

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

State of Minnesota,FELONY
Motion Hearing

Plaintiff,

vs.

Brian Harry Kjellberg,

File No.
62-CR-21-6868Defendant.

Transcript of the proceedings in the hearing held in the above-entitled matter came on for hearing February 21, 2023, before the Honorable Leonardo Castro, Judge of District Court, Ramsey County Courthouse, City of St. Paul, Minnesota.

A P P E A R A N C E S:

MAKENZIE LEE, Assistant Ramsey County Attorney, appeared for and on behalf of the State of Minnesota.

HASSAN TAHIR, Assistant Ramsey County Attorney, appeared for and on behalf of the State of Minnesota.

EARL GRAY, Attorney at Law, appeared with and on behalf of the Defendant.

AMANDA MONTGOMERY, Attorney at Law, appeared with and on behalf of the Defendant.

Court Reporter: Colleen Maloney, Official Court Reporter

(651)266-8194

P R O C E E D I N G S

THE LAW CLERK: All rise.

THE COURT: You may be seated. Good afternoon, everyone.

MR. TAHIR: Good afternoon, Your Honor.

MR. GRAY: Good afternoon.

THE COURT: All right. All right. So calling Page 1, Line 1, State of Minnesota versus Brian Kjellberg. The matter is here on a motion hearing. If I can have the parties identify themselves for the record, please.

MR. TAHIR: Good afternoon, Your Honor. Hassan Tahir. With me is Makenzie Lee appearing on behalf of the State.

MS. LEE: Makenzie Lee also appearing on behalf of the State.

MR. GRAY: Good afternoon. Your Honor, Earl Gray, representing Brian Kjellberg who is present and seated in the courtroom.

MS. MONTGOMERY: Good afternoon, Your Honor. Amanda Montgomery, also representing Mr. Kjellberg.

THE DEFENDANT: Your Honor, Brian Kjellberg.

THE COURT: All right.

Good afternoon to you, Mr. Kjellberg. And it's Kjellberg not Kjellberg?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right.

3 THE DEFENDANT: It's the J that's silent.

4 THE COURT: Thank you.

5 All right. Well, let's get started here I
6 guess with the Defendant's motions in limine and notice
7 to introduce certain evidence.

8 Okay, as to the motions in limine, I guess,
9 that was filed on January 27th and starting with, I
10 guess, video surveillance exhibits -- to prohibit the
11 police officer witnesses from testifying as to what
12 they hear on surveillance video.

13 First of all, will we have transcripts of any
14 surveillance video? Any video that has audio?

15 MR. TAHIR: We will, Your Honor.

16 THE COURT: All right.

17 MR. GRAY: And we will also.

18 THE COURT: All right. So help me understand
19 what the motion is about?

20 MR. GRAY: Sure. There's some surveillance
21 video and audio that will be shown. And in that you
22 can hear some things and you can't hear some things,
23 and we don't want an officer or somebody giving an
24 opinion as to what was said. Let the jury decide what
25 they see and what they hear rather than a police

1 officer or a detective saying, "Yeah, that's where he
2 said this. That's where he said that." That's an
3 opinion of the officer. The evidence is what's on that
4 audio and video and not what his opinion is. That's
5 our position.

6 THE COURT: Okay. And so if there's
7 transcripts, if there's any objections as to what may
8 be on the transcripts, I'd like to handle that
9 beforehand --

10 MR. GRAY: Absolutely.

11 THE COURT: -- and not in front the jury.

12 So -- and I guess what we'll do is: If
13 there's an objection as to what has been transcribed or
14 whether it's inaudible or not, then I will listen to it
15 and make a decision one way or the other. All right?

16 MR. GRAY: Okay. That solves that problem.

17 THE COURT: All right. And also then on
18 limiting the State's rebuttal argument to what the rule
19 requires, not to reargue the case but to --

20 MR. GRAY: Judge.

21 THE COURT: -- but to apply to closing
22 arguments.

23 MR. GRAY: Judge, you've been around a long
24 time, and it's been my experience in the last year or
25 so that rebuttal arguments by the prosecution turn into

1 another final argument. And if that happens here -- I
2 am not saying it will, but if it does -- I'd request
3 that we have a surrebuttal. That's all.

4 THE COURT: All right. You don't have any
5 problem with that?

6 MR. TAHIR: No problem with that.

7 THE COURT: Although the same rules apply.
8 The surrebuttal is limited to the same rules of law.

9 MR. GRAY: Yeah, it does.

10 THE COURT: All right.

11 MR. GRAY: Yes, Judge.

12 THE COURT: All right. And as to certain
13 evidence that the Defense intends to introduce, Number
14 One listed on here we have. Character evidence of the
15 Defendant through witnesses listed in the Defense
16 witness list.

