

1 STATE OF MINNESOTA

DISTRICT COURT

2 COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

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4 -----
5 State of Minnesota,

FELONY
Motion Hearing

6 Plaintiff,

7 vs.

8 Brian Harry Kjellberg,

File No.
62-CR-21-6868

9 Defendant.

10 -----
11 Transcript of the proceedings in the hearing held in
12 the above-entitled matter came on for hearing May 4, 2022,
13 before the Honorable Leonardo Castro, Judge of District
14 Court, Ramsey County Courthouse via Zoom, City of St. Paul,
15 Minnesota.

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

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

18 NELSON RHODUS, Assistant Ramsey County Attorney,
appeared for and on behalf of the State of Minnesota.

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

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

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24 Court Reporter: Colleen Maloney, Official Court Reporter

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P R O C E E D I N G S

THE LAW CLERK: Calling Page 1, Line 1, Case Number 62-CR-21-6868, State of Minnesota versus Brian Harry Kjellberg.

THE COURT: And good afternoon, everyone. My name is Judge Castro, and I will be presiding over this matter. Today's date is May 4, 2022. The time is approximately 3:00 p.m. in the afternoon. We are here for a scheduling conference in this particular matter. This hearing is being conducted via Zoom technology. We do have the parties on the line. I understand that the Defendant Mr. Kjellberg is here, and I'd just ask him to have a seat where he's visible in the office there.

That's perfect. Thank you, sir.

And I just want to clarify the pronunciation of the name, is the K silent?

THE DEFENDANT: The J is silent, Your Honor.

THE COURT: The J is silent.

THE DEFENDANT: Yes.

THE COURT: All right. So it's Kjellberg.

THE DEFENDANT: Yes.

THE COURT: Excellent. All right.

Representing Mr. Kjellberg is Mr. Earl Gray, who is appearing via video along with Ms. Amanda Montgomery.

1 I believe that's Ms. Montgomery, if she can confirm
2 that's who she is?

3 MS. MONTGOMERY: Yes, Your Honor. Good
4 afternoon.

5 THE COURT: Okay. And representing the State
6 is Ms. Mackenzie Lee and Mr. Nelson Rhodus.

7 All right. Well, let's start out with -- I
8 guess what I generally do is work on trying to find a
9 trial date and then working our way back from there as
10 to a jury trial. I think I've been informed -- I guess
11 we have a date that I probably won't be available for
12 in June, but we do have a July 18th date and I'm
13 wondering where the parties might fit with that.
14 Mr. Gray?

15 MR. GRAY: Well, Your Honor, on June 13th I
16 start a trial in Minneapolis that will last --
17 hopefully end by the end of July or the first week of
18 August that's the Lane case, part of the police case.
19 We've got a date certain of -- in selecting the jury of
20 June 13th.

21 After that, and I -- I attempted to -- I was
22 scheduled for trial this Monday on a felony sex case in
23 Minneapolis, but my prosecutor started another trial
24 today which is going to go through next Wednesday or
25 Thursday. I attempted to get a new date on that or

1 find out when the next date would be for that, but I
2 don't know when it will be. But then that sits out
3 there.

4 In August I have a case before Judge
5 Bartscher that has been continued a lot of times and
6 it's another sex case and that's going, and then on --
7 September I have another case in front of Judge
8 Bartscher, Thomas Kip, which is a three box --
9 three-banker-box lengthy criminal sexual conduct case
10 which involves a divorce, it involves two alleged
11 victims. So -- and that's in September, September
12 26th.

13 Unfortunately, I don't think -- and that's
14 why I wanted to find out about this sex case that I
15 have for Monday that's now going to be continued.
16 Because I wanted to find out when they are going to
17 continue that to, but I didn't get any response.

18 So what I'm telling the Court is this: I
19 might not be available till October, and my client
20 would waive a speedy trial. We still have a lot of --
21 not a lot but some discovery that we've requested and
22 never received, and I don't know if I'll have to bring
23 a motion for that or not. But we've requested the
24 audio on a video that's very crucial and they said
25 they'd get it, but they haven't and that was in

1 February I believe we requested that.

2 And we've also had a -- search warrants of my
3 client's phone, his three computers they searched --
4 they seized from the house. We've not received
5 anything on that -- on that material, and we need the
6 cam -- the phone that they seized from him because on
7 the phone are pictures of -- that exonerate him. And
8 they had seized them I guess for a search warrant and
9 we've never gotten the phone back, nor have we gotten
10 the computers back. I have no idea why the computers
11 were seized, because they were in his house having
12 nothing to do with this incident.

