense the opportunity to present whatever evidence Defendant sees fit in front of Judge Reeds; and importantly, a bond modification has been agreed upon. Dismissal with prejudice or quashing the information is simply not the correct remedy. There is no doubt that the evidence at issue should be examined, cross-examined, explored, and weighed; and it will. When that occurs in front of the relevant fact-finder will serve to protect all of the Defendant's constitutional rights, which is the crux of Due Process and *Brady*. Dismissal is not warranted.

WHEREFORE, for the foregoing reasons, the People respectfully request that this Honorable Court deny the Defendant's Motion to Quash, deny the Defendant's Motion to Dismiss with Prejudice, and remand this case to the 52-1 District Court for a continued preliminary examination.

Respectfully submitted,

KAREN D. McDONALD
PROSECUTING ATTORNEY

By: _____
Marc A. Keast
Assistant Prosecuting Attorney

DATED: APRIL 9, 2021

FILED Received for Filing Oakland County Clerk 4/9/2021 3:26 PM

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ATTORNEY FOR DEFENDANT
/

PEOPLE'S SUPPLEMENTAL BRIEF IN RESPONSE TO DEFENDANT'S SUPPLEMENT TO MOTION TO QUASH AND DISMISS WITH PREJUDICE

Upon review of the pleading filed entitled "People's Brief in Opposition to Defendant's Motion to Quash and Dismiss with Prejudice," undersigned A.P.A. determined that an amended first paragraph to page 3 should be submitted to this Court. Please allow the following to replace that paragraph:

Supplemental report #10 details a conversation between Ms. Linda Preka (decedent's mother), former A.P.A. Hand (married name of Wiegand) and the officer in charge of the investigation. *See* Exhibit 1. That report reflects that Ms. Preka was shown a snapchat message sent on the Defendant's account "Hulkolas," while the Defendant was incarcerated in the Oakland County Jail. According to the report, Ms. Preka showed that snapchat message to both A.P.A. Hand and Detective Balog. As stated, it does not appear that the supplemental report, or

information included in that supplemental report, was turned over to defense until undersigned A.P.A. obtained a copy from the Novi Police Department and mailed it in February of this year.

It should be noted that this information is accurately contained in the People's Exhibit 1.

Respectfully submitted,

KAREN D. McDONALD
PROSECUTING ATTORNEY

By: _____
Marc A. Keast
Assistant Prosecuting Attorney

DATED: APRIL 9, 2021

EXHIBIT ONE

will be logged into Novi PD evidence room after this process is completed.

EVIDENCE LOGGED: I placed Denis Preka's cellular telephone and a digital copy into Novi PD property on 07/01/2019.

CR No: 190015581-008 Written By: NOBALOGS (00214) Date: 08/13/2019 10:24 AM

08/12/2019: During the course of this investigation, I, Detective Balog was able to identify the SNAP CHAT user mharrington1234. This is the user that Remington corresponded with On March 19, 2019, sending Hulkolas, (Remington) a snap chat, asking **"U give that kid meth"?** Hulkolas, (Remington) answers back **"Methylone some moll".** This subjects name is Matthew Connor Harrington DOB

INTERVIEW WITH MATTHEW HARRINGTON: I contacted Harrington by telephone on 08/12/2019. I spoke with him about his correspondence with "Hulkolas" on March 19, 2019. Harrington stated that "Hulkolas" is a guy he knew by the name of Nick Remington, whom he had worked with in the past. Harrington recalled that on March 19, 2019 he had observed videos that "Hulkolas" had displayed on a group SNAP CHAT involving a guy possibly on drugs. Harrington stated that he had sent "Hulkolas", (Remington) a snap chat message in response, saying **"U give that kid meth"?** Harington could not remember if "Hulkolas" (Remington) responded back to him or not.
I asked Harrington if he would be willing to testify in court to this fact, and he advised that he would.

CR No: 190015581-009 Written By: NOBALOGS (00214) Date: 09/30/2019 08:04 AM

09/30/2019: I sent SNAP CHAT a second preservation letter request for the SNAP CHAT account HULKOLAS, after information was obtained that new SNAPS have been disseminated from this account, while the suspect/account owner has been in Oakland County Jail. A search warrant and or subpoena shall be sent to SNAP CHAT at a later date for requested preservation information.

CR No: 190015581-010 Written By: NOBALOGS (00214) Date: 10/03/2019 08:08 AM

INFORMATION: On 09/27/2019 The preliminary exam was held on this matter at 52-1 District Court. After the hearing, the Oakland County Prosecutor, Beth Wiegand was shown a new SNAP Chat on Nick Remingtons (HULKOLAS) SNAP CHAT account by the victim Preka's step

father Jamie Thom. Thom advised Wiegand that he was sent this SNAP CHAT by one of Denis Preka's friends named Avery Eckert on 09/26/2019.

SNAP CHAT: The SNAP CHAT shown to Prosecutor Wiegand consisted of a cartoon/bitmoji image of a male subject inside a jail style cage with the words "To all 5,000 of you beautiful motherfuckers I need ketamine, who got? Thanks, nick". See attached photocopy of the SNAP CHAT.

SNAP CHAT PRESERVATION LETTER 09/30/2019: After learning of this new SNAP CHAT, and knowing that Nick Remington is in Oakland County Jail and should not have access to a cellular phone or computer, I sent SNAP CHAT INC. a preservation letter requesting the company preserve all snaps related to the account (HULKOLAS) from the time frame of August 1, 2019 until October 1, 2019.

SEARCH WARRANT: On 10/03/2019 I obtained a search warrant for the Snap Chat information of (HULKOLAS) reference the preservation letter sent. I am awaiting this information.

SEARCH WARRANT INFORMATION: At this time, no information has been obtained that can identify the publisher of the SNAP CHAT cartoon/bitmoji that was sent above. No identifying information from SNAP CHAT or phone carrier services is available as to whom sent this SNAP CHAT.

ORIGINAL 911 CALL: A CD copy of the original 911 call was placed into evidence on 10/03/2019.

CR No: 190015581-011 Written By: NOBALOGS (00214) Date: 01/07/2020 01:54 PM

08/21/2019: I, Detective Balog along with Oakland County Prosecutor Beth Wiegand responded to the University of Michigan campus in Ann Arbor to speak with subject Joshua Anapoell. Anapoell had been interviewed by University of Michigan Police back in December of 2017 when Nicholas Remington was the victim of a drug related robbery, University of Michigan report #1790303767. In the University of Michigan report, Anapoell states that he spoke with Remington shortly after Remington had apparently been robbed. Anapoell stated that Remington told him that he, (Remington) had just been punched in the face and "they" took his money and phone, but didn't get his drugs. Anapoell stated that Remington showed him a baggie of white powder, all the while he was speaking to Anapoell. Anapoell also indicated in this report that Remington was known to be selling drugs in the Dorms.

EXHIBIT

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PEOPLE OF THE STATE OF MICHIGAN,

vs Case No. 19-272593-FC

NICHOLAS MAXIMILLIAN REMINGTON,

Defendant.

_____/

MOTION TO DISMISS

BEFORE THE HONORABLE VICTORIA A. VALENTINE

PONTIAC, MICHIGAN – WEDNESDAY, APRIL 14, 2021

APPEARANCES:

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WITNESS PAGE

(None.)

EXHIBITS:

(None offered.)

Pontiac, Michigan

Wednesday, April 14, 2021

- - -

(At 9:52 a.m., proceedings convened.)

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

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

MR. ROCKIND: Neil Rockind, P-number 48618. I'm co-counsel for Nicholas Remington.

MR. LEWIS: Good morning, Your Honor. Randall Lewis on behalf of Mr. Remington as well, co-counsel, P46134.

THE COURT: Thank you.

Mr. Remington, your name for the record, please, sir.

DEFENDANT REMINGTON: Nicholas Remington.

THE COURT: And who is Mr. Thom?

MR. KEAST: Mr. Thom is the victim's stepfather.

MR. THOM: Yes, Your Honor, James Thom.

THE COURT: Thank you, sir.

And Prosecutor McDonald, did you want to put an appearance on?

MS. MCDONALD: Karen McDonald on behalf of the People.

THE COURT: Okay. Go ahead with the motion, please.

MR. ROCKIND: Judge, I don't know how much time you've allotted for us to have this conversation today, but this -- the discovery and due process violations that occurred in this case prior to Mr. Keast taking over the case, and really prior to -- I'll just say prior to Mr. Keast taking over the case, are abominable. They're some of the worst, most egregious discovery disclosures and failures that I've seen in 27 years. And I hate when lawyers go on and start to talk about their history or their experience or their -- you know, or their time, you know, their time practicing. I hate that because I always feel like that's just sort of a backdrop.

But early on in the case we began to experience and believe that there were discovery failures and that there were issues with the way that the case was being prosecuted. And we took great effort and great pains, went to great lengths I think, to detail in our motion the history, breaking down each and every one and how we ultimately came to those and how they continued to stack up one after the other.

So one of the things that I kind of want to fast forward to because it doesn't seem like -- one of the things that I want to fast forward to because it doesn't

seem like there's disagreement from the State based on the State's responsive pleading, that we have -- that there were discovery, we'll just say shortcomings. What I was troubled by when I read the State's response, and I had been in regular communication with Mr. Keast about this case, what I was troubled by was that I didn't think the State went far enough in attempting to explain it to the Court.

I didn't think the State actually took a position. It seemed like the position was, this occurred, we know that this occurred, it was very -- yeah, it happened, the information wasn't -- report number ten wasn't disclosed and we're agreeing to a remand. But the discovery abuses in the case and the due process abuses in the case specifically relate to Brady material and MCR 6.201 obligations that are placed upon the prosecutor. Because they are more than just an advocate, they're more than just an opponent in court, it's not just Neil versus whoever the prosecutor is, or Randy versus whoever the prosecutor is, it's actually -- it is that person representing the State. And part of the people that they're obligated to protect is the accused.

So when a prosecutor stands in court and says I represent the People, (indiscernible) that body of people which is not particularly capable of being identified.

They don't represent the victim. They don't represent the decedent, even if that's how prosecutors have styled themselves over the course of the last 20 years. They represent the People. And the People includes Mr. Remington. And it's part of their responsibility, it was part of the original trial prosecutor's responsibility to ensure that Mr. Remington received due process even if the information that came across her desk or came to her was unfavorable to the State.

And so when I read the State's response, and I have a lot of respect for Mr. Keast, I am interested to hear the Court press him, and I hope the Court does press, because I think part of this issue, part of the Court's ultimate conclusion in the case has to be why did this happen. Part of the Court's ultimate decision making, what has to go into the mix is, why did this happen, what actually happened.

So let me fast forward to the end of sort of where our brief ends and their brief ends. The People's position seems to be legally in the case, and I don't want to -- it seems to have the feeling of, no harm, no foul. That currently is the way that their brief came across to me. Which is, yeah, I know that my 350 pound lineman jumped on top of the quarterback, and I know that it was clearly after the whistle blew, and I know that there's

the -- but you know what, the quarterback will be able to play in his career again so we can just, you know, don't worry about it, you don't have to kick the guy out, you don't have to suspend him, you don't have to actually fine him, because he'll be able to, the quarterback will be able to return to the game at some point.

But that's not the case here. Essentially, the prosecutor's position is that there is no consequence to the State for what was a clear discovery, due process violation. So let me break it down. MCR 6.201, even if a lawyer, a defense lawyer never asks for specific information, MCR 6.201 places obligations upon the prosecutor that include mandatory disclosure. Mandatory disclosure of -- and this is a -- let me just provide it specifically to the Court.

MCR 6.201 provides mandatory disclosure of the names and addresses of -- and this is upon request. Under (B) discovery of information known to the prosecuting attorney. Upon request the prosecuting attorney must provide each defendant any exculpatory information evidence known to the prosecuting attorney. Any police report and interrogation record concerning the case. Any written or recorded statement. Any affidavit, warrant and return pertaining to a search or seizure in connection with the case.

Start with -- and what remedy, because this really is sort of where the People's brief and the defendant's brief seem to really diverge. Our belief is that there is a consequence for pursuing Mr. Remington in a criminal case, for permitting the preliminary examination to go forward when the prosecutor has engaged, the original trial prosecutor engaged in discovery and due process abuses, where the information was not disclosed to the defendant, was not disclosed to defense counsel, where arguments were made that ended up contradicting and appear to contradict the statements made by the information that was received by the prosecutor.

Where there appears to be a concert in action, or concerted action between the detective in charge of the case and the prosecutor, where I don't believe that we've even begun to scratch the surface about what culpability the detective assigned to the case has. Because it currently seems like he's going to take the Sergeant Schwartz or Sergeant Schultz position that maybe, well, I was just following orders. Which is nonsense because he himself is a police officer, has his own obligations and duties.

Where in the meantime, what are the consequences for this violation of MCR 6.201? We clearly were not given exculpatory information. We weren't given

exculpatory information that was handed directly to the prosecutor. Now I know -- and I want to talk about what that meant. One of the arguments that the prosecutor made during the case in district court was that the messages on Snapchat had to have come from Mr. Remington; they had to have. At one point she made an argument, which I think was misleading, I don't know if I'll chalk it up to -- we can chalk it up to she just misspoke, or it could be that it was deliberately misleading. I'm not -- again, I know what the comment was.

The comment was, she made a comment about Mr. Remington's device, that these messages came from his device. The police never actually examined, never had, never examined Mr. Remington's device. There's no evidence of his device or a phone that had been seized from him that had been examined in this case.

So put that aside for a second. What was there? She made an argument that the messages on this Snapchat account, this (indiscernible) Snapchat account, had to have come from Nicholas because it was his account, etc., etc. In the meantime, she literally had been handed a Snapchat exhibit or evidence by the decedent's stepfather who -- was handed that in court. She was handed that -- it was handed to her. And I do appreciate Mr. Keast correcting his responsive brief. When the brief came to

us, I think it was confusing because it identified Ms. Preka as a person, the decedent's mother, who had received this Snapchat. That is not the case. I saw it. I talked to Mr. Keast about it, whether he had some other information, whether that was an oversight on his part.

He did correct it. We notified him of it and he dutifully corrected that, which I appreciated, but it doesn't -- it just makes it clear that Ms. Preka handed -- or excuse me, Mr. Thom handed to Ms. Hand, a Snapchat exhibit or picture that occurred that was published while Mr. Remington was in jail. There were -- that fact right there, that fact undercuts the State's entire argument that it made in the -- that it made in its responsive -- in its response to our motion to quash, and in its argument to Judge Reeds.

I think the State's position is, well, you can just remand it and we can have a do-over. I don't think things work like that. And I don't think MCR 6.201 suggests that things work like that. And MCR 6.201, where there is the obligation to disclose exculpatory information or evidence known to the prosecutor, that clearly wasn't done. There were -- and then any affidavit, warrant and return pertaining to a search or seizure in connection with the case, those weren't disclosed to us either by the prosecutor.

So let me tell you what I think happened and where I think this case should go. So for whatever reason, whether it was gamesmanship, whether it was some connection or affinity to the decedent, whether it was something to do with me or Mr. Lewis, you know, I can't begin to tell you, there was a failure on the part of the State that was prosecuting this case against Mr. Remington up until Mr. Keast took over the case. And that occurred at critical stages of the proceedings. And that failure, from my view, started early on in the case when we received discovery information from the State, and I laid it out in detail.

One of the things that I laid out in my pleading was that there were -- when you put some of these pieces together there are -- clearly there are inexplicable -- it's inexplicable, inexplicable, how the prosecutor could have received some of this information -- how could she think, for example, how could she seriously argue that a phone that was found at the scene of the incident, that was the decedent's phone that was seized by the police and that was ultimately examined by the police, how could one -- I mean, how is it conceivable to argue that that phone and that the extraction from that phone is not discoverable? It's a police report prepared by a police officer.

But her position, when she was sitting at her desk as I'm cross-examining the officer in charge of the case, the detective, Detective Balog, her position was they didn't have a chance to communicate or coordinate. And if they did, I'd love to hear about it, because it means that they had some plan. But I think that they were essentially caught off guard with the way that I was conducting the questioning. And as I asked him what transpired, like -- because I thought it was just bad police work, to be frank with you. I thought they'd just given the phone back to the decedent's mother and just said, hey, if you can find something on there, let us know. Which would be horrible police work.

And as it turns out, what happened is the phone was returned, then the phone was actually gathered again by the police. It was actually subjected to an extraction by a police officer. That officer actually created a report. That report contains exculpatory evidence. And then that was buried. And then when I present it to officer, we had no idea at all. But the prosecutor knew. It wasn't like she said, what report, what extraction, what are you talking about, Mr. Rockind, I have no idea, Your Honor, I need a break, can we approach, this is news to me. She didn't do any of that. Her reaction was, it's not discoverable.

Under MCR 6.201, she had a duty to provide that to us because it was a report. And if she thought that it wasn't discoverable and that she had -- there was a motion she could have filed, which would have been to file a motion for a protective order, which she didn't do. Stuff was just shocking.

That wasn't the least of it. At the time I thought that was like the height of it, I thought, oh, my God, this is serious. But, you know, the judge actually orders that we're entitled to it, we address it. But it continued. It continued with the prosecutor interviewing, with Detective Balog, a witness who was -- an eyewitness, the homeowner. Can we back up for a second? This is a case in which they're claiming that my client, with three other people in the home -- one now died -- that my client, in front of two living witnesses, they're claiming that he handed drugs to Mr. Preka. And the prosecutor chose not to call either one of the eyewitnesses at the preliminary examination. Just gamesmanship.

So then what happens is, we know, we have information through our own investigation, of what took place in an interview with Ms. Hand and the detective, Detective Balog, and this witness. And I start questioning the witness about it. And what happens? Ms. Hand -- you know, I said did you -- because clearly if a witness tells

a detective or a prosecutor that they're not -- that there are contradictions or inconsistencies or you're changing your story, then I would say to you that what that -- that's exculpatory. That has to be memorialized. It has to be turned over. You can't just sit on that and say I'm going to put that in my back pocket and hide it.

Which is going to lead to a point in a second about why this case needs to be dismissed, and that is that we only found that out through our own investigation. And when I questioned Detective Balog about that at the preliminary examination, his response was -- I said, did you say to Mr. Wiedenmeyer [ph] -- and I'm paraphrasing -- that he had -- he was changing his stories, or he had told four or five different stories? And his response was so cagey and so cute; I did not. And so then the question was; well, did Ms. Hand? And then she objected to hearsay, like she objected to her own statement to the witness as hearsay, to keep it out.

But here's the thing; there was no report prepared. It wasn't memorialized. It wasn't provided to us. It wasn't disclosed to us. It wasn't produced in any kind of -- there wasn't a contemporaneous, you know, memorialization of the witness -- of what Ms. Hand said or what Detective Balog said.

I will tell you that since that time, almost,

what is it, 18 months later or so, after I presented that issue to Mr. Keast, Mr. Keast contacted the detective and said to the detective, you need to memorialize that. And he did in a report that has now been provided to us that is about two or three lines, which I would even suggest doesn't come anywhere near detailing the treatment and the statements that Mr. Wiedenmeyer made to the detective and to Ms. Hand.

I will say that I have a good faith belief, based upon concrete evidence, that my office and us, what we gathered during our investigation as to what Mr. Wiedenmeyer was told and what he said and the pressure that was put on him during that interview, I'm confident that the only reason why Detective Balog prepared any report at all, which was maybe a line or two, which isn't even accurate by the way, was because the prosecutor said you need to prepare some kind of report that details that.

How do you memorialize something two years later? What's the point of having a witness in the room to listen to the interview unless the point is to contemporaneously memorialize and have the witness do it? But nobody was claiming to be a witness until we pressed him on it. This was a gross abuse of the power of the prosecutor, and a gross abuse of the power of having a police officer sit in as a witness.

Even if one could argue that it's work product, which it's not, it's not work product for the detective. The detective doesn't work for the prosecutor's office. He has an obligation to memorialize exculpatory evidence, too, he has a separate obligation. So why didn't he prepare a report? Why was this report prepared when Mr. Keast told him to, but why wasn't there one that was prepared after the interview with Mr. Wiedenmeyer? I can guess that the interview wasn't favorable to the State and so there was no -- it wasn't memorialized. And had we not actually done our own investigation it would have remained hidden.

There is not a single bit of evidence to suggest that the prosecutor at the time was going to disclose to us any of the following:

There was no evidence she was going to disclose to us that the cell phone had been returned to the State, or to the police.

That the cell phone had been extracted, that there was potentially exculpatory evidence on the cell phone extraction.

That Mr. Wiedenmeyer had been interviewed. That Mr. Balog had been present. That the witness had been confronted, and had been confronted with an allegation that he had changed his stories multiple times.

There is no evidence to conclude that she was going to disclose any of that evidence to us because she didn't disclose any of that evidence to us voluntarily or willingly.

There's no evidence to suggest that she was going to provide to us the evidence of her and Mr. Balog's interviewing of any other witnesses in the case.

There's no evidence that she was going to provide to us the Snapchat exhibit that was handed to her by Mr. Thom. There's no evidence that we were going to receive the Snapchat exhibit.

There's no evidence we were going to receive the letters that were sent to Snapchat by Detective Balog. No evidence we were going to see the affidavit in support of a search warrant that was sent to Snapchat. No evidence we were going to see what the return was. No evidence we were going to see what conclusions Snapchat sent to them; any information about the phones or the accounts that were used, the WiFi accounts that were used. There is no evidence that we were going to receive any of that.

In fact, I would go one step further that this abuse is so bad, let me tell you why. Because there are people, there are probably lawyers out there that would have looked at the case that the prosecutor had presented to Mr. Remington and may have suggested to him that he

enter a plea, that he try to do some kind of a Cobbs plea or negotiate some kind of plea bargain. And somebody else in Mr. Remington's shoes, who didn't have the lawyers who are willing to go through this fight, and didn't, honestly, have the benefit of a year of the pandemic to battle and to watch the prosecutor, could have been pressed by a trial judge focused on his or her calendar, or his or her dashboard or scorecard or whatever other thing that the Supreme Court calls it, and could have pushed someone like Mr. Remington and us into an early trial date and could have said -- and the prosecutor could have then made some kind of plea and the person could have taken it and they would stand convicted by plea with no real right of appeal.

And all this evidence would have been hidden because there's no reason, there's not one single thing that anybody could point to. I will turn the podium over to Mr. Keast, or anybody else, to point to one single fact that reveals that Ms. Hand was going to disclose any of this to us.

What happened was the opposite. There was a shadow investigation going on by Ms. Hand and Mr. Balog. It was done in the darkness. It was done in the dark. It was done quietly. What do I think happened? I think that when Ms. Hand got that document from Mr. Thom, and she

turned it over -- because there was clearly documentation that it was turned over to the detective. What I think happened? I think they went into panic mode. You can't tell me that Mr. Balog and her didn't actually communicate. Because at that point all she had to do was send it to Mr. Lewis or I; we were in regular communication with Ms. Hand about a variety of cases. We were never told that.

So what I think happened? They then investigated. Rather than tell us, they actually went and got a search warrant. Think about this, Judge. The police went and got a secret search warrant. Not from Judge Reeds, who was presiding over the case, but they got a secret search warrant from a magistrate in the 52-1 District Court. What were they -- what was the -- what crime were they investigating? When you make an application for a search warrant you've got to make an argument that there's some crime you're investigating. What crime were you investigating?

What they were investigating, what they had probable cause to believe, was that they had been handed exculpatory evidence. And what they wanted to do, was they wanted to have a judge issue them a search warrant that they could then send to Snapchat that Mr. Lewis and I wouldn't be aware of, and that they could investigate this

exculpatory evidence and try to defuse the timebomb that had been thrown into their case. They wanted to hand us the bomb, they wanted to defuse it, and they wanted to hand it to us and say, here you go.

And I believe that's why we didn't hear anything about it until I ultimately (indiscernible) Mr. Keast with my Brady letter and all the other issues that I raised, where we started going back and forth about the absence of -- the failures on the part of the State up to this point.

THE COURT: Okay. Mr. Keast.

MR. ROCKIND: And I want to say one thing, Judge. Mr. Keast's position seems to be that -- the reason why we've asked for the remedy we've asked for is because there's no evidence, Mr. Keast wasn't present for the investigation or the proceedings that were handled by Ms. Hand, so he can't say, as much as I have respect for him and think he's an honorable guy, and I do believe that about him, he can't say what was told to Ms. Hand, what Ms. Hand knew, what wasn't memorialized, what wasn't written down, what wasn't disclosed, what wasn't shared, what was hidden.

