No. 20-

IN THE

Supreme Court of the United States

RONALD JEREMY HYATT,

Petitioner,

v.

THE STATE OF CALIFORNIA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the prosecution may refuse to disclose the names and address of the 23 victims and additional witnesses it intends to call at petitioner's preliminary hearing, or does that violate his Sixth Amendment right to the effective assistance of counsel and to confront the witnesses against him, and his right to due process of law under the Fourteenth Amendment?

LIST OF PARTIES

All parties are named in the case caption.

LIST OF PROCEEDINGS

On January 11, 2021, the Superior Court of the State of California for the County of Los Angeles denied petitioner's request for discovery in *People of the State of California v. Hyatt*, No. BA488059-01. On February 26, 2021, the California Court of Appeal, Second District, Division 8, denied petitioner Hyatt's Petition for a Writ of Mandate in *Hyatt v. Superior Court*, No. B310120. On March 24, 2021, the California Supreme Court denied Hyatt's Petition for Review and application for stay in *Hyatt v. Superior Court*, No. S267435.

TABLE OF CONTENTS

Table of Contents

TABLE OF APPENDICES

TABLE OF CITED AUTHORITIES

Page

CASES

Page

Page

STATUTES AND OTHER AUTHORITIES

Petitioner Ronald Jeremy Hyatt respectfully petitions for a writ of certiorari to the Court of Appeal of the State of California, Second Appellate District, to review its judgment against him in *Ronald Jeremy Hyatt v. Superior Court of the State of California for the County of Los Angeles, Respondent; The District Attorney of the County of Los Angeles, Real Party in Interest.* That judgment denied petitioner's petition for writ of mandate directed to respondent superior court based on denial of his rights under the Sixth Amendment to the effective assistance of counsel and to confront the witnesses against him.

OPINIONS BELOW

No written opinions were issued in this case. The California Court of Appeal Order denying petitioner Hyatt's Petition for a Writ of Mandate was filed on February 26, 2021 (Case No. B310120). App. 2a Also appended is the Order of the California Supreme Court filed on March 24, 2021, denying Hyatt's Petition for Review and application for stay (Case No. S267435). App. 1a

JURISDICTION

Petitioner invokes the jurisdiction of this Court under 28 U.S.C. section 1257(a) on the ground that the trial court's order denied his rights to the effective assistance of counsel and to confront the witnesses against him under the Sixth and Fourteenth Amendments to the United States Constitution.

The California Court of Appeal entered its order rejecting petitioner's Sixth and Fourteenth Amendment claims on February 26, 2021.

The California Supreme Court denied review and application for a stay in this case on March 24, 2021. The instant Petition for Writ of Certiorari is filed within 90 days of that order.

RELEVANT CONSTITUTIONAL PROVISIONS

The Sixth Amendment to the United States Constitution provides in relevant part: "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him . . . [and] to have the Assistance of Counsel for his defence."

The Fourteenth Amendment to the United States Constitution provides in relevant part: " . . . [N]or shall any State deprive any person of life, liberty, or property, without due process of law. . . . "

STATEMENT OF THE CASE

1. Overview

In this case, the prosecution has announced it intends to call all of the 23 alleged victims, and possibly an undetermined number of 50 other potential witnesses, to testify against defendant at his upcoming preliminary hearing. However, the prosecution has refused to disclose the names and addresses of any of those victims and witnesses. The trial court has upheld the prosecution's refusal, overruling petitioner's demand for disclosure based

on his Sixth Amendment right to the effective assistance of counsel, the Sixth Amendment's Confrontation Clause, and on his right to due process under the Fourteenth Amendment. Such discovery is necessary to defense counsel's effective representation of petitioner at the preliminary hearing, by adequately investigating the charges against petitioner and effectively cross-examining the prosecution's witnesses. Petitioner has sought relief from the trial court's unconstitutional order by filing a petition for writ of mandate in the California Court of Appeal and on its denial by a petition for review in the California Supreme Court; in each court petitioner reiterated the Sixth and Fourteenth Amendment claims he initially raised in the trial court.