17 MR. GRAY: Your Honor, we have seven listed,
18 and we probably will call three or four.

19 Is that right?

20 MS. MONTGOMERY: Mm-hmm.

21 THE COURT: You wouldn't happen to know which
22 three or four those are?

23 MR. GRAY: We don't, Your Honor. Actually,
24 we haven't got everyone's statements from them yet.

25 THE COURT: All right.

1 Any objection to that?

2 MR. TAHIR: Well, Your Honor, I haven't
3 received the statements from the Defense, so I can't
4 really meaningfully respond to what they intend on
5 introducing until I see that, so I think this is not
6 really ripe for a decision at this time. Maybe we can
7 revisit it when I do receive those statements. I'd
8 just like to know the scope of the character witness
9 testimony.

10 Of course, I believe under the rules they are
11 permitted to introduce evidence of a pertinent
12 character trait such as peacefulness, which is what
13 will be relevant here, but I'd like to take a look at
14 the statements before being heard on that.

15 THE COURT: Okay. And I assume that's what
16 you're targeting, the pertinent character trait is
17 peacefulness?

18 MR. GRAY: Yes. And lack of aggression and
19 not -- not easily predisposed into a fight, yeah,
20 peacefulness is -- and we'll call a witness. They'll
21 know our client for a lengthy period of time and
22 they're familiar with him and they would testify in
23 their opinion that he's a peaceful person basically,
24 and he isn't the type of person that would be
25 aggressive.

1 And we would also ask that witness -- besides
2 the opinion -- whether or not they're familiar with
3 Mr. Kjellberg's reputation in the community. And if
4 they say they are, which I suspect they will, then what
5 is his reputation? His reputation is that of
6 law-abiding and peaceful, so that's our -- that's the
7 statements. They're going to be about five-minute
8 testimony on each one.

9 THE COURT: And that seems consistent with
10 what they can introduce. Is that fair to say?

11 MR. TAHIR: Yes, if it's limited in scope to
12 what was just described. I don't think we'll have a
13 problem with that. If it's three witnesses, I think
14 that's fair. Seven were listed. I was going to object
15 to all seven testifying, but if it's just three or four
16 and they're going to be limited to that scope, I
17 shouldn't have a problem with that. But I think we'd
18 like to take a look at an actual disclosure before
19 being heard -- a final opportunity to be heard on that.

20 THE COURT: And when can you get those
21 disclosures to Tahir?

22 MR. GRAY: Within --

23 MS. MONTGOMERY: Two weeks.

24 MR. GRAY: Two weeks. We have -- our
25 investigator has had a physical problem and wasn't able

1 to do any work for a while, but he's back now and he'll
2 do it and take care of it for us. If he doesn't, I'll
3 have somebody do it. Not a lawyer, of course, but
4 somebody else.

5 THE COURT: All right. Fair enough.

6 Okay. And then we have evidence of the
7 Defendant's prior traumatic brain injury from 2018
8 through the Defendant's own testimony to show state of
9 mind. So you're going to have to help me understand
10 that.

11 MR. GRAY: Well, in 2018, he received a --
12 quite a beating and as a result was in the hospital for
13 a traumatic brain injury and is still recovering today
14 actually from that, and when he was assaulted -- it's
15 our position when he was assaulted by the deceased, all
16 he could think about is not hitting his head again
17 because another traumatic brain injury could kill him
18 easily. That's why we're getting into that, Your
19 Honor.

20 THE COURT: Okay. So it's as to -- okay. So
21 his state of mind --

22 MR. GRAY: Yes.

23 THE COURT: -- not what the traumatic brain
24 injury --

25 MR. GRAY: No.

1 THE COURT: -- did to him?

2 MR. GRAY: No. But we do have photos of that
3 beating. I don't know how many we're going to use, if
4 any. I think we sent them to them.

5 MS. MONTGOMERY: Yeah, we did.

6 MR. GRAY: They have them.

7 THE COURT: So Mr. Gray, I saw that you had
8 photos. I'm curious what they were. I'm glad they're
9 not brain scans --

10 MR. GRAY: No.

11 THE COURT: -- and you're not planning to
12 introduce any expert witnesses?

13 MR. GRAY: No. It's just his state of mind
14 when this incident occurred, and --

15 THE COURT: Okay.

16 Mr. Tahir?

17 MR. TAHIR: Your Honor, I think I'd object to
18 extrinsic evidence being offered about that traumatic
19 brain injury, whether that be photos of the beating
20 that Mr. Kjellberg suffered or any sort of medical
21 records in that regard. Of course he can testify and
22 talk about the fact and explain his state of mind that
23 he had suffered a prior traumatic brain injury. I
24 think that's okay.