13 In any event, the discovery that we've
14 requested that seems to -- to us important, the phone,
15 the audio on a video that we've requested since
16 February, we haven't received that, and -- those items.
17 And with those items we would no doubt be ready for
18 trial within a short period of time after that.

19 The -- we don't even have the search warrants
20 of the phone, the server, or hard drive, so that's
21 where I'm at. I wish I would have been able to find
22 out about this Minneapolis case that I was scheduled to
23 try Monday, if they would let me know what's going on,
24 but they haven't.

25 THE COURT: All right. Well, let's -- let me

1 first deal with trying to lock down a date, and then we
2 will talk about the -- the discovery issues.

3 MS. LEE: Your Honor?

4 THE COURT: Yes, Ms. Makenzie -- Ms. Lee.
5 I'm sorry.

6 MS. LEE: If I could request a breakout room
7 to discuss something regarding trial dates.

8 THE COURT: A breakout room with whom?

9 MS. LEE: With Your Honor and Defense.

10 THE COURT: All right. Do you have any
11 objection to that, Mr. Gray?

12 MR. GRAY: I guess I don't care. I mean with
13 me, the prosecutor and you, Judge?

14 THE COURT: Yes, I guess so. As if we were
15 doing a chambers discussion before we came out as we
16 have done a thousand times in the past.

17 MR. GRAY: All right. I get it.

18 THE COURT: All right.

19 MR. GRAY: Thanks, Judge.

20 THE COURT: All right.

21 We're going to recess here and go into
22 chambers, if you will, and be right back.

23 (A brief break was taken.)

24 THE COURT: So it appears we have everyone
25 back. We're back on the record in this particular

1 matter after having an opportunity to discuss dates
2 based on issues involving personal matters. I think
3 what we decided on is that we will begin the trial on
4 December 19th and --

5 MR. RHODUS: I think it was November 21st,
6 Judge.

7 THE COURT: Oh, I'm sorry. Oh, November
8 21st. I apologize about that. That is, as we stated,
9 the week of Thanksgiving, but we will have those first
10 three days if you will, and then it will proceed into
11 the next week, November 21st.

12 All right. So then we need to pick a few
13 other dates, I guess I generally like -- and we will
14 issue, of course, an order as it relates to these
15 dates -- I generally like to pick a couple of dates to
16 deal with any motions that we need to deal with and
17 then another date closer to trial for any specific
18 motions in limine that we need to deal with.

19 I'd like to -- I generally do not do any --
20 we have all those issues resolved before our first day
21 of trial, let me say. So we won't be doing any motions
22 on the first day of trial. We will be bringing up a
23 jury and starting jury selection.

24 All right. So, I guess Maggie, if you have I
25 guess some time frames or some dates? I would imagine

1 that you'd want at least a month before trial to deal
2 with any motions in limine that you would like to
3 handle?

4 MR. RHODUS: I think that sounds right,
5 Judge.

6 THE COURT: All right. So --

7 THE LAW CLERK: So four weeks before the
8 start date would be October 31st. Did you want all of
9 the motion dates to fall before the date discussed in
10 the breakout room?

11 THE COURT: I think they can and that will
12 just give us more time. Does that work for you,
13 Ms. Lee?

14 MS. LEE: Yeah, that should work. I think
15 that would be good.

16 THE LAW CLERK: All right. Give me one
17 second.

18 MR. GRAY: So Judge, we have a motions date
19 of Monday October 31st? Is that a date?

20 THE COURT: Not quite yet. We're going to
21 kick it back.

22 MR. GRAY: All right.

23 THE COURT: We're going to kick it back some
24 time.

25 THE LAW CLERK: How about October 14th? It's

1 a Friday.

2 THE COURT: Does that work for everyone for
3 motions in limine?

4 MR. GRAY: Yes. Is that for the hearing
5 dates or when it will be filed?

6 THE COURT: No, that will be the hearing
7 date.

8 MR. GRAY: Okay.

9 MR. RHODUS: Yes, that works, Judge. Does
10 that work for you, Makenzie?

11 MS. LEE: I think that should be fine.

12 THE COURT: And we'll put some timelines in
13 there as to when they should be filed.

14 MR. GRAY: Okay.

15 THE COURT: And then as to a motion date here
16 in the next couple of months dealing with any
17 constitutional issues, search warrants, statements,
18 anything of that nature that are going to generally
19 require some form of witness testimony or some form of
20 memorandum. I would like to do those a couple of
21 months out from now if that's possible, and then we'll
22 deal with the -- we'll deal with it.