And he can't say the same thing about Mr. Balog. Because Mr. Balog was, from our perspective, he was in lockstep with Ms. Hand. Reports not being prepared. Things being done out of order. Search warrants being applied for

to investigate the source or origin or impact of exculpatory evidence. Four (indiscernible) witnesses being interviewed before the exam but no reports being prepared for four or five months. You're telling me that there are two officers, one prosecutor, and one detective, both experienced, that are just -- both happen to be acting in a way, when you look at it from 20,000 feet, appears to be in lockstep to keep the information from the accused, but were doing it sort of absentmindedly, like they just didn't know that it was happening? That just doesn't -- that defies common sense.

So when the State says that the remedy here is to remand, I think the State sells short what other information is out there. Where does Mr. Remington, where does Mr. Lewis, where do we go to know that all of the information that we're entitled to has been turned over? Because all we have, when it comes to Brady material and Brady evidence, is trust. All we can do is trust.

So as much as I trust Prosecutor McDonald, and I do, it's not her fault; as much as I trust Mr. Keast, and I do, it's not his fault; those that were involved in the Brady and due process and discovery abuses have no reliability, no credibility, and we do not trust them as sources of this information.

So even if they were to come to the court, or to

swear or to take some oath, absent God standing over them with a thunderbolt in His finger ready to thunderbolt them if they lie, I don't trust what those two individuals, Mr. Balog or Ms. Hand, would say. We have no way of knowing what other information has been suppressed. And there is very good reason to believe that other information has been suppressed because it was suppressed.

So what does MCR 6.201 say? MCR 6.201 says that where there is a violation, a party fails to comply with this rule, the court, in its discretion, it is your discretion, may order a whole variety of things, and among the relief that you're entitled to -- among the things, among the arrows in your quiver, prohibit the party from introducing in evidence the material not disclosed or enter such other order as it deems just under the circumstances.

So what is just? The Snapchat evidence in this case -- so we believe justice is to dismiss the case. That is the just result. If the Court were to somehow think that that is not just, and I think that is the clear remedy that is appropriate in this case, the Snapchat evidence is garbage. It is unreliable. It is, for all the reasons that we put into our pleading that we're not litigating at this point.

But the Court has -- the evidence that wasn't

disclosed to us, in part, undercuts the Snapchat evidence. You have the power to exclude the Snapchat evidence and say it's not coming in. Want to make your case? You make your case with witnesses, go ahead.

I know Mr. Keast says that you also have the power to remand the case. You do, but circumstances have changed. Let me tell you one of the concerns I have about a remand as a remedy. Some people choose to let the criminal justice process play itself out. I encourage people to do that. Some people don't and they choose to pursue a civil remedy. They choose, for whatever reason, to attempt to file lawsuits. And in this case, the decedent's family has done just that.

One of the issues early in the case was a communication by Ms. Preka to one of the witnesses that I think is, were it to be played in open court, or were Ms. Preka to be questioned about it, I think it would be revealed to be evidence of obstruction and witness tampering. It was a 40-minute or so recording. I mentioned it in my pleading. That phone call included threats, intimations, intimidation of a witness. That was turned over to us.

As it turns out, since that time the Preka family, or the Thom family, have filed lawsuits against Mr. Remington, Mr. Wiedenmeyer, Mr. Gibrotz [ph], the

other individual who was present. So that is a change in the dynamic. Because now, as opposed to having just witnesses come to court, now you have witnesses who also face lawsuits and have lawyers. And I don't know whether the assistant prosecutor who handled the case previously was aware of that or involved in that. Certainly, if I were the prosecutor, I would discourage anybody, a complainant or a decedent's family, from filing a lawsuit because it could only make things worse, which it has.

But, you know, I don't know that a remand just solves it. There's a consequence here. The consequence is dismissal. And if the Court, for whatever reason, thinks a dismissal is too far of a reach -- which I don't in this case given the pattern -- then it is, at a minimum, the suppression of all the Snapchat evidence.

So I'm interested to hear the prosecutor's response. And I will share with the Court -- again, I know that these abuses occurred before Mr. Keast took over the case. He and I probably disagree about the culpability of Detective Balog. He may view Detective Balog as someone who is -- you know, was unaware of these things or was just following orders or was doing his job. I don't. And so --

THE COURT: Let me hear from Mr. Keast.

MR. ROCKIND: Sure.

MR. KEAST: Thank you, Judge.

The first line to my response makes clear that I, neither myself nor Prosecutor McDonald, condones anything that happened prior to January 1 of 2021, and let me just reemphasize that, Judge. My first line: The People must emphasize that this responsive pleading does not attempt to excuse or explain the non-disclosure of evidence favorable to defense.

I absolutely agree with Mr. Rockind that this evidence should have been turned over in 2019. There is no argument there. I included a list of communications between myself and Mr. Rockind. I generally do not do that, but I wanted the Court to make clear the timeline from when I took over this case and when Prosecutor McDonald took over the office in general.

I turned over everything as soon as I was made aware of Mr. Rockind's concerns. And I'm not saying that to be self-serving, Judge, I just want the record to be clear.

Now, my sole argument rests with the remedy that the defense is requesting. Not that a violation occurred, but the remedy. And the remedy I have suggested wasn't picked out of thin air. It's based upon the law. When the Court reads Brady v Maryland, and every case that's come down since then, when the Court reads the cases regarding

prosecutorial, judicial, police misconduct, the Court will find that a remedy is specifically and narrowly tailored to the violation. And again, these aren't remedies that I'm just suggesting or throwing out there. I'm not suggesting it's a do-over, no harm, no foul. My remedy is consistent with the law.

Now, there's a few cases I want to point out to the Court. The most specific case is from the Michigan Court of Appeals. It's in my brief. It's regarding blanket judicial and prosecutorial misconduct. It's a case from Wayne County where the assistant prosecuting attorney --

THE COURT: What's the name of the case?

MR. KEAST: I'll spell it for you, Judge. A-C-E-V-E-L. It's on page 8 of my brief.

In that case the Wayne County assistant prosecuting attorney conspired to commit perjury with witnesses, as well as the judge on that case. That prosecutor, and that judge I believe, were both prosecuted for those crimes.

Now, that violation I use as the benchmark for the worst that a prosecutor and a judge can do. They conspired with each other to commit a crime, as well as with a police officer who was assigned to the case. In that case the Court of Appeals ruled that there was no bar to a retrial. In effect, there was no dismissal with

prejudice because the remedy tailored was specific to the violation.

When we talk about a due process violation -- and when favorable evidence to the defense is suppressed, it is a due process violation, make no bones about that, Judge. But when there is a due process violation the cure to that violation is a fair trial. What I have suggested would be, in effect, a fair trial.

Now, this evidence appears to have been disclosed to assistant prosecuting attorney Beth Hand and the detective on September the 27th, 2019, as they were leaving the courthouse of the 52-1 District Court after the first date of preliminary examination. That should have been turned over immediately, but it wasn't.

Judge Reeds continued the examination October the 16th, 2019. At that examination, Mr. Rockind did not have the benefit of learning this exculpatory information so he couldn't make a motion to reopen proofs. I believe he should. That is why I'm suggesting that this case go back to the district court and the district court judge now have the opportunity to hear the defense arguments in this matter, Judge.

And Mr. Rockind has made a lot of statements about I can't say what was in Detective Balog's mind, I can't say what was in Ms. Hand's mind. That's correct. I

can only tell you how I handled the case and how I would have handled the case. I can't argue that there was a violation, Judge, because there was. There's no doubt about that. But the situation we're faced with now is the remedy. And I do acknowledge in my responsive pleadings that this Court does enjoy broad discretion when fashioning a remedy. My brief simply is pointing out to this Court that the remedies typically given by courts in these situations are exactly the remedy that I have suggested.

Thank you, Judge.

MR. ROCKIND: Judge, I have a couple of responses. I'm hoping that you're not done with Mr. Keast, because one of the issues under MCR 6.201, under subsection (J), there is a specific question about willful violation. The State hasn't addressed, one, whether, from their perspective, this was a willful violation. We've made our arguments that it certainly appears to be and that the detective in charge of the case certainly appears to have culpability. Quite candidly, I think if the detective were to testify in the case, he probably has Fifth Amendment rights as well given what I think are -- what is evidence of obstruction.

But there is a case, I know the Plants case, the Acevel case that Mr. Keast is talking about, was a case in

which the head of a drug unit in Wayne County, whose name was Karen Plants, Karen Plants had a witness on the witness stand who was an informant and she apparently had concerns that the informant would be potentially harmed by Mr. Acevel or others because of the way that the defense lawyer was conducting questioning, and he was trying to get police officers to disclose the identity of the informant or trying to get this witness on the witness stand to admit that he was in fact the informant.

And she went and met with Judge Mary Waterstone, and met with them privately. She had a private meeting with the judge, totally ex parte, met with that judge, talked about this specific issue. I think the detective may have actually been involved. And they created this separate record, and it was all done on a separate secret record, and then the instruction was to this witness that he was to lie about whether he was in fact the informant. So the idea was that -- so that was the concert in action, the obstruction, the subornation of perjury, all of that was what was at issue in that case.

Mr. Acevel was actually convicted at a trial, and then there was a remand, and the issue was really over this one specific issue. There was no claim anywhere else in the case, was no repeated historical discovery and due process abuses like we see in this case. There was no

attempt to hide who a witness was. There was no attempt to hide who the exculpatory -- or hide exculpatory witness interviews. There really was one issue, that the prosecutor and judge, I mean I don't want to make light of it, but it was that, was this informant, this witness on the witness stand, was he in fact the informant. And they were bothered by the fact that the defense lawyer at the time was pressing and pushing on that issue.

So even in that case there's no other claim that other, as far as I know, that other evidence had been excluded, that there was a historical pattern of discovery abuses. If there had been a historical pattern of suppression of favorable evidence -- there isn't even an argument that that's even favorable evidence, who the informant is.

This is the suppression, a historical pattern of the suppression of arguably favorable evidence, and of evidence under 6.201.

First, there was the suppression of the -- there was the argument that we weren't entitled to the extraction. That's nonsense. There isn't a single person that I think would actually agree with that. I don't think even Mr. Keast or Ms. McDonald would agree with that. It's nonsense. I mean, the police get a phone from the decedent that was at the scene; there may be a break

in the chain of custody because the phone was given back to the family then returned to the police department. But then there's an extraction done by a police officer. That is -- there is an obligation to disclose that.

And your remedy, if you don't think that you should have to disclose it, is not to say that it's not exculpatory. Your remedy is to seek a protective order. And nobody would have granted one because it's evidence found at the scene of the alleged crime. And the phone did contain exculpatory evidence. And under the protective order, I don't want to go into it, but the Court, I think, has an idea of what it is. We're dealing with an overdose case. There's evidence on the phone that I think that is arguably exculpatory evidence. And it was known to the police and to the State. That was suppressed.

A witness, an eyewitness changing his story in the presence of the prosecutor and the investigator, that was suppressed. That continued to remain -- the only reason why I know about it is because we did our investigation, but it was suppressed by the State. It was suppressed by the prosecutor, and it was suppressed by the detective. And if the argument is, is that the detective is somehow blameless in all of this, then that really does a disservice to what it means to be a police officer and a detective and to have a separate obligation.

I mean, if the prosecutor says go out and shoot this person in the hallway, I presume that the officer would turn to the prosecutor and go, Ms. Hand, I'm not going to go out and shoot that guy in the hallway; that would be a crime, that would be illegal. Well, I want you to go take this evidence and I want you to shred it. I would hope that a detective would say, I'm not going to go shred that, Ms. Hand; that would be wrong, I can't shred this stuff.

So to say, come on, interview this guy, but there are no notes; we don't have any notes of this interview with this witness. We're interviewing the witness for trial purposes. We don't even have a trial date. This is the argument that we're told now. We're interviewing this witness, Mr. Wiedenmeyer, before the preliminary examination, we're interviewing him, the detective and I, says Ms. Hand and Mr. Balog, we're interviewing him because it's for trial purposes. They didn't call him at the exam. Which is probably not a coincidence. And they had Mr. Balog there for what reason; to be a witness to what he said? A witness to what?

THE COURT: All right, Mr. Rockind.

MR. ROCKIND: Yes, Your Honor.

THE COURT: You've made all these arguments.

MR. ROCKIND: I want to make -- there is a case,

People v Obispo, O-B-I-S-P-O, and it's 225 Mich App 592, and that is a Court of Appeals case. I haven't Shepardized it, so if it's been reversed that would suck for us, but it is a case -- I'm being honest, I'm sharing with the Court, in that case the prosecution, there were discovery issues in the case and it turns out that there was a discovery order and I think there was (indiscernible) discovery order that was served on the police department, went to the police department, and then the judge made a -- the judge concluded that based upon the gravity and egregious nature of the discovery violations that the case ought to be dismissed.

The prosecution argued that the trial court's dismissal of the charges against (indiscernible) Obispo was inappropriate under the circumstances. We (indiscernible) a trial court's (indiscernible) regarding the appropriate remedy for non-compliance with a discovery order for an abuse of discretion and there are several cases cited. The exercise of discretion involves a balancing of the interest of the courts, the public and the parties. It requires inquiry into all the relevant circumstances, including the causes and (indiscernible) of tardy or total non-compliance in a showing by the objective party of actual prejudice, which I think we've done.

And in that case, on the basis of our review of the record we conclude the trial court did not abuse its discretion in dismissing the charges against defendant in response to the prosecutor's complete failure to ensure the defendant was provided with timely discovery. We do not believe the trial court's dismissal of the charges was unwarranted or unnecessarily harsh.

Mr. Remington, going forward, and I say this on behalf of Mr. Lewis and I, we simply have -- we have no way of knowing, even were this case to be dismissed without prejudice and reauthorized, we have no way of knowing what other evidence was suppressed. Because we were the source of identifying that there was some suppression of exculpatory evidence. So again, we renew our motion to have the case dismissed with prejudice.

If the Court is seeking an alternative other than suppression of evidence, then I would suggest to the Court that suppression of all of the Snapchat evidence in the case. That's not our preferred remedy, but that is another remedy. I believe a simple remand to begin the process anew, I think is not a sufficient remedy given the gravity of the due process violations that have occurred in this case.

THE COURT: Okay. Anything further, Mr. Keast?

MR. KEAST: Judge, I did my best to brief the

issue in my responsive pleading. You know, a few things I do want to address is that counsel brought up 6.201(J). It's not either one of the parties' responsibility, duty, or even our jobs, to suggest what's willful; it's the court, respectively. So it's not my position to suggest what is willful or what's not willful, for one reason, and one reason alone; it's the court that must fashion the remedy in this case.

But also, Judge, as a practical matter, as I stated, the very first sentence in my brief, the first thing I put on this record is that I cannot get in the heads of the individuals who were on this case, Judge. I can only talk -- deal with what I have done, and, you know, make analogy to the law and what the Supreme Court and the Court of Appeals have determined to be the appropriate remedy. I included that in my brief. I'm happy to answer any questions, Judge.

MR. ROCKIND: And I know they can't, Judge. But the people that took over Enron, for example, they could have been the most honorable people in the world, they were still handed -- they were still handed all of the violations and abuses that occurred before they took over. We aren't faulting Ms. McDonald or Mr. Keast. We're just saying that Mr. Remington is not lost in this mix, this impacts him. Because it's not Mr. Keast or Ms. McDonald's

fault, they're the ones who are left to sort of sweep up the remains here, but Mr. Remington is the one who has suffered throughout this because of those abuses. And there is a price to be paid and the People are the one that have to pay that price. And that price is dismissal.

THE COURT: Prosecutor McDonald, anything you want to state for the record?

MS. MCDONALD: No, Your Honor. I have confidence in Mr. Keast that he articulated our position accurately.

THE COURT: All right. Thank you.

With regard to this matter, have the attorneys had an opportunity to speak with regard to a remedy for this matter without the Court going at the motions?

MR. KEAST: Judge, when this information was first made to light, I believe I included that in my brief, my suggestion to counsel was the remedy early on, and then counsel indicated he was going to file this motion.

THE COURT: But your remedy, sir, was to have it remanded to the district court with regard to having a preliminary examination.

MR. KEAST: That's correct, Judge. I included the timeline in my brief. When Mr. Rockind spoke with me on March the 2nd and made me aware of the information he had not received from Ms. Hand, I confirmed it March the

3rd. I spoke with my office, Prosecutor McDonald, and we agreed to stipulate to the bond modification, which this Court signed, and also communicated to counsel the -- our suggested remedy to the case.

THE COURT: And as Mr. Rockind has indicated, the only information that he's now received is information that he's uncovered has existed. He has no assurances, (indiscernible) information or discovery that wasn't disclosed and that's what the concern is with regard to how this case is proceeding. I understand it's no fault of our current new prosecutor or yourself, sir, and that you're left to clean everything up.

MR. KEAST: That's correct, Judge.

And regarding Mr. Rockind's concern, I think the same could be said for every single criminal case that's ever issued in this state or in this country. Discovery goes through the prosecuting attorney governed by specific rules, not just the Code of Criminal Procedure, but the Michigan Court Rules, as well as Brady and our own ethical obligations. When violations are uncovered, as in the Michigan Court of Appeals case (indiscernible) Karen Plants, there are ramifications for the individuals who violate those. Ms. Plants and Judge Waterstone did face those violations, or those potential avenues of discipline.

I have the same responsibilities. And I can tell the Court that, as I indicated in my motion, I received an entire copy of the police reports and they all have been turned over in accordance with MCR 6.201. I do agree, if I received something that I believe is non-discoverable or it's privileged, the proper remedy for myself would be to file a motion for a protective order. Meaning that, hey, Mr. Rockind, I have this, I don't think you're entitled to it, but it's potentially exculpatory, so the judge should rule, yourself Judge, should rule on what's turned over.

But defense counsel indicating the concern that you can never know what's in a prosecutor/police file, that's uniform through every single criminal case and that's why we have specific rules governing the disclosure of certain material.

MR. ROCKIND: My counter to that is that when a case begins there is a general -- there's a trust factor. And the trust factor is between the defense, the court, and the prosecutor. And that trust factor is, is that just out of paranoia saying I don't trust that you've given me everything isn't going to fly, because if they have some facts, you have to have some fact-based reasoning.

So with Mr. Keast, were he on the case, I would have, from the beginning, I would have no reason, unless I

were presented with one, nor would Mr. Lewis unless he was presented with one, believe that Mr. Keast was holding out on evidence or holding -- or directing the detective to do something that was inappropriate. But we're not in that circumstance. The court rules -- like I said, it's not like all of a sudden when you take the court rules in your hand as a lawyer, that if you breach the court rule, if you breach 6.201 all of a sudden, you know, like a flag goes up behind Ms. Hand's chair, or that she gets shocked all of a sudden. We're not, like a Kewpie doll, where, you know, every time we mention her name she's saying ouch somewhere else in the universe.

The fact of the matter is, is that the only way that we have trust that the prosecutor is fulfilling his obligation, or her obligation under 6.201, and under the Brady rules, is if there's voluntary compliance. And we know there wasn't voluntary compliance. We know there was the opposite, there were breaches and violations of 6.201 and Brady. They were done right to our face. They were done to Mr. Lewis' face. They were done in the presence of the court. So no, I'm sorry that -- I know Mr. Keast says that there is a process involved, but that process is based on trust, and that trust has been broken.

So what's the aftermath? Mr. Keast says that he's given us everything that the police department

presented to him. I understand that, except the police department is not without fault here as well. There are reports that were prepared of interviews that occurred -- reports generated five months after an interview with a witness. And the report --

THE COURT: With regard to the reports that were given five months post the interview, was anything, to your knowledge, relied upon with regard to the drafting of those reports?

MR. KEAST: I can't speak to that, Judge. The report that counsel is speaking of right now, that occurred before I came on the case. There was a report that I asked the detective to author when Mr. Rockind made me aware of an interview that Detective Balog and Ms. Hand had with that witness. I asked him if he had written a supplemental report regarding that; he indicated he did not. I told him to write one and send it to me. When he did, I turned it over to defense counsel. That's with the witness, last name Wiedenmeyer.

The interview regarding witnesses --

THE COURT: Were there notes taken?

MR. KEAST: Excuse me, Judge?

THE COURT: Were there notes taken?

MR. ROCKIND: Testimony was no.

THE COURT: Okay.

MR. KEAST: I don't have any notes of those.

THE COURT: I'm sorry?

MR. ROCKIND: Mr. Balog testified that no notes were taken. Ms. Hand didn't take any notes. He didn't take any notes. This was of a witness who could have been called at the preliminary examination, but remember, the reasons for interviewing this witness at that time changed. At one point it was -- Mr. Balog testified at the preliminary examination that it was an informal interview. I don't know what that actually means. That's not a term that I'm familiar --

THE COURT: Mr. Rockind.

MR. ROCKIND: Yeah

THE COURT: Thank you, I was asking the questions.

MR. ROCKIND: I'm sorry.

THE COURT: Mr. Keast, with regard to the information, were there notes taken by anybody?

MR. KEAST: I don't have any indication that any notes were taken, Judge. I couldn't find any --

THE COURT: (Indiscernible).

MR. KEAST: I'm sorry. I couldn't find any notes in the file I inherited. I asked the detective if he took notes; he indicated he did not, so I had him write a supplement. Now, albeit, that supplement was authored

some year and a half after the actual interview.

THE COURT: Right. So what was it based upon, memory?

MR. KEAST: Correct.

THE COURT: Okay. And what about the witness; did the witness have notes?

MR. KEAST: I don't know that, Judge. I can tell you what I've been informed, but I don't -- I hesitate to tell this Court yes or no with any definitive answer on a question like this when I wasn't present two years ago. I was informed no, but that's all I can say.

THE COURT: I know, but it begs the question of, has everything been revealed. And, you know, prosecutors, they play an immense role in the judicial system. They play an immense role in protecting the public on all sides. I'm relieved that Prosecutor McDonald and yourself, sir, are now involved and attempting to remedy the issues that you see as a breach of the justice system. So I am very pleased about what's happened since this has come to light. But it's definitely very heavy, with regard to what's happened.

MR. KEAST: I agree, Judge.

THE COURT: The Court will issue a ruling.

MR. KEAST: Thank you, Judge.

We are scheduled for a pretrial tomorrow. Would

the Court like to continue that or schedule a new date?

THE COURT: Sure would, continue it. Thank you.

MR. KEAST: Thank you, Judge.

MR. ROCKIND: We'll be on tomorrow as well?

THE COURT: Yes, sir.

MR. ROCKIND: Okay, Your Honor. Thank you.

(At 10:45 a.m., proceedings concluded.)

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CERTIFICATION

I certify that this transcript, consisting of 44 pages, is a true and accurate transcription, to the best of my ability, of the video proceeding in this case before the Honorable Victoria A. Valentine on Wednesday, April 14, 2021, as recorded by the clerk.

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/s/ Cheryl McKinney, CSMR-5594
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EXHIBIT

E

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PEOPLE OF THE STATE OF MICHIGAN,

vs Case No. 19-272593-FC

NICHOLAS MAXIMILLIAN REMINGTON,

Defendant.

_____/

PRETRIAL

BEFORE THE HONORABLE VICTORIA A. VALENTINE

PONTIAC, MICHIGAN - THURSDAY, APRIL 15, 2021

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(None.)

EXHIBITS:

(None offered.)

Pontiac, Michigan

Thursday, April 15, 2021

- - -

(At 11:25 a.m., proceedings convened.)

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

MR. KEAST: Thank you. Good morning. Marc Keast on behalf of the People. The People consent to this hearing via Zoom.

MR. ROCKIND: Neil Rockind on behalf of Nicholas Remington. We consent to the hearing via Zoom.

MR. LEWIS: Good morning, Your Honor. Randall Lewis on behalf of Mr. Remington. We consent via Zoom also.

THE COURT: Okay, with regard to this matter, this is a pretrial. We did have a motion yesterday which was pretty lengthy in time. The Court is going to issue an opinion with regard to the motion; however, I am going to remand it down to the district court for a new preliminary examination, which will be detailed in the opinion.

So with regard to this matter, I don't think that the current dates are going to be acceptable, but I don't want to lose sight of anything, so I am going to put you on the docket for a status conference in 60 days.

Does that sound appropriate?

MR. KEAST: Yes, Judge. Once I receive the order, I'll send it to the 52-1 District Court as well. It's been my experience that when a case is remanded the circuit court sends that order, but I'll follow up with the 52-1 District Court and then I'll coordinate with counsel on that as well.