25 I think when you expand the scope and start

1 introducing extrinsic evidence about that previous
2 beating that just confuses the issue. I don't know why
3 we'd need to introduce photos of it and go into
4 unnecessary detail about that previous assault. It
5 doesn't have any bearing on this case. It will
6 impassion the jurors. It might make them sympathetic
7 the Defendant unnecessarily.

8 So it's again a matter of scope. I think in
9 talking about it that that was his state of mind, he
10 didn't want to hit his head again because of this
11 previous traumatic brain injury, that I'm fine with. I
12 have no objection to that. But any sort of extrinsic
13 evidence I'd have to object to.

14 THE COURT: I'd have to see the pictures --

15 MR. GRAY: Sure.

16 THE COURT: -- you don't have those
17 available, do you?

18 MR. GRAY: Yes. He talked about his previous
19 injury in his lengthy statement, Judge. We do have
20 pictures of them, and if we did introduce a picture --
21 I haven't totally decided if we wanted to introduce it.
22 But if we did it would only be one or two, Judge.

23 MS. MONTGOMERY: Your Honor, I could show
24 them to you on my computer, or I could email them to
25 you right now.

1 THE COURT: Why don't you show them to me?

2 MS. MONTGOMERY: Okay. Do you want me to
3 walk up there?

4 THE COURT: Oh, yeah. Bring it up here.
5 That will be fine.

6 MS. MONTGOMERY: It's the same ones we
7 disclosed to you guys up here.

8 THE COURT: I only say that because not every
9 traumatic brain injury is equal. I know some of --

10 MS. MONTGOMERY: And I can click on them, but
11 it's just those top row of photos. It basically shows
12 his black eyes.

13 THE COURT: All right. Thank you.

14 I would allow you to show two or three of
15 those pictures. I don't find them to be that damaging
16 in any particular way. I think it's helpful to
17 understand the extent of the injury and how that would
18 transfer over to this incident.

19 You do have something in here called the
20 Department of Veterans Affairs letter as it relates to
21 a potential exhibit, and what is that? And I don't
22 find them to be extrinsic as long as --

23 MR. GRAY: Yeah, he will say this is my --

24 THE COURT: -- Mr. Kjellberg can lay the
25 foundation.

1 And this would be to establish that he's
2 disabled?

3 MR. GRAY: Yes. 100 percent.

4 THE COURT: Okay. And -- now that would be
5 extrinsic evidence because you would need to lay
6 outside foundation for that, but do you have any
7 objections, Mr. Tahir, to -- if he testifies that he
8 could testify he's a disabled veteran?

9 MR. TAHIR: That's fine. I think I would
10 object to the letter if it was lacking sufficient
11 foundation, but him testifying about that on his own,
12 that's fine.

13 MR. GRAY: So he can testify that he's a
14 disabled veteran?

15 THE COURT: Yes.

16 MR. GRAY: And that's it?

17 THE COURT: Yes. What else would you like to
18 come out of the letter?

19 MR. GRAY: That he's 100 percent disabled,
20 that he had 100 percent from the Navy -- that he
21 qualified for it. It wasn't 10 percent. It was
22 100 percent.

23 THE COURT: And that's fair --

24 MR. GRAY: Oh, okay.

25 THE COURT: -- I don't think that's

1 inconsistent with anything.

2 MR. GRAY: Okay. And he also got an
3 honorable discharge.

4 THE COURT: Yeah, I think that's all --
5 that's all fair.

6 MR. GRAY: Okay.

7 THE COURT: And then you have pictures of the
8 Defendant's phone, two pictures on the Defendant's
9 phone?

10 MR. GRAY: Yes. The --

11 THE COURT: And are these of the scene?

12 MR. GRAY: Yes.

13 MS. MONTGOMERY: Yes, Your Honor. We have
14 pictures of the phone itself showing the back of it
15 being cracked. I think we submitted one of the front
16 as well, which we wouldn't need to use, but just the
17 actual phone itself. And then there's also
18 screenshots -- one screenshot of the call list that's
19 on our exhibit list showing the calls that were made
20 that evening. And then otherwise there's, I believe,
21 four photos that Mr. Kjellberg took on his phone of the
22 Mercedes vehicle parked in his yard.

23 THE COURT: All right. And what -- what's
24 the relevance of screenshot phone calls made that
25 evening?

1 MS. MONTGOMERY: Just --

2 MR. GRAY: Go ahead.

3 MS. MONTGOMERY: It would just be to show the
4 sequence of events and how everything happened with him
5 calling the police and calling the tow company just
6 prior to this interaction happening.