23 Well, let's deal with the discovery issues
24 first I guess before we pick a date, because I guess
25 the Defense would like to have all of the discovery

1 before they file any particular motions.

2 MR. GRAY: Yes.

3 THE COURT: So Ms. Lee, as to audio or the
4 search warrants and the contents of the phone,
5 pictures, what -- where are we at with that?

6 MS. LEE: Yes, Your Honor. So at the last
7 hearing, which was an O.H. I believe on like the 30th
8 of March, Defense made another request for the audio
9 portion of a Ring camera video. After that date I
10 contacted the investigators. They had to have someone
11 from their media unit work on it because our video --
12 Defense's video as well as the disc that the
13 investigators had been using for the video, none of --
14 the audio was cut off on all of the video. So we had
15 to backtrack and figure out at what point that went
16 wrong.

17 I did just get a response from one of the
18 investigators that their media person was able to
19 figure out how to get the audio working by downloading
20 an extra program to watch the video. So we'll figure
21 out what that exactly is, or they also are willing to
22 make us a new set of discs and have the audio on those
23 as well. So that should be taken care of relatively
24 quickly.

25 As far as the search warrants go, I did

1 double-check again that we had all discovery from the
2 police department, and I'm told that we did. I'd have
3 to double-check about the search warrants and the
4 contents, because maybe that's something that was
5 overlooked because everything that we have has been
6 disclosed to this point.

7 MR. GRAY: Well, Judge, we've requested this
8 material since February. It's very important for us to
9 get the content of the phone and actually the phone
10 back, and we would stipulate that this is the content
11 in that phone. In order to prepare for trial we need
12 that. There is important evidence for the Defense in
13 that.

14 And as far as the computers, the computers
15 had nothing to do with this incident. I'm not quite
16 sure why they seized them in the first place, because
17 I've never received the search warrants, although I
18 believe we've requested them. Could we have a date as
19 to when we're going to get this material? Particularly
20 the phone and the contents of the phone so if there is
21 an invalid search warrant, I can have it prior to the
22 motions hearing -- like next week so that we can get
23 that taken care of.

24 THE COURT: So let me just start with the
25 search warrants themselves. Those have been provided,

1 correct?

2 MR. GRAY: No.

3 THE COURT: Okay. There is no reason why the
4 search warrants themselves wouldn't have been provided.

5 MR. GRAY: Which ones haven't?

6 MS. MONTGOMERY: We're missing the search
7 warrants for electronic data for his phone and the data
8 content. I believe we have the other search warrants.

9 THE COURT: All right.

10 And that was the voice of Ms. Montgomery.

11 MR. GRAY: Yeah.

12 THE COURT: All right. And does the State
13 have that available now?

14 MS. LEE: I would have to relook through the
15 discovery that we have. It's quite a bit of discovery.
16 But as I said, everything that we have up to today has
17 been disclosed previously.

18 THE COURT: I understand that and I don't
19 doubt that, Ms. Lee. What I'm asking is -- so what
20 you're saying is you do not have the warrants that
21 Mr. Gray is seeking?

22 MS. LEE: What I'm saying is I am unsure if
23 we have it off the top of my head. I'd have to go back
24 and look through our discovery.

25 THE COURT: Okay. So that's one thing that's

1 got to be turned over and that should be turned over
2 relatively quickly. It sounds like the audio of the --
3 whatever it is you're requesting that was downloaded
4 is -- should be available relatively quickly.

5 As to the phone itself and the contents of
6 the phone, I'm not exactly sure that the State is
7 prepared to hand over the phone itself, but the
8 contents of the phone, that would include whatever
9 dump -- or if nothing else, allowing Mr. Gray an
10 opportunity to examine the phone itself.

11 MR. GRAY: Well, what we want, mainly, are
12 the contents of the phone, particularly that night.
13 And so, I mean, I don't know how hard it would be to
14 get the contents to us. They've had the phone -- they
15 could have downloaded, whatever they do to get the
16 contents -- and, okay, they can keep the phone, but we
17 need the contents.

18 THE COURT: All right. So what we're talking
19 about is the contents of the phone?

20 MR. GRAY: Yes.

21 THE COURT: All right. So we got three
22 things so far: The audio, the actual -- that one
23 search warrant, and the contents of the phone are three
24 things that need to be turned over. And then the need
25 for the computers, whether or not a search has been

1 done on those already? Of course, you know, seizing
2 the computers and searching the computers are two very
3 different things. So have the computers been searched?