THE COURT: So Mr. Keast, one of the issues that I'd like to address, is that I would like to have it go to a new judge.

MR. KEAST: That would just need to be spelled out in the Court's order, I believe.

THE COURT: Okay. Not to suggest in any manner whatsoever that the judge did anything inappropriately, but based upon the arguments and the admissions made in the hearing, I'd like somebody with fresh eyes and doesn't have the history with regard to the status of the matter to be able to review the case.

MR. KEAST: Certainly, Judge. As long as that is spelled out in the Court's order, then I can indicate that to the 52-1 court administrator as well.

THE COURT: Thank you.

With regard to discovery, with regard to the preliminary examination, I'm going to need affidavits that discovery is going to be fully complied with and that

there has been not only a -- anything in possession or control and that there has been a search done with regard to any and all discovery whatsoever.

MR. KEAST: Certainly, Judge.

THE COURT: Any questions?

MR. KEAST: Not from the People, thank you, Judge.

THE COURT: What additional time, Mr. Lewis, and Mr. Rockind, would you need with regard to discovery?

MR. LEWIS: I'm sorry, Your Honor?

THE COURT: What additional time would you need with regard to discovery?

MR. ROCKIND: That's difficult to answer. In terms of what they're going to provide to us, you mean?

THE COURT: Well, they're required to provide everything to you.

MR. ROCKIND: Right.

THE COURT: Including making a search for anything in their possession or control. So my question is, I don't know what other information, I guess time to absorb or other avenues that you would need with regard to your additional discovery.

MR. ROCKIND: Forty-five days.

Is that enough, you think, Randy?

MR. LEWIS: Yeah. Yes.

MR. ROCKIND: I mean, it depends on what there is, obviously.

MR. LEWIS: Right. But I'm sure if there's -- if we need additional time, Marc will stipulate.

MR. KEAST: Sure.

THE COURT: I mean, one of the issues that I raised yesterday is with regard to any witnesses, whether or not they had any notes as well.

Anything else?

MR. ROCKIND: I guess the -- and this, I guess, is something that Mr. Keast will have to figure out based on the Court's ruling, but one of the issues that we raised during our motion hearing was that there was information in the possession of the former assistant prosecutor. And I don't know that her interests are, in particular, aligned with the State and the State's attorneys at this point. I'm not saying that they're not, but based upon the presentation of both of the parties, I think there are -- it would seem like Mr. Keast would almost have to consult with Ms. Hand, which I think is a challenge. Not, I guess, she's unavailable, but there are particular issues, and I don't know if Ms. Hand would be needed for a hearing of some sort. I'm not sure.

THE COURT: Okay, so I'm not sure what you're asking me, Mr. Rockind.

MR. ROCKIND: Well, because the Court is asking the prosecutor to do a diligent search, and the concern that we had -- and then to prepare an affidavit. And the question is, can Mr. Keast do that without relying on Ms. Hand's representations.

THE COURT: Well, I guess I'm not going to tell him how to proceed, but I would imagine --

MR. ROCKIND: I know. I'm more just conceptually trying to figure out how we -- so we had obviously sought alternate remedies other than dismissal, we had sought suppression of the Snapchat evidence. I don't know if the Court -- is the Court addressing that in its --

THE COURT: I am. I am, yes.

MR. ROCKIND: So I don't know if, when we go back, if that impacts the presentation at the exam, I don't know if that is evidence that will be permitted. Obviously, I'll wait for the Court's order on that.

But the reason why I bring up this issue about their ability to do this diligent search is that this diligent search would potentially involve communicating with and relying on the representations of the previous prosecutor, who has already -- you know, there were always issues presented. And I guess if Mr. Keast is comfortable doing that, or if we need a hearing with Ms. Hand, I don't

know, I'm just sort of throwing that out there because I haven't seen the Court's order. I just know that the State's going to be obligated to submit affidavits. If that means Mr. Keast, if that means Detective Balog, then so bit it. I mean, you know, if Detective Balog is going to prepare an affidavit making some representations, you know, God bless him.

THE COURT: Mr. Keast, anything you want to state, sir?

MR. KEAST: Judge, it's hard to answer any of those questions at the moment. I think, if I may suggest a course of action, I think once we obtain the Court's order, then we'll have a better idea as to which direction to take with any affidavits regarding discovery.

But this case would be remanded to the 52-1 District Court, at that time I'm sure counsel and I can agree upon a date for preliminary examination to continue. And then from there we'll have the opportunity for my own diligent search of the file, speaking with the witnesses, as well as counsels', regarding any discovery owed to the People. So I think if -- I don't want to get too ahead of ourselves, is basically what I'm saying, Judge.

MR. ROCKIND: And Judge, we may be -- if there's an issue regarding the witnesses who Ms. Hand did not

call, but who have been the subject of, at least in one respect, regarding the motion, I don't know if these -- because there's a -- I explained yesterday there was a pending civil lawsuit that was filed in the middle of a criminal case, which of course now complicates things.

If the witnesses are going to assert a privilege of any sort we're going to seek, in fundamental fairness, that the State actually permit the witnesses to testify with use immunity. And I know Mr. Keast and I, we can talk about that after we've seen the order, but the concern that we have, is that because of the events that have transpired, that Mr. Remington's right to have the case fully litigated could be compromised.

THE COURT: Okay. And with regard to, you're requesting -- you're going to be requesting the prosecutor's office to grant immunity to --

MR. ROCKIND: Well, I can talk to Mr. Keast about that. I'm just sort of trying to -- because once you remand it, the district court -- once you remand it, the district court is going to begin to want to set dates. We've got 45 days for us, that we've said we would need from when Mr. Keast gets that, when he submits to us, this is all the discovery we have. If there's nothing new, we don't need the time. If there's some more information and there are affidavits we have to review, then we'll take

the 45 days.

So my concern is, is that that 45 days is what we would need to review whatever new information there is from Mr. Keast and the State. And then we would have --

MR. KEAST: If I may interrupt. Are you saying you'd rather the case stay in circuit court for the next 45 days before it's remanded?

MR. ROCKIND: I'm just trying to rely on -- the Judge asked how much -- how much time we would need after you make your final representations regarding the discovery.

MR. LEWIS: I think that's a good idea.

MR. ROCKIND: We just said 45 days --

MR. LEWIS: Neil, I think that's a good idea, what Marc just said. I think that we should keep it here until we're ready to do the remand order. Because we have to talk to Marc about -- well, we have to see the Court's order first on the Snapchat, but we're going to have to talk to Marc.

THE COURT: (Indiscernible) with the Snapchat. I mean, there needs to be -- there needs to be complete transparency with regard to any and all discovery, any and all information. You know, going back a year and a half to make police reports and notes, I'm not satisfied with. And I'm not satisfied with regard to the review, you know,

ensuring that everything was looked for and turned over. And it's not that I have any information, it's only, Mr. Keast, that you weren't able to honestly answer questions, which I sincerely appreciate from your office, that you've been completely, you know, transparent. And, you know, I see a very bright road ahead with regard to how things are going to change and be done differently.

And your honesty with regard to not having requested certain information from witnesses, etc., is refreshing, but I need to make sure that both of our functions, all of our functions in the judicial system are upheld for the entire public. So I want to make sure that there is enough sufficient time for you, sir, to satisfy yourself and to present an affidavit that everything has been searched for and that there has been -- anything that's in your custody or control has been turned over.

MR. KEAST: I appreciate that, Judge. If I may suggest that if the Court were to order remand as part of the written order, it could have a date, perhaps 30 or 45 days out, for the actual date of remand. That way we could be in front of Your Honor until we go through independently this file to make sure that discovery is complete. And that way, Judge, we can address it with you, since you know, you know, the underlying facts of this case and you're aware of the recent motions, you just

ruled on the motions.

THE COURT: Okay. So sir, with regard to this, let me suggest this, how about if I keep the case for right now, that I reopen discovery with regard to a full search with regard to possession, anything in possession or control, including any additional information that Mr. Rockind or Mr. Lewis want to receive from witnesses, etc., and that you guys work together on any and all discovery issues and I have you come back in the 30 days so that we can see if you're ready to proceed back down to the district court.

MR. KEAST: I think that sounds fair.

MR. LEWIS: That sounds great. Because right now we're all just thinking out loud.

THE COURT: Okay. I understand.

Okay, so that's what we'll do then, I'm going to have a date in approximately 30 days. It can be a little longer if you need, Mr. Busch.

THE CLERK: Thank you, Judge, that would be 5/20/2021, 9 a.m., if you want it on a Thursday.

THE COURT: You know, let's give them their own separate date. They seem to require a little bit of additional time, which I think is appropriate.

THE CLERK: In that case, can we do 5/18/2021, 9 a.m.?

THE COURT: Does that work for everyone?

MR. KEAST: It does, Judge.

MR. ROCKIND: Yeah.

MR. LEWIS: Yes, Your Honor. Thank you.

THE COURT: Thank you everyone.

(At 11:38 a.m., proceedings concluded.)

- - -

CERTIFICATION

I certify that this transcript, consisting of 14 pages, is a true and accurate transcription, to the best of my ability, of the video proceeding in this case before the Honorable Victoria A. Valentine on Thursday, April 15, 2021, as recorded by the clerk.

Videotape proceedings were recorded and were provided to this transcriptionist by the Circuit Court and this certified reporter accepts no responsibility for any events that occurred during the above proceedings, for any inaudible and/or indiscernible responses by any person or party involved in the proceedings, or for the content of the videotape provided.



/s/ Cheryl McKinney, CSMR-5594
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EXHIBIT

F

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PEOPLE OF THE STATE OF MICHIGAN,

vs Case No. 19-272593-FC

NICHOLAS MAXIMILLIAN REMINGTON,

Defendant.

_____/

STATUS CONFERENCE

BEFORE THE HONORABLE VICTORIA A. VALENTINE

PONTIAC, MICHIGAN - TUESDAY, MAY 18, 2021

APPEARANCES:

For the People:
MARC ANDREW KEAST (P69842)
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For the Defendant:
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Videotape Transcription Provided By:
Cheryl McKinney, CSMR-5594
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WITNESS PAGE

(None.)

EXHIBITS:

(None offered.)

Pontiac, Michigan

Tuesday, May 18, 2021

- - -

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

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

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

THE COURT: Mr. Rockind.

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

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

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

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

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

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

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

THE COURT: Okay.

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

THE COURT: What was the additional Snapchat?

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

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

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

THE COURT: Okay. Mr. Rockind.

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

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

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

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

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

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

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

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

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

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

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

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

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

have to.

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

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

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

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

THE COURT: I never thought it did.

MR. ROCKIND: Whether everything --

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

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

MR. ROCKIND: Thank you, Judge.

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

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

MR. ROCKIND: I appreciate that, Judge.

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

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

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

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

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

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

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

MR. KEAST: I appreciate that.

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

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

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

MR. KEAST: We'll review the opinion.

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

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

Mr. Busch, do you happen to recall?

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

MR. ROCKIND: All right, Your Honor.

MR. KEAST: Fair enough, Judge.

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

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

MR. ROCKIND: Okay, Your Honor.

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

THE COURT: Okay.

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

THE COURT: Thank you.

MR. KEAST: Thank you for your time.

(At 9:20 a.m., proceedings concluded.)

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CERTIFICATION

I certify that this transcript, consisting of 16 pages, is a true and accurate transcription, to the best of my ability, of the video proceeding in this case before the Honorable Victoria A. Valentine on Tuesday, May 18, 2021, as recorded by the clerk.

Videotape proceedings were recorded and were provided to this transcriptionist by the Circuit Court and this certified reporter accepts no responsibility for any events that occurred during the above proceedings, for any inaudible and/or indiscernible responses by any person or party involved in the proceedings, or for the content of the videotape provided.



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EXHIBIT

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FILED Received for Filing Oakland County Clerk 5/21/2021 2:10 PM

STATE OF MICHIGAN

IN THE OAKLAND COUNTY CIRCUIT COURT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

CASE#: 2019-272593-FC
Hon. Victoria A. Valentine

vs.
NICHOLAS REMINGTON,
Defendant.

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OPINION AND ORDER REGARDING DEFENDANT'S MOTION TO DISMISS WITH PREJUDICE

At a session of said Court held on the
21st day of May 2021 in the County of
Oakland, State of Michigan

PRESENT: HON. VICTORIA A. VALENTINE

This matter is before the Court on Defendant's Motion to Dismiss with Prejudice for the Prosecutor's failure to produce exculpatory evidence.

ocument Submitted for Filing to MI Oakland County 6th Circuit Court.

In 2019, Defendant Nicholas Remington was charged with delivery of a controlled substance, causing death, under MCL 750.317a, which provides as follows:

750.317a Delivery of schedule 1 or 2 controlled substance; death as felony; penalty.

> A person who delivers a schedule 1 or 2 controlled substance, other than marihuana, to another person in violation of section 7401 of the public health code, 1978 PA 368, MCL 333.7401, that is consumed by that person or any other person and that causes the death of that person or other person is guilty of a felony punishable by imprisonment for life or any term of years.

It is undisputed that on June 13, 2019, Defendant's counsel served a Discovery Request on the Oakland County Prosecuting Attorney Jessica Cooper, demanding the production of any discovery pursuant to MCR 6.201.

MCR 6.201. Discovery states in part:

> (B) Discovery of Information Known to the Prosecuting Attorney. Upon request, the prosecuting attorney must provide each defendant:
>
> (1) any exculpatory information or evidence known to the prosecuting attorney;
>
> (2) any police report and interrogation records concerning the case, except so much of a report as concerns a continuing investigation;

On September 27, 2019, the preliminary examination commenced before the Honorable Travis Reeds. On October 16, 2019, at the conclusion of the preliminary examination and based upon the evidence presented, Judge Reeds bound Defendant Remington over on the charge of delivery of controlled substance causing death. Mr. Remington's bond was set at

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$1,000,000.00. In 2021, after recognizing the discovery violations by the former prosecutor, the current Oakland County Prosecutor stipulated to the reduction of Defendant's bond to $10,000.

At the center of the Defendant's Motion to Dismiss is the former Assistant Prosecutor's violation of legal and ethical duties to produce evidence, including exculpatory information.

The Michigan Court of Appeals held in *People v. Dickinson*, 321 Mich. App. 1, 4, 909 N.W.2d 24, 28 (2017) that:

> There is no general constitutional right to discovery in a criminal case. The Michigan Court Rules govern the scope of discovery in a criminal case. MCR 6.201. MCR 6.201(B)(1) provides that the prosecution, upon request, must provide the defendant any exculpatory information or evidence. MCR 6.201(B)(2) provides that the prosecution, upon request, must provide the defendant with any police report concerning the case except for portions that concern an ongoing investigation. The prosecution bears responsibility for evidence within its control, even evidence unknown to it, and even where the nondisclosure was inadvertent and not intentionally withheld.

In the case before the Court, Defense counsel did in fact request discovery information. Therefore, pursuant to MCR 6.201(H), the Prosecutor had an ongoing continuing legal and ethical duty to turn over discovery promptly.

MCR 6.201(H) Continuing Duty to Disclose provides:

> If at any time a party discovers additional information or material subject to disclosure under this rule, the party, without further request, must promptly notify the other party. MCR 6.201(H)

Due to discovery concerns, on January 6, 2021, Defendants' counsel served a letter pursuant to *Brady v Maryland*[1], which addressed potential due process and discovery violations

[1] *Brady v. Maryland*, 373 U.S. 83, 84, 83 S. Ct. 1194 (1963).

ocument Submitted for Filing to MI Oakland County 6th Circuit Court.

committed by former Assistant Prosecutor Hand. Current Assistant Prosecutor, Mr. Keast, immediately addressed the issues set forth in the letter.[2] His response confirmed that Ms. Hand intentionally failed to produce a significant amount of discoverable evidence. As conceded by the current prosecutor's office, much of the evidence withheld by Ms. Hand is exculpatory.

> "[E]xculpatory evidence, falls within the *Brady* rule. See *Giglio v. United States*, 405 U.S. 150, 154 (1972). Such evidence is "evidence favorable to an accused," *Brady*, 373 U.S., at 87, so that, if disclosed and used effectively, it may make the difference between conviction and acquittal. Cf. *Napue v. Illinois*, 360 U.S. 264, 269 (1959)." *United States v. Bagley*, 473 U.S. 667, 676, 105 S. Ct. 3375, 3380 (1985).

The concealed evidence includes, but is not limited to, a September 26, 2019 "Snapchat" from a "Hulkolas" account, which was allegedly the name of Defendant's snapchat account. The Snapchat account and its messages are at the center of the issues in this case. Ms. Hand's failure to produce the discovery and blatant misrepresentation to the Court at the preliminary exam, is nothing short of intolerable due process violations.

As stated in *People v Dobek*, "a prosecutor's role and responsibility is to seek justice and not merely convict."[3] And while, the prosecutor's knowledge of the information being withheld is not required under the rule, here, it is conceded that Prosecutor Hand had knowledge, and deliberately withheld evidence and information that was required to be produced.

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[2] Beth Hand was the former Assistant prosecuting attorney assigned to this case.
[3] *People v. Dobek*, 274 Mich. App. 58 (2007).

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Our courts have held that the withholding of exculpatory evidence by the prosecutor after discovery has been requested, constitutes a *Brady* Violation. *People v. Dickinson,* 321 Mich. App. 1, 4, 909 N.W.2d 24, 28 (2017).

The information that has now been provided shows CR No. 190015581-010, created by Det. Balog, that on 9/27/2019 (Start date of the Preliminary Examination) former Assistant Prosecutor Hand was provided a Snapchat that was sent on 9/26/2019 from the "Hulkolas" account.[4] The undisclosed "snap" was shown to former Assistant Prosecutor Hand by Jamie Thom, the decedent's step-father.[5] The Snapchat stated, "To all 5,000 of you beautiful motherfuckers I need ketamine, who got? Thanks, nick".[6] **Defendant Nick Remington, however, was in jail on 9/26/2019 and did not have access to Snapchat or this "Hulkolas" account from jail.** This evidence is in direct contravention of the claim of the assistant former prosecutor. This evidence was not produced until 2021 when the current Assistant Prosecutor, Mr. Keast, tendered the discovery to Defense counsel.

[4] People's Br. Filed in Resp. to Supp. Mot. pp 11-12, Apr. 9, 2021.
[5] *Id.* at 12.
[6] *Id.*

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CR No: 190015581-009 Written By: NOBALOGS (00214) Date: 09/30/2019 08:04 AM

09/30/2019: I sent SNAP CHAT a second preservation letter request for the SNAP CHAT account HULKOLAS, after information was obtained that new SNAPS have been disseminated from this account, while the suspect/account owner has been in Oakland County Jail. A search warrant and or subpoena shall be sent to SNAP CHAT at a later date for requested preservation information.

CR No: 190015581-010 Written By: NOBALOGS (00214) Date: 10/03/2019 08:08 AM

INFORMATION: On 09/27/2019 The preliminary exam was held on this matter at 52-1 District Court. After the hearing, the Oakland County Prosecutor, Beth Wiegand was shown a new SNAP Chat on Nick Remingtons (HULKOLAS) SNAP CHAT account by the victim Preka's step

father Jamie Thom. Thom advised Wiegand that he was sent this SNAP CHAT by one of Denis Preka's friends named Avery Eckert on 09/26/2019.

SNAP CHAT: The SNAP CHAT shown to Prosecutor Wiegand consisted of a cartoon/bitmoji image of a male subject inside a jail style cage with the words "To all 5,000 of you beautiful motherfuckers I need ketamine, who got? Thanks, nick". See attached photocopy of the SNAP CHAT.

SNAP CHAT PRESERVATION LETTER 09/30/2019: After learning of this new SNAP CHAT, and knowing that Nick Remington is in Oakland County Jail and should not have access to a cellular phone or computer, I sent SNAP CHAT INC. a preservation letter requesting the company preserve all snaps related to the account (HULKOLAS) from the time frame of August 1, 2019 until October 1, 2019.

SEARCH WARRANT: On 10/03/2019 I obtained a search warrant for the Snap Chat information of (HULKOLAS) reference the preservation letter sent. I am awaiting this information.

SEARCH WARRANT INFORMATION: At this time, no information has been obtained that can identify the publisher of the SNAP CHAT cartoon/bitmoji that was sent above. No identifying information from SNAP CHAT or phone carrier services is available as to whom sent this SNAP CHAT.

Despite the discovery failures by Ms. Hand, on 9/27/2019 she argued to the Court at the Preliminary Hearing:

ocument Submitted for Filing to MI Oakland County 6th Circuit Court.

> MS. HAND: Judge, for – for counsel to say that there's no – nothing in evidence to suggest that the defendant was the person using this account, Snapchat is a – an application that's on your cell phone... So to say it's not him and that somebody else got ahold of his account and made these admissions, you know, flies in the face of – of logic and it flies in the face of the evidence that's presented.[7]

Prosecutor Hand argued to Judge Reed on 09/27/2019, that it was not logical that other people could post on "Hulkolas" account, despite the exculpatory evidence that was not produced.

Incredibly, at the continuation of the preliminary examination on October 16, 2019, and while wrongfully withholding the 9/26/2019 Snapchat, former Assistant Prosecutor Hand mislead Judge Reed by stating "The Snaps are in evidence."

> MS. HAND: Well, Judge, he doesn't have to reopen the proofs to do that. The Snaps are in evidence. The Court has already admitted them. He wants to sit here and argue to the Court each of them, there's no – there is no need to reopen proofs. And I would indicate, Judge, that it does go to the weight, not the admissibility and the – the records are complete. There is a certification indicating that they are.[8]

There is no question that *Brady* violations and numerous discovery violations knowingly occurred in this case. Intentionally denying defendant a fair trial undermines the legitimacy of the criminal justice system and has a rippling effect on the community's trust in the legal process.

---

[7] Prelim. Exam. Hr'g Tr. at 162:21-163:9, Sept. 27, 2019.
[8] Prelim. Exam. Hr'g Tr. at 162:12-19, Oct. 16, 2019.

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Pursuant to MCR 6.201(J), when a *Brady* violation is discovered, it is up to the court to fashion the appropriate remedy under MCR 6.201(J).

> (J) Violation. If a party fails to comply with this rule, the court, in its discretion, may order the party to provide the discovery or permit the inspection of materials not previously disclosed, grant a continuance, prohibit the party from introducing in evidence the material not disclosed, or enter such other order as it deems just under the circumstances.

Therefore, this Court orders that:

- Pursuant to MCR 6.201, all discoverable information shall be turned over to Defense Counsel within 14 days of the date of this Opinion and Order;
- All Snapchat evidence relating to the "Hulkolas" account is excluded as it is unreliable;
- An affidavit from both the former Assistant Prosecutor Hand, and the current Assistant Prosecutor Mark Keast shall be provided to Defense Counsel and filed with the Court within the 7 days of the date of this Order, detailing all known evidence. The affidavit shall include a list of all evidence the current and former Assistant prosecutors have knowledge of that has any relation to this case. The affidavit shall also include the date of any disclosure or production to the Defendants' counsel of the evidence and a list of any information that has not yet been produced;
- And, while this Court finds no fault in the handing of the Preliminary Examination by the experienced and esteemed Judge Reed, the Court finds that in the interest of justice, this case shall be remanded to District Court and shall be heard by a new judge.

This opinion does not address any Motions or issues previously filed by Plaintiff but adjourned by Plaintiff's counsel.

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For the reasons stated above, Defendant's Motion to Dismiss with Prejudice is Granted in Part and Denied in Part.

Dated: 5/21/2021

Victoria A. Valentine

HON. VICTORIA A. VALENTINE (P58546)
CIRCUIT COURT JUDGE

ocument Submitted for Filing to MI Oakland County 6th Circuit Court.

It reveals that the records that contain – that are purported to contain and to be sufficiently trustworthy to rely on are not, in fact, trustworthy. They're not, in fact, sufficiently trustworthy to rely on for business records.

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

THE COURT: Okay, response, Ms. Hand?