7 THE COURT: It all sounds relevant.

8 MR. TAHIR: Yes, that's fine, Your Honor.

9 THE COURT: Okay.

10 And then there's pictures of the no parking
11 signs as well? At least that's what on my list.

12 MS. MONTGOMERY: Yes, Your Honor. We have
13 quite a few of them that are also in the State's
14 discovery. I think the State would agree that they're
15 relevant to the scenario and what happened that
16 evening.

17 THE COURT: All right. And then we have the
18 photo of Mr. Arundel Stewart. Is that a booking photo?

19 MR. GRAY: Yes.

20 THE COURT: Yeah, that's not coming in.

21 MR. GRAY: Well, our position, Your Honor, is
22 that they -- and this seems to be the only State in the
23 union that allows it. They get to show a picture of
24 Mr. Stewart in the spark of life, and I'm sure that
25 that picture of Mr. Stewart is going to look quite

1 favorable to him. Because of that, we should have a
2 chance at least to rebut what he looked like prior to
3 this incident that night and some -- you know, in the
4 beginning you'd show a picture and that was that. Now,
5 it seems like every person that's ever been a victim
6 is -- ends up being canonized a saint. Depending on
7 what the spark of life witness says, if she just shows
8 a picture of him, then that's fine and doesn't say
9 much. Because as I understand it, the mother wasn't
10 with him anyway. But if it gets too deep into it, we
11 do have a picture of a booking photo of him a month
12 before this on a felony domestic assault.

13 That leads into another one: That the
14 motive -- our position, the motive for Mr. Stewart to
15 not wait there for the cops to come and the tow truck
16 was because he was on conditional release in --
17 Sherburne County?

18 MS. MONTGOMERY: Mm-hmm.

19 MR. GRAY: Yeah, Sherburne County for a
20 felony domestic assault. Now, we're not going to
21 attempt to get in the felony domestic assault unless
22 some -- unless the State wants to, but with respect to
23 the conditional release, he had -- as you know, Your
24 Honor, you have various conditions and one of them is
25 to remain law-abiding, and no possession of drugs and

1 no taking of drugs.

2 Part of our position is going to be that,
3 first of all, this -- autopsy, the toxicology, shows
4 that he was taking marijuana. Plus that -- when he ran
5 down to the -- after the injury, when he ran down to
6 the white car, our client will testify that he saw
7 him -- he was getting up at the time. He saw him down
8 at the car giving whoever was in the car something out
9 of his pocket. Whether that was drugs or whether it
10 was a weapon, whatever it was, we would argue that
11 he -- at this time at night that he was not law-abiding
12 as these conditions require --

13 THE COURT: -- so --

14 MR. GRAY: -- which gives him a motive not to
15 wait for the cops.

16 THE COURT: So when they recovered the body
17 and they recovered the car -- I'm assuming they
18 recovered the car as well? Was the car searched? Were
19 there any drugs found in the car?

20 MR. TAHIR: I believe so, Your Honor. If I
21 could just consult with my Co-counsel. They searched
22 the vehicle, Your Honor. No narcotics or weapons were
23 found inside the vehicle and not on his person either.

24 THE COURT: Okay.

25 MR. GRAY: But he wasn't -- he was in a house

1 two doors down. His car was parked in my client's
2 area, but -- so there wouldn't be any drugs in the
3 house -- in the car. There would be on his person
4 leaving the house two doors down.

5 MS. MONTGOMERY: Your Honor, the car that
6 we're talking about that was handed -- possibly handed
7 off something is a car that left the scene immediately
8 right after. It wasn't the Mercedes that was on the
9 property that was later searched. The white car left
10 the scene with a different driver and then came back to
11 the house. I don't know -- maybe we will learn where
12 that white car went.

13 THE COURT: And what time of the day was it?

14 MR. GRAY: 8:30 at night -- 8:00, 8:30.

15 THE COURT: Okay.

16 Mr. Tahir? Let's first start with the
17 photos, because we're kind of transitioning.

18 MR. TAHIR: Yes, the State doesn't intend on
19 canonizing the decedent as a saint. We're not going to
20 go beyond what spark-of-life testimony is intended for
21 under Minnesota case law. So I don't think we will get
22 to a point where -- the Defense seems like they want to
23 use that photo to rebut the spark-of-life witness
24 testimony. I don't think we'll get there.

25 In terms of the motive that they're offering

1 to explain the sequence of events, I don't see what the
2 photo does to help in that regard. Everything that
3 they're saying -- they can certainly offer evidence of
4 that and argue it, that's fine, but I don't see what
5 the photo does in terms of helping them make that case.
6 All it does is, again, inflame the passions of the
7 jury, seeing the victim in a -- presumably a jumpsuit.
8 I haven't seen the booking photo. I'm sure it's in our
9 file.