2. Background

Petitioner is a celebrity adult movie actor, also known for acting in legitimate movies, speaking at seminars conducted by professional organizations, semi-professional harmonica playing and numerous television appearances on talk-shows. The Los Angeles District Attorney has alleged in a 35-Count Second Amended Felony Complaint that petitioner committed serious (as well as lesser) sex crimes upon 23 women between 1996 and 2020. Petitioner is exposed to possible life sentences on several counts.

The discovery provided by the prosecution to petitioner's defense counsel consists of nearly 5,000 pages of documents and three "thumb drives" containing such materials as police incident reports, and arrest reports. However, on all documents the last names, addresses and phone numbers for all 23 victims and approximately 50 witnesses were redacted, and no birthdates were

disclosed. Review of the materials provided by the prosecution reveals that most of the accusations are based on vague and uncertain recollections of dates, locations, times and acts allegedly committed by petitioner against almost two dozen women between 1996 and 2020, most of whom came forward only after petitioner's initial arrest in June, 2020 was extensively reported in the media.

By timely motion, petitioner requested discovery of 1) full names, 2) dates of birth, 3) current locations/addresses, 4) phone numbers and 5) email addresses of the witnesses the prosecution may call to testify. Petitioner maintained that he was entitled to timely disclosure of information identifying the prosecution's witnesses in order to protect his right to confrontation guaranteed by the Sixth Amendment and that timely disclosure was also necessary to ensure petitioner's Sixth Amendment effective assistance of counsel and to protect his Fourteenth Amendment right to due process of law. (Exhibit "4," 90-94.)

The prosecution has never denied it possesses all the information sought by the defense.

At the January 11, 2021 hearing on petitioner's motion to disclose, the prosecutor acknowledged he intended to call as witnesses at the preliminary hearing all 23 alleged victims. But the prosecution did not decide "at this point in time," whether to call some number of additional witnesses. The prosecutor further acknowledged it had disclosed to the defense only the victims' first names and the first letter of their last names; for some victims the individual's driver's license photograph had also been supplied. Petitioner's counsel, Stuart Goldfarb, explained

the dilemma the prosecution's obduracy placed on the defense. Counsel observed: "I haven't been able in any way to move forward on the case with my client to say this is the person that allegedly you did something to." (Exhibit "6", p. 110.) He explained:

> "[W]here we are at today it's critically important that I be able to have this information for the prelim for this reason. my client is charged on numerous counts of forcible oral copulation, rape, et cetera, but the dates that this occurred date back to the 2004, and out of the so I need the ability to be able to try to get my client to be able to remember what happened or find out information . . . ." Exhibit "6", pp. 110-111.)

Mr. Goldfarb summed up: "[W]e have cases that date back 25 years of alleged victims and having – my client is in custody and having 4700 pages of discovery and receiving another 500, I want the names of people so that I can defend this case and do an investigation." (Exhibit "6", pp. 111-112.)

Defense counsel inquired: "How can someone defend a case if he doesn't know who the victims are"? (Exhibit "6", p. 115.) Stressing the constitutional issue, counsel observed: "it's important for defense counsel to do the investigation as early as they can and thorough complete investigation, if it's not done essentially it would amount to a 6th Amendment violation, ineffective assistance of counsel." (Exhibit "6", p. 117.) Nevertheless, the trial court refused to order the prosecution to identify the victims (including their names and addresses) who the prosecution had stated it intended to call to testify (or

the additional witnesses whom it said it might) at the preliminary hearing. (Exhibit "6", p. 120.)

The court made no factual findings to support its ruling. Under California law the prosecution's disclosure duties include "[t]he names and addresses of persons the prosecutor intends to call as witnesses at trial," Cal. Pen. Code § 1054.1, and such disclosures must be made "at least 30 days prior to the trial." *Id.*, §1054.7. However, that duty has been held to also apply when disclosure is reasonably necessary to prepare for the preliminary hearing. *Magallan v. Superior Court* (2011) 192 Cal.App.4th 1444, 1458-1464, 121 Cal.Rptr.3d 841, 851-857. Under California law, "good cause" to deny, restrict, or defer disclosure "is limited to threats or possible danger to the safety of a victim or witness, possible loss or destruction of evidence, or possible compromise of other investigations by law enforcement." Cal. Pen. Code § 1054.7.

