

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

State of Minnesota,FELONY
Schwartz
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 May 17, 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

1 P R O C E E D I N G S

2 THE LAW CLERK: All rise.

3 THE COURT: You may be seated. All right.

4 Calling Page 1, Line 1, State of Minnesota versus Brian
5 Harry Kjellberg. The matter is here on a Schwartz
6 hearing. And if I could have Counsel, please, identify
7 themselves.8 MR. TAHIR: Good afternoon, Your Honor.
9 Hassan Tahir, H-A-S-S-A-N T-A-H-I-R, appearing on
10 behalf of the State.11 MS. LEE: Makenzie Lee, also on behalf of the
12 State.13 MR. GRAY: Good afternoon, Your Honor. Earl
14 Gray, representing Mr. Kjellberg.15 MS. MONTGOMERY: Good afternoon, Your Honor.
16 Amanda Montgomery, also representing Mr. Kjellberg.17 THE DEFENDANT: Good afternoon, Your Honor.
18 Brian Kjellberg.

19 THE COURT: Good afternoon, Mr. Kjellberg.

20 All right. So at the last hearing I decided
21 that we would have the interview, if you will, or the
22 questioning of some jurors. What I have to say I wrote
23 down so please be patient with me. I just want to be
24 able to make sure I get this all on the record
25 accurately.

1 And I'll start by saying that a Schwartz
2 hearing is a post-trial hearing in which a juror or
3 jurors are examined under oath to address concerns of
4 juror misconduct. The purpose of a Schwartz hearing is
5 to investigate -- prevent the practice of attorneys
6 contacting and questioning jurors after a verdict has
7 been rendered. At a Schwartz hearing, the movant, in
8 this case the Defendant, bears the burden of
9 demonstrating actual misconduct and prejudice.

10 A juror may not testify as to any matter or
11 statement occurring during the course of the jury's
12 deliberation or to the effect of anything upon that or
13 any other juror's mind or emotions as influencing the
14 juror to assent to or dissent from the verdict or
15 concerning the juror's mental process in connection
16 therewith.

17 The Defense has proposed a list of questions,
18 most of which concern matters or statements that
19 occurred during the course of deliberations. Those
20 questions are not allowed and will not be asked. I
21 have prepared a set of questions to ask the juror or
22 jurors as I deem appropriate.

23 Again, a juror may testify on the question of
24 whether extraneous prejudicial information was
25 improperly brought to the juror's attention or whether

1 any outside influence was improperly brought to bear
2 upon any juror, or any threats of violence or violent
3 acts brought to bear on jurors from whatever source in
4 order to reach a verdict.

5 As to answers to the jury questionnaire by
6 Juror Number 14, Mr. Justin Fulton, this Court made
7 clear at our prior hearing that Defendant was given an
8 ample opportunity to inquire as to the juror's
9 responses during voir dire and failed to do this. This
10 hearing does not give the Defense an opportunity to now
11 make further inquiry into those responses.

12 Moreover, there is no evidence that any
13 statement or response given by Mr. Fulton was false or
14 misleading. The allegations of misconduct in this case
15 are based solely on the belief that only one juror,
16 Juror Number 14, Mr. Justin Fulton, who was also the
17 foreperson, may have been predisposed to find the
18 defendant guilty. There has been no evidence presented
19 that other jurors were predisposed to find the
20 Defendant guilty or were guided by outside improper
21 influences or were threatened or coerced in reaching
22 their verdict.

23 Therefore, because jurors may not testify as
24 to any matter or statement occurring during the course
25 of the jury's deliberation, it is my intent to only

1 interview Mr. Justin Fulton. The Court did subpoena
2 two other jurors for this Schwartz hearing. One of the
3 jurors, Juror Number 5, Sheena Sukhu S-U-K-H-U,
4 contacted my chambers and informed my law clerk that
5 she had broken her ankle and could not attend the
6 hearing. I excused her from attending today's
7 proceeding.

8 The third juror, Juror Number 15, which we
9 subpoenaed, Juror John Rasmussen, is available and I
10 will determine if his interview is necessary based on
11 the interview of Mr. Fulton.

12 Anything that the State would like to place
13 on the record?

14 MR. TAHIR: No, Your Honor.

15 THE COURT: Anything that the Defense would
16 like to place on the record?

17 MR. GRAY: Not at this time.

18 THE COURT: All right. We will bring in
19 Mr. Fulton.

20 (Mr. Fulton entered the courtroom.)

