

1 STATE OF MINNESOTA
2 COUNTY OF KANDIYOHI

DISTRICT COURT
EIGHTH JUDICIAL DISTRICT

3
4 State of Minnesota,

5 Plaintiff,

OMNIBUS HEARING

6 vs.

34-CR-24-341

7 Nicholas Robert Rekieta,

8 Defendant.

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The above-entitled matter came on for hearing before the Honorable Stephen J. Wentzell, Judge of District Court, on August 21, 2024, at the Kandiyohi County Courthouse, Willmar, Minnesota.

APPEARANCES :

Kristen Pierce and Jordan Engler, Assistant County Attorneys, appeared on behalf of the Plaintiff.

Francis White, Attorney at Law, appeared on behalf of the Defendant.

Nicholas Robert Rekieta, the Defendant, was personally present.

1 (Whereupon, the following proceedings
2 were duly had:)

3 THE COURT: The Court will call Court
4 File 34-CR-24-341, State of Minnesota versus
5 Nicholas Rekieta, who does appear with attorney
6 Francis White. Kristen Pierce and Jordan Engler
7 appear on behalf of the State.

8 The matter is set for an omnibus hearing here
9 today.

10 Mr. White, did you have some contested issues
11 today?

12 MR. WHITE: Yes, Your Honor, we do have
13 some contested issues.

14 THE COURT: Okay. I would ask that you
15 remain seated since we can pick you up on the mic
16 -- mic much better.

17 MR. WHITE: No problem, Your Honor.
18 Yes, Your Honor, if I may and may it please
19 the Court.

20 On Sunday we filed a motion asking for this
21 Court to strike all evidence -- to suppress all
22 evidence that was collected as under the warrant.
23 We based our motion on the two-prong test in
24 *Franks*, a case with which I'm sure the Court is
25 very familiar.

1 Under *Franks* there is a requirement that the
2 statement that was made by the reporting officer
3 was false or in reckless disregard -- regard --
4 disregarded of the truth and that the statement was
5 material.

6 As I indicated in the motion that we filed, I
7 believe that both of the -- both of the -- the legs
8 upon which Deputy Pomplun, I believe is his name,
9 based his motion or based his request to the Court,
10 I believe both of those are faulty.

11 As I pointed out in the first -- in the
12 first instance for the -- for the, excuse me, in
13 the first instance for the -- for the warrant, he
14 based that on hearsay, which I concede is
15 admissible, but hearsay from a reporting official
16 who -- a mandatory reporter who reported something
17 to another officer, that other officer, Sergeant
18 Nester, forwarded that information to Kandiyohi
19 County Health and Human Services CPS, and CPS
20 rejected that. The letter that I submitted as an
21 exhibit in MNDS clearly shows that that -- that
22 that first -- that particular artifice was rejected
23 by Kandiyohi County. But even if it hadn't been
24 rejected, that plain language of what is -- what is
25 alleged in Deputy Pomplun's request, his

1 application, doesn't rise to the level of anything
2 to do with drugs. Child engagement, perhaps.
3 That language in there reflects nothing but child
4 endangerment at best, and I won't even concede that
5 it does that.

6 The second -- the second element is that -- is
7 that Deputy Pomplun said that he had watched a
8 video -- a video on the Steel Toe -- Steel Toe
9 Morning Show by a gentleman by the name of Aaron
10 Imholte. Aaron Imholte and the defendant have had
11 a, I don't want to say a long-standing feud, but
12 it's gone on -- it's gone on for months. They --
13 they don't like each other. They plain old just
14 don't like each other. And from the writing in
15 the -- in the particular application, it seems as
16 if that -- that the deputy identified Mr. Imholte,
17 and his expectation, there almost as a concerned
18 citizen.

19 Well, case law is -- is very adamant that --
20 that he doesn't qualify as -- as a concerned
21 citizen because when you're dealing with a
22 concerned citizen analysis you have to look at what
23 the motivation is. The motivation is important to
24 determining whether someone is a concerned citizen
25 or not.

1 Also the video, and as is stated in the -- in
2 the -- excuse me, the video that is -- he watched
3 could not have been the defendant's. In fact, the
4 evidence that -- that we received in discovery in
5 their Supplement 1, shows a clip from the -- from
6 presumably the video that he watched showing that
7 it came from a different platform, and that
8 different platform added elements to that video.