The trial court did not question petitioner's showing that disclosure of the identities of the witnesses the prosecution intended to call to testify against petitioner at the preliminary hearing was necessary to defense counsel's preparation for the hearing and to effective cross-examination of the prosecution's many witnesses. Nor did the court find that the prosecution had shown statutory "good cause" to deny or restrict disclosure in petitioner's case, as there were no threats to the victims or witnesses. Indeed, several of the victims stated that they had no objection to the release of their information. The sole reason the court gave for denying disclosure was: "based as we are prior to the prelim," the prosecution's disclosures were sufficient "for going forward with the prelim. Different story once you get to trial, . . . but for the

moment I believe you have the information you're entitled to and that's my ruling." (Exhibit "6," p. 120.)

Petitioner sought review of the trial court's ruling by filing a petition for writ of mandate in the California Court of Appeal, reiterating the constitutional claims he made for disclosure in the trial court, asserting that the court's ruling refusing to require the prosecution to identify its witnesses denied petitioner his Sixth Amendment rights to the effective assistance of counsel and to confront the witnesses against him and his Fourteenth Amendment right to due process. App. 2a. Division 8 of the Second District Court of Appeal denied the petition on February 26, 2021, stating only: "Petitioner does not show that he is entitled to extraordinary relief." App. 2a. Petitioner then sought further review by filing a petition for review in the California Supreme Court, once more reiterating his Sixth and Fourteenth Amendment claims. App. 1a. Review was denied on March 24, 2021. App. 1a.

REASONS FOR GRANTING THE PETITION

1. Petitioner's Claim Is Reviewable

Although this Court lacks jurisdiction to consider an interlocutory judgment and the decision below is "not a final judgment or decree," 28 U.S.C. § 1257(3); *Market Street R. Co. v. Railroad Comm'n of California*, 324 U.S. 548, 551, 65 S.Ct. 770, 772 (1945), petitioner's Sixth Amendment claims are nonetheless reviewable "because the Sixth Amendment issue will not survive for this Court to review, regardless of the outcome of the proceedings on remand." *Pennsylvania v. Ritchie*, 480 U.S. 39, 48, 107 S. Ct. 989, 996 (1987). This is because

if petitioner is acquitted at trial, there will be no means by which the State of California can obtain review to determine whether the trial court correctly decided the Sixth Amendment issue in denying discovery. The same is true should petitioner be convicted; it will be impossible to determine in retrospect whether if discovery had been ordered he would have been bound over for trial at the preliminary hearing, or the matter instead terminated by an outcome favorable to petitioner. 480 U.S. 39, 48-49, 107 S. Ct. 989, 996.

2. The Petition Should be Granted

a. The Right to Effective Assistance of Counsel under the Sixth Amendment

In California, as is true generally, the purpose of preliminary hearings is "to weed out groundless or unsupported charges of grave offenses and to relieve the accused of the degradation and expense of a criminal trial. Preliminary hearings ... operate as a judicial check on the exercise of prosecutorial discretion and help ensure that the defendant [is] not ... charged excessively." *Bridgeforth v. Superior Ct.*, 214 Cal.App.4th 1074, 1086-1087, 154 Cal. Rptr.3d 528, 537 (2013), internal quotation marks and citation omitted). Recognizing this reality, in *Coleman v. Alabama* (1970) 399 U.S. 1, 90 S.Ct. 1999, the Court found that the preliminary hearing "is a 'critical stage' of the State's criminal process at which the accused is 'as much entitled to such aid (of counsel) . . . as at the trial itself.'" *Id.* at 9-10, quoting *Powell v. Alabama*, 287 U.S. 45, 57 (1932)). *Coleman* explained:

