

Katherine M. Keefe
Clerk of the Circuit Court
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McHenry County, Illinois
22nd Judicial Circuit

1 STATE OF ILLINOIS)
2 COUNTY OF MCHENRY) SS:

3 IN THE TWENTY-SECOND JUDICIAL CIRCUIT
4 MCHENRY COUNTY, ILLINOIS

5 THE PEOPLE OF THE)
6 STATE OF ILLINOIS,)
7 Plaintiff,)
8 vs.)
9 MICHAEL M. PENKAVA,)
10 Defendant.)

No. 20 CM 1338

11 ELECTRONICALLY RECORDED Report of
12 Proceedings had in the above-entitled cause before
13 The Honorable MARK R. GERHARDT, Judge of said
14 Court, on the 17th day of February, 2022, in the
15 afternoon session, at the McHenry County Government
16 Center, Woodstock, Illinois.

17 APPEARANCES:

18 MR. PATRICK D. KENNEALLY,
19 STATE'S ATTORNEY, MCHENRY COUNTY, by:
20 MR. PATRICK D. KENNEALLY,
21 State's Attorney,
22 MR. ASHUR YOUASH,
23 Assistant State's Attorney,
24 on behalf of the Plaintiff,

LAW OFFICE OF PHILIP A. PROSSNITZ, by:
MR. PHILIP A. PROSSNITZ,
on behalf of the Defendant
Michael M. Penkava,

EKL, WILLIAMS & PROVENZALE LLC, by:
MR. TERRY A. EKL,
on behalf of the Defendant Colin
Scott, Case No. 20 CM 1337.

1 THE COURT: We'll call the matters of
2 [REDACTED] and Mr. Penkava. I'll bring those
3 individuals in on the Zoom portals.

4 Mr. Penkava, can you hear me?

5 MR. PENKAVA: Yes, I can, your Honor.

6 THE COURT: [REDACTED] can you hear me?

7 MR. SCOTT: Yes, I can, your Honor.

8 THE COURT: All right. The matter comes
9 before the Court for both these gentlemen's
10 matters. The State is represented by?

11 MR. YOUASH: Good afternoon, your Honor,
12 Ashur Youash on behalf of the State.

13 MR. KENNEALLY: Pat Kenneally on behalf of
14 the State, Judge.

15 THE COURT: And the defense?

16 MR. EKL: Good afternoon, your Honor. Terry
17 Ekl on behalf of [REDACTED]

18 MR. PROSSNITZ: And good afternoon, Judge,
19 Philip Prossnitz on behalf of Michael Penkava.

20 THE COURT: All right. The matter comes
21 before the Court for one purpose this afternoon and
22 that's for the Court's decision regarding the
23 State's -- excuse me -- the defendant's motion to
24 strike the State's request for a hearing on a

1 motion in limine. I'll make it short and sweet.

2 The motion to strike is denied.

3 What would you like to do next?

4 Trial date is set for March 2nd, 1:30 p.m.

5 MR. KENNEALLY: Judge, the State would
6 respectfully ask for a hearing date prior to the
7 trial date.

8 THE COURT: What date do you want?

9 MR. YOUASH: Your Honor, would the Court have
10 an open Friday afternoon as the State would -- I
11 guess it would be February 25th, if possible, your
12 Honor.

13 THE COURT: Well, I know I have one other
14 matter in front of me that day which is Ms. Shott,
15 who is pro se, filed a motion that's about that
16 thick.

17 MR. YOUASH: I'm familiar with Ms. Shott,
18 Judge.

19 THE COURT: So that one may take some time.

20 MR. YOUASH: Would the 24th work, your Honor?

21 THE COURT: Let me take a look. I know I
22 have two bench trials, but if Mr. Walsh is here,
23 which he is, he might be able to inform us. Most
24 likely those are his cases. We can take a look if

1 those are actually going to go or not. On the 24th
2 is a bench trial, Karissa Montanez. Mr. Walsh, do
3 you have any information about that one? That's
4 with the State.

5 MR. WALSH: I don't believe that's going to
6 go, Judge. I would have to take a look at my
7 notes, but I don't think that's going.

8 THE COURT: And then the other one is a DT
9 with the public defender's office, which is a
10 little bit older. It's actually got a motion to
11 continue. The Village of Cary is going to ask to
12 continue that one anyways, so it looks like nothing
13 is going on that date.