9 So the video in and of itself is -- is not
10 reliable evidence. And the problem with that is
11 that Deputy Pomplun didn't identify that to Judge
12 Fischer. It's my belief that if Judge Fischer had
13 known that the -- the allegations that were made
14 had been evaluated and dismissed and that the video
15 that -- that Detective Pomplun reviewed was not
16 Mr. Rekieta's video but was, in fact, a video that
17 someone else had copied and then added elements to,
18 she would not have issued that warrant, at least
19 not in the four minutes from the moment that she --
20 excuse me, from the four minutes that he signed it
21 and then she signed the warrant. Four minutes
22 elapsed between the application and the warrant.

23 I assume that all judicial officers take
24 their -- take their -- their jobs and
25 responsibilities seriously and in doing so they

1 rely on -- on officers of the law to be honest and
2 fully forthright and forthcoming in their
3 expressions to the Court. I think in this case
4 these are material omissions that Detective Pomplun
5 did not tell Judge Fischer about, which renders the
6 warrant invalid.

7 One of the others issues that I raised was the
8 fact that the warrant -- even if the warrant is --
9 is valid as to -- as to drugs, the police seized
10 firearms, or alleged firearms I should say, from --
11 from Mr. Rekieta's residence. Those firearms
12 aren't -- aren't listed in the warrant. There's
13 no indication that they're looking for firearms.

14 The case law that I cited in my brief, and I
15 won't go over it -- over it here, is pretty clear
16 that even when something is in -- in plain view, it
17 has to be related to -- substantially related to or
18 there has to be a nexus between the -- the -- the
19 alleged offense for which the search warrant was
20 granted and the -- the seizure of an item that is
21 not listed on there. There is no nexus here.
22 There's -- there's -- it's not substantially
23 related and there is no nexus here. The case law
24 on this is pretty clear.

25 The third issue that I raise -- that I -- that I

1 raised evolves -- involves Ms. April Imholte's
2 statement to the officers after she had been
3 Mirandized. There's been a lot of confusion about
4 this.

5 THE COURT: I'm going to stop you there.
6 That third issue though, isn't that more so a
7 motion in limine that would be reserved if the
8 matter did get set for trial? I'm not sure if it's
9 proper for me at an omnibus stage to really, you
10 know, discuss admissibility since it's not a
11 constitutional or a legal issue. It seems like
12 more a motion in limine is what you're suggesting
13 on that last issue.

14 MR. WHITE: You're at -- I -- that was my
15 initial thought, Your Honor. But the case that I
16 cited, *Sutter*, seemed to -- ended up with the issue
17 being harmless error because, and again, this is
18 something that I'm drawing from -- from my
19 research, and it doesn't state it explicitly
20 because it wasn't raised early enough. So belt
21 and suspenders, Your Honor, I wanted to make sure
22 that it -- that it was raised as early as possible.

23 And the state has conceded, and I'm -- I'm --
24 I'm sure Ms. Pierce will -- will tell you, that
25 they will not use the body cam footage that I'm

1 asking the Court to preclude unless Ms. April Im --
2 Imholte testifies.

3 THE COURT: Okay.

4 MR. WHITE: Thank you, Your Honor.

5 THE COURT: All right. So summing up
6 your first issue then essentially you're asking for
7 a *Franks* evidentiary hearing and you're -- you
8 mention -- you mentioned some items that you placed
9 in the MNDES -- just one moment as I refer to
10 those. That was -- well, do you want to detail
11 what your exhibits are? It looks like you have
12 some video recordings, a document image, a letter
13 from family services, the application for a search
14 warrant, and another video; does that sound
15 correct?

16 MR. WHITE: There are. In -- in there,
17 I'll get rid of the two easiest ones to get rid of,
18 there are -- there are two body cam vid -- videos
19 because Ms. Pierce is conceding that that's not
20 necessary and those relate solely to -- to -- to
21 the third issue that I raised. Those -- those are
22 not particularly relevant.

23 There -- the other video is a copy that I
24 personally downloaded of the Steel Toe Morning
25 Shoe -- Show, excuse me, Steel Toe Morning Show

1 from May 22, 2024, that was their morning show, not
2 the evening show, because apparently there's an
3 evening show as well. I downloaded that. And that
4 video references to -- to times that are in -- that
5 are in the -- in our motion.

6 The application for a search warrant, of
7 course, was to -- to -- the Court already had that
8 but that was for -- for ease of use.

9 The letter is the letter that I referenced
10 from Kandiyohi County Human -- Health and Human
11 Services stating that they had investigated the
12 report from May 16 and they had found it wanting
13 for any evidence of child -- child abuse or
14 neglect, which is a pretty low standard, Your
15 Honor.

16 The PowerPoint presentation that is titled
17 Rekieta video.pptx, that is the PowerPoint
18 presentation that -- that Deputy Pomplun references
19 in his Supplemental Report 1, which is also
20 included, that he created from someone else's
21 stream, not from -- not from Mr. Rekieta's stream,
22 but from someone else's stream. And the
23 Rekieta.png is the -- is a screenshot that is taken
24 from that stream.