> "Plainly the guiding hand of counsel at the preliminary hearing is essential to protect the indigent accused against an erroneous or improper prosecution. First, the lawyer's skilled examination and cross-examination of witnesses may expose fatal weaknesses in the State's case that may lead the magistrate to refuse to bind the accused over. Second, in any event, the skilled interrogation of witnesses by an experienced lawyer can fashion a vital impeachment tool for use in cross-examination of the State's witnesses at the trial, or preserve testimony favorable to the accused of a witness who does not appear at the trial. Third, trained counsel can more effectively discover the case the State has against his client and make possible the preparation of a proper defense to meet that case at the trial. Fourth, counsel can also be influential at the preliminary hearing in making effective arguments for the accused on such matters as the necessity for an early psychiatric examination or bail." 399 U.S. at 9.[1]

But to afford effective assistance to a defendant, counsel must be afforded access to the necessary tools. As the Court has recognized "it is a denial of the accused's

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1. This Court soon made clear that *Coleman* applies to preliminary hearings generally, not just those held under Alabama law. See, e.g.,

Adams v. Illinois (1972) 405 U.S. 278, 278, 92 S.Ct. 916, 917. To be specific, California courts recognize that *Coleman* applies to that state's preliminary hearings. See *Galindo v. Superior Court*, 50 Cal.4th 1, 9, 112 Cal.Rptr.3d 673 (2010).

constitutional right to a fair trial to force him to trial with such expedition as to deprive him of the effective aid and assistance of counsel." *White v. Ragen*, 324 U.S. 760, 764, 65 S.Ct. 978, 980 (1945).

> "Nor can it be doubted that *Coleman* demands more than the mere presence of counsel at the hearing. The right to counsel which *Coleman* declared would amount to no more than a pious overture unless it is a right to counsel able to function efficaciously in his client's behalf. The Sixth Amendment's guaranty of counsel is a pledge of effective assistance by counsel . . . ." *Coleman v. Burnett*, 477 F.2d 1187, 1204–05 (D.C. Cir. 1973) (n. omitted).

Furthermore, lower federal courts have recognized: "In order to effectuate this right, defense counsel must be afforded the opportunity to cross-examine the government's witnesses." *United States v. Perez*, 17 F. Supp.3d 586, 594 (S.D. Tex. 2014) (citing *Coleman v. Burnett*, 477 F.2d 1187, 1201, 1204–05 (D.C.Cir.1973). It is only "[i]f the evidence on the preliminary hearing, at which a defendant is represented by counsel and has *an opportunity for cross examination and discovery* . . . [that] the rights of the defendant are fully protected." *Bailey v. Gray* (E.D. Wis. 1976) 425 F.Supp. 602, 604, aff'd (7th Cir. 1978) 577 F.2d 747 (italics added).

Discovery of certain basic information clearly is vital to defense counsel adequately serving his or her constitutionally-assigned purpose. As noted, this Court emphasized in *Coleman* that counsel's "guiding hand" was "essential to protect . . . against an erroneous or

improper prosecution" because "[f]irst, the lawyer's skilled examination and cross-examination of witnesses may expose fatal weaknesses in the State's case that may lead the magistrate to refuse to bind the accused over." 399 U.S. at 9. In many prosecutions the credibility of the accusing prosecution witnesses is a critical, even *the* critical question – and that is emphatically true in petitioner's case where two dozen women have accused him of inappropriate sexual conduct in incidents supposedly dating back over 25 years.

More than 50 years ago the Court recognized that "when the credibility of a witness is in issue, the very starting point in 'exposing falsehood and bringing out the truth'" is to ascertain "who he is and where he lives." *Smith v. State of Illinois*, 390 U.S. 129, 131, 88 S. Ct. 748, 750 (1968), n. omitted, (citing *Pointer v. State of Texas*, 380 U.S. 400, 404, 85 S.Ct. 1065,1068). For that reason, *Smith* determined that a defendant's right to confront the witnesses against him guaranteed by the Sixth and Fourteenth Amendment, encompasses his right to the prosecution witnesses' true names and addresses. This is because: "The witness' name and address open countless avenues of in-court examination and out-of-court investigation." *Id.* The Court in *Smith* made no bones about it: "To forbid this most rudimentary inquiry at the threshold is effectively to emasculate the right of cross-examination itself." *Id.*