14 Mr. Prossnitz? Mr. Ekl?

15 MR. EKL: I'm sorry, Judge. I couldn't hear
16 what you just said.

17 THE COURT: It looks like the 24th is going
18 to be mostly open.

19 MR. PROSSNITZ: What time, your Honor?

20 THE COURT: 1:30 p.m.

21 MR. PROSSNITZ: That would be perfect for
22 Mr. Penkava and myself.

23 MR. EKL: Judge, I can move some stuff around
24 to be available.

1 THE COURT: I appreciate that, Mr. Ekl. That
2 will be the next court date.

3 [REDACTED] Mr. Penkava, can you two
4 make it on that day? That's February 24, 1:30 p.m.

5 MR. PENKAVA: Yes, your Honor.

6 MR. SCOTT: Yes.

7 THE COURT: All right. Thank you. We'll see
8 everybody then. Thanks, gentlemen.

9 MR. EKL: Thank you, Judge.

10 MR. YOUASH: Thank you, your Honor. Order to
11 come.

12 MR. PROSSNITZ: Judge?

13 THE COURT: Yes, Mr. Prossnitz.

14 MR. PROSSNITZ: Just one brief matter, just a
15 housekeeping matter.

16 THE COURT: Sure.

17 MR. PROSSNITZ: Right now we are scheduled
18 for one afternoon on March 2nd.

19 THE COURT: Correct.

20 MR. PROSSNITZ: And just preliminarily in
21 speaking with everybody, it's my guesstimate that
22 the State's case alone will be an afternoon. And
23 it appears that we will be flying in Mr. Miller
24 once again to testify, so I just want to put it out

1 there that we might need a second date in addition
2 to March 2nd. And I just want to kind of detonate
3 that issue early.

4 MR. EKL: If I could add something?

5 THE COURT: Sure. Go ahead.

6 MR. EKL: We are going to be talking with the
7 prosecutors about stipulations to try to get some
8 of this moving along. I don't know if it's going
9 to be successful, but if we don't get stipulations
10 on some of the prior testimony, there is no way we
11 are going to be able to finish in an afternoon.

12 THE COURT: I'm fighting back a smile because
13 I think I'm the one who said we needed two days to
14 begin with and everyone else said we needed one.
15 Then we reserved two, and then I said I filled up
16 the fourth anyway.

17 MR. EKL: I don't recall ever --

18 THE COURT: Right now we have the 2nd.

19 MR. EKL: Yeah, I don't recall ever saying
20 that we didn't need more than an afternoon, but --

21 THE COURT: State?

22 MR. YOUASH: Judge, I would agree with the
23 defense. I do believe more than one afternoon
24 would be required on this trial.

1 MR. PROSSNITZ: And finally, Judge --

2 THE COURT: Yes, Mr. Prossnitz.

3 MR. PROSSNITZ: -- I would -- my guesstimate
4 is that the State would need an afternoon. I
5 anticipate the defense will file a motion for
6 directed finding. It might be complicated. The
7 Court might want to take it under advisement, so it
8 might make good sense for the second hearing date
9 to occur a week or two after March 2nd.

10 THE COURT: Mr. Prossnitz, if I had your
11 crystal ball, I wouldn't be sitting up here, I
12 would be rich.

13 MR. PROSSNITZ: Well, I understand, but I
14 don't think that guesstimate is so far off or so
15 illogical. I think it's 85 percent accuracy.

16 THE COURT: State?

17 MR. YOUASH: Again, Judge --

18 THE COURT: I'm going to turn to Mr. Walsh
19 since he's still here. Thank you for being
20 present, Mr. Walsh, since --

21 MR. WALSH: Anything I can do to shed light
22 on this, Judge, sure.

23 THE COURT: Since Mr. Walsh's firm seems to
24 drive my scheduling at some points in time, I'm

1 looking at March 9th, Carbajal as well as Pagan,
2 those are both --

3 MR. WALSH: Is that Desiree?

4 THE COURT: Yes.

5 MR. WALSH: Desiree is worked out.

6 THE COURT: Okay. Francisco Pagan with the
7 State, bench trial, DUI and two companions.

8 MR. WALSH: Francisco Pagan?

9 THE COURT: Yes.

10 MR. WALSH: Oh.

11 THE COURT: I'm sorry, no. Francisco
12 Carbajal. It was Desiree Pagan.

13 MR. WALSH: Desiree Pagan is worked out.
14 Francisco Carbajal, I would have to look at, Judge.

15 MR. EKL: Judge, excuse me, but on the 9th I
16 have a hearing scheduled in DuPage that I cannot
17 move.

18 MR. PROSSNITZ: 16th?

19 THE COURT: Hold on. The 11th again with the
20 State and Mr. Walsh, Rafael Franco. That is a
21 driving on license suspended. We are not worried
22 about that because those take about ten minutes.

23 MR. WALSH: I would feel somewhat secure Jeff
24 scheduling something in addition to that if that's

1 all you have.