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

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

CR No: 190015581-014	Report Type: Follow-Up Report	Officer: NOBALOGS (00214)	014

NOVI POLICE DEPARTMENT

45125 W. 10 MILE RD.
NOVI MI 48375
248.348.7100

Case Report

Administrative Details:

CR No	Subject
190015581-014	Remington Snap Chat 05/26/2021
Report Date/Time	Occurrence Date/Time
03/19/2019 09:11	From: 03/19/2019 03:00 To: 03/19/2019 09:05
Location	Call Source
23132 MEADOWBROOK RD	Assoc/Clone
Dispatched Offense	Verified Offense
L3540 Defibrillate - NO	0996 Deliver Controlled Substance Causing Death
OIC	OIC Contact Number
Balog, Steve (NOBALOGS-00214)	
County	City/Twp/Village
63 - Oakland	62 - Novi
Division	
Investigations	
Report Type	
Follow-Up Report	
Created By	Created Date/Time
STEVE BALOG	05/27/2021 10:36 AM

Narrative:

REMINGTON SNAP CHAT: On 05/26/2021 I, Detective Balog received an email from Jamie Thom, (Dennis Preka's Step-father). The email contained an attachment that Thom had been given by a friend of Dennis. The attachment was a photo from HULKOLAS snap chat account which showed a real photo image of Nicholas Remington with several cartoon emojis surrounding him, and the words NEW COURT ORDER- Prosecutor hid evidence September 2019. Took u long enough. Nice job tryna pin me CORRUPTASS Oakland county. Dis case boutta get dismissed boyyyy!!! Remyboyz be bak in dis bitch soon my fellow fools. Jussrunit A? See attached copy of the snap chat. The snap appears to have come from Remington's HULKOLAS Snap Chat, however; the author of the snap is unknown.

NOTE: A photo copy of this new snap chat was added to the evidence file in this case.


Hulkolas
4m ago
I OBJECT!
hey idiot
NEW COURT ORDER - Prosecutor hid evidence September 2019. Took u long enough. Nice job tryna pin me CORRUPTASS Oakland county. Dis case boutta get dismissed boyyyy!!! Remyboyz be bak in dis bitch soon my fellow fools. Jussrunit A?

June 19, 2019

Tweet

Neil Rockind
@neilrockindlaw

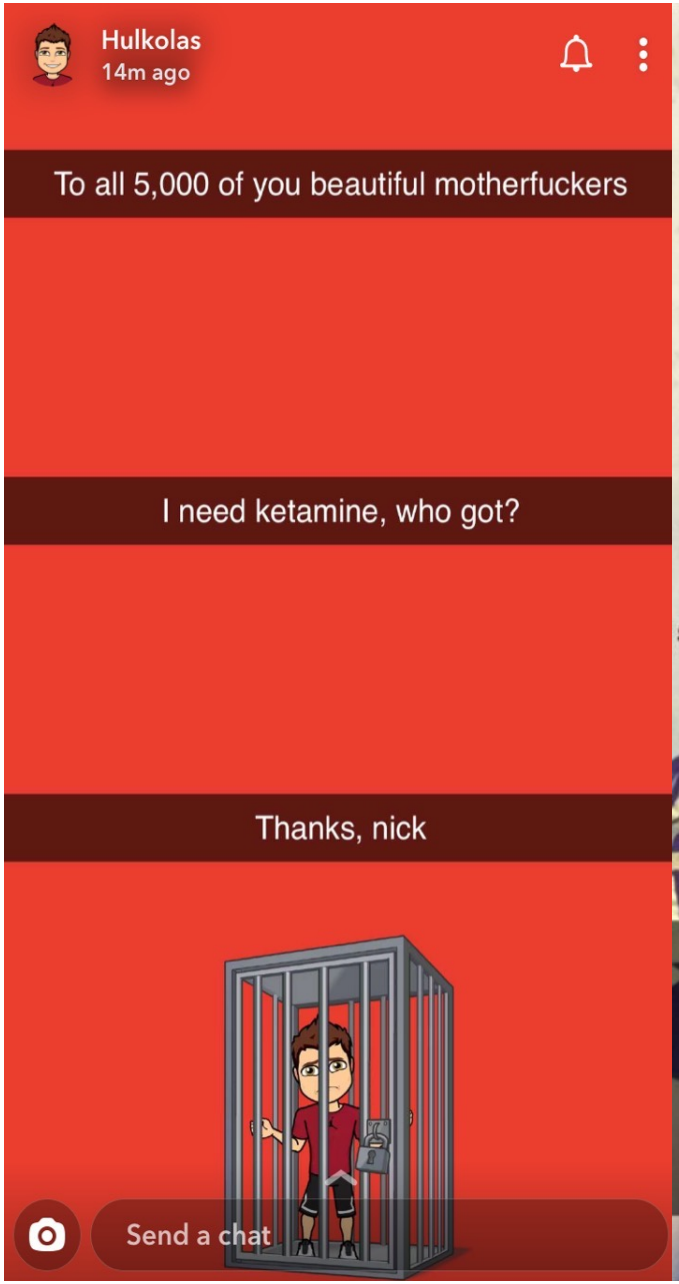
Just an FYI from your a criminal defense lawyer -- If you thought your @Snapchat messages were secret and private, I've got a DVD and table of snap messages from a current homicide case to prove you wrong.

2:32 PM · 6/19/19 · Twitter Web Client

2 Likes

Tweet your reply

September 26,2019



May 26,2021



EXHIBIT

H

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PEOPLE OF THE STATE OF MICHIGAN,

vs Case No. 19-272593-FC

NICHOLAS MAXIMILLIAN REMINGTON,

Defendant.

_____/

MOTION FOR RELIEF FROM ORDER

BEFORE THE HONORABLE VICTORIA A. VALENTINE

PONTIAC, MICHIGAN – WEDNESDAY, JUNE 9, 2021

APPEARANCES:

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Videotape Transcription Provided By:
Cheryl McKinney, CSMR-5594
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WITNESS PAGE

(None.)

EXHIBITS:

(None offered.)

Pontiac, Michigan

Wednesday, June 9, 2021

- - -

(At 9:53 a.m., proceedings convened.)

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

MR. KEAST: Thank you, Judge. Marc Keast on behalf of the People.

MR. ROCKIND: Neil Rockind, counsel on behalf of Nicholas Remington.

MR. LEWIS: Good morning, Your Honor. Randall Lewis, co-counsel on behalf of Mr. Remington.

MR. LAVIGNE: Good morning, Your Honor, for the record, Joseph Lavigne. I'm appearing on behalf of non-party Beth Hand. This is our motion for relief from order.

THE COURT: Okay, sir, go ahead with your motion.

MR. LAVIGNE: Thank you.

Your Honor, I know the Court's had an opportunity to review the motion and the brief, so I'm just going to summarize. I did not receive a response from any party, so I don't know anybody else's position, so I'd like to reserve a little bit of time to respond.

But the nuts and bolts of it are that Ms. Hand is not a party to this case. She's not an employee of a

party or a representative in any capacity. At this point she's completely unconnected to the case and is a private citizen. The People, who are the party to this case, are well-represented, both by the prosecuting attorney and assistant prosecuting attorney Keast. The Court has jurisdiction to direct a party to do or refrain from doing certain things, but with all due respect, the Court does not have jurisdiction to compel a former employee to make an affirmative affidavit of facts as the Court has purported to do in its May 21st order.

The authorities are laid out in our brief. I've also raised a couple of secondary concerns beyond jurisdiction, one of those being that the Court is essentially directing fact-finding on behalf of a party, which I think is a dangerous proposition to take. The Court has already fashioned a remedy, has already ruled, yet is still asking for parties to come forward, or for a non-party to come forward and provide a sworn affidavit of facts.

The second issue is, that that affidavit is something that can only be done based on personal knowledge, and the proposed affidavit deponent has not had access to this file now for almost six months. There has been very little substantive that has occurred. The Court's basically asking for a page-by-page or set-by-set

recitation of what was available and when and what was turned over and when, all of which the People are in a position to answer, but Ms. Hand is not.

The primary issue, Your Honor, though, is the jurisdictional issue. I don't believe the Court can compel Ms. Hand to file the affidavit that it has ordered. For that reason, we're respectfully asking that the Court amend its order and that she be granted relief from the order and that the Court strike the requirement that Ms. Hand file an affidavit.

You know, I also have raised in the brief the issue that the Court has made some very specific findings about how her actions may have affected the constitutional rights of Mr. Rockind and Mr. Lewis' client. Obviously, that puts her in a further very difficult position with respect to making an affidavit. But I don't believe we even get to that point because I don't think the Court has authority to order her, a private citizen at this point relative to the case, to do anything.

So with respect, Your Honor, we are asking that you amend that portion of your order and strike the requirement of an affidavit from Ms. Hand.

THE COURT: Mr. Rockind, would you like to respond?

MR. ROCKIND: I would. I have no idea, I say

that after giving it a lot of thought and sort of debating among the team of defense lawyers representing Mr. Remington, I have no idea what Ms. Hand and Mr. Lavigne are talking about. Let me say why I have no idea what they're talking about.

You didn't order Ms. Hand to do anything. You ordered the Oakland County Prosecutor's Office, on behalf of the State of Michigan, who's prosecuting this case, to attempt to -- and I thought you came up with a remedy -- attempt to solve or attempt to give the State an opportunity to create, to attempt to put some salve on the gaping wound that has been discovered and identified and that's been ultimately pointed out by the Court in the disclosure shortcomings by Ms. Hand, contained in your order, identified in your order, prior to Your Honor issuing that order and prior to Ms. Hand leaving the prosecutor's office.

That's correct hasn't ordered Ms. Hand to do anything. Unless I'm mistaken, I don't believe the Court sent Ms. Hand a subpoena. As far as I know, the Court didn't send Ms. Hand a demand for an affidavit. As far as I know, the Court didn't order Ms. Hand to appear personally and have to answer any questions.

What I do believe is that the Court fashioned a portion of a remedy and then addressed another portion to

the State, which was, that if you want to move forward with this case, then you need to be able to satisfy the Court, you, Judge Valentine, that there is -- that there are no outstanding Brady issues, outstanding non-disclosures, outstanding failure to disclose, and all the issues that the Court is already aware of that came in the -- during the prosecution of Mr. Remington in the district court and following before Judge Alexander.

Unless I missed something, the issue that it seems like Mr. Lavigne and Ms. Hand are attempting to address, is one that really is between the State and Ms. Hand. Your Honor [sic] was directed to the party, which is the State of Michigan, and you provided an order and a direction for the State of Michigan, to attempt to continue to salvage this prosecution. And those are my words, not yours. I know that I'm advocating here, but that's how I interpreted your order.

Your order was, there's been some procedural and substantive unfairness, and if the State, one way for the Court to be satisfied that this unfairness is capable of being remedied, you fashioned one issue, which was the one portion of the order, which was the exclusion of the Snapchats in this case.

And the other was that Mr. Keast would prepare an affidavit on behalf of the State, and that the State

should gather an affidavit from Ms. Hand, because she was the prosecutor who had intimate and personal knowledge of things that occurred on her watch while she was the prosecutor on this file.

So I'm not sure what the relief from order is. The prosecutor hasn't sought leave for relief from the order. The prosecutor, as far as I know, Ms. McDonald's office and Mr. Keast, have attempted to comply with the Court's order by having -- I believe Mr. Keast reviewed the matter and prepared a very detailed affidavit.

Am I right, Mr. Keast, you did that?

MR. KEAST: Correct, I did.

MR. ROCKIND: He's submitted that and he made us aware of it. And I believe he submitted it to the Court. So I'm not sure what relief from order Ms. Hand is seeking.

She, of course, can choose to tell the State, which apparently, she has, that she has no interest or is unwilling or incapable of providing that affidavit. If she's unwilling, incapable, or unable to sign an affidavit and cooperate with the State prosecutor's office, then that is something that the Court will have to deal with, with the State prosecutor's office. But this isn't an issue that even involves -- this isn't a petition -- this is really Ms. Hand's attempt to spare the prosecutor's

office from having to deal with Your Honor and Your Honor's directions. I mean, I don't know how else to explain that.

I mean, to me, the other thing that I thought is interesting, this is between the prosecutor's office and Ms. Hand. It's not between the Court and Ms. Hand. The Court --

THE COURT: Mr. Keast, go ahead, sir.

MR. ROCKIND: I'm sorry, Your Honor, I wanted to say one other thing.

THE COURT: Go ahead.

MR. ROCKIND: I know that Mr. Lavigne referred to Ms. Hand as a private citizen now. And I think that that is a title -- that is a title and a designation that is too conveniently capable of being adopted by somebody who was essentially the captain of a capital case, capital prosecution I'm referring to as a case, for well over a year.

And we've already discovered in this case that Ms. Hand is aware of and had -- as I think Mr. Lavigne pointed out, an affidavit would have to be based on personal knowledge. And I think one of the Court's concerns -- I don't want to speak for Your Honor and of course you'll tell me if I'm overstepping my bounds, I don't want to speak out of turn -- but that there were

things that were within Ms. Hand's personal knowledge, exclusively within her personal knowledge regarding the investigation and prosecution of Mr. Remington.

Mr. Keast is simply not in a position to be able to answer some of those questions. He doesn't have that personal knowledge. Mr. Balog doesn't have that personal knowledge. Apparently, Mr. Terry Healey [ph] himself, who is purportedly this person who was involved in this, I'll call it an as-yet phantom interview with a res gestae witness, because there's not a single bit of documentation of Mr. Healey and Ms. Hand sitting down with this eyewitness.

We know that it took place. It's been conceded by Ms. Hand on the record before Judge Alexander that it took place. Judge Alexander specifically asked her whether she intended to provide it, and she at one point -- Judge Alexander said, well, I think it was -- she acknowledged that there was a second interview, and she said we haven't -- the judge said on page 17, "You didn't give him any of the information from the second interview?" This is from December 4, 2020. Ms. Hand's response, "The second interview after the preliminary examination? No, Your Honor, not yet."

"Not yet" means it's coming. Now, I will say, as an officer of the court, that I wasn't present at that

interview. I think I can speak for Mr. Lewis, who's sitting pensively with his hands over his mouth watching, that he wasn't present for that interview. I know for a fact that Mr. Lavigne wasn't present, because he wasn't involved in the case, and probably had no idea that any of this was going on before he agreed to represent Ms. Hand in this hearing.

Mr. Keast, I think I can say with a hundred percent confidence, was not present during that interview. There were only three people who were arguably present during that interview; one was Ms. Hand. The one was Terry Healey, who has apparently no memory of it, and no notes of it, and no information about it. And Ms. Hand conceded that, during that hearing on December 4th before the judge, that the witness had changed his story.

And ultimately, in the end, on page 18, he said something that is the most exculpatory thing that could happen in a case in which there's an allegation of delivery, which is -- and then he started to say, well, he didn't see him give it to him. In a case in which there's an allegation of someone giving something to another person, and that person then dying, that is -- can't get any more exculpatory than that.

So I don't even understand what we're even talking about here. I don't even think Ms. Hand has to

review the file, she could simply decide that she's capable of putting pen to paper in a sworn statement and saying what -- what she -- what her exchanges with Detective Balog were, what information she received from Mr. Balog, when she received it, what she was told. If she's comfortable putting that in an affidavit, and she wants to make that affidavit, then she can.

The Court didn't order her to do that. The Court attempted to order the prosecutor's office --

THE COURT: Mr. Rockind, I specifically indicate that she is to provide an affidavit.

MR. ROCKIND: Right, but that is an order directed to the State.

THE COURT: Go ahead Mr. Keast.

MR. KEAST: Thank you, Judge.

I was just going to reiterate what the order said, in that the Court -- I'm reading the order right now, the Court does order Ms. Hand to file an affidavit. In my own pleadings I indicated that this file is the property of the Oakland County Prosecutor's Office. As the assistant prosecuting attorney on the matter, I have that file. I have everything that this office has ever had.

As I indicated in a prior pleading on May the 5th of this year, I met with the officer in charge and I

reviewed his police file. Everything that the police file showed was turned over to me, and in fact turned over to defense counsel, and I outline that, Judge. I do believe that Mr. Lavigne's motion is correct. I believe that it is legally correct and factually correct, for nothing more than the fact that I'm not going to give Ms. Hand this file to review. I can't do that, Judge, she's no longer a prosecutor at the Oakland County Prosecutor's Office.

I think that -- I don't know what she would be able to write as far as what evidence there would be to admit. And, you know, Mr. Rockind can interpret it one way, and he's certainly entitled to do that, but as I look at this order, it does appear to me that this Court did in fact order Ms. Hand to detail a list of all evidence in the case. And as I stated, Judge, I don't think that she's in a position to do that, and I believe Mr. Lavigne amply laid that out in his motion.

MR. ROCKIND: But isn't the Court directing that -- I mean, aren't we just sort of quarreling or quibbling over, I guess a dot on a page, which is on page 8. I know the Court's order is directed to the State.

MR. KEAST: But, you know, it's dangerous to play fast-and-loose with interpretation of the Court's order. Only the Judge can interpret the order --

MR. ROCKIND: I understand. What I'm saying is,

this order wasn't -- this order wasn't served on Ms. Hand. She wasn't ordered to appear. This was an order that was directed to the State. The State is the party. And if the State can't provide, can't gather an affidavit from the former assistant prosecutor about the case, then the State can't satisfy the Court and its concerns about Brady evidence.

MR. LAVIGNE: May I respond, Your Honor?

THE COURT: Go ahead, Mr. Lavigne.

MR. ROCKIND: I mean, I don't want to even get into all of the implications why -- I mean, I think --

THE COURT: Go ahead, Mr. Lavigne.

MR. LAVIGNE: Thank you.

MR. ROCKIND: -- Ms. Hand is currently a practicing lawyer. I think she's still a lawyer --

THE COURT: Mr. Rockind, let Mr. Lavigne speak.

MR. ROCKIND: Sure, Your Honor.

MR. LAVIGNE: Thank you, Your Honor.

I will agree with Mr. Rockind about his indications of the lack of notice and service on Ms. Hand. I think the Court's already indicated, and Mr. Keast has, the reason that we're here, I'm not trying to waste anybody's time, but I read the order to say the Court orders that an affidavit from both the former assistant prosecutor Hand and the current assistant prosecutor Keast

shall be provided.

So my reading of the order is the reason that we filed this motion, which is I don't believe it is limited to its application to the current Oakland County Prosecutor's Office only. So I will tell the Court, we're not trying to intervene or spare the prosecutor's office any kind of an obligation, as is suggested. The Court can, and it sounds like has, satisfied any outstanding Brady issues through the party to the case, the People. Mr. Rockind talked about the affidavit or the supplemental document filed by Mr. Keast. I haven't seen that --

THE COURT: Mr. Lavigne, I don't think that's correct. The problem is that the violations that are alleged, and the violations that have been agreed to by the prosecutor's office, involve Ms. Hand. How can I secure the satisfaction that the evidence has been produced when there has not been information put in the file?

According to the arguments of Mr. Rockind, and the information that Mr. Keast has now gathered, there are interviews with no notes, there's information that was -- that was given, allegedly, to Ms. Hand, that hasn't been provided for. How can I put that on the prosecutor's office, that doesn't have the information? And how could the Court not have jurisdiction over Ms. Hand, in a

capital murder case, felony case, on behalf of the Oakland County Prosecutor's Office, who didn't put things in the file, allegedly?

MR. LAVIGNE: Well, I think that the Court can fashion the remedy that it has and it can order the prosecutor's office to do --

THE COURT: What do I know -- what is there that no one knows of? I think that with regard to the information that's in the file, that's sufficient. That's not as far as the Brady violations that are alleged go. It's information that hasn't been put anywhere. We have reports that were drafted 18 months after information was given to the prosecutor's office. How do I know, how can I secure that information, for the due process of the defendant and for the benefit of the community, without Ms. Hand?

MR. ROCKIND: And, Judge, can I add, for Mr. Lavigne's benefit, that the report that was generated 18 months after the interview was prepared at the direction of Mr. Keast, who saw that there was another hole in the disclosure issues with Ms. Hand and Mr. Balog. He saw that and directed that Mr. Balog, to the best of his ability, prepare a report 18 months later to document an interview that Mr. Balog and Ms. Hand had with a witness, in which, again, exculpatory evidence was -- that

evidence was exculpatory. I mean, there are no contemporaneous notes.

I don't know if Mr. Lavigne knows the file, but Ms. Hand objected to her own statements to the witness during the preliminary examination, which we would argue were statements that were potentially admissions by a party opponent or weren't even offered for the truth of the matter asserted, but Ms. Hand objected. Then there's no report prepared. And that's not the only issue. I mean, we've detailed --

THE COURT: So Mr. Lavigne, as your argument goes, Ms. Hand is a private citizen now; so is she entitled to be called as a witness at the preliminary exam?

MR. LAVIGNE: I certainly think she -- in terms of entitled, I certainly think she has the capability to be subpoenaed. Whether she can be compelled to actually testify, I think is a different story.

THE COURT: Well, why wouldn't she be compelled to testify? Tell me, why wouldn't she be able to be compelled to testify?

MR. LAVIGNE: Well, there could be a number of different reasons. You could be talking about work product issues. You could be talking, quite candidly, about Fifth Amendment issues, in light of the findings that the Court

has made. I think everybody on this motion hearing that has a P-number would understand the implications of what the Court or somebody examining her on the stand could potentially be trying to seek. And I'm not conceding that she's done anything that would have to, but the question is, could the question have any tendency. I think you have those issues as well.

I mean, it's an interesting academic question. I'd be happy to, you know, go into it further with Your Honor, but I think that if the Court decides to allow the parties to go that route, they have that right, and we could address that at that point in time before the district court, if that's what happens. But I don't know that the Court, again with all due respect, can compel an affidavit from a non-party as to facts that the Court is ordering in its May 21st order.

MR. ROCKIND: I mean, it sounds like --

THE COURT: But then at the same time, you believe that she could be summoned or subpoenaed to go and testify, but that she could waive -- or she could raise some issues, such as her Fifth Amendment, which, sir, I'm not sure that -- that the factual questions that are asked, that she'd be able to have a Fifth Amendment right. And when you say work product, this isn't work product, sir. These are Brady violations. This isn't work product.

MR. LAVIGNE: With respect, Your Honor, I'm doing the best I can to try to address the Court's hypothetical.

THE COURT: I understand, Mr. Lavigne.

MR. LAVIGNE: And as I indicated before, I'm not conceding any issues on her behalf. But in terms of the Court's query about, could she be subpoenaed, I think she could at least be subpoenaed. And then where it goes from there, I think is an open issue, let's say, at this point.

THE COURT: Anything else?

MR. LAVIGNE: Just ask the Court to grant the motion. If the defense decides they want to subpoena Ms. Hand to testify for exam, we'll address it at that point. But at this point there's no basis for the Court to order the production of the affidavit.

MR. ROCKIND: I have to back up. Why is it that the defense has to carry the water here? I mean, the Court has already made its finding regarding Brady violations. The State has conceded that there were Brady violations committed by Ms. Hand. There are other --

MR. LAVIGNE: Why does there have to be an affidavit?

MR. ROCKIND: Because the Court, I think, was trying to come up --

THE COURT: There's still a case pending. There

is still a case pending. There are still issues that are outstanding. If this is a case that's going to be pursued, it needs to be -- everything needs to be presented appropriately as if there is no Brady violations. Now how do we do that if there's things not in the file?

MR. ROCKIND: So the answer to Mr. Lavigne's question, he wanted to know why there was an affidavit, or why the Court -- obviously I can't get into the Court's thinking, but we've had enough conversations with the Court and enough arguments before the Court that I believe the Court was trying to fashion a remedy to address what evidence Ms. Hand was aware of and what was out there that was not contained in the file, and that an affidavit from a lawyer, with all of the potential repercussions that an affidavit has with it, being a statement, a statement under oath, that that would potentially address that issue.

I think we lost the Judge there for a second.

THE COURT: Nope, I'm right here.

The Court is going to take this under advisement.

MR. ROCKIND: I was going to say, Judge, that I don't think that Mr. Lavigne is right, that the defense should have to call Ms. Hand. If Ms. Hand is going to have to -- if she can be compelled, she can be compelled by the

Court. If she wants to assert a privilege, she can assert a privilege. And you know, if she wants to plead the Fifth, she can plead the Fifth, never going to deny anybody the right to plead the Fifth if that's what they believe is in their best interest.

THE COURT: Okay. Thank you. I will issue an opinion.

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

MR. KEAST: Thank you, Judge.

MR. LEWIS: Thank you, Your Honor.

MR. LAVIGNE: Thank you, Your Honor.

Your Honor, if I could make one request of the Court. The efile system that changed over on Monday only allows parties to the case to receive electronic service. I filed a document yesterday, a SCAO form specifically requesting to be added to the case so that I could receive eservice. That was rejected by the court clerk --

THE COURT: I'll have you added, by anything that's filed, Mr. Keast and Mr. Rockind, you are required to serve Mr. Lavigne.