Petitioner Ron Jeremy Hyatt is a particularly well-known performer in adult movies: he is listed in the Guinness Book of World Records for "Most Appearances in Adult Films," having performed in more that 2000 films. Most of the accusations against him were made

after his well-publicized initial arrest. The credibility of his accusers and their motives obviously pose major questions. The prosecution's concealing their identities severely undermines his right to the effective assistance of his counsel as the preliminary hearing approaches.

b. The Confrontation Clause of the Sixth Amendment

Whether the Confrontation Clause of the Sixth Amendment applies to meet the defense's need for discovery of and access to prosecution witnesses prior to trial has remained unsettled since this court failed to resolve the question in *Pennsylvania v. Ritchie*, 480 U.S. 39, 52, 107 S.Ct. 989 (1987). The Court should grant certiorari in petitioner's case to finally resolve that important question.

Cogent reasons support the Confrontation Clause's application. To begin with, as discussed above the Court recognized in *Smith v. State of Illinois*, supra, 390 U.S. at 131, that counsel must know witnesses' names and addresses to effectively cross-examine them. And as specifically tied to discovery, it has been reasoned that "the right to have access to adverse witnesses before trial" may be implied from the defendant's rights under the Due Process Clause of the Fourteenth Amendment and the Compulsory Process or Confrontation Clauses of the Sixth Amendment as recognized in *Holmes v. South Carolina*, 547 U.S. 319, 324, 126 S.Ct. 1727 (2006). See *Fenenbock v. Dir. of Corr. for California*, 692 F.3d 910, 916, n. 5 (9th Cir. 2012).

The Ninth Circuit observed in *Fenenbock* that decisions of this Court addressing analogous situations support that view, citing *United States v. Valenzuela–Bernal*, 458 U.S. 858, 872, 102 S.Ct. 3440 (1982) ("discussing when deportation of a witness might rise to the level of a due process violation") and *Dennis v. United States*, 384 U.S. 855, 873, 86 S.Ct. 1840 (1966) ("stating, with respect to grand jury testimony, that '[i]n our adversary system for determining guilt or innocence, it is rarely justifiable for the prosecution to have exclusive access to a storehouse of relevant fact,' and that "[e]xceptions to this are justifiable only by the clearest and most compelling considerations'"). *Fenenbock*, at 916, n. 5. See also *Gregory v. United States*, 369 F.2d 185, 188 (D.C.Cir.1966) (observing that "elemental fairness and due process require[ ]' that both parties have an equal opportunity to interview witnesses); *United States v. Black*, 767 F.2d 1334, 1337 (9th Cir. 1985) ("It is true, as Black contends, that both sides have the right to interview witnesses before trial"); *United States v. Girod*, 646 F.3d 304, 311 (5th Cir. 2011) ("'as a general rule, "[w]itnesses ... to a crime are the property of neither the prosecution nor the defense,"'" quoting *United States v. Soape*, 169 F.3d 257, 270 (5th Cir. 1999)).

Nonetheless, in *Ritchie*, the Court was unable to reach a majority consensus concerning the application of the Sixth Amendment's Confrontation Clause to pretrial discovery. In the lead opinion, four justices expressed the view that the Sixth Amendment's "right to confrontation is a *trial* right," and does not require pretrial disclosure of evidence that might be used to contradict unfavorable testimony. 480 U.S. at 52–53, 107 S.Ct. at 999 (opn. of Powell, J., concurred in by Rehnquist, C.J., White and O'Connor, JJ.) But in two separate opinions, three other

justices suggested that denying a defendant pretrial access to information necessary to effective cross-examination could in certain circumstances they described, both of which apply in petitioner's case, violate the Confrontation Clause: when "a defendant is denied pretrial access to information that would make possible effective cross-examination of a crucial prosecution witness." *Id.* at 61–66, 107 S.Ct. at pp. 1003–06 (conc. opn. of Blackmun, J.); and when there has been "wholesale denial of access to material that would serve as the basis for a significant line of inquiry at trial." *id.* at pp. 66–72, 107 S.Ct. at pp. 1006–09 (dis. opn. of Brennan, J., concurred in by Marshall, J.).