10 Forgive me, I've only been on this case for
11 ten days. But I don't see what the booking photo on
12 its own does in order to allow Mr. Kjellberg to present
13 that defense to a jury. It is a simple 403 objection
14 on my part. I don't think it's relevant, and all it
15 does is confuse the issue and inflame the passions of
16 the jury.

17 THE COURT: And you're limiting to -- I'm
18 assuming one picture of the alleged victim?

19 MR. TAHIR: We might have two. But yes,
20 there will be one. If Your Honor limits us to one, we
21 will only introduce one.

22 THE COURT: Yeah, I think one is sufficient.
23 And who will be testifying in regards to the spark of
24 life? Will it be his mother?

25 MR. TAHIR: It will be his mother, Your

1 Honor.

2 THE COURT: Okay. Well, at this time the
3 photo is excluded. If at some other time you want to
4 raise the issue, we can bring it up there.

5 And again -- so let's move on then to the
6 Sherburne County court records.

7 MR. GRAY: Yes. On the register of actions
8 we have his conditional release, and what we want to
9 offer is: On November 29th of 2021, which was almost
10 the date of this, he was released from jail on
11 conditions. We don't intend to get into the fact that
12 it's a felony domestic assault. But one of his
13 conditions was that he remain law-abiding, that he not
14 use or possess of firearms or dangerous weapons, and
15 those are the two that we would argue give -- gives him
16 a motive.

17 He's -- it's that night. He's got his car
18 there. He's taken marijuana. We know that by the
19 toxicology. And he didn't want to wait for the cops.
20 So he punched our client four or five times, three or
21 four times, and my client -- our client went down.

22 And before he was punched the last time, he
23 did put a knife in him. He thought he had put it in
24 his stomach but apparently -- the medical examiner said
25 it was in his chest and heart. And he put it in there

1 once and the guy got up. Mr. Stewart got up and ran
2 down to this white car. And after he saw the white
3 car, the white car took off very fast and then he ran
4 all the way past Mr. Kjellberg's house and up to
5 another house two doors down, and that's the house
6 where he came from, and went in there when the
7 ambulance came and picked him up. He then went to the
8 hospital, and during the hospital visit he died.

9 THE COURT: How -- and how do you plan to
10 introduce that?

11 MR. GRAY: Well, we'll just get a certified
12 copy of this register of actions and white out
13 everything but that.

14 THE COURT: Okay. And who would you
15 introduce it through I guess is what I am saying?

16 MR. GRAY: Well, if it's a certified copy, I
17 hopefully wouldn't have to introduce it through
18 anybody.

19 THE COURT: Do you agree?

20 MR. TAHIR: I do, Your Honor. He won't have
21 to call a foundational witness and as long as the
22 relevant redactions are made, I don't have a problem
23 with that. I think it's fine.

24 THE COURT: All right. Fair enough.

25 Okay, and that I think clears the exhibits.

1 So exhibit numbers. How many exhibits are you planning
2 on having?

3 MR. TAHIR: I can't give you an exact number,
4 Your Honor. Possibly close to 100.

5 THE COURT: Okay. So can you have Exhibits 1
6 through 200 and then you can start with Exhibit 201?

7 MR. GRAY: Okay. To 1,000?

8 THE COURT: To as far as you can go, all
9 right. We hope it's not 1,000.

10 MR. GRAY: No, I --

11 THE COURT: All right. Next we have the
12 character evidence of the alleged victim, specifically
13 relating to the self-defense claim, and who was the
14 aggressor.

15 MR. GRAY: Yes. And we -- we don't have any
16 of that. We would withdraw that.

17 THE COURT: Okay.

18 MR. GRAY: And we've covered the booking
19 photo. So the THC levels, that's in the autopsy. The
20 toxicology is in there.

21 THE COURT: All right. And do you have any
22 objection to that? I mean, it's in the autopsy. I'm
23 assuming you're introducing the autopsy reports.

24 MR. TAHIR: Correct. I have no objection to
25 that as long as we don't go into what those THC levels

1 mean in terms of impairment or anything like that
2 without laying foundation for such an opinion. If it's
3 just that the THC in his system that's fine.

4 THE COURT: All right. Do you plan on
5 eliciting what those THC --

6 MR. GRAY: I've heard so many different
7 opinions about the THC levels after somebody dies. I
8 probably won't. If I do, I'll surely give notice ahead
9 of time, but depending on what expert you talk to, you
10 never get the right answers.