21 THE COURT: Good afternoon, Mr. Fulton.

22 THE WITNESS: Hi.

23 THE COURT: Please come forward.

24 JUSTIN FULTON,

25 was called as a witness and, being first duly

1 sworn, was examined and testified as follows:

2 THE COURT: Please have a seat, sir.

3 THE WITNESS: Sorry.

4 THE COURT: First, let me thank you for
5 coming in today and dealing with the short notice.
6 There -- this hearing is what we call a Schwartz
7 hearing, okay? And it's based on a case of a decision
8 that our court -- our Supreme Court made that relates
9 to juror misconduct.

10 Now, the Defense has introduced evidence
11 that's mostly based either from your Facebook web page
12 or from other sources that argue -- and they argue that
13 it indicates that your verdict essentially was
14 predisposed, that it was based on your apparent strong
15 feelings about white police officers killing black
16 people, all right?

17 So I'm going to have a series of questions
18 for you. I'm the only one that's going to be asking
19 you questions. I ask that you answer them under the
20 oath that you just took and, again, thank you for your
21 time.

22 EXAMINATION BY THE COURT

23 BY THE COURT

24 Q. All right. So my first question to you, sir, is: In
25 reaching your verdict, did you follow the law as given

1 to you by the Court -- by me, and did you disregard any
2 statement of the law that you may have heard or seen
3 from any other source?

4 A. Such as?

5 Q. Do you want me -- let me break that down.

6 A. Okay.

7 Q. It's a multi-question. Sorry about that.

8 A. It's all good.

9 Q. So in reaching your verdict, did you follow the law as
10 it was given to you?

11 A. Yes.

12 Q. Did you disregard any statement of the law that you may
13 have heard or seen from any other source?

14 A. Yes.

15 Q. Okay. Did you in any way base your verdict upon any
16 understanding of the law that you may harbor that is
17 not in accordance with the law as I gave it to you?

18 A. No.

19 Q. Did you review any form of information about this case
20 beyond that provided to you during the trial?

21 A. No.

22 Q. And that would include news articles?

23 A. No.

24 Q. TV clips?

25 A. No.

1 Q. Anything of that nature?

2 A. No.

3 Q. Okay. Did you have any conversations with any of the
4 witnesses, families of the victim, or others about this
5 trial prior to reaching your verdict?

6 A. No.

7 Q. Were you coerced in any way in reaching your verdict?

8 A. No.

9 Q. Was there any extraneous prejudicial information
10 brought to your attention prior to trial or during
11 deliberations?

12 A. No.

13 Q. Again, this is stuff that you may have seen or heard or
14 talked about outside of what happened in the courtroom
15 and outside what happened in the jury deliberation
16 room.

17 A. Yeah, I didn't hear anything.

18 Q. Okay. And I will say at the outset that -- and make it
19 clear to you that if I ask a question -- I don't have
20 very many more -- but if I ask a question that would
21 require you to respond about what happened in the
22 deliberation room, okay, do not answer it and let me
23 know. Because what happened in the deliberation room,
24 any conversations that may have occurred, is an inquiry
25 that I cannot make.

1 A. Okay.

2 Q. All right. Was there any outside influence improperly
3 brought to bear upon you during the trial or
4 deliberations?

5 A. No.

6 Q. Were there any threats of violence or violent acts
7 brought to bear on you from whatever source to reach a
8 verdict?

9 A. No.

10 Q. Again, the Defense has introduced evidence from your
11 Facebook web page that they argue indicates that your
12 verdict was predisposed based on your apparent strong
13 feelings about white police officers killing black
14 people. Were you predisposed to convict the Defendant
15 regardless of the evidence presented and the law as I
16 gave it to you?

17 A. Was I coerced or?

18 Q. Were you predisposed?

19 A. Oh, no. No. Sorry.

20 Q. All right. And did you visit the site called Unicorn
21 Riot prior to or during the trial and deliberations?

22 A. Never heard of them.

23 Q. Was there anything about that site that would have
24 influenced your decision?

25 A. No.

1 Q. Did your feelings about how black people are treated by
2 law enforcement cause you to decide on your verdict
3 before hearing the evidence in this case?

4 A. No.

5 THE COURT: Thank you, Mr. Fulton. I don't
6 have any further questions for you. I ask you to
7 please accept my apology on behalf of the Court for
8 having you come in today and have to answer these
9 questions. Thank you for your service.

10 THE WITNESS: Thank you.

11 THE COURT: Okay.

12 (Mr. Fulton exited the courtroom.)