MR. KEAST: Judge, would you like me to serve Mr. Lavigne the affidavit that I filed?

THE COURT: Yes, please. Thank you.

MR. LAVIGNE: I just wanted everybody to know I wasn't connected with the case any longer, so I appreciate

that, Your Honor.

THE COURT: Thank you.

(At 10:17 a.m., proceedings concluded.)

- - -

CERTIFICATION

I certify that this transcript, consisting of 23 pages, is a true and accurate transcription, to the best of my ability, of the video proceeding in this case before the Honorable Victoria A. Valentine on Wednesday, June 9, 2021, as recorded by the clerk.

Videotape proceedings were recorded and were provided to this transcriptionist by the Circuit Court and this certified reporter accepts no responsibility for any events that occurred during the above proceedings, for any inaudible and/or indiscernible responses by any person or party involved in the proceedings, or for the content of the videotape provided.



/s/ Cheryl McKinney, CSMR-5594
About Town Court Reporting, Inc.
248-634-3369

EXHIBIT

I

FILED Received for Filing Oakland County Clerk 7/23/2021 1:04 PM

STATE OF MICHIGAN
IN THE OAKLAND COUNTY CIRCUIT COURT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

CASE#: 2019-272593-FC
Hon. Victoria A. Valentine

vs.

NICHOLAS REMINGTON,
Defendant.

KAREN MCDONALD (P59083)
PROSECUTING ATTORNEY
Oakland County Prosecutor's Office 1200 North Telegraph Road
Pontiac, MI 48341
(248) 858-1000

NEIL ROCKIND (P48618)
ROCKINDLAW
Attorneys for Defendant
36400 Woodward Ave. Ste. 210 Bloomfield Hills, MI 48304 (248) 208-3800
RANDALL M. LEWIS (P46134) LEWIS & DICKSTEIN PLLC
Attorney for Defendant 2000 Town Center Ste. 2350
Southfield, MI 48075
(248) 263-6800

OPINION AND ORDER REGARDING FORMER ASSISTANT PROSECUTOR'S MOTION

At a session of said Court held on the
22th day of July 2021 in the County of
Oakland, State of Michigan

PRESENT: HON. VICTORIA A. VALENTINE

This matter before the Court is Former Assistant Prosecutor's Motion for Relief from Order. The Order from which relief is sought is the Court's May 21, 2021, Opinion and Order Regarding Defendant's Motion to Dismiss with Prejudice, which found *Brady*[1] and discovery violations had previously occurred.

Our Supreme Court held that "'[T]he suppression by the prosecution of evidence favorable

[1] *Brady v Maryland* 373 US 83 (1963).

to an accused upon request violates due process [(i.e. a Brady violation)] where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution,'" and irrespective of whether defense counsel exercised "reasonable diligence" to discover the evidence. *People v Chenault*, 495 Mich 142, 149, 152, 155 (2014), quoting *Brady v Maryland*, 373 US 83, 87 (1963).

"[I]t must be remembered that *Brady* is a constitutional mandate. It exacts the minimum that the prosecutor, state or federal, must do" to avoid violating a defendant's due process rights. United *States v. Beasley*, 576 F2d 626, 630 (CA 5, 1978).

"[E]xculpatory evidence falls within the Brady rule. *See Giglio v. United States*, 405 U.S. 150 (1972). Such evidence is "evidence favorable to an accused," Brady [v. Maryland], 373 U.S., [83] at 87, so that, if disclosed and used effectively, it may make the difference between conviction and acquittal. *Cf. Napue v. Illinois*, 360 U.S. 264, 269 (1959)." *United States v. Bagley,* 473 U.S. 667, 676, 105 S. Ct. 3375, 3380 (1985).

Pursuant to MCR 6.201(J), when a *Brady* violation is discovered, it is up to the court to fashion the appropriate remedy under MCR 6.201(J):

> (J) Violation. If a party fails to comply with this rule, the court, in its discretion, may order the party to provide the discovery or permit the inspection of materials not previously disclosed, grant a continuance, prohibit the party from introducing in evidence the material not disclosed, or enter such other order as it deems just under the circumstances.

On March 19, 2021, Defendant filed a motion to dismiss based on what he alleged as "egregious and reprehensible" *Brady* violations. After hearing oral argument and reviewing the history of the case, this Court Ordered in part that:

> Pursuant to MCR 6.201, all discoverable information shall be turned over to Defense Counsel within 14 days of the date of this Opinion and Order;...

> An affidavit from both the former Assistant Prosecutor Hand, and the current Assistant Prosecutor Mark Keast shall be provided to Defense Counsel and filed with the Court within 7 days of the date of this Order, detailing all known evidence. The affidavit shall include a list of all evidence the current and former Assistant prosecutors have knowledge of that has any relation to this case. The affidavit shall also include the date of any disclosure or production to the Defendants' counsel of the evidence and a list of any information that has not yet been produced;

The former assistant prosecutor in this case, Beth Hand, objects to the portion of this Court's Order that compelled her to file and provide Defendant with a list of all evidence she had knowledge of and an affidavit that included the date of any disclosure or production to the Defendants' counsel of the evidence and a list of any information that has not yet been produced. Ms. Hand, through her counsel, argues that the "court simply has no jurisdiction to compel that lawyer to do any such thing."[2] Ms. Hand further argues that:

> the Court has jurisdiction to order the People to do certain things and comply with certain requirements. They are the party to the case, and they are represented by the Prosecuting Attorney. They have the ability to speak for themselves and the government as to any issues that are the subject of this case or of the Order, whether that is addressing any issues within the purview of the currently assigned assistant prosecutor or one previously assigned. But, with respect, this Honorable Court has no jurisdiction over Ms. Hand to direct her to do anything related to this case. It is beyond the court's jurisdiction to select former assistant prosecutors and require them to give sworn testimony by way of an affidavit, about facts or circumstances related to any individual prosecution. [3]

In this case Defendant Remington is charged with the delivery of a controlled substance causing death under MCL 750.317A.

MCL 750.317A states:

> A person who delivers a schedule 1 or 2 controlled substance, other than marihuana, to another person in violation of section 7401 of the

[2] Non-Party Beth M. Hand's Motion for Relief from Order and Brief in Support of Motion, p. 6
[3] Non-Party Beth M. Hand's Motion for Relief from Order and Brief in Support of Motion, pp 4-5.

> public health code, 1978 PA 368, MCL 333.7401, that is consumed by that person or any other person and that causes the death of that person or other person is guilty of a felony punishable by imprisonment for life or any term of years.

As stated in MCL 750.317A, a "person who delivers a schedule 1 or 2 the controlled substance ... is guilty of a felony punishable by imprisonment for life or any term of years." MCL 750.317A.

Based upon the record and the prior court hearing transcripts, there appears to be at least one res gestae witness, Mr. Weidemeyer, who was part of an undocumented interview with former Assistant Prosecutor Hand and who allegedly indicated to Ms. Hand that he did not see Mr. Remington deliver drugs to Mr. Prika (the victim).

At a hearing in front of Judge Alexander the following was exchanged:

> THE COURT: Did you at some point confront him [Mr. Weidemeyer] with a different statement?
>
> MS. HAND: I confronted him with the fact that he-- he -- on several occasions he would -- he indicated that he had given -- that the defendant had given the drugs to the decedent, that's what he had told Detective Balog. And, when I asked him whether or not he -- how it was packaged, he changed how it was -- how it was packaged. And, then he started to say well he didn't see him give it to him. But, I didn't call him [Mr. Weidemeyer] as a witness, Judge. He's on -- he's -- he could be the defense witness in this case. I didn't call him as a witness for that reason.
>
> MS. HAND: It's a witness. It's a res gestae witness. It's only my witness if I call the individual to the stand. And, if I call Mr. Weidemeyer to the stand and said -- and he states for some miraculous reason yes I saw Mr. Remington give him the drugs and that -- he decides that's going to be his testimony for the day, then Mr. Rockind can certain impeach him with the fact that didn't he tell me on other occasions that he didn't give him the drugs.
>
> MR. ROCKIND: Judge, I'm not even following that.
> So, it sounds like the witness went from saying that Mr. Remington did something to saying that he didn't do anything and there was

> no disclosure of any of that. That's in the first meeting. And, the second meeting was they hadn't called Mr. Weidemeyer at the preliminary examination, she had a second meeting with Mr. Weidemeyer. Nobody advised us or apprised us that that meeting had taken place, and it's my understanding that there was even more that was said when Mr. Weidemeyer was even told that if he was lying he could go to prison. He actually indicated he wanted to -- he wanted to plead the Fifth, he was advised that he couldn't plead the Fifth. He specifically and repeatedly denied -- he said the truth is I didn't see him give drugs to Mr. Prika or Mr. Prika take drugs. None of that -- that's exculpatory, that's not protected by work product. That's exculpatory evidence that has not been disclosed.
>
> And, I am aware of the concern that Ms. Hand -- that she might try to -- to say that somehow I I had witnesses to the conversations that I had with Mr. Weidemeyer and I had recordings with the -- of the conversations.
>
> * * *
>
> MR. ROCKIND: If you have recording's I'd love to hear 'em.
>
> MS. HAND: I don't have recordings, I had witnesses present with me for that very reason.
>
> MR. ROCKIND: And, we don't -- you've never disclosed who the second witness was.

Transcript Motion hearing, Judge Alexander, December 4, 2020 (pp 18-20).

Of concern is that discovery information was not documented nor disclosed despite Ms. Hand's acknowledgment that the witness' testimony was favorable to Defendant.

Recently, in *People v Burger,* the Court of Appeals dealt with a somewhat similar issue:

> Defendant's argument presumes that the disclosure of the fire chiefs' changes in opinion for the first time at trial amounts to a *Brady* violation. Defendant's presumption is correct. Generally, a criminal defendant does not have a constitutional right to discovery. *People v. Bosca*, 310 Mich. App. 1, 27, 871 N.W.2d 307 (2015). However, "a defendant's right to due process may be violated by the prosecution's failure to produce exculpatory evidence in its possession." *Id.* It is undisputed in this case that defendant learned for the first time at trial that the fire chiefs had changed their respective opinions regarding the fire's point of origin. In their original reports, which were disclosed to

> defendant, both chiefs opined that the fire had two points of origin. However, the chiefs later altered their conclusions, indicating that indeed, the fire had a single point of origin. We conclude that this information was suppressed, because it was not disclosed until the beginning of trial, and that it was material to defendant's case.

People v Burger, 331 Mich. App. 504, 518 (2020).

The disclosure of discovery and the preservation of due process is essential to the delivery of justice. The failure to provide discovery has become even more frustrated due to the departure of the previous Oakland County Prosecutor as well as the Assistant Prosecutor, Beth Hand.

In March of 2021, the current Prosecutor presented this Court with a Stipulated Order modifying the Defendants Bond which stated: "Evidence disclosed to the defense by the undersigned Assistant Prosecuting Attorney, which was not disclosed by the previously assigned Assistant Prosecuting Attorney, may necessitate a remand to the District Court and/ or further litigation that must commence prior to a trial."[4]

As such the Prosecutor and the Defense Counsel stipulated to reduce the Defendant's bond from One Million ($1,000,000.00) Dollars Cash/Surety to $10,000.00 cash/ surety.[5]

Consequently, as set forth in more detail in the Court's May 21, 2021 Opinion, the Court ordered all discoverable information be turned over to the Defendant. The purpose was to satisfy Defendant he had received all discoverable information, even if it was not documented by the previous Prosecutor in current Prosecutor's file.

Our United States Supreme Court held in *Kyles v. Whitley,* 514 U.S. 419, 437 (1995) that:

> On the one side, showing that the prosecution knew of an item of favorable evidence unknown to the defense does not amount to a Brady violation, without more. *But the prosecution, which alone can know what is undisclosed, must be assigned the consequent responsibility to gauge the likely net effect of*

[4] STIPULATION TO MODIFY DEFENDANT'S BOND STATUS p.1-2, dated March 10, 2021.
[5] STIPULATION TO MODIFY DEFENDANT'S BOND STATUS p.2, dated March 10, 2021.

all such evidence and make disclosure when the point of 'reasonable probability' is reached. (emphasis added).

Applied here, the Prosecution, who alone knows what is undisclosed, is complicated by the departure of the prior assistant prosecutor, Ms. Hand.

This court however did not enter a dismissal. A "[d]ismissal,[however] with prejudice is a severe remedy which can put a defendant in a "better position than he would have enjoyed had disclosure been timely made," and while such a remedy is within the trial court's discretion, it should not be granted lightly. *People v Taylor*, 159 Mich. App. 468, 487 (1987).

Therefore, while this Court has the authority to fashion an appropriate remedy for a discovery violation, this Court is also aware of its obligation to balance the interest of the Court with the interest of the public and the parties. "When determining the appropriate remedy for discovery violations, a trial court must balance the interests of the courts, the public, and the parties in light of all the relevant circumstances, including the reasons for noncompliance." *People v. Banks*, 249 Mich. App. 247, 252 (2002). As a result, this Court did not previously dismiss this matter; rather it remanded to the District Court once all the required discovery has been produced.

This Court sets aside the portion of its May 21, 2021 order requiring Ms. Hand to file and serve an affidavit. This Court remands this matter to the District Court, as previously provided. At that time, either party may determine the need to call Ms. Hand as a witness. This ruling does not excuse any discovery violation.

IT IS SO ORDERED.

SEAL OF THE CIRCUIT COURT OF OAKLAND COUNTY MICHIGAN

/s/ Victoria A. Valentine
HON. Judge Valentine
CIRCUIT COURT JUDGE

Outlook

Novi PD

From Balog, Steve <sbalog@cityofnovi.org>
Date Thu 8/12/2021 12:09 PM
To linda nobiletravel.com <linda@nobiletravel.com>; Jamie Thom (jamesgthom@gmail.com) <jamesgthom@gmail.com>

Hello Linda and Jaime,

I hope you all are doing well. I wanted you guys to know that my last day with Novi PD is tomorrow, Friday 13th. I am retiring after 25 years with the department. Denis' case will be turned over to another Detective within the bureau, and Prosecutor Mark Keast will be working with this person. At this time, I am unsure whom it will be assigned to. It was my hope that this case would be over by now and justice served for Denis, and I am deeply saddened that it hasn't (yet). I will be available for any future court appearances, and I will be following the case as a civilian. Take care of yourselves, and the babies…. God bless you all.

Steve Balog | Detective
City of Novi | 45175 Ten Mile Road | Novi, MI 48375 USA
t: 248.347.0544 | c: 248.826.6986 |

To receive monthly e-news from Novi or follow us on social media, click here.

KAREN D. McDONALD
Office of the Prosecuting Attorney, Oakland County Michigan

1200 North Telegraph Road • West Wing, Building 14-E • Pontiac, Michigan 48341
Phone: 248-858-0656 • Fax: 248-858-0660

David W. Williams, Chief Assistant Prosecutor

September 7, 2021

MAJLINDA PREKA-THOM
264 KERBY RD
GROSSE POINTE MI 48236

RE: People v NICHOLAS MAXIMILLIA REMINGTON
P.O. #19-65104

Dear MAJLINDA PREKA-THOM:

Please be advised that the above referenced case has been remanded to the 52/1 District Court in Novi, for the purpose of a preliminary examination.

If you have any questions or need any assistance in the future, please feel free to contact the Oakland County Prosecutor's Office, Victim Services Section at (248) 858-0707.

Very truly yours,

KAREN D. McDONALD
PROSECUTING ATTORNEY

Nicole Kennedy, Victim Advocate
Victim Services Section

NK/ead
VR 012

Lisa Brown
Oakland County Clerk/Register of Deeds
www.oakgov.com/clerkrod

Legal & Vital Records

REMAND TO DISTRICT COURT

STATE OF MICHIGAN
COUNTY OF OAKLAND

I, Lisa Brown, County Clerk for the County of Oakland, State of Michigan, having the legal custody of the files and records thereof, do hereby certify that attached hereto is a copy of the Order of Remand to your court.

Circuit Court Case No. **2019-272593-FC**

District Court Case No. **19-002619**

PEOPLE OF THE STATE OF MICHIGAN

VS.

NICHOLAS MAXIMILLIAN REMINGTON

BOND: CASH/SURETY

Bond in the amount of $$1,000,000 IS NOT on file in the Oakland County Clerk's Office.

Mailed to:

52/1 District Court
48150 GRAND RIVER AVENUE
NOVI MI 48374

NEIL ROCKIND
36400 WOODAWARD AVE. STE. 210
BLOOMFIELD HILLS MI 48304

IN WITNESS WHEREOF, I have here unto set my hand and affixed the seal of said court at Pontiac, Michigan this August 26, 2021.

Lisa Brown
Oakland County Clerk-Register of Deeds

By:_____
Deputy Clerk

Administrative Offices
1200 N Telegraph, Dept 415
Pontiac MI 48341-0415
(248) 858-0560
clerk@oakgov.com

Elections Division
1200 N Telegraph, Dept 417
Pontiac MI 48341-0417
(248) 858-0564
elections@oakgov.com

Legal & Vital Records
1200 N Telegraph, Dept 413
Pontiac MI 48341-0413
(248) 858-0581
clerklegal@oakgov.com

Register of Deeds Office
1200 N Telegraph, Dept 480
Pontiac MI 48341-0480
(248) 858-0605
deeds@oakgov.com

Outlook

next court date on People v Remington Prosecutor Order number:19-65104

From Kennedy, Nicole A <kennedyn@oakgov.com>
Date Wed 9/29/2021 3:49 PM
To linda nobiletravel.com <linda@nobiletravel.com>

Mrs Preka-Thom,

Assistant Prosecutor Marc Keast received updated court status in the above case. Since the matter is going back to the Novi District Court, Judge Law has set the matter for an in person probable Cause conference for Oct. 20 at 1:30 pm. It is like a status conference and they will pick the date for the preliminary examination. You are not required to attend, but can observe. If you decide to attend let myself or Marc know a couple days in advance.

Hope you are well,

OFFICE OF THE PROSECUTING ATTORNEY
County of Oakland | Karen D. McDonald

Nicole Kennedy, Victim Advocate
Victim Services Section
1200 N. Telegraph Rd.
Bldg. 14E-West Wing
Pontiac, MI 48341
(248) 858-1045

PRIVILEGED AND CONFIDENTIAL – ATTORNEY CLIENT COMMUNICATION

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KAREN D. McDONALD

Office of the Prosecuting Attorney, Oakland County Michigan

1200 North Telegraph Road • West Wing, Building 14-E • Pontiac, Michigan 48341
Phone: 248-858-0656 • Fax: 248-858-0660

David W. Williams, Chief Assistant Prosecutor

OCTOBER 01, 2021

MAJLINDA PREKA-THOM
264 KERBY RD
GROSSE POINTE F MI 48236

Please be advised:

This is to notify you of the following scheduled hearing date, provided to you under the Crime Victim's Rights Act.

PROSECUTOR'S ORDER NO.:	19-65104
DATE:	OCTOBER 20, 2021
TIME:	1:30PM
LOCATION:	52-1 DISTRICT COURT, NOVI
TELEPHONE:	(248) 305-6511
TYPE OF HEARING:	PROBABLE CAUSE CONF
DEFENDANT:	REMINGTON/NICHOLAS/MAXMILLIAN

This notice is for informational purposes only. Unless you are subpoenaed or told to be there by the Assistant Prosecutor or a police officer, your attendance is not required. However, you are welcome to attend if you wish. If you would like to attend, please call the court the business day before the scheduled hearing date, to confirm the date and time provided above. If you have any questions about your case, please contact the Victim Services Section at (248)858-0707.

MICHIGAN DEPARTMENT OF STATE
BUREAU OF ELECTIONS

ITEMIZED CONTRIBUTIONS
SCHEDULE 1A
CANDIDATE COMMITTEE

1. Committee I.D. Number 97181

2. Committee Name Karen McDonald for Prosecutor

Enter contributor's name and address. If contribution is from an individual, enter last name, first name, and middle initial. Check box to indicate if contribution is from a Political Committee or an Independent Committee (PAC) Report all contributions regardless of amount.	6. Amount	Cumulative for Election Cycle for Each Contributor (Through date of receipt)

3. Name & Address
Pernick, Jason
9055 Clubwood Dr
Commerce Twp, MI 48390-1711

PAC Receipt? ☐ YES 4. DATE OF RECEIPT 10/13/2021

$300.00 | $300.00

5. If over $100.00 cumulative, please provide:
Occupation Attorney Employer Oakland County
Business Address 1200 N Telegraph Rd Pontiac, MI 48341-1032
Type of Contribution: ☑ Direct ☐ Loan from a person ☑ Fund Raiser

3. Name & Address
Polanco, Ricardo
1967 Howland Blvd
White Lake, MI 48386-1857

PAC Receipt? ☐ YES 4. DATE OF RECEIPT 09/07/2021

$10.00 | $10.00

5. If over $100.00 cumulative, please provide:
Occupation Employer
Business Address
Type of Contribution: ☑ Direct ☐ Loan from a person ☑ Fund Raiser

3. Name & Address
Polanco, Ricardo
1967 Howland Blvd
White Lake, MI 48386-1857

PAC Receipt? ☐ YES 4. DATE OF RECEIPT 10/07/2021

$10.00 | $20.00

5. If over $100.00 cumulative, please provide:
Occupation Employer
Business Address
Type of Contribution: ☑ Direct ☐ Loan from a person ☑ Fund Raiser

3. Name & Address
Rockind, Neil
92 Manor Ct
Bloomfield Hills, MI 48304-3902

PAC Receipt? ☐ YES 4. DATE OF RECEIPT 10/13/2021

$1,000.00 | $1,000.00

5. If over $100.00 cumulative, please provide:
Occupation Criminal Defense Attorney Employer Rockind Law
Business Address 36400 Woodward Ave Ste 210 Bloomfield Hills, MI 48304-0913
Type of Contribution: ☑ Direct ☐ Loan from a person ☑ Fund Raiser

Page Subtotal	$1,320.00
Grand Total of all Schedules 1A (Complete on last page of Schedule)	

Enter this total on line 3a of Summary Page.

MICHIGAN DEPARTMENT OF STATE
BUREAU OF ELECTIONS

ITEMIZED CONTRIBUTIONS
SCHEDULE 1A
CANDIDATE COMMITTEE

1. Committee I.D. Number 97181

2. Committee Name Karen McDonald for Prosecutor

Enter contributor's name and address. If contribution is from an individual, enter last name, first name, and middle initial. Check box to indicate if contribution is from a Political Committee or an Independent Committee (PAC) Report all contributions regardless of amount.	6. Amount	Cumulative for Election Cycle for Each Contributor (Through date of receipt)

3. Name & Address
Washington, Markeisha
30143 Spring River Dr
Southfield, MI 48076-5374

PAC Receipt? ☐ YES 4. DATE OF RECEIPT 10/13/2021

$150.00 | $150.00

5. If over $100.00 cumulative, please provide:
Occupation Attorney Employer Oakland County
Business Address 1200 N Telegraph Rd Pontiac, MI 48341-1032
Type of Contribution: ☑ Direct ☐ Loan from a person ☑ Fund Raiser

3. Name & Address
Weber, Jeffrey
689 Suffield Ave
Birmingham, MI 48009-4626

PAC Receipt? ☐ YES 4. DATE OF RECEIPT 10/13/2021

$250.00 | $250.00

5. If over $100.00 cumulative, please provide:
Occupation Attorney Employer Weber & Olcese PLC
Business Address PO Box 3006 Birmingham, MI 48012-3006
Type of Contribution: ☑ Direct ☐ Loan from a person ☑ Fund Raiser

3. Name & Address
Williams, David
1800 Pine St
Birmingham, MI 48009-1165

PAC Receipt? ☐ YES 4. DATE OF RECEIPT 10/13/2021

$250.00 | $250.00

5. If over $100.00 cumulative, please provide:
Occupation Attorney Employer Jaffe Raitt Heuer and Weiss
Business Address 1200 N Telegraph Rd Pontiac, MI 48341-1032
Type of Contribution: ☑ Direct ☐ Loan from a person ☑ Fund Raiser

3. Name & Address
Wilson, Mike
2158 Mahan St
Ferndale, MI 48220-1135

PAC Receipt? ☐ YES 4. DATE OF RECEIPT 10/07/2021

$41.00 | $41.00

5. If over $100.00 cumulative, please provide:
Occupation Employer
Business Address
Type of Contribution: ☑ Direct ☐ Loan from a person ☐ Fund Raiser

Page Subtotal	$691.00
Grand Total of all Schedules 1A (Complete on last page of Schedule)	$25,756.00

Enter this total on line 3a of Summary Page.