11 THE COURT: Or maybe not the answer you want?

12 MR. GRAY: Well, that's true, too.

13 THE COURT: All right. As far as --

14 MR. GRAY: I'm assuming that the State isn't
15 going to call somebody to --

16 MR. TAHIR: No. No, we will not.

17 MR. GRAY: Okay.

18 THE COURT: All right. As to Number 6,
19 impeachment evidence of the following witnesses: A
20 Mr. McMath, Larry McMath?

21 MR. GRAY: Yes. Larry McMath has a second
22 degree assault from 2016.

23 THE COURT: Do you have any objection to
24 that?

25 MR. TAHIR: No, Your Honor. I think that's

1 relevant evidence. The Court File Number is
2 27-CR-16-468, and, yeah, I think he can be impeached
3 about that.

4 THE COURT: And we won't be going into the
5 facts of that --

6 MR. GRAY: No.

7 THE COURT: -- just that he has convicted of
8 a felony and what the felony is, and when it was.

9 MR. GRAY: Yes.

10 THE COURT: Okay. How about Marcel McMath?

11 MR. GRAY: He has a conviction for
12 terroristic threats -- well, it used to be called
13 terroristic threats. Now it's threats of terror.

14 THE COURT: Threats of violence, yeah. And
15 where -- what year was that in?

16 MR. GRAY: That's recent, isn't it?

17 MR. TAHIR: It's, I believe --

18 MS. MONTGOMERY: 2021.

19 MR. TAHIR: The conviction was last year,
20 Your Honor, February of 2022.

21 THE COURT: You got a file number for that?

22 MR. TAHIR: Yes, 62-CR-21-6411.

23 THE COURT: Any objection to that?

24 MR. TAHIR: No.

25 THE COURT: All right. And a Mr. Ronald

1 Stewart?

2 MR. GRAY: We don't have any for him, do we?

3 MS. MONTGOMERY: (Shakes head.)

4 THE COURT: Okay. All right. I guess that
5 covers all of yours, I believe.

6 I noted you listed -- the State listed 48
7 witnesses. You're not calling 48 witnesses, right?

8 MR. TAHIR: No, Your Honor. I believe we'll
9 call about a dozen.

10 THE COURT: Okay. You may want to narrow it
11 down for them as well, which ones.

12 MR. TAHIR: We will certainly endeavor to do
13 that.

14 THE COURT: All right. And on your exhibit
15 list you have "photographs", and anything specific
16 about that -- those photographs?

17 MR. TAHIR: I don't think so, Your Honor. Of
18 course, some of them will be autopsy photos, which we
19 can have a conversation about. They will be limited in
20 scope just to show where the injury was and just an
21 overall image of the decedent after his death, so the
22 jury can see where the wound was.

23 We don't intend on going overboard and
24 introducing those. I don't think there are any other
25 issues. So essentially they're photos that were taken

1 by the forensic services unit at the scene, documenting
2 where certain items were found and how the police
3 department conducted its investigation.

4 THE COURT: All right. And I assume you have
5 those, Mr. Gray? Any objection to any of those photos?

6 MR. GRAY: No -- well, I don't know how many
7 of the autopsy pictures they're going to show, but I
8 don't have any objection.

9 THE COURT: All right. And we'll limit
10 those, of course.

11 MR. TAHIR: Yes.

12 THE COURT: And then you have recorded
13 statements. I'm assuming those are statements of
14 Mr. Kjellberg?

15 MR. TAHIR: That's correct, Your Honor.

16 THE COURT: Along with the transcripts?

17 MR. TAHIR: That's correct.

18 THE COURT: And generally, the way I do it is
19 assuming -- let's just say that the recording is
20 Exhibit 5, then the transcript is Exhibit 5A.

21 MR. TAHIR: Understood.

22 THE COURT: And the transcripts don't go back
23 to the jury, okay?

24 And then you have written reports. You're
25 not introducing any written reports?

1 MR. TAHIR: I don't believe so, Your Honor,
2 unless something unusual happens. But no, the State
3 does not plan on introducing any written reports.

4 THE COURT: And then we have 911 calls. Are
5 we stipulating to the foundation --

6 MR. GRAY: Yes.

7 THE COURT: -- of those 911 calls? So you
8 don't have to call the 911 operator.

9 MR. TAHIR: If there is a stipulation we will
10 not call that extra witness.

11 THE COURT: And we have on here the weapon.
12 What exactly is the weapon?

13 MR. TAHIR: It's a tool of some kind. I
14 haven't seen it in person. It kind of looks like a
15 screwdriver, almost, which is sharpened at the end.
16 I'm not exactly sure what it is, but it's not really a
17 knife or a traditional weapon so to speak. It looks
18 more like a screwdriver.