13 THE COURT: Based on the responses provided
14 by Mr. Fulton, the Court has determined that there is
15 no need to interview Mr. Rasmussen in this matter.
16 I'll certainly allow the attorneys now to make any
17 arguments.

18 MR. TAHIR: Your Honor, Mr. Fulton's
19 responses clearly show that there was no misconduct in
20 this case. And for that reason, Defense's motion for a
21 new trial on the basis of alleged jury misconduct
22 should be denied.

23 MR. GRAY: Well, Your Honor, this Schwartz
24 hearing is discretionary by the Court, but it would
25 seem to me that it's not fair. You just questioned the

1 person that's being accused of making allegations or
2 bringing in extraneous information to the other jurors.
3 It would seem to me the only fair hearing would be one
4 where at least four or five of the other jurors would
5 be asked: Was it ever brought up that my client is
6 white, and that the deceased is black? Was that ever
7 brought up during the jury --

8 THE COURT: Let me ask you a question. If
9 that was brought up, what -- what do you think -- you
10 think that's improper?

11 MR. GRAY: Yes. Yes. Based on -- it's
12 improper if it's vice versa. Race is one thing that
13 they can't discuss --

14 THE COURT: How is that extraneous
15 information when it's fairly visible that your client
16 is white and the decedent is black?

17 MR. GRAY: Well, if they bring it up as an
18 issue on the evidence that's brought up in the
19 courtroom, and you discuss the race, that's not
20 allowed.

21 THE COURT: Why isn't that allowed? Is it
22 extraneous --

23 MR. GRAY: I don't know.

24 THE COURT: -- to discuss race? Is race
25 something that jurors can't talk about?

1 MR. GRAY: Well, that's -- ah, what the law
2 says.

3 THE COURT: Well, you're making the leap that
4 if they spoke of race -- well, first of all, let make
5 it clear that I can't, nor you, ask questions about
6 what they talked about during deliberations. That's
7 number one.

8 The fact that jurors decide to talk about
9 race -- I don't know where you can imagine that that
10 would be disallowed. Now, if they base their decision
11 because of race that may be different. But Mr. Gray,
12 do you have any evidence whatsoever that the jury's
13 decision was based upon race?

14 MR. GRAY: Well, I thought that this hearing
15 was going to be the hearing where the jurors would be
16 questioned about that.

17 THE COURT: Well, you understand that I can't
18 ask jurors about what they talked about during
19 deliberations, or what they thought about during
20 deliberations. I mean, we can agree on that?

21 MR. GRAY: Well, I can cite State v. Bows, which states that "race-based pressure constitutes
22 extraneous prejudicial information about which a juror
23 may testify." So if the other jurors were called and
24 say -- was it brought up during this deliberation that
25

1 the Defendant was white and the black person was the
2 victim, the deceased, and they discussed that, I think
3 that that's wrong. It's a violation of their duty to
4 just talk about the facts and the evidence and into the
5 race of either the Defendant or the deceased and
6 that's --

7 THE COURT: I understand that you might think
8 it may be wrong, but talking about race I can't imagine
9 would be wrong --

10 MR. GRAY: Race.

11 THE COURT: -- unless they base their
12 decision on race and not on the evidence and --

13 MR. GRAY: Race and --

14 THE COURT: -- and there is nothing that
15 allows me to ask them, notwithstanding the case that
16 you're referring to there, about what they talked about
17 during deliberations.

18 Now, if there was outside pressure that
19 influenced them -- and what I mean by "outside
20 pressure" is that came to jurors outside of that
21 deliberation room and pressured them -- that would be
22 different, but you have no evidence of that --

23 MR. GRAY: No. But our -- our theory was --
24 and that the jurors would be called and if it were
25 discussed in there --

1 THE COURT: Well, you keep on saying that and
2 I keep on telling you. I can't ask them what was
3 discussed in there during deliberations --

4 MR. GRAY: -- well, you --

5 THE COURT: -- so why would I call them if I
6 can't ask them what was discussed during deliberations?

7 MR. GRAY: You could ask them according to
8 this case whether or not race-based pressure was
9 brought upon them in the jury room. You could also --

10 THE COURT: I can't. No. I disagree with
11 you.

12 MR. GRAY: Well, then, I don't -- I can't get
13 any further than that.

14 THE COURT: Right.

15 MR. GRAY: Except then if a juror brings
16 something up outside of the evidence, some other
17 incident, that's illegal. You can't do that.