MICHIGAN DEPARTMENT OF STATE
BUREAU OF ELECTIONS

FUND RAISER SCHEDULE 1F
CANDIDATE COMMITTEE

1. Committee I.D. Number 97181

2. Committee Name Karen McDonald for Prosecutor

- USE A SEPARATE SHEET FOR EACH EVENT -

3. Date Event Was Held	4. Number of Individuals Attending or Participating (whichever is greater)	5. Type of Fund Raising Activity	6. Address and Name (if any) of the place where the activity was held
10/13/2021	60	2021 Fall Fundraiser	260 N Old Woodward Birmingham, MI 48009 ☐ Private Residence

7. Total Contributions	$24,950.00
8. Other Receipts	$0.00
9. Gross Receipts (Add lines 7 and 8)	$24,950.00
10. Total Cost of Event	$6,500.00

*Includes In-Kind Contributions and All Expenditures Made For the Event

11. ☐ Check if event was a joint fund raiser and complete the following:

Co-Sponsor(s)	Contribution Split (%)	Expenditure Split (%)

- The committee is required to file a separate Fund Raiser Schedule for each fund raising event held during the period covered by the Campaign Statement
- Receipts and expenditures listed on a Fund Raiser Schedule must also be reported on the Itemized Contributions Schedule (1A), Itemized In-Kind Contributions Schedule (1-IK), Itemized Expenditures Schedule (1B) and the Summary Page.
- Each committee that participated in a joint fund raiser must file a Fund Raiser Schedule for the event.

MICHIGAN DEPARTMENT OF STATE
BUREAU OF ELECTIONS

ITEMIZED IN-KIND CONTRIBUTIONS
SCHEDULE 1-IK
CANDIDATE COMMITTEE

1. Committee I.D. Number 97181

2. Committee Name Karen McDonald for Prosecutor

3. Name and Address from whom received If contribution is from an individual, enter last name first. Check box to indicate if contribution is from a Political Committee or an Independent Committee (Both are commonly called PACs). Report all in-kind contributions.	4. Type of In-Kind Contribution (Check applicable box) 5. Date of Receipt 6. Name & Address of Vendor from whom goods or services were purchased	7. Amount or Fair Market Value	8. Cumulative for Election Cycle (Through date in Item 5)
PAC Receipt? ☐ YES Name & Address Esshaki, James 210 S Old Woodward Ave Birmingham, MI 48009-6120	4 ☐ Endorsement or guarantee of bank loan ☐ Goods Donated or Loaned ☐ Services Donated	$6,500.00	$6,500.00
If over $100.00 cumulative, please provide: Occupation President/Founder Employer Name and Address James Management 210 S Old Woodward Ave Birmingham, MI 48009-6120	☑ Goods or Services Purchased by Candidate or Others ☐ Goods or Services Purchased by Candidate or Others-LOAN Description Food and Beverages for 10/13/21 Event 5. DATE OF RECEIPT: 10/13/2021 6. VENDOR NAME & ADDRESS: The Morrie Birmingham 260 Old N Woodward Birmingham, MI 48009		
☑ Fund Raiser Contribution			

Page Subtotal	$6,500.00
Grand Total of all Schedules 1-IK (Complete on last page of Schedule)	$6,500.00

Enter this total on line 6 of Summary Page

KAREN D. McDONALD

Office of the Prosecuting Attorney, Oakland County Michigan

1200 North Telegraph Road • West Wing, Building 14-E • Pontiac, Michigan 48341
Phone: 248-858-0656 • Fax: 248-858-0660

David W. Williams, Chief Assistant Prosecutor

OCTOBER 15, 2021

MAJLINDA PREKA-THOM
264 KERBY RD
GROSSE POINTE F MI 48236

Please be advised:

This is to notify you of the following scheduled hearing date, provided to you under the Crime Victim's Rights Act.

PROSECUTOR'S ORDER NO.:	19-65104
DATE:	NOVEMBER 17, 2021
TIME:	1:30PM
LOCATION:	52-1 DISTRICT COURT, NOVI
TELEPHONE:	(248) 305-6511
TYPE OF HEARING:	PROBABLE CAUSE CONF
DEFENDANT:	REMINGTON/NICHOLAS/MAXMILLIAN

This notice is for informational purposes only. Unless you are subpoenaed or told to be there by the Assistant Prosecutor or a police officer, your attendance is not required. However, you are welcome to attend if you wish. If you would like to attend, please call the court the business day before the scheduled hearing date, to confirm the date and time provided above. If you have any questions about your case, please contact the Victim Services Section at (248)858-0707.

STATE OF MICHIGAN

IN THE 52ND JUDICIAL DISTRICT COURT - FIRST DIVISION

COUNTY OF OAKLAND

THE PEOPLE OF THE STATE OF MICHIGAN,

v

District Court:
19-002619

NICHOLAS MAXIMILLIAN REMINGTON,

Defendant.
_____/

PROBABLE CAUSE CONFERENCE

BEFORE THE HONORABLE THOMAS DAVID LAW, DISTRICT JUDGE

Novi, Michigan - Wednesday, November 17, 2021

APPEARANCES:

For the People:

MR. MARC KEAST (P85373)
Assistant Oakland County Prosecutor
1200 N. Telegraph Road
Pontiac, Michigan 4341-1032
(248) 858-0656

For the Defendant:

MR. NEIL ROCKIND (P48618)
MR. RANDALL LEWIS (P46134)
Attorney at Law
36400 Woodward Avenue, Suite 210
Bloomfield Hills, Michigan 48304
(248) 208-3800

Transcribed by:

Jennifer Tobias, CER 5345
Certified Electronic Recorder

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None

WITNESSES: DEFENDANT

None

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Novi, Michigan

Wednesday, November 17, 2021 - 2:40 p.m.

THE COURT: Nicholas Remington, 19-002619. This matter has been brought back today for a probable cause conference and--

MR. KEAST: Thank you, Judge. Mark Keast on behalf of the People.

THE COURT: Thank you, Mr. Keast. I appreciate that.

Mr. Lewis and Mr. Rockind, good afternoon.

MR. ROCKIND: Your Honor, good afternoon. Neil Rockind P48618. I represent Nicholas Remington, your Honor. My co-counsel, Mr. Lewis, is here as well.

THE COURT: Thank you.

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

THE COURT: Alright. Thank you, gentlemen.

Mr. Remington, can I get your full name, please?

THE DEFENDANT: Nicholas Remington.

THE COURT: Thank you.

Alright, so first off the Court appreciates the opportunity that the Court had to discuss this matter with all the attorneys in chambers regarding

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scheduling. My understanding is we're looking at setting an examination date.

MR. ROCKIND: Yes, your Honor.

MR. KEAST: That's correct, Judge.

THE COURT: Maybe looking into next year I realize there is some information that needs to be gathered. Some discussions that will continue and that'll take some time, so we're looking--I don't know if anyone has a suggestion of a potential date, but--

MR. KEAST: Really, the month of January I'm scheduled to be in trial in front of Judge Anderson. Any time in February I'm open.

MR. ROCKIND: Judge, we're thinking maybe the first full week in February. That'd be between the seventh and the eleventh.

THE COURT: How does the 10th in the afternoon look?

MR. ROCKIND: Fine.

MR. KEAST: That'd be great, Judge.

THE COURT: Alright. Let's do February 10th at 1:30 in the afternoon. Are there any other matters that either side needs addressed at this point.

MR. KEAST: Not today, Judge. Thank you.

THE COURT: I don't think there is any issue, to my understanding, with bond and bond

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conditions so I'm going to leave everything as it is.

MR. ROCKIND: For now. Thank you, Judge.

MR. LEWIS: Thank you.

THE COURT: You're welcome. I appreciate that. So we'll see everybody on the 10th, as of right now, the 10th of February at 1:30 in the afternoon; in person exam.

MR. ROCKIND: Thank you.

MR. LEWIS: Thank you, Judge.

THE COURT: Thank you everybody. Have a good day.

MR. KEAST: Thank you, your Honor.

MR. LEWIS: You too. Nice to see the Court.

THE COURT: Same here. Same here, thank you.

(at 2:44 p.m., proceedings concluded)

# # #

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STATE OF MICHIGAN)

)

COUNTY OF OAKLAND)

I, Jennifer Tobias, hereby certify that this transcript, consisting of pages one through 6, is a complete, true, and correct transcript to the best of my ability, of the proceedings held and the testimony taken in the matter of People versus Nicholas Maximilliam Remington, Case Number 19-002619, conducted on Wednesday, November 17, 2021.

December 14, 2023

Jennifer Tobias, CER 5345

Certified Electronic Recorder

52nd District Court - First Division

48150 Grand River Avenue

Novi, Michigan 48374

(248) 305-6067

FORM MI-25 PENGAD • 1-800-631-6989 • www.pengad.com

KAREN D. McDONALD

Office of the Prosecuting Attorney, Oakland County Michigan

1200 North Telegraph Road • West Wing, Building 14-E • Pontiac, Michigan 48341
Phone: 248-858-0656 • Fax: 248-858-0660

David W. Williams, Chief Assistant Prosecutor

NOVEMBER 20, 2021

MAJLINDA PREKA-THOM
264 KERBY RD
GROSSE POINTE F MI 48236

Please be advised:

This is to notify you of the following scheduled hearing date, provided to you under the Crime Victim's Rights Act.

PROSECUTOR'S ORDER NO.:	19-65104
DATE:	FEBRUARY 10, 2022
TIME:	1:30PM
JUDGE:	REEDS
DEFENDANT(S):	REMINGTON,NICHOLAS,MAXIMILL
TYPE OF HEARING:	PRELIMINARY EXAMINATION

This hearing will take place in the Oakland County Courthouse located at 1200 N. Telegraph Road, Pontiac, Michigan. This notice is for informational purposes only. Unless you are subpoenaed or told to be there by the Assistant Prosecutor or a police officer, your attendance is not required. However, you are welcome to attend if you wish. If you plan to attend the hearing, please contact the Victim Services Section at (248) 858-0707 one business day before the scheduled date to confirm the information provided in this notice.

OAKLAND COUNTY SHERIFF OFFICE
1201 N. Telegraph Rd., Pontiac, MI 48341
Phone: 248-858-5011 ORI #MI6316300

NARRATIVE REPORT

PO #_____

☐ SUPRESS ☐ PRIMARY ☐ SUPP PAGE___ OF ___

DATE	DAY	SHIFT	PLAT	BADGE 1	BADGE 2	INCIDENT STATUS	CRIME CLASS	YEAR	INCIDENT #
02/10/22				1957		☐ CLR ARREST ☐ UNF ☐ CLR EXCEPT ☐ INACT			

SYNOPSIS: Interview – Connor Gibaratz

DETAILS: On 02/02/2022, Connor Gibaratz was telephonically interviewed reference his recollections and personal knowledge of the circumstances surrounding of the death of Denis Preka that occurred on 03/19/2019 at 23132 Meadowbrook in the City of Novi

Connor was advised of the identity of the investigating deputy and the purpose of the interview. Connor acknowledged being previously interviewed by Novi police officers and preparing a written statement on 03/19/2019. Connor provided the following additional information to that initially obtained by Novi PD.

- Connor stated that Nicholas Remington picked him up at his house to give him a ride to U of D for a late afternoon class. Nick stayed around the campus while Connor was in class.
- Connor stated they met up with Denis Preka and Paul Wiedmaier at U of D after classes and agreed to go back to Paul's house at 23132 Meadowbrook. Connor stated he was going to stay the night at Paul's house and go to class in the morning. Connor advised that he rode with Nick and Denis and Paul were in Paul's car.
- Connor stated that he, Paul and Nick were friends from high school. Connor stated that Denis was Paul's roommate at U of D during their freshman year and that he had met Denis through Paul.
- Connor recalled that during the evening he observed Denis begin to act bizarrely, laughing and singing. Connor recalled that Denis was sweating, and had difficulty maintain his balance. Connor states that he asked Denis on multiple occasions if he was okay.
- Connor stated that this was not the first time he had seen Denis acting like this. Connor stated he was aware, from prior incidents, of Denis's use of MDMA and other drugs. Connor stated that he was also aware of Denis's prior psychiatric history, including hospitalizations, that Denis had described to him. Connor stated that he had been present in Ann Arbor when Denis had been pepper sprayed by AAPD during an arrest for disorderly conduct.

INVESTIGATING OFFICER(S)	REVIEWED BY:	ASSIGNED TO:	I affirm the above information is true and correct.
			O.I.C. Signature _____

- Connor stated that Nick left by himself and went home because he was on a court ordered curfew. Connor stated the Denis was still alive when Nick left. Connor stated that he intended to get a ride to class in the morning from Paul
- Connor reiterated his prior statements that Denis refused any assistance from him and Paul and continued to insist that he was okay. Conor states that Paul subsequently called 911 early on the morning of 03/19 after they discovered Denis deceased.
- Connor admitted to leaving in Paul's car to dispose of some marijuana prior to the arrival of Novi PD and other emergency personnel. Connor states he returned after Paul called him.
- Connor stated that approximately 2.5 hours after Denis's body had been removed and the police had completed their initial investigation, he, Paul and Nick met at Millennium Park in Northville to discuss what had happened. Connor also advised that Paul spoke with Denis's mother on the phone and on several other occasions throughout the remainder of the day.
- Conner stated that he doesn't recall exactly why he sent a subsequent Snap Chat message to Nick accusing him of giving Denis too much MDMA and killing him. Connor stated he thought he might have just been suspicious because he was aware that Nick had previously possessed and sold MDMA.
- Connor stated that he believes that he last talked to Nick during the summer of 2019 while he (Connor) was serving a 50 day sentence at the Wayne County Jail. Connor states he was serving a sentence for a property crime. Connor advised the sentence was from an incident at Northville Hills Golf Club. Connor stated that he and Nick were arrested together on 12/26/2017 for damage to property that was originally charged as an arson.
- Connor stated that the last time he talked to Paul was before he (Connor) moved to California approximately a year ago.

Connor agreed to speak with the writer again if there were any additional information he could provide.

V. Lynch #1957

KAREN D. McDONALD

Office of the Prosecuting Attorney, Oakland County Michigan

1200 North Telegraph Road • West Wing, Building 14-E • Pontiac, Michigan 48341
Phone: 248-858-0656 • Fax: 248-858-0660

David W. Williams, Chief Assistant Prosecutor

NOVEMBER 20, 2021

MAJLINDA PREKA-THOM
264 KERBY RD
GROSSE POINTE F MI 48236

Please be advised:

This is to notify you of the following scheduled hearing date, provided to you under the Crime Victim's Rights Act.

PROSECUTOR'S ORDER NO.:	19-65104
DATE:	FEBRUARY 10, 2022
TIME:	1:30PM
JUDGE:	REEDS
DEFENDANT(S):	REMINGTON,NICHOLAS,MAXIMILL
TYPE OF HEARING:	PRELIMINARY EXAMINATION

This hearing will take place in the Oakland County Courthouse located at 1200 N. Telegraph Road, Pontiac, Michigan. This notice is for informational purposes only. Unless you are subpoenaed or told to be there by the Assistant Prosecutor or a police officer, your attendance is not required. However, you are welcome to attend if you wish. If you plan to attend the hearing, please contact the Victim Services Section at (248) 858-0707 one business day before the scheduled date to confirm the information provided in this notice.

KAREN D. McDONALD

Office of the Prosecuting Attorney, Oakland County Michigan

1200 North Telegraph Road • West Wing, Building 14-E • Pontiac, Michigan 48341
Phone: 248-858-0656 • Fax: 248-858-0660

David W. Williams, Chief Assistant Prosecutor

February 18, 2022

Ms. Linda Preka-Thom and Mr. Jamie Thom
264 Kerby Road
Grosse Pointe Farms, MI 48236

RE: People v Nicholas Remington
P.O. 19-65104 / CR 2019-272593-FC

Dear Linda and Jamie,

I have an update on how this case has progressed. As you know, Judge Valentine prohibited evidence obtained from Nicholas Remington's Snapchat account due to the lack of reliability of that evidence. That ruling was based on the ease of access to the Snapchat account, as evidenced by the posts made while the Defendant was in the Oakland County Jail. As you also know, I have discovered inconsistencies in various posts made on that account with the records received from Snapchat. We cannot verify how or why that has occurred. Judge Valentine was not aware of that information as it was not discovered until after she issued her ruling. It does however confirm her order that those records are not reliable.

I have tasked one of our investigators with recreating the investigation and interviews of the civilian witnesses who were with Dennis the night of his death. Our investigator's findings have caused this office to conclude that we do not have sufficient evidence to proceed and thus must dismiss this case without prejudice. We simply do not currently have reliable evidence to prove that Nicholas Remington committed this crime.

Our evidence was reviewed with multiple experienced Assistant Prosecutors, Investigators, as well as the Chief of Litigation, the Chief Assistant Prosecutor, and the Prosecuting Attorney. This case was examined with and without the availability of the Snapchat records. Given that we have determined the records received from Snapchat are not reliable, I would not be in a position to offer them as evidence.

That would leave witness testimony as the only remaining evidence. After speaking with our investigator, it became clear that this evidence is insufficient. Thus, we must dismiss our case without prejudice. I do want you to know that "without prejudice," means that should admissible evidence come to light in the future, we could be in a position to re-issue charges.

I am truly sorry to have to share this news with you.

Sincerely,

KAREN D. McDONALD
PROSECUTING ATTORNEY

Marc A. Keast
Chief – Circuit Court Division
Oakland County Prosecutor's Office

MAK/nn

c: File
MAK-22/Remington-N (Ltr).docx

STATE OF MICHIGAN

IN THE COURT FOR THE 52-1 JUDICIAL DISTRICT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

Case No. 19-002619 FY
P. O. No. 19-65104

v

NICHOLAS REMINGTON,

Defendant.
_____/

KAREN D. McDONALD (P59083)
PROSECUTING ATTORNEY
1200 N. TELEGRAPH ROAD
PONTIAC, MI 48341

NEIL S. ROCKIND (P48618)
36400 WOODWARD AVE., SUITE 210
BLOOMFIELD HILLS, MI 48304-0913
ATTORNEY FOR DEFENDANT
_____/

ORDER TO *NOLLE PROSEQUI*

At a session of said Court, held in the 52-1 District Court,
City of Novi, County of Oakland, State of Michigan,
on this 23 day of February 2022.

PRESENT: HONORABLE T. DAVID LAW
DISTRICT COURT JUDGE

Upon reading and filing the attached petition and the Court being fully advised in the premises;

IT IS ORDERED that the above cause be and the same is hereby *Nolle Prosequi*.

52935
DISTRICT COURT JUDGE

Recommended and Drafted by:

Marc A. Keast
Assistant Prosecuting Attorney

A TRUE COPY
CLERK OF DISTRICT COURT #52
BY _____ Deputy

KAREN D. McDONALD

Office of the Prosecuting Attorney, Oakland County Michigan

1200 North Telegraph Road • West Wing, Building 14-E • Pontiac, Michigan 48341
Phone: 248-858-0656 • Fax: 248-858-0660

David W. Williams, Chief Assistant Prosecutor

FEBRUARY 11, 2022

MAJLINDA PREKA-THOM
264 KERBY RD
GROSSE POINTE F MI 48236

Please be advised:

This is to notify you of the following scheduled hearing date, provided to you under the Crime Victim's Rights Act.

PROSECUTOR'S ORDER NO.:	19-65104
DATE:	FEBRUARY 25, 2022
TIME:	2:00PM
LOCATION:	52-1 DISTRICT COURT, NOVI
TELEPHONE:	(248) 305-6511
TYPE OF HEARING:	PROBABLE CAUSE CONF
DEFENDANT:	REMINGTON/NICHOLAS/MAXMILLIAN

This notice is for informational purposes only. Unless you are subpoenaed or told to be there by the Assistant Prosecutor or a police officer, your attendance is not required. However, you are welcome to attend if you wish. If you would like to attend, please call the court the business day before the scheduled hearing date, to confirm the date and time provided above. If you have any questions about your case, please contact the Victim Services Section at (248)858-0707.

My son's case

From: lindathom2013@yahoo.com (lindathom2013@yahoo.com)

To: keastm@oakgov.com

Bcc: mike@855mikewins.com; chris@855mikewins.com; jamesgthom@gmail.com; linda@twinbambino.com

Date: Friday, February 25, 2022 at 12:44 PM EST

Marc,

After seeing this morning on TV, it was clear to me that you are busy and you dismissed the case for that reason. You told me you have kids, and I'm not sure how you sleep at night knowing the person that killed my son is out of jail. Your office didn't want to fight for my son. The case as was a strong as iron, and Remington was three times denied an appeal of his $1,000,000 cash bond. The district judge even called him a danger to society. All the evidence was strong and valid.

I know you wanted to dismiss the case a year ago when Valentine agreed with defense and you didn't fight it. You were like a child afraid to stand up to the judge, and were afraid to "piss her off" because you have other cases with her. There was the option of appealing her decision, but you didn't do anything about it because it cost money and your time. It's no coincidence that you moved the February 10 hearing because the Oxford hearing was February 8, and now, you dismiss the Remington case with the hearing scheduled for today, Feb 25, when another Oxford hearing was yesterday. With all due respect to the families who lost their children in Oxford, my son's life is no less important. Only God and those parents the pain we are enduring every day. And for you, it's just a case number.

This case was a strong as can be. With all the evidence presented at the preliminary hearing, the judge had no question that Remington admitted to giving Denis the drugs. He did the same thing to another person the night before. Why didn't you question him? The next day, my son's birthday, Remington was on social media advertising his drugs. Connor told Remington "You killed Denis." Remington sent a Snapchat to 13 people describing what he gave Denis. The police photos show a perfectly cleaned up crime seen but the video and pictures from the night before show a party seen. That's not a crime? How about texting each other the next morning to meet at the park to get their stories straight? This isn't enough relevant evidence to use against Remington? When the case was bound to circuit court, you didn't need Paul and Connor to admit the truth because in Novi their testimony wasn't necessary with all the evidence presented. If you had fought Valentine's order, you could have presented the same evidence at

the second preliminary hearing that was presented in the first, and had the same outcome - bound up for trial.

Now there is a monster on the streets of Michigan. I'm not saying he killed my son on purpose, but he did it as joke like he did to the guy the night before. He recorded it to promote his business. After my son's death he was still promoting his business. Everyone knows he's a drug dealer and everybody knows he admitted he gave my son the drugs that killed him. And you and your office are deciding to let him go free. Since the night you called me, I am not sleeping. Not only for the loss of my son, but also because I know Remington is free and will someday kill another human being.

You've been blaming Beth for not turning over one piece of evidence, but the evidence was eventually disclosed. All I know is she succeeded in getting the case to trial. Whoever is corrupt in your office and trying to hide the mistakes by dismissing the case, will still have to answer when the story is publicized. I will do everything in my power to make sure the world knows that my son was a victim twice; once when killed by Remington and again when your office quit on him. All I can say is I don't know how you sleep at night knowing you do a shitty job taking care of cases like my son's. You're weak and don't how to fight. At least Beth would have stood up to the judge. What did you do? You were like a chicken who is afraid to stand up to the law. I thought this country was the best on earth and one could get justice. But what I have learned is that it's not the law but the people who ruin it. And my son's case is Judge Valentine and you for not fighting.

You made a comment on the phone the other day that MDMA is used as a study aid like Adderall. It looks like you don't know shit. Google it. MDMA is a party drug, it's not for studying. Paul alleged Denis asked for Adderall, which is used for studying, but none was found in his body. MDMA was found in his body. It's obvious Denis was dosed with a drug he didn't intend to take. Isn't that a crime?

I'm not writing because I think you will do something about it, but to let you know that my son's case is not going to go under the rug like your office wants it to. You and your office will have to answer to the public. You told me your investigator interviewed Connor and Paul again. I want the dates and transcripts of those interviews because I don't believe you. I also want any other evidence and transcripts you can legally give me. Because I will fight for my son.