25 Okay, and I already mentioned the supplemental

1 report, and I think that's -- I think that's
2 everything, Your Honor.

3 What I'm saying is is that evidence is not the
4 best evidence. It wasn't the original evidence.
5 And Judge Fischer had an expectation that she would
6 have been informed of that. Detective Pomplun did
7 not inform her of that. In fact, his application
8 indicates if he watched -- watched Mr. Rekieta's
9 stream. And seeing as that is the only, only,
10 suggestion that there were drugs in the house, then
11 she had a duty to -- she had -- she had a need to
12 know that and he had a duty to tell her that that
13 had been edited so she could have evaluated that.

14 THE COURT: All right. Ms. Pierce, any
15 objection to the Court receiving those items?

16 MS. PIERCE: Your Honor, I would object
17 to the video of the Steel Toe Morning Show. The
18 affidavit does, for the search warrant, does
19 indicate that they did review a video blog on
20 5/22/2024 from Aaron Imholte but there are, as
21 Mr. Francis White says, there are multiples per
22 day. I don't know if this is the one that was
23 watched and can't talk to the authenticity of the
24 video.

25 THE COURT: All right. Any further

1 response on that issue?

2 MR. WHITE: Your Honor, we're not
3 submitting it for the -- for the truth of the
4 matter here, we're submitting it as -- as an
5 indication that there was a different video than
6 what -- what he actually reviewed. But, excuse
7 me, that -- that Mr. -- that Detective Pomplun
8 watched that show and that show indicated that
9 there was animosity between the two -- between the
10 two parties.

11 If you grant us an evidentiary hearing, the
12 *Franks* evidentiary hearing, I will certainly be
13 asking Detective Pomplun whether or not he watched
14 that video or not.

15 THE COURT: All right. Well, I'll take
16 the admissibility of that under advisement. I'll
17 review it and determine whether the Court will
18 overrule the state's objection or not.

19 Ms. Pierce, you response?

20 MS. PIERCE: Your Honor, I would ask
21 for -- to allowed to do a written response.

22 THE COURT: All right. How much time?

23 MS. PIERCE: If I could have until the
24 30th, Your Honor.

25 THE COURT: That would be fine, August

1 30.

2 MR. WHITE: Your Honor, I would ask to be
3 able to reply to the written response and I would
4 need five additional days to do that.

5 THE COURT: Any objection? Typically,
6 this is your motion, I would have you file your
7 submissions first and the state thereafter.

8 MR. WHITE: My submissions, Your Honor,
9 are already filed.

10 THE COURT: All right. In light of that
11 I'll allow a reply brief then by September 6, okay.

12 MR. WHITE: Thank you, Your Honor.

13 THE COURT: All right. The Court will
14 take the matter under advisement as of September 6
15 and issue an order. Typically an order will be
16 provided within 30 days of that date.

17 Was there anything else here today.

18 MR. WHITE: No, Your Honor, except for
19 Ms. Pierce saying on the record that she did agree
20 that that -- that the third element would be --
21 that she had agreed that that there would be no use
22 of the body cam footage unless Ms. April Imholte
23 testifies.

24 THE COURT: Ms. Pierce.

25 MS. PIERCE: I agreed that there would be

1 -- I cannot use April's statements unless she
2 testifies because they're hearsay and I would not
3 show her statement on body camera. I'm not
4 agreeing that I would not use any of the body
5 camera.

6 THE COURT: All right. All right, well,
7 nevertheless, those items are motions in limine.
8 You've noticed it. It's an issue if the matter
9 does go to trial. And if there's any further
10 contest of that, we can certainly discuss that
11 further as well, okay.

12 MR. Understood, Your Honor. Thank you.

13 THE COURT: All right, very well then.
14 The Court will take this under advisement. I'll
15 issue a order once briefing has been provided.

16 That will conclude the proceedings today.

17 MR. WHITE: Thank you.

18 THE COURT: Thank you.

19 MR. WHITE: Thank you, Your Honor.

20 * * * END OF RECORD * * *

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REPORTER'S CERTIFICATE

I, Lisa M. Vosika, do hereby certify that I reported in Stenotype the proceedings in the matter of the State of Minnesota vs. Nicholas Robert Rekieta.

I further certify that thereafter I transcribed into typewriting the foregoing transcript of the said recorded proceedings.

I further certify that said transcript of such proceedings is true and correct to the best of my ability.

Dated: August 26, 2024

/s/ Lisa M. Vosika

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