The two remaining justices expressed no view on this issue. *Id.* 72–78, 107 S.Ct. at 1009–12 (dis. opn. of Stevens, J., joined by Scalia, J., and by Brennan and Marshall, JJ.).) Given the divided views of the justices of this Court as reflected in the several opinions in *Ritchie*, it remains unclear whether or to what extent the Confrontation Clause of the Sixth Amendment grant pretrial discovery rights to the accused. The Court should grant certiorari to finally decide this important constitutional question.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A — DENIAL OF PETITION FOR REVIEW OF THE SUPREME COURT OF CALIFORNIA, FILED MARCH 24, 2021

Court of Appeal, Second Appellate District,
Division Eight - No. B310120

S267435

IN THE SUPREME COURT OF CALIFORNIA

En Banc

RONALD JEREMY HYATT,

Petitioner,

v.

SUPERIOR COURT OF LOS ANGELES COUNTY,

Respondent;

THE DISTRICT ATTORNEY OF THE COUNTY OF LOS ANGELES,

Real Party in Interest.

The petition for review and application for stay are denied.

CANTIL-SAKAUYE
Chief Justice

APPENDIX B — ORDER OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT, DIVISION EIGHT, FILED FEBRUARY 26, 2021

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT DIVISION EIGHT

B310120

RONALD JEREMY HYATT,

Petitioner,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES,

Respondent;

THE DISTRICT ATTORNEY OF THE COUNTY OF LOS ANGELES,

Real Party in Interest.

(Jose I. Sandoval, Judge)
(Super. Ct. No. BA488059)

ORDER

Appendix B

We have read and considered the petition for writ of mandate filed on February 1, 2021.

Petitioner does not show that he is entitled to extraordinary relief.

Accordingly, the petition is denied.

GRIMES, Acting P. J. STRATTON, J. WILEY, J.

APPENDIX C — EXCERPT OF REPORTER'S TRANSCRIPT OF PROCEEDINGS OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES, DATED JANUARY 11, 2021

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 50

HON. JOSE I. SANDOVAL, JUDGE

NO. BA488059-01

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

VS.

RONALD J. HYATT,

Defendant.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

JANUARY 11, 2021

[1]CASE NUMBER: BA488059-01

CASE NAME: PEOPLE V. HYATT, RONALD

Appendix C

LOS ANGELES, CALIFORNIA JANUARY 11, 2021

DEPARTMENT 50 HON. JOSE I. SANDOVAL, JUDGE

REPORTER: CHERYLE LEWIS, CSR #6312

TIME: A.M. SESSION

APPEARANCES:

THE DEFENDANT PRESENT WITH COUNSEL STUART GOLDFARB, ESQ., PAUL THOMPSON AND MARLENE MARTINEZ, DEPUTY DISTRICT ATTORNEYS REPRESENTING THE PEOPLE OF THE STATE OF CALIFORNIA

THE COURT: WE'RE ON THE RECORD NOW IN THE MATTER INVOLVING RONALD JARED HYATT, THIS IS CASE NO. BA488059.

APPEARANCES, COUNSEL.

MR. GOLDFARB: GOOD MORNING, YOUR HONOR. STUART GOLDFARB APPEARING FOR AND WITH MR. HYATT WHO IS PRESENT IN CUSTODY.

MR. THOMPSON: PAUL THOMPSON FOR THE PEOPLE AS WELL AS MARLENE MARTINEZ.

Appendix C

THE COURT: I BELIEVE WE'RE TODAY 0 OF 30. ARE WE GOING TO STAY WITHIN THE PERIOD TO GO FORWARD WITH HIS PRELIMINARY HEARING?

MR. GOLDFARB: NO, YOUR HONOR.

THE COURT: GO AHEAD.

MR. GOLDFARB: I BELIEVE WE ARE 0 OF 10, IF I'M NOT MISTAKEN.