Sincerely,
Linda Thom

mikemorselawfirm
855-MIKE-WINS

March 1, 2022

Oakland County Prosecutor's Office
ATTENTION: Jessica R. Cooper, Prosecuting Attorney
Sent via fax: 248-858-0660

Re: ***Freedom of Information Act - Request for Records/Entire Prosecutor's File***
People v Nicholas Remington
Oakland County Circuit Court Case No.: 2019-272593-FC
Our File No: 600-19-06088

Dear Sir/Madam:

Please be advised that our firm has been retained by the Estate of Denis Preka with regard to an incident resulting in the death of Denis Preka on March 19, 2019 at 23132 Meadowbrook, Novi, Michigan 48375 involving Nicholas Remington. Pursuant to the Michigan Freedom of Information Act, MCL 15.231 et seq., in conjunction with MCL 750.492, I hereby request the following documents:

> ***Original full and complete prosecutor's file, including, but not necessarily limited to: all files, file folders, notes, memorandum, investigation record(s), reports, complaints, findings and conclusions, warrants, pleadings, witness statements (including written and recorded statements), officer statements (including written and recorded statements), affidavits, transcripts, photographs, drawings, diagrams, emails, notes, video recordings (Snapchat and otherwise), and audio recordings (Snapchat and otherwise), pertaining to the March 19, 2019 incident that occurred at 23132 Meadowbrook, Novi, Michigan involving Denis Preka (d.o.b. 3/20/1997), and Nicholas Remington, which has been assigned Case Number 2019-272593-FC.***

If for any reason you are unable or unwilling to produce such documents at this time, then consider this letter as a final request that such documents be preserved, and not destroyed, for subsequent production pursuant to subpoena, court order or other legal process.

If all or any part if this request is denied, please list the specific exemptions which are being claimed to withhold information. If you determine that some portions of the requested information are exempt, I will expect, as the Act requires, that you will provide us with the non-exempt portions. I, of course, reserve the right to appeal any decision to withhold information and expect that you will list the address and office where such an appeal can be sent.

OMS-CORR-028B

As you may know, the Michigan Freedom of Information Act permits you to reduce or waive all search and/or copying fees when release of the requested information would be in the public interest. MCL 15.234(l). I believe that this request fits that category and I, therefore, ask that you waive such fees. If this request is processed under the Privacy Act, however, I expect that no fees will be charged for locating the requested files.

If you have any questions regarding this request, please contact my office and send all records and responses to this address. As provided in the Freedom of Information Act, I expect to receive a reply within five (5) working days.

Thank you for your assistance with this matter.

Very truly yours,
MIKE MORSE LAW FIRM



Kayla McNew
File Manager to Eric Simpson, Esq.
Phone: (248) 209-4874
Fax: (248) 209-4874
kmcnew@855mikewins.com

KCM/kcm
Enclosures

Gmail Jamie Thom <jamesgthom@gmail.com>

RE: Denis Preka

1 message

Keast, Marc A <keastm@oakgov.com> Mon, Dec 12, 2022 at 9:56 AM
To: Jamie Thom <jamesgthom@gmail.com>

Hi Jaime, sorry I didn't see the message. I'm headed to court in a min. I'll review the dep and give you call today

From: Jamie Thom <jamesgthom@gmail.com>
Sent: Monday, December 12, 2022 9:51 AM
To: Keast, Marc A <keastm@oakgov.com>
Subject: Denis Preka

CAUTION: This message is from a sender outside of the Oakland County organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Marc,

We've been trying to get a hold of you regarding Deni's case, but haven't heard back. I'd like to follow up regarding Austin, but also I want to share with you the attached summary of disposition. In particular, Paul's contention that Denis "willing ingested controlled substances" that night. How would he know the MDMA was willing ingested if he never saw Denis take it? Please give us a call as soon as possible to discuss.

Many thanks,

Jamie and Linda

(313) 799-0419

Denis Preka

From: lindathom2013@yahoo.com (lindathom2013@yahoo.com)

To: keastm@oakgov.com

Bcc: chris@855mikewins.com

Date: Wednesday, January 4, 2023 at 11:52 AM EST

Hi Marc,

I've tried to reach you a few times, but you're ignoring me. I'm reviewing Denis' case because I'm going to make it public. It looks like between you and Judge Valentine we can't find justice. I am planning to write a letter to Judge Valentine before I go public which I will copy to you. I am asking her to reverse her decision to quash the Snapchat evidence and allow it be used.

The attached picture will be included so she can see what she has caused, and giving a monster a voice to accuse the Prosecutor's Office of corruption. We know we're dealing with a stupid criminal, but a good manipulative defense attorney. That's why he is where he is right now. The attached picture has the same "jail" icon as the one he used that day.

I'm asking you one more time, and I need you to answer, why you are not following the law and seeking justice for my son? But instead, you are obstructing the justice system by not standing up to the law and filing an appeal out of fear she will ruin other cases. The answer you've given me, you'll have to answer to the people. They will decide if that's the right way for a prosecutor to approach their job or judges to run their cases.

If you believe Judge Valentine is influenced by personal vendettas because someone doesn't agree with her and she's ruined other case like you believe, she needs to be reported. She let a criminal get away with murder because I am 100% sure that Beth never did anything on purpose. Why would she? What was her motivation? Use common sense:
1) If she didn't want that picture in evidence she would have never asked Jamie to send it to Detective Balog in the first place. 2) If she really didn't want it in the file, she could have destroyed it before she left office. For that reason, I would love to contact Beth Hand's attorney and I'd love to be a witness for all this. We know that Remington did all this to obstruct justice on the same day the second motion was denied.

We have two eye witnesses in Connor and Paul, and two people Connor told in Cara and Olga, that Nick killed Denis. Why don't you go after them? I would love to schedule a call with your boss and talk about this.

Sincerely,
Linda Thom



imagejpeg_0.jpg
142.7kB

CR No: 190015581-014	Report Type: Follow-Up Report	Officer: NOBALOGS (00214)	014

NOVI POLICE DEPARTMENT
45125 W. 10 MILE RD.
NOVI MI 48375
248.348.7100

Case Report

Administrative Details:

CR No **190015581-014**	Subject **Remington Snap Chat 05/26/2021**
Report Date/Time **03/19/2019 09:11**	Occurrence Date/Time **From: 03/19/2019 03:00 To: 03/19/2019 09:05**
Location **23132 MEADOWBROOK RD**	Call Source **Assoc/Clone**
Dispatched Offense **L3540 Defibrillate - NO**	Verified Offense **0996 Deliver Controlled Substance Causing Death**
OIC **Balog, Steve (NOBALOGS-00214)**	OIC Contact Number
County **63 - Oakland**	City/Twp/Village **62 - Novi**
Division **Investigations**	
Report Type **Follow-Up Report**	
Created By **STEVE BALOG**	Created Date/Time **05/27/2021 10:36 AM**

Narrative:

REMINGTON SNAP CHAT: On 05/26/2021 I, Detective Balog received an email from Jamie Thom, (Dennis Preka's Step-father). The email contained an attachment that Thom had been given by a friend of Dennis. The attachment was a photo from HULKOLAS snap chat account which showed a real photo image of Nicholas Remington with several cartoon emojis surrounding him, and the words NEW COURT ORDER- Prosecutor hid evidence September 2019. Took u long enough. Nice job tryna pin me CORRUPTASS Oakland county. Dis case boutta get dismissed boyyyy!!! Remyboyz be bak in dis bitch soon my fellow fools. Jussrunit A? See attached copy of the snap chat. The snap appears to have come from Remington's HULKOLAS Snap Chat, however; the author of the snap is unknown.

NOTE: A photo copy of this new snap chat was added to the evidence file in this case.


Hulkolas
4m ago
I OBJECT!
hey idiot
NEW COURT ORDER - Prosecutor hid evidence September 2019. Took u long enough. Nice job tryna pin me CORRUPTASS Oakland county. Dis case boutta get dismissed boyyyy!!! Remyboyz be bak in dis bitch soon my fellow fools. Jussrunit A?

RE: Denis Preka

From: Keast, Marc A (keastm@oakgov.com)

To: lindathom2013@yahoo.com

Date: Thursday, January 5, 2023 at 11:28 AM EST

Good morning,

I have not been ignoring you. I was off. I requested the file, at your request, to obtain a copy of the snapchat records and will send them to you if you still desire.

Let me be clear: the law was followed in this case. There is no admissible evidence to proceed with prosecution of the Defendant. As I have told you, Judge Valentine ruled that the snapchat records are unreliable. As I have also told you, I agree with that assessment, albeit for a completely different reason. That reason being the text in question was sent to several people at the same time. Even if those records were not suppressed, they would be insufficient to convict without witness testimony. I have explained this in a phone call with you and Jaimie as well as in a letter when the decision was made by my office to dismiss the case. I have never said that Judge Valentine was motivated by a personal vendetta. I simply disagree with her reasoning.

Do not accuse me of unethical conduct. I was the one fighting for this case. If you still would like a copy of the snapchat records have your attorney contact me.

Marc Keast.

From: lindathom2013@yahoo.com <lindathom2013@yahoo.com>
Sent: Wednesday, January 4, 2023 11:52 AM
To: Keast, Marc A <keastm@oakgov.com>
Subject: Denis Preka

CAUTION: This message is from a sender outside of the Oakland County organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Marc,

I've tried to reach you a few times, but you're ignoring me. I'm reviewing Denis' case because I'm going to make it public. It looks like between you and Judge Valentine we can't find justice. I am planning to write a letter to Judge Valentine before I go public which I will copy to you. I am asking her to reverse her decision to quash the Snapchat evidence and allow it be used.

The attached picture will be included so she can see what she has caused, and giving a monster a voice to accuse the Prosecutor's Office of corruption. We know we're dealing with a stupid criminal, but a good manipulative defense attorney. That's why he is where he is right now. The attached picture has the same "jail" icon as the one he used that day.

Gmail Jamie Thom <jamesgthom@gmail.com>

Remington Case Files

Keast, Marc A <keastm@oakgov.com> Wed, Jan 11, 2023 at 10:26 AM
To: Jamie Thom <jamesgthom@gmail.com>
Cc: "Lynch, Vince" <lynchv@oakgov.com>

What is your address? I was going to send them to your attorney, but I can send them direct if you prefer.

I have never seen or heard of a screenshot sent from Connor with any admission of the defendant. That would obviously be extremely important. I've forwarded all emails sent to me, including your notes from your conversation with Cara to Investigator Vincent Lynch. He is also the investigator who made contact with Austin. Austin has been in and out of jail and has recently been involuntary committed, he is not a reliable source of information. Investigator Lynch will contact Cara however, as she may have more insight.

If Cara did tell the detective that she was threatened that information was not relayed to the prosecution. Intimidation of a witness is a crime, and it is one that I have prosecuted in the past and would do so again.

I don't recall as I sit here now if we have a timestamp on the Snap. I'll look through the file again before I send you the logs you requested. I believe we have that, and it was used in the subsequent search warrant. Snapchat accounts are easily linked to other users, so I have no doubt that a friend of the defendant created that post to sew doubt into the reliability. That was never a concern to me, which is why I was so perplexed that it wasn't disclosed to defense.

I sincerely empathize with everything you and Linda have been through. I cannot imagine. However, I take issue with the accusations in previous emails that I have engaged in unethical conduct. Nothing could be further from the truth.

If you hear of anything that could be of use, please email Investigator Lynch at lynchv@oakgov.com As a prosecutor, I have no investigative authority so everything gets forwarded to him anyway. Thank you,

Marc Keast

From: Jamie Thom <jamesgthom@gmail.com>
Sent: Wednesday, January 11, 2023 8:58 AM
To: Keast, Marc A <keastm@oakgov.com>
Subject: Remington Case Files

CAUTION: This message is from a sender outside of the Oakland County organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

[Quoted text hidden]

Re: Denis Preka

From: lindathom2013@yahoo.com (lindathom2013@yahoo.com)

To: keastm@oakgov.com; prosecutor@oakgov.com; kennedyn@oakgov.com; mcdonaldk@oakgov.com

Cc: jamesgthom@gmail.com

Date: Sunday, January 22, 2023 at 05:07 PM EST

Marc,

How many times do I have to ask you to send all my sons file ***everything****?* Literally, what you have on his file. I've been crystal clear in this and have asked you four times already. Why did you only send Snapchat? I want an answer.

I need immediately these files including an index and description of each file. I told you on January 9 email see attaches.
"I believe there is missing evidence. In the file provided by Mike Morse, we don't see the report that Balog was supposed to do with the date/time Jamie sent the screenshot of the Snap provided by Avery.
Also I've been asking you since Judge Valentine decision for the proof Balog sent to Beth with the report on the Snap while he was in custody. I've never seen it.When you send all the files, make sure these are included.

Regarding your decision to dismiss Denis' case, I'm actually I am so glad. I have lost faith in your ability to prosecute successfully. Watching you twice interact with Judge Valentine and Defense letting them accuse an innocent women without evidence shows clearly your character, it's obvious you are afraid and don't know how to fight for anyone. I feel so bad for Karen to have you on her team because you don't know how to litigate for Citizens of Oakland County .

This is my final request and last time I will be contacting you.
Most sincerely,
Linda Thom

> On Monday, January 9, 2023 at 11:54:23 AM EST, lindathom2013@yahoo.com <lindathom2013@yahoo.com> wrote:
>
> Marc,
>
> For the fourth time, yes, send everything because I believe there is missing evidence. After talking to Cara and doing the job of your investigative team, she told me that Connor contacted her and Olga through Snapchat telling them Nick killed Denis last night. She gave the police screenshots of these Snaps but I can't in find them in the police report or anywhere else.
>
> I don't know why you're fixating on the message being sent to multiple people? It's never been brought up before and if the Snapchat evidence were allowed back in, there is other incriminating evidence; for example, 1) Connor telling Nick you killed Denis and Nick replying you're just as guilty as I am, 2) Olga's Snap conversation (see attached) with Connor asking why you don't tell the police that Nick killed Denis. Why didn't you get sworn statements for Olga or Cara? I spoke with Cara last Friday and she told me everything that transpired within 24-48 hours of the crime. I will send you a recap of the conversation, and our lawyers are getting affidavit from her. I've reached out to Olga through Facebook

Gmail Jamie Thom <jamesgthom@gmail.com>

Thumb Drive Content

Jamie Thom <jamesgthom@gmail.com> Tue, Jan 31, 2023 at 8:58 AM
To: Marc A Keast <keastm@oakgov.com>
Cc: Chris Filiatraut <chris@855mikewins.com>, Majlinda Thom <lindathom2013@yahoo.com>

Hi Marc,

Below is a link to the contents of the thumb drive you sent us. We can't find the files associated with the search warrant Balog submitted on October 3, 2019 and received by Snapchat on November 21, 2019 (see attached). Maybe they're there, I just can't find them. If so, would you please let me know which files they are? If not, would you please send those to our attorney, Chris Filiatraut?

Keast Snapchat Files

Sincerely,
Jamie Thom

Snap Inc_Search Warrant-10-3-19.pdf
586K

Balog Report

From: Jamie Thom (jamesgthom@gmail.com)

To: spenzak@cityofnovi.org

Cc: lindathom2013@yahoo.com

Date: Tuesday, January 31, 2023 at 09:25 AM EST

Good morning Detective Penzak,

Please see attached screenshot of Balog's report dated 10-3-2019. The last paragraph says "see attached photocopy of the Snapchat." Per your advice to Linda, we requested this file from the records department. Jackie in Records replied, "I am trying to locate the attachment of the photocopy. On page 26-27, the snapchat in question, *it doesn't say Detective Balog received it. And without that information, since he is retired, I can't attest to when or how he received something.* I'm sorry for this inconvenience as I understand this information is important for your upcoming case. I am still trying to locate the file. I just wanted to explain the report doesn't say Detective Balog received a photocopy but I will continue my search for the actual photo."

Will you contact Balog to find out where this file is? Or, if it's impossible to confirm the Novi police ever received it, please update the report saying so, and let us know when it's done so we can get it from the Records Department.

Many thanks,
Jamie Thom



Novi-Police_10-3-2019_Report.pdf.jpg
96.3kB

Re: Denis Preka mom

From: Steve Balog (balogsteve@icloud.com)

To: lindathom2013@yahoo.com

Date: Monday, February 13, 2023 at 02:15 PM EST

I have no idea what you mean about deleting snap chats. Again Linda everything should be in the file. I don't know, as I have no access and have been gone for almost 2 years.

Sent from my iPhone

> On Feb 13, 2023, at 1:49 PM, lindathom2013@yahoo.com wrote:
>
> Hello Steve,
>
> Can you please reply to my question I already asked before but ignored.
> Who was the person in charge editing original Snapchat messages that came from snapchat?
> Who deleted all Nick's threats to Cara from the snapchat file dated March 29th?
> They are missing inside group snapchat and single snapchat as well and I need to know who did that?
> I need the proof you sent Beth the October 3rd report including attachments. The Novi Police can't find it. I don't believe you took care my son case as your own but I understand for you was just a job.
> Regards Remington his not the only one responsible. Paul and Connor are as guilty the day it's coming soon and they have to pay for what they have done to my son.
>
> Regards,
> Linda
>
> On Monday, February 13, 2023 at 01:21:46 PM EST, lindathom2013@yahoo.com <lindathom2013@yahoo.com> wrote:
>
> Hi Steve,
>
> Attached its the proof Olga emailed you all the snapchats.
> Can you please send me the proofs you have?
> Regards the judge she didn't throw anything Marc Keast did. His a lier and his the reason my son case its here.
> I promise you I will find justice for Denis.
> Attached its the judge order and read carefully and find out who's behind this.
>
> Regards,
> Linda

Re: Denis Preka mom

From: Steve Balog (balogsteve@icloud.com)

To: lindathom2013@yahoo.com

Date: Monday, February 13, 2023 at 03:15 PM EST

Linda,
I did everything I could in this case. I am sorry you feel like a did not. I wish you and your family the best, and I hope someday you will get closure.

Sent from my iPhone

> On Feb 13, 2023, at 2:59 PM, lindathom2013@yahoo.com wrote:
>
> Steve,
>
> Unfortunately I don't trust you or anyone anymore. So what you are saying you handed to Marc Keast ? Why Marc Keast needed anything handed by you if was already on file? I will ask Detective Penzak to find it if not?
>
> One more note about Connor if you know Scott and Melisa Gibaratz let them know you are no longer with Novi Police to protect him. It's the end of his games and looks like your 26 years experience couldn't figure out who's behind Remington snapchat login on sept 26th 2019? If you have kept the promise you gave my family april 2nd 2019 when I picked up Denis phone we wouldn't be here. Your mistakes have giving my family more pain.
>
> Regards,
> Linda
>
> On Monday, February 13, 2023 at 02:12:24 PM EST, Steve Balog <balogsteve@icloud.com> wrote:
>
> Linda,

I remember the girls complaining about Remington harassing them and as I said before I couldn't address that due to jurisdiction. They were told to file reports with U of M police. As far as the copy of the email I sent Beth, you can trust me that I have a copy. There is also a copy of it in the Novi PD complete file and Mark Keast should also have a copy, as I handed him one in person. If I am ever needed in court to show this, trust me I will. If you want the above pictures added to the Novi Report talk to Detective Penzak and have them added.
Sent from my iPhone

On Feb 13, 2023, at 1:21 PM, lindathom2013@yahoo.com wrote:

Hi Steve,

Attached its the proof Olga emailed you all the snapchats.
Can you please send me the proofs you have?
Regards the judge she didn't throw anything Marc Keast did. His a lier and his the reason my son case its here.
I promise you I will find justice for Denis.
Attached its the judge order and read carefully and find out who's behind this.

Regards,
Linda

On Monday, February 13, 2023 at 12:28:34 PM EST, Steve Balog <balogsteve@icloud.com> wrote:

Linda,
I don't recall reading this stuff from Olga and Cara. I know that Remington had spoken to them around the time of this incident and I advised them both to contact their local police departments with any threats etc. as anything like that would have to be handled by the agency with jurisdiction.
As far as the later snap chat information which I emailed to Beth, I have documentation that it was sent. I cannot verify what she did with the email, but I have proof I sent it.
Anything and everything that I investigated is either in the actual report or file.
As far as this case, the last I was aware, the judge had thrown out ALL of the snap chat evidence which unfortunately was the majority of this case proving Remingtons guilt. All I can tell you is that I tried my very best to get closure for you and Justice for Dennis. If any fingers are to be pointed it should be at Remington, as I have always believed he is to blame. Any further questions you have should be routed to Novi PD or The Oakland County Prosecutors Office.
Wish I could do more, but I've been retired for almost 2 years now and cannot get involved on a police type level anymore.
Please take care Linda.
Regards,

S. Balog
Sent from my iPhone

On Feb 13, 2023, at 11:12 AM, lindathom2013@yahoo.com wrote:

Good morning Steve,

Yes, thanks for asking... twins are getting big and healthy thanks God!! Yes, I'm already in contact with Detective Penzak but I have some questions when you were handling the case that don't require you to have the case in front of you or any special access before I go to Novi PD, I thought would ask you in private.

1. After Mike Morse, contacted Cara and Olga for affidavit, we have every information they gave you and all the threats emailed and corresponded to you when you were handling the case... The threat that includes that Remington snapchats Cara" Ur involved now by going this route. Damn. Can't even control ur emotions. U will find out then. Cuz I'm blocked from olga U hear me. U r involved now just as u didn't want by not sending this. And no I don't involve u by being near...
Involving wud be killing u, Not telling to tell someone else Something. U do this for other ppl and not me. Ur fucked" on March 29th (you get an email about this on April 3 from Olga Luyre.

I need to know who deleted all Nick's threats to Cara from the snapchat file and all we have half of the snap?
Who was the person in charge editing Snapchat messages? (See attached what Olga sent you on April 3 vs what was in my son's case file). I need to know why you didn't make a report and Nick was not charged for intimidating witness?

2- I have asked Keast since 2021 when the judge quashed the Snapchat evidence to give us a proof that you have sent Beth the report with the alleged attachment of images that the defense claim Beth then intentionally hid from them. Detective Penzak and the Novi Police Record Department, can't find them? I've been in contact with Beth and she's willing to send a affidavit that she never got a report from you and she didn't know anything before the hearing. I'm not trying to point fingers at anyone, I'm just trying to find out the truth because the truth will get us to find justice for my son.
If you prefer replying by email that's fine but sometimes it's better to talk by phone.

Regards,
Linda

On Monday, February 13, 2023 at 07:57:12 AM EST, Steve Balog <balogsteve@icloud.com> wrote:

Hello Linda,

Hope all is well with you also, and I bet the twins are getting so big. If you have questions about the case, I believe the point of contact would be Detective Penzak with Novi PD. When I retired I'm pretty sure he was assigned to follow up and or continue with the case. Because I am retired, I don't have any authority to do anything anymore with the case (reports etc). Hopefully Detective Penzak can handle any and all questions or concerns you may have.

God bless, S. Balog
Sent from my iPhone

On Feb 10, 2023, at 4:34 PM, lindathom2013@yahoo.com wrote:

Good evening Steve,

Hope you and your family doing well. Can you please give me a call when you can my # 248-707-9300.
Morning works best. I need to clarify some concerns I have before I mail a letter to Karen the Judge Valentine.
Also I like you to know that I found out who's behind the Remington snapchat.