19 THE COURT: Okay. And then the camera
20 footage. Again, if there's any audio, you would bring
21 transcripts with that?

22 MR. TAHIR: Yes, Your Honor.

23 THE COURT: Okay.

24 What do you refer to -- what exactly is
25 surveillance video? What were you surveilling?

1 MR. TAHIR: So there is a video that we
2 intend to introduce from -- it's kind of like a Ring
3 doorbell. I'm not exactly sure what type of
4 surveillance camera setup it is. But it's on a garage
5 that's nearby that captured some of this incident, not
6 in the greatest detail, but it also picks up some of
7 the audio, so some of the conversation that was taking
8 place between the decedent and Mr. Kjellberg.

9 So that's the surveillance video that I'm
10 thinking of, and I think that's what we intended when
11 we put it down here. There might be other
12 surveillance -- and again I apologize. I've been on
13 the case for a very short period of time, but it's just
14 surveillance video on that block that shows at least in
15 part the moments leading up to the encounter, and one
16 video in particular shows what happened during the
17 encounter as well.

18 THE COURT: All right. And then we already
19 discussed spark of life photos and of course the
20 curriculum vitae of Dr. Froloff.

21 All right. And then we have the State's
22 motions in limine. Shall we just go through them one
23 by one? That's probably easier -- not quicker but
24 probably easier.

25 MR. GRAY: Judge, on the first page -- I have

1 no problem with the first three.

2 THE COURT: All right. So no objection to 1,
3 2, and 3.

4 MR. GRAY: Number 4, except for the prior
5 convictions we just discussed, I think that's -- those
6 are -- the only character evidence under 608 that we'll
7 be providing.

8 THE COURT: All right. And that covers 609
9 as well so there is no 404(b) notices --

10 MR. GRAY: No.

11 THE COURT: -- from either of the parties,
12 right?

13 MR. TAHIR: No, Your Honor.

14 THE COURT: All right. So that covers 6 as
15 well. And then we already discussed 7 under 609. And
16 then Number 8, Mr. Gray?

17 MR. GRAY: Well, we're going to have a
18 questionnaire, so I'm not going to give them any --
19 You want to handle it?

20 MS. MONTGOMERY: Your Honor, just in regard
21 to the questionnaire that we provided the Court, there
22 was two additional questions in relation to
23 self-defense that we were requesting.

24 The original one we added, Number 22, that
25 was also by the Defense, adding that. However, the

1 State objected to the additional two that we provided
2 by email, and we're still requesting those be added to
3 the questionnaire.

4 THE COURT: I think I ruled on that, didn't
5 I?

6 THE LAW CLERK: I can't remember off the top
7 of my head.

8 THE COURT: So there was two of them and what
9 I did was eliminated one and modified the second one.

10 MS. MONTGOMERY: Oh, I apologize. I missed
11 that.

12 THE COURT: Can you take a look in your
13 email, because I am fairly sure I sent it to you.

14 THE LAW CLERK: Yeah. This would have been
15 on the 16th, correct?

16 THE COURT: I couldn't tell you that.

17 THE LAW CLERK: Okay.

18 THE COURT: But it was probably after Firkus,
19 so probably the 16th.

20 MR. TAHIR: So the parties sent the email on
21 the 17th, on Friday.

22 THE LAW CLERK: Okay. Let me see -- did it
23 go directly to my email?

24 MS. MONTGOMERY: No. It was sent to the 2nd
25 Judge Castro email.

1 THE COURT: And Colleen may have sent it to
2 me, and then I may have sent it to you.

3 THE LAW CLERK: "I would not agree to
4 question 22, and do not disagree with the two questions
5 below. I would substitute Question 22 for the
6 following: At the end of the case, the Court must
7 instruct you on the law of self-defense. Would you be
8 able to follow the Judge's instructions on law of
9 self-defense and not what you believe the law should or
10 should not be?"