***

[11]**THE COURT:** WELL, WE'VE HAD LOTS OF DISCUSSIONS ABOUT DA POLICIES AND WHETHER OR NOT THEY RISE TO THE LEVEL OF ESTABLISHED APPELLATE COURT AUTHORITY AND THE STATUTE. AND I DON'T MEAN ANY DISRESPECT TO YOU OR ANY OTHER ELECTED OFFICIAL. I'M DEALING WITH WHETHER OR NOT YOU SHOULD BE ENTITLED TO THIS INFORMATION BASED ON CITED AUTHORITY BY BOTH PARTIES. I'M DEALING WITH WHAT THE PENAL CODE WOULD PERMIT PRE-PRELIM. I UNDERSTAND YOU FEEL THINGS HAVE CHANGED AND THAT A SIMPLE PRELIMINARY HEARING HAS RISEN TO THE LEVEL OF A MUCH MORE IMPORTANT HEARING THAN IT MAY HAVE BEEN IN YEARS PAST. BUT NOTING THAT YOU'VE GOT ALL THIS INFORMATION, NOTING AS COUNSEL SAID THAT THERE'S A PROBABLE

CAUSE DETERMINATION FOR THE PRELIMINARY HEARING, AND NOTING THAT APPARENTLY YOU HAVE ENOUGH INFORMATION TO GO FORWARD, AND CONSISTENT WITH THE PENAL CODE I'M GOING TO DENY YOUR MOTION.

ANYTHING ELSE?

MR. THOMPSON: NO, YOUR HONOR.

MR. GOLDFARB: JUST RESPECTFULLY, YOUR HONOR, IN MY MOTION I STATED THAT MANY CASES HAVE SAID THAT IT'S IMPORTANT FOR DEFENSE COUNSEL TO DO THE INVESTIGATION AS EARLY AS THEY CAN AND THOROUGH COMPLETE INVESTIGATION, IF IT'S NOT DONE ESSENTIALLY IT WOULD AMOUNT TO A 6TH AMENDMENT VIOLATION, INEFFECTIVE ASSISTANCE OF COUNSEL.

THE COURT: I UNDERSTAND THAT. I'M MAKING MY RULING BASED ON HERE WHAT THE DA HAS GIVEN YOU THOUSANDS OF PAPERS AND INFORMATION ABOUT THE JANE DOES WHO MAY BE INQUIRED OF; AND I HAVE ASKED HIM IF HE IS GOING TO GO [12]PROP 115 OR NOT, HE DOESN'T KNOW AT THIS POINT IT MAY BE, QUOTE UNQUOTE, OBSTACLES TO THAT. I'LL LEAVE THAT TO HIS DETERMINATION AND MANAGEMENT BUT MY RULING STANDS.

NOW THEN, AGAIN, ARE WE 0 OF 30 TODAY? THAT'S WHAT MY NOTES SHOW.

MR. THOMPSON: THE FRONT OF OUR FILE SHOWS 0 OF 10.

THE COURT: LET ME CHECK WITH THE CLERK.

(A DISCUSSION WAS HELD OFF
THE RECORD WITH THE CLERK.)

THE COURT: WE HAVE 0 OF 30. IF WE ARE WRONG, DO LET ME KNOW. THAT'S WHAT MY -- I RECORDED WHEN WE WERE BACK HERE ON DECEMBER 14TH.

MR. THOMPSON: I THINK DEFENSE'S POSITION IS THEY WANT MORE TIME ANYHOW SO I DON'T THINK IT'S AN ISSUE.

MR. GOLDFARB: RESPECTFULLY, YOUR HONOR --

THE COURT: SURE.

MR. GOLDFARB: -- I WAS ASKING FOR INITIALLY THE END OF MARCH AS 0 OF 30 AND THEY HAD A CONFLICT AND SO YOU HAD INDICATED WHY DON'T WE SET IT AS A 0 OF 10 AND DEAL WITH IT THAT DATE.

Appendix C

THE COURT: WHAT DATE WOULD YOU LIKE MR. GOLDFARB?

MR. GOLDFARB: END OF MARCH, YOUR HONOR, AS A 0 OF 30.

THE COURT: BRIAN, GIVE ME A DATE THE END OF MARCH.

MR. THOMPSON: YOUR HONOR, WE -- SO WE'RE CONCERNED THAT THE CASE IS AGING. THE END OF MARCH AS 0 OF 30 IS A LONG TIME OUT. IS THERE NO POSSIBILITY THAT WE ARE GOING

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