Regards,
Linda Preka Thom

<4;27-snap-Cara-Nick-3-29-19-word-missing.pdf>
<snap-Cara-group3-29-19.pdf>
<snap-Cara-Nick-threats 3-29-19-final.pdf>

<Olga-Balog email 4-3-19.pdf>
<Valentine-Decison 5-21-21.pdf>

<Snap.inc-Latitude.pdf>

Username	From	To	Message				Timestamp
cara-m~hulkolas	hulkolas	cara-m	Lol u literally accomplished what u donâ€™t want to happen. And the solution is to tell olga. Letâ€™s see what u will do next w ur games			TRUE	Fri Mar 29 20:36:52 UTC 2019

connor_gibaratz~hulkolas	connor_gibaratz	hulkolas	U dont think cara and olga would have known what happened without me?			TRUE	Fri Mar 29 21:22:56 UTC 2019
connor_gibaratz~hulkolas	connor_gibaratz	hulkolas	So i dont get it			TRUE	Fri Mar 29 21:22:31 UTC 2019
connor_gibaratz~hulkolas	connor_gibaratz	hulkolas	Murderer**			TRUE	Fri Mar 29 21:22:07 UTC 2019
connor_gibaratz~hulkolas	connor_gibaratz	hulkolas	Harrisons roomates not letting you at Harrisonâ€™s?			TRUE	Fri Mar 29 21:15:46 UTC 2019
connor_gibaratz~hulkolas	connor_gibaratz	hulkolas	Ur gonna fuck me over for what?			TRUE	Fri Mar 29 21:15:25 UTC 2019
connor_gibaratz~hulkolas	connor_gibaratz	hulkolas	What did i say to them that they wouldnâ€™t have already known?			TRUE	Fri Mar 29 21:15:13 UTC 2019
connor_gibaratz~hulkolas	connor_gibaratz	hulkolas	Ask urself			TRUE	Fri Mar 29 21:14:49 UTC 2019
connor_gibaratz~hulkolas	connor_gibaratz	hulkolas	They didnt figure out anything lnew			TRUE	Fri Mar 29 21:14:42 UTC 2019
connor_gibaratz~hulkolas	connor_gibaratz	hulkolas	I told olga and car			TRUE	Fri Mar 29 21:14:28 UTC 2019
hulkolas~liltrev	liltrev	hulkolas	I can make that happen but not today			FALSE	Fri Mar 29 21:08:24 UTC 2019
hulkolas~liltrev	hulkolas	liltrev	And it will be 40-45 a g at least			TRUE	Fri Mar 29 21:04:42 UTC 2019
connor_gibaratz~hulkolas	connor_gibaratz	hulkolas	But u killed him			TRUE	Fri Mar 29 20:55:45 UTC 2019
connor_gibaratz~hulkolas	connor_gibaratz	hulkolas	Hes a dumbass			TRUE	Fri Mar 29 20:55:40 UTC 2019
connor_gibaratz~hulkolas	connor_gibaratz	hulkolas	U fucking killed him			TRUE	Fri Mar 29 20:55:33 UTC 2019
connor_gibaratz~hulkolas	connor_gibaratz	hulkolas	Thats retarded			TRUE	Fri Mar 29 20:55:25 UTC 2019
connor_gibaratz~hulkolas	connor_gibaratz	hulkolas	And mol			TRUE	Fri Mar 29 20:55:17 UTC 2019
connor_gibaratz~hulkolas	connor_gibaratz	hulkolas	U gave him methylone			TRUE	Fri Mar 29 20:55:14 UTC 2019
connor_gibaratz~hulkolas	connor_gibaratz	hulkolas	Giving him more while he was already fucked			TRUE	Fri Mar 29 20:55:05 UTC 2019
connor_gibaratz~hulkolas	connor_gibaratz	hulkolas	Not weighing it out			TRUE	Fri Mar 29 20:54:56 UTC 2019
connor_gibaratz~hulkolas	connor_gibaratz	hulkolas	U killed him			TRUE	Fri Mar 29 20:54:43 UTC 2019
connor_gibaratz~hulkolas	connor_gibaratz	hulkolas	Ur trying to blame me for any fall out of u fucking killing denis			TRUE	Fri Mar 29 20:54:40 UTC 2019
connor_gibaratz~hulkolas	connor_gibaratz	hulkolas	Oh housemates			TRUE	Fri Mar 29 20:50:36 UTC 2019
connor_gibaratz~hulkolas	connor_gibaratz	hulkolas	Whos not letting u into harrisons?			TRUE	Fri Mar 29 20:50:25 UTC 2019
connor_gibaratz~hulkolas	connor_gibaratz	hulkolas	Wtf			TRUE	Fri Mar 29 20:50:03 UTC 2019
connor_gibaratz~hulkolas	connor_gibaratz	hulkolas	And they would have known just as much as they do rn regardless of is i said anything			TRUE	Fri Mar 29 20:50:00 UTC 2019
connor_gibaratz~hulkolas	connor_gibaratz	hulkolas	Honestly i think its good that cara and olga know			TRUE	Fri Mar 29 20:49:38 UTC 2019
connor_gibaratz~hulkolas	hulkolas	connor_gibaratz	U have just as much responsibility as me. And u just throw some shit on me like I did it when not nearly no one did nothing			TRUE	Fri Mar 29 20:47:24 UTC 2019
cara-m~hulkolas	hulkolas	cara-m	Lol u literally accomplished what u donâ€™t want to happen. And the solution is to tell olga. Letâ€™s see what u will do next w ur games			TRUE	Fri Mar 29 20:36:52 UTC 2019
hulkolas~kevinfgalvan	kevinfgalvan	hulkolas	I turned it in already			FALSE	Fri Mar 29 14:27:07 UTC 2019
hulkolas~princ3stunner	princ3stunner	hulkolas			36B33	TRUE	Fri Mar 29 11:33:37 UTC 2019
hulkolas~liltrev	liltrev	hulkolas	Please and thank you			TRUE	Fri Mar 29 01:49:37 UTC 2019
hulkolas~maxinizer5000	maxinizer5000	hulkolas	Aka drain cleaner			TRUE	Fri Mar 29 00:59:28 UTC 2019

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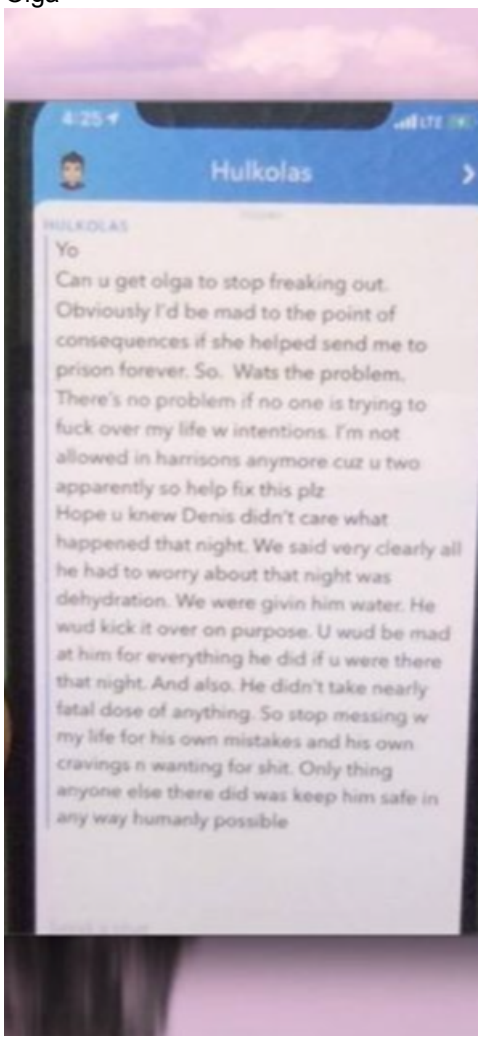
Olga Lurye <omlur@umich.edu>

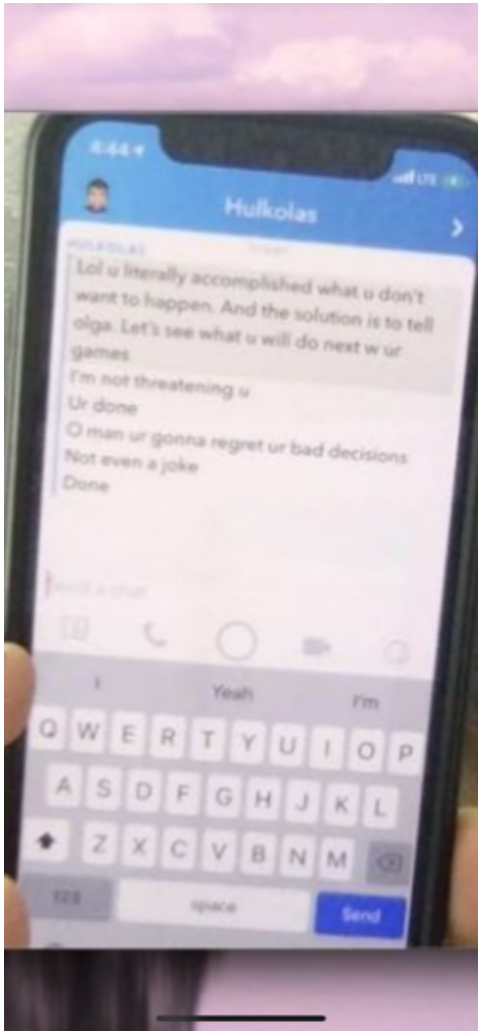
Regarding Denis Preka Investigation

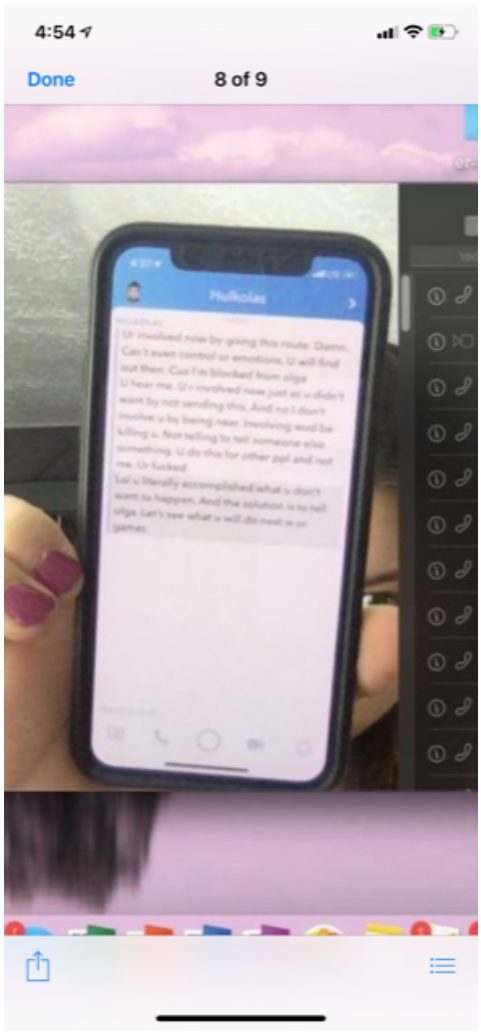
Olga Lurye <omlur@umich.edu> Wed, Apr 3, 2019 at 2:42 PM
To: "Balog, Steve" <sbalog@cityofnovi.org>

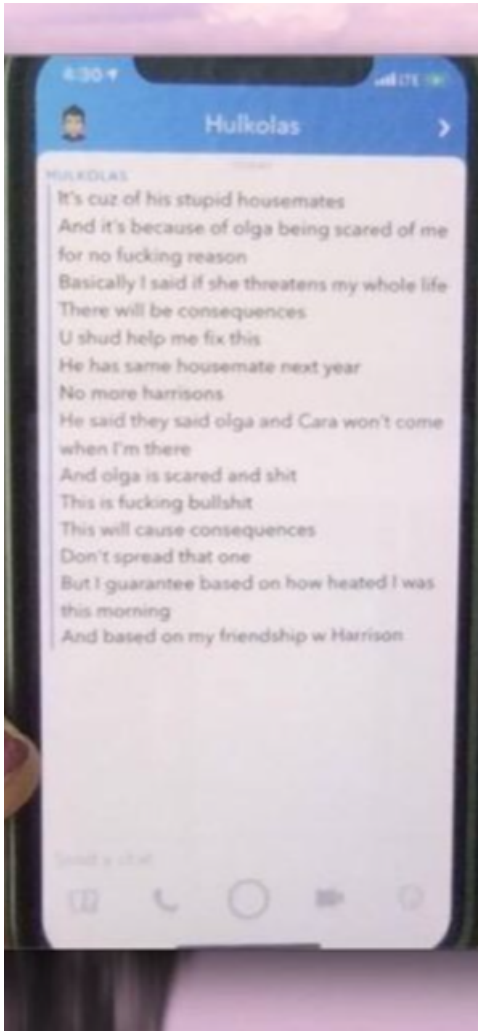
Hi Officer Balog,
Hope you had a nice vacation. I have frightening news: Nick Remmington is contacting Cara and directly threatening us. I can send you the screenshoots. Ill email you the screenshots on here.

Thank you,
Olga




Hulkolas
Lol u literally accomplished what u don't want to happen. And the solution is to tell olga. Let's see what u will do next w ur games
I'm not threatening u
Ur done
O man ur gonna regret ur bad decisions
Not even a joke
Done
Yeah
I'm
space
Send


4:54
Done
8 of 9
Hulkolas



When can you meet this week to talk?

Thank You,
Olga
[Quoted text hidden]
--
Olga Lurye
University of Michigan Ross School of Business '21
9292172430

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Olga Lurye <omlur@umich.edu>

Regarding Denis Preka Investigation

Balog, Steve <sbalog@cityofnovi.org> Wed, Apr 3, 2019 at 3:24 PM
To: Olga Lurye <omlur@umich.edu>

Can you screen shot these and send them one at a time. I cannot read them clearly. Also I may be able to meet with you this Friday early afternoon. Let me know. If you are concerned about Nick threatening you, contact campus PD.

From: Olga Lurye [mailto:omlur@umich.edu]
Sent: Wednesday, April 3, 2019 2:43 PM
To: Balog, Steve
Subject: Re: Regarding Denis Preka Investigation

Hi Officer Balog,

Hope you had a nice vacation. I have frightening news: Nick Remmington is contacting Cara and directly threatening us. I can send you the screenshoots. Ill email you the screenshots on here.

Thank you,

Olga

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Olga Lurye <omlur@umich.edu>

Regarding Denis Preka Investigation

Balog, Steve <sbalog@cityofnovi.org> Thu, Apr 11, 2019 at 6:37 PM
To: Olga Lurye <omlur@umich.edu>

Your names would be redacted on any police reports. Nick is scared to go to jail. I don't think he will do anything to risk that.

Sent from my iPhone

On Apr 11, 2019, at 6:31 PM, Olga Lurye <omlur@umich.edu> wrote:

> Hi,
> Thanks for your quick reply. He's saying there's stuff saying our names on the police report and I thought the police report was from you guys. I'm trying to think rationally since we don't have any sustainable evidence why would our names be on the report, he's def playing us. Cara is the one who's more scared but I'm trying to talk some sense to her though if you have any advice on how to go about that, that would be much appreciated.
>
> i will call the um police.
>
> Thank you,
> Olga
> Sent from my iPhone
> [Quoted text hidden]

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Olga Lurye <omlur@umich.edu>

Regarding Denis Preka Investigation

Balog, Steve <sbalog@cityofnovi.org> Thu, Apr 11, 2019 at 6:04 PM
To: Olga Lurye <omlur@umich.edu>

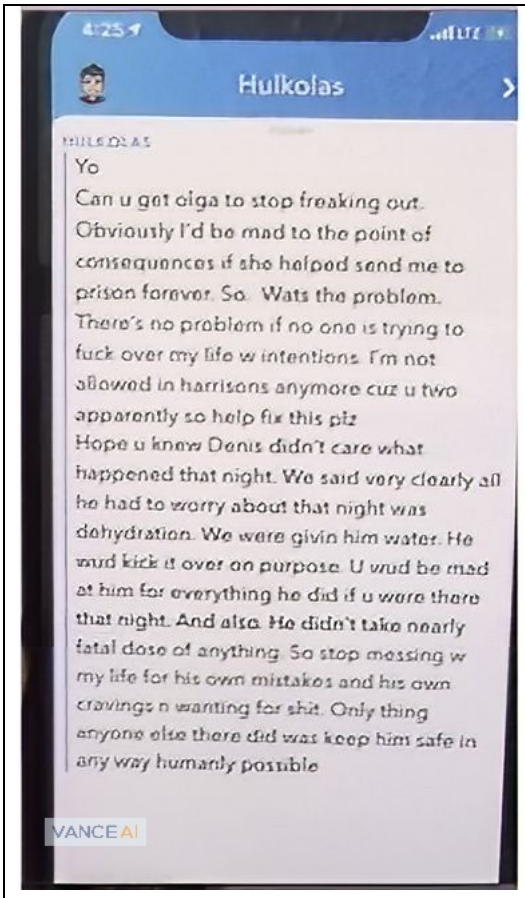
I'm guessing he's playing you guys. He doesn't have any information from me. If he calls, texts etc. making threats. call u of m police.

Sent from my iPhone

On Apr 11, 2019, at 5:57 PM, Olga Lurye <omlur@umich.edu> wrote:

> Hi Officer Balog,
> Nick just contacted Cara on Snapchat saying Your name is on the police report nice one sneaky. She is freaking out. I thought based on our conversations we don't have any sustainable evidence to use in court and all we have is hersay. Is Nick just using a fear tactic or was our names actually involved in the police report. All we did was send in the video to you guys and you guys already had it. Nick has so many people on Snapchat anybody coulda sent of that.
>
> Thank you,
> Olga
>
> Sent from my iPhone
>
> On Apr 3, 2019, at 3:24 PM, Balog, Steve <sbalog@cityofnovi.org> wrote:
>
> > Can you screen shot these and send them one at a time. I cannot read them clearly. Also I may be able to meet with you this Friday early afternoon. Let me know. If you are concerned about Nick threatening you, contact campus PD.
> >
> > **From:** Olga Lurye [mailto:omlur@umich.edu]
> > **Sent:** Wednesday, April 3, 2019 2:43 PM
> > **To:** Balog, Steve
> > **Subject:** Re: Regarding Denis Preka Investigation
> >
> > Hi Officer Balog,
> >
> > Hope you had a nice vacation. I have frightening news: Nick Remmington is contacting Cara and directly threatening us. I can send you the screenshoots. Ill email you the screenshots on here.
> >
> > Thank you,
> >
> > Olga
> >
> > <image002.png>
> >
> > <image004.png>
> >
> > <image006.png>
> >
> > <image008.png>

Nick Remington (Hulkolas) threats sent to Cara Mastanduno and Olga Luyre thru snapchat



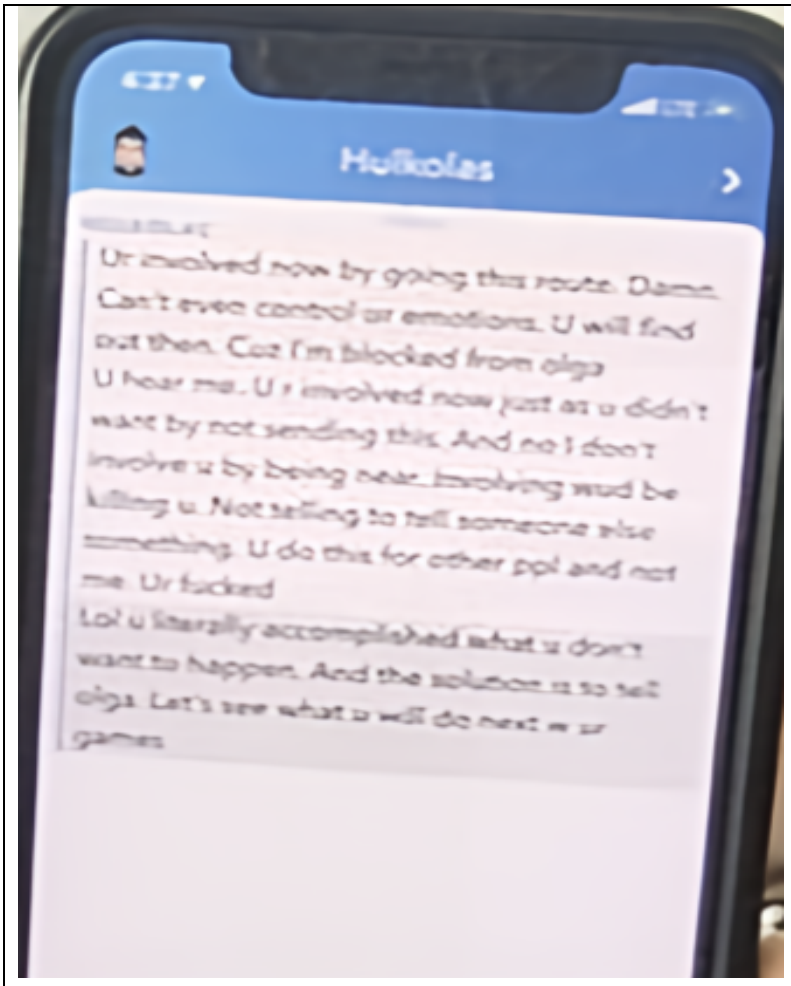
03/29/2019 4:25pm Screenshot

Yo
Can you get olga to stop freaking out
Obviously I'll be mad to the point of consequences if she helped send me to prison forever. So. Wats the problem.
There's no problem if no one is trying to fuck over my life w intentions. I'm not allowed in harrisons anymore cuz you two apparently so help fix this plz
Hope you knew Denis didn't care what happened that night. We said very clearly all he had to worry about that night was dehydration. We were givin him water. He would kick it over on purpose. U would be mad at him for everything he did if you were there That night. And also. He didn't take nearly fetal dose of anything. So stop messing w my life for his own mistakes and his own cravings n wanting for shit. Only thing anyone else there did was keep him safe in any way humanly possible

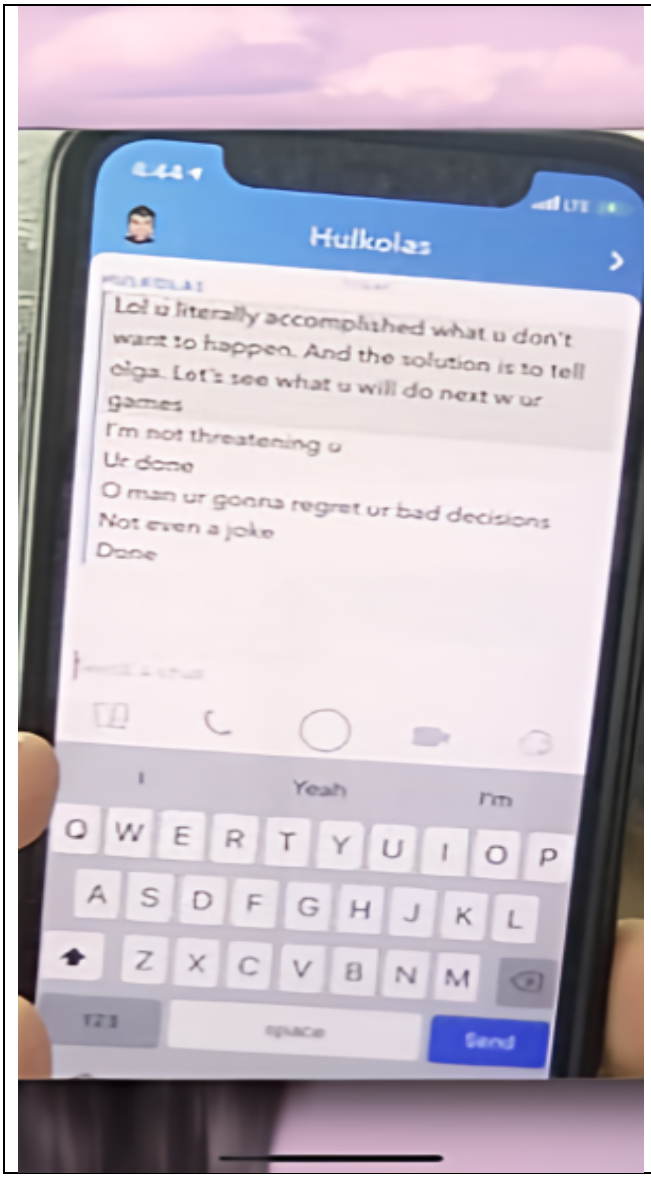
Nick Remington (Hulkolas) threats sent to Cara Mastanduno and Olga Luyre thru snapchat

	03/29/2019 4:30pm Screenshot It's cuz of his stupid housemates And it's because of olga being scared of me for no fucking reason Basically I said if she threatens my whole life There will be consequences U shud help me fix this He has same housemate next year No more harisons He said they said olga and Cara won't come when I'm there And olga is scared and shit This is fucking bullshit This will cause consequences Don't spread that one But I guaranteed based on how heated I was this morning And based on my friendship w Harrison

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	03/29/2019 4:37pm Screenshot Ur involved now by going this route. Damn. Can't even control ur emotions. U will find out then. Cuz I'm blocked from olga U hear me. U r involved now just as u didn't want by not sending this. And no I don't involve u by being near… Involving wud be killing u, Not telling to tell someone else Something. U do this for other ppl and not me. Ur fucked **Lol u literally accomplished what u don't want to happen. And the solution is to tell olga. Let's see what u will do next w ur games.**

Nick Remington (Hulkolas) threats sent to Cara Mastanduno and Olga Luyre thru snapchat



03/29/2019 4:44pm Screenshot

Lol u literally accomplished what u don't want to happen. And the solution is to tell olga. Let's see what u will do next w ur games
I'm not threatening u
Ur done
O man ur going to regret ur bad decisions
Not even a joke
Done