18 THE COURT: Do you honestly believe that
19 jurors sit in the deliberation room and only talk about
20 the evidence?

21 MR. GRAY: Well, I had one of these before,
22 and yes, I do. They're supposed to talk about the
23 evidence and not what they've heard or seen about the
24 issue involved and that's one of the issues in this
25 case, at least from our perspective -- was that the

1 foreman of the jury, in our opinion and based on his
2 Facebook, was quite biased towards white people -- not
3 just white cops. The three guys that he had pictures
4 of on there, one of them looked a little bit like my
5 client.

6 So that -- you know, that would at least -- I
7 would think -- ask at least four or five other jurors
8 if anything was brought up about the fact that my
9 client killed Mr. Stewart because he was black or that
10 was one of the things that entered his mind. That's my
11 understanding of the law. Yours is different, so.

12 THE COURT: All right. Anything else?

13 MR. GRAY: No.

14 THE COURT: All right. So based on the
15 responses provided by Mr. Fulton while under oath, this
16 Court concludes that there is no need to question any
17 other jurors. There is no evidence that Mr. Fulton or
18 any other juror was improperly influenced by
19 information or pressured outside of this Court's
20 proceedings. That Mr. Fulton is vocal on social media
21 about how he sees black people being treated by law
22 enforcement does not provide any basis to conclude that
23 he did not apply the evidence presented during the
24 trial and applied that evidence to the law as given to
25 reach his verdict.

1 The Defense's belief that Mr. Fulton placed
2 undue pressure upon the jurors because of the
3 Defendant's race and the victim's race is wholly
4 speculative and without basis in fact. Therefore,
5 Defendant's motion for a new trial based on juror
6 misconduct is denied. Also, Defendant's motion for
7 judgment of acquittal is denied.

8 This Court concludes that there was
9 sufficient evidence presented for the jury to conclude
10 that the State disproved beyond a reasonable doubt the
11 absence of provocation by the Defendant. They could
12 have concluded -- the jury, that is, could have
13 concluded that the Defendant's failure to allow
14 Mr. Stewart to get to his car and move the vehicle was
15 sufficient provocation.

16 Additionally, this Court concludes that there
17 is sufficient evidence presented for the jury to
18 conclude that the State disproved beyond a reasonable
19 doubt the absence of a reasonable possibility of
20 retreat to avoid the danger. If the Defendant believed
21 he was in danger, he could have retreated into his
22 home. The jury could have concluded that failure to
23 retreat but rather confront was sufficient evidence.

24 Therefore, the motion for a judgment of
25 acquittal is denied, and this matter is now set for

1 sentencing. And let's pick a sentencing date. I
2 believe the PSI is already complete.

3 THE LAW CLERK: How many weeks out would you
4 like to set this?

5 THE COURT: Well, as soon as we can get a
6 sentencing date. I don't know that it needs to be
7 weeks out.

8 THE LAW CLERK: Okay. How about May 31?
9 It's a Wednesday.

10 MR. TAHIR: State's available in the morning.

11 THE COURT: Available in the a.m.?

12 MR. GRAY: What time was it did you say?

13 THE LAW CLERK: Wednesday May 31st in
14 morning.

15 MR. GRAY: I have a dental appointment that
16 morning, Your Honor, that's been scheduled for about
17 four months on a surgery I had. I could do it later in
18 the day?

19 THE COURT: Later in the morning?

20 MR. GRAY: -- or, well, this is at 10:30, but
21 it's in a suburb and I don't know how long I will be
22 there. But I should be -- I should be back by noon, I
23 would think. I mean, I don't know how long the
24 procedure will be, but it's been scheduled for four or
25 five months.

1 THE COURT: Are you going to be able to talk?

2 MR. GRAY: Hopefully. Well, do I need to?

3 THE COURT: Well --

4 MR. GRAY: I should be able to talk. It's a
5 whatever they do -- and he has to check it before he
6 puts it into -- the other dentist puts a tooth in.

7 THE COURT: Okay.

8 MR. TAHIR: We can make the afternoon work,
9 Your Honor.

10 THE COURT: 1:30?

11 MR. GRAY: Sure.

12 THE COURT: Okay. Say May 31st at 1:30, is
13 that it?

14 THE LAW CLERK: Mm-hmm.

15 THE COURT: All right. Thank you, everyone.
16 That concludes this matter.

17 (The proceedings concluded at 1:57 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 May 17, 2023, in the City of St. Paul, County of Ramsey, and State of Minnesota before the Honorable Leonardo Castro.

Signed this 15th day of October, 2023.

s:/ Colleen Maloney

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