2 THE COURT: Well, I also have Kasey Lomax,
3 which is a two-count DUI with companion cases.
4 That is also yours with the State.

5 MR. WALSH: I think there is an outside
6 chance Kasey Lomax may go, Judge.

7 THE COURT: Give me a moment.

8 MR. WALSH: If need be, though, Judge, there
9 seems to be several more moving parts in the matter
10 before you now than there are on my DUI bench trial
11 that I would defer to --

12 THE COURT: Well, I might be able to find a
13 backup judge for you on that afternoon too,
14 Mr. Walsh.

15 MR. WALSH: I'll defer to counsel, Judge.
16 (Indiscernible) that's fine.

17 THE COURT: Well, I'm going to schedule the
18 matter, if everybody is available, for the 11th.

19 MR. EKL: Okay. That's fine.

20 MR. PROSSNITZ: That's fine, Judge.

21 THE COURT: [REDACTED] --

22 MR. YOUASH: Yes, your Honor. Oh, sorry.

23 THE COURT: -- is that okay with you,
24 March 11, 1:30 in addition to March 2nd?

1 MR. SCOTT: March 11, 1:30, yes.

2 THE COURT: Mr. Penkava?

3 MR. PENKAVA: That is fine with me, your
4 Honor.

5 THE COURT: Mr. Youash? Mr. Kenneally?

6 MR. YOUASH: Yes, your Honor.

7 THE COURT: All right. Trial dates are then
8 1:30 on March 2nd, 1:30 on March 11. Anything else
9 as long as we are talking about housekeeping
10 matters?

11 MR. EKL: Judge, my client has asked and I
12 just want to verify with the Court, he has executed
13 his waiver of appearance and he would like to
14 attend trial and the hearing via Zoom. He is 88
15 and has some concern about getting out of the house
16 at this point. So he would like to attend by Zoom.

17 THE COURT: Well, I think you've executed the
18 proper waiver.

19 MR. EKL: He did, Judge.

20 THE COURT: Give me a moment, please.

21 MR. EKL: He did that some time ago.

22 THE COURT: Give me a moment. I think that
23 specifically covered by Illinois Supreme Court Rule
24 Miscellaneous Remedy 30370 from back on

1 February 11, 2021.

2 State, anything to say?

3 MR. YOUASH: Judge, I guess, if I remember
4 correctly, your Honor, the defense withdrew that
5 waiver at some point because they did not want to
6 agree to all witnesses being able to do the same.
7 If I'm mistaken and it's still -- I have no
8 objection to that request.

9 THE COURT: Well, your memory is partially
10 correct because that initially occurred, but then
11 subsequent to that a waiver was filed.

12 MR. YOUASH: Thank you, your Honor. I have
13 certainly no objection to that.

14 THE COURT: Someone can correct my memory if
15 I'm wrong, but that's my understanding.

16 MR. EKL: No, you are correct.

17 THE COURT: And I believe both Mr. Scott and
18 Mr. Penkava have filed those, correct,
19 Mr. Prossnitz?

20 MR. PROSSNITZ: We have. Mr. Penkava is
21 likely to appear live.

22 THE COURT: I understand, but I think both
23 have waivers.

24 MR. PROSSNITZ: I would have to double check

1 the file, your Honor.

2 THE COURT: All right.

3 MR. YOUASH: Your Honor, I have no objection.

4 THE COURT: Okay. Anything else?

5 MR. PROSSNITZ: No, your Honor.

6 MR. YOUASH: Nothing. Thank you, your Honor.

7 MR. EKL: Thank you, Judge. Have a good day.

8 THE COURT: All right. You too.

9 MR. YOUASH: Your Honor, may I approach?

10 THE COURT: You may.

11 [REDACTED] and Mr. Penkava, we are
12 all done. We'll see you in March -- or excuse me.
13 The next date is --

14 MR. EKL: One week from today.

15 MR. SCOTT: 24th?

16 THE COURT: 24th at 1:30, you are correct.

17 Thank you.

18 (Which were all the proceedings
19 had in the above-entitled cause
20 this date.)

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1 STATE OF ILLINOIS)
)
2 COUNTY OF McHENRY) ss:
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4 I, KRISTINE L. FERRU, an official Court
5 Reporter for the Circuit Court of McHenry County,
6 Twenty-Second Judicial Circuit of Illinois,
7 transcribed the electronic recording of the
8 proceeding in the above-entitled cause to the best
9 of my ability and based on the quality of the
10 recording, and I hereby certify the foregoing to be
11 a true and accurate transcript of said electronic
12 recording.

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-----*Kristine Ferru*-----

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