11 MR. GRAY: Yes, that's fine.

12 THE COURT: Okay. All right. So we'll
13 modify that -- the questionnaire to reflect that.

14 THE LAW CLERK: Okay.

15 THE COURT: All right. Of course, no
16 objection to Number 9?

17 MR. GRAY: No, I don't object to that.

18 THE COURT: I get this a lot. On Number 10.

19 MR. GRAY: Do you really think it's possible
20 Judge, that -- no, I don't -- I'm not going to ask
21 those questions.

22 THE COURT: Okay. All right. All right,
23 Number 11 about punishment, of course.

24 MR. GRAY: No. I don't think there are any
25 constitutional issues for 12 --

1 THE COURT: Okay.

2 MR. GRAY: -- that I know of.

3 THE COURT: And 13?

4 MR. GRAY: No, I'm not -- he's going to
5 testify anyway, so no. That's okay with us.

6 THE COURT: 14, as to the not guilty plea?

7 MR. GRAY: Yeah, that's okay with us.

8 THE COURT: 15?

9 MR. GRAY: 15 is fine. 16 is fine. 17 fine.
10 I assume the prosecution will also follow that law.

11 THE COURT: Yeah.

12 MR. TAHIR: Yes.

13 THE COURT: Most of these apply to both
14 sides.

15 MR. GRAY: Okay. 18 is fine, spark of life
16 we've discussed. Self-defense we've handled.

17 THE COURT: So this one is a little more
18 complicated. Number 20, prohibiting the Defendant --
19 Defendant's attorney from commenting during jury
20 selection or opening statements upon either the issue
21 of law of self-defense or refusing to instruct the jury
22 until such time that the Defendant has met his burden
23 going forward. That's a -- that's a real difficult
24 burden to put on the Defense.

25 MR. TAHIR: I will make this easy. Your

1 Honor, we're going to withdraw that. This is a
2 self-defense case. I think both parties will be
3 talking about it from the get-go, so.

4 THE COURT: All right. Sounds good.
5 Number 20 is withdrawn. I mean, certainly if they
6 don't meet their burden, they don't get the
7 instruction, but -- and I think that was the last one.

8 And we are scheduled for trial. What day?

9 MS. LEE: March 27th.

10 THE COURT: That's a Tuesday, right? Does
11 that start on a Tuesday? Is the Monday a day off?

12 MR. TAHIR: It is.

13 MS. LEE: It is a Monday.

14 THE COURT: So generally what I'd like to
15 do -- and I'm open to your suggestions as well -- is
16 that we bring in the jury in the morning. I give them
17 some preliminary instructions. I have them fill out a
18 questionnaire. Then when they're all done, I send them
19 home.

20 We make copies of the questionnaire, get
21 copies to you folks, and we try to then -- if --
22 assuming we get the questionnaires to you in time, we
23 can get together that same day in the afternoon and
24 decide which jurors we can all agree should be removed
25 for cause, and then that would be our first batch.

1 The second decision is which jurors we need
2 to voir dire individually, and then bring those jurors
3 in to voir dire individually and then bring in the rest
4 of the panel to voir dire as a group.

5 Any objection to that?

6 MR. TAHIR: No, Your Honor.

7 MR. GRAY: No.

8 THE COURT: Okay. And so generally as far as
9 timing, I always ask the lawyers to get here at 8:30.
10 I ask --

11 I know it might be a little early for you,
12 Mr. Gray.

13 MR. GRAY: No, no. I can't sleep at after
14 6:00 at my age.

15 THE COURT: Well, perfect then.

16 And then I have the jurors get here at 8:45.
17 So if there are any issues that we need to deal with
18 before we bring out the jurors, we can do that. Of
19 course, things are less complicated given that
20 Mr. Kjellberg's not in custody. That makes things a
21 lot less complicated as far as where we can be and how
22 we can proceed. And then we start as soon as we can
23 after all of the jurors are here.

24 MR. GRAY: Okay.

25 THE COURT: As far as alternates, I don't

1 anticipate us -- well, what do you think? Two?

2 MR. GRAY: Yeah.

3 MR. TAHIR: Two is fine, Your Honor.

4 THE COURT: Anything else?

5 MR. TAHIR: I can't think of anything, Your
6 Honor. Thank you.

7 MR. GRAY: I can think of nothing.

8 Amanda?

9 MS. MONTGOMERY: No, thank you.

10 MR. GRAY: Nothing from me.

11 THE COURT: All right. I guess we're good
12 then. We'll see you on the 27th. If anything comes
13 up -- we can do stuff also through Zoom if something
14 comes up that we need to deal with right away, or have
15 a phone conference.

16 MR. GRAY: I hear my friend was visiting you
17 last week, a guy named Friedberg.

18 THE COURT: Yeah, he was around for a long,
19 long time.

20 (The proceedings concluded at 2:13 p.m.)

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STATE OF MINNESOTA)
)
COUNTY OF RAMSEY)

I, Colleen Maloney, an official court reporter for the Second Judicial District, in and for the County of Ramsey, State of Minnesota, do hereby certify that the foregoing pages are a true and accurate transcript of my original stenograph notes which were transcribed into writing by computer-aided transcription, taken relative in the aforementioned matter on February 21, 2023, in the City of St. Paul, County of Ramsey, and State of Minnesota before the Honorable Leonardo Castro.

Signed this 6th day of October, 2023.

s:/ Colleen Maloney

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