4 MS. LEE: I don't believe they have been
5 searched at this point.

6 THE COURT: All right. And can I get a time
7 frame as to when they're going to be searched?

8 MS. LEE: I don't believe there's been a
9 request for them to be searched, so there would be no
10 time frame.

11 THE COURT: All right. So if the State is
12 not intending to search the computers, then should we
13 return the computers back to the Defendant?

14 MR. RHODUS: My suggestion to the Court, Your
15 Honor, if I may, would be: If we could be allowed
16 perhaps one week just to touch base with the
17 investigators? I think we've narrowed down the
18 discovery issues. We knew the audio for the Ring
19 cameras would be an issue and we had been
20 looking into that, although it has been delayed. But
21 just before making the commitment to giving back the
22 computers -- and as the Court's indicated, typically
23 things like a phone and things like this would be held
24 as potential evidence until after disposition of the
25 case.

1 So if we could have perhaps a week to touch
2 base with our investigators on what the evidentiary
3 value stuff in those electronics was, and then
4 certainly we can look into -- it sounds like the only
5 outstanding search warrant at this point that hasn't
6 been received --

7 THE COURT: I think you froze on us,
8 Mr. Rhodus.

9 MR. RHODUS: -- bringing that over too.

10 THE COURT: We lost that last statement,
11 Mr. Rhodus. You froze on us.

12 MR. RHODUS: Sorry about that. It appears
13 that the only search warrant that's still lacking that
14 hasn't been disclosed yet is the one relating to the
15 search of the phone and the electronic data. So we'll
16 make a specific review and request for that and get
17 that over as well.

18 THE COURT: All right. So, let's -- and
19 we'll include this in the order. What I'd like to see
20 is that by May 20th the audio, the search warrant, the
21 contents of the phone, and the contents of the
22 computers or the computers themselves if they're not
23 going to be used, be turned over to Mr. Gray.

24 And then from there, we can have an
25 opportunity to pick a motion date perhaps in --

1 sometime in August.

2 MR. GRAY: Judge, excuse me. Before we go
3 there, we also received notice in this case that they
4 have DNA evidence that they're either testing or
5 whatever they're doing with it. And we haven't
6 received the results of that either, but could we have
7 a time when we get the DNA evidence also? If there is
8 some?

9 THE COURT: And Ms. Lee, do we have a time
10 frame for that? Ms. Lee or Mr. Rhodus?

11 MS. LEE: Your Honor, there was a batch of
12 documents disclosed on April 12th that included the
13 FSU's forensic documents.

14 MR. RHODUS: And I can chime in here I think
15 real quick on this. I think what we were awaiting is:
16 We had sent Mr. Gray a letter indicating that DNA
17 testing of the weapon in question was going to result
18 in consumption, meaning that in order to be able to
19 test. It was going to preclude any future testing, and
20 we're required by rule to give the Defense notice in
21 the event that they want to be present for that or call
22 their own expert. And I don't recall whether we
23 received a reply? I think it would -- it was my -- I
24 was under the impression that I think we were waiting
25 to see if there was an objection to that request. And

1 if we received something in writing saying, "We don't
2 object and we don't intend to have any independent
3 expert of our own," then we can move forward on this
4 DNA testing.

5 MR. GRAY: For the record, we don't object,
6 and you can test it all you want.

7 MR. RHODUS: Okay.

8 THE COURT: All right. So we have that --
9 you don't need anything in writing then, Mr. Rhodus?
10 We have it on the record that the Defense does not
11 object to the testing and the consumption of the DNA.

12 MR. RHODUS: Correct. I think we can move
13 forward on that. Thank you.

14 THE COURT: Okay. So with that said then,
15 what -- what's your time frame on providing that
16 particular evidence -- and I'm sorry, that's of a
17 firearm?

18 MR. RHODUS: No.

19 MR. GRAY: No.

20 THE COURT: Okay.

21 MR. RHODUS: No, Judge. That would have been
22 the weapon in question.

23 THE COURT: All right.

24 MR. RHODUS: The weapon in this case was not
25 a firearm. And I can just tell the Court, with the

1 caveat of the BCA is, I know, backed up significantly
2 right now and a lot of testing is behind, we will make
3 a request for an expedited review.

4 THE COURT: All right. So we know we can
5 move forward with that. We have the other items we can
6 cover. I don't know a lot about your case Mr. Gray,
7 but based on the little bit that I have seen. I'm not
8 so sure the DNA on the weapon is going to be a really
9 big issue --

10 MR. GRAY: I agree.

11 THE COURT: -- from your end?

12 MR. GRAY: I agree.

13 THE COURT: All right. So we know what the
14 issues are. I think we have those settled. Let's pick
15 a date for the actual motion and then we will send out
16 some time frames as to when the written motions should
17 be submitted and the notice should be given.

18 THE LAW CLERK: Mr. Gray, you had indicated
19 that you will pretty much be in trial through
20 September. Is there a date in August that would work
21 for you?

22 MR. GRAY: Um, yeah. Yeah, the week of -- I
23 probably won't be going to South Dakota. So the week
24 of August 15th except for Friday I could appear, so
25 15th, 16th or 17th or 18th.

1 THE LAW CLERK: Okay.

2 THE COURT: We would probably like to block
3 the whole day, so how is the 16th?

4 MR. GRAY: Looks good for me.

5 MS. LEE: My schedule is clear. I'm not sure
6 if Mr. Rhodus has any issue?

7 THE COURT: Did we lose Mr. Rhodus?

8 MR. RHODUS: (No audible response.)

9 MR. GRAY: Judge, I think --

10 THE COURT: Yes.

11 MR. GRAY: -- on the motions, we don't -- I
12 don't think we need a whole day, probably a half a day.
13 I have already read the statement. I'm not going to
14 contest my client's statement to the police. The
15 search warrants aren't that important. I don't see it
16 being more than half a day, if that would help you.

17 THE COURT: All right. Morning or afternoon
18 work better?

19 MR. GRAY: Well, I'm a morning guy. I fall
20 asleep in the afternoon, so.

21 THE COURT: Okay. Well, then I guess the
22 morning works better. We want to keep you awake, sir.

23 MR. GRAY: Yes, we do.

24 THE COURT: All right. So how about 9:00 on
25 August 16th?

1 MR. GRAY: Sounds good to me, Judge.

2 MS. LEE: That works for the State as well.

3 THE LAW CLERK: And, Your Honor, I apologize.
4 I don't think that we discussed a time for the motion
5 in limine hearing. Do you want that blocked off for
6 the whole day?

7 THE COURT: I don't think we need a whole day
8 for that either, and that's October 14th so --

9 MR. GRAY: So the limine motions, October
10 14th?

11 THE COURT: Did I get that right, Maggie?

12 THE LAW CLERK: You did, Judge. And we can
13 do that at 9:00 a.m. as well.

14 THE COURT: All right. And we can do that at
15 9:00 a.m. And again, we'll issue an order with the
16 dates and when the motions -- the written motions are
17 actually due.

18 THE LAW CLERK: Am I to assume that all of
19 these are going to be blocked as in-person hearings?

20 THE COURT: Yes.

21 THE LAW CLERK: Okay. Thank you.

22 THE COURT: That way we can't lose
23 Mr. Rhodus. Oh, he's back. We got him back.

24 MR. RHODUS: Sorry about that. Single parent
25 today.

1 THE COURT: No problem. No problem. I get
2 it. Okay. Maggie, any other dates or any other issues
3 that we need to kind of clear up before we issue that
4 scheduling order?

5 THE LAW CLERK: No. I can just plug in dates
6 for, you know, exhibit lists and everything like that.

7 THE COURT: All right.

8 THE LAW CLERK: Unless the parties would
9 prefer to agree on them.

10 THE COURT: No. We'll plug in dates. We got
11 it. Thanks.

12 And if we're going to have a -- and we'll put
13 this in the order. If we're going to have a juror
14 questionnaire, if we're going to do a questionnaire
15 then I'd prefer if you'd both confer on what that
16 questionnaire would look like and then submit one to
17 me. And then I will make a final decision as to what
18 the questionnaire looks like. I err on the side of
19 less is more when it comes to the questions, so just
20 take that into consideration.

21 All right. Any other issues, Ms. Lee?

22 MS. LEE: Nothing from the State, Your Honor.

23 THE COURT: Mr. Rhodus?

24 MR. RHODUS: No, Your Honor. Thank you.

25 THE COURT: Mr. Gray or Ms. Montgomery?

1 MR. GRAY: No, Your Honor.

2 MS. MONTGOMERY: No, Your Honor. Thank you.

3 THE COURT: All right. Maggie, we got
4 everything covered?

5 THE LAW CLERK: We do, Your Honor.

6 THE COURT: All right then. All right. Then
7 with that, we will -- that concludes this hearing.
8 Thank you very much, everyone?

9 (The proceedings concluded at 3:36 p.m.)

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MINNESOTA
JUDICIAL
BRANCH

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 May 4, 2022, 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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